

## CURRENT WATER BILLS

---

---

HEARING  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION  
ON

**S. 2891**

**S. 2779**

**S. 3387**

**S. 3404**

**H.R. 3671**

**H.R. 4252**

---

JUNE 9, 2010



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

---

U.S. GOVERNMENT PRINTING OFFICE

62-206 PDF

WASHINGTON : 2010

---

For sale by the Superintendent of Documents, U.S. Government Printing Office,  
<http://bookstore.gpo.gov>. For more information, contact the GPO Customer Contact Center,  
U.S. Government Printing Office. Phone 202-512-1800, or 866-512-1800 (toll-free). E-mail, [gpo@custhelp.com](mailto:gpo@custhelp.com).

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JEFF BINGAMAN, New Mexico, *Chairman*

BYRON L. DORGAN, North Dakota	LISA MURKOWSKI, Alaska
RON WYDEN, Oregon	RICHARD BURR, North Carolina
TIM JOHNSON, South Dakota	JOHN BARRASSO, Wyoming
MARY L. LANDRIEU, Louisiana	SAM BROWNBACK, Kansas
MARIA CANTWELL, Washington	JAMES E. RISCH, Idaho
ROBERT MENENDEZ, New Jersey	JOHN MCCAIN, Arizona
BLANCHE L. LINCOLN, Arkansas	ROBERT F. BENNETT, Utah
BERNARD SANDERS, Vermont	JIM BUNNING, Kentucky
EVAN BAYH, Indiana	JEFF SESSIONS, Alabama
DEBBIE STABENOW, Michigan	BOB CORKER, Tennessee
MARK UDALL, Colorado	
JEANNE SHAHEEN, New Hampshire	

ROBERT M. SIMON, *Staff Director*

SAM E. FOWLER, *Chief Counsel*

MCKIE CAMPBELL, *Republican Staff Director*

KAREN K. BILLUPS, *Republican Chief Counsel*

---

SUBCOMMITTEE ON WATER AND POWER

DEBBIE STABENOW, Michigan *Chairman*

BYRON L. DORGAN, North Dakota	SAM BROWNBACK, Kansas
TIM JOHNSON, South Dakota	JAMES E. RISCH, Idaho
MARIA CANTWELL, Washington	JOHN MCCAIN, ARIZONA
BLANCHE L. LINCOLN, Arkansas	ROBERT F. BENNETT, Utah
BERNARD SANDERS, Vermont	JIM BUNNING, Kentucky
EVAN BAYH, Indiana	JEFF SESSIONS, Alabama
JEANNE SHAHEEN, New Hampshire	

JEFF BINGAMAN and LISA MURKOWSKI are Ex Officio Members of the Subcommittee

# CONTENTS

## STATEMENTS

	Page
Baca, Hon. Joe, U.S. Representative From California .....	19
Brownback, Hon. Sam, U.S. Senator From Kansas .....	8
Caan, George M., Executive Director, Colorado River Commission of Nevada, Las Vegas, NV .....	10
Connor, Michael L., Commissioner, Bureau of Reclamation, Department of the Interior .....	26
Currie, Phyllis, General Manager, Pasadena Water and Power, Pasadena, CA .....	15
Ensign, Hon. John, U.S. Senator From Nevada .....	9
Meeks, Timothy J., Administrator, Western Area Power Administration, De- partment of Energy .....	4
Mueller, Andrew A., President, Board of Directors, Colorado River Water Con- servation District, Glenwood Springs, CO .....	36
Olsen, Kenneth L., Chairman, Lake County Colorado Board of Commissioner, Leadville, CO .....	23
Peterson, Doug, President, Minnesota Farmers Union, St. Paul, MN .....	33
Walden, Richard S., Board Member, Arizona Power Authority, Phoenix, AZ ....	11
Stabenow, Hon. Debbie, U.S. Senator From Michigan .....	1

## APPENDIXES

### APPENDIX I

Responses to additional questions .....	43
---	----

### APPENDIX II

Additional material submitted for the record .....	65
--	----



## CURRENT WATER BILLS

---

WEDNESDAY, JUNE 9, 2010

U.S. SENATE,  
SUBCOMMITTEE ON WATER AND POWER,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:58 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Debbie Stabenow presiding.

### OPENING STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR FROM MICHIGAN

Senator STABENOW. Good afternoon. I'd like to call to order the subcommittee hearing of the Water and Power Subcommittee. It's my pleasure to welcome everyone today. We are including several bills, important bills, before the subcommittee today.

Let me say as we start that we've just found out that we will be having a series of votes coming up in the next little bit, up to 6 votes. So it's my intent to take testimony from our witnesses, as we know a number of you have come in from quite a ways away. We want to make sure we hear from you. We may or may not do questions. We may do them for the record if we're not able to do that because of the votes. So I do want to make sure we have an opportunity to hear from everyone who has come about these important bills.

Senator Harry Reid had expected to join us, but has been called to the floor. I know that Senator Ensign—Congressman Baca I believe is on his way. But I think what we will do for the moment, until they have arrived, again in the interest of time, is to proceed and ask our other witnesses to join us, and then we will turn to the Senator and the Congressman when they get here.

While we are doing that, let me just say we are covering several different topics today: S. 2891, introduced by Senator Reid, to allocate and expand the availability of hydroelectric power generated at Hoover Dam. Incidentally, I understand the corresponding bill passed the House today, which is good news.

Also, S. 2779 and H.R. 3671, introduced by Senator Klobuchar, to authorize a study of groundwater on the Upper Mississippi River Basin, that is important to Minnesota farmers.

S. 3387, introduced by Senator Mark Udall, to provide for the release of water from Ruedi Reservoir, to promote fish habitat conservation in the Colorado River;

S. 3404, also introduced by Senator Udall, to require the Secretary of the Interior, acting through the Bureau of Reclamation,

to take actions to clean up the pollution at Leadville Mine Drainage Tunnel in Lake County, Colorado;

H.R. 4252, introduced by Representative Baca, to direct the Secretary of the Interior to conduct a study of certain water resources in California.

I know that Senator Brownback will be joining me as ranking member as well, and when he comes I certainly will turn to him for any opening comments as well.

So we know again that Senator Ensign and Congressman Baca will be joining us as they arrive. But let me thank our first panel for joining us and taking the time to be with us today: Timothy Meeks, the Administrator of the Western Area Power Administration, Department of Energy; George Caan, welcome, the Executive Director of the Colorado Commission of Nevada; Richard Walden, welcome as well, Chairman of the Arizona Power Authority; and Phyllis Currie, General Manager of Pasadena Water and Power Department.

Welcome to the subcommittee. We've asked each of you to share 5 minutes and summarize your testimony, and then we will proceed from there. So first we will turn things over to Mr. Meeks, Administrator Meeks. Welcome.

[The prepared statements of Senators Reid, Klobuchar and Ensign follow:]

PREPARED STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA,  
ON S. 2891

Thank you Chairman Stabenow and Senator Brownback for the opportunity to address your subcommittee about our bipartisan proposal to reauthorize power allocations from the Hoover Dam.

Completing the Hoover Dam and harnessing the Colorado River over 70 years ago was a game-changer for the southwest. The dam allowed new communities to thrive using water from the river, while also providing reliable clean power to millions in Nevada, California and Arizona.

Congress first distributed the clean renewable power from Hoover Dam in 1928—though it was called Boulder Canyon Dam at that time—and then again in 1984, through allocations to three states, and several municipalities and utilities. The contracts for delivery of the power between the Western Area Power Administration and these entities will expire in 2017, and Western has announced that it will distribute Hoover power allocations in the event that Congress does not reauthorize those allocations first.

To ensure that power continues to be delivered reliably to Nevadans, Arizonans, and Californians, and that there is no legal uncertainty, I think it's important that Congress reauthorize these power allocations as soon as possible and while we have broad bipartisan agreement between the major stakeholders.

Last December, I introduced the Hoover Power Allocation Act of 2009, together with Senators John Ensign, Barbara Boxer, and Dianne Feinstein. Congresswoman Grace Napolitano introduced a companion bill, which attracted 43 cosponsors, and was reported by the House Committee on Natural Resources in May. I'm glad to note that the House passed the Congresswoman's bill yesterday on suspension.

The Hoover Power Allocation Act was developed after two years of negotiations, securing the consensus of the States of Nevada, California and Arizona. Under the modified allocation formula, Nevada will retain its share of nearly 25 percent of Hoover power. At the same time, Hoover power will be made available to even more entities through a five percent resource pool. Indian tribes and other entities that are currently ineligible to buy low-cost Hoover power will have access to the new resource pool.

At a time when we're looking for good, clean energy investments, it is fitting and timely to ensure access to reliable, low-cost, zero-emission power from Hoover Dam. The Hoover Dam is also one of the Southwest's largest clean energy projects. And in exchange for 2,080 megawatts of reliable, clean baseload electricity, Hoover power

users—not the Federal Government—pay for the operations, maintenance, and replacement of Hoover Dam’s power equipment.

By 2017, they will have invested nearly \$2 billion, and they will pay another \$1.6 billion through the life of this Act. This investment will employ hundreds of people and supply clean hydroelectric power to over 29 million in Nevada, California and Arizona.

It is difficult to overestimate the importance of reauthorizing Hoover power allocations. Hoover power plays a vital role in municipal and industrial operations in southern Nevada. For example:

The Southern Nevada Water Authority draws about 10 percent of its power from the dam for the utility’s water works operations;

- NV Energy receives about 53 percent of Nevada’s allocation, which helps Nevadans meet peak demands at lower costs; and
- The Colorado River Commission delivers Hoover power to municipalities like: Boulder City; Lincoln County; Overton Power District; Valley Electric Association. The Commission also delivers power to Nevada industries at the Basic Management Industrial Complex near Henderson.

In addition to ensuring reliable, clean electricity for millions of people, reauthorizing Hoover power allocations also supports continued environmental protection on the Lower Colorado River.

Hoover contractors are committed to providing over \$150 million over 50 years for the Lower Colorado River Multi-Species Conservation Program (MSCP). This program maintains wildlife habitat on the Lower Colorado River, protecting 26 endangered, threatened and sensitive species along 400 river miles. And it will create more than 8,100 acres of riparian, marsh and backwater habitat for Lower Colorado River species.

Passing the Hoover Power Allocation Act is important to ensuring these environmental benefits and securing much-needed investments in the Hoover Power facilities over the next 50 years.

Thank you again for the opportunity to be here with you today. I request that my statement be included in the record, as well as eight letters of support for the Hoover Power Allocation Act from Nevada utilities and industries.

---

PREPARED STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA,  
ON S. 2779

Thank you, Madame Chair, for convening this hearing on my bill, the Upper Mississippi River Protection Act (S. 2779).

As you know, I come from the land of 10,000 lakes. But my state is also home to a great river. We are in fact home to the headwaters of the mighty Mississippi.

But the Mississippi is more than just a river. It is a means of transport for more than 472-million tons of cargo each year, including 46 percent of the grain exported from the United States. It is place where we hunt, fish, swim, and enjoy the cool water in the summer.

Unfortunately, the Mississippi river is also facing many challenges. Soil erosion in the Upper Mississippi River basin is reducing the long-term sustainability and income of the family farm. Collectively, farmers lose hundreds of millions of dollars per year in applied nitrogen.

Some of that sediment finds its way to shipping channels of the river, and result in tens of millions of dollars in increased dredging costs for the shipping industry each year. And those costs in turn get passed back to the shippers including our farmers, who face higher prices to ship their goods.

This bill aims to provide data to help scientists and farmers better understand this problem and how best to address it. Specifically, the bill aims to provide baseline data about the quantity, timing, and location—the what, when, and where—of sediment and nutrient production from its source in the landscape to its destination in the rivers and lakes of the Upper Mississippi River basin. The bill directs the U.S. Geological Survey to utilize a long-term, basin-wide, coordinated network of monitoring stations involving state and private land managers. Additionally, the bill calls for the establishment of a computer modeling program utilizing Geographic Information System technology.

The bill is cosponsored by Senator Feingold and has the support of the following organizations including:

- The National Farmers Union
- Trout Unlimited
- The Nature Conservancy

- Friends of the Mississippi River
- The Upper Mississippi River Basin Association

I am also pleased, Madame Chair, that you have invited the President of the Minnesota Farmers Union, Doug Peterson, to testify about this legislation.

Doug has served as the President of the Minnesota Farmers Union since for more than eight years. Prior to serving the Farmers Union, Doug served in the Minnesota House of Representatives for 12 years, representing a district in western Minnesota. He and his wife, Elly, live on their family farm near Madison, Minnesota, on the North Dakota Border and I am confident that his testimony will be sound and helpful to your committee as you consider the merits of this bill.

Additionally, I would also like to thank Congressman Ron Kind of Wisconsin, who has a companion bill that was passed by the House of Representatives (H.R. 3671) earlier this year. Congressman Kind's bill was sponsored by a number of other representatives from Arkansas, Illinois, Iowa, and Minnesota.

I urge my colleagues to carefully consider this important piece of legislation and again thank you Chairman Stabenow and Ranking Member Brownback for holding this important hearing.

---

PREPARED STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR FROM NEVADA,  
ON S. 2891

Good afternoon, Madam Chairwoman, Ranking Member Brownback, and members of the Subcommittee. Thank you for holding this hearing today on a very important piece of legislation. I appreciate the opportunity to come before you today and testify in support of S. 2891, the Hoover Power Allocation Act of 2009. As you know, this is a multi-state, bipartisan effort that is essential to residents of Nevada, Arizona, and California who rely on electricity generated from the Hoover Dam located in Boulder City, Nevada. As you are aware, Hoover power was first allocated in the Boulder Canyon Project Act of 1928. In 1984, Congress again allocated power through contracts with state, municipal, and utility contractors. Over 29 million people rely on this power, which is a clean, renewable, and reliable source of energy.

The legislation this committee is considering today, The Hoover Power Allocation Act, is the result of extensive negotiations with multiple partners all of whom have worked diligently to strike a delicate balance for the continued allocation of power. The contracts that currently allocate the power to Nevada, Arizona, and California will expire in 2017. This legislation would reauthorize the power allocations from 2017 to 2067 and would provide Hoover contractors the certainty they need to continue to commit hundreds of millions of dollars to construct, upgrade, operate, maintain, and replace equipment as needed to deliver the power. In fact, the contractors are set to invest an additional \$1.6 billion beginning in 2017 if this legislation is enacted.

As part of this agreement, the Hoover Dam contractors have also agreed to contribute five percent of their existing power allocation to a pool that could be distributed to eligible entities that do not currently purchase Hoover power, including federally recognized Indian Tribes. This allocation pool will help needed entities access power and encourage their future growth.

The power that is generated by the Hoover Dam is essential and critical to southern Nevada. We owe it to the contractors who have made, and will continue to make, enormous financial investments the certainty they need to continue. But most of all, we owe the 29 million people who are the beneficiaries of this power. I appreciate the efforts of the staff of the Colorado River Commission, this Committee, and stakeholders who so carefully negotiated this reallocation over the past two years. These groups, working together, have done a great job and should be commended for their hard work.

Again, thank you for holding this hearing and allowing me the opportunity to testify in support of the Hoover Power Allocation Act of 2009. I urge the Committee to act favorably on this legislation.

**STATEMENT OF TIMOTHY J. MEEKS, ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION, DEPARTMENT OF ENERGY**

Mr. MEEKS. Thank you, Madam Chair. I am Timothy J. Meeks, Administrator of the Western Area Power Administration, and I



am happy to be here today to discuss S. 2891, the Hoover Power Allocation Act of 2009.

Western's mission is to market and deliver reliable, cost-based, hydroelectric power from facilities such as Hoover Dam. The Hoover power plant is a significant hydroelectric power resource in the desert Southwest. Hoover power is considered low-cost, clean energy, with a minimal carbon footprint. The Hoover Dam power plant is used by contractors for various power-related ancillary services. For these reasons, Hoover power is an extremely valuable resource in the southwestern United States.

Western's public process to allocate Hoover Dam electricity was initiated in November 2009 in a Federal Register notice. This Federal Register notice proposed the extension of 95 percent of the marketable resource to existing contractors, reserving 5 percent for a resource pool to be allocated to new contractors, and provides for a 30-year contract term.

Western conducted 3 public information forums in December 2009. These public information forums were well attended by current customers and interested parties. Public comment forums were held in January 2010. Again, interested parties were provided an opportunity to submit comments. The comment period was extended through September 2010.

In the event that a resource pool is established, Western will conduct a public process to determine what marketing criteria would be applicable to the disposition of the resource pool. Western projects that final allocations will be determined and contracts executed by the spring of 2013, giving other entities time to plan prior to expiration of the contracts in 2017.

Western has reviewed S. 2891. There are several similarities between the legislation and Western's initial proposals and there are some distinct departures. I will address some of these differences below.

This bill directs Western to allocate certain amounts of Hoover power within 18 months of enactment. This timeframe may not be sufficient to thoroughly solicit and integrate public input into our marketing criteria and final allocation. Western supports the action that the House of Representatives took revising the amount of time allowed for the allocation of power to new customers to 36 months after enactment.

Both S. 2891 and Western's administrative effort propose an amount of resource to be allocated to new customers. Western's process affords the opportunity of full public input and ensures all interested parties are considered in the power's allocation process. Western supports the House of Representatives' elimination of language that would have required a State role in developing criteria associated with the allocation of power to new customers. This language potentially restricts the open public process for creating marketing criteria for those power allocations.

In addition, Western proposed to market 30 megawatts below the maximum rating of 2074 megawatts. The retention of 30 megawatts of capacity for project integration purposes would ensure Western's ability to meet reliability requirements in an economic fashion.

Also, Western proposed a 30-year contract term. As drafted in this bill, the adoption of a 50-year contract term could potentially exclude evolving classes of customers in decades to come.

I would welcome to opportunity to work with this subcommittee to address the technical concerns I have raised as work continues on this legislation. This concludes my remarks. I'd be pleased to answer any questions you may have.

[The prepared statement of Mr. Meeks follows:]

PREPARED STATEMENT OF TIMOTHY J. MEEKS, ADMINISTRATOR, WESTERN AREA  
POWER ADMINISTRATION, DEPARTMENT OF ENERGY

Madam Chairwoman and Members of the Subcommittee, I am Timothy J. Meeks, Administrator of the United States Department of Energy's Western Area Power Administration (Western). I am pleased to be here today to discuss S. 2891, the Hoover Power Allocation Act of 2009. This legislation seeks to amend the Hoover Power Plant Act of 1984. The legislation proposes revised allocations of the generation capacity and energy from the Hoover Dam power plant, a feature of the Boulder Canyon Project (BCP), after the existing contracts expire on September 30, 2017.

Western's mission is to market and deliver reliable, cost-based hydroelectric power from facilities such as Hoover Dam. Hoover Dam was authorized and constructed in accordance with the Boulder Canyon Project Act of 1928. Pursuant to this Act, the Secretary of the Interior was authorized to contract for the sale of generation based upon general regulations as he may prescribe. Subsequent power sales contracts were executed that committed Hoover power through May 31, 1987. With the passage of the Hoover Power Plant Act of 1984, Congress authorized the Secretary of the Interior to implement an uprating program, which increased the generation capacity of the Hoover Dam facilities, to make additional facility modifications, and to resolve issues over the disposition of Hoover power post-1987. In the 1984 Act, Congress directed the Secretary of Energy to offer renewal contracts to existing contractors and provided guidance for marketing the capacity gained through the uprating program.

Western proceeded to market Hoover Dam power and entered into 30-year term contracts with the current Hoover contractors in accordance with the Hoover Power Plant Act of 1984 and Western's Conformed General Consolidated Power Marketing Criteria. This process resulted in the allocation of 1,951 megawatts of contingent capacity with an associated 4,527,001 megawatt-hours of firm energy. Contingent capacity is capacity that is available on an as-available basis, while the firm energy entails Western's assurance to deliver.

The Hoover power plant is a significant hydroelectric power resource in the desert Southwest with a maximum rated capacity of 2,074 megawatts. Under existing Federal law and policy, Western markets Hoover power at cost. Hoover power is hydro-power and is considered "clean energy" with a minimal carbon footprint. The Hoover Dam power plant is able to ramp up and down rapidly and is used by contractors for various power-related ancillary services. For these reasons, Hoover power is an extremely valuable resource for power contractors in the southwestern United States.

The existing power sales contracts between Western and the contractors will expire on September 30, 2017. As this expiration date becomes more prominent on the planning horizon, efforts have progressed among both Federal and non-Federal sectors to determine the allocation of Hoover Dam power after 2017.

In accordance with policy and existing Federal law, Western's post-2017 power allocation effort is composed of a series of proposals introduced to the public through Federal Register notices, public information forums and public comment forums. Western makes policy decisions only after all interested parties have been provided ample opportunity to be engaged in the process and public input has been carefully considered to develop new Hoover Dam allocations that are in the public's best interest and provide the most widespread use of this Federal resource.

Western's public process to allocate Hoover Dam electricity was initiated on November 20, 2009, in a Federal Register notice that proposes several key aspects of the allocation effort. Among other things, this Federal Register notice proposes the application of Western's Energy Planning and Management Program, extends a major percentage of the marketable resource to existing contractors, reserves an approximate 5 percent resource pool to be allocated to new contractors, and provides for 30-year contract terms. Western conducted three public information forums from December 1-3, 2009. These public information forums were well attended by current

customers and interested parties and engaged the attendees through question and answer sessions. Public comment forums were held from January 19-21, 2010. Interested parties were provided an opportunity to submit comments related to Western's proposals contained in the November Federal Register notice. The comment period was extended from January 29, 2010, to September 30, 2010, via a Federal Register notice dated April 16, 2010. Western is in the process of reviewing the submissions received to date. Depending on the public input received, Western projects that some initial decisions will be made later this year. In the event that a resource pool is established, Western will conduct a public process to determine what marketing criteria would be applicable to the disposition of the resource pool. Western projects that final allocations will be determined and contracts executed by the spring of 2013, giving other entities time to plan prior to the expiration of the contracts in 2017.

Western has reviewed S. 2891. There are several similarities between the draft legislation and Western's initial proposals brought forward in the November Federal Register notice, and there are some distinct departures. To provide background that may be useful to the Subcommittee members as this bill is considered, I'll address some of these differences in my comments.

All of Western's allocation efforts are open to public participation and conducted in accordance with the Administrative Procedures Act. At each stage of the process, Western proposes actions and/or policy to be considered and is open for public comment and input. Western believes soliciting and integrating the public input into policy decisions allows Western to progress to results that are in the public's best interest and lead to the most widespread use of this resource.

S. 2891 directs Western to allocate certain amounts of Hoover power within eighteen (18) months after enactment. Based on historical practice and in review of Western's marketing project plans, an 18-month time frame may not be sufficient to thoroughly solicit and integrate public input into our marketing criteria and final allocations. Western supports the action that the House of Representatives Committee on Natural Resources took on H.R. 4349, which revised the amount of time allowed for the allocation of power to new customers from 18 months to thirty-six (36) months after enactment.

Western has 15 current contractors who receive an allocation of Hoover power. Two of those existing contractors are the Colorado River Agency (CRC) and the Arizona Power Authority (APA). APA and CRC sub-allocate their allocations to customers under State prescribed guidelines and regulations. Both S. 2891 and Western's administrative effort propose an amount of resource to be allocated to new customers. Western's process affords the opportunity of full public input and ensures all interested parties are considered in the power's allocation. Western supports the House of Representatives Committee on Natural Resources elimination of language in H.R. 4349 that would have required a state role in developing criteria associated with the allocation of power to new customers. This language potentially restricted the open public process for creating marketing criteria for those power allocations. Western has received numerous written comments and statements from Native American tribes expressing concern that their interests have not yet been fully vetted and considered. In recent history, tribes have been active in Western's remarketing efforts, and one goal of Western's Strategic Plan is to seek partnerships with tribes on numerous initiatives. I believe that soliciting input from tribes and other entities that do not have an allocation of Hoover power is in the public interest. Western has identified 59 federally recognized Native American Tribes in the BCP marketing area and is in the process of ensuring they are afforded an opportunity to participate in the public process. Western supports the revision made to the House version of this bill that expressly provides for the tribes to contract directly with Western to obtain a Hoover allocation.

S. 2891 would direct that Hoover's full maximum rating of 2,074 megawatts of capacity be allocated to Hoover customers in a multi-faceted approach. As described in Western's November 20, 2009, Federal Register notice, Western proposes to market 2,044 megawatts of contingent capacity; 30 megawatts below the maximum rating. The retention of 30 megawatts of contingent Hoover Dam capacity for use by Western for project integration purposes would assist in providing the tools needed to meet our mission and statutory requirement of delivering reliable Federal hydro-generation. Western manages multiple federally owned generation and transmission projects in the Desert Southwest on a minute-by-minute basis. While these projects are financially segregated, they are operated as an integrated system. This 30-megawatt capacity to be held by the Federal Government would provide significant benefit to the operation of the integrated projects and the Western Area Lower Colorado balancing authority that Western operates. Should Western be unable to retain approximately 30 megawatts, Western expects to procure replacement power from the

market at a higher cost, if it is available. These higher costs would in turn be passed through to Western's customers in the form of higher rates.

S. 2891 would direct that the existing contractual amounts totaling 4,527,001 megawatt-hours annually be allocated. In consultation with the Bureau of Reclamation (Reclamation) and in review of the most recent hydrologic studies, Western observed and proposed that 4,116,000 megawatt-hours would better align with the actual availability of the resource. Western's historical practice is to market an amount of generation that is based upon projected available generation. Remarketing the existing 4,527,001 megawatt-hours is possible; however, the 4,527,001 megawatt-hour level of generation has only been achieved a few times in the last 30 years. Reclamation's forecast studies exhibit that this level of generation would be fairly improbable.

S. 2891 expressly requires that each contract offered to a new allottee for Hoover Dam power should require the new allottee to execute the Boulder Canyon Project Implementation Agreement Contract No. 95-PAO-10616. Western finds significant value in the provisions and results of the Implementation Agreement. However, this agreement was constructed for unique circumstances that existed in 1994. Should we retain this feature, I recommend that the current Implementation Agreement be evaluated and potentially revised to accommodate current conditions. We support the universal benefits achieved by the Implementation Agreement and will work with our customers to determine the appropriate documentation to meet all of our customers' needs; both current and future.

S. 2891 expressly requires that each contract offered to a new allottee for Hoover Dam power includes a provision requiring the new allottee to pay a proportional share of its State's funding contribution for the Lower Colorado River Multi-Species Conservation Program, known as the LCR MSCP.

The LCR MSCP is a 50-year, multi-stakeholder, Federal and non-Federal partnership, responding to the need to balance the use of lower Colorado River water resources and the conservation of native species and their habitats in compliance with the Endangered Species Act (ESA). The LCR MSCP is a comprehensive approach to species protection developed after nearly a decade of work. This program is funded on a costshare basis comprised of 50-percent Federal and 50-percent non-Federal. The States of Arizona, California and Nevada have worked internally with water and power customers to fund each State's respective share. S. 2891 recognizes these funding requirements and obligates new power customers to contribute to this funding in a proportional manner. Supporters of S. 2891 note that the 50-year obligation of the LCR MSCP is, in part, reason to proceed with 50-year Hoover power supply contracts. Western's position is that the 50-year LCR MSCP term need not coincide with the Hoover Dam power sales contracts' term. The adoption of a 50-year contract term could potentially exclude evolving classes of customers in decades to come. The modern day electrical industry is dynamic in its regulations, technologies, operations and participants. The landscape of potential customers in decades to come has the capability to yield new prospective customers, and we strive to meet the needs of all our customers; existing and future.

Western respectfully recognizes that our administrative process is not the exclusive means of allocating Hoover power. I would welcome the opportunity to work with this Subcommittee to address the technical concerns I have raised as work continues on this legislation. In the absence of congressional action, Western will uphold its authority and responsibility to market Hoover power consistent with historical statutes and in concert with the rules and regulations as the Secretary of Energy prescribes. This concludes my prepared remarks. I would be pleased to answer any questions you or Members of the Subcommittee might have.

Senator STABENOW. Thank you, Administrator Meeks.

Before turning to Senator Ensign, who I know has arrived—welcome—I'd like to turn to Senator Brownback if there is any opening statement you'd like to make.

**STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR  
FROM KANSAS**

Senator BROWNBACK. Thanks, Madam Chairman. I have a written one I'll submit for the record in the interest of time, because we have a series of votes coming up. I am interested in the topics because it's very important for a number of areas in the country. I look forward to hearing from the presentations.

Senator STABENOW. Thank you. Thank you very much.  
Senator Ensign, welcome.

**STATEMENT OF HON. JOHN ENSIGN, U.S. SENATOR  
FROM NEVADA**

Senator ENSIGN. Thank you, Madam Chairwoman and Ranking Member Brownback. I appreciate the opportunity to testify on the Hoover Power Allocation Act of 2009, S. 2891.

As you know, this is a multi-state bipartisan effort that is essential to the residents of Nevada, Arizona, and California who rely on electricity generated from Hoover Dam, located in Boulder City, Nevada. As you are aware, Hoover power was first allocated in the Boulder Canyon Project of 1928, and in 1984 Congress again allocated power through contracts with State, municipal, and utility contractors.

Over 29 million people rely on this power, which is a clean, renewable, and reliable source of energy. The legislation this committee is considering today, the Hoover Power Allocation Act, is the result of extensive negotiations with multiple partners, all of whom have worked diligently to strike a delicate balance for continued allocation of power. The contracts that currently allocate the power to Nevada, Arizona, and California will expire in 2017. This legislation before us would authorize the power allocations from 2017 to 2067 and would provide Hoover contractors the certainty that they need to continue to commit the hundreds of millions of dollars to construct, upgrade, operate, maintain, and replace equipment as needed to deliver the power. In fact, the contractors are set to invest an additional \$1.6 billion beginning in 2017 if this legislation is enacted.

As part of this agreement, Hoover Dam contractors have also agreed to contribute 5 percent of their existing power allocation to a pool that could be distributed to eligible entities that do not currently purchase Hoover power, including federally recognized Indian tribes. This allocation pool will help needed entities access power and encourage their future growth.

The power that is generated by Hoover Dam is essential and critical to southern Nevada. We owe it to the contractors, who have made and will continue to make enormous financial investments, the certainty that they need to continue. But most of all, we owe it to the 29 million people who are the beneficiaries of this power.

So I appreciate the efforts of the staff of the Colorado River Commission, this committee, and the stakeholders who have so carefully negotiated this reallocation over the last 2 years. These groups, working together, have done a great job and should be commended for their hard work.

Again, thank you for holding this hearing and allowing me the opportunity to testify on this important legislation. I appreciate the time.

Thank you very much. Thank you to you and to Senator Reid. I know this is very important to Nevada and we appreciate your leadership and Senator Reid's. I know he had hoped to be here, but was called away to the floor.

But we're glad that you're here representing Nevada.  
Senator ENSIGN. Thank you very much.

Senator STABENOW. Thank you.  
We will return. Mr. Caan, welcome.

**STATEMENT OF GEORGE M. CAAN, EXECUTIVE DIRECTOR,  
COLORADO RIVER COMMISSION OF NEVADA, LAS VEGAS, NV**

Mr. CAAN. Good afternoon and thank you, Madam Chairman, and thank you, Ranking Member Senator Brownback. My name is George Caan and I'm the Executive Director of the Colorado River Commission of Nevada, and I'm here to strongly support S. 2891, the Hoover Power Allocation Act of 2009.

Hoover Dam is there to provide flood control, water delivery, and power production for the 29 million people who reside in the Hoover marketing area in the Southwest. This project is paid for by those who purchase the power from the dam. The project is maintained and operated with the payments that we make under the rates charged for Hoover Dam. This bill sustains that commitment for another 50 years to ensure that this critical infrastructure is maintained.

As was noted, the bill provides for a 50-year term, extending our contracts until 2067. This is consistent with the investment that power customers have made in the Lower Colorado River multi-species conservation program, which is the ESA compliance effort for the Lower Colorado River. It establishes a 5 percent pool of energy and capacity taken from all the contractors, which is put into a pool, referred to as Schedule D in the legislation, which provides 5 percent for use by contractors who currently do not have an allocation of Hoover power.

Two-thirds of that pool will be administered by the Western Area Power Administration in the marketing area. The remainder of the third will be marketed within each State by entities such as the Colorado River Commission, the Arizona Power Authority in Arizona, and Western in California to entities within that State.

The agreement also provides that new contractors will pay their appropriate share of the costs for the Endangered Species Act program, the MSCP, and also join the Boulder Canyon Project implementation agreement, which is an agreement among the Hoover power contractors, the Western Area Power Administration, the Bureau of Reclamation, which provides for the engineering, operation, maintenance, upkeep, and repair in a customer-focused group that provides for the 10-year planning processes to keep this important project operating.

This legislation is important for the United States in that it provides a sustainable source of revenue for this important infrastructure for the communities that we serve. It's important for Nevada, as Senator Ensign mentioned, because of the economic resource and the viability and the importance of the low-cost, clean, renewable hydropower provided to our community, and it's important for the 29 million people who reside in our communities and work in business and industry to keep this affordable, clean, renewable resource available to them.

Thank you for this opportunity and I'd be very happy to answer any of your questions.

[The prepared statement of Mr. Caan follows:]

PREPARED STATEMENT OF GEORGE M. CAAN, EXECUTIVE DIRECTOR, COLORADO RIVER  
COMMISSION OF NEVADA, LAS VEGAS, NV, ON S. 2891

Good morning Madam Chairwoman Stabenow, Senator Brownback, and Members of the Subcommittee. My name is George Caan and I am the Executive Director of the Colorado River Commission of Nevada. I appreciate your invitation to speak to you today regarding S. 2891, and I want especially to thank you Madam Chairwoman for your efforts and leadership on this bill. I speak today on behalf of the State of Nevada, one of the three lower basin states directly affected by the Hoover power contracts. The Colorado River Commission of Nevada strongly supports S. 2891. I also submit for the record support letters from the Nevada customers who benefit from Hoover power including the Southern Nevada Water Authority and NV Energy.

The Colorado River Commission is the state agency responsible for receiving and allocating federal hydropower from the Colorado River that is provided to the State of Nevada. This legislation is crucial to my state. The Colorado River Commission receives electric power generated by Hoover Dam through delivery contracts with the Western Area Power Administration of the U.S. Department of Energy. The Commission, in turn, contracts to deliver Hoover power to retail and wholesale customers in Southern Nevada. We also operate a power delivery system to deliver this critical resource to our customers.

The Colorado River Commission of Nevada has worked for over two years with representatives of Arizona and California to develop this consensus approach to ensuring that the benefits of Hoover power will continue to be delivered to the citizens of our three states after current contracts expire in 2017.

S. 2891 extends current Hoover power contracts for fifty years to 2067. This time frame coincides with the fifty year commitment that Hoover power customers made to pay a share of the costs of the Lower Colorado Multi-Species Conservation Program that provides protection for endangered species in the Lower Colorado River system.

It also re-directs five percent of Hoover power from current contractors to a resource pool for entities who do not receive any Hoover power today. This bill will allow federally-recognized Indian tribes to apply for the dam's power for the first time, as well as entities eligible under section 5 of the Boulder Canyon Project Act such as states, municipal corporations, political subdivisions, irrigation districts, and rural electric cooperatives.

The Western Area Power Administration will allocate two-thirds of the pool, and the remaining one-third of the pool will be distributed in equal shares through the Arizona Power Authority (for new allottees in Arizona), the Colorado River Commission of Nevada (for new allottees in Nevada), and through Western (for new allottees in California). S. 2891 requires new allottees to pay a proportionate share of the costs borne today by current contractors for operational and environmental purposes.

During House consideration of the identical H.R. 4349, amendments were adopted to address tribal sovereignty concerns and to give Western the additional time it requested for allocating the new resource pool. We urge the Congress to approve S. 2891 with these amendments approved by the House.

Congressional approval is needed to ensure the continued availability and reliability of Hoover power to the citizens of Nevada, Arizona and California. The State of Nevada supports S. 2891 in its entirety and urges the Committee to approve the bill. Thank you again for the opportunity to speak with you today. I'd be happy to answer any questions you may have.

Senator STABENOW. Thank you very much.  
Mr. Walden, welcome.

**STATEMENT OF RICHARD S. WALDEN, BOARD MEMBER,  
ARIZONA POWER AUTHORITY, PHOENIX, AZ**

Mr. WALDEN. Thank you, Madam Chair, Ranking Member Brownback, and members of the subcommittee. My name is Richard S. Walden. I'm Chairman of the Arizona Power Authority, the State agency designated by law to receive and distribute Arizona's share of Hoover power. I've been a Commissioner for 26 years. I'm joined here by other members: our Vice Chairman, retired three-star Marine Corps General John Hudson; Executive Director Joe

Mulholland; and our General Counsel, Doug Font. We're here to support the bill.

Additionally, for the record, in my real life I'm a farmer and my farm receives no Hoover power.

Additionally, I'd like to mention that I served my country as a U.S. Army aviator in Vietnam, serving in the years 1965 to 1968.

Arizona created the APA in 1944 to take and receive on behalf of the State electric power developed from the waters of the main-stream of the Colorado River, including Hoover Dam. APA currently purchases Hoover power it receives pursuant to the 30-year contract with Western, a power marketing agency of the Department of Energy.

APA operates on a cost of service basis and sells the Hoover power it receives to 30 wholesale nonprofit customers within the State. APA's largest customer is the Central Arizona Water Conservation District, which uses Hoover power to pump Colorado River water to 3.2 million customers, including Native Americans. Our second largest customer, the Salt River Project, serves the water and power needs of approximately 964,000 customers.

The remaining half of our power is sold to irrigation districts, electrical districts, and municipalities throughout Arizona. This power is absolutely essential as it provides efficient electrical energy to the people of Arizona, who've been receiving this power for 65 years and who have developed an economic infrastructure based on its use.

As a member of the commission during the 1980s allocation, I can attest that APA and its staff makes every effort to receive, transmit, and continuously deliver Hoover power to its customers in a cost-effective manner. In a normal water year, APA receives 370 megawatts of power, more than 1 million megawatt hours of energy. This helps reduce the use of fossil fuel generation and the associated pollution from that by providing power for peaking and load-following.

In my written statement you have a history of allocations beginning in 1928. Under S. 2891, Congress would allocate Hoover power pursuant to Schedules A, B, and C. However, each of the current Hoover contractors will contribute 5 percent of their Schedule A and B power to a new Schedule D, which allocates to federally recognized Indian tribes and other eligible entities that do not currently purchase Hoover power.

We recognize that Native American tribes and regionally based electric cooperatives have raised concerns. The APA has met separately with each group to listen to their concerns, better understand their needs, and assure them that the authority, the APA, will work with them to use a fair, deliberative, and transparent public process. We are committed to this process and in my written statement I have provided examples.

Additionally, APA worked with the House Committee on Natural Resources, the Native American tribes, and regionally based electric coops to address these issues. APA agreed to the compromises to the House version of the bill.

In summary, S. 2891 offers a forward-thinking and visionary approach that enables parties who do not now have direct access to Hoover power in Arizona, California, and Nevada to receive a sig-



nificant amount of that power through the creation of this Schedule D. S. 2891 preserves the best of governance structure which has enabled the people of Arizona, California, and Nevada to obtain access to critical power which benefits the overall economy. At the same time, the bill recognizes the changes within the marketplace and allows for the inclusion of new customers through a fair and open process, without devastating those current customers whose livelihoods and jobs depend on access to Hoover power.

We respectfully urge you to pass this legislation expeditiously so that it can be enacted before the end of the 111th Congress, and we stand ready to work with the committee and all interested parties.

Thank you for the opportunity to testify before the committee today and I look forward to answering any questions you may have. Thank you.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF RICHARD S. WALDEN, BOARD MEMBER, ARIZONA POWER AUTHORITY, PHOENIX, AZ

Chairman Stabenow and Members of the Subcommittee, my name is Richard S. Walden. I am a Board Member of the Arizona Power Authority (APA), which is the state agency designated by federal and state law to receive and distribute Arizona's share of Hoover power within the state of Arizona. I have been a Commissioner for 26 years.

The State of Arizona created APA in 1944 to take and receive on behalf of the state, electric power developed from the waters of the mainstream of the Colorado River including Hoover Dam. Arizona's model of creating a state-based authority for distribution of federal preference power is similar to that used by the State of Nevada, in that both manage their Hoover power through a public power entity.

APA currently purchases the Hoover power it receives pursuant to a 30-year contract with the Western Area Power Administration (Western). Western is a power marketing agency of the United States Department of Energy. APA operates on a cost-of-service basis and sells the Hoover power it receives to 30 wholesale, non-profit customers within the state. (See Exhibit RSW-1.) This distribution is governed by strict adherence to the terms of the Boulder Canyon Project Act of 1928, subsequent applicable federal statutes and regulations, including the Hoover Power Plant Act of 1984, as well as Titles 30 and 45 of the Arizona Revised Statutes. As a member of the APA's Commission during the last time we deliberated upon the allocation of Hoover Power in the 1980's, I can personally attest to the fact that APA employed a fair, transparent and forward looking process to negotiate contracts in the best interest of our region, the State of Arizona and the taxpayers of this country.

APA's largest customer is the Central Arizona Water Conservation District (CAWCD) which uses Hoover power to pump Colorado River water to supply 3.2 million consumers, including Native Americans, with water for home consumption, agriculture, and manufacturing in the desert communities of Arizona. CAWCD receives 42.86% of the Hoover power allocated to Arizona. APA also sells power to the Salt River Project, which serves the electric power needs of approximately 964,000 customers in Arizona and uses Hoover power to provide the needs of 152,000 residential, agricultural and industrial water users. The remaining one-half of APA's Hoover power is sold to irrigation districts, electrical districts and municipalities throughout Arizona. This power is absolutely essential to the customers of the APA because it provides efficient electric energy to the people of Arizona. It is important to understand that the people of Arizona have been receiving this power for approximately 65 years; and they have developed an economic infrastructure based on its use. Their livelihood depends on this resource.

As an active and long term Board Member of the APA, I can attest that APA makes every effort to receive, transmit and deliver the Hoover power to its customers in an efficient and cost effective manner. In a normal water year, APA receives 377 megawatts of power and more than one million megawatt hours of energy on behalf of the state. APA has eight full-time employees who carry out their responsibilities on an efficient and expeditious schedule and report, on a monthly basis to the APA Commission, citizens appointed by the Governor. APA ensures that the Hoover power is used in the most efficient manner for load-following and meet-

ing the peak loads of the state of Arizona. This accomplishes two very important goals. First, it provides power to the customers of the APA at a reasonable cost. Secondly, it reduces the use of fossil fuel for electric generation and associated pollution. This is important to understand because by using Hoover power for peaking and load-following purposes, APA minimizes the amount of pollution that would otherwise be emitted into the atmosphere by fossil fuel generating plants.

That is why APA strongly endorses S. 2891, the Hoover Power Allocation Act of 2009. We believe that this forward-looking initiative is fair, reasonable and essential to Arizona, the people of the southwest and conforms to the energy policy of the United States.

*What does this bill do?*

Hoover power was first allocated by the Bureau of Reclamation pursuant to the Boulder Canyon Project Act of 1928. In 1984, Congress again allocated Hoover power through contracts with state, municipal and utility contractors. These contracts will expire in 2017. The 1984 Hoover Power Plant Act distributed Hoover power to contractors under three different schedules—Schedules A, B, and C.

Under S. 2891, Congress would distribute Hoover power pursuant to Schedules A, B and C ; however, each of the current Hoover contractors would contribute 5% of their Schedules A and B power to a pool that would be distributed under a new Schedule D. Schedule D power would be allocated to federally recognized Indian Tribes and other eligible entities that do not currently purchase Hoover power.

Two-thirds of the Schedule D pool would be allocated through the Western Area Power Administration; the remaining one-third of the Schedule D pool would be distributed in equal shares through the Arizona Power Authority (for new contractors in Arizona), through the Colorado River Commission of Nevada (for new contractors in Nevada), and through Western (for new contractors in California).

We recognize that Native American tribes and regionally based electric cooperatives—who do not now have direct access to Hoover power because they did not seek access to it when the APA's existing customer contracts were established in the 1980's—have raised concerns with this legislation. The APA has met separately with each group to listen to their concerns, better understand their needs and assure them that the Authority will work with them to use a fair, deliberative and transparent public process to allocate power from the proposed new Schedule D pool should S. 2891 be enacted. We recognize that our role is one that requires a continued commitment to the public trust and we intend to maintain our vigilance with regard to this principle. Arizona Power Authority personnel have made it their mission to conduct themselves accordingly in this open and fair public process and have repeatedly engaged with all stakeholders to ensure those affected by S. 2891 have had ample opportunity to express their opinions, concerns and views on the proposed reallocation of Hoover Power in the State of Arizona.

Several examples are as follows:

- On March 5, 2010 APA staff met with representatives of the Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative and the Navopache Electric Cooperative.
- Representatives from Arizona Municipal Power Users' Association (AMPUA), which represents the Cooperatives listed above have regularly attended Arizona Power Authority Commission meetings including meetings in January, February, March, April and May of 2009.
- Representatives of the Ak-Chin Indian Community, the Inter Tribal Council of Arizona and the San Carlos Irrigation Project also attended Commission meetings in January and February of 2010 and in July, August, September, November and December of 2009.
- APA staff met with Inter-Tribal Council of Arizona in February and March of this year to specifically address their issues and concerns.
- APA has also extensively corresponded with all interested parties, expressing the Authority's position and requesting that stakeholders make their concerns known.

Additionally, APA worked with the House Committee on Natural Resources and the Native American tribes and regionally based electric cooperatives to address issues raised by those particular stakeholders. Specifically, APA agreed to the following compromise changes to the House bill:

- Allow Western Area Power Administration (WAPA) 36 months instead of 18 to develop criteria and make allocations.
- Allow tribes to contract directly with WAPA instead of through a state agency.
- Remove a provision that gave states first consultation with WAPA regarding allocation criteria.

These amendments were agreed upon in advance by the Hoover principals and show APA's willingness to work with all stakeholders to develop an equitable plan for power distribution.

*Why we support the bill?*

S. 2891 offers a forward-thinking and visionary approach that enables parties who do not now have direct access to Hoover power in Arizona, Nevada and California to receive significant amounts of that power through the creation of a new Schedule D. This proposed new schedule allocates 5% of the actual capacity (103.7 megawatts annually) and energy from Hoover Dam to new customers in the designated marketing region for Hoover power.

S. 2891 preserves the best of the governance structure which has enabled the people of Arizona, Nevada and California to obtain access to critical power generated on the lower Colorado River resulting in regional economic growth that benefits the overall economy. At the same time, the bill recognizes the changes within the marketplace and allows for the inclusion of new customers to have access to power, through a fair and open process, without devastating those current users whose livelihoods and jobs depend upon access to Hoover power.

Finally, the bill maintains the important regional balance in distributing public power in the southwestern United States. Efforts to dramatically change the terms of reference of this measure could—however well intentioned—severely and adversely affect this balance, injuring consumers and private and public enterprises that depend upon Hoover power to sustain their livelihood and use it to create jobs and economic growth.

We respectfully urge you to pass this legislation expeditiously so that it can be enacted before the end of the 111th Congress. We stand ready to work with you and your colleagues, along with any interested parties, to help expedite S. 2891 timely consideration.

Senator STABENOW. Thank you very much.

Ms. Currie, welcome.

**STATEMENT OF PHYLLIS CURRIE, GENERAL MANAGER,  
PASADENA WATER AND POWER, PASADENA, CA**

Ms. CURRIE. Thank you. Chairwoman Stabenow and Senator Brownback and members of the subcommittee: I'm Phyllis Currie. For the past 9 years I've been the General Manager of the Pasadena Water and Power Department in the city of Pasadena, California.

I thank you for allowing me the opportunity to participate in today's hearing on S. 2891, the Hoover Power Allocation Act. The Southern California Public Power Authority is a joint powers agency consisting of 11 municipal utilities and one irrigation district. Our members deliver electricity to approximately 2 million customers over an area of 7,000 square miles with a total population of 4.8 million consumers.

The Southern California Public Power Authority members that are Hoover participants include the municipal utilities of the cities of Anaheim, Azusa, Banning, Burbank, Colton, Glendale, Los Angeles, Pasadena, Riverside, and Vernon.

The city of Pasadena was one of the original contractors for power from Hoover Dam. In 1931 Pasadena, along with the cities of Glendale, Burbank, Los Angeles, the Metropolitan Water District, Southern California Edison, and the States of Arizona and Nevada, agreed to pay rates sufficient to guarantee repayment in 50 years to the Federal Government for the construction costs of this multi-purpose, almost 1500 megawatt dam.

Hoover Dam and the power plant was entirely paid for by the original power users, not by the Federal taxpayers. All the benefits of this multi-purpose dam, including the flood control, municipal

and industrial water supply, irrigation and recreation uses, were made possible by the commitments of these original power users. Since its inception, Hoover Dam has provided its multiple benefits to millions of citizens in Arizona, California, and Nevada.

Pasadena was also one of the parties that agreed in 1984 to advance-fund the cost of upgrading the turbines at Hoover, which resulted in another 500 megawatts of power. Pasadena joined the SCPPA cities of Glendale, Anaheim, Riverside, Azusa, Banning, Colton, Vernon, and the States of Arizona and Nevada in the effort which, again, used no taxpayer money.

Power from Hoover Dam has always been allocated by act of Congress rather than through an administrative proceeding. The Boulder Canyon Project Act of 1928 authorized the construction of the dam and related facilities and allocated power to the original contractors, including Pasadena. The Hoover Power Plant Act of 1984 authorized the Hoover Operating Project, which reallocated power to the original contractors and allocated the new capacity and energy to the uprating participants.

In anticipation of the expiration of the current contracts for Hoover, in 2007, as you've already been advised, the power users in the 3 States got together more than 2 years ago to begin negotiations that led to this current bill.

From the city of Pasadena's point of view, passage of this legislation will enable us to plan effectively for long-term power supplies to meet customer demand. It will also offset the higher costs of renewable resources which we will acquire to meet the 40 percent by 2020 target that the city of Pasadena has adopted. All of the other SCPPA Hoover contractors have adopted similar or higher renewable energy targets, and the passage of this bill will match the commitments of the power users that are made to fund the environmental program with the contracts that ensure the benefits of power from Hoover.

The city of Pasadena is proud that it was one of the original Hoover participants and we were participants in the upratings authorized in 1984. This unique facility, paid for by power users, not by taxpayers, provides immeasurable benefit to the citizens of southern California, Arizona, and Nevada.

Thank you for the opportunity to support this—to present this statement. We are gratified by the strong bipartisan support for the bill, and I will be happy to answer any questions you may have.

[The prepared statement of Ms. Currie follows:]

PREPARED STATEMENT OF PHYLLIS CURRIE, GENERAL MANAGER, PASADENA WATER AND POWER, PASADENA, CA

Chairwoman Stabenow, Sen. Brownback and Members of the Subcommittee, thank you for inviting me to participate in today's hearing on S. 2891, the Hoover Power Allocation Act.

The Southern California Public Power Authority (SCPPA) is a joint powers authority consisting of 11 municipal utilities and one irrigation district. Our members deliver electricity to approximately 2 million customers over an area of 7,000 square miles, with a total population of 4.8 million consumers. SCPPA members that are Hoover participants include the municipal utilities of the cities of Anaheim, Azusa, Banning, Burbank, Colton, Glendale, Los Angeles, Pasadena, Riverside and Vernon.

Pasadena was one of the original contractors for power from Hoover Dam. In 1931, the city of Pasadena, along with Glendale, Burbank, Los Angeles, Metropoli-

tan Water District, Southern California Edison and the States of Arizona and Nevada agreed to pay rates sufficient to guarantee the federal government that construction costs of the multi-purpose, almost 1500 megawatt dam would be repaid in 50 years.

Hoover Dam and power plant was entirely paid for by the original power users—not by the federal taxpayers. All the benefits of this multi-purpose dam, including flood control, municipal and industrial water supply, irrigation and recreation were made possible by the commitment of these original power users to pay for the dam. Since its inception, Hoover Dam has provided these multiple benefits to millions of citizens in Arizona, California and Nevada.

Pasadena was also one of the parties that agreed, in 1984, to advance fund the costs of uprating the turbines at Hoover, which resulted in another 500 MW of generation from the dam. Pasadena joined SCPPA cities Glendale, Anaheim, Riverside, Azusa, Banning, Colton, Vernon and the States of Arizona and Nevada in that uprating effort which, again, used no taxpayer money.

Power from Hoover Dam has always been allocated by Act of Congress, rather than through an administrative proceeding. The Boulder Canyon Project Act of 1928 authorized construction of the dam and related facilities and allocated power to the original contractors, including Pasadena. The Hoover Power Plant Act of 1984 authorized the Hoover uprating project, re-allocated power to the original contractors and allocated the new capacity and energy to the uprating participants.

In anticipation of the expiration of current contracts for Hoover, in 2017, power users in Arizona, California and Nevada got together more than two years ago to begin negotiations that led to the S. 2891. These negotiations led to the legislation before you today, which:

- Authorizes the Secretary of Energy to enter into 50-year contracts with existing contractors for 95% of the capacity and energy they now receive;
- Gives power users a contract term that matches the financial commitment made by water and power contractors in the Lower Colorado River Multi-Species Conservation Plan (MSCP) legislation signed into law in 2009. The MSCP funds will be used for 50 years of environmental mitigation on the Lower Colorado River; and
- Creates a 5% “set aside” of capacity and energy for new entrants, including Indian tribes, municipalities, rural electric cooperatives and irrigation districts that do not now receive Hoover power.

From Pasadena’s point of view, passage of this legislation will enable us to plan effectively for long-term power supplies to meet customer demand. It will also offset the higher cost of renewable resources we will acquire to meet the 40% by 2020 target Pasadena has adopted. All of the other SCPPA Hoover contractors have adopted similar, or higher, renewable energy targets.

And, passage of this bill will match the commitment water and power users made to fund the MSCP with contracts that ensure the benefits of the power generated at Hoover.

Pasadena is proud that it was one of the original Hoover participants and that we were participants in the upratings authorized in 1984. This unique facility, paid for by power users, not by taxpayers, provides immeasurable benefits to citizens Southern California, Arizona and Nevada.

We are also proud that the legislation we are discussing today was agreed-to unanimously by Hoover contractors in the three states. And, we are gratified to have strong bi-partisan support for the bill in the House and the Senate. Thank you for the opportunity to present this statement and I would be happy to answer any questions you may have.

Senator STABENOW. Thank you very much to each of you. As I indicated, in the interest of time, in that we will have votes coming shortly, I have just one question. That is, given the fact that we now have a House bill that has passed, are you all saying that you support the changes that the House made? I know, Administrator Meeks, you had some technical points you were talking about. But I wonder if you would at least indicate whether or not you’re supporting the version passed by the House.

Mr. MEEKS. The version passed by the House definitely moved toward the straw man that we put out in our Federal Register notice, particularly the 36-month allowance for us to do the new cus-

tomers power allocations. That was definitely a positive, and the elimination of consultation with the States as we go forward with the new resource pool was definitely a positive in our direction. So it did take care of some of the technical concerns we had.

Mr. CAAN. Madam Chairwoman, we strongly support the version that came out of the House with the amendments, we strongly support that.

Senator STABENOW. Thank you.

Mr. WALDEN. Madam Chair, for Arizona, we too strongly support the House version as passed.

Ms. CURRIE. Madam Chairwoman, for the California participants, we also support the version that has been passed.

Senator STABENOW. Thank you very much. I appreciate that.

Senator Brownback, do you have any questions?

Senator BROWNBACK. No, in the interest of time I'll let colleagues if they'd like to ask questions.

Senator STABENOW. Thank you very much.

I know that Senator Udall has joined us and you have bills that are on the next panel, so I don't know if you wish to ask any questions at this time of this panel?

[No response.]

All right. Senator McCain, welcome.

Senator MCCAIN. Thank you, Madam Chairman.

Mr. Walden, obviously the importance of the APA, Arizona Power Authority's, role in allocating Arizona's share of Hoover power demands that its process be handled in an open and transparent manner. Can you speak to the concerns that have been raised by representatives of the electric cooperatives and the Inter-tribal Council of Arizona, and have you addressed some of these concerns?

Mr. WALDEN. Yes, sir, Senator McCain, we have. We've addressed those concerns via several ways. No. 1, we've had numerous meetings with both the cooperatives and the tribal members. No. 2, the cooperatives did not participate in the last round, they did not request to be part of the last round of allocations they are now requesting.

As it relates to the tribes, we have come up with this scheme called Schedule D, which provides them with roughly 70 megawatts. I don't remember the exact number. That in itself means that the tribes will have something over 20 percent of the total resources out of the Colorado River. So they are well served and well represented in this process.

As to the open and fair process, it will be a public process and I assure you as a member of the commission that that will be the case.

Senator MCCAIN. I thank you.

I thank you, Madam Chairman.

Senator STABENOW. Thank you, Senator.

Before completing the topics in front of us, we want to welcome Congressman Baca. We appreciate—we know you had votes a little bit earlier and we're going to have some in just a little while, so we understand that. But we welcome you and appreciate the opportunity for you to testify.

**STATEMENT OF HON. JOE BACA, U.S. REPRESENTATIVE FROM CALIFORNIA**

Mr. BACA. Thank you very much, Madam Chairwoman. I appreciate that very much. I want to thank you, and I also want to thank the ranking members, and also members of the Subcommittee here on Water and Power.

As you know, I'm Representative Joe Baca from 43rd Congressional District. I want to thank my good colleague here that served with us some time in the past on our side of the House, and of course a great golfer too as well, not to mention that, too. Now he's carrying the banner for all of you.

Senator McCain, thank you very much from our neighboring State, too, as well in Arizona.

Thank you for your time. I'm pleased to present to you testimony on H.R. 4252, the Inland Empire Perchlorate Water Plume Assessment Act. H.R. 4252 directs the Secretary of the Interior to conduct, and I state, directs the Interior to conduct a study of water resources in the Rialto-Colton Basin in California.

I would like to thank the chairman of the House Natural Resources Committee, Representative Nick Rahall, and of course Ranking Member Doc Hasting and my good friend of the House Ways and Means Committee subcommittee, Grace Napolitano, and Ranking Member Tom McClintock for their support on this legislation.

I also want to take the time to thank all of my colleagues in the House of Representatives, and I state, for their bipartisan support on this bill. In addition, I commend the City Council of Rialto and the Perchlorate Task Force City Council Member Ed Scott, Rialto Mayor Pro Tem Joe Baca Junior, who happens to be my son, for their hard work and dedication in protecting families.

Perchlorate is a rocket fuel additive. It is an unstable organic compound that is found to be harmful to humans, and I state, harmful to humans because it interferes with the thyroid functions. Those at the greatest risk are pregnant women and infants, and it affects all of us. Can you imagine many of the pregnant women and infants in the surrounding communities?

I am very familiar with the water contamination. My family lives in the city of Rialto and I've lived there for almost 40 years, so I've been impacted. My children, friends, and close neighbors know what it's like to live with water that is contaminated. When we first learned that our water was not safe to drink, we were scared and we were worried about the damage caused, not only to our health, but our children and the surrounding communities. We were nervous because we drank the water, cooked with the water, bathed with it, and our children did as well.

I drafted a bill to make sure that other families and neighboring cities would not have to suffer, because we are already suffering from enormous hardship in this area, and 13.4 percent of the population lives below the poverty level and there's very high unemployment in the immediate area. We're ranked third highest in the Nation in the rate of foreclosure and the unemployment rate has double digits for too long.

On top of these troubles, there is a plume of water that has a very high level of perchlorate. My bill requires, and I state, re-

quires that the plume in the Rialto-Colton Basin is studied, is studied. The plumes are the underground pockets of water and can travel like little underground rivers. We know what it's like, just as the oil spill that we've had, and it's traveled. When it travels, it actually not only travels from our area, but it also can travel through the Santa Anna Basin into the Orange County area.

We don't know where the contaminated water in this plume is traveling. We don't know where it's going. But we know we don't know how big it is or how fast the water is moving. We do need to know more about the plume to permanently fix the problem.

The research established from the study in H.R. 4253 ensures that the exact problem will be identified. As we all know, a study by the U.S. Geological Survey is not something done lightly. As the Nation's largest water, earth, and biological science and civilian mapping agency, the USGS provides scientific understanding, and I state, provides scientific understanding about the nature, resources, conditions, issues, and problems.

The information gained by USGS studies will move us closer to eliminating the perchlorate issues that have caused heartaches, frustration, and fear. Fortunately, under the city council of Rialto's zero tolerance policy, the city does not blend any detectable level of perchlorate into the water system. They are making sure that water is safe by conducting wellhead treatment. But what about the cities that do not have the policy or the treatment facilities to clean this water?

Commissioner Conder from the Department of Interior stated that the directives in this bill are within USGS jurisdiction. USGS has found that the groundwater constitutes about 79 percent of the drinking water supplied in the entire Inland Empire, which has approximately over 4 to 5 million people in the area. As I stated, the flow of it also goes into the Santa Anna-Orange County area.

A study by the USGS is long overdue. We have learned that perchlorate contamination began in 1940 through the action of the U.S. military, continued through the 1960s through the work of U.S. defense contractors, and may have been made worse by firework companies in the area.

Water managers need to know the source, fate, and movement of perchlorate within the Rialto-Colton Basin and adjacent areas in order to effectively mitigate the contamination. We need USGS to make this a priority. That is why I drafted this bill. That's why I'm grateful that we're here today.

In the administration, the written statement regarding the legislation indicates that the citizens relying on water from the Rialto-Colton Basin will have to compete with other administrative priorities for funding. The message to you is to send to USGS by supporting H.R. 4252 will be that families deserve clean drinking water, and I state, clean drinking water. They should not have to live in fear of the effects it may have on our children and women, too, as well. This message that you will send to USGS by supporting H.R. 4252 will be that families deserve clean drinking water.

H.R. 4252 moves beyond finding of those at fault. We know the need to know and fully appreciate the extent of the damage. The hot spot of the contamination is in Rialto in my home city in Cali-



fornia, and that area in 2009 was designated as a Superfund site. This Superfund designation we help take care of the hot spot, but what about the waters traveling underground in the plume? What about other cities that will be impacted if we don't do the study or the research?

The contamination is spreading. I fear for communities that do not have the wellhead treatment facilities or the finances. Basically, in the State of California we're at a \$1 billion deficit right now.

What is learned from the study in H.R. 4252 will help other areas with the hardship of perchlorate contamination. I respectfully request your support of this legislation because it is a national consequence. There are many States that have perchlorate issues. This study would help them be aware of what could be happening underground. It received bipartisan support and our side of the House. I look forward to bipartisan support.

I thank you for allowing me this time. Thank you.

Senator STABENOW. Thank you very much, Congressman. We appreciate your testimony and your leadership on this issue. So thank you very much.

If there aren't any questions, we will excuse this panel and thank you again for sharing your views with us. We appreciate the hard work that you've put into this. We will invite the second panel to come forward.

Welcome. Before introducing each of our witnesses, and we appreciate your being here, I am going to turn to Senator Udall, who I know has introduced 2 of the bills that we have in front of us. We very much appreciate all of your leadership on these issues. I know, coming from Colorado, how important these issues are. So we will turn to you and appreciate any comments you would like to make.

Senator UDALL. Thank you, Madam Chairwoman. I want to come right back at you. I really appreciate the hard work of your committee staff and your willingness to include these 2 very important bills on the docket today.

We have a saying in the West that whiskey's for drinking and water's for fighting over. To some extent, that's what these 2 bills do. They try and minimize the conflict.

Senator STABENOW. Is this the whiskey?

Senator BROWNBACK. I would just add as a Kansan that Colorado is very good about fighting for water. They are excellent at it.

Senator UDALL. Senator Brownback and I have had these discussions on a number of occasions. But we're also committed to working together. We also have to be aware that at one point Colorado was a part of the greater territory of Kansas as well. I want to make sure that that's known for the record. But Senator Brownback does come to Colorado to experience the mountains. He spends his hard-earned dollars and helps our economy. We send him water in exchange.

I want to just speak for a few minutes on these 2 important pieces of legislation and also introduce 2 Coloradans who will be testifying shortly as well. Let me start with S. 3404, which is the Leadville Mine Drainage Tunnel Remediation Act of 2009. On June 7, 1976, which is almost 34 years ago to the day, the Senate Com-

mittee on Interior and Insular Affairs held a hearing on a bill introduced by then Colorado Senator Floyd Haskill. The legislation at that time would have authorized the Secretary of Interior to, quote, “rehabilitate and maintain the Leadville Mine Drainage Tunnel for public safety and water quality improvement,” unquote.

That is very similar to my bill today. Even by 1976, conditions in the tunnel I have referenced posed serious risks to the people of Leadville. Senator Haskill who I mentioned—I now have the great privilege to occupy the seat that he held back then—said at that hearing, quote: “We have a serious problem here that I don’t think can wait. We have a possibility that the city of Leadville’s water supplies will be contaminated. We have the possibility of pollutants in the Arkansas River, which will be extremely serious and detrimental to agriculture, to say nothing of the health of people downstream.” End of his quote.

He went on to describe the immediate threat from a tunnel blow-out to the residents of Leadville who live adjacent to the mouth of the tunnel.

At that hearing 34 years ago, the Bureau of Reclamation testified that it did not have the authority, Madam Chair, to implement a permanent solution to the conditions in the tunnel threatening Leadville and the Arkansas River Valley. Unfortunately, Senator Haskill’s legislation which would have given them that authority died in the House.

Little has changed since then, and I see Mr. Olsen nodding in great agreement. Now, in 2007 and 2008 it appeared that we might be on the verge of realizing the dangers that Senator Haskill described, when the EPA said new collapses within the tunnel could lead to a catastrophic blowout. The Bureau and the EPA took emergency actions that eventually stabilized the situation, but in the process we heard the same claims from the Bureau, that it lacked the necessary authority to implement a permanent solution.

For instance, in a letter from the Bureau responding to a November 8, 2007, EPA letter, the Bureau said that using its treatment plant as part of the remedy for Operable Unit 6, which is where the tunnel is located, they said, quote, “It’s beyond our authority.”

So in short, Madam Chairwoman, in the process of trying to address the physical blockages within this tunnel we keep finding that there are legal blockages as well.

So my legislation, similar to what Senator Haskill wanted to do in 1976, removes any doubt as to the Bureau’s responsibility and authority for the maintenance of the tunnel. It also encourages the Bureau and the EPA to work cooperatively on any permanent solution for the cleanup of Operable Unit 6.

Now, the administration is going to claim this bill is unnecessary. I disagree. I commend the Bureau and the EPA for working so well together the past couple of years on the tunnel and with my office and the people of Leadville. But that spirit of cooperation may not necessarily exist in the future. So we need to resolve the question of legal authority and responsibility for the tunnel once and for all.

Now, if in the regrettable scenario—I’m being optimistic—that I be here 34 years from now, if we’re still discussing the safety condi-

tions at the tunnel, let us at least be able to say that we removed the legal blockages in the hearing now.

So to help us with that, I'm pleased to welcome Lake County Commissioner Ken Olsen to the hearing. Ken's literally been on the front lines of this fight and he knows better than anyone the importance to Leadville and southeastern Colorado of resolving this problem once and for all. He can correct me if I'm wrong, but I understand that your brother was probably the last person to walk more than 1,000 feet into the tunnel back in the 1950s before it became blocked?

**STATEMENT OF KENNETH L. OLSEN, LAKE COUNTY  
COLORADO BOARD OF COMMISSIONERS, LEADVILLE, CO**

Mr. OLSEN. Actually, Senator, I just learned that from an email when I asked him about how to go about testifying at a subcommittee meeting. So I did not realize until about 2 weeks ago that he, my father, and my father's stepfather, who happened to be a blacksmith in 1943 driving the Leadville Mine Drainage Tunnel, went into the tunnel about 1,000 yards in about 1963. That was news to me.

Senator UDALL. For the record, 1,000 yards and one of the last groups to go into the tunnel. I too don't know everything my brothers do, so thank you for confirming that.

Thanks for being here and we look forward to your insights.

The other Coloradan I want to welcome, who's come all the way from Ouray, Colorado, that's Andy Mueller. He's President of the Colorado River District Board of Directors. The district and other Colorado River water users have done a remarkable job working with my office on the Ruedi Reservoir legislation. So I want to thank you for being here.

Let me just, Madam Chair, if I could, speak briefly about that legislation. This bill, S. 3387, is necessary because we've had a very successful endangered species recovery program on the Upper Colorado River, with participation from the Federal Government, the States of Colorado, Wyoming, and Utah, water users, and Native American tribes. The program's been specifically designed to recover populations of four endangered fish and it's been one of the most successful endangered species recovery programs, not just in the West but in our Nation.

Recovery of these species is an important Federal priority. However, to keep the program viable the water users must comply with the U.S. Fish and Wildlife Service opinion that requires 10,825 acre-feet of releases from the Ruedi Reservoir dedicated to improving fish habitat in the Colorado River. Colorado River water users have identified permanent sources for this water. Half will come from the marketable yield pool of Ruedi Reservoir and half will come from a converted agricultural water right.

This legislation, my legislation, will implement the first half from Ruedi Reservoir and has the support of a diverse set of water users in Colorado on both sides of the Continental Divide, which is saying something, Madam Chair. If you can bridge the Continental Divide, you're a long way to a solution.

I understand the administration objects to providing the water from the reservoir as a nonreimbursable expense. Commissioner

Connor, I know that we can work together to resolve your objections and I appreciate your recent efforts in that regard. I hope you will continue to commit to work with me to address the administration's concerns on both my bills in a timely manner. These are very, very important issues to Colorado, as you know.

So again, I want to thank the ranking member and the chairwoman for their indulgence and for a long opening statement, but one that's important to my State. Thank you.

[The prepared statement of Mr. Olsen follows:]

PREPARED STATEMENT OF KENNETH L. OLSEN, CHAIRMAN, LAKE COUNTY COLORADO BOARD OF COMMISSIONER, LEADVILLE, CO, ON S. 3404

My name is Ken Olsen. I am the chairman of the Lake County Colorado Board of Commissioners and a fifth generation Leadville, Lake County resident. I thank you for the opportunity to brief this sub-committee on the nature and need of this legislation.

Leadville, Colorado is located in mountainous central Colorado at a 10,200 feet elevation and is the highest incorporated city in the United States. The headwaters of the Arkansas River begin here. Leadville exists as one of the most productive mineral rich areas in the country and owes its formation to a long-term legacy of mining since the 1860's. Although we have been blessed with these natural resources, we also are cursed with the accompanying environmental effects of mining activities. Our area has been left to contend with two community pariahs, the Leadville Mine Drainage Tunnel and the 27 year old California Gulch Superfund site. As explained further, the connection of one to the other is inseparable.

The Leadville Mine Drainage Tunnel is an 11,299 foot tunnel that was driven starting in December 1943 as an emergency WWII war effort to de-water and access the Leadville Mining District for the extraction of zinc, lead and manganese. The tunnel was driven under the provision of PL 133 of the 78th Congress by the Bureau of Mines. The initial 6000 feet of the tunnel was driven until the war ended in August 1945. The tunnel bore restarted in 1952 due to the Korean conflict and was continued to its current length. I wish to emphasize that the Leadville Mine Drainage Tunnel was driven by the United States Government for obtaining metals for the national defense of this country.

In 1959 the General Services Administration approved the transfer of the tunnel from the Bureau of Mines to the Bureau of Reclamation. Reclamation initially wanted to obtain the water rights from the tunnel as part of the FryingpanArkansas Project. Subsequently, the Bureau gave up on this effort when the amount of water obtainable was insufficient for their needs and the water quality was a concern due to metal contamination. In the late 1960's due to large sinkholes appearing along the tunnel length the Bureau did perform some mitigation work including placing a pump to reduce rising water levels in the collapsing part of the tunnel and place a bulkhead (plug) about 200 feet from the tunnel entrance to help alleviate a possible blowout of the tunnel. As the tunnel continued to deteriorate, congressional action was instituted by Senator Floyd Haskell in 1976 with 5.3394 in an attempt to address the problems created by the lack of maintenance. Of specific concern were the sinkholes adjacent to Colorado State Highway 91, rising water levels, increasing hydraulic head in the area drained by the tunnel, the threat to our local domestic water supply, metals contamination of the Arkansas River and all of its downstream users including the Front Range Municipalities of Aurora and Colorado Springs, that are outside the Arkansas Valley Drainage, and the risk to the trailer park residents at the mouth of the tunnel. The Bureau did not want this legislation and said they would study the problem. In 1991 the Bureau put in a water treatment plant at the tunnel entrance in response to a Sierra Club lawsuit over water quality discharging from the tunnel of which the Bureau operates today.

In 1983 the EPA designated 18 square miles in and around Leadville the California Gulch Superfund site. The site was split into twelve "operable units" for management, however the treatment plant area at the tunnel entrance was not in the Superfund designation area. The bulk of the tunnel length is in operable unit 6 (OU6). In the long, arduous task of Superfund deletion OU6 was issued a Record of Decision (ROD) in 2003, after a lengthy administrative process by the EPA. The selected remedy included the provision that surface water acid rock drainage (ARD) would be placed into the Marion Shaft in the spring runoff season of each year. The Marion connects directly with the LMDT via a short crosscut connection under-

ground. The Bureau, EPA, Colorado Department of Health and the public all participated with input in the development of the ROD. The amount of ARD placed down the Marion each year varies from 3 to 5 million gallons, is usually 3 to 5 weeks out of the year and is highly contaminated primarily with zinc, cadmium and iron.

The selected remedy for OU6 no doubt has made operation of the LMDT plant more difficult both in operational costs and treatment methods. What is also difficult to ascertain is how much of the contaminated surface water gets to the treatment plant via the collapsed tunnel. The treatment plant is highly effective in treating the water it does get from the bulkhead flow and the wells along the tunnel.

In the summer of 2007 the Lake County Commissioners were apprised that the primary pump delivering water to the treatment plant was cavitating (sucking air) and that unusual turbidity was being experienced. We equated this information as a possibility that new collapses were occurring in the tunnel. Due to the known difficulty of this community with the LMDT we began inquiring locally about any other water level anomalies being observed locally. Our investigation led to us calling together various agencies and local private sector parties to compare notes in November 2007. We advised our congressional delegation of the potential risk involved with the continuous increasing hydrostatic head (elevating water levels) in the Leadville area. Subsequently we observed physical signs of high water levels in supersaturated mine dumps and across the ground surface where only occasional spring runoff is observed and was now being observed in the late fall. We obtained graphs of recent well data (hydrostatic heads in shafts and wells) and historic levels. We observed in data from the Leadville Sanitation District that they were processing wastewater at the highest level ever recorded. We believed that groundwater was infiltrating sewer mains never before exposed to higher ground water levels.

In February 2008 the Board of Commissioners declared a state of emergency due to the risk of high ground water levels. The result was the drilling of a relief well into the LMDT and the transmission of that "mine pool" water to the LMDT Treatment Plant. The result of the relief well was to drop groundwater levels in the tunnel, relieve hydraulic head to reduce the possibility of a blowout at the tunnel, reduction of the risk to local water supply and Arkansas River contamination, and reduction of the risk to the trailer park residents near the treatment plant.

In January 2009 the County was advised that the EPA was reopening the ROD on OU6 and was intent on capping the remaining historic mine waste rock dumps east of Leadville. The EPA indicated that they believed that the selected remedy for OU6 of placing acid rock drainage down the Marion Shaft was not reliable for the long-run as a remedy. The mine dumps are a valuable tourist draw to our community and we had already been through the public process for OU6 once before. The capping is to be done to reduce the volume of toxic water being produced every spring from the East side of Leadville. It is our observation and experience that the Bureau and EPA have not worked well with each other regarding the LMDT and OU6. Each agency is focused on their own functional area and tasks that they perceive as their mission. The legislation as set-forth in S3404 is needed for the following reasons: clear authority for the Bureau of Reclamation to maintain the LMDT for its entire length and treat all water; authorization for the EPA and Bureau to cooperate in the completion of the remedy for OU6 and to treat surface water from OU6 as a backup plan if the capping of the waste rock piles is only partially successful.

Lake County's continuing struggle with the LMDT and Superfund combined environmental challenges need to be addressed for the long-term. We need this legislation to accomplish the following:

- Require the BOR to have the responsibility and authority to maintain the LMDT for its entire length
- Require the BOR to treat contaminated surface water, if needed, at the LMDT Treatment Plant
- Require the EPA and BOR to jointly cooperate in ensuring water quality in the Arkansas River

We are a small county of 364 square miles, of which, 85% is owned by the Federal and State government. We have no producing mines at present. A large part of our economy is tourism and recreation based. The ability for our community to attract business and remain economically viable would be greatly enhanced by permanently addressing our environmental issues.

We appreciate that both the Bureau of Reclamation and the EPA are attempting to carry out their environmental and public safety tasks. Our community does, however, deserve a reasonably cooperative relationship between the agencies and our

public to give all a genuine sense of responsible public safety and environmental protection.

Senator STABENOW. Thank you very much for again for your leadership on these issues and for joining us, being a part of this today.

We want to welcome Commissioner Michael Connor. You have been with us before. We appreciate that, and we appreciate your being back with us to talk about all 4 of the bills that are in front of us. Then we will turn to Doug Peterson, who is President of the Minnesota Farmers Union, and we appreciate very much your being here to testify on 2 of the bills in front of us; and Mr. Andy Mueller, again President of the Colorado River District Board of Directors. Welcome. Ken Olsen, Lake County Commissioner of Leadville, Colorado.

So we will first turn to Commissioner Connor. Welcome.

**STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER,  
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. CONNOR. Thank you. Madam Chairwoman, Ranking Member Brownback, and Senator Udall: I'm pleased to be here today. I'm Mike Connor, the Commissioner of the Bureau of Reclamation. I will as expeditiously as possible summarize the Interior Department's views on the four bills before the subcommittee today.

I should mention, with me today is Matt Larson with the U.S. Geological Survey, who is prepared to respond to questions on 2 of the bills, S. 2779 and H.R. 4252. Our written statements have been submitted for the record.

The first bill is S. 2779, the Upper Mississippi River Basin Protection Act. The Department appreciates the intent of S. 2779 to address nutrients and sediments in the Upper Mississippi River Basin. We especially value the bill's emphasis on sound science.

However, the Department has concerns about the financial resources that would be required for the USGS to carry out the full scope of activities described in this bill, given the overall availability of resources for administration programs. Also, the Department supports the goals of S. 2779, but we note that the activities called for in this bill are well within the scope of existing authorities.

In summary, the proposed legislation describes a program consistent with current USGS activities to support protection of the Upper Mississippi River Basin and the Gulf of Mexico watershed nutrient task force recommendations. We note that some of these conservation activities are being addressed by other ongoing programs.

The second bill I'll talk to is S. 3387, having to do with the Ruedi Reservoir and its marketable pool. You are absolutely right, Senator Udall, we will be happy to continue to work on this bill and work with Colorado's water users. S. 3387 would provide for the release of water from the marketable yield pool of water stored in Reclamation's Ruedi Reservoir for the benefit of endangered fish in the Colorado River.

Reclamation recognizes the public interest embodied in the Upper Colorado River recovery program, the programmatic biological opinion, or PBO, that was issued to Reclamation on operations

affecting the 15-mile reach of the Colorado River and the efforts of water users in Colorado to find a permanent water supply as negotiated under the PBO. Reclamation, the Fish and Wildlife Service, and our other Federal partners have a long positive history with the recovery program. My written statement describes the fact that since 1990 the large majority of water used in this program has in fact been provided on a nonreimbursable basis by the Bureau of Reclamation.

With respect to S. 3387, the Department believes more negotiation is needed and that the bill as introduced is inconsistent with the cost share obligation that was a fundamental aspect of the 1999 PBO. In a September 1998 letter to the Fish and Wildlife Service, Colorado west slope and trans-mountain water interests agreed to each provide or secure funding to buy or build the 10,825 acre-feet of permanent water needed after the interim period ends in 2012. This commitment was subsequently incorporated into the PBO. Our goal is simply to maintain this non-Federal cost share in supplying the permanent water needed to comply with the Endangered Species Act.

In addition, we have concerns that as currently written the bill would impact the Federal treasury due to potential lost revenues that would result from removing this water from the marketable yield of water from Ruedi Reservoir without a repayment contract. The Department is prepared to work closely with the proponents of S. 3387 to identify reasonable alternatives to the bill's present language. We think there is room to evaluate and develop an affordable cost share that could be borne by west slope interests.

The third bill is S. 3404, the Leadville Mine Drainage Tunnel Act of 2010. The administration supports the general purposes of S. 3404, which are to ensure that the Leadville Mine Drainage Tunnel poses no threat to public safety or the environment and to facilitate the cleanup of a Superfund site in the vicinity. For reasons I'll summarize, however, the administration believes it is premature and perhaps unnecessary to move forward with this legislation.

The administration last testified before this subcommittee on legislation pertaining to the tunnel on April 24, 2008. Since that time, Reclamation completed a risk assessment analyzing potential dangers posed by water blockages inside the tunnel and worked cooperatively with the U.S. Environmental Protection Agency and the Colorado Department of Public Health and Environment to install additional drainage capability, also called a relief well, into the tunnel.

We have also held several public meetings with residents living near the tunnel—with residents living near the Leadville area, to convey Reclamation's finding that the LMDT is safe, and have continued an active dialog with the EPA as they set about revising their proposed remedy for Operable Unit 6 of the California Gulch Superfund site, which lies just above the LMDT.

We have also had very productive interactions with Senator Udall's office on this legislation and we appreciate those discussions.

The Department has 3 principal concerns with the language in S. 3404. First, we do not believe that the requirement in section 2 of the bill is necessary, which calls on the Secretary of the Inte-

rior to take steps to repair and maintain the structural integrity of the LMDT. This mandate has not been found to be technically necessary from a public safety or environmental perspective, nor cost-effective, given the findings of Reclamation's risk assessment completed in the fall of 2008.

Second, EPA and Colorado made a determination in June 2009 that portions of the current remedy for Operable Unit 6 of the California Gulch Superfund site are not efficient nor sustainable and the agencies are proposing to change that remedy. In view of this ongoing process, the Department does not believe section 3 of the bill, which authorizes new duties to the Secretary of the Interior, is appropriate at this point in time.

Finally, section 3 of the bill amends existing law of the 1992 authorization pertinent to Reclamation. It amends that law in a manner that could be construed as conferring responsibility on the Secretary for facilities which have been listed under the Comprehensive Environmental Response Compensation and Liability Act, CERCLA, or as subject to the Resource Conservation Recovery Act, RCRA. Reclamation is not a potentially responsible party for contamination at the Leadville Superfund site and we believe that this language serves to create that impression and could be construed as creating liability where none currently exists. My written statement expands on these points.

Returning to the risk assessment referenced previously, I would like to quickly provide some background. The assessment's purpose was to determine whether any threat was posed to public safety or the environment by the LMDT in the face of annual fluctuations in groundwater levels. Reclamation began its scientific risk assessment in 2007 and when initial findings were available they were independently peer reviewed. This review confirmed Reclamation's analysis that it is highly unlikely that a sudden release of water could occur from either a blockage in the LMDT or through the bulkheads installed in the tunnel.

When the risk assessment was published in the early fall of 2008, it was posted on the Internet and distributed to the media. Reclamation conducted 3 public meetings and sought public comment on the findings. We remain confident in the value of the risk assessment and in the validity of its findings.

Notwithstanding that confidence, Reclamation has an emergency action plan for the LMDT and a water treatment facility that has been in place since 2001 and is regularly updated. The plan is more fully discussed in my written testimony.

We understand the concern of Lake County Commissioners that Reclamation or the Department may 1 day walk away from the work at Leadville. I would like to affirm that Interior and this administration at its highest levels are committed to continuing to operate and maintain the treatment plant, pumps and pipelines and protect public safety at the LMDT.

In addition to these actions, we support the process of the Colorado Department of Health and Environment and EPA to determine a water management portion of the remedy at OU-6 that is more effective than those actions that were proposed and incorporated into the ROD in 2003.



Finally, the fourth bill, H.R. 4252. The last bill is the Inland Empire Perchlorate Groundwater Plume Assessment Act of 2010. The Rialto-Colton Basin is located in western San Bernadino County in California, about 60 miles east of Los Angeles in the upper Santa Anna River watershed. Groundwater presently constitutes about 79 percent of the drinking water supply in the Inland Empire. Perchlorate, which is both from synthetic and natural sources, has been detected in the main water-producing aquifers within the Rialto-Colton and adjacent basin and has contaminated water in more than 20 production wells that supply the communities within the basin and surrounding area.

The USGS has a long history of hydrologic work in the Rialto-Colton area and adjacent areas in the Inland Empire and it operates an extensive groundwater monitoring network, providing the public with real-time information on water levels and water quality. The USGS has developed predictive models on the Rialto-Colton Basin and adjacent groundwater basins to assist in the management of water resources in the area. These models are based on the current scientific understanding of the geology and hydrology in the area, including the aerial and vertical extent of the aquifers, hydraulic properties, recharge and discharge of groundwater, interaction between groundwater and surface water.

H.R. 4252 directs the Secretary, acting through the USGS, to conduct a study of water resources in the State that addresses a number of concerns, including delineating the aquifers in the Rialto-Colton Basin, determining the availability of groundwater resources for human use and the salinity of groundwater resources, identifying the source or sources of a recent surge in perchlorate concentrations in groundwater and the susceptibility of the aquifers to contamination, and characterize the surface and bedrock geology, including the effect of the geology on groundwater yield and quality.

The USGS has the scientific capacity to address the issues identified in H.R. 2316, a strong working relationship with many of the people currently working on groundwater quality issues in California's Inland Empire, and a reputation for providing unbiased information.

We note that the problem of perchlorate affecting drinking water supplies is not unique to the communities in the Rialto-Colton or the Inland Empire. Perchlorate is an issue throughout the Southwestern United States. Therefore, methods developed to understand the perchlorate contamination in the Rialto-Colton could be useful to water managers in other basins.

We note, however, that the activities called for in H.R. 4252 are already authorized by existing authorities. Any study conducted to fulfil the objectives of the bill would compete for funding with other administration priorities.

That concludes my testimony. Both myself and Mr. Larson will be ready to answer questions at the appropriate time.

[The prepared statements of Mr. Connor follow:]

## PREPARED STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, ON S. 3387

Madam Chairwoman and Members of the Subcommittee, I am Michael Connor, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to be here today to present the views of the Department of the Interior (Department) on S. 3387, a bill to provide for release of water from the Marketable Yield pool of Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River, and for other purposes. The Department has concerns with the language of S. 3387 which I will describe below.

Reclamation recognizes the public interest in the Upper Colorado River Recovery Program and the Programmatic Biological Opinion (PBO) issued to Reclamation on operations affecting the 15-Mile Reach of the Colorado River, and supports the efforts of water users in Colorado to find permanent water supply requirements as negotiated under the PBO. Reclamation, the Fish and Wildlife Service (Service) and our other Federal partners have a long, positive history with the Recovery Program. Based on survival and propagation rates tracked by the Service, these recovery programs have promoted recovery of endangered fish species in the River.

The Department's contribution of water for fish habitat in the 15-Mile Reach Upper Colorado River has been substantial. From 1990 to 1999, Reclamation provided at least 90% of the water every year under prior biological opinions for the four fish species, all on a non-reimbursable basis. This averaged just under 35,000 acre-feet during the 1990s. Since adoption of the PBO in 1999, Reclamation's annual contribution of water has ranged from 20,825 acre-feet up to 50,825 acre feet. Today, Reclamation's non-reimbursable contribution of water to this Program provides roughly 75% of the water available to the Service for the 15-Mile Reach, which comes from various Reclamation facilities including Ruedi Reservoir.

Beginning in 2013, S. 3387 would authorize the annual release of 5,412.5 acre feet of water from Ruedi Reservoir. The legislation further provides that this annual release can be executed without a contract between the Federal government and the non-Federal parties. The absence of a contract is problematic for operational and financial reasons.

In a September 16, 1998, letter to the Service, Colorado West Slope and transmountain diverter water interests agreed to each "provide or secure funding to buy or build . . ." 5412.5 acre-feet of permanent water after the interim period which ends in 2012, with the water users assuming responsibility for the 5412.5 acre-feet as of January 1, 2013. In light of this, the Department believes more discussion needs to take place between our agency, the State of Colorado, and west slope water users on S. 3387. The Department believes that the bill as written is inconsistent with this cost-share arrangement which was a fundamental aspect of the 1999 PBO.

Associated with this issue, the Department is concerned that the bill will impact the Federal treasury due to potential lost revenues that would result by removing 5412.5 acre-feet of water from the Marketable Yield pool (51,500 acre feet) of water from Ruedi Reservoir without a repayment contract.

In 1999, the Service issued a PBO to Reclamation on operations affecting the 15-Mile Reach of the Colorado River. In addition to the 10,825 acre-feet of water Reclamation was to provide annually until 2012, the PBO, in recognition of the September 1998 letter, called for east and west slope water users to have permanent agreements in place to provide 10,825 acre-feet of water per year by 2012. The "10825 Stakeholders" as they became known began meeting in 2007 to review possible alternatives and have now selected a preferred alternative, which involves the west slope water users providing their commitment through the continued release of water from Ruedi Reservoir.

Ruedi Reservoir was constructed to provide storage for replacement of out-of-priority diversions to the east slope, which is known as the replacement capacity, and to provide water for municipal and industrial development on the west slope. Ruedi Reservoir's largest pool of water is referred to as the Regulatory Capacity. The Regulatory Capacity (73,278 acre-feet) is divided into three smaller pools, one of which is the Marketable Yield pool. The Marketable Yield pool is 51,500 acre-feet, of which 16,373 acre-feet remains available for contracting. The S. 3387 language would remove 5,412.5 acre-feet of the water available for future contracts and set it aside for the purposes of the bill without any repayment for construction, operation, or maintenance costs that are associated with this water, and incurred by the United States. Under the 1958 Water Supply Act (Public Law 85-500), and the 1962 authorization for the Fryngpan-Arkansas Project (Public Law 87-590), these costs are reimbursable.

In general, the Department views the principle of a reasonable non-Federal cost-share contribution as an important one to maintain. Water development, despite its benefits, has had an impact on aquatic ecosystems. In this case, non-federal water development has contributed to certain species being listed under the ESA. The beneficiaries of that development need to contribute to the mitigation necessary to protect and recover species. We believe that was what was contemplated in the PBO.

As S. 3387 is written, the non-federal cost sharing obligations of the west slope would be shifted to the United States. Not only is this inconsistent with the PBO as it applies to the west slope, it is also inconsistent with the approach taken by the east-slope water users who are meeting their cost-share obligation under the September 1998 letter and the PBO. Also, as alluded to earlier, the United States could lose revenues from the foregone 5,412.5 acre-feet of water that might otherwise be provided under a repayment contract. These revenues total about \$6,800,000 in capital repayment if paid today in a one-time payment. Additionally, the revenues foregone from operation, maintenance, and replacement (OM&R) would annually total over \$18,000, based on the OM&R figures from the previous five years.

A final issue associated with the absence of a repayment contract concerns how releases of water will be made from Ruedi Reservoir. At a minimum, the language in the bill should articulate the need to coordinate releases with Reclamation and other interested parties, and that measures need to be taken to ensure that such releases of water are protected to ensure benefits to endangered species.

In summary, I'd like to stress the importance of maintaining the 1999 PBO for the benefit of aquatic resources and water users in Colorado. Accordingly the Department is prepared to work closely with non-Federal parties to identify reasonable alternatives to the bill's present language.

This concludes my written remarks. I would be pleased to answer any questions from the Subcommittee.

S. 3404

Madam Chairwoman and Members of the Subcommittee, I am Michael Connor, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 3404, the Leadville Mine Drainage Tunnel Act of 2010. The Administration supports the sponsors' intent with this bill to ensure that the Leadville Mine Drainage Tunnel (LMDT) poses no threat to public safety and the environment, and to facilitate the clean up of a Superfund site in the vicinity. For reasons described below, however, the Administration has both policy and technical concerns about this bill and does not believe that legislation is warranted at this time. We will continue to work with Federal, State, and non-Federal parties on water resource issues at the Leadville Mine Drainage Tunnel (LMDT).

The Department last testified before this Subcommittee on legislation pertaining to the Leadville Mine Drainage Tunnel (LMDT) on April 24, 2008. Since that time, Reclamation completed a Risk Assessment analyzing potential dangers posed by water blockages inside the tunnel, and worked cooperatively with the U.S. Environmental Protection Agency (EPA) and Colorado Department of Public Health and Environment (CDPHE) to install additional drainage capability into the LMDT. We have also held several public meetings with residents living near the Leadville area to convey Reclamation's findings that the LMDT is safe, and have continued an active dialogue with the EPA as it revises the proposed remedy for Operable Unit 6 of the California Gulch National Priority List (Superfund) Site, which lies above the LMDT. We have also had very productive interactions with Senator Udall's office on this legislation, and we appreciate those discussions.

The Department has three principal concerns with the language in S. 3404. First, we do not believe that the requirement in Section 2 of the bill, which calls on the Secretary of the Interior to take "such steps to repair and maintain the structural integrity of the LMDT as may be necessary," takes into consideration Reclamation's 2008 Risk Assessment. The Risk Assessment, completed in the Fall of 2008, is described in greater detail below. Second, a determination by the EPA and CDPHE was made in June of 2009 that portions of the current remedy for Operable Unit 6 of the California Gulch Superfund site are not efficient or sustainable, and the agencies are proposing to change that remedy this year. EPA and CDPHE jointly concluded that "using the mine workings and the [LMDT] to convey water cannot be relied on for the long-term." In view of this ongoing process, the Department also does not believe that Section 3 of the bill, which contemplates new responsibilities for the Secretary of the Interior to treat additional flows of water diverted from the

surface of Operable Unit 6 into the Leadville Mine Drainage Tunnel, is appropriate. Finally, Section 3 of the bill amends Section 708(a) of Public Law 102-575 in a manner that could be construed as conferring responsibility on the Secretary for facilities which have been listed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or are subject to the Resource Conservation and Recovery Act (RCRA). Reclamation is not a Potentially Responsible Party for contamination at the Leadville Superfund site, and believes that this language serves to create that impression and could be construed as creating liability where none currently exists.

The LMDT is located in Lake County, Colorado, and was originally constructed by the Bureau of Mines from 1943 to 1952. It was intended to remove water from portions of the Leadville Mining District to facilitate the extraction of lead and zinc ore for the WWII and Korean War efforts. Reclamation acquired the LMDT in 1959 with the intention of using the tunnel as a source of water for what was then the proposed Fryingpan-Arkansas project. Due to more senior existing claims on the water, no water rights for the discharge were ever obtained by Reclamation. The LMDT drainage discharges into the East Fork of the Arkansas River.

In 1983, EPA listed the California Gulch Site on the National Priorities List of Superfund sites. The 18-square-mile area was divided into 12 areas called Operable Units (OU). The LMDT is located beneath a portion of a surface unit, OU6 that covers approximately 3.4 square miles in the northeastern quadrant of the Site. Groundwater in the California Gulch area is within a separate operable unit—designated OU12. Reclamation holds title to the LMDT on behalf of the United States, but does not own or operate any sources of contamination on the surface of OU6 (i.e., waste rock or tailings), or any portion of the surface itself.

As part of the implementation of an OU6 remedy proposed in 2003, EPA has been collecting surface runoff from mine waste piles and discharging that surface runoff into the Marion Shaft, where it moves through the mine workings to the LMDT. This water is seasonal and totals approximately 3 to 5 million gallons a year. It has proven to be possible for the Reclamation plant to treat limited amounts of waters from OU6 for EPA pursuant to agreement and EPA's reimbursement. After reviewing technical data suggesting that the remedy proposed in 2003 was neither effective nor sustainable, EPA in June 2009 announced that, in 2010, it planned to revise this proposed 2003 remedy, a process that is nearing completion today.

The new data sheds additional light on the complex site hydrogeology, and suggests that the collection of water at the surface and the diversion of portions of the water into existing shafts, and to the LMDT, is not effective in the long term. Seasonally, groundwater levels fluctuate near the LMDT. Groundwater flows into the LMDT at numerous locations, and flows out of the LMDT at the portal and also into surrounding rock formations. In addition, EPA and CDPHE have determined that the new remedy should prevent the generation of contaminated surface waters in the first instance, thereby alleviating the additional 3 to 5 million gallons of contaminated surface water that is currently diverted through shafts into the LMDT.

These characteristics also heavily influenced the findings of Reclamation's 2008 Risk Assessment. The assessment's purpose was to evaluate the stability and assess the risk associated with the LMDT. Reclamation began its scientific Risk Assessment in 2007, and when initial findings were available, they were independently peer reviewed. The Risk Assessment utilized a similar process to the one Reclamation uses to assess risk at its dams, a model that is an international standard for conducting risk assessments. The independent peer review confirmed Reclamation's analysis that it is highly unlikely that a sudden release of water could occur from either a blockage in the LMDT, or through the bulkheads installed in the tunnel. Moreover, the assessment concluded that even if an existing natural blockage in the upper part of the LMDT failed rapidly, a sudden release of water through the lower blockage and bulkheads is unlikely.

When the Risk Assessment was published in the early Fall of 2008, it was posted on the Internet and distributed to the media. Reclamation conducted three public meetings and sought public comment on the findings. We remain confident in the value of the Risk Assessment and the validity of its findings.

There are three sources of LMDT water currently entering the treatment plant. First, the natural rate of drainage from the tunnel portal is 500 gallons per minute (gpm), or 1.1 cubic feet per second (cfs). Second, there is a well in the LMDT about 1000 feet in from the portal that pumps about 500 gpm or 1.1 cfs directly to the treatment plant. And third, since June of 2008, Reclamation has been receiving another 700 gpm or 1.6 cfs, accommodating the additional drainage capability via another well installed by EPA about 4,700 feet in from the portal. This well was installed in response to public concern about rising water levels in the vicinity of the LMDT.

Reclamation has a maximum treatment plant capability to process water at a rate of nearly 2,100 gpm from the LMDT or 4.8 cubic feet per second cfs. The NPDES permit for the facility states that the 30-day Average LMDT discharge cannot exceed 1,736 gpm or 3.89 cfs with a Daily Maximum ceiling of 2,313 gpm or 5.2 cfs.

As these actions illustrate, Reclamation is currently managing safely all waters discharged to the LMDT. Nevertheless, Reclamation has an Emergency Action Plan for the LMDT and water treatment facility that has been in place since 2001 and is regularly updated. Water level indicators and other warning systems near the LMDT are tied into the water treatment plant's auto-dialer for employees, and an audible warning system was installed in 2002 to alert the Village at East Fork residents in the event of an emergency. The system plays an alert message in Spanish and English.

We understand the concern of some in Colorado that Reclamation may one day "walk away" from the work at Leadville. I would like to affirm that Reclamation is committed to assuring that the treatment plant, pumps and pipelines are operated in a manner so as to protect public safety at the LMDT. In addition to these actions, we support the process of CDPHE and EPA to determine a water management portion of the remedy at OU6 that is more effective than actions the agency proposed in 2003. Recent studies conducted by EPA conclude that using the mine workings and the LMDT to convey water cannot be relied on for the long term, and that it is neither cost effective nor efficient to treat diluted acid rock drainage this way in perpetuity. Reclamation is awaiting the publication by EPA of a revised Record of Decision, and believes no legislation should be enacted until that process is complete. As such, the Administration does not believe that S. 3404 is warranted at this time.

At a minimum, if any legislation were to proceed, it should be amended to address the issues raised herein.

This concludes my written statement. I am pleased to answer any questions from the Subcommittee.

Senator STABENOW. Thank you very much.

Mr. Peterson, welcome.

**STATEMENT OF DOUG PETERSON, PRESIDENT, MINNESOTA FARMERS UNION, ST. PAUL, MN**

Mr. PETERSON. Thank you, Chairman Stabenow—excuse me—Chairwoman Stabenow and Ranking Member Brownback, and also Senator Udall and the subcommittee. I want to thank you today for allowing me to testify in front of this committee on the water quality on data collection of the Upper Mississippi, specifically S. 2779.

I'm Doug Peterson. I'm assessment of the Minnesota Farmers Union and my family and I—my wife is here also, Ellie—we operate a farm located south of Madison, Minnesota. We produce wheat, corn, soybeans, and alfalfa. I currently serve on the Board of Directors of the National Farmers Union and also serve as its national secretary.

As the subcommittee considers S. 2779, the Upper Mississippi River Basin Protection Act, I would like to highlight some key perspectives and elements from a farmer's point of view. Farmers and ranchers have a variety of tools available to properly manage sediment and nutrient loss. Federal programs authorized under the farm bill and implemented by the U.S. Department of Agriculture also provide some necessary technical and financial assistance to maintain and improve natural resources on farmers' property. Depending upon the local resources and the needs and the agricultural production of the individual farmer, a range of activities can assist in avoiding, controlling, or trapping sediment and nutrient runoff.

We in Minnesota have State-level programs that work in partnership with Federal programs to provide further improvement of

natural resource conservation benefits. In Minnesota, the Land of 10,000 Lakes, the most recent listings of the pollution control agency has over 2500 polluted surface bodies of water listed as impaired in Minnesota that have been failed or identified under the Clean Water Act and water quality standards for their designated use.

So far, about 40 percent of the water resources in Minnesota that have been assessed against water quality standards do not meet at least one standard, a rate comparable with a lot of other States. Only a small percentage, about 20 percent, of Minnesota's river miles and lakes have been assessed so far.

Because of the impaired water issues and other issues that we confront as the Minnesota Farmers Union, we have been active in recent years on water-related issues that pertain to the Upper Mississippi Basin, and the Minnesota Farmers Union along with 19 other farm organizations, including the Farm Bureau and commodity groups, we have come together to form the Minnesota Agricultural Water Resource Coalition. The purpose is to develop and implement a strategic educational, communication, and public relations program to inform agricultural producers in Minnesota about the water quality issues. Not only that; in addition, Minnesota agricultural groups have formed a working drainage group to work on the issues that concern Minnesota's nearly 17,000 miles of public drainage ditches that are critical to the Upper Mississippi River Basin area.

The goals of this legislation, it fits well with the direction that the Farmers Union in Minnesota has been traveling. In 2006 the Minnesota legislature passed the Clean Water Legacy Act, which is the policy framework that describes how Minnesota will restore its impaired waters and protect high quality resources. That act also stresses the need for public participation in those plans, as it contains the reduction of pollution strategies.

Strategies that consider local needs is also a key. Another component of the act is the need for State and local entities to cooperate and coordinate their water planning and monitoring efforts. The Minnesota Farmers Union is especially interested in monitoring and inventory efforts to establish parameters around natural background loading in waters, and legislation would helpfully and hopefully work to address what Minnesota Farmers Union has supported, that projects that defend and define the DNA markers of animal species fecal matter—in other words, fecal coliform in the water column—and natural sloughing, and establishment of pre-sediment levels.

In closing, Madam Chair, I would just like to say that and emphasize that the property rights should be recognized as farmers and producers as a monitoring network is established and maintained. It is absolutely critical that any data collected should be sensitive to landowner privacy, and also as provided in this legislation.

I want to thank you for this time. I will stand for questions. Thank you.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF DOUG PETERSON, MINNESOTA FARMERS UNION,  
ST. PAUL, MN

Chairwoman Stabenow, Ranking Member Brownback and members of the Subcommittee, thank you for the opportunity to testify today about the status of water quality and data collection efforts in the Upper Mississippi River Basin. My name is Doug Peterson and I am president of the Minnesota Farmers Union (MFU). My family and I own and operate our farm located south of Madison, Minnesota, where we produce wheat, corn, soybeans and alfalfa. In addition to my responsibilities at MFU, I also serve on the board of directors for the National Farmers Union (NFU).

Farmers Union has been working since 1902 to protect and enhance the economic wellbeing and quality of life of family farmers, ranchers and rural communities through advocating grassroots-driven policy positions adopted by its membership. Our members understand the critical role of natural resource stewardship in maintaining our ability to provide food, feed and fuel, as well as a variety of ecosystems services such as clean water from our farms and ranches.

As the subcommittee considers S.2779, the Upper Mississippi River Basin Protection Act, I will highlight some key elements from a producer's perspective. Farmers and ranchers have a variety of tools available to properly manage sediment and nutrient loss. Federal programs authorized under the Farm Bill and implemented by the U.S. Department of Agriculture (USDA) provide necessary technical and financial assistance to maintain and improve natural resources on farmers' property. Depending on the local resource needs and the agricultural production of the individual producer, a range of activities can assist in avoiding, controlling or trapping sediment and nutrient run-off. State-level programs work in partnership with federal programs to further improve natural resource conservation benefits.

In Minnesota the land of 10,000 lakes, the most recent listings of the Minnesota Pollution Control Agency has over 2,500 surface bodies of water listed as impaired waters in Minnesota that have failed to meet water quality standards for their designated use. So far, about 40 percent of the water resources in Minnesota that have been assessed against water quality standards do not meet at least one standard, a rate comparable with what other states are finding. Only a small percentage of Minnesota's river miles and lakes have been assessed so far.

Because of the impaired waters issue and others, Minnesota Farmers Union has been very active in recent years on water related issues that pertain to the Upper Mississippi Basin. MFU came together with nineteen other Minnesota farm organizations including the Farm Bureau and commodity groups to form the Minnesota Agricultural Waters Resources Coalition to develop and implement a strategic educational, communications and public relations program to inform agricultural producers in Minnesota about water quality issues. In addition, Minnesota agriculture groups have formed a drainage work group to work on issues that concern Minnesota's nearly 17,000 miles of public drainage ditches that are critical to the Upper Mississippi River Basin area.

The goal of this legislation fits well with the direction that Farmers Union and Minnesota have been moving. In 2006, the Minnesota Legislature passed the Clean Water Legacy Act, which is a policy framework that describes how Minnesota will restore its impaired waters and protect high quality water resources. The Act stresses the need for public participation to ensure that implementation plans contain pollution reduction strategies that consider local needs. Another key component of the Act is the need for state and local entities to cooperate and coordinate their water planning and monitoring efforts.

MFU is especially interested in monitoring and inventory efforts to establish parameters around natural background loading in waters, and this legislation would hopefully work to address that. MFU has supported projects to define DNA markers of animal species fecal matter, and natural sloughing, and establishment of pre-settlement levels.

Data collection and analysis plays a key role informing program implementation decisions. The Mississippi River Basin Healthy Watershed Initiative (MRBI) recently launched by the USDA-Natural Resources Conservation Service (NRCS) is a conservation-systems approach to managing and optimizing nutrient use and minimize runoff and soil erosion. The MRBI targets watersheds and subwatersheds based upon consistent evaluation of data from a variety of sources, including the USGS and state-level water quality data. The USGS data collection network proposed by this bill would provide information essential to future program planning as well as providing a quantifiable measure of the program's effects.

In addition to conservation program implementation, the availability of sound data is also important in measuring outcomes to determine program effectiveness. Data collected by utilizing sound scientific methodologies and interpreted with rig-

orous statistical analysis can provide a wealth of information for lawmakers, government agencies and agricultural producers to help them make policy and resource management decisions.

The legislation correctly recognizes the need to integrate data analysis with existing efforts across various agencies to create a baseline understanding of overlap, data gaps and redundancies. One of these already functional programs is the NRCS Conservation Effects Assessment Project (CEAP). CEAP assessments are carried out at the field-, watershed-and landscape-scale and include analysis of the cumulative effects and benefits of conservation practices on natural resources and the environment.

USDA conservation program practices are being assessed under CEAP to quantify the environmental effects of conservation practices and programs and develop the science base for managing the agricultural landscape for environmental quality. Programs under consideration by CEAP include the Environmental Quality Incentives Program (EQIP), the Conservation Reserve Program (CRP), the Conservation Stewardship Program (CSP), the Wetland Reserve Program (WRP), the Wildlife Habitat Incentives Program (WHIP), the NRCS Conservation Technical Assistance Program and the Grassland Reserve Program (GRP).

Given the vast landscape over which water quality information will be gathered, implementation of data collection as proposed under this bill will require an extensive network of monitoring stations, equipment and personnel. With more than 60 percent of the Upper Mississippi River Basin in cropland or pasture, private landowners are logical partners in the establishment of a nutrient and sediment monitoring network. I emphasize that private property rights should be recognized as a monitoring network is established and maintained, and it is absolutely critical that any data collected should be sensitive to landowner privacy as provided for in the legislation.

Program effectiveness must be measured in an outcome-based approach where real changes and environmental benefits are tracked and rewarded. Efforts to improve data collection and analysis related to water quality moves us toward that goal by providing essential information that can be used to continually improve programs and practices for the best possible outcome. Farmers and ranchers have historically been our best soil and water conservationists when given the proper tools and programs, and continue to seek opportunities to protect and conserve the natural resources that are essential to agricultural production and rural communities.

Senator STABENOW. Thank you very much.  
Mr. Mueller, welcome.

**STATEMENT OF ANDREW A. MUELLER, PRESIDENT, BOARD OF DIRECTORS, COLORADO RIVER WATER CONSERVATION DISTRICT, GLENWOOD SPRINGS, CO**

Mr. MUELLER. Good afternoon, Madam Chair Stabenow, Ranking Member Brownback, and Senator Udall. My name is Andy Mueller. I am President of the Board of Directors of the Colorado River Water Conservation District, commonly referred to as the Colorado River District.

I want to thank you for this opportunity to share the Colorado River District's position regarding the importance of S. 3387. I also want to thank Commissioner Connor for his willingness and the willingness of his Department to find and work with us—find a mutual solution for the issues presented by this bill.

The Colorado River District is a political subdivision of the State of Colorado, responsible for the protection and development of the Colorado River Basin's water in Colorado. We have been partners with Interior agencies, States, water users, power and environmental interests in the cooperative and highly successful recovery program for the endangered fish on the Upper Colorado River since its inception in 1988.

S. 3387 would dedicate a small portion of western Colorado's pool of water in the Federal Ruedi Reservoir to the recovery program.



I want to share with you the importance of this legislation to the Colorado water users and the very real challenges we face.

Let me begin by offering some perspective on the importance of the Colorado River and this legislation to the entire State of Colorado. The Colorado River provides water to nearly all of Colorado. Numerous diversions move water from the natural basin of the Colorado River to each of Colorado's major river basins. Among the largest of these diversions are 2 U.S. Bureau of Reclamation facilities, the Colorado Big Thompson and the Frying Pan-Arkansas projects. The latter includes the Ruedi Reservoir as a principal project feature and is the subject of this legislation.

Additionally, hundreds of mostly small non-Federal projects provide vital water supplies to the metropolitan areas on both sides of Colorado's Continental Divide. All of these water users rely upon the continued success of the recovery program for compliance with the ESA.

A key component of the recovery program is the 1999 U.S. Fish and Wildlife Service's programmatic biological opinion, or PBO, for the mainstream of the Colorado River in Colorado. The PBO provides Endangered Species Act compliance for 5 U.S. Bureau of Reclamation projects in Colorado. The PBO also fulfills ESA requirements for all existing non-Federal water projects and water uses on the main stem of the Colorado River in Colorado.

This amounts to total Federal and non-Federal depletions of 1 million acre-feet annually, serving over 4 million Colorado citizens and water users. The main stem basin of the Colorado River in Colorado is heavily used by agriculture, municipalities, and industry on both sides of the Continental Divide, which roughly divides the State. Tensions, alluded to earlier by Senator Udall, frequently erupting in litigation or worse, between the east and west slope water interests in Colorado, are legendary.

I'm here today to present a true consensus position among those often-fractious parties. As part of the biological opinion, Colorado water users agreed to replace 10,825 acre-feet per year of Ruedi releases currently being made under earlier biological opinions with permanent water sources. Water users agreed that the commitment should be split evenly between east and west slope water users, but all of the water must be provided for this commitment to be fulfilled.

This bill is necessary for the implementation of this agreement. From the recovery program's inception in 1988, we have read the headlines and watched news features regarding the ESA's impact on water users in other regions.

The recovery program distinguishes the Upper Colorado River from other fractious basins as it provides ESA compliance over Federal and non-Federal water users and has done so without a single legal challenge.

Reclamation is concerned that water users are somehow reneging on our commitment, on our agreement to provide a permanent water supply to the endangered fish. We are not.

Ruedi Reservoir is somewhat unique among Reclamation projects. Ruedi was built as compensation to western Colorado and the people therein for the loss of Colorado River water diverted to

Arkansas—to the Arkansas River, through Reclamation’s Frying Pan-Arkansas project.

The majority of the water in Ruedi Reservoir is dedicated to the west slope water use. We see western Colorado’s willingness to dedicate a portion of our uncontracted pool of Ruedi water to the endangered fish recovery as a commitment of our water. Accordingly, I’m here to ask you for your support of S. 3387 as the only practical implementation for continued compliance with the 1999 PBO.

Thank you.

[The prepared statement of Mr. Mueller follows:]

PREPARED STATEMENT OF ANDREW A. MUELLER, PRESIDENT, BOARD OF DIRECTORS, COLORADO RIVER WATER CONSERVATION DISTRICT, GLENWOOD SPRINGS, CO, ON S. 3387

I want to thank Chairman Stabenow and Senator Brownback for this opportunity to share the Colorado River Water Conservation District’s position with the subcommittee regarding the importance of S.3387, which dedicates a portion of the Western Colorado Marketable Pool in Ruedi Reservoir to the Upper Colorado River Endangered Fish Recovery Program (“Recovery Program”).

The Colorado River Water Conservation District (“River District”) is the principal policy body focused exclusively on the Colorado River within Colorado. We are a political subdivision of the State of Colorado responsible for the protection and development of the Colorado River basin’s water resources to which the State of Colorado is entitled under the 1922 and 1948 Colorado River interstate water compacts. The River District includes all or part of 15 counties in west-central and northwest Colorado, including the entirety of the mainstem of the Colorado River basin in which both Ruedi Reservoir and the critical habitat for four fish species listed as endangered occur.

The Colorado River provides water to almost the entire state of Colorado. Numerous transmountain diversions move water from the Colorado River’s headwaters to each of Colorado’s other major river basins. Among the largest of these diversions are two U.S. Bureau of Reclamation (“Reclamation”) projects: the Colorado-Big Thompson and Fryingpan-Arkansas projects. The latter includes Ruedi Reservoir as a principal project feature and is the subject of this legislation. Additionally, non-federal projects provide vital water supplies to Colorado’s metropolitan areas, including the Denver metro area, Colorado Springs, and Pueblo.

All these projects are 100% dependent on the continued success of the Recovery Program for continued service and water delivery. Technically, the Program serves as the “reasonable and prudent alternative” under provisions of the Endangered Species Act (“ESA”). The Recovery Program provides ESA compliance for approximately 1,800 water projects depleting 2.8 million acre-feet per year in the Colorado, Wyoming, and Utah portions of the Upper Colorado River Basin. These include every Reclamation reservoir and project in the Upper Colorado River basin.

A key component of the Recovery Program and ESA compliance is the 1999 U.S. Fish and Wildlife Service’s programmatic biological opinion (PBO<sup>1</sup>) for the “15 Mile Reach” of the Colorado River in Colorado. Only with the PBO in place can the following five U.S. Bureau of Reclamation projects continue operations in compliance with the ESA:

- Fryingpan-Arkansas Project (including Ruedi Reservoir),
- Colorado-Big Thompson Project,
- Collbran Project,
- Grand Valley Project, and
- Silt Project.

The PBO also fulfills ESA requirements for all existing non-federal water projects and water uses of the Colorado River from its confluence with the Gunnison River at Grand Junction, Colorado to its headwaters. This amounts to total depletions (federal and non-federal) of one million acre-feet annually. Additionally, the PBO allows for 120,000 acre-feet/year of new water development.

<sup>1</sup>“Final Programmatic Biological Opinion for Bureau of Reclamation’s Operation and Depletions, Other Depletions, and Funding and Implementation of Recovery Program Actions in the Upper Colorado river above the Confluence with the Gunnison River,” December 20, 1999.

As part of the PBO, Colorado water users, including Reclamation, agreed to provide 10,825 acre-feet/year of water permanently. The PBO explicitly recognized Ruedi Reservoir as a potential source of this permanent water.

S. 3387 permanently dedicates 5,412.5 acre-feet from the marketable pool of Ruedi Reservoir to fulfill half of the water users' commitment to provide 10,825 acre-feet of water annually to assist fish recovery. The marketable pool (51,500 acre-feet) in Ruedi Reservoir, as defined in the Fryingpan-Arkansas Project's Operating Principles, is dedicated to water uses on Colorado's west slope, consistent with Colorado water law.

The PBO provides for an additional 10,825 acre-feet of releases from Ruedi Reservoir on an interim basis through 2012. The PBO also requires replacement of an additional 5,412.5 acre-feet by east slope water users from other sources. Accordingly, with passage of S.3387, Ruedi Reservoir will have a net increase of 5412.5 acre-feet of water in its West Slope marketing pool after 2012.

The River District enjoys a long-standing and collaborative working relationship with Reclamation. We are therefore distressed that Reclamation opposes this legislation. From our discussions with Reclamation officials, we understand their principal concern is providing this water at no cost to water users. We respond in five parts.

First, Reclamation seems to be ignoring the fact that other provisions of the PBO restore 5,412.5 acre-feet to the marketable pool at Ruedi. S.3387 is required to comply with the ESA, in particular with the PBO. Without the PBO, the restored water, plus the 5,412.5 addressed in the legislation, would be released annually from Ruedi for fish recovery under previous biological opinions. With this legislation, there is a net increase in the contracting pool of 5,412.5 acre feet of water. Without it, there is a substantial decrease in the contracting pool of water in Ruedi.

Second, as mentioned above, Reclamation, specifically its five projects covered by the PBO, is the principal beneficiary of the PBO. Reclamation projects are the single largest water user in the mainstem basin of the upper Colorado River. As such, Reclamation is the primary beneficiary of the ESA protections of the Recovery Program and the PBO.

Third, water dedicated to fish and wildlife (and recreation and other environmental purposes) in Reclamation reservoirs is traditionally non-reimbursable, i.e., provided at no cost to water users. We simply seek similar treatment for this water.

Fourth, the authorizing legislation for the Fryingpan-Arkansas Project specifies, ". . . the Secretary of the Interior is directed . . . to comply with the laws of the state of Colorado relating to the control, appropriation, use and distribution of the water therein."<sup>2</sup> "The primary purpose of Ruedi Reservoir . . . (is) the protection of western Colorado water users by the provisions of Colorado Revised Statutes" requiring "any works or facilities shall be designed for exportation of water from the natural basin of the Colorado River . . . shall be operated in such a manner that the present appropriations of water, and in addition thereto prospective uses of water . . . within the natural basin of the Colorado River . . . will not be impaired nor increased in cost at the expense of the water users with the natural basin."<sup>3</sup> Dedicating a portion of this water to fish recovery efforts and fulfillment of the PBO, provides protections to Western Colorado water users consistent with the authorizing legislation and principal purpose of Ruedi Reservoir.

Fifth, this legislation represents no actual cost to the federal Treasury either in lost or foregone revenues, at least for the foreseeable future. Contracts for water from the Marketable Pool of Ruedi Reservoir have been available for 28 years. To date, less than half of that pool is under contract. There simply is little foreseeable demand for the remaining water from this pool; therefore, western Colorado water users are willing to permanently dedicate a small portion of its water in Ruedi to endangered fish recovery in order to provide ESA protection for approximately one million acre-feet of existing depletions (both federal and non-federal) plus 120,000 acre-feet of new depletions. Additionally, passage of this legislation yields a net increase to the marketable pool of 5412.5 acre-feet of water, more than offsetting any theoretical "loss."

Finally, there is a practical and institutional impossibility for western Colorado water users to pay the contract price for Ruedi Reservoir water if this legislation fails. Reclamation's Colorado water projects are the larger west slope projects covered by the PBO. Other water uses are predominantly small agricultural and municipal uses. These water users simply do not have the financial capacity to pay the contract price for Ruedi water for release to endangered fish habitat. The contract-

<sup>2</sup>P.L. 87-590, 76 Stat. 389 at Section 5(e).

<sup>3</sup>Page 2, Paragraph 7 of House Document 130 in accordance with House Resolution 91, 87th Congress, March 15, 1961.

purchase price of a 5412.5 acre foot contract for Ruedi water is forecast to be roughly \$8 million in 2013, when water deliveries from a permanent water source are required. Furthermore, neither the River District nor any other entity has the legal authority or institutional mechanism to impose a fee or levy a tax to provide the necessary revenues from water users for payment of a contract from Ruedi Reservoir.

The consequence of failure to secure annual water releases from Ruedi Reservoir with this legislation is reopening of the PBO and new ESA consultations on the five Reclamation projects and hundreds of individual water users and water projects in the Colorado River basin in Colorado.

Reclamation, as the largest water user in the basin, has the most at risk in the event of failure of the PBO. Non-compliance with the PBO and consequent reopening of the PBO creates serious regulatory and financial uncertainty for Reclamation and other water users, including possible imposition of expensive and open-ended selenium management program in the Colorado River basin, as was imposed in the Gunnison Basin under that basin's recent PBO for the same endangered fish.

The Recovery Program for the Endangered Fishes of the Upper Colorado River is the most successful recovery program in the nation. Its continued success for the benefit of the four listed fish species and federal and non-federal water projects is dependent on passage of S.3387. Accordingly, the Colorado River District respectfully urges the Subcommittee's support of S.3387.

Permanent assignment of 5,412.5 acre-feet of water in Ruedi Reservoir from the west slope's marketable yield pool to endangered fish recovery accomplishes several important federal goals:

- Ensuring continuing ESA compliance pursuant to the PBO for all east and west slope Colorado River mainstem water users upstream of the Gunnison River, including principally five U.S. Bureau of Reclamation projects;
- Fulfilling Congressional intent and ensuring compliance with Colorado law regarding the purposes of Ruedi Reservoir, namely that the marketable yield pool continues to be available for the benefit of west slope water users by providing ESA compliance for uses of this water;
- Restoring 5412.5 acre-feet to the Ruedi Marketing Pool for future use; and
- Maintaining consistency with long-standing Congressional policy and Reclamation law that water dedicated to fish and wildlife purposes from Reclamation projects is a non-reimbursable project cost.

Senator STABENOW. Thank you very much.

Mr. Olsen.

Mr. OLSEN. Thank you, Madam Chair, Senator Brownback, Senator Udall. I appreciate the opportunity this afternoon to testify in support of the Leadville Mine Drainage Tunnel Act of 2010. My name is Ken Olsen. I'm the chair of the Board of Lake County Commissioners. Leadville is our county seat and I've spent all of my life in Leadville and have a reasonable familiarity with the Leadville Mine Drainage Tunnel, commonly referred to as the LMDT.

First I want to point out that Leadville is situated at the headwaters of the Arkansas River. What happens in Leadville with water affects downstream farmers, municipal water supplies, and the trans-basin drinking water of Aurora and Colorado Springs—a lot of people.

The drainage tunnel is 11,299 feet long. It was driven as an emergency World War Two effort to de-water and access the Leadville Mining District for the extraction of zinc, lead, and manganese. It was driven 6,000 feet until 1945, when money ran out and the war ended, and started up again in 1952 during the Korean Conflict, when it was driven to its final length. This was all done by Federal appropriations through the War Production Board and the Bureau of Mines.

In 1959 the tunnel was transferred to the Bureau of Reclamation, who wanted it for the water rights in connection with the Fry-

ing Pan-Arkansas Project of the Bureau. That did not work out well for the Bureau as the water was heavily metal-laden and water rights were in issue. In the late 1960s, sinkholes of significant size started appearing along the tunnel, which had not been maintained by the Bureau. The most significant were adjacent to Colorado Highway 91, which the tunnel goes under. The caving tunnel and concern over the water building up behind the blockages gave rise to the possibility of a tunnel blowout occurring.

The first 1,000 feet of the tunnel was driven through glacial moraine material, dirt and rock, not a stable material. At the mouth of the tunnel reside over 200 residents, who are still there today. The tunnel entrance is within 300 yards of the Arkansas River.

As Senator Udall has pointed out, in 1976 Senator Floyd Haskill conducted a hearing on his S. 3394 with the Bureau to address the hazards to the public and environment posed by the collapsing tunnel. The Bureau opposed the legislation and said more study was needed.

The Leadville Mine Drainage Tunnel Treatment Plant, which was the product of a Sierra Club lawsuit, was opened in 1991 to address water quality from the tunnel. In the fall of 2007, elevated water levels in the complex mine pool area which is east of Leadville intersected by the tunnel was again brought to the forefront of both public safety and environmental risk of a blowout of contaminated water. In February 2008, due to a series of events, a state of emergency was declared by the Lake County Commissioners. This led to the construction of a relief well by the Bureau and EPA, which is still in use today to pull down water levels and reduce risk.

Entering into the complexities of the situation is an 18 square mile area of Leadville being designated a Superfund site in 1983, 27 years ago. Operable Unit 6, which is one of 12 areas of the site and has the bulk of the tunnel length under it, had as an element of its 2003 record of decision that 3 to 5 million gallons of highly toxic water was to be put down the Marian Shaft, which flows into the Leadville Mine Drainage Tunnel, every year.

Now the EPA has decided to reopen its record of decision on Operable Unit 6 because they believe the long-term viability of the tunnel to transport the water to the treatment plant is questionable. They are proposing to reduce the acid rock drainage by capping historic mine piles.

The Bureau has long contended that they only have the authority to treat the water coming out of the tunnel and are only responsible for the first 1,000 feet of the tunnel.

In closing, we need S. 3404 to assign responsibility to the Bureau of Reclamation for the entire tunnel length and ensure that the mine pool created by the blocked tunnel is safely controlled and the Bureau of Reclamation works with the Environmental Protection Agency regarding Operable Unit 6 and treat, if necessary, any surface water from Operable Unit 6 that still emanates after their reopened record of decision work on OU-6.

Just as a brief example, I would love for these fine people up here to display the complexity of the geology of the Leadville Mine Drainage Tunnel. I'll take just a brief moment. This is a rather

large visual. The complexity of the tunnel is such that it starts 9 feet out on this map, it goes for 11,000 feet. This is the geology of the Leadville Mine Drainage Tunnel.

It is complicated. The Leadville District is very difficult. It starts here. The treatment plant is here. The relief well was drilled here. The tunnel's blocked from the left-hand side of the map. The Leadville Mine Drainage Tunnel drains the east side of Leadville for strategic war metals.

We need your help and appreciate the opportunity to address the committee today. Thank you.

Senator STABENOW. Thank you very much for your testimony. Thank you to all of you.

Senator Brownback had a question.

Senator BROWNBACK. Thanks, Madam Chairman.

Mr. Mueller, I'd ask you just in particular, is there consequences on the quantity of water flowing in the Arkansas River by what you're proposing here?

Mr. MUELLER. Senator Brownback, there are no consequences to the Arkansas River. This pool of water that we're disputing with the Bureau of Reclamation, no one disputes that it's in Ruedi Reservoir for the sole benefit of the west slope of Colorado, for the water users on that side of the divide. So it is not coming out of any pool of water that would go eastward toward Kansas, no, sir.

Senator BROWNBACK. That would be significant to some people I know—me in particular. But I appreciate the discussion here, and I know these are serious issues that you're facing and wrestling with. I'm glad you've been working on them together for some time.

Thanks, Madam Chairman.

Senator STABENOW. Thank you very much.

Thank you to all of you. We have actually managed to have the timing be just about perfect. They're just ready to call a vote. So I appreciate all of you being here. I would note that the subcommittee has also received written testimony regarding the hearing and the bills in front of us today. That testimony as well as any written submissions from today's witnesses will be made part of the official hearing record. We will also keep the record open for a period of 2 weeks to receive additional statements. For the information of Senators and the staff, questions for the record are due by the close of business day tomorrow.

We thank you very much for joining us. The meeting is adjourned.

[Whereupon, at 4:10 p.m., the hearing was adjourned.]

## APPENDIXES

---

### APPENDIX I

#### Responses to Additional Questions

---

##### RESPONSES OF RICHARD S. WALDEN TO QUESTIONS FROM SENATOR STABENOW

*Question 1a.* We have received testimony for the record from tribal interests in Arizona that the allocation available to the tribes is insufficient. Is it your belief that the allocations are fair?

Answer. S-2891 makes available up to 69,170 kilowatts of capacity with 105,637 megawatt hours of energy in summer and 45,376 megawatt hours of energy in the winter pursuant to Schedule D. S-2891 provides an opportunity for fair and reasonable allocation of power to the tribes in Arizona for the following reasons:

Representatives from the current Hoover contractors from Arizona, California and Nevada have been working on this legislation and, more specifically, on this concern for almost three years. The amount of hydropower currently allocated to Arizona from all federal sources in the summer months is 795,603 kilowatts. The portion that is currently allocated to tribes during the summer months is more than 17.7% of all federal hydropower allocated to the state of Arizona and it is 19.2% in the winter. Native Americans in Arizona living on tribal reservations represent 3.49%, according to the 2000 census, of the total Arizona population and the percentage is expected to be less than that when the 2010 Census is completed. Despite this high allocation of hydropower to Native American tribes in Arizona, the existing contractor representatives from the three states believed that an additional allocation of Hoover power should be made available to the tribes in 2017 and, therefore, agreed to make 69,170 kilowatts of capacity available through S-2891. If the Native American tribes in Arizona are able to take full advantage of the Hoover power available to them through S-2891, they will receive 23.9% of all hydropower allocated to the state of Arizona in the summer months and 26.2% in winter months. It should be noted that, despite our requests, the Native American tribes have been unable to provide to us their current load requirements. Therefore we are unable to ascertain what their future demand projections will likely be. We have made an honest effort to work with the Native Americans in Arizona to help them meet future power supply requirements with this national resource.

*Question 1b.* What were the results of meetings you had with tribal entities in February and March? Have any discussions continued since March? If not, why not? And, if so, what have the results of those meetings been? Are you willing to engage in further discussions with the tribes in an ongoing forward basis?

Answer. We met with tribal representatives in February and March in order to listen to and fully understand their need for an allocation of Hoover power. We discussed the proposals developed by the representatives of Arizona, California and Nevada and explained why the entities from the three states felt that the allocation of 69,170 kilowatts to the schedule D pool was fair and reasonable based on all facts considered. The representatives from the tribes explored our reasoning and we discussed many details concerning scheduling and use of Hoover power. We explained that we representatives from Arizona supported a large allocation of power for tribes in Arizona despite some reticence from others. We believe that we have presented justification to the tribal representatives as to why the 69,170 kilowatts of Hoover capacity available to tribes was fair and reasonable. Since these direct meetings in February and March, representatives from the tribes have attended monthly meetings of the Arizona Power Authority (the latest was June 15, 2010) where these matters were generally discussed; however, we have had no further direct meetings with tribal representatives since we felt we had fully explored and explained the

reasoning behind the 69,170 kilowatt allocation available to tribes in Arizona nor have the tribes requested any further meetings. We are more than happy to continue discussions with the tribes and work with them in any way they would like to work with us to enable them to use this power efficiently and effectively to meet the needs of the tribes in Arizona. Hoover generation is a very valuable and dynamic resource and should be used to its maximum efficiency at all times. The tribal representatives recognize this, and we are willing, able and eager to achieve optimum efficiency of this resource with the tribes.

*Question 1c.* Are there other allocations of power within the Colorado River system that also benefit Native American tribes?

Answer. Yes. Exhibits 1 and 2 summarize the federal hydropower available in Arizona in both summer and winter months. As noted above, the tribes, which are approximately 3.5% of Arizona's population, currently receive 17.7% of the hydropower allocated to Arizona during the summer months. If the tribes are able to take full advantage of S-2891 after it passes, the tribes will receive 23.9% of all hydropower allocated to Arizona during summer months.

*Question 1d.* Do you support modifications to the bill to provide for the tribes' ability to contract directly with the Administration? Should that ability also be extended to the allocations made in Schedule C?

Answer. We support modifications to the bill as adopted by the House of Representatives. These provide the tribes with the ability to contract for Hoover power directly with the Administration. However, we feel that extending an allocation of energy pursuant to Schedule C is not necessary or reasonable. Schedule C energy is limited by water flow on the Colorado River. Currently, and for the past seven years, no Schedule C energy has been available due to drought conditions in the southwest. Lake Mead reservoir supplying Hoover Dam is at record low elevations. The primary recipient of Schedule C energy under the 1987 Hoover Power Marketing Plan is the Central Arizona Project (CAP). CAP uses Hoover power and energy to pump water for residents in Arizona. Approximately 15% of the water pumped by CAP flows to Native American tribes in Arizona at the present time. As Native American tribes' water requirements grow, this percent allocation will eventually increase to 47%. The CAP uses this energy to supply their pumping responsibilities, a large portion of which is dedicated to Native Americans. If the Schedule C energy is reduced to CAP because we share it with Native Americans, they will have less energy available to meet their pumping responsibilities. Furthermore, if the Environmental Protection Agency limits the output of the Navajo Generating Station because of environmental concerns, CAP will be in dire need of all the energy it can obtain, especially any Schedule C energy if it is ever available again. Furthermore, the allocation of energy per unit of capacity (capacity factor) to the tribes through Schedule D will be higher than the corresponding allocation of energy that CAP receives through Schedule B. In brief, the tribal allocation (through Schedule D) is at an average energy level (capacity factor) for Hoover Dam, and Schedule B (the power that CAP receives) is at a much lower capacity factor. It would not be fair to increase the allocation of Hoover energy to the tribes above that of the average for the entire project at the expense of Schedule B users who receive less than average energy.

*Question 2.* Would an allocation of power to customers in Arizona that did not go through the Arizona Power Authority be contrary to the procedures established under Arizona state law?

Answer. The Boulder Canyon Project Act designates the Arizona Power Authority as the agency which purchases federal hydropower on behalf of the State of Arizona from the Boulder Canyon Project. An allocation of power to customers in Arizona that does not go through the Arizona Power Authority would be different than procedures previously established under Arizona state law, but it would not be contrary to state law. That is because under the first section of the Act's newly-established Schedule D, the Western Area Power Administration may contract directly for long-term Schedule D contingent capacity and associated firm energy with new allottees located anywhere within the marketing area.

*Question 3.* What attempts have been made to ensure a fair allocation process among the electrical cooperatives within Arizona?

Answer. Section 30-125 of Arizona Revised Statutes states that when available power supplies are insufficient to meet pending power applications, preference shall be given to: (1) districts and (2) any incorporated city or town or any cooperative serving its own members only, to the extent of the difference between the existing contracts with purchase of power generated by the waters of the mainstream of the Colorado River from whomever purchased, and 17,500,000 kilowatt hours per annum. That complicated statute can be interpreted to mean that cooperatives could get approximately 7,000 to 10,000 kilowatts each of Schedule A hydro capacity.



Richard S. Walden, as Chairman of the Arizona Power Authority Commission, has written a letter dated April 20, 2010 to the General Managers of the Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative and Navopache Electric Cooperative certifying that an application from these cooperatives will be treated fairly and equitably pursuant to all applicable laws, regulation and the Authority's guidelines. Mr. Walden has further reiterated that same pledge in testimony before the House of Representatives and the United States Senate Subcommittees on Water and Power.

*Question 4a.* Please describe, from your perspective, the major differences between the administrative allocations proposed by the Administration and the allocations proposed in this bill. For example:

Please comment on the proposal from the Administration to retain 30 megawatts of contingent Hoover Dam capacity and distribute it to customers within the Administration's integrated system.

Answer. In his June 9, 2010 testimony to the Subcommittee, Western Administrator Tim Meeks stated that his agency would like to withhold from allocation to customers 30 MW of Hoover Dam capacity for use in the regulation and integration of the other federal resources on the Colorado River. The Hoover contractors oppose this recommendation. Currently, the Administration retains the difference between nameplate capacity of Hoover Dam which is 2,074 megawatts and the capacity allocated to all contractors in the states of Arizona, California and Nevada which is 1,951 megawatts for this purpose pursuant to current law. The difference, which at full capacity is 123 megawatts, is available to the Administration to the extent that the elevation level at Lake Mead is sufficient to produce generation capacity above the 1,951 megawatts contracted to customers. During the past 11 years, the southwest has suffered an extensive drought and the elevation at Lake Mead is currently below 1,092 feet (normal is 1,165 feet), and the production of capacity at Hoover Dam is approximately 70% of nameplate capacity. The Administration has done without this additional capacity for the last seven years; therefore, it does not make sense that they need the 30 megawatts for the same purpose after 2017. They use this capacity primarily for regulation and internal needs for which they have no contractual or compelling operating responsibility under the Hoover contracts.

*Question 4b.* Please comment on the Administration's testimony regarding the quantity of power that should be available for remarketing.

Answer. The Administration would prefer to have 30 MW of capacity available for regulation and other reasons some of which relate to other hydroprojects marketed by Western. They have no remarketing authority, need or responsibility for retaining 30 megawatts. The fact is that the diversity in use between Arizona, California and Nevada provides the Administration with sufficient capacity to meet their load-following and regulation responsibilities to its Hoover contractors. This has been the case for the past seven years during which the drought has reduced available capacity and there is no compelling reason for withholding any Hoover capacity from customers in Arizona, California and Nevada. There is a total installed capacity of 2,074 megawatts at Hoover Dam and all of that power should be allocated to the three states to enable these states to meet their load responsibilities, especially for integrating other resources, load following and reserves. The Hoover Power Allocation Act of 2010 does not change the historical obligation of Western in this regard.

Western has also suggested that the amount of firm energy sold to Hoover contractors be reduced from the current 4,527,001 MWH to 4,116,000 MWH due to reduced energy production over the past several years at Hoover caused by the drought. Western delivers to its customers (contractors) the total energy output from Hoover regardless of the contractual provisions. The change suggested by Western has no effect on Western's obligations or its energy deliveries. We Hoover (contractors) customers get total energy produced (less losses and adjustments). However, the change suggested by Western may impact the amount of energy designated as Schedule C energy and this could create serious contractual problems among the contractors that we want to avoid. Please do not adopt this suggestion base energy change since it has no actual effect on energy production responsibilities, but could create serious contractual disputes.

*Question 4c.* Please comment on the Administration's testimony that the current Implementation Agreement needs to be evaluated and potentially revised to accommodate current conditions.

Answer. The current Implementation Agreement has been in effect for more than 15 years and addresses subjects such as billing, administration and crediting capital investments made by the customers. Should this agreement need to be revised, the Administration will have until 2017 to effectuate any required changes. That is not a compelling or relevant consideration in the passage of this bill.

*Question 4d.* Please comment on the Administration's testimony that a 50-year contract term could potentially exclude classes of customers in decades to come.

Answer. It is very difficult to imagine or understand what new classes of customers may be developed in the future that could not be served by existing contractors in Arizona, California and Nevada. However, it is important to understand that 50 years was the term for the original contracts between the states and the federal government when the Hoover generation went into service in the 1930's. In this day and age, energy considerations require long-term financing that finds its security in contracts like those associated with Hoover Dam. More specifically, in order to finance future generation, the entities that receive Hoover power like the Arizona Power Authority will need long-term commitments in a 50 year time frame to ensure bondholders of its ability to repay debt. Future commitments to generation will be for similar terms for nuclear plants and coal-fired generation with carbon sequestration facilities. Consequently, it will be necessary to have long-term contracts for Hoover to supplement these generating resources for meeting load and future financing requirements.

In addition, the Arizona Power Authority and the Western Area Power Administration are currently discussing the financing for rebuilding the transmission facilities that bring Hoover power from Hoover Dam down to the Phoenix area. Many of these transmission facilities were built 50 or 60 years ago and need replacement. The federal government has neither allocated the financial resources nor indicated an intention to refinance this transmission system. Therefore, the local entities such as the Arizona Power Authority will be required to finance their share of these facilities. The Arizona Power Authority fully intends to work with Western to finance these transmission facilities on a long-term basis. A 50-year commitment from Western to purchase the Hoover power will help justify the investment in these transmission facilities. In short, we need the 50-year contract to responsibly plan for the future power supply needs of Arizona, and we at the Authority will undertake the responsibility to supply future classes of customers on a fair and equitable basis.

Section 5 of the Boulder Canyon Project Act designates those classes of customers who are eligible to obtain Hoover power. A 50-year term is needed in order to assure a stable cash flow required to operate, maintain, and upgrade by hydropower generation and related transmission system.

#### RESPONSES OF RICHARD S. WALDEN TO QUESTIONS FROM SENATOR BROWNBACK

*Question 1.* The legislation before us would, upon the 2017 expiration of the existing Hoover contracts, allocate the project's power for the next 50 years. The last time Congress reauthorized the Hoover project, we approved 30-year contracts—the same time period envisioned by Western in their Administrative proceeding.

While supporters of the legislation argue that 50 years is needed in order to coincide with the 50-year Lower Colorado River Multi-Species Conservation Program (LCR MSCP), Western notes that the contract terms do not coincide with the LCR MSCP terms. Please comment on the need for a 50-year vs. 30-year contract term. Will the adoption of a 50-year term potentially exclude evolving classes of customers in decades to come?

Answer. The first contracts for Hoover Dam from the 1937 through 1987 time frame were for 50 years. It was not until 1987 that a 30-year term was employed as a compromise. To responsibly and effectively integrate a large hydro facility such as Hoover, a 50-year contract is required and even more necessary in the future as energy generation finance responsibilities become longer in time and larger in amounts.

More specifically, to address the question of the MSCP, it is correct that the termination of the MSCP does not coincide with the 50-year proposed contract term of this legislation. The MSCP has been in effect for almost seven years and will continue until 2054. The new 50-year Hoover contracts would extend until September 30, 2067. Currently, costs associated with the MSCP are shared 50% by the federal government and 50% by the states of Arizona, California and Nevada. When the current MSCP agreements terminate in 44 years, I am confident that a new agreement will be implemented that is stricter, more costly and perhaps allocates a higher percentage of costs to the states than the current MSCP. At that time, voluntarily or otherwise, we will enter into a new environmental agreement that will extend the participants financial obligation for a longer period of time. Environmental problems do not go away with contracts nor do the agreements that address these problems. Our successors will be a part of these programs as long as people populate the state of Arizona.

*Question 2.* In the Administrative proceeding to allocate future Hoover capacity, the Western Area Power Administration has proposed to retain 30 megawatts of

contingent Hoover Dam capacity for use by Western for project integration purposes. Please comment on whether such retention is appropriate.

Answer. This question has also been addressed above in response to Senator Stabenow's questions. In brief, in 1984, Western retained 123 megawatts of capacity for internal integration purposes involving multiple projects not just Hoover. That amount of capacity was contingent on the capacity production at Hoover Dam. Due to the drought we are suffering in the southwest, the 123 megawatts has not been available for at least seven years, and probably will not be available through 2017. If Western can do without this capacity for 14 to 15 years, they certainly don't need it in the post-2017 timeframe. Western has been able to take full advantage of the diversity in the use of Hoover between the states of Arizona, California and Nevada to meet these system responsibilities, and they will be able to do this in the post-2017 time frame. Furthermore, these responsibilities ultimately fall to the Hoover contractors of Western which can more effectively, efficiently and economically use the Hoover capacity to meet the load responsibilities of the people in the southwest because they have direct responsibility for these loads. We oppose the retention of any Hoover capacity by Western.

*Question 3.* In your testimony, you note that Native American tribes and regionally-based electric cooperatives have raised some concerns with the legislation because they do not have direct access to Hoover power. Can you explain how the process works in Arizona and the steps you have already taken to address these concerns?

Answer. The Arizona Power Authority has been designated by the state law to take and receive the power generated at Hoover Dam on behalf of the state and distribute the power fairly and efficiently within the restraints of state law. The states of Arizona, California and Nevada entered into discussions and negotiations approximately three years ago to develop this legislation. As a result of those deliberations, we have developed what is now known as S-2891. Schedule D of the proposed legislation was carefully thought through, negotiated, discussed and developed by the three-state working group in order to provide an opportunity for tribes and other entities, such as cooperatives which do not currently receive an allocation of Hoover to receive Hoover power. Exhibits 1 and 2\* to these questions are tables summarizing all federal hydropower in Arizona as it is allocated to the various classes of customers. As can be seen, the tribes today receive approximately 17.7% of the hydropower allocated to Arizona during the summer months. Pursuant to S-2891, the tribes could receive almost 24% of the federal hydropower available during the summer months in Arizona. This is a major step we have taken to address the concerns of the Native American tribes. Likewise, the legislation has set aside 11,510 kilowatts of capacity that is available to cooperatives and other entities not currently receiving Hoover power in Arizona. Furthermore, Mr. Richard Walden, Chairman of the Arizona Power Commission, has written a letter to three cooperatives that are primarily interested in obtaining an allocation of Hoover power in 2017, assuring them that they will be treated fairly and equitably pursuant to all applicable laws, regulations and the Authority's guidelines applicable to the allocation process. We have met with representatives of the tribes and cooperatives to listen to and better understand their concerns and ideas regarding this legislation and the allocation process. Our intention is to do what is best for the citizens of Arizona which includes Native Americans and customers of cooperatives. We have and will continue to work 14 with all interested groups in order to make Hoover power available as fairly and reasonably as possible.

*Question 4a.* The House companion bill adopted some amendments to the Hoover legislation that APA supported. In particular, you agreed to the following compromise changes:

- provide Western with 36 months, instead of 18 months, to develop criteria and make allocations;
- allow tribes to contract directly with Western instead of through a state agency; and
- remove a provision giving states first consultation rights with WAPA regarding allocation criteria.

Please explain why these changes were necessary. Should the Senate adopt these changes as well?

Answer. Yes. The first change allows Western 36 months instead of 18 months to develop criteria and make allocations of Hoover power was requested by Western. Western felt strongly that they needed at least this 36-month period to develop allo-

\*All exhibits have been retained in subcommittee files.

cation criteria and negotiate contracts with their contractors in Arizona, California and Nevada, and we respect their judgment. It is a reasonable request and we, therefore, agreed to the 36-month time period for allocation. Provisions 2 and 3 above allow the tribes to contract directly with Western and remove provisions giving states first consultation rights regarding this allocation process. During discussions with the tribes regarding this legislation, they requested that Western have the ability to contract directly with them. Although we would rather have power directly allocated to the Power Authority through this legislation, we understand the position of the tribes and their desire to deal with the United States government and not the state. We respect the tribes' position and we concur with their request. We recommend that the United States Senate adopt these changes as did the United States House of Representatives. Furthermore, we do not object to the removal of the provision giving the states first consultation rights regarding allocation criteria. In short, we recommend that the Senate adopt the changes made by the House of Representatives.

*Question 5a.* How does the Arizona Power Authority allocate its portion of Hoover power, and specifically, how does the Authority treat applications from eligible entities not currently receiving Hoover power?

Answer. The ultimate criteria for allocating Arizona's share of Hoover power will be developed by the Commission of the Arizona Power Authority based upon all applicable laws and on the fundamental principles of reasonableness, fairness and equity. The Commission will follow the law set forth by the state of Arizona, a copy of which is included in the booklet submitted with these questions and identified as Exhibit 3. I direct your attention to page 21, Section 30-125—Preference When Power Supplies Insufficient. The Power Authority will follow this Section for the power to be allocated under Schedule A and it will follow Title 45 for the power to be allocated under Section B. We will use our full authority and ability in an effort to satisfy all applicants, and if this requires supplementing the Hoover power with additional energy resources, we will also explore that option. We conducted a similar allocation process in 1987, and those results remain in effect today. All applications were given fair and reasonable consideration at that time. In the 1987 Hoover allocation process the Arizona Power Authority employed a two-year public process and developed a 1987 Hoover Power Marketing Plan for the State of Arizona. The Authority then offered to eligible entities within the State the Hoover power obtained under its Western federal power marketing contract. The Authority based the Marketing Plan upon requirements contained in the Western federal power marketing contract, applicable state law requirements, and additional general principles and guidelines developed through the public process.

The Arizona Power Authority will employ a similar public marketing process in allocating Hoover power post-2017.

*Question 5b.* How will the Authority treat applications from eligible entities not currently receiving Hoover power?

Answer. The Authority will follow the requirements of its to-be-developed 2017 Hoover Power Marketing Plan and give serious and fair consideration to all applicants for power, including those who are currently not receiving any Hoover power from the Authority.

More specifically, the Arizona Power Authority has adopted regulation, 12 Arizona Administrative Code Chapter 14, which contain policies pertaining to the application for electric service and power purchase certificates that pertain to the allocation of Hoover power to qualified applicants in Arizona. These regulations, along with applicable sections of Title 30 and Title 45—Arizona Revised Statutes, are contained in the attached booklet identified as Exhibit 3.

As set forth in Section R12-14-201, the Authority shall give public notice that it will receive applications for electric service from prospective purchasers. The public notice shall include date, time and place at which the Authority shall provide a preliminary information proposal regarding the allocation and marketing of available long-term power. In preparation for this conference, (which shall be held by the five Commissioners) the Power Authority will review existing allocations comments from all parties (existing and new) and propose a plan which will be discussed publicly with all interested parties. The Commissioners and staff of the Authority will answer questions and conduct all deliberations in public conferences where all interested parties will be duly notified, invited and given the opportunity to be heard. It is our plan to receive applications from all interested parties and develop a data request that will solicit capacity and energy information from all applicants so the Authority can develop a sound engineering and economic basis for allocating the Hoover power in 2017. It is our intention to hire a qualified consulting engineer that will assist the Power Authority in soliciting, tabulating and checking the applicant-supplied information for accuracy, and make recommendations for an allocation

methodology. It may also be necessary to hire a second consulting engineer to check the results, review the recommendations, make corrections, if necessary and add further recommendations with regard to allocation policies and procedures. It is our intention that all decisions will be made at public conferences by the Arizona Power Authority Commission after due deliberation and consideration of comments and suggestions by the general public. The Arizona Power Authority Commission will hold public, transparent, open and fair conferences and deliberation regarding the allocation of Hoover power.

---

RESPONSES OF DOUG PETERSON TO QUESTIONS SENATOR STABENOW

*Question 1.* Please describe the practical implications of S. 2779 for a typical farmer within the Upper Mississippi basin.

Answer. I think the most practical part of this legislation will give farmers more opportunity to participate in monitoring and improving water quality, sediment and nutrient loss. I think a lot of time farmers get a “bum-wrap” on these issues. Good soil is essential to a farm, as is water quality, in addition, nutrients and inputs aren’t free they are increasingly expensive, and farmers want to get the most out of them. This legislation will also help quantify farms inputs into the Mississippi basin, and demonstrate their contribution and also help set baselines for possible reductions.

*Question 2.* Your testimony notes the importance of protecting individual property owners’ rights—what is your understanding of how an individual’s private property rights will be protected in the event the studies authorized by this bill go forward?

Answer. It is my understanding and hopes that the legislation is clear that efforts for “on-farm” monitoring take into account access to farms and fields, that include the granting of permission before entering private property for monitoring purposes. Also an understanding of what to expect on a farm at the time of monitoring is key, what has been planted, sprayed, applicated recently, etc. It is also important that any producer information is treated with strict confidentiality.

*Question 3.* Your testimony describes a “drainage work group” to address issues arising in connection with public drainage ditches that are critical to the Upper Mississippi River Basin—can you please provide a little more detail on the types of work that the group does? You also described a Minnesota water resources coalition that includes 19 members, including the Farm Bureau, that is working on similar issues—can you please provide more details about how the work of that coalition relates to that work proposed to be completed by S. 2779?

Answer. The Drainage Work Group was first established as a stakeholder group to advise the preparation the Public Drainage Ditch Buffer Study, which was published by the Board of Water and Soil Resources (BWSR) in February 2006. This Study Work Group discussed a range of topics regarding buffer strips and drainage and developed a number of consensus recommendations, which are presented in Section 6 of the study report. In 2006, the Study Work Group agreed to continue to meet as the stakeholder Drainage Work Group (DWG), with continued facilitation provided by the BWSR. The stakeholder Drainage Work Group has been meeting since 2006 for the following purposes:

- Foster science-based mutual understandings regarding drainage topics and issues;
- Develop consensus recommendations for drainage system management and related water management, including recommendations for updating Chapter 103E drainage law and other provisions.

Following are the entities represented on the Drainage Work Group.

Drainage Work Group Membership

Drainage Authorities	AMC—Association of Minnesota Counties. MAWD—Minnesota Association of Watershed Districts.
Farm Groups	MFB—Minnesota Farm Bureau. MFU—Minnesota Farmers Union. Lobbyist for several other Ag groups.
Environmental Groups	MCEA—Minnesota Center for Environmental Advocacy. FWLA—Fish and Wildlife Legislative Alliance. MCF—Minnesota Conservation Federation.
Other Associations	MASWCD—Minnesota Association of Soil and Water Conservation Districts. MVA—Minnesota Viewers Association. MACO—Minnesota Association of County Officers. MADI—Minnesota Association of Drainage Inspectors. RRWMB—Red River Watershed Management Board. MAT—Minnesota Association of Townships. MAWRC—Minnesota Agricultural Water Resources Coalition. ADMC—Agricultural Drainage Management Coalition.
State Agencies Legislature	BWSR, DNR, MDA, MPCA. Legislators and/or House and Senate committee staff.

2006–2007 RECOMMENDATIONS AND OUTCOMES

*Drainage Work Group Activities and Accomplishments to Date*

The Drainage Work Group (DWG), which is facilitated by the Board of Water and Soil Resources, has provided a forum for discussing drainage management issues, sharing applicable current science and developing consensus recommendations for enhanced drainage management.

In 2006, the DWG developed consensus recommendations to:

- clarify and enhance Chapter 103E drainage law regarding buffer strips and side inlet controls along public drainage ditches (Section 103E.021);
- clarify protection of conservation practices along drainage ditches;
- clarify ditch inspection frequency;
- develop drainage records preservation and modernization guidelines and promote state cost-share for drainage records modernization;
- support an update of the Minnesota Public Drainage Manual; and
- support establishment of an interagency drainage management team to provide coordination and assistance to promote multipurpose drainage management.

These consensus recommendations were substantially adopted by the Legislature in 2007.

In 2007, 2008 and 2009, the DWG developed consensus recommendations to further update Chapter 103E drainage law, including:

- clarify the scope and process of Section 103E.227 to better enable wetland restorations and other impoundments on drainage systems, and associated funding partnerships between drainage systems and conservation programs;
- clarify the language and process of Section 103E.805 to better enable partial abandonment of drainage systems for wetland restorations and other impoundments;
- require all Chapter 103E drainage authorities to appoint a drainage inspector and clarify applicability to watershed districts as well as counties;
- update various dollar limits and thresholds in drainage law, primarily for inflation;
- support additional state cost-share for drainage records modernization; and
- provide authority in statute to BWSR for drainage stakeholder coordination.

Bills carrying these consensus recommendations were introduced but stalled during the 2009 legislative session. These bills are being further discussed by the 2010 Legislature, minus any appropriations.

*Other Topics of Discussion to Date*

- Review of drainage law and experience regarding transfer of drainage system authority, particularly where urban areas have expanded over agricultural drainage systems.
- Water quality use classifications and public drainage systems.
- Drainage ditch assessments on state Consolidated Conservation lands.
- Sources of sediment in the Minnesota River Basin.
- Current conservation drainage practices—research and experience.
- Methods and process for redetermination of benefits of drainage systems, including adjusting drainage assessments for land use change.
- Lateral effects of drainage on conservation lands and conservation lands on farmland
- 103E.015 Considerations before drainage work is done.
- Other current drainage related research, information, legislation, programs and topics.

The Minnesota Agricultural Water Resources Coalition (MAWRC) came together to develop and implement a strategic educational, communications and public relations program to inform agricultural producers in Minnesota about water quality issues. Given the vast landscape over which water quality information will be gathered, implementation of data collection as proposed under this bill will require an extensive network of monitoring stations, equipment and personnel and with more than 60 percent of the Upper Mississippi River Basin in cropland or pasture, private landowners are logical partners in the establishment of a nutrient and sediment monitoring network. The MAWRC is a good network to help provide farmers with info about monitoring network.

## RESPONSE OF DOUG PETERSON TO QUESTION FROM SENATOR BROWNBACK

*Question 1.* In your testimony, you describe many of the ongoing programs that address sediment and nutrient loading within the river system. What additional information, and at what costs, do you anticipate this bill will provide, that is currently not being undertaken by the myriad of federal and states agencies studying the river system?

Answer. It is the hope of MFU that the legislation would provide added voluntary monitoring from farmland where it is currently not. MFU is not sure on the additional cost. However, the network this bill would establish would provide valuable information that could be used to better target ongoing programs and maximize use of federal and state resources.

## RESPONSES OF KENNETH L. OLSEN TO QUESTIONS FROM SENATOR STABENOW

*Question 1.* Was the Lake County Commission satisfied that the relief well drilled in 2008 addressed the immediate public safety concerns that the County had at the time and today? Is the relief well still operational and available for use if any emergency situation develops?

Answer. The Lake County Commissioners are satisfied that the relief well was drilled in 2008 to reduce the water level and consequently the hydrostatic head on the tunnel. Although the well drilled is called a “relief well” the fact is that it is still being used currently to keep the water levels down and convey contaminated water to the Leadville Mine Drainage Treatment Plant. We view this well as a permanent asset which will need to be utilized in perpetuity to maintain safe water levels as the tunnel deteriorates more over time and less water flows to the tunnel entrance. We believe the Bureau of Reclamation should set a mine pool target level. Additional wells may be needed in the future as additional caving occurs.

*Question 2.* Has the County been working with the Environmental Protection Agency regarding the revised Record of Decision for Operable Unit 6 at the Superfund site—and does the County support the changes proposed by EPA?

Answer. Lake County has been working with the Environmental Protection Agency regarding an amended Record of Decision on Operable Unit 6 (OU6) of the California Gulch Superfund Site since January 2009 when the commissioners were advised by Carol Campbell of Region 8 that such amendment was being pursued. This process is ongoing and includes several public scoping sessions and on-the-ground pilot projects regarding capping of waste rock piles. The Lake County Commissioners are generally supportive of the alternatives as proposed by the Environmental Protection Agency for OU6. Mitigation of the visual effects of these historic waste piles is of paramount concern of the business and cultural heritage community and the commissioners must reach a balance with all parties involved. We be-

lieve the Environmental Protection Agency needs to study clean water diversions as well as capping.

*Question 3.* Was the County involved with the risk assessment process that the Bureau of Reclamation completed in 2008 to assess the risks associated with a failure of the tunnel? Was the County satisfied with the results of the assessment?

Answer. The county's involvement in the risk assessment process was to the extent of participation in public meetings of the presentation of the draft and final versions of the risk assessment. Communication with the Bureau of Reclamation, Environmental Protection Agency and Colorado Department of Health and Environment via telephone conference was weekly for several months after the county emergency declaration of February 13, 2008. The Risk Assessment document is technical in nature and provides some degree of public safety assurance with regard to the potential for a tunnel "blowout." Several items in the report are of special note. On page 46 in the conclusion of the report "The likelihood of the upper blockage near the Penderly Fault remaining stable decreases as the level of the mine pool, and subsequent head differential, increases. If the upper blockage were to fail, the likelihood of uncontrolled seepage would increase and some property damage could occur but loss of life would not be expected." This statement reaffirms the commissioners' view that the mine pool level must be controlled not only to reduce risk to property and life but also to reduce the environmental consequences of uncontrolled seepage of metal contaminated water into the Arkansas River drainage. Additionally, several suggestions are made by the Consultant Review Board in their Executive Summary which include computation of maximum mine pool level, refinement of early warning system and refinement to analysis of seismic conditions. The commissioners have not been advised by the Bureau of Reclamation of progress to date on these suggestions. The Bureau has been working well and communicating with our local emergency response personnel. It should be pointed out that it appears the Risk Assessment focused on life safety issues related to the Tunnel and a potential blowout. It did not focus on environmental risk or mention risk to our local water supply. We live with the risk of chemicals stored and used at the treatment plant in the form of sulfuric acid and sodium hydroxide. The risk could be reduced and potential operating costs may be reduced by converting the plant to a lime/ferric chloride operation.

#### RESPONSES OF KENNETH L. OLSEN TO QUESTIONS FROM SENATOR BROWBACK

*Question 1.* Please describe the participation of the Federal agencies in addressing your concerns regarding the tunnel since the release of the Risk Assessment conducted by the Bureau of Reclamation.

Answer. Since the release of the Risk Assessment our contact with the Bureau of Reclamation regarding concerns at the Tunnel has been several meetings regarding updating of the emergency evacuation plan with Bureau personnel and a conference call in December 2009 with Bureau Deputy Commissioners Finkler and Wirkus regarding then S1417 by Senator Udall. We have, as stated above in answer to Senator Stabenow's question 2, had a reasonable level of communication with the Environmental Protection Agency regarding OU6.

*Question 2.* Please explain what amount of authorized funding you believe will be necessary to both treat the surface water delivered through the LMDT and expand the treatment plant? Does it exceed what is currently authorized by this legislation?

Answer. I am not privy to what it is costing currently to operate the treatment plant. It is my belief the treatment plant does not need to be expanded and the current costs of operation will most likely remain the same as now except for inflation and necessary replacement component parts as the plant ages. Operation costs would be best derived from the Bureau of Reclamation. The costs of operation and maintenance of the treatment plant and tunnel is a federal responsibility as the Federal government drove the tunnel.

#### RESPONSES OF ANDREW A. MUELLER TO QUESTIONS FROM SENATOR STABENOW

*Question 1.* In a September 16, 1998, letter to the Fish and Wildlife Service, the Colorado River District agreed to provide water or secure funding to buy water necessary to meet specific Endangered Species Act requirements—do you believe that this legislation is consistent with that commitment?

Answer. We believe S.3387 is consistent with both the spirit and letter of the 1998 letter to the Fish and Wildlife Service. The purpose of S.3387 is partial fulfillment of the commitments made in the 1998 letter. Passage of S.3387 will provide half of the 10,825 acre-foot commitment made in the letter. Division of responsibility for the 10,825 acre-foot commitment is described in detail in the letter. West Slope



water users are “providing . . . 5,412.5 acre-feet of permanent water for the fish” with S.3387 and its permanent dedication of water from the West Slope’s Marketable Pool of water in Ruedi Reservoir.

*Question 2.* Is the River District willing to discuss potential compromises with the Administration as are outlined in Commissioner Connor’s testimony?

Answer. The Colorado River District very much appreciates the Commissioner’s and the Administration’s willingness to discuss potential compromise. The River District is willing to do so and looks forward to developing workable alternatives to S.3387 as introduced. The River District and its water user partners have a meeting scheduled with the Commissioner to explore mutually acceptable mechanisms for fulfilling the requirements of the 1999 Biological Opinion.

*Question 3a.* S. 3387 proposes to allocate certain water from Ruedi Reservoir for fish and wildlife purposes and specifies that the capital, operation, maintenance, and replacement costs that arise from the release of such water shall not be reimbursable—are there any special circumstances that apply to this situation that would not apply to others?

Answer. We believe S.3387 is consistent with Reclamation’s authorities and historical practices. Reclamation’s Manual states that Reclamation has discretion over determinations of reimbursable and non-reimbursable costs related to ESA consultation costs. The Manual states that the cost of compliance is done on a case-by-case basis. Reclamation has room to negotiate or determine that these costs are non-reimbursable.

Water is commonly dedicated to fish and wildlife (and other public benefits) as non-reimbursable in Reclamation projects (see examples below).

Regarding the specific question of special circumstances, Ruedi Reservoir is somewhat unique among Reclamation projects. Ruedi was built as compensation to Western Colorado, pursuant to the Fryingpan-Arkansas Project’s authorizing statute and Colorado’s Conservancy District statute, for the loss of Colorado River water diverted to the Arkansas River basin through the Fryingpan-Arkansas Project. The majority of the water in Ruedi Reservoir is dedicated to use in Western Colorado. We see Western Colorado’s willingness to dedicate a portion of its uncontracted pool of water in Ruedi to endangered fish recovery as a commitment of our water.

*Question 3b.* Please provide examples of water dedicated for fish and wildlife purposes on a non-reimbursable basis that you believe is consistent with the proposal in S. 3387.

*Question 3c.* Please provide examples of releases of water from a federal reservoir without a contracting mechanism in place for the releases of water as proposed by S. 3387.

Answer. Water dedicated to flood control, recreation, fish and wildlife and other public purposes is commonly identified as non-reimbursable in Reclamation Projects. One example of this is the Weber Basin Project in Utah, which includes \$18.9 million in non-reimbursable costs allocated to flood control, recreation, fish and wildlife enhancement, highway transportation, and the safety of dams. Congress included a permanent “conservation pool” of 18,000 acre-feet in Ruedi Reservoir as non-reimbursable in its authorizing legislation in 1961. (P.L. 87-590, 76 Stat. 389).

Water is routinely released from Reclamation projects pursuant to requirements of Biological Opinions without contract. Water is released from other Colorado River reservoirs, specifically Flaming Gorge, Navajo and Glen Canyon Dams, for fish and wildlife purposes without benefit of a contract. Additionally, a Biological Opinion for the Gunnison River basin will soon be finalized requiring stored water releases from Reclamation’s Aspinall Unit consistent with both a biological opinion and settlement of the National Park Service’s Black Canyon of the Gunnison’s recently decreed water rights. There will be no contract required for releases required by either of these substantial water demands.

Additionally as further example, we offer the releases of water from Reclamation projects in the northwest to aid native salmon recovery. The Bureau releases storage water from several projects in the Upper Snake River Basin (including Minidoka, Palisades and Boise Projects) for downstream threatened and endangered salmon species, pursuant to a 30-year agreement with the State of Idaho and water users. There is no reimbursable expense; in fact, the Bureau rents available contracted water (“willing seller”) and also pays an administrative fee to the local water district for the release of uncontracted water. These releases are authorized pursuant to state statute; the costs are covered by Congressional appropriations, not reimbursable project costs.

While we offer these as examples of water released by Reclamation without contact for fish and wildlife purposes, we are happy to explore with Reclamation re-

removal of the provision in S.3387 requiring releases without a contract if an acceptable contractee can be identified and enforceable contract developed.

*Question 4.* The legislation will not take effect until an unspecified date when an additional 5,412 acre-feet of water is allocated to meet the remaining obligations in the biological opinion—where is that additional allocation expected to come from and what happens if that obligation is never met?

Answer. Water users' obligation under the 1999 Biological Opinion is for delivery of 10,825 acre-feet of water annually. Water users split that commitment equally between Eastern Colorado and Western Colorado water users of the Colorado River. Eastern Colorado water users plan to provide half of the obligation by no longer irrigating historically irrigated lands located in western Colorado. The water historically used for irrigation will be dedicated to fish recovery.

The specific effective date language for S.3387 is included to legislatively establish the full 10,825 acre-foot commitment by water users. Failure to provide the full amount will fail to comply with the 1999 Programmatic Biological Opinion (PBO) and would re-open the PBO, which covers all water uses of the mainstem of the Colorado River in Colorado. The great efficiencies in administering the ESA per the PBO for the Fish & Wildlife Service, other federal agencies, and large and small water users would be lost.

If the full obligation is not met by fiscal year 2013, over one million acre-feet of historical water consumption would be subject to individual ESA consultations. Failure of the PBO could result in immediate re-initiation of ESA consultation on the five major Reclamation projects covered by the PBO and approximately 300 non-federal projects that have received ESA compliance under the PBO.

*Question 5.* Please describe the potential uses in Colorado that will generate contracting income for Reclamation from the "restored" water you describe will be available from Ruedi Reservoir? If there is little foreseeable demand for the remaining water within the Marketable Pool, do you foresee a different market for the restored water?

Answer. The Colorado River District has conducted several marketing studies for this and other stored water in Western Colorado. Because of Ruedi Reservoir's location below the significant senior water right on the Colorado River, we do not forecast full contracting of the entire Marketable Pool of water in Ruedi.

Under the provisions of the PBO, by 2013, 10,825 acre-feet of water will no longer be released annually from the Marketable Pool in Ruedi Reservoir. This is the 10,825 that is currently being released through 2012 from Ruedi on an interim basis pursuant to the PBO. S.3387 provides for annual release of 5,412.5 acre-feet annually for fish recovery beginning in 2013. With the passage of S.3387, the net increase to the Marketable Pool will be 5,412.5 acre-feet.

We pointed out the net increase in the Marketable Pool in my written testimony in partial response to concerns raised by Reclamation that S.3387 represents lost or foregone income to the US Treasury. However, we do not believe that the full pool will, in fact, be contracted in the foreseeable future and therefore our proposed permanent dedication of a portion of the marketable pool will not have an actual impact on either the US Treasury or on water users' ability to contract for water from Ruedi Reservoir.

Most important in our response to this and other questions about this legislation is that only with passage of S.3387 and provision of the full 10,825 acre-feet is the PBO fulfilled and any of the benefits to water users and Reclamation possible.

#### RESPONSES OF ANDREW A. MUELLER TO QUESTIONS FROM SENATOR BROWBACK

*Question 1.* Please describe your understanding of how the Upper Colorado River Recovery Program and the Programmatic Biological Opinion (PBO) addresses the role that project beneficiaries should play as it relates to the mitigation necessary to protect and recover species. Was it your understanding that the unused water, that you intend to use for mitigation, would require a cost-share agreement?

Answer. Water users acknowledge our commitment to provide 10,825 acre-feet annually for endangered fish recovery under the PBO. S.3387 represents a permanent commitment of half of the 10,825 obligation from Western Colorado's pool of water in Ruedi Reservoir.

The primary purpose of Ruedi Reservoir . . . (is) the protection of western Colorado water users by the provisions of Colorado Revised Statutes" requiring "any works or facilities shall be designed for exportation of water from the natural basin of the Colorado River . . . shall be operated in such a manner that the present appropriations of water, and in addition thereto prospective uses of water . . . within the natural basin of the Colorado

River . . . will not be impaired nor increased in cost at the expense of the water users with the natural basin.”<sup>1</sup>

Dedicating a portion of this water to fish recovery efforts and fulfillment of the PBO, provides protections to Western Colorado water users consistent with the authorizing legislation and principal purpose of Ruedi Reservoir. Accordingly, we see Western Colorado’s willingness to dedicate a portion of its uncontracted pool of water in Ruedi Reservoir as providing our water to endangered fish recovery.

*Question 2.* How, if at all, will the release of this water stored in the Ruedi Reservoir impact water usage for agriculture, drinking, or recreational purposes?

Answer. Because the West Slope Pool, or Marketable Pool, of water in Ruedi Reservoir is far from fully contracted, there should be no impact on traditional consumptive uses such as agriculture, municipal or industrial water use. The 5,412 acre-feet to be committed to fish recovery from Ruedi will likely be delivered to the critical habitat for the endangered fish with a recreational water contract. Accordingly, these releases can, and likely will, have a positive impact on recreation and the environment in the Roaring Fork and Colorado Rivers.

There are local concerns regarding potential impacts of water releases from Ruedi Reservoir to the angling community immediately downstream of Ruedi dam on the Fryingpan River. However, with less water released after 2012 than presently released (5,412 acre-feet versus 10,825) and a recent commitment from the Fish & Wildlife Service to be more sensitive to local conditions on the Fryingpan’s angling community when scheduling fall releases from Ruedi Reservoir, any negative impact should be attenuated.

---

RESPONSES OF PHYLLIS CURRIE TO QUESTIONS FROM SENATOR STABENOW

*Question 1.* Your testimony indicates that the power from Hoover dam contributes toward meeting the renewable energy requirements of the State of California—if you did not have this power available, how difficult would it be to meet those requirements?

Answer. Retention of its share of Hoover power is a critical component of Pasadena’s plan to meet the 40% by 2020 renewable energy goals set by its Board. This is among the highest renewable goals of any city and utility in the country. Being able to count on 95% of its current Schedule A and B allocations of Hoover power will help Pasadena mitigate the rate impact of the higher cost renewable resources we will acquire.

*Question 2.* Do you support modifications to the bill that are consistent with the changes made on the House side?

Answer. Yes. All the existing Hoover contractors support the changes to the bill made by the House.

*Question 3.* How would you propose to address any unresolved “intra-California” issues if there are any? For example, the Committee has received a request from the Imperial Irrigation District to specify which interests in California should be eligible to receive new allotments of Hoover power—what is your position regarding that proposal as opposed to an alternative process that may be utilized.

Answer. Pasadena and the other existing Hoover contractors are very aware of and sensitive to the desires of entities like the Imperial Irrigation District (IID) to get a share of Hoover power. We propose to address requests by California interests that do not currently receive Hoover power by encouraging them to participate in the Western Area Power Administration’s (Western) process for allocating Schedule D power. In the case of IID, which is a SCPPA member, SCPPA has stated that it will support IID’s application for some of that power during the administrative process.

The legislation provides 103 MW for distribution to new entrants, which include entities like IID. In order to ensure that Western’s Schedule D administrative process is open, fair and transparent, the legislation does not specify the criteria that will be developed by Western or the entities that will receive the allocations.

*Question 4a.* Please describe, from your perspective, the differences between the administrative allocations proposed by the Administration and the allocations proposed in this bill. For example:

Please comment on the proposal from the Administration to retain 30 megawatts of contingent Hoover Dam capacity and distribute it to customers within the Administration’s integrated system.

---

<sup>1</sup>Page 2, Paragraph 7 of House Document 130 in accordance with House Resolution 91, 87th Congress, March 15, 1961.

Answer. In his June 9, 2010 testimony to the Subcommittee, Western's Administrator Tim Meeks stated that his agency would like to withhold from allocation to customers 30 MW of Hoover Dam capacity for use in the regulation and integration of the other federal resources on the Colorado River. Today, no Hoover power is reserved for those functions; all of it is allocated to the customers who have paid (and continue to pay) Hoover's costs of construction and operation. Therefore, the Hoover contractors oppose this recommendation.

*Question 4b.* Please comment on the Administration's testimony regarding the quantity of power that should be available for remarketing.

Answer. S. 2891 and H.R.4349 direct that 4,527,001 megawatt hours of energy be allocated annually from Hoover Dam. In contrast, Administrator Meeks' testimony recommends that only 4,116,000 megawatt hours be allocated.

The obligation of the Secretary of Energy to delivery contingent capacity and firm energy pursuant to the terms of the legislation is subject to the availability of water to produce such capacity and energy. Hoover contractors believe that the full amount of available contingent capacity and energy ought to be delivered to customers annually. Therefore, the Hoover contractors oppose the Administration's proposal to withhold from allocation 411,001 megawatt hours of firm energy.

*Question 4c.* Please comment on the Administration's testimony that the current Implementation Agreement needs to be evaluated and potentially revised to accommodate current conditions.

Answer. The Hoover contractors understand that the current Implementation Agreement addressed a number of issues that arose after the 1987 contracts were signed, some of which were one-time events that have since been resolved. Hoover contractors are willing to work with Western and other parties, through the administrative process to allocate Schedule D power, to evaluate how the current Implementation Agreement needs to be revised and to develop changes to the Agreement.

*Question 4d.* Please comment on the Administration's testimony that a 50 year contract term could potentially exclude classes of customers in decades to come.

Answer. S. 2891 and H.R. 4349 direct the Secretary of Energy to enter into 50 year contracts with existing Hoover contractors and with new allottees that receive an allocation of power from the Schedule D resource pool. This contract term matches the 50 year funding commitment that water and power contractors in Arizona, California and Nevada have made to fund the non-federal share of the Multi-Species Conservation Plan. It also provides resource certainty for Hoover contractors.

The 103 MW Schedule D resource pool authorized in the legislation ensures that the benefits of Hoover power will be distributed more widely in the three states and will provide resource certainty for new allottees, as well.

---

#### RESPONSES OF PHYLLIS CURRIE TO QUESTIONS FROM SENATOR BROWNBACK

*Question 1.* The legislation before us would, upon the 2017 expiration of the existing Hoover contracts, allocate the project's power for the next 50 years. The last time Congress reauthorized the Hoover project, we approved 30 year contracts—the same time period envisioned by Western in their Administrative proceeding.

While supporters of the legislation argue that 50 years is needed in order to coincide with the 50 year Lower Colorado River Multi-Species Conservation Program (LCR MSCP), Western notes that the contracts terms do not coincide with the LCR MSCP terms. Please comment on the need for a 50 year vs. 30 year contract term. Will the adoption of a 50 year term potentially exclude evolving classes of customers in decades to come?

Answer. The 50 year funding commitment that water and power users in Arizona, California and Nevada made to the Multi-Species Conservation Program (MSCP) will protect 26 endangered, threatened and sensitive species on the Lower Colorado River. Hoover contractors agreed to participate in this historic public-private partnership in anticipation of continuing to receive the benefits of Hoover power upon compliance with MSCP program requirements.

Given that the new Hoover contracts will begin in 2017, the benefits from the power contracts will not coincide precisely with the 50 year term of the MSCP. However, a fundamental principle underlying MSCP is that the substantial financial commitment made by the Lower Colorado River water and power users was based on the expectation that they would receive benefits from the operation of Hoover Dam for a commensurate period of time.

While it is true that the contract extension period for other projects whose power is marketed by Western is 30 years, no other group of project customers has made

the long-term financial commitment to environmental mitigation that the Hoover contractors have made.

The Hoover contractors have addressed Western's concern about excluding evolving classes of customers by agreeing to reduce each of their existing allocations of Hoover power by five percent to create the Schedule D pool of 103 MW for new entrants.

*Question 2.* In the Administrative proceeding to allocate future Hoover capacity, the Western Area Power Administration has proposed to retain 30 megawatts of contingent Hoover Dam capacity for use by Western for project integration purposes. Please comment on whether such retention is appropriate.

Answer. In his June 9, 2010 testimony to the Subcommittee, Western Administrator Tim Meeks stated that his agency would like to withhold from allocation to customers 30 MW of Hoover Dam capacity for use in the regulation and integration of the other federal resources on the Colorado River. Today, no Hoover power is reserved for those functions; all of it is allocated to the customers who have paid (and continue to pay) Hoover's costs of construction and operation. Therefore, the Hoover contractors oppose this recommendation.

*Question 3.* The Imperial Irrigation District has requested an amendment to direct Western to give preference to full-service public power providers when allocating California's share of the new "Schedule D" allotment of Hoover Dam power. What is your position on this proposed amendment?

Answer. Pasadena and the other existing Hoover contractors are very aware of and sensitive to the desires of entities like the Imperial Irrigation District (IID) to get a share of Hoover power. We propose to address requests by California interests that do not currently receive Hoover power by encouraging them to participate in the Western Area Power Administration's process for allocating Schedule D power. In the case of IID, which is a SCPPA member, SCPPA has stated that it will support IID's application for some of that power during the administrative process.

The legislation provides 103 MW for distribution to new entrants, which include entities like IID. In order to ensure that Western's Schedule D administrative process is open, fair and transparent, the legislation does not specify the criteria that will be developed by Western or the entities that will receive the allocations.

*Question 4.* You testify that S. 2891 will help offset the higher cost of renewable resources Pasadena needs to acquire to meet the 40% by 2020 target it has adopted. Please elaborate. Am I correct in assuming that the Hoover hydropower provided under these contracts will not count as a renewable resource to meet your state goal?

Answer. You are correct that Pasadena, in accordance with California's Renewable Portfolio Standard guidelines, does not count Hoover hydropower as a renewable resource. However, Pasadena and its customers benefit from the fact that Hoover hydropower is low cost, zero-carbon energy. Pasadena, in consultation with its consumer-owners, has adopted goals of 40% renewable energy by 2020 and 40% carbon reduction below 2008 levels by 2020. Without Hoover energy, Pasadena would have to procure an equivalent amount of renewable resources at a much higher cost, resulting in greater costs to customers.

---

RESPONSES OF GEORGE M. CAAN TO QUESTIONS FROM SENATOR STABENOW

*Question 1.* Can you please describe the efforts that have been made to negotiate the terms of this legislation among the various stakeholders?

Answer. Discussions regarding this proposed legislation have been underway for almost two years. In the course of this process, current Hoover contractors have engaged in discussions with each other, with their customers (including a wide range of municipalities), with entities who have not previously received Hoover power (including Indian tribes and electrical and irrigation cooperatives), with industry associations, and with state and federal government entities. The goal of all of these discussions has been to develop principles that will provide a reasonable framework for post-2017 Hoover power allocations, and to develop and support legislative language to implement this framework.

*Question 2.* How will entities like Indian tribes and electrical cooperatives be able to obtain allocations of power—and please comment on the sufficiency of the 5 percent that has been reserved for the new contractors?

Answer. S. 2891 and H.R. 4349 create a 103 megawatt resource pool (Schedule D) for new allottees. Indian tribes and electric cooperatives are expressly included in the class of entities eligible to apply for power from this pool. With this legislation, tribes will be eligible to apply for Hoover power allocations for the first time.

Hoover contractors believe the size of this resource pool is fair and sufficient. In fact, it is larger than any of the resource pools created in the past for other federal projects.

*Question 3.* Please describe the changes agreed to in connection with the proceedings on the House side for the corresponding House legislation—and do you recommend that similar changes be adopted here in the Senate?

Answer. The Hoover contractors recommend that the Senate adopt the amendments adopted on the House side. These include:

- Two amendments addressing tribal sovereignty concerns:
  - An amendment allowing tribes to contract for Hoover power allocations directly with the Western Area Power Administration (Western), rather than indirectly through the states.
  - An amendment deleting a provision in H.R. 4349 as introduced, which required Western to consult with the states first in developing its criteria for allocating the Schedule D pool. With this amendment, tribes will be on an equal footing with the states and all other interested entities that choose to participate in development of Western's criteria in its administrative process.
  - An amendment increasing the time allowed for Western's allocation of Schedule D power, from 18 to 36 months, as Western requested.

*Question 4a.* Please describe, from your perspective, the differences between the administrative allocations proposed by the Administration and the allocations proposed in this bill. For example:

Please comment on the proposal from the Administration to retain 30 megawatts of contingent Hoover Dam capacity and distribute it to customers within the Administration's integrated system.

Answer. In his June 9, 2010 testimony to the Subcommittee, Western's Administrator Tim Meeks stated that his agency would like to withhold from allocation to customers 30 MW of Hoover Dam capacity for use in the regulation and integration of the other federal resources on the Colorado River. Today, no Hoover power is reserved for those functions; all of it is allocated to the customers who have paid (and continue to pay) Hoover's costs of construction and operation. Therefore, the Hoover contractors oppose this recommendation.

*Question 4b.* Please comment on the Administration's testimony regarding the quantity of power that should be available for remarketing.

Answer. S. 2891 and H.R. 4349 direct that 4,527,001 megawatt hours of energy be allocated annually from Hoover Dam. In contrast, Administrator Meeks' testimony recommends that only 4,116,000 megawatt hours be allocated.

The obligation of the Secretary of Energy to deliver contingent capacity and firm energy pursuant to the terms of the legislation is subject to the availability of water to produce such capacity and energy. Hoover contractors believe that the full amount of available contingent capacity and energy ought to be delivered to customers annually. Therefore, the Hoover contractors oppose the Administration's proposal to withhold from allocation 411,001 megawatt hours of firm energy.

*Question 4c.* Please comment on the Administration's testimony that the current Implementation Agreement needs to be evaluated and potentially revised to accommodate current conditions.

Answer. The Hoover contractors understand that the current Implementation Agreement addressed a number of issues that arose after the 1987 contracts were signed, some of which were one-time events that have since been resolved. Hoover contractors are willing to work with Western and other parties, through the administrative process, to allocate Schedule D power, to evaluate how the current Implementation Agreement needs to be revised, and to develop changes to the Agreement.

*Question 4d.* Please comment on the Administration's testimony that a 50 year contract term could potentially exclude classes of customers in decades to come.

Answer. S. 2891 and H.R. 4349 direct the Secretary of Energy to enter into 50 year contracts with existing Hoover contractors and with new allottees that receive an allocation of power from the Schedule D resource pool. This contract term matches the 50 year funding commitment that water and power contractors in Arizona, California and Nevada have made to fund the non-federal share of the Multi-Species Conservation Plan. It also provides resource certainty for Hoover contractors.

The 103 MW Schedule D resource pool authorized in the legislation ensures that the benefits of Hoover power will be distributed more widely in the three states and will provide resource certainty for new allottees, as well.

## RESPONSES OF GEORGE CAAN TO QUESTIONS FROM SENATOR BROWNBACK

*Question 1.* The legislation before us would, upon the 2017 expiration of the existing Hoover contracts, allocate the project's power for the next 50 years. The last time Congress reauthorized the Hoover project, we approved 30 year contracts—the same time period envisioned by Western in their Administrative proceeding.

While supporters of the legislation argue that 50 years is needed in order to coincide with the 50 year Lower Colorado River Multi-Species Conservation Program (LCR MSCP), Western notes that the contracts terms do not coincide with the LCR MSCP terms. Please comment on the need for a 50 year vs. 30 year contract term. Will the adoption of a 50 year term potentially exclude evolving classes of customers in decades to come?

Answer. (Same response as above)

*Question 2.* In the Administrative proceeding to allocate future Hoover capacity, the Western Area Power Administration has proposed to retain 30 megawatts of contingent Hoover Dam capacity for use by Western for project integration purposes. Please comment on whether such retention is appropriate.

Answer. (Same response as above)

*Question 3.* Please elaborate on the amendments adopted by the House to address tribal sovereignty concerns.

Answer. (Same response as above)

*Question 4.* Western has initiated a Federal Register proceeding to address the Hoover allocation issues administratively. Why do you prefer Congressional action?

Answer. Hoover is unique among federal projects because, from the initial authorization in the Boulder Canyon Project Act of 1928, its power has been allocated by Act of Congress. The agreement of the states of Arizona, California and Nevada was needed in order to win the support of Congress.

This same question arose when Western commenced its marketing process in 1979, for the Hoover power contracts expiring in 1987. At that time, litigation was filed over the proper interpretation and application of the Boulder Canyon Project Act, which resulted in uncertainty and unnecessary expenditure of resources. That litigation was resolved by the Hoover Power Plant Act of 1984.

We believe that Congress should allocate post-2017 Hoover power statutorily as it did in 1928 and in 1984. As in both of those prior instances, the agreement of the three states is essential to ensure Congressional support. Congressional action is the only way to ensure that the Administration, Hoover contractors and new allottees are not subjected to expensive, time-consuming and unproductive litigation.

Finally, Congressional action is needed to ensure that Western has the statutory authority to create the Schedule D resource pool which will allow Indian tribes and other new entrants to participate in the allocation process for Hoover power. Commenters in Western's administrative proceeding stated that Western does not have authority to grant Hoover power allocations to new allottees, in the absence of the express statutory authorization granted in S.2891.

---

 RESPONSES OF MICHAEL L. CONNOR TO QUESTIONS FROM SENATOR STABENOW,  
ON S. 3387

*Question 1.* Regarding S. 3387, the Ruedi Reservoir bill, I am pleased that the Administration is willing to work with the river district to develop reasonable alternatives to the bill's present language—what is the anticipated time frame for being able to provide alternative language to the district?

Answer. Reclamation and the district have had discussions that we expect will result in a path forward soon.

*Question 2.* Does Reclamation agree that dedicating a portion of the water from Ruedi Reservoir for fish and wildlife purposes in a non-reimbursable manner is consistent with the authorizing legislation for the Reservoir?

Answer. Water identified in the authorizing legislation for fish and wildlife purposes is for mitigation for the construction and operation of the Fryingpan—Arkansas (Fry-Ark) project. The water at issue in S. 3387 is to be provided pursuant to an agreement specific to a 1999 Programmatic Biological Opinion for mitigation of non-project activities by other entities outside the scope of the Fry-Ark project. As non-project activities, these require reimbursement to the United States for the costs of storing and delivering the water.

*Question 3.* What are Reclamation's concerns about the need to have a contract relating to the release of water from the Reservoir as opposed to allowing the Fish and Wildlife Service to request releases of water through some other process as contemplated by the bill?

Answer. As stated in our testimony on S. 3387, the absence of a contractual arrangement governing the release of water from Ruedi Reservoir could pose operational and financial problems. Operationally, the absence of a contract deprives Reclamation of a legal basis for establishing expectations of water users along the 15-mile reach of the River and introduces a new variable or obligation into operational considerations. Financially, as discussed in our testimony, a contract enables reimbursement to the United States for proportionate costs incurred at Ruedi. At a minimum, the language in the bill should articulate the need to coordinate releases with Reclamation and other interested parties and that measures need to be taken to ensure that such releases of water are protected from diversion by others to ensure benefits to endangered species.

*Question 4.* If the issues raised by Reclamation are not addressed, are you concerned about the potential precedent this bill may set for other projects?

Answer. Yes.

RESPONSES OF MICHAEL L. CONNOR TO QUESTIONS FROM SENATOR BROWNBACK

*Question 1.* Could you please elaborate on why the absence of a contract is problematic for operational and financial reasons, as it relates to Ruedi Reservoir?

Answer. As stated in our testimony on S. 3387, the absence of a contractual arrangement governing the release of water from Ruedi Reservoir could pose operational and financial problems. Operationally, the absence of a contract deprives Reclamation of a legal basis for establishing expectations of water users along the 15 mile reach of the River and introduces a new variable into operational considerations. Financially, as discussed in our testimony, a contract enables reimbursement to the United States for proportionate costs incurred at Ruedi. At a minimum, the language in the bill should articulate the need to coordinate releases with Reclamation and other interested parties and that measures need to be taken to ensure that such releases of water are protected from diversion by others to ensure benefits to endangered species.

*Question 2.* Please describe how the BOR has addressed cost share issues in the past, as it pertains to unused reservoir capacity at federal water facilities for environmental purposes.

Answer. The water users' proposal to use uncontracted Ruedi Reservoir water in this manner is unique to the facts of this situation. The water users committed to provide a permanent 10,825 acre feet of water (west and east slope water users) in a programmatic biological opinion as their contribution to actions that, when combined, provide ESA compliance for both non-federal and federal depletions. We are not aware of similar factual situations.

RESPONSES OF MICHAEL L. CONNOR TO QUESTIONS FROM SENATOR MARK UDALL,  
ON S. 3404

*Question 1.* I want to emphasize for the record that the goal of my legislation—the Leadville Mine Drainage Tunnel Act of 2010 (S. 3404)—is not to force the Bureau of Reclamation to act when it believes the tunnel is safe. The point is to ensure that when we know it is not safe, there are clear lines of responsibility and authority for acting. That was not the case in 2008 when the Bureau and the U.S. Environmental Protection Agency (EPA) disputed their respective responsibilities to respond to a dangerous buildup of contaminated water behind a physical blockage in the tunnel. And none of the legal blockages have changed since then. Therefore, in my opinion, the Bureau misses the point when they testify that the legislation does not take into consideration the 2008 risk assessment. The legislation is not designed to address current safety conditions, but rather current and future responsibility for action.

Even though the Bureau committed in its testimony to not “walk away” from the tunnel, and there has been good cooperation recently with EPA and the State of Colorado on this issue, that has not been the history at the tunnel. I want to ensure the people of Leadville and southeastern Colorado that we do not have a repeat of 2008 at any point in the future.

Commissioner Connor, with that in mind, can you describe your understanding of the Bureau's responsibilities regarding the tunnel? Do you have any objection to codifying those responsibilities in law so that it is clearly articulated for any future contingencies?

Answer. Reclamation believes that its current responsibilities for the tunnel are spelled out in Public Law 102-575, which requires that Reclamation, “. . . treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.” Reclamation is responsible for ensuring that all of its facilities are safe, and do not present a threat to public health, safety, or the environment.



It is for that reason that, when EPA and others expressed concern about the safety of the Tunnel, Reclamation conducted a risk assessment to confirm that the Tunnel did not present a significant safety hazard. Based on that assessment, Reclamation believes the tunnel is safe and the chance of a catastrophic discharge as a result of the failure of a blockage inside the tunnel is highly unlikely. As provided in PL 102-575, Reclamation is responsible for the operation and maintenance of the treatment plant, and is also committed to ensuring that waters discharged from the treatment plant do not violate Federal and state law. Reclamation generally does not object to statutory language that would clarify those responsibilities, particularly as it relates to Reclamation's authority to treat waters (above historical flows) delivered to the treatment plant from the de-watering well in the tunnel or limited surface waters discharged in case of emergency from operable unit 6 of the California Gulch Superfund Site pursuant to the ROD Amendment issued by EPA on September 28, 2010. However, Reclamation has both policy and technical concerns about this bill and does not believe that legislation is warranted at this time.

*Question 2.* Commissioner Connor, in your testimony, you stated that S. 3404 could be construed as "conferring responsibility on the Secretary for facilities which have been listed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or are subject to the Resource Conservation and Recovery Act (RCRA)." Could you specify which parts of and in what ways S. 3404 could be construed as such? In addition, since my legislation is not designed to confer any such responsibility to the Secretary, can you suggest changes to the legislation that would remove this particular concern?

Answer. Section 708 of Pub. L. 102-575 currently provides that "[t]he Secretary shall have no authority under this section at facilities which have been listed or proposed for listing on the National Priorities List, or are subject to or covered by the Resource Conservation and Recovery Act." We note that S. 3404 would amend Section 708 to provide expressly for such authority, including any authority to improve and expand the Treatment Plant and to consult with EPA on elements of the Operable Unit 6 ROD that may require alterations to, or affect the operation and maintenance of, the Tunnel or treatment plant.

#### RESPONSES OF MICHAEL L. CONNOR TO QUESTIONS FROM SENATOR STABENOW

*Question 1a.* Regarding S. 3404, relating to the Leadville Mine Tunnel, was the Department of Interior able to coordinate its testimony with the Environmental Protection Agency?

Answer. Yes.

*Question 1b.* When will EPA have the revised Record of Decision for the site completed?

Answer. EPA issued a Record of Decision amendment for OU6 on September 28, 2010, which eliminates the use of the LMDT except in the event of an emergency. The ROD amendment can be found at: <http://www.epa.gov/region8/superfund/co/calgulch/index.html>.

*Question 2.* Is Reclamation committed to working in a timely manner with the State of Colorado and the Lake County Commission on specific amendments to the bill that will address the Administration's concerns about the bill including issues relating to the potential characterization of Reclamation as a potentially responsible party, and ensuring an appropriate allocation of costs associated with treatment of water and maintenance of the facilities?

Answer. Yes.

*Question 3.* Does Reclamation need additional authority to treat water at the Leadville Mine Tunnel treatment facility or maintain the tunnel or treatment facility beyond what is currently provided in P.L. 102-575 or otherwise?

Answer. Reclamation is presently treating the annual outflow volume of the Leadville Mine Drainage Tunnel (LMDT), approximately 510 million gallons. In addition to this amount, Reclamation is treating surface water diversions by EPA from surface sources into the LMDT via the Marion Shaft (up to 5 million gallons per year to date, as well as diversions from relief well in two locations along the tunnel alignment. One of those locations is the relief well that EPA installed in 2008 to relieve the threat posed by blockages in the lower portion of the tunnel (~ 377 million gallons per annum), of which Reclamation has since taken ownership. Reclamation's authority to treat these additional waters is not explicitly enumerated in Public Law 102-575; however, Reclamation has been relying on general health and safety considerations to treat these diversions.

## RESPONSES OF MICHAEL L. CONNOR TO QUESTIONS FROM SENATOR BROWNBACK

*Question 1.* Please describe the work that the BOR has conducted, as it relates to the safety of the Leadville tunnel. Do you believe it is the obligation of the Bureau of Reclamation (BOR) to be the lead Federal agency? If additional work is needed, do you believe the BOR should be the lead agency, as it relates to any public safety and environmental issues that may arise? If not, who should be the lead Federal agency, as it relates to the operations of the tunnel, and any costs associated with additional mitigation, if necessary.

Answer. In response to public concerns expressed in 2008 about the safety of the Tunnel, Reclamation initiated a scientific Risk Assessment to analyze the condition of the LMDT. That assessment, begun in 2008, was intended to respond to concerns about the stability of the LMDT and its potential for a catastrophic release of water. When initial findings were available, they were independently peer reviewed. The independent peer review confirmed Reclamation's analysis that it is highly unlikely that a sudden release of water could occur from either a blockage in the LMDT, or through the bulkheads installed in the tunnel. Moreover, the assessment concluded that even if an existing natural blockage in the upper part of the LMDT failed rapidly, a sudden release of water through the lower blockage and bulkheads is unlikely. When the Risk Assessment was published in the early Fall of 2008, it was posted on the Internet and distributed to the media. Reclamation conducted three public meetings and sought public comment on the findings. We remain confident in the value of the Risk Assessment and the validity of its findings. Lastly, Reclamation is conducting a facility assessment of its operation and maintenance. The purpose of the review is to identify possible treatment process enhancements, overall efficiency improvements, and any possible modification opportunities that would lower long term operation and maintenance costs. This will be accomplished within the appropriated budget. As the owner of the LMDT, Reclamation is the lead Federal agency for all matters concerning its operation and maintenance. The California Gulch Superfund Site, part of which overlies the tunnel, is being cleaned up under CERCLA with EPA as the lead agency and Colorado Department of Public Health and the Environment (CDPHE) as the support agency. EPA is the lead Federal agency, in consultation with CDPHE, for responding to environmental contamination associated with the Superfund Site.

*Question 2.* Please describe the role that the BOR has played at other superfund sites, in addressing water related issues. Is this a core mission of the BOR?

Answer. Activities related to Superfund Sites are not a core mission of the Bureau of Reclamation. However, Reclamation has certain technical expertise that can be useful in developing remedies at Superfund sites. In some case-by-case instances, Reclamation has made this expertise available on a reimbursable basis.

Additionally, the Department of the Interior and its component bureaus possess delegated authority under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to conduct cleanups of Federal lands. Reclamation has exercised this authority at times to conduct CERCLA cleanups on lands subject to Reclamation's jurisdiction, custody or control. Because it manages relatively little contaminated land on behalf of the United States, Reclamation has not conducted many CERCLA cleanups. Nevertheless, Reclamation takes all of its environmental stewardship responsibilities seriously and believes that environmental response on Reclamation-managed lands is part of its overall agency mission. Reclamation notes that, with respect to Operable Unit 6 of the California Gulch Superfund Site, Reclamation does not manage any of the surface of the Site—the source of the acid mine drainage and other surface water discharged into or migrating to the Tunnel. EPA, together with CDPHE, is responsible for addressing water contamination at Operable Unit 6.

ON S. 2779

*Question 3.* Within your testimony on the Upper Mississippi you describe many programs that are in place that address the science and management of nutrients and sediments in the river system. Do you believe that this bill will provide any additional insight, or direction, that you are currently not pursuing? If so, what areas should be further addressed?

Answer. The activities called for in the bill would expand the current USGS monitoring efforts in the region, which would support United States Department of Agriculture programs, including the recently announced Mississippi River Basin Healthy Watersheds Initiative, by providing a more comprehensive picture of the effectiveness of conservation and management practices. The bill also directs the USGS to obtain improved geospatial coverages of information on point and nonpoint sources of nutrients to streams, along with information on best management practices. Both

monitoring data and geospatial coverages are used to calibrate scientifically sound and rigorous water-quality models, which would help land and water managers address nutrient and sediment issues in the Mississippi River Basin and hypoxia issues in the Gulf of Mexico.

RESPONSES OF MICHAEL CONNOR TO QUESTIONS FROM SENATOR STABENOW,  
ON S. 2779

*Question 8.* Regarding S. 2779, relating to the Upper Mississippi River, does the Administration have any technical concerns regarding the bill beyond the issue raised in the testimony regarding the potential lack of sufficient funding to complete the work authorized by the bill?

Answer. The USGS has a few technical concerns with the current bill language; we would be happy to work with the Committee to resolve our concerns.

*Question 9.* Does S. 2779 provide any additional authority to U.S.G.S to complete the required work beyond what is already in place?

Answer. No, the activities described within S. 2779 are within the scope of current USGS authorities.

ON H.R. 4252

*Question 10.* Regarding H.R. 4252, the bill to assess groundwater pollution conditions in California, is the primary concern of the Administration that there may not be sufficient funding to complete the work authorized by the bill or are there any specific technical concerns regarding the bill?

Answer. The USGS has no technical concerns regarding H.R. 4252; however, the work authorized by this bill would need to be considered in light of other USGS research priorities.

*Question 11.* Your testimony indicates that the U.S. Geological Survey is currently working on studies relating to the groundwater quality in California's Inland Empire area—does H.R. 4252 add to any of the existing authorities or provide any new authorizations?

Answer. USGS's The Rialto Colton Basin study proposed in HR 4252 can be conducted with existing authorities; H.R. 4252 does not add to these authorities nor does it provide new authorities.



## APPENDIX II

### Additional Material Submitted for the Record

[Due to the large amount of materials submitted, additional documents and statements have been retained in subcommittee files.]

STATEMENT OF THE U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR,  
ON S. 2779

Madam Chairwoman and Members of the Subcommittee, the Department of the Interior appreciates the opportunity to provide its views on S. 2779, the "Upper Mississippi River Basin Protection Act."

The Department considers sediment and nutrient loss in the Upper Mississippi River Basin to be a real threat to the health of the ecosystem and appreciates the efforts of the sponsors of S. 2779 to address this important issue. We especially value the emphasis within the bill on the need for reliance on sound science to inform wise management of nutrients and sediments in the Upper Mississippi River Basin. However, we have concerns about the financial resources that would be required for the U.S. Geological Survey (USGS) to carry out the full scope of activities described in this bill. Carrying out these activities would mean diverting resources away from other priority programs. The Department of the Interior supports the goals of S. 2779, although we note that the activities called for in this bill are well within the scope of existing Department of the Interior authorities and activities already underway by the Department that are aimed at addressing the same problems addressed in this bill.

The bill directs the Secretary of the Interior, acting through the USGS, to provide a scientific basis for the management of sediment and nutrient loss in the Upper Mississippi River Basin. This would be accomplished through

- establishing a sediment and nutrient monitoring network that builds on existing monitoring activities;
- conducting research and modeling that relate sediment and nutrient gains and losses to landscape, land-use, and land-management characteristics;
- providing technical assistance regarding use of consistent and reliable methods for data collection; and
- instituting a program to disseminate new information to managers, scientists and the public.

The role identified for the Department in this bill is consistent with the USGS's leadership role in monitoring, interpretation, research, and assessment of the health and status of the water and biological resources of the Nation. Since its beginning, the USGS has been the primary federal agency responsible for assessing the quantity and quality of the nation's surface water and groundwater. The USGS has been active in a number of programs and investigations that involve the Upper Mississippi River Basin specifically.

The USGS participates in the Mississippi River Gulf of Mexico Watershed Nutrient Task Force. The role of the Task Force is to provide executive level direction and support for coordinating the actions of participating organizations working on nutrient management within the Mississippi River/Gulf of Mexico Watershed. It is chaired by the Environmental Protection Agency and has representation from four additional Federal agencies, ten State governments, and Tribal governments in the basin. A key goal of the Task Force is to implement the Gulf Hypoxia Action Plan 2008, which provides an overview of how federal agencies, states, and tribes are working together to take action to reduce the size of the hypoxic zone in the Gulf of Mexico while protecting and restoring the human and natural resources of the Mississippi River Basin. The Action Plan in 2008 identified USGS to lead or co-lead two activities. The USGS has the lead role to "reduce the scientific uncertainties regarding the source, fate, and transport of nitrogen and phosphorus in the surface

waters of the Mississippi/Atchafalaya River Basin and to improve the accuracy of management tools and efficacy of management strategies for nutrient reduction.” As a co-lead with the U.S. Environmental Protection Agency and the National Oceanic and Atmospheric Administration, the USGS is tasked “to coordinate, consolidate, and improve access to data collected by State and Federal agencies on Gulf Hypoxia and Mississippi/Atchafalaya River Basin program activities and results.”

To accomplish these tasks, the USGS has used its water-quality models and a broad suite of USGS and other Federal and non-Federal monitoring data from 31 basin States to identify the most important sources of nutrients and the sub-watersheds delivering the majority of those nutrients from the Mississippi River Basin to the Gulf of Mexico. Partners and stakeholders such as the U.S. Department of Agriculture and the U.S. Environmental Protection Agency in coordination with State and local agencies are using USGS information to target their resources in priority watersheds to manage nutrient runoff to rivers and streams.

Specifically, the models estimate the amounts of nutrients delivered from key nutrient sources and landscapes in the Mississippi River watershed. Delivery of nutrients from more than 800 watersheds to local rivers, streams, and lakes, and to more distant receiving waters such the northern Gulf of Mexico are estimated. Key nutrient sources assessed in the model include chemical fertilizers, animal manure, human wastewater, urban stormwater, and atmospheric deposition. A nationally scaled model for the Mississippi/Atchafalaya River Basin was published in 2008, and a regional model for the Upper Mississippi River watershed is planned for release this year.

The USGS has offices in each of the five Upper Mississippi River Basin states. These offices have a long history of conducting water-quantity and water-quality monitoring and assessment activities within the basin. Existing USGS programs include the Hydrologic Networks and Analysis Program, the National Water-Quality Assessment Program, the National Stream Quality Accounting Network, the National Streamflow Information Program, the Toxic Substances Hydrology Program, the Water Resources Research Act Program, and the Cooperative Water Program, as well as cooperative efforts such as the Long-Term Resource Monitoring Program funded by the U.S. Army Corps of Engineers. These programs currently provide information on nutrients and sediment in rivers, streams, and groundwater within the basin.

For more than 20 years, the USGS Upper Midwest Environmental Sciences Center (UMESC) in La Crosse, Wisconsin, has provided research support in the Upper Mississippi River Basin to Department of the Interior agencies and the U.S. Army Corps of Engineers to address complex issues of navigation, contaminants, and other natural-resource concerns. More recently, this Center has developed an active partnership with the Department of Agriculture, Natural Resources Conservation Service, on sediment and nutrient concerns of the agencies. For over 15 years, UMESC has provided scientific and management leadership for the Long-term Resource Monitoring Program component of the U.S. Army Corps of Engineers’ Upper Mississippi Restoration-Environmental Management Program. This monitoring program of water quality, fisheries, vegetation, land use, and other critical indicators of river health is the largest mainstem river assessment program in the Nation.

The USGS conducts monitoring activities in cooperation with many States and local governments in the Upper Mississippi River Basin. The USGS is also active in hydrologic and water-quality studies in the Lower Mississippi River Basin. The continuity of research is important from the standpoint of developing a complete assessment of the entire Mississippi River basin. To this end, the USGS has begun a partnership with the Long-term Estuary Assessment Group, centered at Tulane University. The USGS also supports EPA and states in their implementation of the National Aquatic Resource Surveys, particularly those focused on rivers and streams. These surveys are producing assessments of the condition of rivers and streams throughout the Mississippi River basin and across the nation. By focusing on periodic assessments of the resource at large, these surveys provide an important complement to the continuous sampling at selected locations proposed in the USGS sediment and nutrient monitoring network.

S. 2779 acknowledges the need to use all existing monitoring and science programs of the USGS and those of other entities while identifying information needs in the Upper Mississippi River Basin. Existing monitoring and assessment programs and models are tools for defining how water-quality conditions are affected by human activities and natural climatic variations and how management actions may best improve water-quality conditions at a wide range of scales from small watersheds to the Mississippi River Basin. In 1995, the USGS had more than 200 locations for long-term sampling in the Basin; now, the network consists of about 74 locations, many of which are only sampled one year out of every four making it chal-

lenging to verify model outputs. Within the last 10 years, there also has been a reduction in the number of locations that are sampled by States. DOI is in the process of developing a plan to determine how many sampling stations are needed to provide needed data.; the report is expected to be published in 2011.

The bill would also authorize integration of activities conducted in cooperation with other Federal partners and would emphasize and expand the existing USGS coordination and assistance to State monitoring programs. For example, the U.S. Fish and Wildlife Service's (Service) Partners for Fish and Wildlife Program restores wetland habitat in watersheds across the country, including the Upper Mississippi River Basin. The Service applies its expertise to the management of sediment and nutrients in the basin through participation in demonstration projects, technical assistance, and working groups. We recognize the need to ensure that future monitoring activities complement and do not duplicate State or other Federal monitoring activities.

Section 106 of the bill provides for the National Academy of Sciences (NAS) to conduct a comprehensive assessment of water resources of the Upper Mississippi River Basin. As drafted, funding for such a study would come from USGS resources and could have the effect of reducing funding available for other USGS monitoring and assessment work in the basin. If the NAS study remains in the bill, additional direction as to the goals and uses of the study should be provided.

In summary, the proposed legislation describes a program consistent with current USGS activities to support protection of the Upper Mississippi River Basin and the Gulf of Mexico Watershed Nutrient Task Force and the recommendations of the 2008 Action Plan. We note that some of these conservation activities are being addressed by other ongoing programs. Funding for the activities in S. 2779 is not included in the fiscal year 2011 President's Budget proposal and would remain subject to available resources.

Thank you, Madam Chairwoman, for providing the Department with the opportunity to present this statement.

---

STATEMENT OF THE U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR,  
ON HR 4252

Madam Chairwoman and members of the Subcommittee, I appreciate the opportunity to provide the Department of the Interior's views regarding U.S. Geological Survey (USGS) scientific capability relevant to the Inland Empire Perchlorate Ground Water Plume Assessment Act of 2009 (H.R. 4252).

*USGS Science in Support of Groundwater Management and Contaminants*

The USGS serves the Nation by providing reliable scientific information to describe and understand the Earth; minimize loss of life and property from natural disasters; manage water, biological, energy, and mineral resources; and enhance and protect our quality of life. The specific mission of the USGS California Water Science Center is to collect, interpret, and provide unbiased and timely scientific information of the highest quality for the responsible planning, use, and management of California's water resources in cooperation with local, State, and other Federal agencies. Scientific issues related to the occurrence and movement of groundwater and contaminants, such as perchlorate, fall within the scope of the USGS mission.

*Perchlorate issues in Rialto Colton and the "Inland Empire"*

The Rialto-Colton Basin is located in western San Bernardino County in California, about 60 miles east of Los Angeles in the upper Santa Ana River watershed (the Inland Empire). The Rialto-Colton Basin is bounded on the northeast by the Bunker Hill and Lytle Creek Basins and on the southwest by the Chino and North Riverside Basins. Groundwater presently constitutes about 79 percent of the drinking-water supply in the Inland Empire. Perchlorate has been detected in the main water-producing aquifers within the Rialto-Colton and adjacent basins and has contaminated water in more than 20 production wells that supply the communities within the Rialto-Colton Basin and surrounding area.

Perchlorate ( $\text{ClO}_4^-$ ) has both synthetic and natural sources. Synthetic perchlorate is a residual of the manufacture and use of rocket propellants, fireworks, flares and other pyrotechnic devices. Minor concentrations of natural perchlorate has been measured in mined Chilean nitrate fertilizers. Perchlorate is extremely soluble and is carried in groundwater without retardation or absorption. The two major sources of synthetic perchlorate in the area are San Bernardino County's Mid-Valley Sanitary Landfill and a 160-acre site near the landfill. These two sites were used for storage and destruction of perchlorate-containing compounds such as explosives, propellants, and pyrotechnic devices. Chilean nitrate fertilizer was commonly used

in the Basin in the early part of the 20th century. In addition, imported water from the Colorado River contains measurable perchlorate and also may be a source of perchlorate in the Inland Empire. Recent data collected by the USGS indicates that low levels of perchlorate have accumulated naturally in unsaturated zones in arid and semiarid areas of the southwestern United States, such as the Mojave Desert, likely as a result of atmospheric deposition.

Perchlorate contamination is of concern to water managers because of the importance of groundwater in this region. Water managers need to know the source, fate, and transport of perchlorate within the Rialto-Colton Basin and adjacent basins in order to effectively mitigate the contamination. Major uncertainties facing water managers include: 1) the source(s) of perchlorate in specific wells; 2) the hydrologic and geologic controls on the migration of perchlorate within the Rialto-Colton Basin; 3) the effectiveness of the Rialto-Colton Fault as a barrier to perchlorate migration from the Rialto Colton basin to the adjacent Chino and North Riverside basins; and 4) the potential vertical movement of perchlorate through long-screened wells.

*What is the USGS doing in the area?*

The USGS has a long history of hydrologic work in the Rialto-Colton area and adjacent areas in the Inland Empire going back as far as the early 1900s. This work has been updated periodically and collectively forms the basis of our scientific understanding of the regional hydrogeologic setting, the movement of water within aquifers pumped for public supply, and water-quality issues in the area. The USGS operates an extensive groundwater-monitoring network providing the public with real-time information on water levels and water quality. The USGS has developed predictive models in the Rialto-Colton Basin (Woolfenden and Kadhim, 1997; Woolfenden and Koczot, 2001) and the adjacent Lytle Creek and Bunker Hill groundwater basins (Danskin and Freckleton, 1989; Danskin and others, 2006) to assist in the management of the water resources in the area. These models are based on the current scientific understanding of the geology and hydrology in the area, including the areal and vertical extent of aquifers, hydraulic properties, recharge and discharge of groundwater, and the interaction between groundwater and surface water. Most of the USGS research done in the Inland Empire has been in cooperation with local water management agencies such as the San Bernardino Valley Municipal Water District under the auspices of the USGS Cooperative Water Program. In the past five years, about 70 percent of the cost of these studies has been borne by local agencies.

In recent years, the USGS has been working with local water agencies to help them understand the sources, distribution, and migration of perchlorate in the Inland Empire. A recent study completed as part of the USGS Groundwater Ambient Monitoring and Assessment (GAMA) Program (Belitz and others, 2003) sampled 99 drinking water wells throughout the Inland Empire and identified perchlorate in about 67 percent of the wells at the reporting level of 0.5 micrograms per liter (ug/L); about 10 percent had perchlorate concentrations in excess of the California maximum contaminant level of 6 ug/L, but no well had concentrations in excess of the EPA health reference level (Kent and Belitz, 2009). Woolfenden (2008) used a particle-tracking model to determine the susceptibility of an aquifer to perchlorate contamination in the Rialto-Colton Basin. Izbicki (2008) collected wellbore flow and depth-dependent water-quality data from a public supply well near Highland, CA located in the northern part of the Inland Empire. Water-quality and isotopic data indicated that the source of perchlorate was Chilean nitrate fertilizer.

The USGS is participating in a 2-year study funded by the Department of Defense Environmental Security Technology Certification Program (ESTCP) to apply state-of-the-art chemical and multiple-isotope techniques to identify the source of perchlorate within the Inland Empire. A total of 25 wells will be sampled and analyzed for perchlorate, perchlorate isotopes, and other tracers in the Rialto-Colton Basin and Chino Basin adjacent to the Rialto-Colton Fault. Data collected in this study are intended to help identify the areal and vertical extent of perchlorate contamination near the margin plumes in areas having high background perchlorate concentrations from fertilizer or other sources. An important component of this new work is to investigate the impact of well-bore flow on the vertical distribution of perchlorate within aquifers.

*Rialto Colton Basin, California Water-Resources Study*

The key issues of concern identified in H.R. 4252 are:

- A. The delineation, either horizontally or vertically, of the aquifers in the Rialto-Colton Basin within the State, including the quantity of water in the aquifers;
- B. the availability of groundwater resources for human use;



- C. the salinity of groundwater resources;
- D. the identification of a recent surge in perchlorate concentrations in groundwater, whether significant sources are being flushed through the vadose zone, or if perchlorate is being remobilized;
- E. the identification of impacts and extents of all source areas that contribute to the regional plume to be fully characterized;
- F. the potential of the groundwater resources to recharge;
- G. the interaction between groundwater and surface water;
- H. the susceptibility of the aquifers to contamination, including identifying the extent of commingling of plume emanating within surrounding areas in San Bernardino County, California; and
- I. characterization of surface and bedrock geology, including the effect of the geology on groundwater yield and quality.

The USGS has the capability to complete a 2-year study to address the issues of concern presented in H.R. 4252 for the Rialto-Colton Basin. The tasks required are within the scope of the USGS mission and expertise and could be accomplished under existing authorities.

H.R. 4252 focuses on perchlorate issues in the Rialto-Colton Basin; however, perchlorate is a concern throughout the Inland Empire. If requested, the USGS could consider options for studying this issue throughout the region.

#### *Conclusion*

The USGS has the scientific capacity to address issues of concern identified in H.R. 4252, a strong working relationship with many of the people currently working on groundwater quality issues in California's Inland Empire, and a reputation for providing unbiased information.

The problem of groundwater quality affecting drinking water supplies is not unique to communities in Rialto-Colton or the Inland Empire. Perchlorate is an issue throughout the southwestern U.S. Therefore, methods developed to understand the perchlorate contamination in the Rialto-Colton could be useful to water managers in other basins.

We note, however, that the activities called for in H.R. 4252 are already authorized by existing authorities. Any study conducted to fulfill the objectives of the bill would need to compete for funding with other Administration priorities.

Thank you, Madam Chairwoman, for the opportunity to present the views of the Department on H.R. 4252. I will be happy to answer any questions you or the other Members may have.

---

SALT RIVER PROJECT,  
COMMERCIAL AND CUSTOMER SERVICES,  
*Phoenix, AZ, May 5, 2010.*

Mr. Tyler Carlson,  
*Huber Chief Executive Officer, Mohave Electric Cooperative, Bullhead City, AZ.*

Mr. David Plumb,  
*Chief Executive Officer, Navopache Electric Cooperative, 1878 W. White Mountain Blvd., Lakeside, AZ.*

Mr. Creden Huber,  
*Chief Executive Officer, Sulphur Springs, Valley Electric Cooperative, 340 North Haskell, Wilcox, AZ.*

DEAR MESSRS. CARLSON, HUBER AND PLUMB: Salt River Project ("SRP") fully supports the fair and equitable distribution of power from Hoover Dam to eligible entities within the State of Arizona. We believe that includes Native American tribes and electric cooperatives. The Hoover Power Allocation Act of 2009 ("Act") establishes a pool of Hoover power ("Hoover D") for allocation to eligible entities that do not currently have allocations of Hoover power.

We recognize you have concerns with the State allocation process that you have expressed during the federal deliberations of the Act. However, recognizing the importance of Hoover as a resource for the State of Arizona, our hope is that we can jointly support the passage of the Act and commit to work together to address your concerns at the State level once an allocation for Arizona is secured.

When the Act is passed, the State of Arizona through the Arizona Power Authority, will receive a renewed allocation of Hoover power, including Hoover D. Hoover D is intended only for eligible entities without current allocations of Hoover power and the state process, under existing Arizona statutes, defines electric cooperatives as eligible entities. SRP will be actively engaged in the State allocation process and

we commit to support the allocation of a portion of Hoover D to each of your cooperatives. It is our expectation that cooperatives will receive allocations in this process. Should your cooperatives receive a combined total allocation of less than 3 MW, SRP hereby commits to sell an amount of power, providing operational and cost characteristics that mirror Hoover D capacity and energy, necessary to bring you to 3 MW total. Our calculations are that a 3 MW allocation will provide you an allocation proportionally equivalent to SRP's Hoover allocation relative to our respective loads. This commitment by SRP is extended solely to Mohave Electric Cooperative, Navopache Electric Cooperative and Sulphur Springs Valley Electric Cooperative and it will be your responsibility to determine an equitable distribution of the 3 MW.

By copy of this letter to your legal counsel, this letter also serves as notice that SRP is withdrawing its membership from the Arizona Municipal Power Users Association.

We look forward to working with you to secure a new long term allocation of Hoover power for the State of Arizona, to address your concerns and to ensure broad, equitable distribution of Hoover power within the State, including to you and your members.

Sincerely,

MARK B. BONSALE,  
*Associate General Manager.*

---

STATEMENT OF NAVOPACHE ELECTRIC COOPERATIVE, MOHAVE ELECTRIC COOPERATIVE, AND SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, ON H.R. 2891

On March 18, 2010, our organizations testified before the House of Representatives Water and Power Subcommittee on the merits of H.R. 4349/S. 2891 and we informed those Members of Congress that this legislation was critically flawed from a state, national, and Federal perspective. It is still our contention that these bills fall woefully short of providing Arizona's rural electric Cooperatives, cities, towns and Native American tribes protection from the discriminatory practices of the Arizona Power Authority.

Despite efforts to "improve" the legislation in the House of Representatives we do not believe there are sufficient safeguards to ensure that Arizona's Hoover allocation will be distributed in an equal and equitable manner that is consistent with Federal preference laws.

Under the proposed legislation there is a superficial allocation to a reservation of Hoover power and energy in a Federal Pool of 5% which is less than the historic Federal Pool reservations in re-marketing of Federal resources of the last 20 years amounting to between 6% and 8%. This small reserve pool is expected to be marketed appropriately under federal law. However, testimony before the House of Representatives Water and Power Subcommittee has proven that despite this well intended effort, the 5% pool is inadequate to meet the reasonable needs of new entities seeking access to Hoover.

Moreover, under Federal law there is a right of equal and equitable access granted to cities, towns, municipalities, Indian tribes and rural electric cooperatives to power generated from a Federal hydroelectric facility. Yet within the State of Arizona, power from Hoover has been marketed contrary to the most recent Federal preference rules and regulations and this inequity is not addressed or corrected in the bills S. 2891 or H.R. 4349.

The Arizona Power Authority has made claims that it "has met with (Indian tribes and Rural Electric Cooperatives) to listen to their concern, better understand their needs and assure them that the Authority will work with them to use a fair, . . . public process to allocate power from the proposed new Schedule D pool . . ." However, the only meeting that took place was not productive and the Authority made no commitments nor did they provide us with any assurances. As appreciative as we are of the opportunity to seek power from the Schedule D pool, we would respectfully prefer to have the Arizona Power Authority adhere to Federal preference laws—which, we believe, would provide the Cooperatives, Tribes, and cities and municipalities with access and an equal opportunity to obtain Hoover power.

We also would like to clarify a misconception that has been allowed to flourish regarding the Authority's "costs" for Hoover power. The Hoover facility and its uprates and the costs associated with the facility are all paid by the allottees through the cost of the power remarketed, and in Arizona the cost of Hoover to the Arizona Power Authority is recovered through its rates to its customers. Beginning in 2017, as it is today, the Arizona Power Authority will recover any Hoover related

costs through the rates that it charges its customers for the Hoover power and energy resold to them.

S. 2891/H.R. 4349 reallocation of Hoover as proposed to the Arizona Power Authority, as an agent of the State, does not require it to follow the Federal Reclamation Project Act of 1939 in remarketing and perpetuates discrimination against cooperatives and municipalities by relegating them to an inferior and lesser eligible class of customer. It should be noted that Federal policy on the marketing of resources from Federal projects was set by law upon passage of that Act. It is national federal policy to encourage distribution of federal resources for the widespread use first of public bodies, cities, towns, municipalities, cooperatives and tribes and then to others.

Since inception, contrary to the widespread use principles and philosophy of Federal Law, the Arizona statutes controlling sale of Hoover power by the Arizona Power Authority (A.R.S. §30-125) have favored a single class of customer—special irrigation and electric and other districts—to the disadvantage of cities, towns, tribes, municipalities and electric cooperatives. The Federal Preference law does not have such discrimination, and we would prefer bill language clarifying that the Authority must comply with Federal rules and regulations governing the distribution of power from Hoover.

S. 2891 which enacts new federal national policy concerning the marketing of the Hoover resource should not permit such continued discrimination by the Arizona Power Authority (APA) and S. 2891 should be revised to require the APA, as a condition of receipt of its Hoover allocation, to follow the Federal preference law giving equal and equitable access to cities, towns, rural electric cooperatives, municipalities and tribes.

Beginning with the original allocations of Hoover and its remarketing in the three states, Nevada through its Colorado River Commission, a preference customer under Federal Law, we understand markets to rural electric distribution cooperatives, Valley and Lincoln, consistent with the provisions of the 1939 Act.

Within the Hoover marketing area, California has made an effort to distribute Hoover for the widest use consistent with law. The California municipal entities which currently receive and will receive 2017 allocations are all considered to be Federal preference customers, except for Southern California Edison. Recognizing the wide customer base of Southern California Edison and the fact that Edison was an original investor and purchaser of Hoover in the original marketing, it continues to receive under this legislation an allocation of Hoover even though it is not qualified as a Federal Preference customer. We do not oppose the way in which California and Nevada propose to manage their Hoover allocation for wide spread use consistent with Federal law.

It should be noted, unlike the Nevada Colorado River Commission and the cities of California which are eligible under the 1939 Act, the Arizona Power Authority is not qualified under Federal law as an entity entitled to preference in marketing federal hydroelectric resources under the 1939 Reclamation Project Act. It is ineligible to receive federal power allocations from the Federal Parker Davis Project. It was declared ineligible to receive allocations of federal power from the Federal Colorado River Storage Project (CRSP) because of its discriminatory law.

Contrary to the policy of encouraging wide spread use, the APA Act A.R.S. §30-125 gives preference only to special districts and relegates electric cooperatives, cities, and towns to a second class of customer while the 1939 Federal Law puts all three classes and Indian tribes on an equal and equitable footing. Since applicants for use of Hoover exceed the resource allocated to Arizona, the APA does not make the resource available for widespread use and after 2017 will continue to discriminate against what after 2017 will be over two million people in Arizona, within the marketing area, unless S. 2891 is amended.

We, as Cooperatives, believe that Arizona Indian tribes and also many Arizona communities such as Marana, St. Johns, Eagar, Springerville, Duncan Valley Electric, Graham County Electric, Navopache Electric, Williams, Gilbert, Wickenburg, and Reserve, New Mexico, and Mohave Electric, Trico Electric and Sulphur Springs Valley Electric Cooperatives and their currently over 250,000 meters and what by 2017 will be more than 2 million customers are prejudiced under the proposed legislation by the current Arizona Power Authority statutory provisions unless S. 2891 is amended.

The relevant necessary S. 2891 provision is in Section 619 (a) Renewal of Contracts section and what we would propose is that the language of S. 2891 should be amended to read as follows:

“ . . . Provided, however, that in the case of Arizona and Nevada, such renewal contracts shall be offered to the Arizona Power Authority to be remarketed and re-

sold only in compliance by the Arizona Power Authority with the provisions of the Federal Reclamation Project Act of 1939, 53 Stat. 1187, 1194, 43 U.S.C. 485h(c) with respect to preference in marketing of Federal Power and upon assurance of meaningful allocations of Hoover A to the Arizona rural distribution cooperatives within the State of Arizona, and the Colorado River Commission of Nevada . . . .”

The economic circumstances of 1946 used to justify the A.R.S. §30-125 discriminatory provisions of the Arizona Power Authority Hoover law favoring agricultural special irrigation and electrical districts, and denying for 70 years widespread use of the resource, no longer will exist in 2017. As they continue to be urbanized and as acreage devoted to irrigated agriculture decreases, those districts no longer require a super-preference in the allocation of Hoover contrary to Federal law as opposed to a continuing opportunity for equal consideration.

The needs of inhabitants of Arizona cooperatives, cities and towns and Indian tribes have expanded since 1946 and an equal and equitable opportunity for them to receive an allocation of Hoover power and energy will be vitally important to their electric operations as we all pursue development of renewables, use of hydroelectricity in the integration of wind, integration of solar, and flexibility in operating electric systems to reduce green house gasses and lessen coal dependence.

Perpetuation of the APA refusal to comply with the 1939 Federal Preference laws, in the receipt and resale of a vital Federal resource, is unconscionable. Hoover is a resource which belongs not to the special favorites of the APA but to the people of the United States to be marketed in accord with Federal law. S. 2891, which disposes of this Federal Resource should be amended to require compliance by the APA with Federal Preference laws as a condition of receipt by it of a renewed 50-year allocation of Hoover. After 70 years, equity, fairness and equal opportunity under Federal laws should be the benchmark for a renewed 50-year allocation to the APA of Hoover.

Hoover power is a vital resource for customers in the States of Arizona, California and Nevada. Over 29 million people rely on this power. In the 1984 remarketing of Hoover, Arizona cities and towns and cooperative were denied equal and equitable access.

Under the 1984 legislation, these current contracts are scheduled to expire in 2017.

The 1984 Hoover Power Act distributed power under three schedules:

Schedule A—Provided allocations to the original contractors of Hoover power as authorized by the 1928 Act. Metropolitan Water District of Southern California, Cities of Los Angeles, Glendale, Pasadena, and Burbank (preference customers); the Southern California Edison Co.; the State of Arizona through its Power Authority; Nevada through the Colorado River Commission of Nevada (a preference customer); and the City of Boulder City, Nevada (a preference customer).

Schedule B—Provided an allocation to contractors that advanced funds for modification of Hoover power turbines as authorized by the 1984 Act: these were the States of California (Cities of Glendale, Pasadena, Burbank, Anaheim, Azusa, Banning, Colton, Riverside, Vernon who are all preference customers under federal law); and the Colorado River Commission of Nevada (a preference customer); and the Arizona Power Authority of the State of Arizona.

Schedule C—Governs allocations of excess Hoover energy, if any, to the states of Arizona, California and Nevada as negotiated by the states and federal government.

*The Hoover Power Allocation Act of 2009-S. 2891/H.R. 4349*

Under the proposed legislation, Congress would distribute Hoover Power pursuant to Schedules A, B, and C. However, each of the current Hoover contractors would contribute 5% of their allocated power to a pool that would be distributed under a new Schedule D. Schedule D power would be allocated to federally recognized Native American Tribes and the other eligible entities that do not currently purchase Hoover power. Such a miniscule amount is grossly unfair and inadequate.

Two thirds of the Schedule D pool would be distributed through the Western Area Power Administration and the remaining one third would be allocated in equal shares to the Arizona Power Authority (for new Arizona contractors subject to the discriminatory Arizona law); and the Colorado River Commission of Nevada (for new contractors); and through Western (for new contractors in California).

These new contracts would continue for 50 years until September 30, 2067.

#### *Widespread Use of Federal Resources*

The driving intent and objective of Federal law in marketing power resources as expressed in the 1939 Reclamation Act is to encourage widespread use in marketing of the Federal Resource to as broad a public audience as possible. Examples of encouraging the widespread use of federal electricity in Arizona would be to include,

with the existing districts, the cooperatives and municipalities that do not now have Hoover allocations with equal and equitable access.

*Examples of Cooperative Use—All Customers, Not Just Water*

Arizona electric distribution cooperatives, consistent with the intent of the original Rural Electrification Act serve a wide and broad based membership as not for profit entities.

Navopache Electric Cooperative in Northeastern Arizona and Western New Mexico serves: 2 accounts for the Village of Reserve in the state of New Mexico, needs of the State of New Mexico, 4 New Mexico Fish and Game needs and 2 State of New Mexico accounts. Also it delivers electricity to and serves 3,973 accounts on the White Mountain Apache Reservation reaching approximately 12,000 Native American people. It delivers to 14 Arizona Department of Transportation accounts, 29 United States Forest Service accounts, 2 Arizona prison accounts, 59 Arizona school districts, and 8 Arizona Fish and Game accounts.

Mohave Electric serves 36 Federal installations and 5 Department of Interior accounts, 39 Fort Mohave Tribe accounts, 6 Havasu National Wildlife accounts, 600 Hualapai Tribe accounts or about 1200 Native American persons, 87 Bullhead City, Arizona municipal accounts, and 7 community college accounts. There are also 11 mining accounts and 33 farm accounts.

Sulphur Springs Valley in Southeastern Arizona along the Mexico border delivers electric service to many installations of the United States Army, the United States Customs and Border Service, the United States Forest Service, The Arizona Game and Fish Department, the Arizona Department of Transportation, the Arizona Nature Conservancy, the University of Arizona, multiple schools, municipal buildings, the Arizona Department of Veteran Services and the Arizona Department of Public Safety.

*Misconceptions and Recent Developments*

You may hear some rendition of history that the cooperatives did have an allocation of Hoover power in the early 1960's. That particular portion of history provides the example of why this amendment is needed. Prior to 1963, the State of Arizona—through the APA—did market a blended product of Hoover power, Parker-Davis Project power, and purchased steam power as Colorado River Power. The APA had excess surplus of this blended power and some of the cooperatives in Arizona did purchase this power along with entities such as investor-owned utilities. Those of us that purchased this excess power from the APA did not have allocations. It is important to note that the Parker-Davis Project power was required by law to be marketed in accordance with federal preference rules. In 1963, the federal government decided that Arizona's "super preference" laws were not consistent with the Federal Preference laws and took the Parker-Davis Project power away from the State and marketed it directly to preference entities in accordance with preference power provisions. It was then that the cooperatives received Parker-Davis power in 1963. Since 1963, the cooperatives have not received an allocation of Hoover power, and the power they received prior to 1963 was actually a blend of Parker-Davis Project power, Hoover power, and purchased steam power and, again, not an allocation.

We are here seeking an amendment to a federal legislative action that we did not initiate, we are simply responding to it. We have sought since May of 2008 to come together to mutually create the Arizona State position on allocations within the state, to no avail. We sought a parallel path of a State allocation solution and federal legislation development, but were also denied. We sought these positions so all in Arizona could support the legislation when it was developed and introduced. But some entities felt compelled to thwart and prevent the Arizona cooperatives input. We could not, and did not, support a federal legislative solution that did not solve the Arizona State allocation issues first, and are forced to seek federal legislative relief because the legislation has been introduced.

It is only within the last few weeks, and with the knowledge that we are here to testify that the Arizona Power Authority has asked to meet with us. And, yet, the Authority has not proposed any solutions or alternatives to seek a mutual resolution of the problem, and in fact, have not even presented us with a proposal to address the existing inequity. We view these initial overtures as self-serving.

In closing, we want you to know that some, but not all the Arizona interests have been willing to meet to address the inequities and unfairness in the proposed legislation. We express our gratitude to the officials of Salt River Project for their willingness and commitment to the Rural Electric Cooperatives, and we look forward to working with them on issues concerning Arizona's allocation of Hoover power. We

too are committed to finding a solution that will be valuable to the State of Arizona and all of its qualifying participants.

---

THE UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION,  
Montrose, CO, June 3, 2010.

Hon. DEBBIE STABENOW,  
*Chairman, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.*

Hon. SAM BROWNBACK,  
*Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building, Washington, DC.*

SUBJECT: Support for S. 3387 re: Ruedi Reservoir Water Releases to Benefit Endangered Fish Habitat in the Colorado River

DEAR CHAIRMAN STABENOW AND RANKING MEMBER BROWNBACK: I am writing to support S. 3387, a bill that provides for release of water from Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River and amends P.L. 106-392, the authorizing legislation for the Upper Colorado and San Juan river basin recovery programs.

Ruedi Reservoir was constructed for the benefit of west slope water users. Use of this water for endangered fish habitat to provide ESA compliance on more than 500,000 acre-feet per year of depletions by the west slope water users is consistent with the intended uses of Ruedi Reservoir. Making the component non-reimbursable is consistent with congressional policy that water uses in Reclamation projects for environmental purposes (fish and wildlife, endangered species, recreation, etc.) are non-reimbursable.

S. 3387 is a consensus bill developed by east and west slope water users in Colorado. The bill, along with corresponding efforts by east slope water users to provide 5,412.5 acre-feet of water from other sources, fulfills fundamental requirements of the 15-Mile Reach Programmatic Biological Opinion (PBO) (USFWS, 1999). The PBO provides ESA compliance for five major Reclamation projects and numerous non-federal projects in the Upper Colorado River Basin. The PBO is an essential component of the Upper Colorado River Endangered Fish Recovery Program which is recovering endangered fish while providing ESA compliance for 1,800 water projects in the Upper Colorado River basin.

S. 3387 provides an essential element supporting continued recovery of endangered fish and ESA compliance for Reclamation and non-federal water projects in the Upper Basin. Therefore, I urge the Subcommittee's favorable consideration of this bill.

Sincerely,

MARCUS W. CATLIN,  
*Manager.*

---

GRAND VALLEY WATER USERS' ASSOCIATION,  
GRAND VALLEY PROJECT,  
June 4, 2010.

Hon. DEBBIE STABENOW,  
*Chairman, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.*

Hon. SAM BROWNBACK,  
*Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.*

DEAR CHAIRMAN STABENOW AND RANKING MEMBER BROWNBACK: I am writing to support S. 3387, a bill that provides for release of water from Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River and amends P.L. 106-392, the authorizing legislation for the Upper Colorado and San Juan river basin recovery programs.

Ruedi Reservoir was constructed for the benefit of west slope water users. Use of this water for endangered fish habitat to provide ESA compliance on more than 500,000 acre-feet per year of depletions by the west slope water users is consistent with the intended uses of Ruedi Reservoir. Making the component non-reimbursable is consistent with congressional policy that water uses in Reclamation projects for environmental purposes (fish and wildlife, endangered species, recreation, etc.) are non-reimbursable.

S. 3387 is a consensus bill developed by east and west slope water users in Colorado. The bill, along with corresponding efforts by east slope water users to provide 5,412.5 acre-feet of water from other sources, fulfills fundamental requirements of the 15-Mile Reach Programmatic Biological Opinion (PBO) (USFWS, 1999). The PBO provides ESA compliance for five major Reclamation projects and numerous non-federal projects in the Upper Colorado River Basin.

The PBO is an essential component of the Upper Colorado River Endangered Fish Recovery Program which is recovering endangered fish while providing ESA compliance for 1,800 water projects in the Upper Colorado River basin.

S. 3387 provides an essential element supporting continued recovery of endangered fish and ESA compliance for Reclamation and non-federal water projects in the Upper Basin. Therefore, I urge the Subcommittee's favorable consideration of this bill.

RICHARD L. PROCTOR,  
*Manager.*

DENVER WATER,  
*Denver, CO, June 3, 2010.*

Hon. DEBBIE STABENOW,  
*Chairman, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.*

Hon. SAM BROWNBAC,  
*Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.*

SUBJECT: Support for S. 3387 re: Ruedi Reservoir Water Releases to Benefit Endangered Fish Habitat in the Colorado River

DEAR CHAIRMAN STABENOW AND RANKING MEMBER BROWNBAC: I am writing to support S. 3387, a bill that provides for release of water from Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River and amends P.L. 106-392, the authorizing legislation for the Upper Colorado and San Juan river basin recovery programs.

Ruedi Reservoir was constructed for the benefit of west slope water users. Use of this water for endangered fish habitat to provide ESA compliance on more than 500,000 acre-feet per year of depletions by the west slope water users is consistent with the intended uses of Ruedi Reservoir. Making the component non-reimbursable is consistent with congressional policy that water uses in Reclamation projects for environmental purposes (fish and wildlife, endangered species, recreation, etc.) are non-reimbursable.

S. 3387 is a consensus bill developed by east and west slope water users in Colorado. The bill, along with corresponding efforts by east slope water users to provide 5,412.5 acre-feet of water from other sources, fulfills fundamental requirements of the 15-Mile Reach Programmatic Biological Opinion (PBO) (USFWS, 1999). The PBO provides ESA compliance for five major Reclamation projects and numerous non-federal projects in the Upper Colorado River Basin. The PBO is an essential component of the Upper Colorado River Endangered Fish Recovery Program which is recovering endangered fish while providing ESA compliance for 1,800 water projects in the Upper Colorado River basin.

S. 3387 provides an essential element supporting continued recovery of endangered fish and ESA compliance for Reclamation and non-federal water projects in the Upper Basin. Therefore, I urge the Subcommittee's favorable consideration of this bill.

Sincerely,

JAMES S. LOCHHEAD,  
*CEO/Manager.*

THE SOUTHWESTERN WATER CONSERVATION DISTRICT,  
Durango, CO, June 16, 2010.

Hon. DEBBIE STABENOW,  
Chairman, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.

Hon. SAM BROWNBACK,  
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.

SUBJECT: Support for S. 3387 re: Ruedi Reservoir Water Releases to Benefit Endangered Fish Habitat in the Colorado River

DEAR CHAIRMAN STABENOW AND RANKING MEMBER BROWNBACK: We are writing to support S. 3387, a bill that provides for release of water from Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River and amends P.L. 106-392, the authorizing legislation for the Upper Colorado and San Juan river basin recovery programs. Southwestern Water Conservation District is charged with protecting and developing the water in Southwestern Colorado and actively participates in the San Juan River Basin Recovery Implementation Program. The success of two programs is linked in terms of achievement of recovery goals for two endangered fish species.

S. 3387 is a consensus bill developed by water users in Colorado. The bill provides an essential component for recovering endangered fish under the Upper Colorado River Endangered Fish Recovery Program. As such, it benefits both recovery programs, complies with the Endangered Species Act, and fulfills the congressional intent expressed in P.L. 106-392, as amended.

We very much appreciate the Subcommittee's past support of the recovery programs and needed amendments to P.L. 106-392. We urge the Subcommittee's favorable consideration of S. 3387.

JOHN PORTER,  
President.

---

COLORADO WATER CONGRESS,  
Denver, CO, June 3, 2010.

Hon. DEBBIE STABENOW,  
Chairman, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.

Hon. SAM BROWNBACK,  
Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.

SUBJECT: Support for S. 3387 re: Ruedi Reservoir Water Releases to Benefit Endangered Fish Habitat in the Colorado River

DEAR CHAIRMAN STABENOW AND RANKING MEMBER BROWNBACK: I am writing to support S. 3387, a bill that provides for release of water from Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River and amends P.L. 106-392, the authorizing legislation for the Upper Colorado and San Juan river basin recovery programs.

Ruedi Reservoir was constructed for the benefit of west slope water users. Use of this water for endangered fish habitat to provide ESA compliance on more than 500,000 acre-feet per year of depletions by the west slope water users is consistent with the intended uses of Ruedi Reservoir. Making the component non-reimbursable is consistent with congressional policy that water uses in Reclamation projects for environmental purposes (fish and wildlife, endangered species, recreation, etc.) are non-reimbursable.

S. 3387 is a consensus bill developed by east and west slope water users in Colorado. The bill, along with corresponding efforts by east slope water users to provide 5,412.5 acre-feet of water from other sources, fulfills fundamental requirements of the 15-Mile Reach Programmatic Biological Opinion (PBO) (USFWS, 1999). The PBO provides ESA compliance for five major Reclamation projects and numerous non-federal projects in the Upper Colorado River Basin.

The PBO is an essential component of the Upper Colorado River Endangered Fish Recovery Program which is recovering endangered fish while providing ESA compliance for 1,800 water projects in the Upper Colorado River basin.

S. 3387 provides an essential element supporting continued recovery of endangered fish and ESA compliance for Reclamation and non-federal water projects in



the Upper Basin. Therefore, I urge the Subcommittee's favorable consideration of this bill.

Sincerely,

DOUGLAS KEMPER,  
*Executive Director.*

---

WYOMING STATE ENGINEER'S OFFICE,  
*Cheyenne, WY, June 8, 2010.*

Hon. DEBBIE STABENOW,  
*Chairman,*

Hon. SAM BROWNBACK,  
*Ranking Member, Subcommittee on Water and Power, Senate Energy and Natural Resources Committee, 304 Dirksen Senate Building Washington, DC.*

SUBJECT: Support for S. 3387 to amend P.L. 106-392, authorizing Ruedi Reservoir Releases to Benefit Endangered Fish Habitat in the Colorado River

DEAR CHAIRMAN STABENOW AND RANKING MEMBER BROWNBACK: We are writing to support S. 3387, a bill providing for water releases from Ruedi Reservoir for the benefit of endangered fish habitat in the Colorado River. This measure, when enacted, will amend P.L. 106-392, the authorizing legislation for the Upper Colorado and San Juan River Basin recovery programs. These programs are long-term conservation partnerships among the States of Colorado, New Mexico, Utah and Wyoming, Indian tribes, federal agencies, and water, power and environmental interests working to recover four species of endangered fish native to the Colorado River Basin while allowing water development to continue in compliance with the federal Endangered Species Act (ESA). The Department of the Interior recognized these programs with the Department's Cooperative Conservation Award in April 2008 as national model efforts successfully working to recover endangered species while addressing water needs to support growing western communities in a manner fulfilling the Federal government's trust responsibilities to Native Americans and respects state water law and interstate river compacts.

A component of U.S. Bureau of Reclamation (Reclamation) Fryingpan-Arkansas Project, Ruedi Reservoir was constructed on the Fryingpan River in western Colorado for the benefit of Colorado's west slope water users. The primary purposes of Ruedi are to provide storage for 28,000 acre feet of replacement water that allows out-of-priority diversions by the Fry-Ark project to Colorado's east slope, and a marketable yield pool for Colorado's west slope uses. A little more than one-third of Ruedi Reservoir's marketable yield pool is currently under contract with apparent limited prospects for future contracting. Use of this water to enhance and benefit endangered fish habitat so as to ensure continuing compliance with the ESA for more than 500,000 acre-feet per year of depletions by Colorado west slope water users is consistent with the intended purposes of Ruedi Reservoir. Making the component non-reimbursable is consistent with past and current Congressional policy directives and enactments which specify that Reclamation project water uses for environmental purposes (fish and wildlife, endangered species, recreation, flood control, etc.) are non-reimbursable.

S. 3387 would accomplish the same result for a 5,412.5 acre-foot block of water to be permanently allocated to endangered fish recovery from Ruedi Reservoir. There is no traditional, master contract with a west slope project "sponsor" to whom this block of water has been allocated or to whom the project costs associated with this water have been assigned. A little more than one-third of the available marketable yield pool or contract pool is currently under contract. There are limited prospects for foreseeable future contracting. Permanent assignment of 5,412.5 acre-feet of water for endangered fish recovery is appropriate.

S. 3387 is a consensus bill developed by east and west slope water users in Colorado. It is supported by the non-federal participants to the two endangered fish recovery programs, including the State of Wyoming. This bill, along with corresponding efforts by Colorado east slope water users to provide 5,412.5 acre-feet of water from other sources, fulfills fundamental requirements of the 15-Mile Reach Programmatic Biological Opinion (PBO) issued by the U.S. Fish and Wildlife Service in 1999.

The PBO is an essential component of the Upper Colorado River Endangered Fish Recovery Program which is recovering endangered fish while providing ESA compliance for 1,800 water projects in the Upper Colorado River basin. This legislation, along with water provided by Colorado's east slope water users, would satisfy the obligations of the 15-Mile Reach PBO, which provides ESA compliance for five major

Reclamation projects and numerous non-federal projects in the Upper Colorado River Basin.

Enactment of S. 3387 will provide an essential element supporting continued recovery of the endangered fish species and ESA compliance for Reclamation-constructed, as well as nonfederal, water projects in the Upper Colorado River Basin. The past support and assistance of Congress has greatly facilitated the success of these multi-state, multi-agency programs. We urge the Subcommittee's favorable consideration of this bill.

Respectfully submitted,

PATRICK T. TYRRELL,  
*Wyoming State Engineer.*  
JOHN W. SHIELDS,  
*Interstate Streams Engineer.*

---

○