

**ST. MARY DIVERSION AND CONVEYANCE WORKS  
AND MILK RIVER PROJECT**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENERGY AND NATURAL RESOURCES**  
**UNITED STATES SENATE**  
ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

**S. 3563**

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONDUCT STUDIES TO DETERMINE THE FEASIBILITY AND ENVIRONMENTAL IMPACT OF REHABILITATING THE ST. MARY DIVERSION AND CONVEYANCE WORKS AND THE MILK RIVER PROJECT, TO AUTHORIZE THE REHABILITATION AND IMPROVEMENT OF THE ST. MARY DIVERSION AND CONVEYANCE WORKS, TO DEVELOP AN EMERGENCY RESPONSE PLAN FOR USE IN THE CASE OF CATASTROPHIC FAILURE OF THE ST. MARY DIVERSION AND CONVEYANCE WORKS, AND FOR OTHER PURPOSES

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HAVRE, MT, SEPTEMBER 1, 2006



Printed for the use of the  
Committee on Energy and Natural Resources

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U.S. GOVERNMENT PRINTING OFFICE

32-480 PDF

WASHINGTON : 2007

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For sale by the Superintendent of Documents, U.S. Government Printing Office  
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## **ST. MARY DIVERSION AND CONVEYANCE WORKS AND MILK RIVER PROJECT**

**FRIDAY, SEPTEMBER 1, 2006**

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Havre, MT.*

The committee met, pursuant to notice, at 1 p.m., at the Student Union Ballroom, Student Union Building, Montana State University, 1 SUB Drive, Havre, Montana, Hon. Pete V. Domenici, chairman, presiding.

### **OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO**

The CHAIRMAN. Could we have order, please? Thank you very much. Good morning everyone. It's nice to be with you. I'm Senator Pete Domenici of the State of New Mexico. I'm chairman of the committee, the standing committee of the U.S. Senate called Energy and Natural Resources. We are having an official hearing of that committee here in your city and we will proceed shortly with opening statements and observations and then proceed to ask the representative from this area, the U.S. Representative, to speak. Before that, I would ask if Senator Burns would have a word. I have an opening statement but I would just like to ask you if you want to have a word of welcome first.

Senator BURNS. Well, thank you, Mr. Chairman, for that opportunity. You never want to precede the chairman of a committee, I learned that a long time ago in the Senate and I was reminded, I think, on this committee whenever we first joined the U.S. Senate. So I would wait and make my statement after your opening statement but I would want to welcome Senator Domenici, the chairman of the Energy and Natural Resource Committee, to Montana. This is not his first trip to the State. He is familiar with the State of Montana and he is not unfamiliar with the challenges that we face in the West and that is water and our natural resources and how we maintain a conservation mode to make good use of our natural resources and to make sure that our economies flourish because our economy is based on natural resources here in our great State. So, Mr. Chairman, thank you for coming and welcome to Montana.

The CHAIRMAN. Thank you, Senator Burns. All right, the meeting is called to order. Thank you for attending. The realization of our Nation's Manifest Destiny was made possible by the construction of water supply projects by the Bureau of Reclamation. Many families migrated to the West under the promise that this water would

be provided. Reclamation water projects currently supply water to 31 million people and provide irrigation water for roughly 10 million acres of farmland. With the growth of the West, the demands on the water that these projects supply have grown significantly. These projects are the lifeblood of the West. Any disruption to the water supplies that is supplied by these facilities would be devastating to the interests that depend upon them. However, in many instances, these projects are growing old and without repair. It threatens the existence of many of our communities in the West. Nowhere is this more true than the Hi-Line of Montana. After 90 years of use, the St. Mary's facility is deteriorating and is in need of major rehabilitation. Of that, I do not have to come here to draw that conclusion. I'm made aware of that and it is a matter of fact.

The failure of the facility threatens the well being and prosperity of the Hi-Line farmers and ranchers, local towns and industry and fish, wildlife, and recreation are all dependent on water from the St. Mary facility. Senator Burns has advocated the importance of addressing this situation and I very much appreciate his leadership in confronting the problem that aging infrastructure puts upon and poses for both Montana and the Nation.

I look forward to working with him to address this problem. At Senator Burns' request, I included \$5 million in the energy and water appropriations bill, which I also happened to chair, for engineering and environmental studies required to rehabilitate the facility. It is my sincere hope that this hearing will begin the process of evaluating the best way to repair these aging facilities throughout the West. I would like to welcome our witnesses for today's hearing and I will name panel number one shortly but before I do that, I believe I will yield to Senator Burns for comments. Then I will introduce panel number one and then ask Congressman Rehberg to make an opening statement preceding the first panel. With that, Senator Burns, I yield to you.

[The prepared statement of Senator Baucus follows:]

PREPARED STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

Mr. Chairman, the Hi-Line is about more than wide-open spaces and spectacular views of Montana. The plows and the combines of the Hi-Line are fundamental to our way of life. The Hi-Line is vital to Montana. And the Hi-Line is important to the nation's bottom line.

Our predecessors recognized this. They had foresight. They saw that irrigated agriculture in the Milk River Basin would foster regional prosperity.

A century ago, Ethan Allen Hitchcock was Secretary of the Interior. He served under Presidents William McKinley and Theodore Roosevelt. In 1905, Secretary Hitchcock authorized the construction of the St. Mary Diversion Facility to provide water to irrigators and communities along the Hi-Line.

And the St. Mary Diversion Works was one of the first five irrigation projects authorized by the newly-formed Bureau of Reclamation in the early 1890s. That history underscores the importance of the St. Mary System to the state, the region, and the nation. The St. Mary System's value has not diminished. And neither should our resolve to maintain it.

I would like to thank all the area producers and the members of the St. Mary Working Group, especially thank Lt. Governor John Bohlinger, Chief and Chairman Earl Old Person, Chairwoman Julia Doney, Larry Mires, Randy Reed, and John Tubbs. They have tirelessly championed the rehabilitation of the St. Mary System. They understand that investing in our Country's infrastructure is critical to our producers' economic competitiveness today. And they understand that it is part of our duty to leave a better country to our children tomorrow.

That is why I am proud of my work to help rehabilitate the St. Mary System. In 2005, I got the rehabilitation started by including \$8 million dollars in the high-

way bill to build a new bridge across the St. Mary River and address bank stabilization along Swiftcurrent and Boulder Creeks. I also worked with my friend Senate Minority Leader Harry Reid to include \$5 million in the 2007 Energy and Water Appropriations bill. We are off to a good start. And I'm committed to getting the job done.

The Milk River Basin is home to just 7 percent of the state's population. But the Milk River Basin supports more than 1 out of every 4 farm jobs in the state. And every producer in the Milk River Basin generates agricultural retail and service jobs, as well. Producers in the Milk River Basin generate 38 percent of Montana's farm and ranch earnings.

Maintaining Montana's economic competitiveness depends on irrigated agriculture in the Milk River Basin. And irrigated agriculture depends on rehabilitation of the St. Mary System. It's the life line of the Hi-Line.

The St. Mary System diverts 160,000 acre-feet of water into the Milk River every year. Without that diversion, the Milk River would dry up in 6 out of every 10 years. Without that diversion, our agricultural communities along the Hi-Line would dry up.

The St. Mary System provides drinking water to more than 18,000 residents in Glacier, Hill, Blaine, Phillips, and Valley counties. Our communities depend on a reliable source of clean drinking water. It's critical to the health of our children. Without the St. Mary System diversion, municipal water systems across the Hi-Line would be devastated.

The St. Mary Diversion and Conveyance Works Act includes an important provision providing for a feasibility study to determine the possibility of developing a safe and reliable municipal and industrial water source for the Fort Belknap Reservation. We should not risk the health of our communities on 100-year-old water infrastructure.

Inaction and delay are not options. After 100 years, the St. Mary Diversion works are just one accident away from catastrophe. The St. Mary System consists of 29 miles of crumbling earthen canals, leaky siphons, and cracking concrete hydraulic drops.

The system was originally designed to divert 820 cubic feet a second. But now the system can handle just 670 cubic feet a second.

In 2002, one of the hydraulic drop structures failed. The canal had to be turned off for 2 months. Again in 2004 and 2005, the system had to be shut down because of leaks in the siphons. Each of these capacity reductions and shutdowns acts like a tax on local producers. Each shutdown cost them millions in lost revenue.

We must act now. I will not stand by while the life line of the Hi-Line rusts, cracks, and crumbles.

Rehabilitating the St. Mary Diversion works is critical to Montana tribes. For nearly a century, the Blackfeet Tribe has hosted the St. Mary Diversion Works on their land. But this has significantly impaired the tribe's natural resources.

The system has caused flooding and erosion below the confluence of Swiftcurrent and Boulder Creeks. The St. Mary diversion dam bars fish from moving upstream. That hurts native fisheries and the recreation economy.

Sherburne Dam is incapable of passing water during low winter flows. As a result, Swiftcurrent Creek often dries up in the winter, hurting fish habitat.

One of the biggest concerns is that a catastrophic failure of the St. Mary Diversion works could severely damage Blackfeet Tribal lands. That could cause flooding and resource damage. And that could put lives at risk.

That is why the St. Mary Diversion and Conveyance Works Act of 2006 includes a provision creating an emergency response plan and an emergency response fund. We must not leave the Blackfeet Tribe in harm's way. We must not leave them at the mercy of a rusting, 100-year-old irrigation system. This legislation makes sure that we take steps to protect the Tribe.

The St. Mary rehabilitation legislation also includes several other provisions critical to the Blackfeet Tribe. It includes protection of Tribal water rights. And it includes feasibility studies to determine the possibility of rehabilitating the Blackfeet Tribe's irrigation system.

The costs of inaction are great. And so are the benefits of rehabilitation. Rehabilitating the St. Mary system will ensure that the region's farmers and ranchers stay competitive. Rehabilitating the St. Mary System would increase agricultural production by up to \$13 million dollars a year. And rehabilitating the System would pump another \$4 million dollars in secondary effects into area retail, service, and supply businesses.

The Milk River Basin is also home to more than 7,300 acres of wetlands and the Bowdoin National Wildlife Refuge. These natural resources depend on a stable sup-

ply of water in the Milk River. These wetlands support hundreds of thousands of waterfowl each year.

We take our kids hunting and fishing here. These wetlands are part of our recreational heritage as Montanans. They are important to the local economy. Rehabilitation of the St. Mary System will improve this hunting and fishing habitat. Rehabilitation of the St. Mary System would bring another \$12 million dollars a year in recreation dollars to the local economy.

All told, rehabilitating the St. Mary System could bring in an additional \$41 million dollars a year to the local economy. Creating good paying jobs at home is my top priority. These are jobs that preserve our agricultural way of life. These are jobs that promote our recreational heritage of hunting and fishing. These are good jobs that keep our Hi-Line families and communities strong.

Let us work to keep our agricultural economy competitive. Let us work to keep clean drinking water flowing to more than 18,000 Montanans. Let us work to correct resource damage on Blackfeet lands. And Let us work to preserve the wetlands and wildlife.

For all these reasons, we must work to rehabilitate the St. Mary System. Let us keep the Hi-Line's life line in good shape, for the next generation of farmers and ranchers on the big open spaces of Montana.

**STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR  
FROM MONTANA**

Senator BURNS. Thank you, Mr. Chairman. I appreciate that and again, thank you for coming. The \$5 million is appreciated in that bill and of course, it will be put to good use. The funding will complete the feasibility study for the same area of diversion facilities and will develop an emergency response plan in the event of a catastrophic failure of those facilities.

It has been my great honor to work on this project. We've traveled it from one end to the other. We visited with people all the way from St. Mary's clear down to Wolf Pointe, Montana and I made the decision that this project must move forward. I'd also like to thank our witnesses for traveling and taking time out of their busy summer schedules to participate today. The St. Mary Rehabilitation Group, the Blackfeet Tribe, and the Fort Belknap Tribe have been integral to the development of this legislation. I am also pleased to see Representative Rehberg here today and the Bureau of Reclamation, Great Falls Regional Director, Mike Ryan, could join us up here today also.

In 1903, Secretary of the Interior Hitchcock authorized the construction of the Milk River Project as one of the first five reclamation projects under the new Reclamation service. Two years ago we authorized the construction of the St. Mary Diversion Facilities and two years later, those facilities were authorized and have been in operation for nearly 100 years with minimum repairs or improvements.

I would tell you it is a wonder how they work, given the time and our knowledge of engineering and of moving water. At that, it looks like to me, Mr. Babb really knew what he was doing. It is the backbone of this region's agriculture economy. It provides irrigation for 110,000 acres and approximately 660 farms. But now, the facilities and the Milk River Projects are facing catastrophic failure. Landslides along the canal are in a deteriorated condition. The structure makes the project unreliable.

As authorized in 1903, the Milk River Project is operated as a single-use irrigation project. Since completion, nearly 100 percent of the cost to operate and maintain the diversion and infrastruc-



ture has been borne by the irrigators. In addition, the irrigators are responsible for reimbursing the Reclamation, to initiate the initial construction cost of the diversion facilities. Maintenance costs have increased with accelerated deterioration of those facilities.

That is the history on it and when we look on how important this is to our area, this project has to move forward and we cannot lose sight of the critical role that our Blackfeet and Belknap Tribes must play in this discussion. Both tribes have water compacts that must be addressed in addition to the St. Mary's Project. My staff has been working closely with Fort Belknap on its draft settlement language and I look forward to working with the Blackfeet as soon as its Compact has been ratified by the State.

I know that the tribes are deeply concerned about their water rights being lost in the shuffle but I will not allow that to happen. It is important to me that the tribes' rights are protected in the St. Mary's legislation and their individual settlement packages are given due consideration by Congress.

They are all pieces of a comprehensive water solution along the Hi-Line and I am committed to securing the enactment of all three components. Overall, the bill will provide a feasible and comprehensive approach to rehabilitating an aging and deteriorating infrastructure while still meeting the needs of the folks in Montana.

I would tell you that the cornerstone of any economic development that we face on the Hi-Line today is hinged with the development of this project. That's how important it is to this area. That's how important it is to the State of Montana and to me. Thank you, Mr. Chairman. I look forward to the testimony.

The CHAIRMAN. Thank you, Senator.

Now I'm going to introduce the first panel and see if you are all here. Please show me by standing up and then we will note your presence. Lieutenant Governor John Bohlinger; Randy Reed; Earl Old Person; Julia Doney; and Bob Rice. You will testify immediately following the Congressman and will speak in the order that I just introduced you. With that, I am very pleased to have you present. It is wonderful to have you open these hearings with your observations and we yield now to you.

**STATEMENT OF HON. DENNY REHBERG, U.S.  
REPRESENTATIVE FROM MONTANA**

Mr. REHBERG. Thank you, Senator Domenici, Senator Burns. We thank you for calling this oversight hearing to discuss the important rehabilitation that needs to be done at the St. Mary Diversion and Conveyance Works and the Milk River Project. By being here today you will hopefully gain an even better understanding of the critical nature of this project. I would additionally like to thank the audience for being here as well because it proves to you the importance and this is the number one issue within the State of Montana as far as Governor Switzer is concerned, Senator Burns, Senator Baucus, myself and the Montana Legislature and the municipalities and the counties.

As you know, I have introduced legislation, H.R. 5705, that is identical to Senator Burns's bill, in an effort to make this issue and this project a reality.

A hundred years ago, the U.S. Government recognized the benefit of agriculture production in this region and subsequently, the Bureau of Reclamation made significant investments in infrastructure along the St. Mary and Milk River Basins. Due to the flow pattern of the Milk River, an agreement was also entered into in 1921 that allocated water to both the United States and Canada. This agreement is just one example of the importance, not only nationally but internationally, of this stretch of water.

However, 100 years have certainly taken a toll on these facilities. The St. Mary's Diversion is worn out and in serious need of modernization and rehabilitation. This legislation would not only authorize the rehabilitation and improvement of the St. Mary Diversion and Conveyance Works in the best manner possible but would also ensure that we develop an emergency response plan in case the facilities should ever fail.

The Milk River is a lifeline to northern Montana. Our agriculture, wildlife and small communities are dependent upon the fair and reliable delivery of water. This project is one of the most complex the Bureau of Reclamation has ever undertaken in this country. With so many entities involved, it is vital that we take the necessary steps to ensure these facilities continue to work.

I look forward to hearing the rest of our witnesses and I hope that this hearing will enable us to push this critical legislation through both the House and Senate.

I might point out that it is unusual to have this many members of the Energy and Water Appropriations Committee sitting together because I also serve on the Energy and Water Appropriations in the House.

Senator Domenici, I look forward to working in the Conference Committee with both of you on Senator Burns's and your insertion of the language and the continuation of our working relationship so that we can see that the money is available for this rehabilitation. It seems like we are a long ways from the headwaters of the St. Mary's Diversion sitting in Havre, Montana. That will just tell you how important this project is. It virtually covers the entire northern part of the State of Montana. So much of our population, having traveled to New Mexico with both your own Congressman, Steven Pierce, and your Congresswoman, Heather Wilson. I know that you represent exactly the same kind of issues in New Mexico. We don't need to explain to you the problem, just point out to you how important we feel it is. We feel very fortunate that Senator Burns is on the committees that matter most to us and look forward to working with you in the future. Thanks for giving me this opportunity. Thank you for coming to Montana and thank you for giving us the opportunity to be heard on this very important issue.

The CHAIRMAN. Thank you very much.

Senator Burns, did you have anything to ask of the congressman?

Senator BURNS. I have none.

The CHAIRMAN. I have just one question. Congressman, first thank you for being here and for your testimony and for your help. We will, so the people will understand, the money that we're talking about, the \$5 million, is already in the bill. In other words, if you were to pick up the appropriation bill for energy and water,

which I chair in the Senate, you will find in it the \$5 million and it says what it is for. The problem is, we haven't gotten around to passing the appropriations bills yet this year and I can't look out at you and promise you as to when it will happen. But it would appear to me that we will either do it in the next 3 or 4 weeks—we will pass some of them in the Senate and House and see if we can get them wrapped up. But if not, then we will do it after the election and I'm sure we will get them all done, regardless of who is—what the outcome of the elections happen to be, we'll get them done and you will be a big help because you're on the subcommittee that we will meet with. Ours is in for sure. We hope yours is—your chairman did not put it in. It's not in yours. I will see to it in conference, it's there but you will be of great help.

Mr. REHBERG. Thank you.

The CHAIRMAN. Is that satisfactory?

Mr. REHBERG. Absolutely. You hit it right on the nose and I need to tell the audience and yourself as well, no it is not in the House version. That's why what you both did and you, Mr. Chairman in particular, in the Senate is so critical to the success of this project. I will provide the support that you need in that conference and make sure that my chairman understands how important that is.

The CHAIRMAN. You got it. You can count on that. Thank you, sir.

Mr. REHBERG. You bet.

The CHAIRMAN. Now, would the witnesses now come to the table and begin in the way that I introduced you? Lieutenant Governor, at this end of the table and you go first.

Mr. BOHLINGER. Yes, sir.

The CHAIRMAN. How much time do they each have? All right, now in the interests of conducting the hearing in such a way that it is orderly, we're going to follow what we normally do in the Senate and give each of you 5 minutes. We'll go right down the line, 5 minutes each and then we'll come to questions and perhaps a second round of observations on your part. I'm going to start with you, Lieutenant Governor. It's good to have you and we're glad to get you on record on what you have to say about this project. Please proceed.

**STATEMENT OF HON. JOHN BOHLINGER, LT. GOVERNOR,  
STATE OF MONTANA**

Lt. Gov. BOHLINGER. Good afternoon. Thank you, Senator Domenici, Senator Burns. I'd like to express my gratitude for your being here. My name is John Bohlinger. I am Montana's Lieutenant Governor and for the past 2 years, I have had the privilege of serving with Mr. Randy Reed, the co-chair of the St. Mary Rehabilitation Working Group.

As Montana's Lieutenant Governor, I welcome you to our State. I thank you for this opportunity to discuss the critically needed rehabilitation of the St. Mary Diversion Works and to address associated concerns the Blackfeet Tribe, the Fort Belknap Indian Community and the Milk River Basin. I would also like to express my thanks to Senator Baucus, Senator Burns and Congressman Rehberg for making this issue a priority in the Halls of Congress.

I am here today as Governor Switzer's representative, and as the spokesperson for the State of Montana. I'd like to take just a moment to express some of my feelings and concerns. The opportunity to have a Senate field hearing in the State of Montana is critical. It gives we, as Montanans, a chance to meet before Congress and to address our concerns.

On the 15th of August, I wrote Senator Domenici a letter, asking him to invite Governor Switzer to this table to express himself. That invitation didn't come but I want to tell you about a little of Governor Switzer's background. He is a farmer, a rancher, and a man with an advanced degree in soil science. He understands agriculture as an irrigated farmer. I think he could have added a lot to today's conversations.

I also would like to discuss briefly the critical issue of funding for this St. Mary's Project and place that in context with projects that have been funded in this region. As these charts would illustrate, in 2002 and 2000, the U.S. Congress took under consideration the inadequate water infrastructure of our State and authorized the funding for and the advancement of what is called the Rocky Boy Reservation Water Project and the Fort Peck Dry Prairie Project. It would have cost about \$500 million to bring these projects to fruition. That has not moved through Congress. The appropriations have not been placed on the President's budget but our congressional delegation have been able to bring forward about \$45 million towards this need. The charts would have illustrated that this amount pales in comparison to the sort of monies that have been made available to our neighbors in North Dakota, who received \$133 million or three times the amount that we Montanans have received. Our neighbors, South Dakota, received \$268 million or six times more than we received. Colorado, our neighbors to the south, received \$207 million or four and a half times more than we Montanans received and your State, the Land of Enchantment, received \$144 million dollars or three times more than we Montanans received and it is not that we begrudge the placement of those monies in these other States because we know how vital they are to the economies and to the welfare of those people. We're just hoping that Montana will have its fair share of this next budget and appropriation period as we move forward with the St. Mary's Project.

The CHAIRMAN. Let me see, Lieutenant Governor.

Lt. Gov. BOHLINGER. Yes, sir.

The CHAIRMAN. It is a privilege to have you here, as I said but I've just heard you talk about comparisons and that's fine.

Lt. Gov. BOHLINGER. Yes sir.

The CHAIRMAN. But would you get on with talking about this project?

Lt. Gov. BOHLINGER. Yes, sir. I certainly will. Let me speak directly.

The CHAIRMAN. I think that's why we came here.

Lt. Gov. BOHLINGER. Yes, sir.

The CHAIRMAN. Now, there is a nice theoretical discussion—

Lt. Gov. BOHLINGER. Thank you, sir.

The CHAIRMAN. Which would have been a good thing to do at a political rally, perhaps, but let's get on with this. What do you want to tell us as Lieutenant Governor?

Lt. Gov. BOHLINGER. I'd like to speak directly to S. 3563.

The CHAIRMAN. That would be good.

Lt. Gov. BOHLINGER. Thank you. I'd like to acknowledge the role of the St. Mary's Working Group and its work in crafting this piece of legislation. Sixteen members of the Working Group represent a broad partnership of stakeholders and they include the Milk River Irrigation Districts, the Blackfeet Tribe, the Fort Belknap Indian Community, municipalities, county governments, business interests and recreational and fishery interests in the Milk River Basin.

The catalyst for bringing the Working Group together has been the simple understanding of their shared fate. The negative impacts of failure will be borne by all, just as the benefits of success will be shared by all, as S. 3563 is the culmination of 3 years of hard work by the St. Mary's Working Group and the State of Montana.

We also recognize that the entirety of the St. Mary Division Works is located within the boundaries of the Blackfeet Indian Reservation. As such, the sovereignty of tribes must be recognized and respected as a solution is crafted.

The St. Mary Diversion Works are as old as the Bureau of Reclamation itself. Energy to construct the 30-mile canal was provided by steam, horse, and manual labor. Now, after almost 100 years of service, the St. Mary system has reached the end of its useful life. The steel siphons are plagued with slope instability and are leaking. The five concrete drop structures have deteriorated to a point of rubble. Slides and slope failure is widespread along the canal route. It is not a question of if but when the system will fail.

Mr. Chairman, loss of this infrastructure would have a devastating economic effect on the Milk River Basin and people of the State of Montana. The St. Mary Diversion Works support over 10 percent of Montana's irrigated agricultural economy.

Without water from the St. Mary River, this Milk River would run dry in 6 out of every 10 years and the impact would extend beyond agriculture. Multiple Hi-Line communities depend upon St. Mary Diversion Works for their municipal water. The Bowdoin National Wildlife Refuge also depends upon water from the St. Mary River. A sudden failure of the system would result in environmental damage to the St. Mary's watershed and the Blackfeet Reservation. This is a culturally sensitive area that contains critical habitat for the threatened cutthroat and bull trout.

Also at stake is the United States' water right for the St. Mary River under the 1909 Boundary Water Treaty. A failure of the St. Mary Diversion Works would preclude the United States from exercising its entitlement to a share of the St. Mary River.

The State of Montana has taken a leadership role in contributing over \$1.9 million towards the preliminary engineering, economic studies, and administrative and technical support to the Working Group. At the request of the Schweitzer Administration, the State Legislature authorized \$10 million in non-Federal share for reconstruction of the St. Mary Diversion Works.

One of the most important provisions of S. 3563 is the establishment of an affordable cost share agreement for water users who hold repayment contracts with the Bureau of Reclamation. The 1905 authorization of the St. Mary Diversion Works is for the single purpose of irrigation. As a result, nearly 100 percent of the cost to operate and maintain the diversion facilities has been borne by irrigators.

A recent study demonstrates that 32 percent of the annual economic benefit derived from the St. Mary system accrues to irrigated agriculture. The remaining 68 percent accrues to the public in the form of municipal water, recreation and fish and wildlife benefits.

In 1905, the Secretary of the Interior authorized construction of the St. Mary Diversion Works in order to provide a stable source of water for irrigation to the lower Milk River Valley. As a result of this early 20th century project, settlers moved into the valley and a vibrant regional economy based on agriculture grew out of a dry prairie landscape.

The CHAIRMAN. Governor, can you look at the clock up here and see what's cooking?

Lt. Gov. BOHLINGER. I see a red light blinking, sir.

The CHAIRMAN. That's been blinking for a long time.

Lt. Gov. BOHLINGER. Well, let me just summarize by offering my thanks for this opportunity to speak with your committee, sir. We appreciate your being here. We appreciate you, Senator Burns, for arranging this opportunity and we look forward to further collaborating with you. Thank you for this opportunity to speak.

[The prepared statement of Lt. Gov. Bohlinger follows:]

PREPARED STATEMENT OF HON. JOHN BOHLINGER, LT. GOVERNOR, STATE OF MONTANA

Chairman Domenici, Ranking Member Bingaman, and distinguished members of the Energy and Natural Resources Committee, thank you for the opportunity to provide further testimony in support of S. 3563, "St. Mary Diversion Works and Milk River Project Act of 2006." The State of Montana appreciates the Committee holding a field hearing in our fair State and the time and effort of everyone involved in traveling such a great distance. We respectfully move this Committee to pass S. 3563 as herein described.

As was evident at the field hearing in Havre, Montana, the St. Mary Diversion and Conveyance Works ("DCW") is unique. The United States Bureau of Reclamation ("BOR") expressed concern at the hearing that S. 3563 may set a precedent for other aging infrastructure across the West. However, this is not the case. Although other BOR projects may be facing similar aging issues, the DCW is like no other and cannot be directly compared to any other. The DCW was authorized in 1905, as part of the Milk River Project, one of the original five Reclamation Service projects authorized in 1902. It is an engineering marvel of the early twentieth century. It is entirely gravity-fed, with steel riveted siphons of the Titanic era, delivering water approximately 30 miles from the St. Mary River in a trans-basin diversion to the North Fork of the Milk River. The DCW lies entirely within the boundaries of the Blackfeet Indian Reservation, whose people helped construct the DCW and, yet, have never benefited from its existence. The DCW allows the United States to take its share of water from the St. Mary River under the 1909 Boundary Waters Treaty with Canada (1909 Treaty). Without the DCW our share of the St. Mary River would flow to Canada. The Water Rights Compact between the State of Montana and the Ft. Belknap Indian Community of the Ft. Belknap Indian Reservation ("Ft. Belknap Indian Community") is predicated upon the continued existence of the DCW. The DCW also provide critical water to the Bowdoin National Wildlife Refuge which is struggling with severe salinity issues. Failure of the DCW could also impact the threatened Bull Trout. No other BOR project faces such a com-

plex intertwining of Tribal, international, fish and wildlife, and domestic sustainability issues.

At the outset, I would like to address a question raised by Senator Domenici in the field hearing. The question was whether the 1909 Treaty would need to be renegotiated if the DCW were to be rehabilitated with a 1000 cubic feet per second (CFS) canal. The short answer is no. Rehabilitation of the DCW would not require renegotiation and would not be affected by actions of the International Joint Commission, the international body responsible for implementing the 1909 Treaty. Rehabilitating the canal to a 1000 CFS capacity would simply allow the United States to take that amount of water to which it is already entitled under the 1909 Treaty. The original design capacity of the DCW was 850 cfs. Due to deterioration and safety concerns, the DCW has for a long time operated at approximately 670 cfs. A larger capacity DCW, such as 1000 cfs, would simply allow the United States to take more of its existing entitlement. As recognized by BOR Regional Director Dan Jewell, before the International Joint Commission, the United States currently does not have enough infrastructure to take full advantage of its entitlement under the 1909 Treaty.

The United States currently runs approximately 150,000 acre-feet per year of St. Mary River water through the DCW to the Milk River and the Milk River Basin. Without the DCW, none of this water would be available to users in the Milk River Basin. According to BOR, virtually all the Milk River irrigators in Montana receive on average only about one-half of a full-service water supply with the DCW. The mainstem of the Milk River has essentially been closed to new appropriations for over twenty years. In dry years, about 90% of the flow in the Milk River is water diverted from the St. Mary River through the DCW for irrigation, municipal, fish and wildlife, and recreation purposes.

Without the DCW, the United States could not take virtually any of its share of the St. Mary River water to which it is entitled under the 1909 Treaty. All of this water would flow to the benefit of our neighbors in Canada. As a further complicating factor, Canada currently irrigates 7000 acres in Alberta with water flowing through the Milk River as it runs into Canada and before it flows back into the United States into the Milk River Basin. Some of this water is Canada's share of the Milk River, some is its share of the St. Mary River through the DCW, and some is the United States' share of the St. Mary River through the DCW. Should the DCW fail, Canada would almost assuredly continue to meet its irrigation demand from the flows in the Milk River in Canada, regardless of whether the DCW is rehabilitated. This leaves the people in the Milk River Basin in even more dire straits, if that were to be possible. This includes the Ft. Belknap Indian Community which is entitled to essentially all of the natural flow of the Milk River (up to 645 cfs) under their Water Rights Compact with the State of Montana; this is the reason that the Compact is predicated on the existence of the DCW to bring St. Mary River water to the Milk River and the people of the Milk River Basin.

The State of Montana appreciates the concerns and shares frustrations of the Blackfeet Tribe and the Ft. Belknap Indian Community regarding settlement of their claims, and in particular their water rights. However, the deterioration of the DCW doesn't stop simply because Tribal negotiations are on-going and S. 3563 must be passed now. The State has been in negotiation with the Blackfeet Tribe concerning their water rights for over twenty years with little or no effective federal presence at the table. While the State and the Ft. Belknap Indian Community reached a settlement ratified by the Montana Legislature in 2001, the Federal Government has yet to bring to the table resources to effectuate a federal ratification of that settlement. The State has already secured \$9.5 million in bonding authority to commit to any final, federal settlement with the Ft. Belknap Indian Community. The State is committed and stands ready to negotiate these settlements. Without any type of deadline to force the necessary federal resources to the table, there is little doubt that these settlement issues would continue to limp along without federal finality for years to come. BOR believes that these claims should be settled prior to any authorization on the DCW. However, this statement is somewhat disingenuous given that BOR knows that Washington has not committed the federal resources to negotiate and settle these claims. The luxury of time that the BOR seeks by requiring final, federal settlement of these claims and rights prior to authorization of rehabilitation, knowing that there is a void of resources dedicated to settlement, is not one that the Tribes of people of the Milk River Basin can afford. Time is of the essence.

To this end, the State proposes the following to address the concerns of the Tribes, provide for the continued viability of the Milk River Basin, and provide for the implementation of the 1909 Treaty. The DCW will fail, and it is just a question of when. Postponing rehabilitation does not make the impending failure disappear. It

takes time to properly prepare for planned rehabilitation. The Blackfeet Tribe and the Ft. Belknap Indian Community testified that they support S. 3563, as long as their claims and issues are settled prior to construction of any rehabilitation of the DCW. The State proposes that S. 3563 be passed substantially as written with new language providing that construction of the rehabilitation may not commence until Federal FY 2009, October 1, 2008, or until such time as the claims of the Tribes are federally settled, whichever comes first. The new language provides an additional two years for resolution of Tribal claims and issues and provides an incentive for the Federal Government to bring the necessary resources to the table to effectuate settlement. During the interim, the BOR can complete all actions necessary for construction, including compliance with the National Environmental Policy Act and engineering. As further set forth in the testimony of Mary Sexton, Director of the Montana Department of Natural Resources and Conservation, the State believes that a majority of BOR's concerns regarding additional work have already been addressed and the timeframe suggested by the State allows for completion of the rest. S. 3563 with the new language addresses all of the parties remaining concerns by providing a timeline for Tribal settlement, time to complete all actions necessary for construction, and providing for the planned rehabilitation of the lifeline upon which the Milk River Basin, the Water Rights Compact between the State and the Ft. Belknap Indian Community, and the 1909 Treaty depend.

Finally, as brought out in the field hearing, the DCW is vital feature of the Montana Hi-Line. Over ten percent of Montana's irrigated agricultural economy is dependent upon supplemental water provided by the DCW. Without the water imported from the St. Mary River, the Milk River would run dry on average 6 out of every 10 years. Over 17,000 people in communities along the Hi-line depend on the DCW for their municipal drinking water. Bowdoin National Wildlife Refuge is also dependent on St. Mary River water to provide critical food and habitat for an estimated 100,000 waterfowl each spring and fall. A sudden failure of the system would likely result in severe environmental damage on the Blackfeet Reservation, particularly to the threatened Bull Trout.

The cost-share set forth in S. 3563 is critical to the survival of these interests, and especially the cap on cost-share of \$25 million. The State's understanding of how this cost-share would work is set forth in Exhibit A to this Testimony. The average per capita income for residents of the Hi-Line is \$14,585. As originally and currently authorized, irrigators bear almost 100% of the operation and maintenance (including rehabilitation) costs for the DCW. A preliminary economic study commissioned by the State and conducted in consultation with BOR indicates that 32% of the annual economic benefit derived from the DCW accrues to irrigated agriculture. The remaining 68% accrues to the public in the form of municipal water, recreation, and fish and wildlife benefits. For this reason alone, the DCW must be reauthorized to recognize these other benefits. In addition to and not a part of that calculation are the considerations that the Blackfeet Tribe should benefit from a rehabilitated DCW, and the Water Rights Compact between the State and the Ft. Belknap Indian Community is predicated on the continued existence of the now deteriorated DCW. If the DCW fails, the Water Rights Compact must be reopened for negotiation because non-Tribal water use in the Milk River is dependent upon St. Mary River water. Moreover, the United States forfeits virtually its entire share of the St. Mary River to Canada under the 1909 Treaty if the DCW fails. Thus, the DCW is unique, and any cost-share set by S. 3563 cannot set a precedent for any other project for no other BOR project shares these same interests.

In conclusion, for the past two and one-half years, I have had the privilege of Co-Chairing the St. Mary Rehabilitation Working Group ("Group") with Mr. Randy Reed, an irrigator from Chinook, Montana. This Group formed at the impetus of local people like Mr. Reed who are frightened by a future without the imperiled DCW and recognize that the local BOR cannot provide for a planned rehabilitation. The Group is an unprecedented representation of Tribal, irrigation, fish and wildlife, county, municipal, economic development, and recreation interests along the Hi-Line of Montana. The representatives on the Group and their forebears settled the Hi-Line with the promise from the Federal Government of a stable water supply. That promise hangs precariously in the balance as the DCW rapidly approaches failure after almost one hundred years of service. It is on-behalf of these interests and the hard-working people of the Hi-Line that State moves this Committee for passage of the S. 3563 as modified by the new language herein discussed.



Exhibit A—COST SHARE ANALYSIS OF PROPOSED ST. MARY  
REHABILITATION PROJECT S. 3563

Rehabilitation costs		Non reim- bursable	Reimburs- able	Reimbursable costs	
				Federal cost share	Non-Fed- eral cost share
	(2006 \$s)	55%	45%	75%	25%
Feasibility Study .....	15,000,000	8,250,000	6,750,000	5,062,500	1,687,500
St. Mary Rehabilitation ..	135,000,000	74,250,000	60,750,000	45,562,500	15,187,500
Emergency Fund .....	15,000,000	8,250,000	6,750,000	5,062,500	1,687,500
Milk River Project .....	10,000,000	5,500,000	4,500,000	3,375,000	1,125,000
		100%			
Emergency Fund Plan .....	2,000,000	2,000,000			
Blackfeet Economic Projects .....	1,000,000	1,000,000			
Blackfeet Irrigation Projects .....	5,000,000	5,000,000			
Fort Belknap Regional Water .....	1,000,000	1,000,000			
Total .....	184,000,000	105,250,000	78,750,000	59,062,500	19,687,500

<sup>a</sup> Subject to \$25 million cap.

The CHAIRMAN. Do you support S. 3563?

Lt. Gov. BOHLINGER. Wholeheartedly.

The CHAIRMAN. Right. Thank you very much.

Lt. Gov. BOHLINGER. Yes, sir. Thank you.

The CHAIRMAN. Mr. Reed.

**STATEMENT OF RANDY REED, CO-CHAIR, ST. MARY  
REHABILITATION WORKING GROUP**

Mr. REED. Chairman Domenici, Senator Burns, welcome to Montana. Senator Domenici, thank you for coming.

The CHAIRMAN. Thank you.

Mr. REED. My name is Randy Reed. I am the co-chair of the St. Mary Working Group with Montana Lieutenant Governor John Bohlinger.

I would like to express my thanks and sincere appreciation to Senator Burns, Senator Baucus and Representative Rehberg. As soon as Montana's congressional delegation became aware of the seriousness of the problems, they took the issue as a top priority.

My great grandfather homesteaded in the Milk River Valley and was among the founding fathers supporting the construction of the Milk River Project at the turn of the 20th century. Irrigation allowed my grandfather to settle in northern Montana and endure. I began farming and ranching in 1984, after graduating from Montana State University with an Agricultural Business Degree.

Today, my family produces irrigated seed potatoes, alfalfa hay and malt barley and pinto beans. We also rely on the project for our drinking water and also enjoy many of the recreational opportunities supported by the St. Mary Diversion Works. S. 3563 recognizes the critical need to rehabilitate the St. Mary Diversion and Conveyance Works. A system-wide investigation showed critical shortcomings in the system's infrastructure and operation impacts to the environment. The steel siphons are plagued with slope instability problems, leaks and the concrete in the hydraulic drop structures is severely deteriorating. Landslides along the canal and the

deteriorated condition of the structures make the canal unreliable today as a water source.

The proposed legislation addresses the core issue: cost share. The ability of irrigators to pay for capital investment represents a financial crisis associated with the project. As originally authorized, the St. Mary Diversion Works are operated for the single purpose of irrigation. As such, over the last 90 years, nearly 100 percent of the operating and maintenance cost for the diversion infrastructure has been borne by irrigators.

Reclamation's 2005 Current Use Benefit Analysis showed large public benefits accrue from the existence of the St. Mary Diversion Works. A recent preliminary economic study authored by John Duffield shows that approximately 32 percent of the annual economic benefit associated with the St. Mary Diversion Works accrue to irrigated agriculture. The remaining 68 percent accrues to the public in the form of municipal water, recreation, fish and wildlife, and extensive riparian areas. However, the 1905 authorization does not reflect this new reality. As a result, irrigators within the Milk River Project are being asked to subsidize the Nation for benefits the public enjoys.

Mr. Chairman, the residents of the Milk River Basin are hard-working people, who, over generations of families, have carved out a living and built communities in this landscape.

With an average per capita income of \$14,585, the residents of the Hi-Line are not rich. Yet counties, communities and individuals have donated over \$275,000 in support of the St. Mary's efforts. Now we need active cooperation and participation from the Bureau of Reclamation.

We have tried to constructively engage Reclamation in this project and have been repeatedly told there is nothing the agency can do under the current authorization. Passage of S. 3563 will allow Reclamation to work with us collectively for an amicable solution. My family's future, my communities' future and the future of the Milk River Basin are dependent on the passage of S. 3563. Does the United States close the book on 100 years of history and investment or do we reinvest in our country's future? Our grandfathers had the vision to establish this project to build Montana communities. The legacy is ours now. Passage of S. 3563 is not just about the fate of the farmers and ranchers but rather, Montana's Milk River Basin.

Rehabilitation is a legacy that we will pass to our children and our grandchildren and many generations beyond. Once again, I thank you, Senator Domenici and Senator Burns, for coming to Montana. This is so critical to us, our water supply and we're just so appreciative of this hearing. Thank you, sir.

[The prepared statement of Mr. Reed follows:]

PREPARED STATEMENT OF RANDY REED, CO-CHAIR, ST. MARY REHABILITATION  
WORKING GROUP

Chairman Domenici and distinguished members of the Senate Energy and Natural Resources Committee.

Welcome to Montana and thank you for holding this field hearing in Havre, Montana to discuss the critical need to rehabilitate the St. Mary Diversion Works of the Milk River Project and, address associated concerns of the Blackfoot Tribe, Ft. Belknap Indian Community, and the Milk River Basin.

My name is Randy Reed. I am the Co-Chair of the St. Mary Rehabilitation Working Group with Montana Lt. Governor John Bohlinger.

I would like to express my thanks and sincere appreciations to Senator Burns, Senator Baucus and Representative Rehberg. As soon as Montana's Congressional Delegation became aware of the seriousness of the problems they took on the issue as a top priority.

My great grandfather homesteaded in the Milk River Valley and was among the founders supporting the construction of the Milk River Project at the turn of the 20th century. Irrigation allowed my great grandfather to settle in Northern Montana and endure. I began farming and ranching in 1984 after graduating from Montana State University with an Agricultural Business Degree. Today, my family benefits from these same water resource facilities and we are able to raise irrigated certified seed potatoes, alfalfa hay and malt barley. We also rely on the project for our drinking water and enjoy the many recreational opportunities supported by the St. Mary Diversion Works.

Senate Bill 3563 recognizes the critical need to rehabilitate the St. Mary Diversion and Conveyance Works. A system wide investigation showed critical shortcomings in the system infrastructure and operation impacts to the environment. The steel siphons are plagued with slope stability problems and leaks, and the concrete in the hydraulic drop structures is severely deteriorating. Landslides along the canal and the deteriorated condition of the structures make the canal unreliable today as a water source.

The State of Montana has spent over half a million dollars to prepare preliminary engineering and economic studies. S. 3563 addresses the immediate need to begin the final planning and environmental analysis required to reconstruct the facilities. The bill also allows Reclamation to develop a "strategic plan" and reimbursable funding mechanism that provides critical support should a catastrophic failure occur prior to rehabilitation. It is time for us to be "pro-active" on these issues rather than "reactive".

The proposed legislation addresses a core issue—cost-share. The ability of irrigators to pay for capital investment represents the crux of the financial crisis associated with this project. As originally authorized, the St. Mary Diversion Works are operated for the single purpose of irrigation. As such, over the last 90 years, nearly 100% of the cost to operate and maintain the diversion infrastructure has been borne by irrigators within the eight irrigation districts of the Milk River Project.

Reclamation's 2005 Current Use Benefits Analysis showed large public benefits accrue from the existence of the St. Mary Diversion Works. A recent preliminary economic study authored by Dr. John Duffield shows that approximately 32% of the annual economic benefit associated with the by the St. Mary Diversion Works accrue to irrigated agriculture. The remaining 68% accrues to the public in the form of municipal water, recreation, fish and wildlife, and extensive riparian areas. However, the 1905 authorization does not reflect this new reality. As a result, irrigators within the Milk River Project are being asked to subsidize the Nation for benefits the public enjoys.

Although rehabilitation of the St. Mary Diversion Works is at the heart of Senate Bill 3563, the proposed legislation addresses other water related needs in the St. Mary and Milk River Basin. S. 3563 contains provisions to address project related concerns on the Blackfeet Reservation and provides funding for the Ft. Belknap Indian Community to study the feasibility of building a rural water system on their reservation. Senate Bill 3563 also authorizes Reclamation to prepare a feasibility study on the need to rehabilitate water diversion and delivery structures within the Milk River Project.

Mr. Chairman, the people of the Milk River Basin and the State of Montana are not looking for a handout through Senate Bill 3563. Residents of the Milk River Basin have worked extremely hard to bring attention to this critical issue. The St. Mary Rehabilitation Working Group represents a broad coalition of basin interests including the Milk River Irrigation Districts, the Blackfeet Tribe, the Fort Belknap Indian Community, municipalities, business interests, and recreational and fishery interests in the Milk River Basin. The residents of the Milk River Basin are hard working people who over generations of families have carved out a living and built communities in this beautiful landscape. With an average per capita income of \$14,585, residents of the Hi-line are not rich. Yet counties, communities and individuals have donated over \$275,657 in support of this project.

Now we need the active cooperation and participation of the Bureau of Reclamation. We have tried to constructively engage Reclamation in this project and have been repeatedly told that there is nothing the agency can do under current Reclama-

tion law. Passage of Senate Bill 3563 will allow Reclamation to work with us collectively for an amicable solution.

My family's future, my communities' future, and the future of the Milk River basin is dependent on passage of Senate Bill 3563. Does the United States close the book on 100 years of history and investment or do we reinvest in our country's future? Our grandfathers had the vision to establish this project to build Montana communities. This legacy is ours now. Passage of S. 3563 is not just about the fate of the farmers and ranchers but rather Montana's Milk River Basin. Rehabilitation is a legacy that we will pass on to our children and our grandchildren and the many generations beyond.

Again, I appreciate this opportunity to testify.

The CHAIRMAN. Thank you very much, Mr. Reed.

Chief Earl Old Person, would you please proceed? Thank you, sir, for coming.

**STATEMENT OF CHIEF EARL OLD PERSON, CHAIRMAN  
OF THE BLACKFEET TRIBE**

Chief OLD PERSON. Honorable Senator Domenici and Senator Burns, I am Earl Old Person, chairman of the Blackfeet Tribe. I appear here on behalf of the Blackfeet Tribe and its members. I would like to express my appreciation to the chairman of the Senate Energy and Natural Resources Committee, Pete Domenici, for the invitation to provide testimony to the committee.

I would like to also express my appreciation to Senator Burns, whose landmark efforts to bring about the rehabilitation of the St. Mary facility and for his efforts on behalf of the Blackfeet Tribe in that process. Also to Senator Baucus and Congressman Rehberg, for their concern and input.

We are cautiously supportive of the present legislation to rehabilitate the St. Mary's facilities. We are relieved to see an unsafe project, that could potentially fail and seriously impact our reservation lands and the people, will be finally fixed. We are also optimistic that the amount of damages on the reservation that has been caused by the project will be remedied. This has been a long-standing concern of the Blackfeet Tribe. We are glad to see that something will finally be done about it. However, we are cautious because once again, plans are being made that directly impact our land and waters. While in the past, we have been consistently ignored and left out of the process, this time we are demanding to be a full party to the process with an equal place at the table with the Federal and the State government and with equal signatory authority in all aspects of the project, including final approval of the project.

Because our land and waters are directly impacted by the project, we have the greatest interest and greatest stake in this rehabilitation effort. As long as we can remember, our Blackfeet people have occupied the area of St. Mary's and Milk River, however, our original territory was much larger but gradually, our land was taken until we were pushed as far as possible up against the rocks, the Rocky Mountains and this is our reservation today.

When our reservation was established by Treaty in 1855, our people understood that the waters of the reservation, including St. Mary's and Milk River, were also set aside for our people. This is our water. The rivers and streams on reservation are sacred to the Blackfeet people and they are a critical part of our oral history, creation of stories and traditions and ceremonies. They are the life-

blood of every aspect of our lives, our economy and our way of life and our spirituality.

However, when the United States entered into the Boundary Waters Treaty in 1909, no one came to us and said, "We are dividing up your water. You should be part of our negotiations." In fact, no one came to us at all and our water rights were never even considered in the Treaty. When the Milk River Project was constructed by the Federal Government almost 100 years ago, no one came to us and asked our permission to use our water. No one came to us and asked our consent to build this project that diverts our water far off the reservation to be used by others.

When you talk about rehabilitation of the St. Mary's facility, as far as we are concerned, you are talking about fixing a project that will continue to divert Blackfeet water. This is why we are now saying, "No more." We will not let the Federal and State governments make plans for our water and ignore the water rights and land rights of the tribe. That is why we are saying that our land and water issues must be addressed in order for the rehabilitation to go forward and that is why we are saying that we must be an equal party at the table with the Federal and State governments in the process.

The Blackfeet Tribe has long viewed the massive conversion of St. Mary's water from the Blackfeet Reservation for the Milk River Project as well as the 1909 Boundary Waters Treaty as a violation of the rights of the Blackfeet people because the water rights of the Blackfeet tribe was never considered or addressed. As far as the Blackfeet Tribe is concerned, it is our water that has been diverted for use by others almost 100 years ago. Unless the water rights of the tribe are determined, we do not see how the diversion can legitimately continue through the rehabilitation system. We are also adamant that our damage claims relating to the project are addressed and resolved and that we finally receive some benefit from this project that has used our lands and water for all these years.

Although the Federal Government promised us that we would benefit from the project in return for the use of our land and waters, to this day, we have never received one benefit from the project.

It is also critical that our Blackfeet irrigation projects be rehabilitated as an older BIA Irrigation Project. It suffers from substantial disrepair and historical neglect and suffers similar conditions and problems as the Milk River Project. If monies can be appropriated for the Milk River Project to use reservation waters far downstream by non-Indian project users, then funds should also be appropriated to repair the Blackfeet irrigation project so that reservation waters can be used for our people. We are especially glad to see that the Blackfeet provision of the present bill recognizes these issues.

We appreciate the efforts of Senator Burns for including these provisions on our behalf but we must also ensure that these provisions are acted upon by the Federal Government.

The only way to ensure that land and water rights of the Blackfeet Tribe are protected is to make sure that they are determined and resolved before the rehabilitation goes forward. We expect the Federal Government to move forward quickly in this regard. It is

also our expectation that Congress and our Montana delegation will assist in and be supportive of the Blackfeet Tribe in achieving a comprehensive settlement of the water rights and damage claims.

We appreciate the committee's understanding of these issues and look forward to both a resolution of the Blackfeet Tribe's long-standing land and water issues and to the rehabilitation of St. Mary Diversion and Conveyance facilities. We also look forward to a clear recognition of the Blackfeet Tribe's critical role in the process and on equal sovereign-to-sovereign basis with both the Federal and the State government.

I want to thank you for allowing me this time. This is important to our Blackfeet people. I may have taken a little more time but it is very critical at this time, that we address these issues. Thank you.

[The prepared statement of Chief Old Person follows:]

PREPARED STATEMENT OF CHIEF EARL OLD PERSON, CHAIRMAN OF THE BLACKFEET TRIBE

Good afternoon. I am Earl Old Person, Chairman of the Blackfeet Tribe. I appear here today on behalf of the Blackfeet Tribe and its members.

I would like to express my appreciation to the Chairman of the Senate Energy and Natural Resources Committee, Pete Domenici, for the invitation to provide testimony to the Committee. I would also like to express my appreciation to Senator Burns whose landmark efforts to bring about the rehabilitation of the St. Mary facilities is the subject of the hearing today.

At the outset, I would like to state that the Blackfeet Tribe supports the rehabilitation of the St. Mary diversion facilities and conveyance works. The Tribe understands and is concerned that the diversion facilities and conveyance works may fail, and the physical and environmental impacts of such failure will be felt most directly by the Blackfeet people. There are also some very significant environmental impacts to Reservation lands and waters which have been caused by the Project that are a source of major concern by the Blackfeet. We understand these environmental issues will be addressed and fixed as part of the rehabilitation effort. These include the siltation of St. Mary's Lake, an environmental tragedy that is worsening over time, the dewatering of Swiftcurrent Creek which has a substantial impact on the fishery, including the threatened bull trout, the flooding at the confluence of Boulder Creek and Swiftcurrent Creek that occurs on an almost annual basis, and, of course, the leakage of the canal that has impacted tribal lands, resources and wildlife. The Blackfeet Tribe has long sought to have these environmental damages resolved and fixed, and we will push to make sure they are addressed as part of the rehabilitation process. In addition, the water system of the community of Babb has been affected by the operation of the project, and it is our expectation that this issue will be addressed as well.

At the same time, we do not believe the diversion and conveyance facilities can be rehabilitated unless the water rights of the Blackfeet Tribe and other claims relating to the Project are resolved. The water rights of the Tribe were never addressed when the Milk River Project was constructed. Neither were the Tribe's water rights addressed when the United States entered into the 1909 Boundary Water Treaty with Great Britain, which allocated St. Mary's and Milk River water between the United States and Canada, and which serves as the primary justification for the Milk River Project diversions. As far as the Blackfeet Tribe is concerned, it is our water that has been diverted for use by others for almost a hundred years, and we do not believe that anyone can establish otherwise unless a water rights compact is entered into or an adjudication occurs. Unless the water rights of the Blackfeet Tribe are determined, it is impossible to say that the historical capacity of the St. Mary Canal is available for diversion off the Reservation. And, if a greater capacity canal is constructed—and we understand that this is an option being considered—then it is even more critical that the Tribe's water rights be determined.

Finally, despite promises by the federal government that the Blackfeet Tribe would benefit from any project that utilized St. Mary and Milk River waters, the Blackfeet Tribe has never received one benefit from the Milk River Project. We have suffered the environmental consequences of the Project, and we must live with the potential failure of the project on a daily basis. We see water being diverted from

the Reservation year after year after year, but incredibly the Blackfeet Tribe receives absolutely no benefit from the project. It is high time that this situation changes, and we intend to insure that as part of any rehabilitation effort, the Blackfeet Tribe receives the benefits from the Project to which it is entitled, including an appropriate allocation of water from the Project, other project benefits and compensation for damages and use of Blackfeet water.

For these reasons, the Blackfeet Tribe expects to be a full partner in the rehabilitation process with the Federal government and the State government. It is our expectation that the Tribe will have an equal role in any decision-making process relating to the rehabilitation, and in approving all aspects of the rehabilitation effort, including preliminary studies, planning, design and construction. The Tribe also expects that it will be a full signatory to any final approvals of the final project. I will address these issues in more detail in my remaining remarks.

The Blackfeet Tribe is a sovereign Indian Nation residing on the Blackfeet Indian Reservation and exercising jurisdiction and regulatory control within the Reservation. The present Blackfeet Reservation is only a small part of the historical aboriginal territory of the Blackfeet Tribe, and our people have occupied these lands since time immemorial. The Aboriginal Territory of the Blackfeet Tribe encompasses much of the present State of Montana, and a large area north into Canada, including the St. Mary's and Milk Rivers. The Rocky Mountains, and the streams and rivers that flow from the mountains, have long been one of the most culturally and religiously significant areas to the Blackfeet People, and they are a critical part of the oral history, creation stories and ceremonies. The present Blackfeet Reservation was established by Treaty with the United States on October 17, 1855 (11 Stat. 657).

The St. Mary's and the Milk Rivers originate on and near the present day Blackfeet Reservation, and the Tribe has aboriginal rights to the waters of the two rivers that predate the formation of this country, and treaty rights that date at least from the 1855 Treaty. The Tribe's water rights are currently the subject of negotiations among the Blackfeet Tribe, the Montana Reserved Water Rights Compact Commission and a Federal Negotiation Team. The adjudication of the Tribe's water rights has been stayed by the Montana Water Court on a year to year basis in order to allow the negotiations to proceed.

The St. Mary facilities that are the subject of the proposed legislation are located on the Blackfeet Reservation. Since the construction of the facilities almost one hundred years ago, the Tribe has had, and continues to have, fundamental issues relating to water rights, land rights, environmental issues and damages claims that are directly related to the St. Mary facilities and the diversion of St. Mary River water for the Milk River Project. It therefore goes without saying that the Blackfeet Tribe is the primary stakeholder in any effort to rehabilitate the St. Mary diversion and conveyance works of the Milk River Project.

The Blackfeet Tribe has long viewed the massive diversion of St. Mary's water from the Blackfeet Reservation for purposes of the Milk River Project, as well as the 1909 Boundary Waters Treaty which was used to justify the diversion, as violations of the rights of the Blackfeet people because the water rights of the Blackfeet Tribe were never considered or addressed in the Boundary Waters Treaty or in the diversions of water for the Milk River Project. This state of affairs is completely incomprehensible to the Blackfeet Tribe. Only the year before the Boundary Waters Treaty was concluded in 1909, the U.S. Supreme Court decided the most significant Indian water rights case in the United States, *Winters v. United States*, 207 U.S. 564 (1908). This case established and defined the fundamental doctrine of Indian reserved water rights that governs Indian water rights in the western United States for almost one hundred years. As this Committee knows, under the *Winters* doctrine, when an Indian reservation is established by the United States government, sufficient water is reserved to fulfill the purposes of the Reservation, both existing and future, with a priority date of the date of establishment. The *Winters* case, which arose on the Fort Belknap Reservation and involved the very same Milk River that is involved here today, remains the fundamental basis for Indian water rights in the United States. However, notwithstanding the contemporaneous *Winters* decision, there is absolutely no acknowledgment or consideration of the water rights of the Blackfeet Tribe in the diversion of water from the Blackfeet Reservation for the Milk River Project or in the Boundary Waters Treaty. The failure to recognize and take into account the Blackfeet reserved water rights puts the very validity of the St. Mary diversion and the Boundary Waters Treaty into question.

The complete disregard of the water rights of the Blackfeet Tribe is all the more incomprehensible because several alternatives for uses of the United States' share of St. Mary's and Milk River water were identified and analyzed, two of which would have benefitted the Blackfeet Tribe. One of the alternatives identified by the

Bureau of Reclamation was a Blackfeet only project. The Bureau of Reclamation determined that 60,000 acres on the Blackfeet Reservation could be irrigated feasibly with St. Mary's water. A second alternative was an all-American Canal route that would have routed the canal through the Reservation and provided benefits to the Tribe on its way downstream to other project users. The third alternative is the present Milk River Project. Ironically, the two alternatives that would have provided benefits to the Blackfeet Tribe were rejected in favor of providing benefits only to non-Indian irrigators downstream on the Milk River.

From the studies of these alternatives, the United States knew when entering into the Boundary Waters Treaty and in constructing the Milk River Project, that the Blackfeet Tribe had a reserved right to St. Mary's water in an amount of at least that water necessary to irrigate 60,000 acres on the Reservation, or approximately 150,000 acre-feet. Nevertheless, these rights were never discussed or considered in the Boundary Waters Treaty, nor was the impact on the Tribes rights discussed or considered in the final Bureau of Reclamation project selected for construction.

At the time of Boundary Waters Treaty and when the Milk River Project was constructed, the Reservation had been in existence for more than fifty years, and it would have been impossible to ignore the fact that Blackfeet land and waters were involved. It also would have been impossible not to recognize that the Milk River Project, constructed to allow the United States to fully develop its St. Mary's—Milk water supply, involved a major dam and reservoir and canal system located on the Blackfeet Reservation. It is therefore incredible that the United States did not involve the Blackfeet Tribe in the negotiations of the Boundary Waters Treaty or provide benefits to the Tribe as part of the Milk River Project.

If Blackfeet rights had been acknowledged and considered in the Boundary Waters Treaty, we do not believe that the Milk River Project would have ever been built. The project utilizes a substantial portion of the United States' share of St. Mary's water, diverting it off the Blackfeet Reservation in a trans-basin diversion for use by non-Indian users far downstream from the Reservation. To this day, the Tribe receives no benefit whatsoever from the Project. At the same time, the Tribe has suffered greatly from environmental problems and damages that have been caused by the diversion facilities on the Reservation. Among other things, these environmental problems and damages include the following:

- The current outlet structure at Sherburne Dam is unable to pass low flows during the winter months and as a result, Swiftcurrent Creek is completely dewatered and fishery habitat is lost, including habitat for the threatened bull trout.
- The banks of Swiftcurrent Creek have been eroding under the current release regime, and flooding occurs on nearly an annual basis at its confluence with Boulder Creek. Fishery habitat and private property is continually at risk as a result of the erosion and flooding.
- The Swiftcurrent Creek Dike, which was constructed by the Bureau of Reclamation in 1915, diverts all flows from Swiftcurrent Creek and Boulder Creek into Lower St. Mary Lake. These streams previously flowed across a large alluvial fan in the Babb area. As a result of the dike, sediment is continuously deposited into St. Mary Lake. The resulting delta has increased in size by 16 acres between 1958 and 1990. St. Mary's Lake is a stunningly beautiful alpine lake and is a significant recreational area on the Reservation and source of economic revenue to the Tribe.
- The St. Mary Diversion Dam is a barrier to fish moving upstream, and fish are sometimes caught in the headgates at that location. These impacts may affect the threatened bull trout in addition to other fish species.
- The canal and siphons are in a significantly deteriorated condition and leakages from the canal present environmental problems, and the potential of additional environmental problems if they fail.

A separate problem is the impact the operation of the St. Mary diversion facilities causes to the Babb Community water system. There is a known surface and ground-water interaction between water levels at Babb and surface water runoff carried in adjacent streams and water transported in the St. Mary's Canal. This interaction affects the community water system and needs to be studied and addressed.

In addition to the water rights and environmental issues, the construction of the Milk River Project is directly contrary to, and in complete derogation of, the promises made to the Tribe that it would benefit from the development of St. Mary's and Milk River water. These promises were made in return for the Blackfeet Tribe agreeing to allow a right of way for the Milk River Project facilities in an 1895 Agreement, ratified by Congress, and in the development of the two alternatives that would provide irrigation benefits to the Blackfeet Tribe, including the irrigation



of 60,000 acres of land within the Blackfeet Reservation. Although that project was determined to be feasible, it was never built. Instead, the rights and interests of the Blackfeet Tribe were sacrificed in favor of downstream development far off the Reservation.

Further, the United States allowed non-Indians on the Blackfeet Reservation to file state water rights claims for essentially all the direct flow water rights on the North and South Forks of the Milk River during this same period. As a result there is no readily available water left for Tribal development in either watershed. The United States was obligated to discuss these circumstances with the Blackfeet Tribe and to take these circumstances into account. However, once again, the United States failed in its obligation to protect the rights of the Blackfeet Tribe.

There are also serious questions about the existence of valid rights of way for the project. Clearly, there can be no construction or reconstruction of the project without valid rights of way, and this issue must be addressed before the rehabilitation can go forward. Although the Bureau of Reclamation has been reviewing this issue for several years, there has been no final report on the rights of way and no discussion with the Tribe concerning this critical matter.

As this history shows, the Blackfeet Tribe has been systematically excluded from the process used to allocate the waters of the St. Mary's and Milk Rivers, and the Tribe's rights have been systematically ignored in the subsequent utilization of St. Mary's water by the Milk River Project. Astonishingly, this disregard of the Blackfeet Tribe and the rights of the Tribe has continued up to the present time. There is still no serious discussion of the Tribe's water rights, land rights and damages claims in the context of the rehabilitation of the project, and no clear benefits for the Blackfeet Tribe as part of the authorization for the project.

In order for the rehabilitation to go forward, the following must be done:

1. The water rights of the Tribe must be determined.
2. The land issues relating to the project must be determined and resolved, in particular the right of way issues.
3. The Tribe's damages claims against the federal government must be resolved. This includes damages relating to use of Tribal water, use of Tribal land, damages to Tribal land, and environmental damages caused by the Project.
4. The Tribe must receive clear benefits from the project as part of the authorization.
5. The Tribe must be a full partner in the rehabilitation effort, including the preliminary studies, the planning, design and construction.

The CHAIRMAN. Thank you very much, Chief. Your statement will be made a part of the record in the event you did not give it all.

Now, Ms. Doney, you were next.

**STATEMENT OF JULIA DONEY, PRESIDENT, FORT BELKNAP  
COMMUNITY COUNCIL**

Ms. DONEY. Yes. Good afternoon, Mr. Chairman, members of the committee, and interested individuals. Thank you for this opportunity to provide the position of the Tribes of the Fort Belknop Reservation and the Fort Belknop Community Council to the committee on this important legislation. I am Julia Doney, the duly elected president of the Fort Belknop Community Council, the governing body of the Gros Ventre and Assiniboine Tribes of the Fort Belknop Reservation.

First, a few words about the Fort Belknop Reservation. Pursuant to treaties of the United States signed in 1851 and 1855, and the Act of Congress of 1888, the Fort Belknop Reservation is home to the Gros Ventre and Assiniboine Tribes. Pursuant to the constitution and bylaws of the tribes, the Fort Belknop Community Council is the governing body of the tribes and tribal members. The council consists of ten elected representatives, including the president.

The Fort Belknop Reservation, in north-central Montana, lies approximately 50 miles east of Havre and is bounded by the Milk

River on the north and the Little Rocky Mountains on the south. The reservation consists of 697,617.18 thousand acres of trust lands, both allotted and tribal, fee lands, and Montana State school lands. The vast majority of the land ownership is by the United States in trust for the tribes and for individual Native Americans. Approximately 3,150 enrolled tribal members reside on the reservation and 3,179 tribal members reside off the reservation.

Unemployment is extremely high on the reservation, with the principle employers being the Tribal government and the United States. Agriculture is the principle industry, with irrigation occurring on about 7,500 acres of the more than 13,880 acre Fort Belknap Irrigation Project in the north part of the reservation and grazing and dryland farming and minor amounts of irrigation occurring in the southern portion of the reservation. Precipitation ranges from about 20 inches a year in the southern mountains, up to 12 inches per year in the northern part of the reservation.

Fort Belknap is home to the famous *Winters* decision, 207 U.S. 564, 1908, which is the seminal case in the Reserved Water Rights Doctrine. The U.S. Supreme Court affirmed a lower court decision which determined that the Fort Belknap Tribes had a water right of 500 miners inches—125 cubic feet per second—to irrigate about 7,500 acres of the more than 13,800 acres of the Fort Belknap Indian Irrigation Project. Although no water rights had been filed with the State of Montana under State law, the Court determined that the tribes' reserved water right had an 1888 priority date, earlier than upstream, non-Indian water diversions and the Court upheld an injunction against the junior diverters.

In 1979, pursuant to amendments to the Montana Water Use Act, the State of Montana filed a general stream adjudication, *In the Matter of the Adjudication of All Rights to the Use of Water, Both Surface and Underground, within the State of Montana*, Montana Water Court. As an alternative to litigating reserved water rights in the Montana Water Court, the amendments authorized the Montana Reserved Water Rights Compact Commission to negotiate reserved water rights with Montana Indian Tribes and Federal agencies.

In 2001, the State and the Fort Belknap Indian Community ratified a Compact. A copy attached as Exhibit 1,\* which settled the reserved water rights of the Tribes of the Fort Belknap Reservation between the state and the community. The compact quantified the water rights, provided for administration and dispute resolution, provided protections to allottees and non-Indian water users in the Milk River Basin, established the Milk River Coordinating Committee to assure coordination and communication among all Milk River water users, provided for water right protection and enforcement through the appointment of the water commissioner for the Milk River Basin and provided for further negotiations among the United States, the tribes, and the State on Federal issues, such as Federal financial contribution, an allocation of water from Tiber Reservoir, State/Federal cost share, construction of mitigation features to protect the Milk River Project water users. Such three party negotiations have thus far not been successful and the tribes

\*All attachments have been retained in committee files.

and the State have decided to seek introduction of Federal legislation ratifying the compact and authorizing such actions as are necessary to implement the compact.

The draft bill authorizes development of the tribal water right that is consistent with the Tribal Water Development Plan that has been approved by the Fort Belknap Indian Community Council. The plan, as developed, would allow the Fort Belknap Indian Community to irrigate sufficient water to meet the tribal needs for the next 30 to 50 years. The level of development is necessary to meet the needs of the Fort Belknap Indian Community and will allow the Community to be a real player in the irrigated agricultural economy of the Milk River Basin.

The Fort Belknap Indian Community has been closely involved in the deliberations of the St. Mary Working Group. We understand the history, background, and need for action to protect the St. Mary Water supply for the non-Indian water users of the Milk River Project. In the spirit of community and being a good neighbor, the Community would like to be able to support S. 3563.

However, on March 17, 2006, I, as president of the Fort Belknap Indian Community, provided written comments on a draft of S. 3563 and a copy of the letter is attached. In my comments, I specifically requested that the Fort Belknap Reservation be treated similarly to the Blackfeet Reservation in the legislation and that provisions parallel to those for Blackfeet be included in the legislation for Fort Belknap Indian Community. To date, I have received no response to my comments and request nor was the legislation modified to include the provisions, which I requested.

In a March 28, 2006 meeting between the State and Fort Belknap Indian Community, representatives and State entities committed to moving forward with water settlement legislation.

The CHAIRMAN. Could you summarize your statement now, ma'am?

Ms. DONEY. I will. Since then, it was stated that we would move forward. The water settlement legislation would move forward parallel with the St. Mary legislation. Let's see. While the State and the community have completed a Reserved Water Rights Compact for the Fort Belknap Reservation, much work still needs to be done to obtain congressional ratification of the compact and authorization of the implementation and funding for the compact. The State and community have moved a long way toward agreeing.

In short, the Fort Belknap Indian Community believes that consideration of S. 3563 is premature and should be delayed until completion of water rights negotiations of the Milk River Basin. It is simply unfair to the tribes of the Fort Belknap to provide yet another benefit to the non-Indian water users while deferring action on the reserved water rights of the Fort Belknap.

The Fort Belknap Indian Community would support the enactment of S. 3563 if the bill is amended to include legislation ratifying, authorizing, and providing for funding at level necessary to implement the Fort Belknap Indian Community/Montana Compact. It simply makes sense to solve the Fort Belknap Indian Community water rights issues at the same time.

Again, thank you for the opportunity to provide this testimony and I ask that this statement be substituted for the original statement that was provided. Thank you.

[The prepared statement of Ms. Doney follows:]

PREPARED STATEMENT OF JULIA DONEY, PRESIDENT, FORT BELKNAP  
COMMUNITY COUNCIL

Good afternoon Mr. Chairman, members of the Committee, and interested individuals. Thank you for this opportunity to provide the position of the Tribes of the Fort Belknap Reservation and the Fort Belknap Community Council to the Committee on this important legislation. I am Julia Doney, the duly elected president of the Fort Belknap Community Council, the governing body of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation.

THE FORT BELKNAP RESERVATION

First, a few words about the Fort Belknap Reservation. Pursuant to Treaties of the United States signed in 1851 and 1855, and the Act of Congress of 1888, the Fort Belknap Reservation is home to the Gros Ventre and Assiniboine Tribes. Pursuant to the Constitution and Bylaws of the Tribes, the Fort Belknap Community Council is the governing body of the Tribes and tribal members. The Council consists of ten elected representative, including the president.

The Fort Belknap Reservation, in north-central Montana, lies approximately 50 miles east of Havre and is bounded by the Milk River on the North and the Little Rocky Mountains on the South. The Reservation consists of 697,617.18 thousand acres of trust lands (both allotted and tribal), fee lands, and Montana state school lands. The vast majority of the land ownership is by the United States in trust for the Tribes and for individual Native Americans. Approximately 3,150 enrolled tribal members reside on the Reservation and 3,179 tribal members reside off the Reservation.

Unemployment is extremely high on the Reservation, with the principle employers being the Tribal government and the United States. Agriculture is the principle industry, with irrigation occurring on about 7,500 acres of the more than 10,000 acre Fort Belknap Irrigation Project in the North part of the Reservation and grazing, dry land farming, and minor amounts of irrigation occurring in the southern portion of the Reservation. Precipitation ranges from about 20 inches per year in the southern mountains to 12 inches per year in the northern portion of the Reservation.

Fort Belknap is home to the famous *Winters* decision, 207 U.S. 564, 1908, which is the seminal case in the "reserved water rights doctrine." The United States Supreme Court affirmed a lower court decision which determined that the Fort Belknap Tribes had a water right of 500 miners inches (125 cubic feet per second) to irrigate about 7,500 acres of the more than 13,000 acres of the Fort Belknap Indian Irrigation Project. Although no water rights had been filed with the State of Montana under state law, the Court determined that the Tribes' reserved water right had an 1888 priority date, earlier than upstream, non-Indian water diversions and the Court upheld an injunction against the junior diverters.

THE FORT BELKNAP/MONTANA WATER RIGHTS COMPACT (MONT. CODE ANN  
SEC. 85-20-1001)

In 1979, pursuant to amendments to the Montana Water Use Act, the State of Montana filed a general stream adjudication, *In the Matter of the Adjudication of All Rights to the Use of Water, Both Surface and Underground, within the State of Montana*, Montana Water Court. As an alternative to litigating reserved water rights in the Montana Water Court, the amendments authorized the Montana Reserved Water Rights Compact Commission to negotiate reserved water rights with Montana Indian Tribes and federal agencies.

In 2001, the state and the Fort Belknap Indian Community ratified a Compact (Copy attached as Exhibit 1)\* which settled the reserved water rights of the Tribes of the Fort Belknap Reservation between the State and the Community. The Compact quantified the water rights, provided for administration and dispute resolution, provided protections to allottees and non-Indian water users in the Milk River Basin, established the Milk River Coordinating Committee to assure coordination and communication among all Milk River water users, provided for water right protection and enforcement through the appointment of a water commissioner for the

\*The exhibits have been retained in committee files.

Milk River Basin, and provided for further negotiations among the United States, the Tribes, and the State on federal issues, such as federal financial contribution, an allocation of water from Tiber Reservoir, state/federal cost share, construction of mitigation features to protect Milk River Project. Such three party negotiations have thus far not been successful and the Tribes and the State have decided to seek introduction of federal legislation ratifying the Compact and authorizing such actions as are necessary to implement the Compact. A copy of the most recent draft of the legislation is attached as Exhibit 2.

The draft bill authorizes development of the tribal water right that is consistent with the tribal water development plan that has been approved by the Fort Belknap Indian Community's counsel. The Plan as developed would allow the Fort Belknap Indian Community to irrigate sufficient water to meet the tribal needs for the next 30 to 50 years. The level of development is necessary to meet the needs of the Fort Belknap Indian Community and will allow the community to be a real player in the irrigated agricultural economy of the Milk River Basin.

S. 3563

The Fort Belknap Indian Community has been closely involved in the deliberations of the St. Mary Working Group. We understand the history, background, and need for action to protect the St. Mary Water supply for the non-Indian water users of the Milk River Project. In the spirit of community and being a good neighbor, the Community would like to be able to support S. 3563.

However, on March 17, 2006, I, as President of the Fort Belknap Indian Community, provided written comments on a draft of S. 3563. In my comments, I specifically requested that the Fort Belknap Reservation be treated similarly to the Blackfeet Reservation in the legislation and that provisions parallel to those for Blackfeet be included in the legislation for Fort Belknap. To date I have received no response to my comments and request nor was the legislation modified to include the provisions which I requested.

In addition, while the State and the Community have completed a Reserved Water Rights Compact for the Fort Belknap Reservation, much work still must be done to obtain Congressional ratification of the Compact and authorization of the implementation and funding for the Compact. The State and Community have moved a long way toward agreeing on legislation, please see Exhibit 2. However agreement is not yet complete nor has legislation been introduced. It is anticipated that the Settlement Bill will be introduced at the next Session of Congress. The Fort Belknap Indian Community would request that the Settlement Bill and S. 3563 be considered together in the next Session of Congress.

In short, the Fort Belknap Indian Community believes that consideration of S. 3563 is premature and should be delayed until completion of reserved water rights negotiations in the Milk River basin. It is simply unfair to the Tribes of the Fort Belknap Indian Community to provide yet another benefit to the non-Indian water users while deferring action on the reserved water rights of the Fort Belknap Indian Community.

For the above reasons, the Fort Belknap Indian Community must oppose the enactment of S. 3563 unless and until legislation ratifying and authorizing the Fort Belknap/Montana Compact is moved forward at the same time as S. 3563 or joined with S. 3563. It simply makes sense to solve all the basin's water rights issues at the same time.

Again, thank you for the opportunity to provide this testimony. If you have any questions, please feel free to proceed.

Respectfully submitted, this first day of September, 2006.

The CHAIRMAN. That will be done and your time has expired.

Ms. DONEY. I'm sorry.

The CHAIRMAN. It was a pleasure to have you here. Please proceed.

**STATEMENT OF ROBERT E. RICE, MAYOR, CITY OF HAVRE,  
STATE OF MONTANA**

Mr. RICE. Chairman Domenici and Senator Burns, thank you for your willingness to schedule this hearing. We appreciate you coming to Havre. The advantage of going last is most of the information that you should receive has already been said. In fact, your opening statements indicated to me that you know the impact of

the problem but I'm going to read a prepared statement for the record.

My name is Robert Rice. I have had the opportunity to serve as mayor of this fine community for the past 5 years. On behalf of not only the city of Havre, but the communities of Chinook, Harlem—and the Mayor of Harlem asked me to say Harlem twice, Dodson and Malta, Kremlin, Gilford, Hingham, Rudyard and Inverness, who all receive their drinking water from the Milk River, which is fed by the St. Mary Diversion and Conveyance Works, we sincerely appreciate the special effort you are taking today to more fully understand and appreciate the importance of this century-old Federal facility to the health, welfare and economic well-being of a large section of northern Montana.

When you think of this aging piece of infrastructure, I'd like you to think of it in a very personal way. In a drought year like the one we're currently experiencing, the source of our water for municipal, industrial and economic development purposes comes almost entirely from that which is transferred to the Milk River Basin from the St. Mary River Basin through the engineering marvel that is the St. Mary Diversion and Conveyance Works. From the water you may drink today to the water used to maintain the lawn outside this building to the water used for every other single purpose in this and other communities in our area, it is all available to us only because Federal policymakers 100 years ago had the vision to invest wisely in this vitally important infrastructure we continue to rely on today. It is now our turn to do what we can to assure that this water delivery system remains structurally sound and will continue to deliver quality drinking water to future generations of Montanans.

The St. Mary Diversion facility is known by many as the "lifeline of the Hi-Line," the geographic area of northern Montana that encompasses that area of our State from the Rocky Mountain Front to the North Dakota border. The rehabilitation of this facility is estimated to provide a net economic benefit on an annual basis of up to \$41.3 million for our State and this country. Many of the economic benefits that can be attributed to St. Mary water come from municipal, industrial and recreational uses, all of which were not part of the congressionally authorized project when it was created in 1905. These economic benefits will continue to grow as the communities on the Hi-Line continue to grow. The long-term economic value of this project is projected to be as high as \$700 million, for a cost-benefit ratio of 4 to 1, given the projected cost of this project of \$120 million. It is clear that the Federal Government investment being requested to rehabilitate the St. Mary system will continue to add to the economy of northern Montana and the United States for decades to come.

The part of Montana served by the St. Mary Diversion and Conveyance Works has traditionally not enjoyed the economic prosperity that other areas have. However, we contribute significantly to the overall economy of Montana and this Nation, in large measure, due to the continued operation of the St. Mary Diversion Works. The Milk River Basin alone produces \$67 million in annual farm earnings, which is fully 38 percent of Montana's total.

This critical piece of infrastructure for the city of Havre and for the other communities who rely heavily on it for their everyday water needs, serves a rural population of over 17,000 people. I implore you to work earnestly toward an investment by the Federal Government that will keep this ailing but critically important facility not only operational, but a vibrant part of the fabric of our regional economy.

Thank you for this opportunity to speak. I'd also like to thank Mr. Rehberg for being here. Senator, it is an honor to have you in our wonderful city.

The CHAIRMAN. Well, mayor, let me say that I very much appreciate being here and I thoroughly enjoy it.

Mr. RICE. Thank you, sir.

The CHAIRMAN. It is beautiful country. I just want to tell all of you, if you haven't been to New Mexico now, as compared with New Mexico 2 months ago, it is completely different. We have had a monsoon hit New Mexico. Monsoon! And we had so much rain that it is a green pasture everywhere where it was brown.

Mr. RICE. We envy you, sir. We need that.

The CHAIRMAN. It was just terrific. I mean, I never saw anything—I wasn't there during a lot of that rain, I just came and found it. I just couldn't believe it! In 74 years—I was born there on the outskirts of Albuquerque. I never heard of anything quite like this. If this is some kind of weather change that is bad, I'm all for it.

[Laughter.]

The CHAIRMAN. I don't know what that is, but I'm—

Mr. RICE. Yes, sir.

The CHAIRMAN. I'll take it!

Mr. RICE. We'll take some of that, too, sir.

The CHAIRMAN. I'm sure it won't be there next year. You'll be back with the same dry drought with everybody complaining and crying. Right now, actually, they are asking me to stop the rain. You know, they always—before, they wanted me to bring rain and now they want me to stop it. I tell them they are really nuts. Let's take it all. Whatever comes, let's take it.

First, let me thank all four of you. Now, you didn't get by this easy. We're going to ask some questions, if you don't mind.

Mr. RICE. Sure.

The CHAIRMAN. And I'm going to do it the way I normally do but in no way holding you to this. I'd like to start by letting you ask questions but if you want me to, I will, whichever you prefer. I usually let some Senator start but I'll do it, whichever way you prefer, Senator Burns.

Senator BURNS. You are being pretty liberal with the rules of the Senate here.

The CHAIRMAN. Yes, I am.

Senator BURNS. I've never seen you in this mode before.

The CHAIRMAN. I am so generous today you wouldn't believe it.

Senator BURNS. There you go. I've just got a couple of questions with regard to Ms. Doney. Your water compact has not been completed yet, has it?

Ms. DONEY. No, it hasn't.

Senator BURNS. How many acres have you, on the reservation, do you have under irrigation now, today? Do you know, by any chance? On the reservation and you might—

UNIDENTIFIED MALE. The current?

Senator BURNS. Yes.

UNIDENTIFIED MALE. The current irrigation project is 13,800. We currently irrigate 7,500 and we have additional historical—[fades to inaudible].

Senator BURNS. Okay. But your water compact has not been completed as of yet?

Ms. DONEY. No.

UNIDENTIFIED MALE. The water compact has been completed with the State; the tribe has a signed agreement with the State of Montana.

Senator BURNS. Okay, but we haven't got it down to the Federal level yet?

UNIDENTIFIED MALE. We need to get it to the Federal level.

Senator BURNS. Okay. I just wanted to clear that up for the record. Also, Mayor Rice, you were talking about the impact, not only that agriculture has on the city of Havre but also, what is the impact of this water as far as the city is concerned?

Mr. RICE. For the city of Havre, sir?

Senator BURNS. You bet.

Mr. RICE. This is instrumental in any economic development that we want to proceed with. It is our source of drinking water currently. If we were to lose it, we would have to rely on our wells, which are capable but it would be very detrimental to our community to have to do that. That's why we also have entered into the Tyber Project. We feel good water is vital to this economy in Havre itself so if we were to lose this, we'd be in the dire straits, to be quite honest with you.

Senator BURNS. Mr. Reed was the one who contacted me a couple of years ago and said, we've got to do something up here and immediately went to work and we started on working on this project, Mr. Chairman and they have prepared a guidebook for us and I just want to make that part of the record for the information of the rest of the committee, as we move this thing forward.

I feel like those water compacts are very, very important, too and of course, there are a lot of moving parts to this project and we can't allow anything that would hinder our collaboration and our cooperation in order to get it done. There is just too much at stake to be any other way.

Mr. Chairman, that is all the questions I have. I think that you want to satisfy some of the questions that you have because you're the chairman and you've got to ask the tough questions and we hope that we will be able to answer them for you.

The CHAIRMAN. Lieutenant Governor, we'll start with you, please.

Lt. Gov. BOHLINGER. Yes, sir.

The CHAIRMAN. You mentioned in your testimony the possible effects of the failure of the St. Mary's facility would have on the 1909 Boundary Water Treaty between Canada and the United States.

Lt. Gov. BOHLINGER. Yes, sir.



The CHAIRMAN. My first question is, what effect, if any, has the reduction in the facility's capacity over the years, had on the treaty with Canada?

Lt. Gov. BOHLINGER. Well, the treaty with Canada was first established in 1909 and was revised in 1921. The effects of a failure of this canal would cause all of that water to flow into the Milk River and then eventually into the Hudson Bay—that is, flow into the St. Mary's River, which flows into the Hudson Bay. The Milk River would not receive water. It would, in my opinion, be disastrous for the Hi-Line. We'd find about 140,000 acres of irrigated farmland no longer able to receive irrigation water. We'd find about 17,000 to 18,000 people who live along the river and look upon that as a source of water for life, unable to sustain life as they know it. It would be a disastrous occurrence, sir.

The CHAIRMAN. If the capacity of the facility is increased to 1,000 CFS, will a re-negotiation of the treaty be required? And if so, what would you—what have you done to prepare for that eventuality?

Lt. Gov. BOHLINGER. Mr. Chairman, I have not been a party to those studies but I will find those people that have been working on that issue and include in our final report, comments from them with respect to that question.

The CHAIRMAN. All right. Let me continue on.

Lt. Gov. BOHLINGER. Yes, sir.

The CHAIRMAN. Both the Blackfeet Indian Tribe and the Fort Belknap Indian Tribe expressed concerns about the resolution of their reserved water right claims. My first question is, when do you anticipate a compact, resolving the Blackfeet Indian Tribe's water rights claims will be agreed to by the State of Montana and the Blackfeet Indian Tribe?

Lt. Gov. BOHLINGER. Mr. Chairman, the Blackfeet Nation and the State of Montana are vigorously working towards an agreement at this time. I can't say specifically when that agreement will be crafted but it is being worked on.

The CHAIRMAN. It is imminent?

Lt. Gov. BOHLINGER. Mr. Chairman, again, I will have to get those people that are negotiating to provide an answer to that question and I will include that in my final report to you.

The CHAIRMAN. Can anybody at the table answer that question?

Chief OLD PERSON. I would like to call on my legal counsel.

The CHAIRMAN. Let's get her up here and let's ask. Are you the legal counsel?

Ms. GEYN. Yes. My name is Geyn, Mr. Chairman. As the Lieutenant Governor has indicated, we are working toward a final settlement. At this time, our goal is to try to have something to present to the 2007 Montana Legislature. We hope to meet that goal. It's unclear that we will be able to but that certainly is our hope at this time.

The CHAIRMAN. All right, thank you very much. You can be seated. Lieutenant Governor, you mentioned in your testimony that a re-allocation of project purposes for St. Mary system is one of the most important features of S. 3563. Do you remember that?

Lt. Gov. BOHLINGER. Yes sir.

The CHAIRMAN. You also mentioned that a recent study found that only 32 percent of the annual economic benefit derived from the facility accrues through the irrigated agriculture.

Lt. Gov. BOHLINGER. Yes sir.

The CHAIRMAN. While the remaining 68 percent goes to other purposes, is that correct?

Lt. Gov. BOHLINGER. Yes sir. That's correct. The 68 percent beneficiaries would include the municipalities, would include a very lively sportsman industry that has been developed. Fisheries and hunting contribute greatly to this economy. It's our wish that when a new funding formula is developed, that it would include more than just the irrigators as those who contribute to the cost of maintaining the facility. We feel that the cost should be shared proportionately in terms of benefit received.

The CHAIRMAN. Was the Reclamation involved in producing the assessment of the economic benefits?

Lt. Gov. BOHLINGER. This study was done by a Dr. Duffield, I believe his name is. I believe he is an independent researcher that was employed by the State of Montana for that study.

The CHAIRMAN. Okay. Thank you.

Lt. Gov. BOHLINGER. Yes, sir.

The CHAIRMAN. Mr. Reed?

Mr. REED. Yes sir.

The CHAIRMAN. I was provided a January 2006 cost estimate for the rehabilitation of the St. Mary's facility undertaken by Thomas, Dean and Hoskins. They estimated that depending upon the canal capacity, the rehabilitation will cost from \$120 million to \$140 million. As has been the case with many construction projects, past estimates have recently skyrocketed. I think you all know that. Is the private firm's estimate still accurate or has the cost increased since the January 2006 estimate, in your opinion?

Mr. REED. In my opinion, the figures have been brought up to current costs. The cost analysis is based on the increased costs and it was also adjusted for inflation.

The CHAIRMAN. Well, tell me that another way. Does that mean it's pretty accurate?

Mr. REED. I believe our engineer is here, if you would like it directly from him. I believe it to be accurate but our engineer, I think, is in the background.

The CHAIRMAN. Where is the engineer? Do you mind standing up here and—just come up a little closer. Would you state your name for the record, please, sir?

Mr. JEWEL. My name is Irling Jewel. I'm with Thomas, Dean and Hoskins and the cost estimate was done in the report that you refer to was the corrected one. The final one was just completed last month. We did some minor tweaking. There are some unknowns but we feel that the dollar amount that is in the current appropriations—

The CHAIRMAN. Are pretty close.

Mr. JEWEL. Is pretty close, in the ballpark for the magnitude it stretches.

The CHAIRMAN. Now, just stand there for a minute. Does Reclamation concur in the estimate and what has just been said? Just state your name for the record.

Mr. RYAN. Mr. Chairman, my name is Mike Ryan. I'm the Regional Director of the Bureau of Reclamation in the Great Plains. Reclamation has reviewed the engineering report and yes, we agreed with the caveats that Irling stated, that it is a reasonable estimate and range of costs.

The CHAIRMAN. All right, very good. Thanks to both of you. My next question to you, sir—Mr. Reed, you might have to call on somebody but it is my understanding that the deterioration of the facility has resulted in the reduction, the capacity of it from 850 CFS to between 650 and 725. What is the primary cause of this reduced capacity?

Mr. REED. The canal was constructed as a single vane construction at the turn of the century and due to—there isn't a lot of freeboard on the canal and so several things have happened over the years. The thing hasn't been re-prismed since the early fifties, where you take an excavator and go the whole length of the canal. Also, where it is a one-bank canal, so when you come to a coolie, the canal goes straight and there is a one-bank and then it backs up in the coolie so it's not as we traditionally think of it as a canal. It's—you know, in those days when they had construction with mules and frescos, it was an amazing engineering feat, what they did with horses. I mean, I'm not sure—you know, I would hope a new project like that could be constructed today but it was amazing!

The CHAIRMAN. Let's just get down to summarizing for me. What is the primary cause of the reduced capacity?

Mr. REED. It has to do with canal capacity as well as there is a certain amount of seepage between the first 9 miles of the canal and then after that, it mainly has to do without a new prism in the canal. Then also, there are waste ways that don't function anymore and the people that operate that facility, they have to watch the Weather Channel. So if there is a predicted thunderstorm, they have to cut the canal back because it will overtop somewhere and wash out.

The CHAIRMAN. Okay, let me follow on. How does this reduction that we just are assuming is a fact, how does this reduction affect the local interests that rely on the water?

Mr. REED. Well, it's a timing issue. We can let it loose out of Fresno at about 1,600 CFS at peak demand and when you can only bring water across at 650 CFS, you run Fresno out before you get water here. The other issue, going back to the 1909 Boundary Water Treaty, the 21 order is set on 2-week intervals. So when 2 weeks go by and the St. Mary River is flowing 5,000 CFS, we lose our water to Canada. It becomes free Canadian water. It's not even part of the settlement and because of the under-capacity of the canal, we lose water to Canada, due to an administrative rule in the 1909 Boundary Water Treaty.

The CHAIRMAN. So which interests have taken the brunt of the reduced capacity?

Mr. REED. Irrigation.

The CHAIRMAN. In your testimony, you stated that in the past, local parties that paid for a portion of the engineering studies required for the rehabilitation of St. Mary's facility. S. 3563 provides that 88.75 percent of these costs be borne by the Federal Govern-

ment. One, do you believe that the non-Federal parties are able to contribute more than 11.25 percent for the St. Mary facility and Milk River Project Feasibility Study?

Mr. REED. I believe, sir, that when we got into this, we were wishing that the thing could be authorized under Picks Law. It's just a political critter I don't think we can carry and to make the thing affordable and to make the thing work and the financing package and so that we can all budget it and go on with our lives, this is the cost share we need to make it work.

The CHAIRMAN. So what you are saying is that your best impression of the community at large, that is about as fair as we can get it and about as much as you can bear. Is that correct?

Mr. REED. Yes sir.

The CHAIRMAN. All right. You also stated in your testimony that you irrigate with water provided by the facility, is that correct?

Mr. REED. Yes sir.

The CHAIRMAN. Have you and other farmers who irrigate with this water, found it difficult to make the annual operation and maintenance payments?

Mr. REED. Well, the problem with the Milk River is the consistency. St. Mary's is our consistent water. St. Mary's flows 150 acre feet like clockwork. The Milk River bounces up and down, given the year and so it makes it—when you don't have a reliable, managed water supply, it makes it difficult to make everything work. An example this year, we have a lot of water. It is a hot, dry year. The price of hay is up. I mean, it is finally one of those years where you can get a little heel but it's not always the case. There are a lot of hot, dry years that we're short on water and because we have an under-capacity system with storage that is diminished, it hurts. It hurts the bottom line. It hurts to be able to pay the bills, it hurts to pay the banker. In the year 2001, one of the most severe years, I had to purchase a brand new pivot. I was making a payment on a pivot with 6 inches of water. It was nearly impossible but I got through it. That's just kind of how we are. But the whole system and the reliability of the St. Mary's water will increase the economic value of water here. It will also make it so that we can afford to invest on infrastructure.

The CHAIRMAN. Well, what time is it?

UNIDENTIFIED MALE. I don't know.

The CHAIRMAN. I don't have a watch here.

Senator BURNS. How about 2:12?

The CHAIRMAN. 2:12?

Senator BURNS. Yes.

The CHAIRMAN. Okay. I wonder if we might do this. We aren't nearly finished. I have a number of questions for each of you and then we have another witness. But I think we should recess for about 10 minutes.

Senator BURNS. Okay, that would be fine.

The CHAIRMAN. All right, we stand in recess for 10 minutes and please return.

[Recess.]

The CHAIRMAN. In Washington, we'd lose half the audience. I see that—keep the audience or do what we had to do, right?

Senator BURNS. That's right.

The CHAIRMAN. I thought probably a number of people agreed with me that it was time for a recess so I did that, in all our mutual benefits, those who found themselves in the restroom and we all had the same problem. Having said that, we're ready now to proceed.

Our witness that is before us is Earl Old Person. Will you get your mic up close to you, please sir? That's fine. Now, Mr. Old Person, in your testimony, you state that the Blackfeet Tribe must be involved in decisions surrounding the rehabilitation of the St. Mary's facility. I included a provision in fiscal year 2006 budget, Energy and Water that authorized Reclamation to enter into cooperative agreements with Blackfeet Indian Tribe and the State of Montana for the collection of technical data for the rehabilitation of St. Mary's facility. First question. Specifically, what benefits would you like to see the Blackfeet Tribe receive from the rehabilitation of the facility and how would you characterize the Reclamation's willingness to participate in these studies?

Chief OLD PERSON. Well, I think first of all, I don't like reading testimonies. I like to come off the cuff but one of the reasons that we say that we want to be part of what is taking place today. I have a photograph of old-timers that I translated for, back in the sixties. There is another group in the eighties and that was the last group. These were the people that the know anything about this treaty that was made between the U.S. Government and the Canadian government.

The CHAIRMAN. Yes, sir.

Chief OLD PERSON. All they had in mind was this was our water. This is where the water begins its flow. That's what they had in mind and they were proud of it because it was their way of life. It's their way that they referred to the water as something that we need, not only we the Indians, all people need water and we, as the Indian people, it's sacred to them. That is the reason that being ignorant to this canal deal that took place, that is the reason I say that from here on, we want to be part of whatever takes place, however it can benefit us, we want to be involved. And I'm sure that people can understand, all lands need help today and we're part of them. All irrigation projects need help today and we want to understand what exactly is taking place.

I want to give you a little history. There was a Comedecine Canal that took place years ago. Our people did not agree with it but they were told it was for your benefit. You can irrigate with this canal that is going to take place. Instead, when that canal took place, our people that did not own, did not irrigate, did not farm—if they had land in that area, they were charged for it and they wondered why is my lease money being held? They were told it was O&M charges. They were being charged for nothing they were using. These are some of the things why we want our involvement today. I think we have some people today within our reservation that are just as knowledgeable, capable, that can do things for us and with us so that we can better understand whatever takes place.

The CHAIRMAN. All right, now Chief Old Person, I understand that and I am just trying to get from you—I'm not trying to make things difficult. I hope you don't think that.

Chief OLD PERSON. Oh no, I know.

The CHAIRMAN. But I put language in a bill that has already passed that said—let me read it here. It said that the U.S. Bureau of Reclamation was authorized to enter into cooperative agreements with you and the State of Montana for the collection of technical data for the rehabilitation of St. Mary's facility.

Chief OLD PERSON. Um hmm.

The CHAIRMAN. Has there been this discussion with you and your people that I've just described, regarding the technical data or not?

Chief OLD PERSON. I would like to refer to my legal counsel and we have our water resource person here with us.

The CHAIRMAN. Okay. Is the question fair? I don't mean to—

Chief OLD PERSON. It's fine.

The CHAIRMAN. All right. Yes ma'am?

Ms. GEYN. Yes, Senator Domenici, there was language in the bill that you mentioned authorizing cooperative agreements between the Bureau of Reclamation and the tribe.

The CHAIRMAN. That's right.

Ms. GEYN. In relation to that funding that was included in that particular bill, if that language was intended to carry over to other funding, we certainly would benefit from that and would agree with that. We do have a cooperative agreement right now with the Bureau of Reclamation for approximately \$190,000 to undertake certain studies for the benefit of the Blackfeet Tribe. So we do have that cooperative agreement and we would hope that those kinds of arrangements continue for any additional funding that is appropriated by Congress.

The CHAIRMAN. I'm reading your answer to say that it must have been pretty good because you'd like it to continue on. So I guess that is your answer.

Ms. GEYN. Yes, Senator. That is an example of what we would like to see continue in this project as things go forward. The tribe certainly would like to have a meaningful role in any study that takes place or any investigations or data collection that occurs on the reservation and if that can be done through a cooperative agreement, we certainly would support that.

The CHAIRMAN. We'll go on to something else in a similar vein but a different subject. Are you aware that in S. 3563—and you can have legal counsel on this too—that we would direct the Secretary of the Interior to resolve any land, water, environmental or other claims that the Blackfeet Indian Tribe has against the United States? Are you aware that that is in the proposed bill?

Ms. GEYN. Yes, Senator. We are aware that we are in there and I think the chairman alluded to the fact that we are appreciative that that language was in there. It is language that we sought. When you ask about our compact and the status of it, I said that we were trying to reach the 2007 legislature that will be an agreement between the tribe and the State only. One of the most difficult parts is reaching agreement with the Federal Government as part of that comprehensive settlement and that language, we are hoping, will spur the Federal Government on to make sure that we reach an agreement with them as well on an appropriate Federal contribution of settlement so we are definitely supportive of that language and actually sought to have that language included in the bill.

The CHAIRMAN. All right. I had some additional questions, for you, Chief Earl Old Person but I think I'll give them to your counsel to answer in writing. Is that all right? Now, I'm going to ask you a couple, ma'am. Are you aware that in S. 3563, that authorizes the Secretary of the Interior to undertake a feasibility study to develop a rural municipal industrial water supply project for the Fort Belknap Indian Reservation?

Ms. GEYN. Fort Belknap?

Tom.

Mr. BRUCKARDS. Yes, my name is Tom Bruckards. I am the water attorney for the Fort Belknap Indian Community and we are aware of that language in the bill.

The CHAIRMAN. Will somebody describe the need for this project, briefly for us, for the record?

Mr. BRUCKARDS. Let me say that part of our problem in the southern part of the reservation, we had a coal mine up in the mountains, in the Little Rocky Mountains and we're concerned about the water contamination and we're hoping to have a water project, a potable water project for the whole reservation so that the communities can have safe water. That's the primary purpose of it. Water is always a problem in this part of the country if you don't have it from a main water source. There is a lot of salt in the water. It is water that has to be treated a lot, in the groundwater—it's not real good groundwater. So any fresh water from the rivers is better than the well water, at least that is what we've been finding in the hole. You're familiar with the North Dakota/South Dakota water projects and they all seem to be using water from the rivers and we're no different on Fort Belknap. We need that kind of a water supply, a water distribution system so that we can utilize our water from the Milk River for that purpose, for municipal and industrial purposes.

The CHAIRMAN. I have just one quick follow-up and it might be you, sir. Does the current water infrastructure on the Fort Belknap Indian Reservation allow the tribe to take full advantage of their adjudicated water rights of 125 CFS?

Mr. BRUCKARDS. We have a project, the Fort Belknap Indian Irrigation Project but that project has not been kept up. As we stated, the initial project was for 13,800 acres. We are currently irrigating about 7,500 acres and the project, as it was designed, was very difficult for the 125 CFS to carry the whole length of the project. It's not really the fault—it's really nature's fault because it is a very level valley—there's not a lot of slope from the west end to the east end so the 125 CFS was difficult to irrigate the whole 13,800 acres. They did a good job of designing it but like we mentioned before, engineering has come a long way since then.

The CHAIRMAN. Thank you. Back to you, ma'am. You stated in your testimony that the passage of S. 3563, the big Senate bill, should be delayed until Fort Belknap Water Rights Compact is authorized. My home State also has many unresolved Indian water rights claims. Unfortunately, the Department of the Interior has not been as involved in the resolution of these claims as I believe they should, speaking of my State. Our committee has repeatedly urged the Department of the Interior to become more involved in the resolution of these claims. So the question for you, aside from

the Federal legislation authorizing the compact, is what provisions would you like included in S. 3563 and how would you describe the Department's involvement in negotiating the Fort Belknap Water Rights Compact? Who wants to do that?

Mr. BRUCKARDS. Senator, the Fort Belknap Indian Community's Water Compact was done in accordance with the Water Rights Settlement Office of Interior. They appointed a regional water compact negotiating team that participated fully, but at the regional level and the Federal Government, the U.S. Department of Justice, the Interior Department, the Department of Agriculture—all the departments that have interests have been represented in the Working Group and the Working Group has assessed our water compact and has sent it to Washington to the Working Group in Washington at Interior. That was in 1992, I believe and it has been sitting there since then, without action. So, the State and the Fort Belknap Indian Community decided we had better go to Congress, just like many of the Indian settlements of the past, Congress has taken up the legislation and the administration has worked out their differences with Congress. We're hoping that this will take place with our bill that we're drafting and hope to have introduced in the next session of Congress.

The CHAIRMAN. Well, we wish you luck.

[Laughter.]

The CHAIRMAN. Mr. Mayor, in your testimony, you state that 17,000 people in the Hi-Line of Montana receive their water from the St. Mary facility.

Mr. RICE. Yes, sir.

The CHAIRMAN. Is there an alternative source of supply for your city if the water were no longer available from the St. Mary facility?

Mr. RICE. Yes, sir. We have three active wells within the community that we could rely on if we needed to. But in each case, it would take some finance to get those active and online.

The CHAIRMAN. So you could prevent a serious negative impact on the economy if given some time, in the event it was just impossible to renew these facilities?

Mr. RICE. Yes, sir. In an emergency situation, we would be able to provide drinking water and health and welfare for our community.

The CHAIRMAN. Under the current authorization, what amount of the project purpose is assigned for municipal use and does your city currently have to pay for the water it receives from the facility?

Mr. RICE. Sir, we do pay for water that we receive. I can't give you the exact figure right off the top of my head. I can refer to my C-Lawyer, Dave Peterson.

Mr. PETERSON. Yes, Senator, the city has a contract with the Bureau of Reclamation for 1,000 give or take, with additionally 800 in purchase and they purchase out for about—I believe \$15,000 a year. In the wells, sir that he is talking about, it would only be able to supply water. During the summertime, it wouldn't be able to meet any demands for any type of irrigation or anything like that. It would be strictly emergency purposes only. We would have to put small treatment facilities on those wells in order to get them up to the plants.



The CHAIRMAN. I hate to do this one but I will. Do you believe your city is capable of assuming a portion of the cost associated with operation, maintenance and rehabilitation of the St. Mary facility?

Mr. RICE. Senator, in all honesty with you, we would have to do whatever it takes to get the job done. If I had to come up with some money today, I probably couldn't but if it meant getting the project done, then we would have to find some means to make that happen. But I would find it very difficult.

The CHAIRMAN. Yes. Is the price you're paying pretty cheap?

Mr. RICE. For water? Currently, yes sir. It's reasonable.

The CHAIRMAN. The price he described is pretty reasonable?

Mr. RICE. Yes, sir. That's reasonable. Yes sir, very reasonable. We are able to make a living on it.

The CHAIRMAN. Very good. Now, Senator Burns, do you have any wrap-up question or observation?

Senator BURNS. I've got a lot of observations and I've got a lot of notes here. I have no further questions. I think the line of questioning is very good. I think it indicates that we still have some work to do and I think we've got a good group in place to do it and I thank you for asking those questions and being here today to hear the answers.

The CHAIRMAN. Well, I think it is important that I've finally—just in the final wrap-up here, before we take our last witness, the Regional Director of the Great Plains Region, U.S. Bureau of Reclamation. That's going to be our last witness. But I want to ask again, of our two Indian leaders. Chief Earl Old Person, are you suggesting that unless and until your water rights claims be adjudicated and settled, that we not proceed to rehabilitate this project?

Chief OLD PERSON. The construction.

The CHAIRMAN. Yes, the construction?

Chief OLD PERSON. Right.

The CHAIRMAN. Okay, so you say you might proceed with the feasibility and the like but it's your position we should not proceed with construction until your claims are resolved, is that right?

Chief OLD PERSON. Right.

The CHAIRMAN. How about you, ma'am?

Ms. DONEY. I say the same.

The CHAIRMAN. All right. Now we have that clear on the record. It does not mean, I believe, that we've concluded that we agree with that or don't agree but let's make sure that everybody knows that is the position. We nonetheless are proceeding with the feasibility money and another \$5 million that Senator Burns asked of my subcommittee, not this one but the appropriation one, for putting that money in and moving ahead, one step at a time. Thanks for your time. It's been a privilege to be in your community. You are excused.

Mr. Ryan, thank you very much for coming. More importantly, thank you for working for the Federal Government and heading up the group here. You have done an excellent job and we are delighted to have you here and we'd like you to testify and submit your statement. So summarize it and we'll ask a few questions. Please proceed.

**STATEMENT OF MIKE RYAN, REGIONAL DIRECTOR, BUREAU  
OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. RYAN. Thank you, Chairman Domenici and Senator Burns. My name is Mike Ryan and I am the Regional Director of the Great Plains Region for the Bureau of Reclamation. I appreciate the opportunity to provide the Department of the Interior's views on S. 3563. I will summarize my written remarks and would ask that my full statement be included in the record?

The CHAIRMAN. That will be done.

Mr. RYAN. Reclamation has worked extensively with the St. Mary's Rehabilitation Working Group since its inception. We share their concerns with the condition of these facilities and also recognize the adverse consequences that would come with a failure of the system. However, given the potential magnitude and costs of the challenges before us, we feel it essential that we proceed with caution in a step-wise and informed manner. The Department recognizes the importance of this Federal project in serving the people of Montana. Recognizing these needs, the Department supports the parts of the bill that would provide authorization to carry out appropriate feasibility studies. The Department also supports the general concept of an emergency plan and fund to be used in the event of a catastrophic failure of the St. Mary Diversion and Conveyance Works prior to rehabilitation. The Department is concerned however, with the legislation's provision of investment authority for the emergency response plan. There are concerns that investing appropriations provides additional monies to finance a governmental purpose outside of the normal appropriations process. However, the Department does not support authorization for construction of the rehabilitation and improvement of the St. Mary Diversion and Conveyance Works or other features of the Milk River Project prior to completion of a feasibility report. The information generated from this analysis is essential to making informed decisions about the future of these facilities.

In addition, outstanding water rights claims of the United States as Trustee for the Blackfeet Tribe and the Fort Belknap Indian Community are significant to the future of water management in the watersheds dealt with in this bill. The Department believes that pending the resolution of these claims, authorization of a rehabilitation plan for the Milk River Project as called for in this act is premature. Federal negotiating teams are currently working with both tribes and the Montana Reserved Water Rights Commission toward settlement of their water rights claims.

The Department of the Interior remains committed to these ongoing settlement negotiations. In addition to defining the extent of tribal water rights, negotiations allow settlement parties to develop creative solutions to water use problems. The Department is concerned that passage of this legislation would negatively impact efforts to resolve water rights claims for the tribes of the Blackfeet and Fort Belknap Reservations. Although this bill requires the Secretary to consult with the appropriate parties, there is a risk of creating parallel and potentially conflicting tracks for negotiating rehabilitation and water management strategies.

In negotiating Indian water rights settlements, the Federal Government seeks settlements that resolve all outstanding water

claims and achieve finality. The requirement in the bill would effectively separate out some of the Blackfeet Tribe's water-related claims against the United States for separate resolution from the tribe's other claims. This provision exacerbates the risk that this bill, rather than facilitating the resolution of existing Indian water rights claims, would complicate and slow the process of negotiating a comprehensive settlement.

The Department also objects to language imposing a legislative timeline on the Secretary of the Interior with respect to settling Indian water rights and other claims. A mandate to the effect that the "Secretary shall resolve any claims" also suggests that the availability of Federal funds and resources is unlimited.

While the Department cannot support authorizing the rehabilitation of this project at this time, as I stated, the Department supports studying rehabilitation of the St. Mary Diversion and Conveyance Works. The feasibility study would develop and analyze alternative means for the rehabilitation of St. Mary storage and conveyance facilities, endangered species issues, tribal water issues and interests, fish and wildlife resource issues, municipal water supply concerns and international considerations related to the apportionment of the St. Mary and Milk Rivers. Until this is accomplished, we believe that an informed determination of a project plan is not possible, therefore construction authorization at this time is premature.

The Department supports engaging the tribes of the Blackfeet and Fort Belknap Indian Reservations in studies to identify implementable solutions to their water needs. These studies must be done in consultation with the tribes and in coordination with ongoing efforts to negotiate comprehensive water rights settlements. We would also note that the project repayment terms identified in the bill depart from the accepted project repayment practice to a degree that creates a dangerous precedent for the extensive aging infrastructure needs throughout the West. The legislation should require the use of current Reclamation procedures for determining non-Federal cost-share that have been applied across the Western States.

Given the extensive infrastructure needs throughout the West, the Department believes this bill would significantly impact Reclamation's ability to address aging infrastructure. This legislation could cost the Federal Government over \$160 million, while authorizing multiple feasibility studies that could, if implemented, cost the Treasury hundreds of millions more. In addition the potential Federal contribution to pending Indian water rights settlements has not been addressed.

At the same time, we recognize the importance of the Milk River Project and are committed to the most efficient use of Federal resources to assure its viability.

Thank you for the opportunity to comment and I'd be happy to respond to questions.

[The prepared statement of Mr. Ryan follows:]

PREPARED STATEMENT OF MIKE RYAN, REGIONAL DIRECTOR, BUREAU OF  
RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, my name is Mike Ryan, and I am the Regional Director of the Great Plains Region for the Bureau of Reclamation. I

appreciate the opportunity to provide the Department of the Interior's views on S. 3563, the St. Mary Diversion and Conveyance Works and Milk River Project Act of 2006.

Let me say at the outset that Reclamation has worked extensively with the St. Mary's Rehabilitation Working Group since its inception. We understand and share their concerns with the state of these facilities and also recognize the adverse consequences that would come with a failure of the system. Given the potential magnitude and costs of the challenges before us, we feel it essential that we proceed with caution in a step-wise and informed manner.

This legislation has a number of components. First, it would authorize the Secretary of the Interior to study the feasibility and environmental impact of rehabilitating the St. Mary Diversion and Conveyance Works and other features of Reclamation's Milk River Project in North Central Montana. Second, the legislation would authorize the rehabilitation and improvement of the St. Mary Diversion and Conveyance Works. Third, the legislation would authorize the creation of an emergency response plan and fund to use for emergency repairs should there be a catastrophic failure of the facilities prior to implementation of rehabilitation. Fourth, the legislation would require the Secretary to resolve all claims of the Blackfeet Tribe against the United States relating to the portions of the Milk River Project located within the exterior boundaries of the Blackfeet Reservation. Fifth, the legislation would authorize the Secretary to study the feasibility of implementing projects to improve the economic conditions of the Blackfeet Indian Reservation and also to determine the feasibility of rehabilitating the Blackfeet Irrigation Project. Finally, the legislation would authorize study of developing a Municipal, Rural and Industrial (MR&I) water supply project for the residents of the Fort Belknap Reservation and surrounding communities.

#### BACKGROUND

The St. Mary Storage Unit of the Milk River Project, often referred to as "the lifeline of the Highline," was authorized by the Secretary of the Interior on March 25, 1905 and constructed between 1905 and 1921. It was authorized as a single-purpose irrigation project, thus irrigators are responsible for the operation, maintenance, and replacement costs of the facilities. The St. Mary River provides about 50% of the Milk River Project's water supply for 110,000 acres of irrigated land during normal years, but this percentage increases to approximately 90% during 1 drought years. Three municipalities, two rural water systems, and the Bowdoin National Wildlife Refuge also rely on the Milk River Project for some or all of their water supplies.

The St. Mary Diversion and Conveyance Works have a long history of service. In fact, these facilities have generally outlived their design life, as they have served the people of North Central Montana for almost one hundred years under severe climatic and geologic conditions.

#### FEDERAL CONCERNS

The Department recognizes the importance of this Federal project in serving the people of Montana. In addition to the role the St. Mary Diversion and Conveyance Works plays in providing water for agriculture and municipal needs for the people of Montana, these facilities are also relevant to efforts to resolve the water rights claims of the tribes of the Blackfeet and Fort Belknap reservations, to conserve threatened and endangered species, to maintain and improve water quality, to promote power development and recreation, and to ensure implementation of the Boundary Waters Treaty of 1909.

Recognizing these needs, the Department supports the parts of this bill that would provide authorization to carry out appropriate feasibility studies: for rehabilitation of the St. Mary Diversion and Conveyance Works; rehabilitation of prioritized Milk River Project facilities; for appropriate projects with the Blackfeet Reservation; and for a MR&I water supply system on the Fort Belknap Indian Reservation. The purpose of these studies would be to provide the Congress with a complete and comprehensive package of information upon which to build solutions for the water needs of North Central Montana. Typically, a 50-50 cost share among the federal government (50 percent) and local project beneficiaries is provided by legislation authorizing feasibility studies.

The Department also supports the general concept of an emergency plan and fund to be used in the event of a catastrophic failure of the St. Mary Diversion and Conveyance Works prior to rehabilitation. The Department is concerned, however, with the legislation's provision of investment authority for the Emergency Response Plan. Investing appropriations provides additional monies to finance a governmental pur-

pose outside of the normal appropriations process. The Department has other concerns regarding the specific language contained in the legislation and we would appreciate the opportunity to work with the committee to address these concerns.

The Department does not support authorization for construction of the rehabilitation and improvement of the St. Mary Diversion and Conveyance Works or other features of the Milk River Project. It would be premature for Congress to authorize this major project prior to completion of a feasibility report. It is of critical importance to decision makers that extensive analysis be done in compliance with Reclamation policy, practice and Executive orders, and also in compliance with other Federal laws and policies, including for example the Clean Water Act, the National Environmental Policy Act (NEPA), and the National Historic Preservation Act. The information generated from this analysis is essential to making informed decisions about the future of these facilities.

In addition, outstanding water rights claims of the United States as trustee for the Blackfeet Tribe and Fort Belknap Indian Community are significant to the future of water management in the watersheds dealt with in this bill. The Department believes that pending the resolution of these claims, authorization of a rehabilitation plan for the Milk River Project as called for in this Act is premature. Parts of the Milk River Project facilities are located within the boundaries of the Blackfeet Reservation, and more importantly, the Blackfeet Tribe has asserted Federal reserved water rights to the water currently being delivered through the Milk River Project facilities. The Fort Belknap Indian Community also has asserted significant claims in these watersheds. Federal negotiating teams are currently working with both tribes and the Montana Reserved Water Rights Commission toward settlement of their water rights claims.

The Department of the Interior remains committed to these ongoing settlement negotiations. For over 30 years, Tribes, States, local parties, and the Federal government have recognized that, when possible, negotiated Indian water rights settlements are preferable to protracted litigation over Indian water rights claims. In addition to defining the extent of tribal water rights, negotiations allow settlement parties to develop creative solutions to water use problems. The Department is concerned that passage of S. 3563 would negatively impact efforts to resolve water rights claims for the Tribes of the Blackfeet and Fort Belknap reservations. Although this bill requires the Secretary to consult with the State, the Blackfeet Tribe, and the Board for the Milk River Project regarding the selection of an alternative for rehabilitating the project, the bill does not ensure coordination between efforts to settle tribal water claims and the rehabilitation project. There is a risk of creating parallel and potentially conflicting tracks for negotiating rehabilitation and water management strategies.

In negotiating Indian water rights settlements, the Federal government seeks settlements that resolve all outstanding water claims and achieve finality. The requirement in S. 3563 that the Secretary "shall resolve any land, water, environmental, and other claims of the Blackfeet Tribe against the United States relating to the portions of the Milk River Project located within the exterior boundaries of the Blackfeet Reservation" would effectively separate out some of the Blackfeet Tribe's water-related claims against the United States for separate resolution from the Tribe's other claims. This provision exacerbates the risk that this bill, rather than facilitating the resolution of existing Indian water rights claims, will complicate and slow the process of negotiating a comprehensive settlement.

The Department also objects to language in S. 3563 imposing a legislative timeline on the Secretary of the Interior with respect to settling Indian water rights and other claims. The Secretary should have discretion to determine the scope and merit of the claims to be settled, as well as be given latitude to determine the sorts of solutions that fit within the abilities of the Department. A mandate to the effect that the "Secretary shall resolve any . . . claims" also suggests that the availability of federal funds and resources is unlimited.

#### NEED FOR STUDIES PRIOR TO AUTHORIZATION

While the Department cannot support authorizing the rehabilitation of this project at this time, the Department supports studying rehabilitation of the St. Mary Diversion and Conveyance Works. The feasibility study would develop and analyze alternative means (starting with a screening of alternatives at an appraisal level of detail) for the rehabilitation of St. Mary storage and conveyance facilities; endangered species issues; Tribal water issues and interests; fish and wildlife resource issues; municipal water supply concerns; and international considerations related to the apportionment of the St. Mary and Milk Rivers. Reclamation believes that a feasibility report can be completed in 3 years, a timeline that allows for the

necessary aspects of the planning process (engineering, hydrology, economic, environmental, cultural, Tribal and international considerations) to be incorporated. Until this is accomplished we believe that an informed determination of a project plan, project features and project costs is not possible, and therefore construction authorization at this time is premature.

In the search for a comprehensive solution to the water and related issues in North Central Montana, the Department supports engaging the Tribes of the Blackfeet and Fort Belknap Indian Reservations in studies to identify implementable solutions to their water needs. These studies must be done in consultation with the Tribes and in coordination with ongoing efforts to negotiate comprehensive water rights settlements. We would like to work with the committee on setting some parameters on the appropriate scope and number of the projects to be studied.

The Department agrees that the extent of infrastructure needs of the Milk River Project and the costs of rehabilitation must be made clear to the Congress, along with the extent and costs of other projects that could be of benefit to the Blackfeet and Belknap Tribes. The Department is concerned with some of the language contained in the legislation regarding these issues and we would again appreciate the opportunity to work with the committee and the Tribes toward mutually acceptable legislation.

#### FEDERAL REIMBURSABILITY/REPAYMENT CONCERNS

The project repayment terms identified in Section 3(b)(4) of S. 3563 depart from the accepted project repayment practice to a degree that creates a dangerous precedent for the extensive aging infrastructure needs throughout the West. This legislation requires the Federal government to cover the full cost of the "public benefits" of the project, and also pay for the vast majority of the traditionally reimbursable side of the ledger. The legislation identifies that 55 percent of the project costs will be Federal and 45 percent will be reimbursable. The legislation then assigns 75% of this reimbursable cost to the Federal Government. The Federal share therefore is at least 88.75%, not the 55% stated in subsection (4)(A)(ii). The legislation also caps non-reimbursable obligations at \$25 million. The legislation should require the use of current Reclamation procedures for determining non-Federal cost-share that have been applied across the western states.

Given the extensive infrastructure needs throughout the West, the Department believes S. 3563 would significantly impact Reclamation's ability to address aging infrastructure and would appreciate the opportunity to work with the committee to refine these costs. We would further emphasize that the Department has a long-standing policy making local beneficiaries responsible for ensuring that project operation, maintenance, and replacement costs for facilities are met. This legislation could cost the Federal government over \$160 million, while authorizing multiple feasibility studies that could, if implemented, cost the Treasury hundreds of millions more. In addition the potential Federal contribution to pending Indian Water Rights Settlements has not been addressed.

At the same time, we recognize the importance of this project, and are committed to the most efficient use of Federal resources to assure its continued viability.

Thank you for the opportunity to comment on S. 3563.

The CHAIRMAN. Thank you for that gloomy testimony.

[Laughter.]

Senator Burns, would you like to comment?

Senator BURNS. Thank you, Mr. Chairman. You know, you objected to setting the timeline in order to make these settlements. Mr. Ryan, if we don't set some timelines, how are we going to get it done?

Mr. RYAN. I share your concerns, Senator Burns. But in my experience in negotiating water contracts, I have not experienced negotiating water rights settlements but in negotiating water contracts, sometimes the deadlines can have a negative effect on trying to reach cooperation in wrestling through some tough water issues.

Senator BURNS. Right now, nothing moves and I don't know if that benefits the folks that have the water or does that benefit the Federal Government or does that benefit the Federal Treasury? I just think it does not hurt us to set some timelines on negotiating these settlements because they are important. They are important

to our State. They are important to the tribes and sometimes, we get the feeling that the bureaucracy just stonewalls us and the only way we have to break through that wall is insertion of a timeline. Now, we can also take a timeline out. But I think there has to be some impetus put to move it forward. I really do and we'll be happy to work with you on that.

Mr. RYAN. Thank you.

Senator BURNS. Happy to work with you but basically, I just think we have to have some timelines in order to get it done. I know it has to be part of what we're trying to do here. Time is money and then if we delay, delay, delay, delay, delay, then all at once, the figures that the Senator or the chairman was worried, are the figures on the Reclamation. Do these figures still hold today as they did a couple of years ago when they were put together, they say yes. Well, pretty soon those figures start to go up, too. So the cost to the taxpayer and the cost to the tribes and the water users continue to go up and it just serves no purpose to dillydally around with it. That's my comment. That's my story and I'm sticking to it!

Mr. RYAN. I understand, sir.

The CHAIRMAN. Thank you, Senator. Let me say, Mr. Ryan, I understand that the problem that you're confronted with is much bigger than you and—

[Laughter.]

Mr. RYAN. Thank you, sir.

Senator BURNS. It is.

The CHAIRMAN. And you know that.

Mr. RYAN. Yes, sir.

Senator BURNS. And I do, too.

Mr. RYAN. Thank you, sir.

The CHAIRMAN. I just nonetheless must lay before you at a public hearing on a project like this, which is a rather symbolic project in terms of the country. I must lay before you the realities of what we're confronted with. The average reclamation facility is over 50 years old.

Mr. RYAN. Yes sir.

The CHAIRMAN. Some of the reclamation facilities are over 90 years old.

Mr. RYAN. Yes sir.

The CHAIRMAN. We're talking about one of those today, right?

Mr. RYAN. Yes sir.

The CHAIRMAN. In many areas of the West, such as the Hi-Line here are dependent upon reclamation projects, the Reclamation estimates that estimates that approximately \$250 billion has been invested in reclamation projects. Is that correct?

Mr. RYAN. Yes sir, that is my understanding.

The CHAIRMAN. However, as these facilities age, many communities can no longer afford the cost of operation, maintenance and rehabilitation. We have one of those before us today.

Mr. RYAN. It appears that way, sir.

The CHAIRMAN. How does the administration plan to protect this Federal investment and the people who rely on these facilities when the stakeholders are unable to afford the rehabilitation of the reclamation facilities and when, as a matter of fact, many of the uses of the reclamation projects are different that they were when

the projects were originated? How does the administration plan to protect that investment and that set of facts?

Mr. RYAN. Well, sir, I think that some of the testimony that came out earlier and also in some of your observations pointed to that fact that for the reclamation projects that are old projects that have, in many instances, single purposes for their authorization, when those purposes are irrigation and in today's world, with the agricultural economy, it is very difficult for those to stay financially viable. My experience on other reclamation projects has indicated that one means to help sustain their viability is to reach out to other purposes that the project can be benefited from and I think that we heard some of that today—

The CHAIRMAN. You're right.

Mr. RYAN. And then to see, sir, if those purposes could bring something to the table financially to help maintain the viability of the core.

The CHAIRMAN. And even that has not been established as a policy for the country. We are not telling our Bureau of Reclamation people to rely upon that as a policy in order to rehabilitate and/or alter, amend or maintain facilities. We have not said the American policy is—when they are old, etcetera, go out and find out if you are benefiting other uses that should be paying and see if they make things more—things less fragile if they contribute. That's not a policy yet, is it?

Mr. RYAN. My understanding is the same as yours, sir.

The CHAIRMAN. Well, that's a policy we better look at, Senator Burns. It clearly applies to yours but it applies to the country.

Mr. RYAN. Yes sir.

The CHAIRMAN. It might be too small an impact on the remnants of the \$250 billion that has been invested and that investment is in all various levels of decay, right?

Mr. RYAN. Yes sir.

The CHAIRMAN. Some of it is okay even though it is old.

Mr. RYAN. Yes sir.

The CHAIRMAN. Some is no good at all and some has just changed itself out there and is now a municipal water source.

Mr. RYAN. Yes sir.

The CHAIRMAN. It goes all over the map.

Mr. RYAN. There is great variability.

The CHAIRMAN. And we haven't set about to see what in the world is out there, either. We have, in this committee. You know that we have at least set about to reorganize the Bureau of Reclamations? You know that?

Mr. RYAN. Yes sir. And I am on the—along those lines, sir, I believe what you are referring to is what Reclamation has called the "Managing for Excellence" aspects and I am directly involved with one component of that effort and that component is major repair challenges.

The CHAIRMAN. Is what?

Mr. RYAN. Major repair challenges.

The CHAIRMAN. Okay.

Mr. RYAN. And I asked to be assigned that task. I'm hopeful that it would help me with working with the local folks, yourself and others, to resolve situations here on the Milk.



Senator BURNS. Mr. Chairman, can I make an observation here?

The CHAIRMAN. Senator Burns.

Senator BURNS. When we talk about protecting that \$250 billion in investment we've made in irrigation systems that have been built since day one, why is it so difficult for some of those irrigation districts that the users want to own it and have paid for it? In other words, they have paid back the loans on it? And yet, we have a terrible, terrible, difficult time in getting the Bureau of Reclamation to release that district to those users. Why is that so difficult?

Mr. RYAN. Well Senator, I have had some direct experience with transferring title from Federal ownership to irrigation district ownership and even though it was a bit complicated, we stepped through that process and I believe those districts right now are happy with the agreement that we reached and title now does rest with them. There are occasions, though, when the issues that surround the title of the facility make it such that in my direct experience, the receiving entity is not willing to bear, for instance, issues working through other Federal legislation, such as the Endangered Species Act and operating the project or issues associated with the liability. One of the benefits—in my opinion, one of the benefits to local water users is that since title is still in the hands of the U.S. Government, the U.S. government shares at least some, if not all, the liability for those facilities and upon transfer of title, that goes with it.

Senator BURNS. I like your answer but I don't accept it.

Mr. RYAN. Thank you, sir.

The CHAIRMAN. Let's leave the macro for a minute, other than to just suggest that somebody is involved and as bright as you are, you must understand that we have a pending fiasco.

Mr. RYAN. Yes sir.

The CHAIRMAN. We've got to find out what we're doing about it.

Mr. RYAN. Yes sir.

The CHAIRMAN. The strange thing is, that some of these districts, these projects are probably pretty valuable.

Mr. RYAN. Yes sir.

The CHAIRMAN. They are probably not so valuable in their current state of disrepair, if you leave them as purposed originally.

Mr. RYAN. Yes sir.

The CHAIRMAN. But if you put them into another kind of mold and try to package it up, they might contribute to a renovation that might be cheaper than we think.

Mr. RYAN. Yes sir.

The CHAIRMAN. But we've got to turn loose the innovation and the innovative thought on how you package these in a better way. Some municipalities can pay much more than they are currently paying and would, if in fact we changed our approach and said something different before them, at the different table, for them to participate in.

Mr. RYAN. Yes sir.

The CHAIRMAN. Let me go back to this one here. Both Senator Burns and I requested half a million dollars in the energy and water appropriation bill last year, \$5 million in this year's bill, which has not yet reached fruition but it was for the collection of data and the feasibility studies for the rehabilitation of this facility.

Mr. RYAN. Yes sir.

The CHAIRMAN. How are the studies that were authorized last year progressing and when carrying out these studies, are you taking into account the environmental effects that the operation of the St. Mary's facility has on the Blackfeet Tribe and if so, how do you plan to remedy these negative effects, if there are some?

Mr. RYAN. Senator, as the Blackfeet tribal representatives mentioned earlier, we do have some agreements between the Blackfeet Tribe and the Bureau of Reclamation. The Bureau of Indian Affairs is involved also and we've also done some good work with the State of Montana to get out those questions. I was briefed by my staff that that work continues and that they are optimistic about its outcome. I also understand and it was underscored for me again just a short while ago with the testimony of the stakeholders that there is a lot at stake for them. Their interests are sincere and this is important work and that we need to be careful. But I'm optimistic we'll get through it.

The CHAIRMAN. You are?

Mr. RYAN. Yes sir.

The CHAIRMAN. All right, very good. I hope the Indian leaders understand that it is a two-way street. You've got to be cooperative also in trying to get to this end. I think they indicate—I believe that's the case.

Mr. RYAN. Yes sir, so do I.

The CHAIRMAN. We'll see it in a few months. If it isn't, we'll see. We'll have another hearing, maybe bring them back to Washington and see what's cooking.

Mr. RYAN. Yes sir.

The CHAIRMAN. Because you've got to get these negotiations going. It can't just languish around. Would you describe more fully the Government's involvement in the resolution of the Blackfeet Tribe and the Fort Belknap's Indian Tribe's water rights claims?

Mr. RYAN. Senator, those are topics that I've been briefed upon but since much of the work happened prior to my assuming this position, I don't feel comfortable with my level of knowledge to be responsive. But if you'd permit, I could take that question back and provide the answer to the committee.

The CHAIRMAN. You'd better. Does somebody there know? Do you have somebody that knows the answer to that question?

Mr. RYAN. Yes sir.

The CHAIRMAN. And they're just not here?

Mr. RYAN. Yes sir, that's correct.

The CHAIRMAN. They are back in your office or what?

Mr. RYAN. They're back in the Department.

The CHAIRMAN. In the Department?

Mr. RYAN. Yes sir.

The CHAIRMAN. Okay. Would you do that for us?

Mr. RYAN. Yes sir.

The CHAIRMAN. Okay, I'll make the question very succinct and staff will give it to you.

Mr. RYAN. Thank you.

The CHAIRMAN. You stated in your testimony that the administration supports the general concept of an emergency response plan and a fund to go with it.

Mr. RYAN. Yes sir.

The CHAIRMAN. Right. You go on to say that you are concerned with the investment authority associated with the emergency response plan.

Mr. RYAN. Yes sir.

The CHAIRMAN. What do you suggest the administration should do in the event of a catastrophic failure? How would the emergency repairs be funded, in the event of a catastrophic failure?

Mr. RYAN. If the emergency response funding were there, sir?

The CHAIRMAN. Yes.

Mr. RYAN. Yes, well if I remember correctly, the language talks about working with the tribal governments and working with the communities and the water users to come up with a contingency plan, analyzing the risk of the different features, taking a look at the failure scenario as the likelihood and impact of different failure modes. In other work that I've done—I'm an engineer, sir. In other work that I've done, we would identify critical spares and have those on hand. We would try to negotiate agreements up front for access, potentially also for acquisition of additional repair materials and mobilize and get in and get the work done, get the repair done. That's the type of effort that as I read the Senate bill that I envisioned the author, Senator Burns, would want us to take and I think that is appropriate.

The CHAIRMAN. All right. Mr. Ryan, you stated in your testimony that feasibility studies can be completed in three years.

Mr. RYAN. Yes sir, we believe so.

The CHAIRMAN. Federal funds have already been appropriated to undertake the studies for the rehab of the St. Mary's facility. Additionally, the St. Mary Rehabilitation Working Group has invested significant time, money and resources in developing these studies.

Mr. RYAN. Yes sir.

The CHAIRMAN. How do you plan to incorporate the work that has already been completed by the St. Mary's Rehabilitation Working Group and the Reclamation when completing the feasibility study on the St. Mary facility?

Mr. RYAN. Senator, we believe that it would be foolish to through out all the hard that has been done to date and start at ground zero.

The CHAIRMAN. I would hope so.

Mr. RYAN. And wasteful of money previously spent and relationships previously developed. So we would envision using every bit of available information that is applicable, that is on the books right now, so we're not reinventing the wheel and use that. We have to make sure that the concerns and I think that we heard from the first panel, sir, that there still are some concerns with where we're at and where we're going, so we have to dovetail those in and complete not only the feasibility report but we also have to be working on making sure we satisfy the National and Environmental policy Act and the National Historic Preservation Act, etcetera. But I'd like to be able to use all the information that good people have worked hard to generate so far.

The CHAIRMAN. So do you believe that the feasibility study for the rehabilitation of the facility can be completed in less than 3 years?

Mr. RYAN. Senator, if I can do it in less than 3 years, I will. But right now, with my understanding of what's been done and what remains, 3 years is the appropriate timeframe.

The CHAIRMAN. Okay. In the written testimony, Chief Old Person stated that Reclamation is investigating the rights of way of the Blackfeet Reservation.

Mr. RYAN. Yes sir.

The CHAIRMAN. Will you please tell the committee, will you update us on these activities?

Mr. RYAN. Yes sir. There are differences of opinion between the Blackfeet Tribe and the U.S. Government on just what the status—you know, the interest in the lands is, ownership or easements, rights of way, etcetera and so working with the Blackfeet Tribe and working with the Bureau of Indian Affairs, that's some of the cooperative work that was referred to earlier on sitting down, looking through the existing data and trying to work together, in a professional and in a way collaborative way, to resolve those concerns. Many of the records are very old and trying to come to grips with just what—where does a section corner lie and—

The CHAIRMAN. What are rights of way for?

Mr. RYAN. For the canal system, for the carriage and—

The CHAIRMAN. Will you talk about water?

Mr. RYAN. Yes sir.

The CHAIRMAN. Okay.

Mr. RYAN. Yes sir. For the features of the St. Mary's—

The CHAIRMAN. So you're trying to arrive at some kind of market value or what is this exercise you're going through?

Mr. RYAN. We're trying to resolve some longstanding differences of opinion about just who—did the United States acquire all of the use interests that it needed to, nearly 100 years ago and if not, then what do we do about it?

The CHAIRMAN. So the point is, if we have it, the Indian position is, is that they are entitled perhaps, to some money. Is that right?

Mr. RYAN. Well Senator, I don't presume to speak for the Blackfeet Tribe but that is my understanding of what they think would be fair.

The CHAIRMAN. All right. I understand. I have no further questions of you. I thank you so much for what you've been doing.

Mr. RYAN. Thank you, sir.

The CHAIRMAN. I'm sure it is hard work, especially on this old project but it is important that we keep it up until we find out how we're going to do it, right?

Mr. RYAN. Yes sir. I am fortunate enough to be a fourth generation Montanan. This State and its people are important to me.

The CHAIRMAN. Okay, that's good. I'm not a Montanan and it's already important to me.

[Laughter.]

Mr. RYAN. Thank you.

The CHAIRMAN. Okay. Senator Burns, do you have anything further to say?

Senator BURNS. I do not. I just want to thank you for coming to Montana and holding this hearing and also, your very sharp questions and to highlight the challenges that we have in front of us. That's the real worth of this hearing, here where people get to hear

the question and they get to hear the answers. So thank you very much for coming.

The CHAIRMAN. Senator Burns, it's a pleasure to be in your State. Thank you for inviting me. On behalf of the Energy and Natural Resources Committee, I want to thank all of you for participating, those that did. For you who are present and for letting us conduct this hearing in your presence, we thank you. We think we have a wonderful committee. They are not all here but we have had a reputation since I became chairman, of getting things done. And the way we've done it is, believe or not, is to shake aside the idea of partisanship and do two major bills on a bipartisan basis, totally without regard to our party affiliation. We decided to do an energy bill. We haven't had one in 15 years. We did one. There are people who wanted a lot of other things in it but it is a magnificent piece of work. It is going to bring onboard during the next 7 or 8 years, literally millions and millions of gallons of ethanol that will be followed on by a further biodegraded production of ethanol from cellulose in a big, monster way.

We have done some terrific things in terms of bringing on alternative vehicles. We've done some powerful things in terms of nuclear power. Whether you like it or not, the American people have finally come of age and 85 percent think it is time we used nuclear power and what a great accomplishment that is. About the same time, we did a bill that puts that out there and believe it or not, with the incentives we provided, there are 27 new applicants for powerplants that would be fed by nuclear power that are already applications pending for the Nuclear Regulatory Commission. I don't believe you knew that, Governor. We had zero for a period of 30 years. Now we have 27, thousand megawatts each, pending. And guess what? They're going to build them right next door to the existing one. What a smart idea! And in each case, the people in the neighborhood want them back. So all this idea of where will you locate them have been resolved. Pretty smart idea. I could go on beyond that with the kinds of things this bill has brought into fruition. Your senator sat right there and we did it, didn't we?

Senator BURNS. We did it.

The CHAIRMAN. First bill in 15 years! Now if we could do a few more, moving toward independence and if we weren't too frightened, frightened of our own spirit and do some offshore drilling, which we have just about got started with recently, producing from our own reservoirs underground, the deep water. Do that next and then a couple of other big things. We will have been very proud and you would have been proud of us. That's important these days, that you get a feel that we're trying to do our job. We are. Some of us do work very hard, contrary to what you are fed over the airwaves, we are pretty hardworking and some of us are even halfway smart.

[Laughter.]

The CHAIRMAN. Thank the Lord, not to us. Some of us just inherited it, right? My kids are pretty smart. They get it all from my wife, everybody says. That's true. In any event, thank you. We won't be back soon but in the meantime, let's see what we can do about this project.

Senator BURNS. Thank you.

[Applause.]  
[Whereupon, at 4:30 p.m., the hearing was adjourned.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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STATEMENT OF DOLORES PLUMAGE, BLAINE COUNTY COMMISSIONER AND MEMBER OF ST. MARY'S WORKING GROUP ON S. 3563

Chairman Domenici, Ranking Member Bingaman, members of the Energy and Natural Resources Committee:

It is an honor to submit testimony on behalf of Blaine County and my fellow Commissioners Art Kleinjan and Don Swenson. I am presenting a county perspective on SB 3563. To the credit of the St. Mary's Working Group (SMWG) members, there has been consistent participation and attendance during all four seasons in challenging weather conditions, high transportation costs, long distances, economic hardships especially in Eastern Montana, and last, but not least, a diversified representation of interests that could have easily shattered the group's unity. However, the Working Group has maintained a focused purpose and dedication to the efforts of authorizing the rehabilitation of the St. Mary Diversion System and addressing associated issues of the Blackfeet and Ft. Belknap Tribes, and the Milk River Basin.

Glacier, Hill, Phillips, Valley and Blaine Counties collectively contain a total population of 66,860, a 7.2% of total Montana population. The total farm earnings of the Basin is 38% of all Montana farm earnings; and the Basin represents 27% of all Montana farm employment; and the irrigated crops of the Basin are barley—32% of Montana's total barley crop, Basin spring wheat—3.4%, and alfalfa—8.2% of all irrigated alfalfa produced in Montana; and Basin livestock which is 15.5% of all Montana cattle; and 11% of all Montana sheep (source: Mont. Dept. of Commerce—Census and Economic Info. Center).

Blaine County has a population of 6,629, per capita income \$12,101, and a county size in square miles 4,275. Following are the Blaine County communities' municipal, residential and industrial water use data: Chinook—population served 1,386; Harlem—848; and Ft. Belknap Agency—1,262 (source: St. Mary Diversion & Milk River Project Preliminary Econ. Analysis by Dr. J. Duffield, 12/30/05; 2005 census). Agricultural production is a major source of revenue. The Ft. Belknap Reservation and its government have pending projects such as an ethanol plant and a water treatment plant. Both Ft. Belknap and communities in the county have goals of attracting more commerce, a more improved highway for the hi-line connecting the five counties, extensive oil and gas activity and increased tourism. According to University of Montana Paul Polzin, "It is not unusual for population growth to lag behind economic growth", (Great Falls Tribune, Aug. 24, 06).

In a normal irrigation season (May through September), supplemental water provided by the St. Mary Diversion Facilities provides approximately 70-90% of irrigation water used by contract holders on the Milk River Basin. During the drought of 2001, 95% of available water in the Milk River originated in the St. Mary River Basin. St. Mary system provides municipal drinking water to over 17,000 people in thirteen Montana communities. Bowdoin National Wildlife Refuge contracts with Reclamation for approximately 3,500 acre-feet per year of supplemental water from the St. Mary River. This 15,500-acre refuge provides food and habitat for an estimated 100,000 waterfowl each spring and fall. The St. Mary system benefits wetlands, numerous endangered and threatened species, and reservoirs for storage and recreational benefits.

The St. Mary Diversion Facilities are approaching 100 years old and are still dependent on the same basic infrastructure built by the Reclamation Service in the early 1900's. Operation of the St. Mary Diversion Facilities has had a series of negative environmental impacts on the Blackfeet Reservation.

There are many issues being addressed by the Working Group. It is obvious that the tribes are facing crucial decisions regarding their water rights. Ft. Belknap Reservation is within the boundaries of Phillips and Blaine Counties. Considering the testimonies of President Julia Doney of the Ft. Belknap Community Council and

Chairman Earl Old Person of the Blackfeet Tribal Council, it is evident that they do not want this legislation to overshadow their water issues which have existed for many years. It is the Working Group's task to sincerely address issues that are within their scope of limited jurisdiction. The Working Group desires to work collaboratively with Bureau of Reclamation to develop language to address a mutual agreement of determining federal reimbursability/repayment concerns and to address multiple users of the Milk River.

The irrigators have had to bear the financial burden of maintaining the St. Mary's infrastructure. Considering all of their rising costs of agricultural expenses, it is overwhelming for the irrigators. Bureau of Reclamation is a key component; however, it is depressing and frustrating to observe their reluctance to assist due to their own bureaucracy. Hence the Working Group has no choice but to bypass Reclamation and go to Congress. The expression of great appreciation by St. Mary's Executive Director Larry Mires is also echoed by the Working Group to Senator Baukus for securing federal funds to address Blackfeet environmental issues and the St. Mary Siphon Bridge in 2005; and to Senator Burns and the Congressman Rehberg for crafting the new legislative language to provide a permanent fix to the St. Mary and Milk River Projects in 2006. Counties, communities, and citizens have donated \$275,657.88 to support the efforts of the St. Mary Rehabilitation Working Group (as of 8.21.06). The St. Mary's Working Group was formed in 2004 and have provided over \$126,102 in-kind contributions to attend meetings and to promote the project.

The State of Montana has contributed over \$947,142 to support the goals of the Working Group (as of 7.31.06). The State of Montana also has contributed staff time and resources providing administrative and technical support. Lt. Governor Bohlinger and the supporting staff from Department of Natural Resources have been invaluable to the Working Group's progress. The dedication to the urgency of this water system and its importance to Eastern Montana has been a wonderful "work in progress".

Montanans are a very self-reliant and proud people. Today we are extremely happy to see that our concerns have reached the hearts and minds of our legislators. Sometimes, it appears that we are forgotten. With a deep-rooted love for the Milk River Basin and the simplicity of life that we represent, Blaine County thanks you for your time, attendance and dedication to this matter.

PAGE WHITHAM LAND AND CATTLE, LLP,  
Glasgow, MT, August 28, 2006.

Chairman DOMENICI,  
Ranking Member BINGAMAN,  
*Energy and Natural Resources Committee.*

MR. CHAIRMAN AND MEMBERS: Thank you for the opportunity to submit testimony regarding the need for rehabilitation of the Milk River Project and the St. Mary's Diversion Works.

I am a cattle rancher, irrigator, and member of the St. Mary Rehabilitation Working Group. My son and his children represent the fourth and fifth generations to operate one of the larger family ranches in northern Montana. We irrigate Milk River Valley land, producing winter feed for a significant number of cattle and calves that are pastured on private, BLM, and State of Montana lands during the grazing season. Our ranch employs twelve to fifteen men and women, circulates substantial income through the state's economy, and contributes considerable revenue to county, state, and federal government.

Prior to construction of the Ft. Peck Dam, the many thousands of acres of fertile bottom land along a 130 mile stretch of the Missouri River served as winter feed base for a large number of northern Montana ranches, including ours. Following the flooding of these highly productive "Missouri River Hay lands", the Milk River Project has served as a substitute source of production since the early 1940s and now provides winter feed base for most range-livestock operations in the region.

Since World War II, area farmers and ranchers have invested significantly in the purchase and development of lands for irrigation and have incurred financial obligations based on the production potential of irrigated land. The development of these lands for irrigation was encouraged through government programs and accomplished with the understanding that a dependable supply of water at an affordable cost would always be available.

Milk River Project irrigated lands produce the majority of the winter feed for more than 250,000 head of cattle, and is essential to the \$110,000,000 range livestock industry in four northern counties of Montana. Most years, Montana is a winter feed deficit state and Milk River Valley irrigated hay production is irreplaceable.



Montana ranches without a dependable source of winter feed have never survived, and I am unable to envision the future of our ranch without an irrigated feed base.

There is little doubt; the loss of this water supply would financially ruin hundreds of farms and ranches, adversely affect fish and wildlife, and jeopardize the municipal water supply for a number of communities including the Ft. Belknap Reservation.

The Milk River Project and St. Mary Diversion are in critical need of rehabilitation, and failure to appropriately reauthorize and fund this project will result in a socio/economic disruption of unpredictable magnitude within the State of Montana. This is an antiquated Federal Project operating under outdated Federal Law, and a congressional solution is crucial.

Respectfully,

STEVEN K. PAGE.

*September 1, 2006.*

Chairman DOMENICI,  
Ranking Member BINGAMAN,  
*Energy and Natural Resources Committee.*

Re: Benefits of St. Mary Diversion Facilities and Milk River Project

Thank you for giving me the opportunity to write the Energy and Natural Resources Committee. My name is Mike Barthel and I've resided along the Milk River for the past 20 years. Prior to making my home near the Milk, I resided in Glendive, Montana and grew up on a farm near the Yellowstone River. I know the importance of water both from an agriculture standpoint and from my current position on the St. Mary Working Group (SMWG) where I represent all forms of recreation along the Milk River Valley. I've served as State President for Montana Walleyes Unlimited and a two-year term as a local president for the Fresno Chapter of Walleyes Unlimited. My current occupation is Police Chief for the City of Havre, a town that wouldn't exist if the City of Havre didn't have an adequate and reliable water supply.

I met Co-Chair of the SMWG (Randy Reed) a number of years ago when we discovered we had the same interest. The federally built and maintained water system that supplies the reservoirs of Fresno and Nelson and the Milk River was failing and on the verge of a catastrophic failure. Mr. Reed's interest primarily lie with the family farm. My interests . . . No minimum pool standards set on Fresno and Nelson and I was receiving increasing pressure from members of the walleye club asking me to do something about it. Don't let Mr. Reed fool you with his oral testimony and written comments, which tends to lean towards irrigation. We have shared some great fishing days together on the water! From those early meetings, a group was formed. Today it is called the SMWG and although we have different interest at the table, the goal is common. Rehabilitate the system so that an adequate water supply will supply life to the Hi Line for years to come.

My experiences as a leader of an organization have given me the opportunity to work with some great people who specialize in the management of water. One such organization is the Montana Fish, Wildlife and Parks. FWP has presented to the public many times on lake elevations and why it will do more harm than good to plant fish when water levels are too low. The local chapter works in conjunction with FWP and has planted trees and vegetation to ensure adequate cover for newly planted fingerlings and fry fish. Too many times the lake elevations are too low for the cover to do any good and the fry and fingerlings become a food source. Too many times the elevation of the lake is so low the fish decided to exit and are flushed downstream. Too many times the lake elevations are so low that one can't even put a boat into the water. The local biologist has said for years that a stable water supply on the lakes is needed for fish survival. Future fisheries studies are needed. Species of concern, like the Sauger inhabits these waters. Further west, the endangered Bull Trout is allowed to pass by an inadequate fish net and into the Milk River system. The Piping Plover an endangered bird can be found on Nelson Reservoir. Again, a minimum pool standard would ensure adequate water for fish, wildlife and municipal water use.

The local Fresno Chapter of Walleyes Unlimited recently invested over \$60,000 in a campground on water front property for all of the public to enjoy. Today, it is a long walk down the beach to water. Because of receding water, the beach turns to knee-deep mud and then silk. Boat slips and docks are moved daily because of the constant receding water. With the current price of fuel, campers and boaters must stay close to home a problem when there isn't enough water. The main problem: Roughly 1150CFS leaving Fresno, 450CFS entering. Other groups have worked

hard on establishing habitat for wildlife along the Milk River Valley. Ducks Unlimited, Pheasants Forever, Turkeys Forever, and Northerns Forever all have dedicated time and money to improve the Milk River and reservoirs for the betterment of their species. The Bureau of Reclamation has spent a lot of federal dollars installing restrooms, camping areas and fire pits, but many times because of low water the locations are too far from water to be utilized.

The continued releases from the first dam on the Milk River ensure some good. In addition to supplying drinking water to roughly 17,000 people living near the Milk River, it is estimated that the net economic benefit of recreation in the basin attributable to the Milk River Project and St. Mary water is \$10.5-\$12 million annually. Additionally imported water from the St. Mary River supports over 7,340 acres of wetlands in the Milk River Basin with of a total value of \$5-\$7 million annually. Benefits of St. Mary Diversion Facilities and Milk River Project far exceed those originally envisioned when the project was built in 1906.

The SMWG is asking for your help on behalf of all the Americans living and visiting this great part of Montana! We cannot afford this federal project by ourselves.

God Bless,

MIKE BARTHEL.

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BEAR PAW DEVELOPMENT CORPORATION,  
*Havre, MT, September 4, 2006.*

Hon. PETE DOMENICI,  
*Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

Hon. JEFF BINGAMAN,  
*Ranking Member, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES: I am writing with specific regard to S. 3563, which, among other things, will work to rehabilitate the St. Mary Diversion and Conveyance Works and the Milk River Project (St. Mary Diversion). This legislation, perhaps more than any other action currently before Congress, will determine the continued viability of northern Montana as a place to live, work, recreate and engage in entrepreneurial activities. Thank you for this unique opportunity to provide you with information about the St. Mary Diversion as you consider much-needed funding for this century-old federal project.

I currently serve as the Executive Director of Bear Paw Development Corporation, a federally-recognized Economic Development District that includes five counties and two Indian reservations in northern Montana. The economy of this area and the well-being of its people are intimately linked to the continued functionality of the St. Mary Diversion and its accompanying infrastructure. While the Congress smartly authorized this project 100 years ago, it has unfortunately fallen into a dreadful state of disrepair that literally challenges its continued ability to perform its intended function, which is the efficient delivery of water from the St. Mary River Basin to the Milk River Basin.

Although the original purpose of this engineering marvel was to assure that the agricultural producers of northern Montana received the water necessary to properly grow crops for a growing nation and a young state, the water delivered by the St. Mary Diversion has had a much deeper, more significant impact on this area, known as the Hi-Line, than anyone would have speculated in the early 1900's. Nearly 50,000 people live in the rural counties directly impacted by this project, with countless more reaping the indirect benefits of a water delivery system funded, designed and constructed by individuals possessing a vision for northern Montana that continues to allow our area to contribute significantly toward the economic well-being of Montana and the United States.

As you can imagine, it is difficult enough to engage in meaningful, job-creating economic development activities in places like rural northern Montana. This task becomes nearly impossible without the proper publicly-financed infrastructure that allows the private sector to expand, create jobs and contribute to our overall economy. According to the December, 2005 *St. Mary Diversion & Milk River Project Preliminary Economic Analysis*, the rehabilitation of the St. Mary Diversion is responsible for as much as \$41.3 million annually in net economic benefit to Montana and the U.S. This same study indicates that the long-term economic value of this project is estimated at \$410-\$700 million. When compared to the expected project cost of approximately \$120 million, a favorable cost-benefit ratio of 4:1 is anticipated.

Production agriculture is, by any measure, the backbone to the economy of northern Montana. Fully 38 percent of Montana's total farm earnings are derived from agricultural production in the Milk River Basin. This \$67 million annually comes from over 8,600 farm workers. Annual agricultural cash receipts from the Milk River Basin are \$495 million. None of this agriculture-related economic activity would be possible without the continued functionality of the St. Mary Diversion and Conveyance Works. In a very real and significant way, this infrastructure fuels the economy of our area and adds tremendously to the overall viability and sustainability of Montana's economic base.

In addition to the St. Mary Diversion's role as a contributor to the regional and national economy, it also provides life-sustaining drinking water for the communities of Havre, Chinook, Harlem, Fort Belknap Agency and rural areas in Hill County. More than 15,700 residents of these communities rely on the St. Mary Diversion Works to deliver water to their homes on a daily basis. This municipal use sustains these communities and makes them attractive as locations to live, raise a family and conduct business. Without the water that is delivered to these communities, it would be impossible for the residents of this area to survive. Indeed, the St. Mary Diversion allows our quality of life, and life itself, to exist on the high plains of northern Montana.

Although the pioneering engineers and federal policymakers of the early 1900's were truly visionary with respect to this piece of infrastructure, it has not received the attention it deserves from the federal government over the course of the past several decades. At a personal level, we all understand it is folly to spend good money on a house for our family only to ignore its ongoing upkeep and maintenance. The same is true with public infrastructure. The St. Mary Diversion Works is in serious need of rehabilitation and faces the real potential of immediate collapse, which would have significant and very negative impacts on all of Montana's Hi-Line. The federal government, through S. 3563, has a real opportunity to protect the investment they have already made in this project and assure that this important infrastructural enhancement to this area can continue to serve the various water needs of our communities for decades to come.

Another factor which points to the importance of federal investment in this project is the relative poverty of the residents of the area when compared to their fellow citizens on a statewide or national basis. Using figures from Hill, Glacier and Blaine Counties, the following statistics indicate the dramatic gap that exists with per capita income and poverty for this region and individuals that reside elsewhere:

	Per capita income 1999	Persons below poverty level 2003
United States .....	\$21,587	12.5%
Montana .....	\$17,151	14.2%
Hill County .....	\$14,935	18.1%
Glacier County .....	\$11,597	25.6%
Blaine County .....	\$12,101	22.2%

These stark numbers are indicative of the general economic conditions that exist in the area impacted by this project and point to the necessity of securing federal funds to continue to assure that the communities of Montana's Hi-Line receive the water that is necessary to fuel their economy and provide quality drinking water to its residents. These numbers reflect the reality that the residents of this region are simply unable to bear the brunt of paying to properly rehabilitate this federally-owned facility. A significant federal investment is a must.

The proposed rehabilitation of the St. Mary Diversion Works has developed through a unique and truly grassroots effort of citizens, local and tribal government officials, conservation organizations, agricultural producers and economic development interests. This diverse group of concerned Hi-Line residents wants to find a sensible, long-term solution to the deteriorating nature of this important water delivery system for our area. Toward this end, Milk River residents, organizations and units of local and tribal government have contributed over \$401,000 in both monetary and in-kind donations that will advance this project, a substantial financial and personal commitment for a region of our state and nation that has experienced out-migration, business closures, commodity price uncertainty and multiple years of drought.

Your assistance in directing appropriate federal funding to this project through S. 3563 will go a long way toward assuring that the investment made by the Congress 100 years ago in the St. Mary Diversion and Conveyance Works was money

well spent and that this water delivery system will be able to continue to serve the people and communities of northern Montana for the next 100 years.

Thank you for allowing me the opportunity to present these comments. My contact information is as follows:

PAUL TUSS,  
*Executive Director.*

CITY OF HAVRE,  
*Havre, MT, September 5, 2006.*

Hon. PETE DOMENICI,  
*Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

Hon. JEFF BINGAMAN,  
*Ranking Member, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES: I am writing with specific regard to S. 3563, which contains legislation to rehabilitate the St. Mary Diversion and Conveyance Works and the Milk River Project (St. Mary Diversion). On behalf of the rural population of over 17,000 people of Havre, Chinook, Harlem, Dodson, Malta, Kremlin, Gilford, Hingham Rudyard and Inverness who all receive their drinking water from the St. Mary Diversion we appreciate the efforts being made to help rehabilitate this 100 year old infrastructure.

When the newly created Bureau of Reclamation decided to construct, what some call an engineering marvel, the St. Mary Diversion, its sole intended use was for irrigation. Since the inception of the first waters that flowed through the gates, the use of the project has changed dramatically. In the last 100 years the project has grown from a single use project to an economically viable multi-use project that serves agriculture, municipal, industrial and recreation uses after its first 100 years of use.

The City of Havre constructed a water treatment facility in the early 1950's as the "City Fathers" also had a vision and looked for the community to continue to grow. The city entered into a contract with the Bureau of Reclamation and was allocated 2800 acre/feet of water from the Milk River each year for the treatment and distribution to its residents. Before the construction of the water plant the city relied on wells to supply water to the residents and businesses in Havre. As the city expanded and the population continued to grow, the quality of the wells started to deteriorate. Havre became more dependent on the use of surface water to supply its customers and used more of its 2800 acre/feet allocation.

In 1997 after a study completed by the city's engineer Carollo Engineering it was determined that the ground water deteriorated to a point that it could only be used as a backup water supply during emergency situations. The city began the process of expanding the water plant to meet the needs of the growing community. In 2000 the city allocated more than \$9 million dollars for the expansion and construction of the current water treatment facility which can produce 6 MGD. Today the City of Havre relies solely on the waters from the Milk River and in most years' water from St. Mary's Diversion to provide its drinking water. This is the case for all of the communities which receive water from the Milk River.

As Mayor Bob Rice of Havre stated in his oral testimony at the September 1, 2006 Field Hearing in Havre, in a drought year like the one we're currently are experiencing, the source of our water for municipal, industrial and economic development purposes comes almost entirely from that which is transferred to the Milk River Basin from the St. Mary River Basin. The Milk River without the water from the St. Mary's diversion would run dry 7 out of every 10 years.

Agriculture on the Milk River Basin produces 38% of Montana's total farm earnings. This is a large percentage considering the size of Montana. But without the communities along the basin this production would not be possible and without the agricultural economics the communities would dry up and blow away along with the water that the Milk River alone provides. These two groups go hand in hand and could not survive without the other.

Along with the agricultural benefits there are many other economic benefits that were derived from this single use system built in 1905. The industrial, municipal and recreational uses make up 59% of the \$41.3 million in economic benefits that are seen at the local, state, regional and national levels. The long-term economic value of this project is projected to be as high as \$700 million, for a cost-benefit ratio of four-to-one, given the projected cost of this project of \$120 million.

Federal policy makers 100 years ago had seen a vision for this land and created the St. Mary's Diversion and Conveyance Works. It has gone from a single use project in its infancy to a multi-use project that has created communities and an economic livelihood along the Milk River Basin. These communities and their economic benefits make this State, Region and Nation what they are today.

The ability of the irrigators to maintain this century old infrastructure is no longer economically feasible. The St. Mary Diversion and Conveyance Works is known as the "Lifeline of the Hi-Line," and is in need of help from the visionaries (Federal Government) who invested in the future of this land 100 years ago. With this help we will continue to preserve the communities and this land served by the St. Mary's Diversion and Conveyance Works.

I ask you to work toward making an honest investment by directing appropriate federal funding to this project through S. 3563 that will keep this conveyance system operational for the next 100 years and allow future generations to work and live in the "Lifeline of the Hi-Line".

Thank you for this opportunity for allowing me the opportunity to present these comments. My contact information is as follows:

DAVID PETERSON,  
*Public Works Director.*

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*Glasgow, MT, September 5, 2006.*

Hon. CONRAD BURNS,  
*Senate Energy and Natural Resources Committee.*

DEAR SENATOR BURNS: My wife (Kim) and I irrigate about 425 acres in the Glasgow Irrigation District, of which I serve as a Commissioner. The purpose of this correspondence is two-fold. First, all of the assistance and leadership that you and your staff have invested into the St. Mary Diversion and Conveyance Works and Milk River Project Act of 2006 (Senate Bill 3563) are appreciated. Secondly, the following information and suggestions are provided for your use in negotiating SB 3563 through the Senate hearings.

Several questions regarding the economics of irrigating on the Milk River were raised during the recent Senate Energy and Natural Resources Field Hearing in Havre. Some of your Congressional colleagues may not realize higher costs are incurred when irrigating at the lower-end of a ditch or irrigation system (in comparison to being at the headwaters). In contrast, the amount of water available for irrigating is generally less at the lower end of a ditch. Since the Glasgow Irrigation District is located at the bottom end of the Milk River Basin, we have the highest costs among the eight irrigation districts in the Milk River System. Our annual irrigation taxes average about \$19.50/per acre. In addition we pay \$4.75 per acre foot of water. It is critical to remember that the Glasgow Irrigation District borrowed \$2 million for a Rehabilitation and Betterment (R&B) project in the early 1990's. At that time, the Bureau of Reclamation did an economic analysis and concluded that we (the irrigators) did not have the capability to repay the loan. Our membership had to vote and agree to take on added debt to qualify for the loan (which we approved, and are now repaying). In other words, irrigators in the Glasgow Irrigation District are continually confronted with the difficulty of generating enough revenue to match the production costs and provide adequate funds for family living expenses. Some members of our District will be unable to survive the high construction costs that are likely to be associated with the rehabilitation of the St. Mary works.

Kim and I bought most of our irrigated acreage in 1994. I believe that our aspirations were similar to other families that have bought land along the Milk River during the last century. Because we knew that the Bureau of Reclamation had acquired most of the "early" water rights along the river, we expected our water rights to be a viable long-term investment. This premise of "available irrigation water" has been the basis for developing infrastructure throughout the Basin. We pay about \$11,000 annually for irrigation (425 acres x \$19.50/acre plus about 425 ac-ft of water at \$4.75/ac-ft. About \$2,500 of our annual irrigation costs (\$6/ac) goes to pay O&M of the St. Mary works. Therefore, it has been most disheartening to learn that our irrigation system is in shambles, and that the two most likely scenarios for the future will be: 1) higher irrigation costs, and 2) less water. Although I do not believe the current dilemma is the fault of any one Government Agency, or the activities of any special interest group, it would seem that the Federal Government should be more aggressive and zealous in its efforts to protect physical, social, and biological investments throughout the Basin.

In my opinion, the creation and evolution of the St. Mary Working Group has been one of the most positive events to occur in the Milk River Basin. Most of the special interest groups in the Basin are represented on the Group, and they have become a catalyst for positive change throughout the Basin. As a member of the Working Group, I believe that "consensus" was the foundation for the draft language that we forwarded to your office for consideration in the drafting of SB 3563. Therefore, I was surprised and disappointed during the Field Hearing to learn that some members of our Working Group apparently recommended delaying construction activities on the St. Mary Project, until the Tribal Water Compacts were settled. As an irrigator, Commissioner of the Irrigation District, and member of the Working Group—I strongly disagree with their position. I feel like the entire Milk River Basin is being held hostage.

We simply cannot afford to delay passage of SB 3563, and subsequent construction activities. The failure or collapse of the Irrigation System would adversely impact every tax-paying resident and sportsman in the Milk River Valley. More importantly, I believe that language in the draft Senate Bill clearly stated, that the activities of this legislation "would not affect the Tribal water rights or the negotiations of water compacts". Perhaps the language needs to be strengthened? Hopefully, it can be stated and demonstrated to everyone that the draft language protects, rather than threatens Tribal interests. This is not the time for bureaucratic inertia. Therefore, for the interests of all, I strongly recommend that you and your staff continue your important efforts to pass SB 3563.

Please do not hesitate to contact me if additional information is needed. Likewise, I would appreciate updates from your staff on the status of the Bill as it progresses through the Hearings. Once again, many thanks for the good work.

Sincerely,

JOHN LACEY.

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MONTANA STATE UNIVERSITY,  
Malta, MT, September 6, 2006.

Hon. PETE V. DOMENICI,  
*Chairman, Senate Energy and Natural Resource Committee.*

Hon. JEFF BINGAMAN,  
*Ranking Member, Senate Energy and Natural Resource Committee.*

DEAR CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN, AND MEMBERS OF THE ENERGY COMMITTEE: I would like to thank you for taking the time to travel to Montana and hosting a field hearing for the St. Mary Diversion and Conveyance Works and Milk River Project Act of 2006. I would also like to extend my appreciation of Senator Burns for introducing this legislation and the support it has received from Senator Max Baucus and Representative Denny Rehberg.

It has been well documented that the 90 year old St. Mary Diversion and Conveyance and Milk River Project is in great need of rehabilitation. Current estimates for this rehabilitation are about \$135 million. The passage of this act is necessary to amend the old authorization, which recognizes this project as a single purpose irrigation project. Since the development of this project, irrigators have repaid the original construction cost and all of the annual maintenance costs. At the same time, other uses and values have grown to include wildlife, recreation, and municipal water supply, while maintaining irrigation as the primary use. Since the project has the additional uses of municipal water to 17,000 individuals in 13 communities and supports wildlife, including Bowdoin National Wildlife Refuge, it is only appropriate that federal cost share also be used to rehabilitate the system. The format for the proposed cost share in S. 3563 was developed from the Bureau of Reclamation Safety and Dams Act of 2004.

The diversion of water from St. Mary River into the Milk River has been noted as the "Life Line of the Hi-Line" and has continued since its inception in 1906 to be of great economic importance to this region of Montana. Increased agricultural production and recreation represent 32% and 29% of the economic benefit that the St. Mary Conveyance Works and Milk River Project provide to this region, respectively. Economic development in this region is challenging, but without a doubt, we cannot afford to lose one of our major economic inputs. Loss of the added St. Mary water into the Milk River would drastically change our community and region.

As this legislative process began in 2002, the State of Montana and local stakeholders have worked hard to include all of the affected interests, as demonstrated by our diverse witness list. Despite testimony by both the Blackfeet and Fort Belknap Tribes in opposition to this legislation, both parties have been involved with the writing of S. 3563 and the Working Group process since its inception. The

Working Group, State, and Tribal interests have contributed over \$275,000 dollars of local monies, in addition to the \$2,547,142 that the State of Montana has contributed. Additionally, the State of Montana has authorized \$10 million in bonds to be matched with federal dollars for the rehabilitation of this federal facility. I doubt that there are many states or communities that are willing to commit funds at this level, prior to federal authorization and appropriation for the rehabilitation of a US Bureau of Reclamation facility.

Without the added water from the St. Mary River into the Milk River, water shortages would occur 6 out of every 10 years. The 90-year-old conveyance system is in desperate need of rehabilitation. Delayed rehabilitation could likely result in catastrophic failure of some portion of the conveyance system. Failure would result in large-scale environmental damage to the Blackfeet Reservation, costing many more thousands of dollars to repair. US Bureau of Reclamation has documented the vulnerable structural integrity of the system and diminished capacity of the conveyance system. A rehabilitated system would address long-standing issues of degradation to the Blackfeet Reservation due to the operation of the system, and address winter habitat for the threatened bull trout.

Passage of the St. Mary Diversion and Conveyance Works and Milk River Project Act of 2006 is an important first step in a lengthy process in making positive improvements to an old federal facility. It is important to begin this rehabilitation process with passage of S. 3563 to protect the previous investment in this federal facility. These efforts will provide a road map for future rehabilitation projects, paving the way for local/federal partnerships to rehabilitate other federal systems and provide a new age for the Bureau of Reclamation.

I would like to thank the entire Senate Energy and Natural Resource Committee for their time and dedication to this important project and look forward to passage of S. 3563 legislation.

Sincerely,

MARKO MANOUKIAN,  
*Phillips County Extension Agent.*

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ST. MARY REHABILITATION WORK GROUP,  
*Glasgow, MT, September 6, 2006.*

Hon. PETE DOMENICI,  
*Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

Hon. JEFF BINGAMAN,  
*Ranking Member, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES: I am Larry Mires and I currently serve as the Executive Director of Two Rivers Economic Growth Corporation, a local Economic Development organization that serves the city of Glasgow and Valley County Montana. The economy of this area and the well-being of its people are intimately linked to the continued functionality of the Milk River Project and its accompanying infrastructure, the St. Mary Diversion and Conveyance Works being the main one. I also have the honor and privilege of serving as the Executive Director for the St. Mary Rehabilitation Working Group; The sixteen members of the Working Group represent a broad coalition of stakeholders including the Milk River Irrigation Districts, the Blackfeet Tribe, the Ft. Belknap Indian Community, municipalities, county government, business interests, and recreational and fishery interests in the Milk River Basin. The Working Group was created to craft a "Workable Solution" for rehabilitating the St. Mary Diversion Facilities before the system suffers a catastrophic failure. With this goal in mind, the Working Group has been working with the State of Montana and the Montana delegation to draft authorizing legislation to resolve this issue.

I am writing with specific regard to S. 3563, which, among other things, will work to rehabilitate the St. Mary Diversion and Conveyance Works of the Milk River Project (St. Mary Diversion) and Milk River Project. This legislation, perhaps more than any other action currently before Congress, will determine the continued viability of northern Montana as a place to live, work, recreate and engage in entrepreneurial activities. Thank you for this unique opportunity to provide you with information about the St. Mary Diversion as you consider much-needed funding for this century-old federal project.

It should be noted that S. 3563, the St. Mary Diversion and Conveyance Works and Milk River Project Act of 2006 as submitted to the congress on June 23, 2006

by Senator Conrad Burns and co-sponsored by Senator Max Baucus was done so with consensus of the full Working Group. By operating policy all decisions and agreements by the Working Group must be by consensus—with no exceptions.

While the Congress authorized this project 101 years ago, it has unfortunately fallen into a dreadful state of disrepair that literally challenges its continued ability to perform its intended function, which is the efficient delivery of water from the St. Mary River Basin to the Milk River Basin.

Although the original purpose was to assure that the agricultural producers of northern Montana received the water necessary to properly grow crops for a growing nation and a young state, the water delivered by the St. Mary Diversion has had a much deeper and more significant impact on this area, known as the Hi-Line, than anyone would have speculated in the early 1900's. Nearly 50,000 people live in the rural counties directly impacted by this project, with countless more reaping the indirect benefits of a water delivery system funded, designed and constructed by individuals possessing a vision for northern Montana that continues to allow our area to contribute significantly toward the economic well-being of Montana and the United States.

It is difficult enough to engage in meaningful, job-creating economic development activities in places like rural Montana and even more challenging on the Hi-Line. This task becomes nearly impossible without the proper publicly-financed infrastructure that allows the private sector to expand, create jobs and contribute to our overall economy. According to the December, 2005 St. Mary Diversion & Milk River Project Preliminary Economic Analysis, authored by Dr. John Duffield, University of Montana and member of the advisory committee that provided the guidance for the U.S. Water Resources Council (1983), *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, commonly referred to as the "principles and guidelines", the rehabilitation of the St. Mary Diversion is responsible for as much as \$41.3 million annually in net economic benefit to Montana and the U.S. This same study indicates that the long-term economic value of this project is estimated at \$410-\$700 million. When compared to the expected project cost of approximately \$135 million, a favorable cost-benefit ratio of 4:1 is anticipated.

Most specifically, I would like to address some comments and concerns made during the Field Hearing held in Havre, Montana on September 1, 2006.

1. Both tribal councils, while supporting the legislation, were opposed to its passage at this time until their reserved water right claims are resolved. No one in the basin disagrees with the need to resolve tribal water right claims—there is the reality however that these negotiations have been ongoing, in some cases for over half a century or more, and are still not resolved. The Milk River Project, the Montana Hi-Line, the State of Montana, and the country simply CAN NOT continue to wait or be held hostage for these agreements to be reached by the Tribes, the State, and the Congress. The Bureau of Reclamation testified that they were opposed to any and all "deadlines" in the legislation, as "it impairs their ability to negotiate effectively". It is obvious from Reclamations past performances, that if tight regiments are not enacted the agency is more than capable of blowing off the directives of Congress and the people of this great country.

2. Bureau of Reclamation testified against the legislation in whole but supported yet another 3 year "feasibility study". In 1999 congress passed the *Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved water Rights Settlement and Water Supply Enhancement Act of 1999* (P.L. 106-103) specifically directed Reclamation to conduct a regional feasibility "study" of north central Montana. Reclamation, again proving its ability to side step congress, down graded the "Regional Feasibility Study" to a "Regional Feasibility Report" sighting lack of sufficient funding for sufficient information to make a full "Feasibility Study". This report, which was finally released in 2004, has already determined that "St. Mary Canal System Enhancements is the only alternative that would significantly address the water supply and related issues of north Central Montana and that would produce positive economic benefits" (U.S.BR, October 2004, Page iii).

3. Reclamation testified in favor of a Strategic Plan in case of a catastrophic failure of the St. Mary Diversion and Conveyance Works yet opposed the establishment of a trust fund to cover the expense incurred should an event take place. This position by Reclamation leaves only one option—the original current single purpose authorization of 1902 and makes the irrigators of the basin fiscally liable for 98% of the cost. This will bankrupt the Hi-Line agricultural community of Montana and is totally unacceptable by any standards! Unless authorized as a multi purpose project, problems of the past and today will simply continue to escalate and we will be no further ahead then we are now. What has been taking place in the past does not seem to be working or we wouldn't be having these discussions today. The Working



Group would welcome the opportunity to work closely with the committee to find a meaningful solution.

Production agriculture is, by any measure, the backbone to the economy of northern Montana. Fully 38 percent of Montana's total farm earnings are derived from agricultural production in the Milk River Basin. This \$67 million annually comes from over 8,600 farm workers. Annual agricultural cash receipts from the Milk River Basin are \$495 million. None of this agriculture-related economic activity would be possible without the continued functionality of the St. Mary Diversion and Conveyance Works. In a very real and significant way, this infrastructure fuels the economy of our area and adds tremendously to the overall viability and sustainability of Montana's economic base.

4. Reclamation rejected all the other aspects of the legislation. One of the greatest concerns to all is that of cost repayment. The proposed legislation uses formulas similar to those passed by Congress in the 2004 Reclamation Safety of Dams Act, in that 15% of reimbursable funds are paid by project beneficiaries. It is my understanding that Reclamation through administrative procedure attempted to make that 15% of each projects total cost—and not of qualified reimbursable funds. We would welcome to opportunity to work with the committee in seeking an equitable formula for “cost repayment” for this aging infrastructure.

5. S. 3563 also contains a \$25 million cap which Reclamation does not endorse nor support. This is in fact a “*cost containment*” provision to maximize each and every dollar spent on the project. The basin can no longer afford extravagant and unnecessary duplications of expenditures that exist in government, i.e. studies upon studies that result in the same conclusions but fail to allow an actual solution.

6. Reclamation was not in favor of additional basin wide studies at this time. Without these studies being authorized, how is it ever going to be possible to develop a long range plans for the current infrastructures? Authorizing studies of the Milk River Project simply speeds up the process that Reclamation would drag out for another 100 years.

In addition to the St. Mary Diversion's role as a contributor to the regional and national economy, it also provides life-sustaining drinking water for the communities of Havre, Chinook, Harlem, Fort Belknap Agency and rural areas in Hill County. More than 15,700 residents of these communities rely on the St. Mary Diversion Works to deliver water to their homes on a daily basis. This municipal use sustains these communities and makes them attractive as locations to live, raise a family and conduct business. Without the water that is delivered to these communities, it would be impossible for the residents of this area to survive. Indeed, the St. Mary Diversion allows our quality of life, and life itself, to exist on the high plains of northern Montana.

Although the pioneering engineers and federal policymakers of the early 1900's were truly visionary with respect to this piece of infrastructure, it has not received the attention it deserves from the federal government over the course of the past several decades. The St. Mary Diversion Works is in serious need of rehabilitation and faces the real potential of immediate collapse, which would have significant and very negative impacts on all of Montana's Hi-Line. The federal government, through S. 3563, has a real opportunity to protect the investment they have already made in this project and assure that this important infrastructural enhancement to this area can continue to serve the various water needs of our communities for decades to come.

The proposed rehabilitation of the St. Mary Diversion Works has developed through a unique and truly grassroots effort of citizens, local and tribal government officials, conservation organizations, agricultural producers and economic development interests. This diverse group of concerned Hi-Line residents wants to find a sensible, long-term solution to the deteriorating nature of this important water delivery system for our area. Toward this end, Milk River residents, organizations and units of local and tribal government have contributed over \$401,000 in both monetary and in-kind donations that will advance this project, a substantial financial and personal commitment for a region of our state and nation that has experienced out-migration, business closures, commodity price uncertainty and multiple years of drought.

Your assistance in directing appropriate federal authorization and funding to this project through S. 3563 will go a long way toward assuring that the investment made by the Congress 100 years ago in the Milk River Project and St. Mary Diversion and Conveyance Works was money well spent and that this water delivery system will continue to serve the people and communities of northern Montana and our country for the next 100 years and beyond.

Thank you for allowing me the opportunity to present these comments.  
 Respectfully submitted;

LARRY MIRES,  
*Executive Director.*

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*Chinook, MT, September 6, 2006.*

CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN, MEMBERS OF THE ENERGY AND NATURAL RESOURCES COMMITTEE: I am writing concerning the need to rehabilitate the St. Mary Diversion Facilities. My husband and I live in the small rural farming community of Chinook along Montana's hi-line. The City of Chinook has a population of approximately 1,200 people.

My husband, Ed Obie, is a 3rd generation inhabitant of Chinook. Sixty years ago his father returned from World War II and began "Obie Flying Service". When my husband finished college, he joined his father in the flying service business and is operating it on his own today. Ed does aerial charters and crop spraying. The number of charters decreased sharply after the government began subsidizing Big Sky Airlines. In fact, a number of fixed base operators (FBO's) in north central Montana have ceased to offer charters, including those in Havre, Malta and Great Falls. As a result of the decline in charters, the aerial spraying has become our main source of income. If we have no water, we have no crop spraying.

We also operate a small, dryland farm south of Chinook. As we are in a drought more often than not in this area, our crop yields aren't always the best—may I run some figures by you:

This year's projected farm income: 16,500 bu. wheat @ \$4/ bu .....	\$66,000.00
This year's farm expenses:	
Health insurance @ \$500/mo. ....	\$ 6,000.00
Utilities .....	700.00
Fuel and repairs (approx.) .....	16,000.00
Property taxes .....	3,300.00
Crop insurance .....	8,000.00
Farm & vehicle insurance .....	7,000.00
Fertilizer .....	13,000.00
Custom seed & harvest .....	18,000.00
Crop spraying .....	7,000.00
<hr style="width: 100%;"/>	
Total expenses .....	<u>\$79,000.00</u>
<hr style="width: 100%;"/>	
LOSS on farm operation .....	<u>\$13,000.00</u>

The point here is, there would be many years we could not exist without the income from the crop spraying.

Aside from the obvious reasons for needing water, we, and many others like us along the hi-line, will be unable to make a living in this area. The hi-line could become nothing but a string of ghost towns.

I understand our neighbors at Fort Belnap are opposing the project until such time as they get some water right issues handled. By that time it could be too late for the rest of us—and also for them.

Please show your support of the St. Mary Diversion project.  
 Thank you for your consideration.

GAIL OBIE.

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THE CITY OF HARLEM,  
*Harlem, MT, September 6, 2006.*

Senator CONRAD BURNS,  
 321 1st Avenue North, Great Falls, MT.

Re: St. Mary Diversion and Conveyance Works and Milk River Project Act of 2006

DEAR SENATOR BURNS: As Mayor of the City of Harlem, a community located on the Hi-line which draws its water from the Milk River, I am writing to you to support your effort to make the above named legislation a true reality for thousands of Montanans.

Harlem, like many communities along the Milk River, depends on the river as our sole source of reliable, potable water for our citizens. Without the water which the Milk River supplies to us, the City of Harlem would be faced with a crisis of enormous proportions! Harlem would either have to have water brought in by truck (a costly and unreliable option) or search for water underground by drilling deep wells miles from the city limits (a cost prohibitive option with only a marginal chance of success according to a civil engineer hired by the City). If Harlem is not able to take water from the Milk River, the City itself will likely die.

I cannot urge you in strong enough terms to promote and fight for the St. Mary Diversion project! Harlem, as a member of the St. Mary Working Group, supports fully the effort to rehabilitate the aging facilities which are in immediate need of repair and reconstruction.

Senator Burns, as you have said, St. Mary's is "the backbone of the region's agricultural economy." May I respectfully add that for Harlem the Milk River is "the lifeblood of the city." Please feel free to use me as a reference in this matter. I will be glad to speak with anyone about the importance of the St. Mary's Diversion project to our community!

Respectfully yours,

JASON L. GIBSON,  
*Mayor.*

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PHILLIPS CONSERVATION DISTRICT,  
*Malta, MT, September 6, 2006.*

Re: S. 3563, Rehabilitation of the St. Mary Diversion Facility

DEAR CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN, AND MEMBERS OF THE ENERGY AND NATURAL RESOURCES COMMITTEE: Thank you for the opportunity to submit testimony on Senate Bill 3563 authorizing the Secretary of the Interior to conduct studies to determine the feasibility and environmental impact of rehabilitating the St. Mary Diversion and Conveyance Works and the Milk River Project, to authorize the rehabilitation, and to develop an emergency response plan for use in the case of catastrophic failure of the project.

It is the opinion of the Phillips Conservation District (PCD) Board that the St. Mary Diversion Facility is of immeasurable value to the producers, sportsmen, municipalities, and the general public in Phillips County, the Hi-Line, and the State of Montana. The PCD Board of Supervisors are locally elected volunteers whose role is to oversee and positively affect natural resource management, and to be a voice for private lands for the benefit of the environment and the local economy.

The water supplied through the Milk River Irrigation Project allows local irrigators to produce a great deal of the hay needed in Phillips County. Approximately 50,000 tons of hay is raised annually on irrigated acres in Phillips County; providing roughly 1/3 of the hay necessary to maintain the County's nearly 50,000 head of cattle.

Without the *dependable* water source provided by the Milk River Irrigation Project, this would not be possible in a county where the average rain fall is 10-12 inches annually. For example, the annual water year (September to August) precipitation amounts for the past few years in Phillips County were as follows (does not include the Zortman area):

2001-02—11 in.	2004-05—10.5 in.
2002-03—10.2 in.	2005-06—9.4 in.*
2003-04—14.1 in.	*(does not include Aug.)

Additional difficulties producers often contend with in Phillips County are temperature extremes, wind, and timeliness of precipitation.

In addition, the Conservation District feels it would be economically unfeasible to expect irrigators to assume the entire cost for the rehabilitation, operation and maintenance of the facilities. It is obvious that the benefits extend well beyond providing irrigating waters, and costs should be shared accordingly.

In Phillips County, Nelson Reservoir is a popular location for recreation providing fishing, boating, water skiing, and other activities for persons locally and statewide. The Milk River enhances wildlife habitat for numerous fish, reptiles, and animal species in the area. Considering the prediction that the Milk River would go dry six of every ten years without the St. Mary Diversion, these benefits could be lost.

In conclusion, it would be disastrous to abandon this valuable facility which has truly proven to be "the lifeline of the Hi-Line" for nearly 100 years. Your support for this essential project is greatly appreciated.

Sincerely,

ROBERT BREIPOHL,  
*Chairman.*

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RECTOR LAW OFFICE, P.C.,  
*Glasgow, MT, September 7, 2006.*

Hon. PETE DOMENICI,  
*Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

Hon. JEFF BINGAMAN,  
*Ranking Member, Committee on Energy and Natural Resources, Dirksen Senate Office Building, U.S. Senate, Washington, DC.*

Re: Senate Bill 3563

DEAR CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES: I write in support of Senate Bill 3563 and urge your committee to adopt the same. I did attend the Senate Field Hearing in Havre and would like to make the following comments.

Authorization of this project is essential. The authorization will give the Bureau of Reclamation the authority to proceed with the studies that are preliminary and necessary for the ultimate rehabilitation of the St. Mary Diversion. Nothing can happen until the authorization has been passed.

Even though the Blackfeet and the Fort Belknap Tribes have given their tentative support to the Senate Bill, it is imperative that the authorization go forward today. The concerns of both the Tribes can be worked through after the authorization has been allowed to proceed. Tribal Water Compacts, while they are certainly related, are not an intrinsic part of the rehabilitation process itself.

There were several questions concerning the cost share formula. The significant thing about that cost share formula is that 62% of the benefits from the Diversion itself inure to non-agricultural purposes. I practice law in Glasgow and am serving on the St. Mary Working Group as a representative of the Two Rivers Growth Economic Development Council. While we understand that agriculture is our basic industry and failure of that industry would have a ripple effect that would wreck havoc on the whole economy. Yet there are those other benefits that are real and substantial; values of river front property have appreciated significantly in the last few years, primarily because of the recreational aspects and the wildlife that are associated with the river. There are literally thousands of acres of wetlands that would be destroyed if the Diversion was allowed to fail. It would therefore, have an extreme negative impact on the wildlife utilizing those wetlands.

The cost share formula proposed in the Bill, I believe, is fair because there are so many non-agricultural benefits and further, because the agricultural segment of our economy simply cannot afford to pay the cost to rehabilitate the project. The cost per acre would be staggering and would undoubtedly cause several financial failures in the agriculture community.

At the hearing, no one addressed the other portions of the Milk River Project. There are several other project features that need to be reviewed and studied, most notably, Vandalia Dam. This authorization Bill would authorize the feasibility study to determine the condition of the facility and the repairs needed.

I therefore urge the committee to pass and approve Senate Bill 3562.

Sincerely,

JAMES D. RECTOR.

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*Chinook, MT, September 7, 2006.*

Senator CONRAD BURNS,  
*U.S. Senate.*

SENATOR BURNS: As a life long resident of Blaine County, a former irrigator and a present day water user in the city of Chinook, I must give my support for your Bill to rehabilitate the Saint Mary Diversion. Failure of the Diversion would be devastating to the people that are served by the water from the Milk River in Montana. Water from the Milk River is used not only for irrigation, but for drinking and for

wildlife habitat. Money must come from the federal government to do this rehabilitation.

RICHARD CRONK.

*Havre, MT, September 8, 2006.*

Re: S. 3563 St. Mary Canal Rehabilitation Project

CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN, MEMBERS OF THE ENERGY AND NATURAL RESOURCES COMMITTEE: Thank you for the opportunity to comment on this potentially great adventure. It is long over due in my opinion.

A little about myself, I am a retired Fisheries Biologist and Fisheries Scientist (American Fisheries Society certification), having worked for the State of Montana's Fish, Wildlife and Parks Department (FWP) for over 30 years. For 28 of those years I worked with the fisheries in the Milk River Drainage and as the Regional Biologist for the middle and upper Milk. I have had many opportunities to work with state and federal agencies concerning projects on the Milk River and associated reservoirs but the St. Mary rehab is by far the most important project to come along in my lifetime. I would like to address some of the fisheries benefits of this project.

I conducted a considerable amount of research on the effects of water availability on fisheries in Fresno and Nelson Reservoirs during my tenure. One of the more important studies determined the effects of drawdown on fish emigration and flushing from Fresno Reservoir. It was determined that when the reservoir is drawn down to elevation 2551, massive numbers of forage fish and game fish are discharged into the river below. This is most likely due to density dependent factors (overcrowding). When water is drawn below this elevation, long term damage occurs to the fishery. The walleye/pike/perch fishery must rebuild from the remnant populations in subsequent years. Many times in the last three decades the reservoir has been drawn below this critical point. In fact, this severe draining occurs every 2.6 years on average. As it takes about four years to grow a walleye to catchable size, managing this fishery has been an uphill battle. Despite an excellent water year in 2005 and good runoff this Spring, we are again within days of surpassing this critical point. As the reservoir recedes, turbidity and increased temperature negatively affect the fishery. If levels remain low over winter, which is common, predation and cannibalism further reduce game and forage fish populations. Water level management recommendations to benefit the fishery have been submitted to the U.S. Bureau of Reclamation (BOR) numerous times. These recommendations are also contained in FWP progress reports and are in the files. These recommendations include a draw-down regime and a minimum pool recommendation. I believe the BOR would like to meet these criteria but water availability has not allowed this to occur. It is important to note that these water level recommendations are not completely in direct conflict with primary irrigation demands as moderate draw-downs in late Spring and Summer are beneficial to the fishery in that they allow for re-vegetation of shorelines for forage fish production the following year. A more consistent and increased diversion of water could allow for both needs to be met. The success of all fisheries management efforts are contingent on water availability at this time.

Similar flushing effects were noted at Nelson Reservoir and water level recommendations have also been submitted to the BOR for inclusion into their water management operations.

It should also be noted that endangered and sensitive species such as pallid sturgeon and paddlefish would also use the lower Milk River below Vandalia Dam if more water entered and exited the system in a timely manner.

Local sportsmen groups, the state and the BOR have continued to extend boat ramps into these dewatered reservoirs at considerable expense. Despite their efforts, only one ramp is currently usable at Fresno Reservoir at this time.

In conclusion, it is obvious from a fisheries standpoint that if the rehabilitation of the St. Mary's canal and associated structures is able to improve delivery and therefore increase the quantity of water to the Milk River System, the stage would be set to see great long-term improvement to the entire Milk River fishery as long as minimum pools could be established.

Sincerely,

KENT GILGE.

*Montana Association of Counties.*

Hon. PETE DOMENICI,  
*Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office  
 Building, U.S. Senate, Washington, DC.*

Hon. JEFF BINGAMAN,  
*Ranking Member, Committee on Energy and Natural Resources, Dirksen Senate Of-  
 fice Building, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN DOMENICI, RANKING MEMBER BINGAMAN AND MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES: I am writing on behalf of Montana Association of Counties (MACo) in regard to S. 3563, which will work to rehabilitate the St. Mary Diversion and Conveyance Works and the Milk River Project. This legislation, perhaps more than any other action currently before Congress, will determine the continued viability of northern Montana as a place to live, work, recreate and engage in entrepreneurial activities. The St. Mary Diversion Facility is known by many as the "Lifeline of the Hi-Line," the geographic area of northern Montana that encompasses that area of our state from the Rocky Mountain Front to the North Dakota border. When such a large part of Montana is affected by a basic infrastructure failure it affects all parts of the State.

These reasons are why MACO encourages your efforts to appropriate the necessary federal funding for this project. With this funding the St. Mary's system will be able to continue to serve the people of the Hi-Line and our State economy for years to come.

Thank you for allowing me the opportunity to present these comments.

Sincerely,

DOUGLAS A. KAERCHER,  
*President, MACo.*

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STATEMENT OF KRAIG HANSEN, FIRE CHIEF, CHINOOK VOLUNTEER FIRE  
 DEPARTMENT, CHINOOK, MT

I would like to thank you for letting me submit a testimony on the need to rehabilitate the St. Mary Diversion Facilities. I'm the fire chief for the community of Chinook Mt. and the St. Mary Project has a huge impact on the community and the fire department. The City of Chinook has a population of 1300 people and we receive all of our water from the Milk River and that water is provided by the St. Mary Diversion Facilities. The fire department currently has an ISO rating of an 8 but will be testing Sept. 12, 2006 to try to lower the rating. I fully intend on getting the ISO rating to a 7, possibly a 6, which will help the residents living in Chinook obtain a lower Fire Insurance premium. The City of Chinook relies a 100 percent on the Milk River for water and also for the fire hydrants, but if Senate Bill S. 3563 fails and the St. Mary's Diversion fails, our ISO rating will jump to a 10 which is like having no fire department at all. The Fire Insurance premium would go up tremendously on every building in town. No one in town could afford fire insurance so the towns along the Hi-Line would dry up and become ghost towns. The people and the groups that are opposing this, need to set aside their political gains and their greed to see that this Senate Bill S. 3563 passes because there's just not another alternative.

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STATEMENT OF CAROL C. JUNEAU, REPRESENTATIVE HD 16, BROWNING, MT

I would like to support the testimony provided to the Committee on September 1, 2006, in Havre, Mt. of Earl Old Person, Chairman of the Blackfeet Tribal Business Council, in regards to the St. Mary Canal. Some of the issues addressed by Mr. Old Person that I would like to reiterate include:

A. The St. Mary diversion facilities cannot be rehabilitated without the water rights and other claims of the Blackfeet Tribe are resolved.

B. Environmental impacts to the Blackfeet Reservation caused by the Project need to be addressed and fixed.

C. That the rehabilitation effort includes an appropriate allocation of water from the project, other project benefits and compensation for damages and use of Blackfeet water.

I represent the Blackfeet Reservation in my House District 16, Montana State Legislature. Also, thank you for bringing this hearing to Montana.

## STATEMENT OF MARY SEXTON, DIRECTOR, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, HELENA, MT

Chairman Domenici and distinguished members of the Senate Energy and Natural Resources Committee, I thank you for the opportunity to provide written testimony on Senate Bill 3563. My name is Mary Sexton, and I am the Director of the Montana Department of Natural Resources and Conservation.

The Montana Department of Natural Resources and Conservation (DNRC) fully supports passage of S. 3563, the "St. Mary Diversion Works and Milk River Project Act of 2006." As the agency of State government responsible for coordinating local, state, and federal water resources development and utilization plans and projects, DNRC is committed to working with local, Tribal and federal partners on the successful implementation of all provisions contained in S. 3563.

DNRC agrees with the statement made by the Bureau of Reclamation (Reclamation) at the 1 September 2006 Senate Energy and Natural Resources Committee field hearing in Havre, Montana, that the facilities of the St. Mary Diversion and Conveyance Works have outlived their design life after serving the people of North Central Montana for almost one hundred years under severe climatic and geologic conditions. The Department also agrees with Reclamation on the adverse consequences that would come with a failure of the system. We also agree with Reclamation on the need to take a comprehensive look at the water needs of the Milk River Basin and to proceed in a stepped and informed manner.

S. 3563 lays the groundwork for developing a comprehensive solution by authorizing investigations on facilities throughout the Milk River Basin in addition to addressing concerns of the Blackfeet Tribe and Ft. Belknap Indian Community. As Committee members know from oral testimony given at the 1 September field hearing, the St. Mary Diversion and Conveyance Works are in critical need of repair or replacement. Failure of the St. Mary Diversion system would be catastrophic to the Hi-Line economy of north central Montana. The stable supply of irrigation water provided by the system secures the "backbone" of the region's agricultural economy. In authorizing construction of the rehabilitation and improvement of these facilities, S. 3563 simply recognizes that the infrastructure needs of the system have to be addressed now. It is not a question of if, but when, the system will fail. With a catastrophic loss of the St. Mary Diversion and Conveyance Works there will be no need to address the other challenges before us.

DNRC also agrees with Reclamation on the need to develop an emergency plan and funding mechanism should the St. Mary Diversion and Conveyance Works suffer a catastrophic failure before rehabilitation is substantially complete. However, we believe that the best emergency response plan is to pass S. 3563 as soon as possible and move forward to construction before the system fails.

DNRC must respectfully disagree with Reclamation's testimony that Reclamation "has worked extensively with the St. Mary's Rehabilitation Working Group since its inception." Though Reclamation attends all Working Group meetings, the agency has chosen to take a role limited to monitoring the discussion and providing technical information. This limited role is confusing to basin residents who do not understand why the agency that owns and operates the facilities is not at the front leading the discussion. It is out of this void of Reclamation leadership and planning that the Working Group grew. For this reason, the State of Montana has been forced to take a leadership role to move this project forward. Not only is it confusing for the owner/operator not to be fully engaged in the process, it is detrimental to the overall effort.

DNRC's strongest area of disagreement is with Reclamation's statement that a 3-year feasibility study (FS) must be done before Congress can make an informed decision about the future of these facilities. Reclamation's 3-year study is the approach typically followed for a brand new project, not rehabilitation of a project that has been in place for almost 100 years. We believe that through the combined efforts of Reclamation and the State of Montana, the majority of required engineering, hydrologic, and economic studies have already been completed.

In October 2004, Reclamation released its North Central Montana Regional Feasibility Report authorized under the 1999 Chippewa Cree Reserved Water Rights Settlement (P.L. No.106-163) and funding with three million dollars. The study found that "St. Mary Canal System Enhancements is the only alternative that would significantly address the water supply and related issues of north Central Montana and that would produce positive economic benefits" (U.S.B.R, October 2004, Page iii). This report assessed various rehabilitated canal capacities, but did not provide a preferred alternative or recommended capacity.

On 31 May 2006, in a meeting with DNRC staff, Reclamation staff stated that cost estimates contained in the North Central Montana Feasibility Report were con-

sidered to be of feasibility grade for the St. Mary Diversion and Conveyance Works. Given that Reclamation considers feasibility grade cost estimates to be more accurate than appraisal level estimates, Reclamation staff comments appear to contradict those made by Reclamation in their oral testimony that one component of the FS would be the screening of alternatives at an appraisal level of detail for the rehabilitation of the facilities. If the North Central Regional Feasibility Report is not at least the appraisal level study sought by Reclamation, what then was the purpose of the three million-dollar expenditure?

In 2004, DNRC hired the engineering consulting firm of Thomas Dean & Hoskins (TD&H) of Great Falls, Montana, to provide professional engineering services to the State and Working Group. In February 2005, TD&H released the Phase 1 report titled *St. Mary Diversion Facilities Data Review, Preliminary Cost Estimate and Proposed Rehabilitation Plan*. A copy of the Executive Summary from this report is attached as Exhibit A.\* is report achieved the following goals.

1. Review of all engineering, geotechnical, and environmental information collected and/or prepared by or on behalf of the US Department of Interior related to the St. Mary Diversion and Conveyance Works,
2. Completion of an on-site field investigation to identify deficiencies and potential rehabilitation and/or replacement design concepts that will ensure the most efficient and cost-effective continued operation of the St. Mary Diversion and Conveyance Works, and
3. Identification of additional studies necessary to evaluate alternatives, identification of environmental compliance and cultural resource requirements, preparation of preliminary cost estimates, development of a preliminary implementation schedule for rehabilitation that addressed preliminary engineering requirements, environmental and cultural resource assessments, funding procurement, phasing, design, and construction.

In 2006, TD&H began Phase 2 preliminary engineering design work for rehabilitating the St. Mary Diversion and Conveyance Works. The results of this effort are documented in the report *St. Mary Diversion Facilities Feasibility and Preliminary Engineering Report for Facility Rehabilitation* (TD&H, August, 2006). A copy of the Executive Summary from this report is attached as Exhibit B. As part of the Phase 2 preliminary engineering design work, TD&H examined several alternative designs for rehabilitating system infrastructure and developed feasibility level cost estimates for each. All cost estimates were prepared in general accordance with procedures described in Reclamation's *Cost Estimating Handbook* (USBR, 1989). In addition, TD&H developed appraisal level cost estimates on two additional diversion and conveyance alternatives that have been proposed since Reclamation's 2004 North Central Feasibility Report. In response to a question from Senator Domenici on Reclamation's confidence with TD&H's cost estimates Reclamation replied that they were generally satisfied with the accuracy of the estimates.

Phase 2 preliminary design work also included a preliminary economic analysis of the proposed rehabilitation project undertaken by Dr. John Duffield with the firm Bioeconomics in Missoula, Montana. Dr. Duffield served on the review team for the development of the U.S. Water Resources Council (1983), *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, commonly referred to as the "principles and guidelines" used by Reclamation. The methods Dr. Duffield applied in his analysis are generally consistent with the guidance provided in the principles and guidelines. In addition, Dr. Duffield consulted with Reclamation's economist Mr. George St. George in preparation of the preliminary economic analysis. The main findings of Dr. Duffield's report are that an assumed \$120 million investment in the St. Mary Diversion and Conveyance Works will produce an estimated economic benefit of \$24 to \$39 million annually, compared to the amortized annual project cost of about \$6.6 million. In other words, project benefits far exceed project costs by about a four to one ratio. These project benefits are shared over a number of sectors including irrigated agriculture, municipal and rural water uses, recreation, fish and wildlife, and ecosystem services including the provision of wetlands. The net present value of project benefits over the 100-year design life of a rehabilitated project is estimated to be between \$410 and \$660 million. This very significant impact relative to cost reflects the fact that substantial private sector infrastructure is already in place. Results of the full preliminary economic analysis are found in the report *St. Mary Diversion & Milk River Project Preliminary Economic Analysis Impacts and Benefit-Cost Analysis* (Bio-

\*The exhibits have been retained in committee files.



economics, August 30, 2006) A copy of the Executive Summary from this report is attached as Exhibit C.

Montana DNRC also believes that the majority of needed hydrologic studies were completed as part of Phase 2 preliminary engineering studies. These results can be found in the report *St. Mary Diversion Facilities Hydrologic and Hydraulic Design Considerations for Overall Canal Rehabilitation* (TD&H, July 28, 2006). A copy of the Executive Summary from this report is attached as Exhibit D.

It is important for the Committee to understand that DNRC and its contractors made every effort to ensure that all Phase 2 preliminary engineering studies were done in accordance with Reclamation policy and procedures. Representatives from DNRC, TD&H and Bioeconomics held periodic update meetings with Reclamation staff to brief them on progress and receive comments for improvements. All draft reports were submitted to Reclamation for review and comment. Representatives from DNRC and their contractors also met with Reclamation staff to review and discuss every comment Reclamation provided.

We would also like Committee members to know that several other issues Reclamation believes must be further studied are being addressed through other venues. In particular, the Montana Reserved Water Rights Compact Commission is actively negotiating with the Blackfoot Tribe to settle water right claims, and the International Joint Commission's Administrative Measures Task Force is working on issues related to apportionment waters in the St. Mary and Milk Rivers. The outcome of any decision by the International Joint Commission will not affect whether or not the St. Mary Diversion and Conveyance Works need to be rehabilitated or even the manner in which it could be rehabilitated. As recognized by Montana Area Office Manager Mr. Dan Jewell in testimony before the International Joint Commission, the United States lacks the infrastructure to take the water to which it is already entitled under the 1909 Boundary Waters treaty.

It is the opinion of Montana DNRC that the largest remaining data gap is an environmental review to satisfy requirements of the National Environmental Policy Act (NEPA). We agree with Reclamation that this step needs to be taken and look forward to working with them on its completion. Given that the federal action being contemplated is the rehabilitation of a 100 year old project, rather than a brand new start, we feel a 3-year timeframe to complete an environmental review is excessive. We feel Reclamation should be able to complete this step within two years.

Montana DNRC also disagrees with Reclamation's testimony that it is unreasonable to apply a \$25 million cap on reimbursable obligations. We believe such a cap will provide a powerful incentive for Reclamation to control costs. Reclamation has a history of cost overruns, such as Animas La Plata, and passing the additional costs on to contract holders who have no recourse but to pay. With a cap on reimbursable obligations Reclamation will be forced shoulder the burden of any cost overruns.

One of the most important provisions in S. 3563 is establishment of reasonable cost-share arrangements for those who would hold repayment contracts with Reclamation. The St. Mary Diversion and Conveyance Works must also be reauthorized to recognize the multiple benefits it now supports. As originally authorized in 1905, the St. Mary Diversion and Conveyance Works are operated for the single purpose of irrigation. As such, over the last 90 years, nearly 100% of the cost to operate and maintain the diversion infrastructure has been borne by irrigators within the eight irrigation districts of the Milk River Project. Reclamation's 2005 Current Use Benefits Analysis showed large public benefits accrue from the existence of the St. Mary Diversion system. Dr. Duffield's preliminary economic analysis shows that 32% of the annual economic benefit associated with the supplemental water supplied by the system accrues to irrigated agriculture. The remaining 68% accrues to the public in the form of municipal water, recreation, fish and wildlife, and extensive riparian areas. However, the 1905 authorization does not reflect this new reality. As a result, contract holders in the Milk River Basin are being asked to subsidize the Nation for benefits the public enjoys. This inequity must be addressed now.

The State of Montana and St. Mary Rehabilitation Working Group have put in a tremendous effort to raise non-federal funds to initiate the rehabilitation project. To date, State and local funds committed to the rehabilitation of the St. Mary Diversion and Conveyance Works exceed \$13 million (Exhibit E). However, rehabilitation can only succeed if there is a third partner, the Federal Government.

The State and Working Group are eager and willing to work with Reclamation and Congress to find acceptable solutions for federal support to the project. We understand that National priorities make it extremely difficult to find federal funds for the rehabilitation of the St. Mary Diversion and Conveyance Works. However, the rehabilitation of the St. Mary Diversion and Conveyance Works cannot wait. Should the system fail not only will there be a serious effect on the Montana econ-

omy, environmental damage to the St. Mary's watershed on the Blackfoot Reservation—in a culturally sensitive area that contains critical habitat for the threatened cutthroat and bull trout, and potential international conflict, the cost of rehabilitation will be more expensive and difficult as emergency construction. There is not time to simply wait for the federal funding environment to change.

The State and Working Group wish to work with Congress to pass S. 3563 as soon as possible. Finally, the State and Working Group will continue to raise non-federal funds and work with all of the stakeholders so that we are prepared to pursue the rehabilitation project as soon as federal funds are provided.

I once again thank you for the opportunity to present this testimony to the Committee.

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STATEMENT OF JAY ESLICK, SUPERINTENDENT, CHINOOK PUBLIC SCHOOLS,  
CHINOOK, MT

Dear Chairman Domenici and Members of the Energy and Natural Resources Committee,

Thank you for this opportunity to submit testimony regarding the need to rehabilitate the St. Mary Diversion Facilities.

My name is Jay Eslick. I am Superintendent of Schools in Chinook, Montana. I represent a School District with a student population of approximately 425 students and a community of over 2000 people.

The town of Chinook is located in the "Heart of the Hi-Line" along the northern border with Canada. Our major industry is farming and ranching. In recent years we have also experienced substantial economic growth due to the exploration, extraction, and production of natural gas within our region.

I am writing today to impress upon you the importance of the Milk River to our community and region. Our community solely depends on the Milk River as our source of water. Without the Milk River we will not be able to live in this area. Farmers would not be able to farm. Ranchers would not be able to ranch. Gas Companies would not be able to explore, extract or produce.

The St. Mary Water project was built with the intention of providing water to the Montana Hi-Line. The people of the Hi-Line have built their livelihood around the St. Mary Water Project. Some of the data I have seen reveals the Milk River would run dry, on average, six (6) out of every ten (10) years without the St. Mary Water Project. With the recent drought conditions that have strangled our region, I would venture to guess this average would be a conservative estimate.

The failure to rehabilitate the St. Mary Water Project system would undoubtedly displace thousands of people from the Hi-Line and create economic chaos for the banking and lending institutions within our region.

I encourage you to support the passage of legislation to rehabilitate the St. Mary Water Project System.

Thank you for your consideration.

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STATEMENT OF FREDA BRYSON, CHINOOK CITY COUNSEL, CHINOOK, MT

I am writing in reference to the need for a new canal system near Browning Montana to be built at the St. Mary's Lake at the head of the Milk River which supplies water to the Milk River System. This Milk River starts at the East side of Glacier Park.

There has been studies lots of money spent for many different reports ,now is the time to get started on the construction for this very important project.

My name is Freda Bryson and I'm a City Counsel person for the City of Chinook Montana. We solely depend on the Milk River for water, due to the draught we have endured for the past several years. Our Farmers and Ranches have had to relay on our City water system to haul water for their livestock as well as household needs.

We have had to increase the cost of our water system that is having a financial impact On the Citizen's of my Community.

With this Letter I hope you will consider getting this construction going soon.

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STATEMENT OF MAX MADDOX, CHINOOK, MT

For the record, my name is Max Maddox and my address is 3490 Stockyard Rd., Chinook, MT 59523. In order for you to more fully understand the importance that Senate Bill 3563 has to me and my family, I would like to share some thoughts and personal information with you.

Since the late 1970's I have attended meetings in an effort to find an affordable way to repair the deteriorating facilities of the St. Marys Diversion works. For years I represented the five irrigation districts in the Chinook Division Irrigation Association during discussions about the Fort Belknap Tribes' Water Rights Compact. This proposed Compact is now before the U.S. Government and is contingent on a viable St. Marys Diversion.

Since the 1970's a member of my family (my father, my brother or myself) has served on the local ditch board. I have been a board member of the Montana Water Resources Association for over 20 years and I now serve as its chairman. I have also been a member of the St. Marys Working Group since its inception. So far this year alone I have dedicated 27 days to these organizations, all in an effort to try to help ensure the enactment of the new introduced SB3563.

Why would anyone donate so much time and put so much effort to this cause? I do it for my family's future and our way of life in the Milk River Valley. My grandfather's great-great grandchildren are now growing up on the family farm that he established. Will they, and others like them in our valley, be able to continue on the family farms? Under the present circumstances they won't if the St. Marys Diversion fails and is not repaired. If a catastrophic failure should occur and be repaired under the present rules of repayment, they won't be able to continue because they would be unable to pay the bill—so, either way they go broke. We have to have water, but it also has to be affordable. SB3563, as drafted by Senator Burns, will let us survive a major break in the system and upon its enactment it will ensure this project for our future generations.

Beyond our family farm, in our valley we have an internationally important bird area The Bowdoin Wildlife Refuge that is dependent on the St. Marys water. Wetlands are becoming national treasures. We have over 7,300 acres of wetlands incidental to this project (with an estimated replacement cost of between \$80.73 and \$117.4 million) that are in serious jeopardy should the system fail. While I was attending a National Water Resources conference in Park City, Utah recently, I turned on the TV late one evening and there was a program (on national TV) about the Whitetail deer of the Milk River Valley. This is another nationally recognized treasure that is dependent on water in the Milk River.

My response to testimony at your recent hearing in Havre, Montana: the language in SB3563 was agreed to by ALL parties in the St. Marys Working Group in previous meetings. It has always been understood that the SMWG would not get involved in Tribal water rights or their negotiation. Nothing was said that the two issues couldn't proceed parallel to one another. However, they are two separate issues both in discussion and in legislation. The St. Marys Diversion is in too critical of a condition to wait for a protracted Water Rights Compact process. Comments by the Chair and SB3563 author were deemed proper, in my view, confirming the urgency in proceeding with this legislation.

I was disappointed, upset and embarrassed that testimony was not adhered to as submitted, and that not all of it was given in the predetermined time allowed. I guess I've sacrificed so much in time and effort for this endeavor that I was very excited to have a U.S. Senate Hearing in our valley, and I feel strongly that committee protocol should have been followed and positions shouldn't have changed from prior agreements.

Also, as to the Bureau of Reclamation's request that legislation be halted and the BOR be given three years to conduct yet another feasibility study, I disagree. It is my recollection that the BOR was given money and a mandate to do this back around 1999, and all we got from it was a feasibility report. Things on the St. Marys Diversion are too tenuous to wait three more years for something that was supposed to have been done already. We need the protection provided in SB3563 to get us through a catastrophic failure as soon as possible. As Senator Burns said, "Time is money."

Your consideration of my remarks is most appreciated and I look forward to the progression of this legislation.

Mr. Chairman and Committee Members, I thank you.

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STATEMENT OF GARY W. ANDERSON, MEMBER, ST. MARY REHABILITATION WORKING GROUP, REPRESENTING THE CITY OF CHINOOK, MT

I thank you for the opportunity to discuss the critical need for the rehabilitation of the St. Mary Diversion and Conveyance Works and my support for Senate Bill 3563.

## MUNICIPAL AND RESIDENTIAL WATER USES

The communities of Havre, Chinook, Harlem and two rural systems supplied from Fresno Reservoir are dependent on supplemental water from the St. Mary River for a stable water supply. Without the diversion, these agricultural communities and rural water system would dry up.

Remember more than 15,790 people living in those communities are dependent on this system for clean drinking and household waters along with water to support their businesses and industries. Ground waters in the communities of Chinook and Harlem are contaminated in varying degrees with natural gas by-products and in varying amounts with sulfur, iron and nitrates making a lot of the ground water of no use for drinking and household use. These surrounding areas are therefore dependent on the treatment plants in Chinook and Harlem for their water supply.

At the U.S. Senate Field Hearing held September 1, 2006 in Havre, Montana, Chairman Domenici asked Bob Rice, the Mayor of Havre, what Havre would do in the event that the project failed to bring water to his city. Mayor Rice responded that the City of Havre has three emergency wells that could be put into used. These wells are meant for emergency use only and would require major expense to the city to place them on line as needed for permanent use. Small treatment plants would probably have to be built at each location. The wells would provide emergency drinking and household water use only. Chairman's Domenici question did not include the communities of Chinook and Harlem. These communities are not as fortunate. This would require locating good water, drilling, transporting and maybe treatment of the water at the well sites. An expense they can not handle.

Failure of the system would be devastating to these communities, agriculture, and recreational economic development along the hi-line of Montana.

Why? Because we are talking about the "Lifeline of the Hi-Line"—St Mary Water.

## MILK RIVER BASIN ECONOMICS

- The irrigated lands contribute about 15 to 17 million dollars each year in alfalfa production. (Bureau of Reclamation (BOR), 2003)
- These crops, in turn, provide much of the winter feed for livestock in the Milk River Basin—approximately 258,500 head valued at \$237 million dollars. (Montana Statistical Reporting Service date)
- Milk River Basin is an important contributor to Montana's Economy.
  - 38% of all Montana Farm Earnings.
  - 27% of all Montana Farm Employment
  - Irrigated Crops; Barley: 32%, Spring Wheat: 3.4%
  - Agriculture Cash Receipts: \$495 million
  - Livestock: 15.5% of all Montana Cattle, 11% of all Montana Sheep
  - (Montana Department of Commerce-Census & Economic Information Center)

## OTHER INFORMATION

St. Mary water in the Milk River is significant to the health of the Missouri River Basin and contributes to ground water recharge. (Communities of Dodson, Malta, Saco & Hinsdale—2,816 people)

Flow of water into the Milk River from St. Mary River improves water supply, water quality, fish and wildlife habitat, and may provide hydropower opportunities. (BOR, 2003)

According to a 2001 study, (Majerus 2001), recreational opportunities throughout the basin depend on imported water from the St. Mary River. In 2002, Nelson & Fresno reservoirs alone served 88,165 visitors (BOR, 2003) and provided about \$15 million/yr. in recreational benefits.

The U.S. Bureau of Reclamation "Milk River Project" is a significant component of Montana's industrial infrastructure and is vital to the economic and societal sustainability of the Milk River Valley. This irrigation system has served its purpose for many years; however due to deterioration associated with age, is in urgent need of rehabilitation

## ST. MARY CANAL SYSTEM

The System is composed of a diversion dam, 29 miles of canals, two (2) Steel siphon tubes—one section with a 90-inch dia. and another with a 78-inch dia.—each barrel is approximately 4,605 feet in total length. This total includes both the Hall's Coulee Siphon and St. Mary Siphon sections. There are also five concrete drops.

Senate Bill 3563 recognizes the critical need to rehabilitate the St. Mary Diversion and Conveyance Works. The steel siphons are plagued with slope instability

and are leaking badly. The leaking support collars are responsible for soaking the ground under the concrete saddle support causing them to move or slip down hill. Some of the concrete saddles that support the siphons have deteriorated significantly and in the area of the Hall's Coulee Siphons, some of the them are completely gone. 6" x 6" timbers laid in Lincoln log configuration or criss-crossed, are all that support the siphons. Ground slides and slope failure is widespread along the canal route. Originally designed to deliver 850 cubic feet per second (cfs) the system is now stressed to delivery of 670 cfs.

If allowed because of structural deterioration and collapses, 670 cubic feet/second of water travelling at 60 mph down any one of the drops or out of the siphons would do a tremendous amount of environmental damage to the St. Mary watershed on the Blackfeet Reservation.

#### ST. MARY REHABILITATION WORKING GROUP-CONTRIBUTING PARTNERS

As I mention earlier, the St. Mary Working Group was formed in 2003. The Working Group is composed of 18 members. These members represent the 8 Milk River Irrigation Districts, the Blackfeet tribe, the Fort Belknap Indian Community, 9 Municipalities/Communities, 5 County governments, 2 rural water systems including the communities of Kremlin, Gildford, Hingham, Rudyard, and Inverness, Bear Paw Development Corp., Two Rivers Economic Growth, the State of Montana, business interest, along with recreational and fishery interests in the Milk River Basin. All decisions made in this effort are made by consensus of all contributing partners without exception.

The St. Mary Working Group has determined that there are three "focus of efforts" for the Milk River Basin Water Project. They are as follows:

- 1) Find a "Workable" solution for rehabilitating the St. Mary Facilities before the system suffers catastrophic failure.
- 2) Work with the Blackfeet tribe to address environmental impacts associated with the operation of the St. Mary Facilities and provide workable enhancements and mutual benefits from a rehabilitated St. Mary Canal.
- 3) Explore option for restoring Fresno Reservoir to its original capacity and rehabilitate the Basin infrastructure.

#### LOCAL AND STATE FUNDING

The St. Mary Working Group has local funding support—\$150,000 in local Milk River Basin funds annually. As of August 21, 2006 the total local funding support was \$275,657.88. Over a ten-year period this could reach \$1,500,000.

Not include is In-kind contribution by members of the St. Mary Working Group—\$126,102, which equates to approximately \$3,600/month (As of 5/23/2006)

The 2005 Legislature for the State of Montana also supports the rehabilitation of the St. Mary Diversion Works by contributing over 1.9 million towards preliminary engineering, economic studies, and administrative and technology support to the Working Group. They also designated \$10 million bonding authority for non-federal cost share for replacement and rehabilitation of the St. Mary Diversion Facilities infrastructure.

#### TO SUMMARIZE

The Milk River Irrigation Project was authorized in 1903 by the Secretary of Interior and was one of the first five irrigation projects initiated in the United States under the 1902 Reclamation Act. Excavation of the St. Mary Canal began in 1907. The major components of the Milk River Irrigation Project were in place between 1907 and 1939. Most parts of the project were in place by 1924, though Fresno Dam and Reservoir were not completed until 1939. This irrigation project made possible reclamation of approximately 125,000 acres of agricultural land possible in the lower Milk River Valley. This system diverts approximately 160,000 acre-feet of water into the Milk River every year where it supports irrigated agriculture, communities and businesses, a National Wildlife Refuge, fish and wildlife, and recreational opportunities in north-central Montana's Hi-line region. Without this diversion, the Milk River would dry up 6 out of 10 years.

Again thank you for the opportunity to provide written testimony for Senate Bill 3563.

STATEMENT OF RANDY MIDDLEBROOK, CRITICAL INFRASTRUCTURE PROGRAM  
MANAGER, MONTANA HOMELAND SECURITY

Greetings, allow me to introduce myself. My name is Randy Middlebrook and I am the Critical Infrastructure Program Manager for Montana Homeland Security. I have taken a special interest in the efforts of the Saint Mary Rehabilitation Working Group and their ongoing interaction with you committee. My interest is that the Saint Mary Diversion / Milk River Project has been identified as State Level Critical Infrastructure by my office and its impending demise will have a rippling effect throughout the Montana High Line Region.

Effects will be felt not only from a public safety standpoint but also through interdependencies that this valuable water system provides to other sectors of critical infrastructure within the state, namely the Public Health sector. The Northern Montana Hospital in Havre serves one of the largest populated regions in the state. Approximately 40,000 people along the high line rely on expedient and convenient emergency and everyday medical services from the Northern Montana Hospital. Obviously, without water, these services that the residents of northern Montana rely on and take for granted on a daily basis could be severely diminished or even cease to exist.

The National Infrastructure Protection Plan directs each state to identify, assess risk and threat, prioritize based on criticality and formulate a plan to protect critical infrastructure within its boundaries at any level. The vulnerability of any infrastructure is not based solely on the terrorist threat. Other factors such as natural disasters, reliability and domestic issues make our infrastructure systems just as vulnerable and at risk as a high valued target within the state and the nation. One of the charges and primary objective of my office is to ensure that the critical infrastructure in Montana is protected from any and all risks and hazards; failure to keep a critical system such as the Saint Mary Diversion Project functioning is a failed protection from a homeland security viewpoint.

Although there may not be anything I, or my staff, can do in the way of funding, we can certainly increase awareness and ensure that all of the state agencies that need to address this issue are somehow involved in the efforts of the working group. Funding for the Bureau of Reclamation to rehabilitate this very critical system needs to be top priority and I will act as an advocate for the people of Montana to help find a way to secure funding to protect one of our most valuable resources . . . . water!

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STATEMENT OF COUNTY COMMISSIONERS, HILL COUNTY, MT

We are writing regarding S. 3563, the bill to rehabilitate the St. Mary Diversion and Conveyance Works and the Milk River Project.

As County Commissioners in Hill County, Montana, we are acutely aware of the circumstances that would result if this bill is not passed and funded. We are proud of our county and work diligently to provide the residents with a quality life style, including jobs, infrastructure and areas to recreate. In order to maintain this life style, improvements must be made to aging infrastructure, including the St. Mary Diversion. The entire Hi-Line of Montana survives largely in part because of the water provided by this aging federal project. The rehabilitation of this project would assure the economic viability of communities along the Milk River Basin.

The original purpose for construction of this project was agricultural irrigation needs but towns and cities along the basin also depend on a stable water flow in the Milk River to provide their citizens water for drinking as well as household use. In Hill County alone, Inverness, Rudyard, Hingham, Gildford, Kremlin and Havre utilize water from the Milk River, either through water districts or water contracts with the Bureau of Reclamation. The economic feasibility of these communities depends upon a reliable water delivery system, which would be accomplished with funding of this bill.

Thank you for allowing us to speak for the 17,000 plus residents of Hill County regarding this very important project.