

WATER AND POWER BILLS

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

ON

S. 3265

S. 3464

S. 3483

H.R. 2842

SEPTEMBER 19, 2012



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

U.S. GOVERNMENT PRINTING OFFICE

76-899 PDF

WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
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WATER AND POWER BILLS

WEDNESDAY, SEPTEMBER 19, 2012

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

The subcommittee met, pursuant to notice, at 9:32 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeanne Shaheen presiding.

OPENING STATEMENT OF HON. JEANNE SHAHEEN, U.S. SENATOR FROM NEW HAMPSHIRE

Senator SHAHEEN. Good morning. At this point I would like to welcome everyone. Clearly there's not a lot going on in Congress today. So all of you are here and we appreciate that.

Today's hearing involves 4 bills that are pending before the subcommittee. The bills cover several different aspects of our water and power jurisdiction including rural water and hydropower.

The bills we're covering today are S. 3265, a bill amending the Federal Power Act regarding the collection of land use fees.

H.R. 2842, the Bureau of Reclamation's Small Conduit Hydropower Development and Rural Jobs Act.

S. 3464, the Mni Wiconi Project Act amendments.

S. 3483, the Crooked River Collaborative Water Security Act.

I look forward to hearing more about these bills. We have several Senators who are going to be here testifying. Senator Murkowski will be here to make a statement. She's running a little late. We expect Senator Wyden also and possibly Senator Johnson.

So while we're waiting for them before the testimony on the bills occurs, we have Senator Jeff Merkley and Congressman Tipton, who are here, who would like to testify on two of the bills that are pending before us. So we appreciate your willingness to go ahead while we're waiting for the others. I'll ask Senator Merkley if you would go first.

STATEMENT OF HON. JEFF MERKLEY, U.S. SENATOR FROM OREGON

Senator MERKLEY. Thank you very much, Chairman Shaheen. I'm delighted to be here particularly because I'm presenting a bill of critical importance to Central Oregon, the Crooked River Collaborative Water Security Act. I introduced this bill with my colleague, Senator Wyden, in early August.

This bill is a product of many years of negotiations between a diverse set of stakeholders in the region who came together despite

many differences. There is a saying in the West that, “Whiskey, that’s for drinking. Water, that’s for fighting.” It’s nice when occasionally stakeholders can come together and wrestle with the very difficult issues about how to share this precious resource.

The stakeholders have found common ground as presented in this legislation. I’m thrilled that one key stakeholder, the Prineville Mayor, Betty Ruppe, is here today, back here. She has played a crucial role in developing this agreement. She flew out here to DC specifically to attend this hearing to convey how important this legislation is to the city of Prineville and to the region.

This bill is important for the economic security and the ecological health of the region. It’s been endorsed by the city of Prineville, Crook County, the Governor of Oregon, Irrigation Districts, the Warm Springs tribe and environmental groups. These groups have written letters of support to both the Chair and Ranking Member. I have those letters here today to submit for the record.

This bill addresses the use of water stored behind the Bowman dam. This dam in the Deschutes Basin has created a reservoir that has nearly doubled the necessary capacity for its primary uses, irrigation and flood control.

Another key aspect of the Deschutes Basin is that it’s undergoing the process of reintroducing an endangered species of fish, the Mid Columbia Steelhead, which used to exist in the Crooked River, but went locally extinct. The reintroduction of these native fish is still in the early stages. But the success or failure of this reintroduction will provide a model for other basins across the country.

In this context this legislation determines how to make use of the water that exists in the reservoir. Quite simply, the bill provides greater security to farmers by allocating specific amounts of water to irrigation while also providing for management of the reservoir to enhance fish and wildlife habitat with increased flows. In addition this bill meets future water needs for the city of Prineville and creates a possibility for a new hydro electric turbine to be installed on Bowman dam.

After decades of missed opportunities we now have the chance to change the management of the Bowman dam and do so in a way that benefits Oregon’s economy and environment. I look forward to working with the Chair, the Ranking Member, certainly Senator Wyden and other members of the committee to move this legislation forward.

Thank you, Madame Chair.

[The prepared statement of Senator Merkley follows:]

PREPARED STATEMENT OF HON. JEFF MERKLEY, U.S. SENATOR
FROM OREGON

Thank you Chairman Shaheen, Ranking Member Lee and members of the subcommittee.

I am pleased to be here to present a bill of critical importance to central Oregon, the Crooked River Collaborative Water Security Act. I introduced this bill with my colleague, Senator Wyden, in early August.

This bill is the product of many years of negotiations between a diverse set of stakeholders in the region who came together despite many differences. They have found common ground as presented in this legislation. I am thrilled that one key stakeholder, Prineville Mayor Betty Ruppe, is here today. Mayor Ruppe has played a crucial role in developing this agreement. She flew to Washington DC specifically

to attend this hearing to convey how important this legislation is to the City of Prineville, and to the region.

This bill is important for the economic security and the ecological health of the region. It has been endorsed by the City of Prineville, Crook County, the Governor of Oregon, irrigation districts, the Warm Springs Tribe, and environmental groups.

These groups have written letters of support to both the Chair and Ranking Member. I would like to submit those to the record at this time.

This bill addresses the use of water stored behind the Bowman Dam. This dam, in the Deschutes Basin, has created a reservoir that has nearly double the necessary capacity for its primary uses—irrigation and flood control.

Another key aspect of the Deschutes Basin is that it is currently undergoing a process of reintroducing an endangered species of fish, the mid-Columbia steelhead, which used to exist in the Crooked River but went locally extinct.

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In addition, this bill meets future water needs for the city of Prineville and creates the possibility for a new hydroelectric turbine to be installed on Bowman Dam.

After decades of missed opportunities, we now have the chance to change the management of the Bowman dam and to do so in a way that benefits Oregon's economy and environment.

I look forward to working with the Chair, Ranking Member, Senator Wyden, and other members of the committee to move this legislation forward.

Senator SHAHEEN. Thank you, Senator Merkley.

Senator Johnson has joined us. Senator, I was going ahead to proceed with Senator Merkley and Congressman Tipton since they were here or would you like to go now?

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Briefly.

Senator SHAHEEN. Great.

Senator JOHNSON. Senator, Chairman Shaheen and thank you for including the Mni Wiconi Amendments bill in today's hearing.

The Mni Wiconi project serves 3 tribal rural water systems and one non-tribal rural water system in South Dakota. Mni Wiconi offers an economic lifeline and improved public health to 3 Indian Reservations in my State that are home to some of our Nation's most troubling levels of unemployment and poverty. My legislation is intended not to expand the project's scope, but to ensure that it is completed.

I appreciate that the Administration has some concerns. I am hopeful that we can constructively work toward meeting the remaining needs of this critically important project.

I would also ask that a letter from the Oglala Sioux tribe be included in the record.

Senator SHAHEEN. Without objection, we will include the letter. Thank you very much, Senator Johnson.

Now, Congressman Tipton.

**STATEMENT OF HON. SCOTT R. TIPTON, U.S.
REPRESENTATIVE FROM COLORADO**

Mr. TIPTON. Thank you, Chairwoman Shaheen for convening today's hearing on my bill H.R. 2842, the Bureau of Reclamation Small Conduit Hydropower Development Rural Jobs Act.

At a time when our country needs to focus on domestic energy production and job creation, hydropower can play a critical role in providing clean, renewable electricity while expanding job opportunities in rural America. Hydropower is the cheapest and cleanest source of electricity available through modern technology. According to the Energy Information Administration, it's the highest source of non-carbon emitting energy in the world and accounts for approximately 70 percent of the United States total renewable electricity generation making it the leading renewable energy source of power.

My home State of Colorado has hydropower. But there's still an enormous opportunity for new hydropower development at existing facilities. Canals and pipelines in the State, if developed, can generate as much power as the Glen Canyon Dam, enough emission free power for a million homes.

Increased conduit hydropower serves a number of purposes.

It produces renewable, emissions free energy that can be used to pump water or sell electricity into the grid.

It can generate revenue for irrigation districts to help pay for aging infrastructure, the cost of facilities and modernization.

It can create local jobs and generate revenue to the Federal Government.

It's as simple as this poster demonstrates. As easy as putting a portable generator into moving canal water.

What's stopping this low hanging fruit we might ask?

Actually, we are by allowing Federal regulatory framework to stifle development and the entrepreneurial spirit. For this reason I introduced my bipartisan legislation, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act. This legislation authorizes power development at the agency's confluence to clear up multi Federal agency confusion and duplicative processes and reduces the regulatory costs associated with hydropower development.

This legislation seeks to remove duplicative environmental analysis where doing so will considerably reduce costs for hydropower developers while retaining the level of analysis necessary to protect valuable natural resources. Under existing regulations even though the Bureau of Reclamation Conduit Hydropower units would already have been on disturbed ground within existing manmade facilities such as those in these posters, they've already gone through the Federal environmental review process, is still going to require another national environmental policy act or NEPA process, that would still have to be done.

As an example, the House Natural Resources Committee heard from an Arizona witness who wanted to be able to install 15 hydropower units on a Federal canal that had already gone through the NEPA process. The cost of installing each turbine would have cost \$20,000. But going through the additional NEPA review would have cost an additional \$50,000 each according to his testimony.

That cost according to this chart is two and a half times the installation cost making it cost prohibitive for the irrigation district.

This simply makes no sense. But I understood that there are some concerns with the wording of these provisions in my bill. I want to assure you that I'm willing to work with you on resolving those concerns.

The legislation has also substantially reduced Administrative costs. Instead of the current process where the Bureau of Reclamation must painstakingly analyze each and every proposal for development, the bill gives to the first development right to the entity or entities operating and maintaining the Federal conduit. Most Reclamation irrigation water supply projects have an arrangement where operations and maintenance activities are transferred to the local beneficiary as a way to be able to reduce paperwork and other costs.

The rationale for the legislation's right of first refusal provision is that the non-Federal operator knows the details of the facility and is locally invested in the project. This provision would significantly decrease hydro conduit hydropower planning costs.

The bill also protects water users by specifically reaffirming hydropower development and as a secondary water supply and develop delivery purposes in ensuring that there will be no financial and operational impacts to existing water and power users.

I'm proud to have the support of the Family Farm Alliance, the National Water Resources Association, the American Public Power Association, among others.

If enacted this legislation will jump start the conduit hydropower development at the Bureau of Reclamation facilities while supporting the creation of badly needed rural jobs. I stand ready to work with the committee on making this bill a public law reality.

Madame Chairwoman, with your permission I would like to be able to submit letters of support for the record. I'd like to thank you very much for this time.

Senator SHAHEEN. We would appreciate those letters for the record and accept them without objection and appreciate, very much, Congressman Tipton your testimony and your willingness to work with the committee as we look at the wording of the legislation.

Mr. TIPTON. My pleasure, Madame Chairman.

Senator SHAHEEN. Thank you.

Since we are still waiting for Senators Wyden and Murkowski we will go ahead with the testimony from the witnesses. We have two witnesses today who are testifying on behalf of the Administration.

Grayford Payne is the Deputy Commissioner for Policy, Administration and Budget from the Bureau of Reclamation.

John Katz is an attorney with the Federal Energy Regulatory Commission.

So, thank you very much to both of you for being here. Mr. Payne, would you like to begin as soon as you get seated?

STATEMENT OF GRAYFORD F. PAYNE, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. PAYNE. Thank you, Madame Chairman and members of the subcommittee.

I'm Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation. Thank you for the opportunity to provide the Department's view on 3 bills before the subcommittee today, H.R. 2842, S. 3464 and S. 3483. My written statements have been submitted for the record.

H.R. 2842, the Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2012, starting off with H.R. 2842, the Department supports the goals of this bill. It would change to increase the generation of hydropower in existing canals and conduits. H.R. 2842 would clarify to Reclamation is responsible for permitting conduit hydropower development in all Reclamation owned facilities through our lease power of privileges or LOPP contracts.

Section two of H.R. 2842 would provide that the Natural Environmental Policy Act or NEPA shall not apply to small conduit hydropower development excluding citing of associated transmission on Federal lands. Reclamation's existing LOPP procedures allow for a categorical exclusion under the NEPA to be applied to low impact hydropower projects without unduly delaying project development.

The Department believes that environmental protection should continue to apply in the context of new construction undertaken on Federal lands and will continue to apply NEPA as appropriate through the use of categorical exclusions or environmental assessments.

Finally several of the definitions in H.R. 2842 as drafted would affect the other authorities in the 1939 act. We recommend improvements which are detailed in my written statements.

S. 3464, the Mni Wiconi Project Act Amendments of 2012 would authorize funding for additional components on the Rural Water Project that have been under construction for several years and with appropriations requested in 2013, will be essentially completed.

For reasons described in my written statement, the Department cannot support S. 3464. In the Rural Water Program Assessment report delivered to Congress this past July, Reclamation explained that about \$1.4 billion of Federal obligations remain on Reclamation to complete the existing authorities authorized rural water projects. That figure is greater than Reclamation's total annual appropriations. The sheer size of that obligation factors heavily into our position on this bill which would authorize about \$14 million of additional obligations.

We recognize that the need continues to exist within the reservation served by the Mni Wiconi Project. For that reason Reclamation will continue to work with the sponsors, project sponsors, and other agencies to assess how best to meet these needs in the future.

S. 3483, the Crooked River Collaborative Water Security Act.

S. 3483 is an innovative piece of legislation that would accomplish several objectives for its sponsors. The bill corrects the un-

wieldy boundary line for the Wild and Scenic River designation on the portion of the Crooked River. It enables the use of un-contracted water stored behind Bowman dam for the city of Prineville as well as in stream flows to the benefit of fish and wildlife downstream. It authorizes early repayment of outstanding capital costs among other things.

The Department supports these objectives and we can support S. 3483 if amendments are made consistent with points made in my written statement.

In summary there are portions of the bill that depart somewhat from practices currently applied under Reclamation laws and policies particularly in the areas of operations and contracting. We regard our recommendations as primarily technical in nature and would be happy to work with the bill sponsors and subcommittee to refine the legislation.

As a parting thought I want to relay that my day to day duties here in Washington are primarily as a CFO and do administrative capabilities working with the Department. That said, for some specific questions about leasing or procedures, leasing procedures or project construction or facility operations I may need to respond back to the committee in writing for the record. I'd be glad to do so.

Thanks again for the opportunity to be here today.

That concludes my statement.

[The prepared statements of Mr. Payne follow:]

PREPARED STATEMENTS OF GRAYFORD F. PAYNE, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

H.R. 2842

Madam Chair and members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on HR 2842, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2011. The Department supports the goals of HR 2842, which aims to increase the generation of clean, renewable hydroelectric power in existing canals and conduits. As noted in previous hearings, the Department has an aggressive sustainable hydropower agenda, which we continue to implement under existing authorities. My testimony today will summarize the areas where the Administration supports the objectives of HR 2842, as well as detail the areas in the bill where we believe improvements could be made.

Before I share the Department's views on HR 2842, I want to highlight some of the activities underway at the Department to develop additional renewable hydropower capacity. Last year, Secretary Salazar and the U.S. Department of Energy Secretary Steven Chu announced nearly \$17 million in funding over three years for research and development projects to advance hydropower technology. The funding included ten projects that will receive a total of \$7.3 million to research, develop, and test low-head, small hydropower technologies that can be deployed at existing non-powered dams or constructed waterways. The funding will further the Obama Administration's goal of meeting 80 percent of our electricity needs from clean energy sources by 2035.

In March 2011, the Department released the results of an internal study, the Hydropower Resource Assessment at Existing Reclamation Facilities, that estimated the Department could generate up to one million megawatt hours of electricity annually and create jobs by addressing hydropower capacity at 70 of its existing facilities. In March of this year, Reclamation completed the second phase of its investigation of hydropower development, Site Inventory and Hydropower Energy Assessment of Reclamation Owned Conduits, as referenced in the 2010 Hydropower Memo-

randum of Understanding (MOU)¹ between the Department of the Interior, the Department of Energy, and the Army Corps of Engineers. While the first phase, completed in 2011, focused primarily on Reclamation dams, the second phase focused on constructed Reclamation waterways such as canals and conduits. The two studies revealed that an additional 1.5 million megawatt-hours of renewable energy could be generated through hydropower at existing reclamation sites.

In summary, HR 2842 would do four things: 1) provide a blanket authorization for the installation of small hydropower units on all Reclamation-owned canals and conduits; 2) require that Reclamation offer preference to water user organizations for the development of canal/conduit hydropower under a Lease of Power Privilege (LOPP); 3) exempt small canal/conduit hydropower projects below 1.5 MW from the requirements of the National Environmental Policy Act (NEPA) and; 4) designate Reclamation's Power Resources Office as the lead point of contact for policy and procedure setting activities related to canal/conduit hydropower under an LOPP.

Section 2 of HR 2842 would clarify that Reclamation is responsible for authorizing conduit hydropower development on Reclamation-owned facilities through LOPP contracts. As background, Reclamation is authorized by existing law to issue LOPP contracts that utilize Reclamation-owned facilities for private hydropower development under Section 5 of the Townsites and Power Development Act of 1906, 43 U.S.C. § 522, and Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c). Statutes that are specific to individual Reclamation projects may also apply. Similar to the LOPP process, the Federal Energy Regulatory Commission (FERC) may also issue licenses for hydropower development under the authority of the Federal Power Act, 16 U.S.C. § 791 et seq. To resolve potential confusion over whether a Reclamation LOPP contract or a FERC license should govern hydropower development at Reclamation facilities, Reclamation and FERC entered into agreements in 1981, 1992, and 2010 to address hydropower development. In particular, a 1992 memorandum of understanding between Reclamation and FERC (1992 MOU)² established a process to resolve questions of jurisdiction over hydropower development at Reclamation facilities. Reclamation and FERC continue to work together to improve that process and make the process more efficient.

Section 2 of HR 2842 would specifically authorize Reclamation to develop or enter into LOPP contracts for the development of new hydropower on conduits or canals on Reclamation-owned projects. This language would streamline the issuance of LOPP contracts by simplifying the Reclamation-FERC jurisdictional consultation that was established in the 1992 MOU. This language also could provide Reclamation with an opportunity to discuss programmatically resolving jurisdiction over hydropower development on Reclamation conduits with FERC, thus creating the potential to eliminate case-by-case jurisdictional consultations for development on Reclamation conduits.

Section 2 of HR 2842 would also require that Reclamation offer preference in the award of LOPPs to "irrigation districts or water users associations" with which Reclamation has an existing contract for operations and maintenance of that project or project feature. Reclamation already provides preference to existing irrigation districts and water user associations pursuant to Section 9(c) of the Reclamation Projects Act of 1939. Reclamation would be happy to work with the sponsor of the bill and the Committee to resolve any concerns regarding preference.

Section 2 of HR 2842 would provide that NEPA "shall not apply to small conduit hydropower development, excluding siting of associated transmission on Federal lands[.]" The Department opposes a waiver of NEPA. Furthermore, this language is in contrast to the existing provision in Section 30 of the Federal Power Act (16 U.S.C. 823a) that allows FERC to approve an application to develop hydropower within conduits located on non-federal lands under certain conditions. Accordingly, as provided in FERC's regulations at 18 CFR § 380.4(a)(14), FERC is not required to prepare an environmental assessment or environmental impact statement for certain conduit hydropower projects that meet the statutory and regulatory criteria and do not have the potential for significant environmental impacts.

The Department understands the intent of HR 2842 to be that conduits and canals are existing, man-made structures where environmental impacts associated with construction have already occurred and/or been mitigated. However, the Department's view is that low-impact hydropower, particularly in conduits and canals, can be efficiently developed by utilizing existing environmental review provisions that will not unduly delay project development and ensure environmental health and safety. Environmental analysis for many LOPP contracts has, for example, been addressed through categorical exclusions or environmental assessments rather than

¹ <http://www.usbr.gov/power/SignedHydropowerMOU.pdf>, 2010

² The 1992 MOU is available in the Federal Register at: 58 Fed. Reg. 3269 (Jan. 8, 1993).

environmental impact statements. The Department believes that environmental protections should continue to apply in the context of new construction undertaken on federal lands, and will continue to apply NEPA through the use of categorical exclusions or environmental assessments.

Reclamation's existing Lease of Power Privilege procedures allow for an existing categorical exclusion under NEPA to be applied to low-impact hydropower projects. Reclamation believes that low-impact hydropower developed in conduits or canals may be appropriately analyzed under those same procedures, which are documented in the Departmental Manual at 516 DM 14.5(C)(3) and (D)(4). The Department understands the value and importance of expedient environmental review and believes development of hydropower within Reclamation's existing conduits and canals can be efficiently analyzed utilizing these existing review processes.

I would also like to address language in Section 2 of the House passed bill specifying that "the Power Resources Office (PRO) of the Bureau of Reclamation shall be the lead office of small conduit hydropower policy and procedure-setting activities conducted under this subsection." The Department supports this language given that project-specific expertise concerning Reclamation facilities resides first at the field level where ownership responsibility for the specific infrastructure resides. It is preferable for policies and procedures to be set within the PRO with developers continuing to approach the appropriate Reclamation regional or area office with proposals to develop conduit hydropower. There is a robust channel of communication between the PRO, other Denver Offices, and Reclamation regional and field offices that allows for successful implementation of a Lease of Power Privilege agreement.

Finally, HR 2842 would amend 9(c) of the Reclamation Project Act of 1939, which in addition to providing LOPP authority, authorizes the Secretary to enter into contracts for municipal water supply and miscellaneous purposes. Several of the definitions in HR 2842 as drafted would affect the other authorities in the 1939 Act. In particular, the proposed definition of "transferred work" is too narrow to refer to all works affected by subsection 9(c) of the 1939 Act, since that subsection authorizes contracts involving works other than conduits. Either the definition would need to be broadened to include all affected works, or the term defined narrowed from "transferred work" to "transferred conduit." Also, the existing 1939 Act has a definitions section. Any definitions that are of general application should be included in the existing definitions section, rather than in subsection 9(c). Definitions that apply solely to conduit hydropower need to do so explicitly, to avoid misapplication or confusion. Lastly, the 1939 Act definitions section already includes a definition of "Secretary". The Department would be happy to work with the Committee on these technical changes to the language of the proposed definitions and their placement within the existing 1939 Act.

As referenced above, Reclamation has procedures in place through the LOPP process for the sites where Reclamation has the authority to develop hydropower. We are currently reviewing our LOPP policies and processes to look for ways to expedite and improve the process, especially for conduits and canals.

In conclusion, as stated at previous hydropower hearings before this subcommittee, Reclamation will continue to review and assess potential new hydropower projects that provide a high economic return for the nation, are energy efficient, and can be accomplished in accordance with protections for fish and wildlife, the environment, or recreation. As the nation's second largest hydropower producer, Reclamation strongly believes in the past, present and bright future of this important electricity resource.

Thank you for the opportunity to discuss HR 2842. This concludes my written statement, and I am pleased to answer questions at the appropriate time.

S. 3464

Madam Chair and members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration, and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 3464, the Mni Wiconi Project Act Amendments of 2012. If enacted, S. 3464 would expand the scope and authorization ceiling of the Mni Wiconi Rural Water Supply Project and have significant impacts on the budgets of both Reclamation and the Bureau of Indian Affairs. For the reasons described below, the Department cannot support S. 3464.

The Mni Wiconi Rural Water Supply Project is a municipal, rural and industrial project that serves both tribal and non-tribal populations of the Pine Ridge, Rosebud, and Lower Brule Indian Reservations and the West River Lyman-Jones Rural Water System in seven counties of southwestern South Dakota. Responsibilities of the Secretary under the Mni Wiconi Rural Project Act (Public Law 100-516) include

the operation and maintenance of existing water systems, including the core treatment plant and pipelines, and appurtenant facilities on the Pine Ridge, Rosebud and Lower Brule Indian Reservations. With the funding requested in the President's FY 2013 budget, the majority of the population of the project will be served. The Lower Brule and West River Lyman-Jones portions of the project will be completed. Generally those not connected to the project (approximately 2.5% of the population on Rosebud and Pine Ridge Reservation) are served by community water systems or individual wells. Reclamation would be happy to facilitate or coordinate action with other federal agencies to address the needs identified by the bill's sponsor. Reclamation has a backlog of authorized but not constructed projects. Therefore, we have concerns about adding to the scope of an existing project that is nearly complete.

Section 3(a) of S. 3464 would expand the service area of the Oglala Sioux Rural Water Supply to include land that is part of the Pine Ridge Indian Reservation in the State of Nebraska. The Mni Wiconi Project Master Plan, a working document that identifies remaining construction contracts to be completed, does not include construction contracts to serve the population in Nebraska. It is our understanding that other entities are involved with funding new housing facilities in this area, which will include the costs for connecting these new facilities to the Mni Wiconi water system. Given these considerations, adding this portion of the Pine Ridge Indian Reservation to the authorized Project service area does not add to the current authorized cost ceiling of the project or schedule within the existing sunset date.

Sections 3, 4, and 5 of S. 3464 direct the Secretary of the Interior to develop a plan for completion of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, and the Lower Brule Sioux Rural Water System, respectively. Planning the completion of the systems is dependent on future appropriations as well as Reclamation's need for flexibility in decision-making relative to all authorized rural water projects. Reclamation must constantly assess and prioritize these kinds of projects to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities as efficiently as possible, and to reflect the diverse needs and circumstances facing each individual project. The Department would like to work with project sponsors of the bill to discuss plans for completion, and clarifying the roles, responsibilities, and authorities of Federal agencies involved in the project.

Section 6 of S. 3464 would require the Secretary to submit to Congress recommendations for financing and implementing mitigation plans for fish and wildlife losses, and Native American cultural resources, resulting from the construction and operations of the Oahe, Fort Randall, and Big Bend Dams and Reservoirs. The legislation does not address how provisions of this section may have already been addressed by other Acts of Congress intended to provide equitable compensation to Indian tribes adversely impacted by Pick-Sloan projects on the Missouri River; including the Tribal Parity Act (PL 105-132) and the Cheyenne River Sioux Tribe Equitable Compensation Act (PL 106-511), as amended.

Section 7 of S. 3464 would increase the authorized Mni Wiconi cost ceiling by an additional \$14,308,000, based on October 1, 2011, price levels. Reclamation has worked closely with the project sponsors to ensure completed features will be functional and provide intended benefits within the currently authorized cost ceiling. The Department believes the FY 2013 President's request of \$23 million for construction provides sufficient funding to meet the objectives of the Project as authorized. Reclamation has not been provided the details necessary to analyze the cost estimates that are contained in S.3464.

Section 7(b)(1) would authorize appropriations for operation and maintenance to be used to reimburse costs for water service to members of the Rosebud Sioux Tribe living in White River, South Dakota. Reclamation is concerned that this shifts operation and maintenance costs that have been a non-Federal responsibility of the West River Lyman-Jones Rural Water System and the city of White River to the United States, further compounding the budget challenges during these fiscally difficult times. The Department is also concerned about the precedent of Federal funding to cover payment of water bills for tribal members residing in an incorporated city. The Department has testified in other circumstances about the concerns it has with taking on operation and maintenance obligations or subsidizing those costs.

Section 7(b)(5) would authorize appropriations for operation and maintenance to be used for the improvement, repair, and replacement of existing public or tribal water systems prior to their transfer into the respective project system. Reclamation had previously determined that the costs of upgrading existing community facilities should be properly allocated to the construction component of the project. Since these existing systems were originally constructed using funds and authorities of other agencies, Reclamation believes any funding for improvements needed to cor-

rect deficiencies in existing systems should be discussed among the various responsible agencies before those systems are accepted into the project.

Section 8 of S. 3464 would direct the Secretary to update and submit to Congress feasibility studies addressing wastewater disposal needs of the reservations, any deficiency assessments associated with existing waste water systems, and construction, operation and maintenance costs of new wastewater disposal facilities and systems that may be recommended. Reclamation's general authorities and expertise are associated with water supply and not wastewater treatment and disposal. Reclamation believes that other agencies with existing authorities and programs that address wastewater facilities and systems may be better suited as the responsible agency for completing these studies.

Section 9 of the bill amends PL 100-516 to insert a "Mni Wiconi Project Emergency Assistance Planning Act," which would require federal agencies to develop and implement a five-year plan to meet the needs of the Mni Wiconi Project Rural Water Systems in emergency situations. While we agree that it is important to document potential threats and emergency response measures in a written plan, it is not feasible to forecast the "emergency management needs of each rural water system" as described in the proposed Section 204(b)(1). Furthermore, the collaborative effort by the Secretaries of the Interior, Secretary of Defense, and Secretary of Homeland Security to carry out the provisions of this section with consultation with the Indian Tribes with an interest in the project would be extremely difficult to achieve by the date specified of January 1, 2014.

The proposed Section 205 would establish an Emergency Assistance Fund to carry out this title. Reclamation is responsible for extensive water and power infrastructure that is exposed to the same natural disasters and potential man-made threats that could affect the Mni Wiconi Project Rural Water Systems. Funding needed for emergency repairs are made available from annual appropriations and prioritized as necessary to perform work to restore facilities to operational status after damage occurs. This is a more efficient use of federal funds than creating an emergency fund that is reserved for a specific project, such as the Mni Wiconi Project.

This concludes my written statement. I would be pleased to answer questions at the appropriate time.

S. 3483

Madam Chair and members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 3483, the Crooked River Collaborative Water Security Act. The provisions of S. 3483 address the Crooked River Wild and Scenic River designation along with water supply concerns relating to Reclamation's Crooked River Project.

The Department supports the goals of correcting the Wild and Scenic River boundary near Bowman Dam and improving Reclamation project operations, where possible, to further enhance water use and availability. We also recognize refinements made since similar companion legislation was heard in the House in June of last year. We believe that some of the provisions of S. 3483 will advance the goal of water security on the Crooked River, and we offer the following recommendations for improvements to the bill. If the changes summarized below are incorporated to the bill, the Department can support S. 3483.

S. 3483 includes seven sections which address: the Wild and Scenic River designation near Bowman Dam; water supply for the City of Prineville; first fill protection for water in Prineville Reservoir; operating requirements "for the benefit of downstream fish and wildlife"; repayment contract provisions for the Ochoco Irrigation District (District); requirements that Reclamation participate in "dry-year management planning meetings"; and savings clause language clarifying the bill's effect on existing law. This statement summarizes the Department's interest in the most significant provisions of each section.

An eight-mile segment of the Lower Crooked River near Prineville, Oregon was designated as a National Wild and Scenic River in 1988 with enactment of the Omnibus Oregon Wild and Scenic Rivers Act (Public Law 100-557). The Lower Crooked River meanders through canyons of deeply eroded basalt and banks covered with riparian vegetation. A variety of wildlife including river otters, beaver, great blue herons and mule deer inhabit the corridor. A wide-range of recreation opportunities are available along the Lower Crooked River including native trout fishing, camping, hiking and boating.

When the Wild and Scenic River boundary was administratively finalized for this section of the Crooked River, the centerline of Bowman Dam was used as the upstream terminus of the designation. However, the placement of the beginning of the

designation within this man-made feature is both counterintuitive and cumbersome to administer. Section 2 of S. 3483 addresses this by moving that upper limit of the designated river one-quarter mile downstream. The Department of the Interior supports the proposed modification of the boundary as a reasonable solution consistent with the original intent of the Wild and Scenic designation. The Department is willing to work with the Sponsor and the Committee to determine the exact placement of the new boundary. Clearly the dam and related facilities were never intended to be included within the wild and scenic river designation.

Section 2 of S. 3483 also contains language anticipating applications for hydro-power development at Bowman Dam through the Federal Energy Regulatory Commission (FERC). The Department believes that Reclamation has the authority to permit non-Federal power on the Crooked River Project pursuant to the language of Section 2406 of Public Law 102-486. Therefore, Section 2 (B) should be modified to add "or Bureau of Reclamation" after the words "Federal Energy Regulatory Commission."

Section 3 of S. 3483 amends the Act of August 6, 1956 (70 Stat. 1058), by increasing the statutorily-required minimum release flows from Bowman Dam to serve as mitigation for groundwater pumping by the City of Prineville. The Department does not oppose the concept of providing releases to mitigate for municipal use of groundwater. We believe the bill's language of "without further action by the Secretary. . ." and its references to a Reclamation Directive and Standard to be contradictory and subject to interpretation as to the need for NEPA compliance and a contract. The bill's language also requires delivery of water prior to receiving payment from the City and it is unclear as to whether or not the 5100 acre-feet is part of the currently required 10 cfs releases. We recommend deleting the words "Without further action by the Secretary of the Interior, beginning on the date of enactment of the Crooked River Collaborative Water Security Act" and replacing it with, "Upon passage of the Crooked River Collaborative Water Supply Act, the Secretary of the Interior is authorized to contract with the City of Prineville for up to 5,100 acre-feet of water in Prineville Reservoir and upon receipt of required payments may release such water on an annual basis to serve as mitigation. . ." We recommend deleting the words 'Water and Related Contract and Repayment Principles and Requirements' as this does not refer to a Reclamation document and deleting the words 'Directives and Standards PEC 05-01' as this is currently under revision. Substituting "in accordance with Reclamation law and policy" would be more appropriate.

An additional concern with S. 3483 is the bill's statement that "The Secretary is authorized to contract exclusively with the City for additional amounts in the future at the request of the City." This language would preferentially benefit the City of Prineville and appears to close the door to any potential future irrigation or municipal water contractors of the Crooked River Project (Project).

First Fill Storage and Release

Section 4 of S. 3483 also proposes an entirely new addition to the 1956 Act. The proposed addition would provide existing contractors and others with a "first fill" priority basis, rather than the current situation where both contracted and uncontracted storage space in Prineville Reservoir fill simultaneously. While this provision is not likely to have any immediate effect, it is possible under the proposed first fill priority system that in very dry water years the last fill entity could be shorted. This section also requires the release of all the contracted water in the reservoir every year. We recommend deleting the word 'release' and substituting the words 'make available' as it is common for irrigators to use less water than they have contracted in any given year.

Storage and Release of Remaining Stored Water Quantities

The Department supports the concept of providing some of the now uncontracted space in the reservoir for fish and wildlife purposes. However, the inserted Section 7(a) requirements to release all remaining stored water quantities for the benefit of downstream fish and wildlife will prevent Reclamation from issuing new contracts.

We note that the bill's language also inserts a Section 7(b) to the 1956 Act which would require that if a consultation under the Endangered Species Act or an order of a court requires releases of stored water from Prineville Reservoir for fish and wildlife, the Secretary shall use uncontracted stored water. Reclamation would interpret this provision to set a new precedent in legislatively prescribing operation of the Crooked River Project. Reclamation interprets this section as altering but not eliminating agency discretion with respect to contract water supplies, therefore, sufficient discretion would remain with respect to the operation of the Project to war-

rant consultation under Section 7(a)(2) of the Endangered Species Act. The limit of Reclamation's discretion is not entirely clear, and could be subject to contrary interpretations. Also, the additional quantity of water reserved for the City of Prineville is not addressed in this section, and Reclamation interprets the bill such that any future quantities of water made available to the City (beyond the 5,100 acre feet) will not be subject to first fill protection and may affect the use of water for the benefit of downstream fish and wildlife.

S. 3483 also includes amendments to the 1956 Act to coordinate the management of water for the benefit of fish and wildlife with the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon. Reclamation notes the role of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service with respect to the use of uncontracted water for the benefit of listed species is not entirely clear, resulting in a potential for conflict if the federal, state and tribal management priorities are not aligned. Likewise, the limitation of the use of the reservoir for downstream resources, could cause similar problems if a species were to be listed in or above the Reservoir. As drafted however, Reclamation would interpret the amended Section 7(c)(2) as not to alter Reclamation's obligations under Section 7(a)(2) of the Endangered Species Act.

The "Required Coordination" language in the amended Section 7(d) continues to lack clarity with respect to the scope and purpose of the section. Specifically, striking the words "and assist" line 18 of page 7 would reduce the potential for conflict by clarifying the purpose of the section.

Section 5 of S. 3483 would provide for early repayment of project construction costs by landowners within the District and the District's participation in conserved water projects of the State of Oregon. The Department fully supports these objectives and has no concerns regarding corresponding language in the bill.

The Department does not see the need for language in Section 6 of S. 3483 requiring that Reclamation participate in and prepare a report from meetings by a "Dry Year Management Planning" group. Reclamation already has standing authority to provide technical and planning assistance to state, local and tribal government entities under Title II of the Reclamation States Emergency Drought Relief Act (PL 102-250 as amended). This planning authority does not expire, and is not subject to a standing drought declaration being in place in the area of interest. The Drought Act authority is sufficiently broad to cover the topic areas proscribed in Section 6 of S. 3483, without creating a new Congressional reporting burden on the Department. However, if this language remains, we suggest deleting at the end of Section 6(d), "with the voluntary agreement of North Unit Irrigation District and other Bureau of Reclamation contract holders referred to in that paragraph, the Secretary may release that quantity of water for the benefit of downstream fish and wildlife as described in section 7 of that Act." This language limits Reclamation's authority and creates a burdensome requirement that could more efficiently be addressed by requiring entities to contact Reclamation prior to June 1 of any year or the water will be released downstream.

The Department also supports the McKay Creek Exchange Project which has been the subject of periodic discussions between the District and Reclamation and which would provide enhanced instream flows in McKay Creek in exchange for water from a portion of the District's current contracted water supply from Prineville Reservoir. However, we have concerns with those portions of Section 5 of S. 3483 that address contract amendments relating to lands within the vicinity of McKay Creek. As written, the proposed legislation does not clearly identify the fundamental exchange element of the project. The language in Section 5 is unclear as to whether the proposed water supply would come from the District's current contract supply or from uncontracted water in Prineville Reservoir, and the amount of water is not specified. As a result, the Department believes the McKay Creek Exchange Project would be implemented more effectively by proceeding with contracting processes that Reclamation has typically used for such situations, and which have been the subject of prior discussions with the District.

While the Department supports the goals of S. 3483, we believe that the bill would benefit from changes as outlined here. This concludes my written statement. I am pleased to answer questions at the appropriate time.

Senator SHAHEEN. Thank you very much, Mr. Payne. We appreciate that responses might need to be in writing.

Senator Murkowski has joined us, but we would like to go ahead and hear your testimony, Mr. Katz. She'll make her statement later.

Thank you.

STATEMENT OF JOHN KATZ, DEPUTY ASSOCIATE GENERAL COUNSEL FOR ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Mr. KATZ. Thank you, Chairman Shaheen, Senator Johnson, Senator Murkowski. It's a pleasure to be before you today.

I'll go off topic for a minute just to thank Senator Shaheen for her State's hospitality. My family had a wonderful reunion at Lake Winnepesaukee this summer.

Senator SHAHEEN. We very much appreciate that. Come back often.

Mr. KATZ. Thank you.

I will be fairly brief. My name is John Katz. I'm Deputy Associate General Counsel for Energy Projects at the Federal Energy Regulatory Commission. I appear today as a Commission staff witness. My statements are my own and don't necessarily reflect the opinions of the Commission, the chairman or any commissioner.

Section 10(e)(1) of the Federal Power Act provides that persons, states, and municipalities to whom the Commission has issued licenses are required to pay annual charges for a number of things, as relevant here, for the use and enjoyment of lands of the United States.

Section 24 of the act provides that when an entity files an application either for a preliminary permit or for a license, the lands that are covered by that application, this is only as applies to Federal lands, become sort of exempt from disposal under the public land laws because the United States is deemed to have an interest in the power development potential of those lands. In some instances entities reach agreements with departments of the United States, such as the Department of Reclamation and particularly the Forest Service, where they will perhaps trade lands so that they can have lands available for a hydro project or they may sell or the lands will otherwise be transferred to those entities.

However, section 24 provides, in a mandatory fashion, such that Reclamation and Agriculture don't have any choice, that if such lands are transferred they are required to be continued to be subject to the United States' power site reservation. In some instances therefore, there are lands that have been transferred entities who are operating hydro projects yet they still pay annual charges for the use and enjoyment of those lands.

Senator SHAHEEN. Mr. Katz, pardon me for interrupting you. I just wanted to clarify for members of the audience that you are testifying on S. 3265.

Mr. KATZ. Oh, yes. I apologize. Indeed.

The proposed legislation would provide that if lands are transferred or otherwise given to private entities by the United States, annual charges for use of those lands would no longer be charged by the Commission. It would amend section 10(e) to provide that.

Commission staff takes no position on the bill. It would not, in any way, undercut the Commission's ability to protect the public interest considerations that the Federal Power Act requires it to protect. It would not affect the Commission's budget in any way because the annual land use charges are paid directly into the Treasury of the United States.

With that I'm happy to answer any questions you may have.

[The prepared statement of Mr. Katz follows:]

PREPARED STATEMENT OF JOHN KATZ, DEPUTY ASSOCIATE GENERAL COUNSEL FOR
ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

S. 3265

Chairman Shaheen, Ranking Member Lee, and Members of the Subcommittee:

My name is John Katz and I am Deputy Associate General Counsel for Energy Projects at the Federal Energy Regulatory Commission. I appear today as a Commission staff witness. The views I express are my own and not necessarily those of the Commission or of the Chairman or any individual Commissioner. I appreciate the opportunity to appear before you to discuss S. 3265.

I. BACKGROUND

Section 10(e)(1) of the Federal Power Act (FPA) provides that persons, states, and municipalities to which the Commission has issued a license to operate non-federal hydropower facilities must pay to the United States reasonable annual charges in an amount to be fixed by the Commission for, among other things, "recompensing [the United States] for the use, occupancy, and enjoyment of its lands or other property." Section 17 of the FPA states that such charges will be paid into the U.S. Treasury, with 12.5 percent being allocated to "Miscellaneous Receipts," 50 percent being paid into the Reclamation Fund, and the remaining 37.5 percent being paid by the Secretary of the Treasury to the state within which the lands at issue are located (there is an exception for proceeds from Indian reservations, all of which are credited to the Tribes).

FPA section 24 provides that any lands of the United States included in any proposed hydropower project shall, from the date of filing of a project application, be reserved from entry, location, or other disposal until otherwise directed by the Commission or by Congress. If the Commission determines that the power development potential of reserved power sites will not be injured or destroyed by location, entry, or selection under the public land laws, the Secretary of the Interior will declare the lands open to location, entry, or selection, under any conditions imposed by the Commission and "subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of [Part I of the FPA], which right shall be expressly reserved in every patent issued for such lands."

It has been the Commission's policy for many years that, where federal lands subject to a power site reservation are transferred to a licensee, the licensee still must pay annual charges for the use of the lands, given that the United States retains the power interest in the lands. The Commission has no record of the amount of acreage that falls into this category, because the Commission assesses federal land use charges based on the amount of federal acreage that each licensed project occupies (typically, taken from information in a license application or license order), and for this purpose there is no practical distinction between lands that are wholly owned by the United States and those that have been transferred to a private entity subject to a power site reservation. Unless a licensee elects to identify any acreage that has been transferred from federal ownership but is still subject to a section 24 power site reservation, the Commission does not have that information.

II. S. 3265

S. 3265 would revise section 10(e) of the FPA to provide that those federal lands as to which the Commission assesses annual charges to hydropower licensees will not include land that has been sold, exchanged, or otherwise transferred from federal ownership, notwithstanding the retention by the United States of a power site reservation on those lands.

Commission staff has no position on the proposed legislation. S. 3265 would not affect either the Commission's ability to protect the developmental and non-developmental values set forth in the FPA or the Commission's funding. The Commission will assess annual charges for the use, occupancy, and enjoyment of federal lands in any manner that Congress directs.

III. CONCLUSION

This concludes my testimony. I will be happy to answer any questions you may have.

Senator SHAHEEN. Thank you very much, Mr. Katz.
Senator Murkowski, did you want to make a statement?

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR
FROM ALASKA**

Senator MURKOWSKI. Madame Chairman, thank you first of all for conducting this hearing including my bill on the agenda this morning. I appreciate, you, Mr. Katz, being here and speaking to S. 3265 which addresses FERC's collection of land use fees for hydro projects.

Madame Chairman, I guess I look at this one and say I'm just not sure why it's even necessary to legislate in this area. But we are here this morning.

Under the Federal Power Act FERC is authorized to collect these reasonable annual fees from project owners for use, enjoyment and occupancy of Federal lands. In a sense the Federal Government is a landlord for these types of projects and can collect the fees and the rents from its tenants. I understand that.

But I was very surprised to learn that when the land in question is no longer owned by the Federal Government because it's been sold or it's been transferred that the government can continue to collect these fees. It's, you know, liking it to a situation where you're renting an apartment or you're owning the house. But you sell the house. Do you still have to pay for a house that you no longer own?

I guess if there's an outstanding mortgage, yes. But if you owned—if you rented an apartment and you're no longer in that apartment, you've moved on. You've transferred. The fact that you're still paying rent to the landlord to me just doesn't set right. To me it's inherently unfair.

Yet, the FERC is authorized to continue to collect these fees as long as the land retains something that is referred to as a Power Site Classification. So what my legislation does, Madame Chairman, is simply halt the collection of Federal land use fees when the Federal Government no longer owns that land. I've learned that even though it might sound simple on its face, there's nothing simple about this.

We've had a difficult time even identifying how many projects are at issue. In my questions to you, Mr. Katz, I'm going to see if we can't drill down a little bit more on that.

I would note, though, for my colleagues that many of the approximately 15 projects that we have identified so far many of them are located in Alaska. But there are some in Oregon, Washington and Colorado that are in the same situation. So it's for this reason that I have brought this bill forward.

Madame Chairman, I don't know if you want to begin with your questions. But I certainly have a few for Mr. Katz just in terms of what we're really looking at here and how we might be able to better identify the projects in question.

But thank you.

Senator SHAHEEN. Thank you very much, Senator Murkowski. I know that you won't be asking about S. 3265 and Senator Johnson will be asking about the Mni Wiconi project. So I will start Mr.

Payne, by asking you about the small conduit hydropower development, H.R. 2842.

The committee has heard from a number of groups who have raised questions about the waiver, the NEPA waiver, that's in that legislation. So I wonder if you could begin by stating for the record what your understanding is of what the language would do with respect to waiving the NEPA process.

Mr. PAYNE. Yes. Currently the language that's in the proposed legislation would basically waive the NEPA process for the development of small conduit hydropower on Reclamation owned facilities.

Senator SHAHEEN. Is the Bureau looking at ways to expedite or improve the process for developing hydropower in these situations? Clearly as I listen to Congressman Tipton testify on his legislation he was suggesting that for projects that would include hydropower in construction that had already been completed and had already gone through the NEPA process that it might be an unnecessary burden on those developers. That was my interpretation of what he said.

Can you speak to that and to what the Bureau is looking at and whether it's the Bureau's assessment that that's correct or not?

Mr. PAYNE. Yes. Currently the Bureau has a directive in standards on leases, lease and power privileges that we're in the process of revising. The revised version will basically become more friendly in the sense it will be more efficient, more transparent and it will be basically allow more communication so that this whole process of developing hydropower at Reclamation facilities will be more streamlined.

We feel confident that this will satisfy.

Senator SHAHEEN. But it would still, based on that response, it would still require a NEPA process?

Mr. PAYNE. Yes.

Senator SHAHEEN. Before going forward.

Mr. PAYNE. It would still require a NEPA process and what we would use would be under the NEPA process, categorical exclusions, which we've already used in 4 other instances in recent years. As a result when you look at categorical exclusion NEPA process, it has taken anywhere between 6 months to 15 months to complete which we feel is fairly streamline.

Senator SHAHEEN. So how do you respond to the concern that he raises that if a project has already gone through NEPA that it shouldn't have to go through it again if just to add the hydro, the conduit, into the canal or whatever the body is?

Mr. PAYNE. I'm not an expert on that. I'd like to get back to you in written testimony.

But, I guess what I would say is what I've understood is, you know, when the original one was done maybe years ago, things can change. It's always good to honor the process and to make sure that we get it done right so that we don't get down the road and have to stop everything. I think it's more costly to do it that way.

With, like I said, the categorical exclusion, which is more of a checklist kind of NEPA process, it would streamline it. That's why we feel this is kind of a win/win situation.

Senator SHAHEEN. OK. Thank you.

I want to go now to S. 3483, the Crooked River Collaborative Water Security Act.

I was impressed as Senator Merkley was describing the effort that had gone into the legislation about the number of groups that have come together to come to some agreement on how to move forward. I just wonder if the Bureau is confident that the bill as written will bring about the intended results.

Mr. PAYNE. Yes. Actually the Bureau is very comfortable with the bill. We like it a lot. We think that this current legislation will bring about the results that are intended.

I think all the parties in Oregon support the bill. We support it. We think it's a win/win for everybody.

We're very comfortable with it.

Senator SHAHEEN. Thank you.

Senator Wyden is here. I'm sure he will have a lot to say about that legislation. So Senator, would you like to make a statement before we go onto further questions?

STATEMENT OF RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Madame Chair. This is a hectic morning, even by Senate standards.

I thank you and Senator Murkowski and Senator Johnson for their courtesy. I particularly just wanted to commend Senator Merkley and his staff for their leadership on the Crooked River bill. I know Betty Ruppe is here today. She and so many in Central Oregon spent hours and hours with Senator Merkley and myself and our staff to put together this legislation on behalf of the irrigation districts, the Warm Springs tribes, the conservation groups, the city, Governor Kitzhaber, the State and the county.

We have a long tradition in our State with trying to find common ground on these kinds of issues. I think all of us, particularly in the West, understand that water is the prerequisite to a quality of life in our part of the country. It's how we restore our salmon runs, the natural habitats. This bill strikes a balance between competing demands for a scarce resource.

I'm particularly pleased that the city of Prineville is going to have water for economic development. Our irrigators will have a new level of certainty on their future water supply. It opens up the fish habitat. We particularly, Senator Shaheen, want to thank you for scheduling the hearing on this legislation so quickly.

This has been an important issue for Oregon. We're very pleased to be able to move forward after all of the years of work to reach agreement. We look forward to working the Bureau of Reclamation.

Congressman Walden, he has a related piece of legislation in the other body in order to be able to move this legislation forward.

Mr. Payne, I'll have some questions for you. I think I'll submit those for the record.

We appreciate the cooperation that you've shown and thank you, Senator Shaheen, Madame Chair, for the courtesy this morning. Thank you.

Senator SHAHEEN. Thank you very much, Senator Wyden.

Mr. Payne.

Mr. PAYNE. Thank you.

Senator SHAHEEN. I'll now go to Senator Murkowski for questions.

Senator MURKOWSKI. Thank you, Madame Chairman.

Mr. Katz, let me ask you about that power site classification. My question relates to the purpose of these PCSs. It's my understanding that they're meant to preserve the power values of undeveloped areas or sites that could be developed.

Is that a correct understanding?

Mr. KATZ. Yes. I think that's accurate.

If you look at the legislative history of the section it seems that back in the tens and the twenties, when that section was being put together, that there was concern, particularly in the Senate also in the House, about large companies, sort of, obtaining huge swaths of power privileges so that the people of the United States wouldn't have a chance to develop them. I think that led to section 24.

Senator MURKOWSKI. So once we have a hydropower facility in place, once that project exists, just in terms of the practical effect or the benefit of a Power Site Classification. Isn't the power value protected by the PSC already being utilized then?

Mr. KATZ. Yes, it should be.

Senator MURKOWSKI. OK. OK.

I had mentioned in my comments about the difficulty in identifying the projects out there. I know that you have worked closely with my staff on the legislation. But FERC was not able to provide us with a list of the hydropower projects that are still subject to Federal land use fees.

Why is this so difficult? Why is it so hard to identify this?

Mr. KATZ. The reason it's difficult is because the Commission charges or sets annual charges for the use of Federal lands by hydropower licensees. But it doesn't have a separate schedule of fees so that the fees relating to section 24 lands are different than fees that are not subject to section 24.

Senator MURKOWSKI. Would that be difficult to isolate that or to account for them in a different way so that we would have a better tracking on it?

Mr. KATZ. In the future, as I think I spoke with your staff recently, the Commission has fortunately due to new technology, been able to ask licensees for data like from GPS and similar processes. So in future, going forward, the Commission is asking licensees to provide information as to which of those lands might be subject to a power site reservation and which aren't.

In the past the Commission didn't do that, as I said, because it didn't affect the fee. So the Commission could, if the Senate were to request or Congress were to request, could go back to each licensee and see and ask them to provide that information, but absent doing that which might be burdensome for some licensees it might not.

There isn't a way to, sort of, go back to the past.

Senator MURKOWSKI. Do I understand correctly, though, that currently you have begun to ask for that information?

Mr. KATZ. Yes, that's correct.

Senator MURKOWSKI. Then I know that you have seen the list of projects that my staff has assembled working with the trade groups, including the National Hydropower Association, the Alaska

Power Association. We've essentially gone out and surveyed these constituent and trade groups. We've shared this list with the folks at FERC.

Does this list look complete to you? Do you think we pretty much identified the population out there?

Mr. KATZ. To the best of my knowledge, but again because the Commission doesn't do that, there may be some licensees who have, for example, very small amounts of lands that are subject to such things, so it doesn't trouble them, and they haven't brought that to your attention.

So I can't be sure that it's the universe. I think it's probably the universe of people that make significant payments and they're concerned about it.

Senator MURKOWSKI. Is there anything else that you might recommend we do, any other groups that we might look to in trying to really firm up whether or not this is the universe? Is there anything else that we should be looking at or any other questions that we might be asking?

Mr. KATZ. No. It sounds like you're speaking to the right groups. I mean, certainly NHA is the industry trade association.

Senator MURKOWSKI. Right.

Mr. KATZ. But again, I don't know what steps they've been able to take to survey their membership.

Senator MURKOWSKI. OK.

Mr. KATZ. But you're asking the right folks.

Senator MURKOWSKI. I appreciate that, Mr. Katz. I appreciate you working with my staff on this to just better understand what we're dealing with.

Again, I would like to think that this would be a simple enough issue to resolve. It's certainly common sense that we're trying to get to the point where common sense is going to rule. I appreciate that.

I thank you, Madame Chair.

Senator SHAHEEN. Thank you.

Senator JOHNSON.

Senator JOHNSON. Thank you very much for being here today.

One of the primary goals of my legislation is to ensure that the construction of the pipeline and necessary service lines on the Pine Ridge Reservation and the Rosebud Reservation can be completed. Without this, my understanding is that more than 4,300 intended beneficiaries of the project on the two reservations will not be served. Reclamation has stated that a majority of the population will be served within their authorized construction ceiling, but won't there still be an unmet need within the existing scope of the project once the construction ceiling is reached?

Mr. PAYNE. Yes, Senator, there probably will be some for those outlying areas. We estimate that the actual number of current residents that will not be serviced by the Mni Wiconi project to be currently about 1,000 people given and I think the 4 thousand is a projection down the road.

But either way we do agree that there is a need. But currently what we understand with our research is that those locations currently do have either residential wells or community wells that

they're currently being served by. NIH is working with them to test water quality. Currently it is good water quality.

You know, we have, in the past, and I think recently in April or so we met with the various parties who have constructed some of these locations whether it's Agriculture's Rural Water Division or it's EPA or IHS or HUD and trying to get them to get together to actually help with these projects. But I think a lot of it has to do with their response is their lack of funding or the other priorities. I don't really want to speak for them. But I'm just what I'm understanding from our region.

You know, I guess the best way would be we've proposed and drafted an MOA that would be with the other, our other agencies, that would basically, hopefully, outline roles and responsibilities to see what we can do to get this. But we'd be happy to work with the committee.

Senator JOHNSON. Reclamation previously stated that given the magnitude of the work that will have to be completed on the project and the backlog of work awaiting action on other projects that the tribes should look for alternative funding sources that could be used to construct any remaining features.

In Reclamation's view how does leaving the tribal sponsors to fend for themselves in finishing this construction square with the United States trust responsibilities to the tribes?

Mr. PAYNE. Again, this is back to where we have worked with the tribes. The tribes have all done outreach to these other Federal agencies and that is where we think that in order to solve this problem may be an MOA with the other agencies to get them all at the table to get a collective solution would probably be the best.

Senator JOHNSON. Currently there are other Federal agencies that operate existing community systems on their reservations, which the original Mni Wiconi Act contemplates incorporating into the project. Can you outline some of the challenges Reclamation has faced in getting other agencies to participate in plans to upgrade the existing community systems?

Do you think this bill would help spur the other agencies to get involved at higher levels and make these issues a priority?

Mr. PAYNE. In the actual Mni Wiconi project where we've done the water treatment plan as well as the pipelines that go throughout the communities, you know, we have known that there are areas that were serviced by other Federal agencies. We do recognize that some of these pipelines aren't up to standards and that in order to connect to these pipelines we would really need that the O&M that should have been performed on these to be performed to get them up to standards because I think there is possibly, if you were to connect them, very remote possibilities contaminating the newly constructed lines that we have as well as the fact that we would inherit a liability with these.

I can't speak for the other Federal agencies. But I think the tribes are also looking at ways to try to get them to the table to help out. Once these systems are upgraded and they are connected to our project and you know, we would be happy to pick up the O&M for this.

Senator JOHNSON. Thank you very much, Mr. Payne. I look forward to your cooperation.

Mr. PAYNE. Thank you.

Senator SHAHEEN. Senator Johnson, did you have any further questions? Thank you.

I actually have one that is not clear to me that relates to this project. I know that you indicated, Mr. Payne, that the existing Mni Wiconi project is almost complete.

Can you elaborate on what that means? Is it going to be complete in a year, in 6 months, in 5 years?

Mr. PAYNE. Sure. No, this project should be, if we get our full appropriations for this project, should be completed in 2013. We have it as one of our priorities in our 2013 budget submission.

So if we do get full funding we will be able to complete this project in 2013. Then that would fulfill our Federal obligation.

Senator SHAHEEN. OK. Thank you.

Mr. Katz, I want to follow up on some of Senator Murkowski's questions relative to S. 3265.

How does this legislation correspond with FERC's pending rulemaking on the collection of land use fees?

Mr. KATZ. It's really a separate matter. I mean, in the rulemaking the Commission noted what its current policy and legal requirements were, but this is not an issue in that rulemaking.

Senator SHAHEEN. OK.

It's my understanding that the Omnibus Budget Reconciliation Act of 1986 requires FERC to recover its budget through fees and annual charges on the industries that it regulates. So how would this legislation impact the funding that FERC has been dependent on to operate?

Mr. KATZ. The legislation would not affect that at all because section 17 of the Power Act provides that all the charges that are recovered for use and enjoyment of U.S. lands go straight to the Treasury. So those have never funded the Commission's operations.

Senator SHAHEEN. OK. Thank you.

I want to go back with a final question, Mr. Payne, on the S. 3483, the Crooked River Collaborative and would again note what both Senators Merkley and Wyden had to say about the collaborative effort that went into this project. I think it's very impressive. I certainly commend the Mayor of Prineville, who is here and all of those other individuals and groups who made this happen.

But I just want to clarify that it is not the intent of this effort to waive any applicable environmental laws.

Mr. PAYNE. That is correct.

Senator SHAHEEN. OK.

You're comfortable that the bill, as it's written, makes that clear?

Mr. PAYNE. Yes, especially in the ESA portion. We would be willing to work with the committee to clarify anything that needs to be clarified. We don't have any problems with that.

Senator SHAHEEN. OK.

Thank you both very much for your testimony this morning. I have no further questions and clearly neither does anyone else since they're gone.

The testimony and written submissions from today's witnesses will be part of the official hearing record. We will keep that record open for 2 weeks to receive additional statements.

Again, thank you. The hearing is adjourned.

[Whereupon, at 10:20 a.m. the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF GRAYFORD F. PAYNE TO QUESTIONS FROM SENATOR MURKOWSKI

H.R. 2842

Question 1. What are the financial challenges in developing conduit hydropower at federal canals and pipelines? In particular, what are the capital costs, regulatory costs and other costs on a project covered by this bill?

Answer. The capital cost and other investments required to develop conduit hydropower on federal canals vary widely depending on the facility size and location. In general, conduit hydropower is developed with small units (under 10 megawatts), in locations where environmental and regulatory considerations are minimal. Environmental compliance, transmission agreements, operating arrangements and facility design are among the principal non-capital cost considerations. Because conduit hydropower units are typically small, the size of the investment is not on the scale of typical federal powerplants, which are much larger and have planning and development costs that can run into the tens of millions of dollars.

Question 2. This bill waives the NEPA requirements for small conduit hydropower of less than 1.5 mw because the canals and pipelines necessary for conduit hydro have already been built. The proponents of the bill argue that the NEPA waiver eliminates just the paperwork requirements but not environmental statutes. Will environmental laws like the Endangered Species Act and the Clean Water Act still apply? What about state water laws?

Answer. Many of Reclamation's existing projects pre-date the NEPA process, or are operating in conditions that have changed significantly since construction. For these and other reasons explained in the Department's written statement, we believe the NEPA waiver contained in HR 2842 to be unwarranted. The development of small conduit hydropower projects that meet the qualifications listed in a standard checklist will be eligible for categorical exclusions (CE) under NEPA, resulting in very little paperwork. That checklist is available as part of the Reclamation Manual's Directive and Standard titled Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges (FAC 04-08) (<http://on.doi.gov/SrhRrW>). The only way to determine whether an individual project should be looked at more carefully under NEPA is to allow these processes to take place. Federal and state laws such as the Endangered Species Act and Clean Water Act will continue to apply regardless of what level of NEPA analysis is performed for new hydropower development or if the process is waived all together.

Question 3. Please elaborate on the potential use of a NEPA categorical exclusion for conduit hydropower development.

Answer. Reclamation's existing Lease of Power Privilege procedures allow for a categorical exclusion (CE) under NEPA to be applied to low-impact hydropower projects. These procedures are also documented in the Departmental Manual at 516 DM 14.5(C)(3) and (D)(4), for use when the scope of a project is consistent with the terms of a CE, and there are no extraordinary circumstances. Key considerations in determining if the project is consistent with the terms of the CE are:

- (i) the project would utilize an existing dam or conduit;
- (ii) points of diversion and discharge of the LOPP powerplant would be in close proximity to the existing infrastructure and would not significantly affect the flow patterns of the water source;

- (iii) there would be no increase or change in timing of diversions and discharges; and
- (iv) the primary purpose of the infrastructure would remain, e.g., most commonly irrigation.

Reclamation's final Directive and Standard, Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges, which was released on September 28, 2012, provides more detailed information on the potential use of a CE for conduit hydropower development.

S. 3464

Question 1. Please describe all the Federal agencies that have existing authorities and programs to address wastewater facilities and systems within the region that may be better suited to play a role in the project.

Answer. The other Federal agencies that have the authority to fund various additional water and wastewater features in the region of the Mni Wiconi project are: Indian Health Service (IHS) with the Department of Health and Human Services (HHS), Bureau of Indian Affairs (BIA) within the Department of the Interior, Housing and Urban Development (HUD), Environmental Protection Agency (EPA), United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS), and USDA Rural Development. IHS in particular has an active program to assess and fund wastewater projects.

Reclamation and the Tribe's rural water staff have met with the other agencies listed above on several occasions to discuss authorities, programs, and capabilities to assist with completion of remaining project components including wastewater facilities. Reclamation's understanding is that while other Federal agencies are supportive of addressing unmet needs, their budgets are limited and projects are objectively prioritized and ranked. Establishing a project specific interagency memorandum of agreement would help define needs, roles, and responsibilities to develop a multi-agency approach to improving these existing water systems. Reclamation introduced a draft interagency agreement at a multi-agency government to government consultation meeting on August 16, 2012. This agreement contemplates periodic meetings to develop a coordinated approach to the upgrades of the water systems.

Question 2. Please describe your current repayment obligations for the Mni Wiconi project, as well as the remaining Federal Funding needed to complete the project. Do you consider it the role of Reclamation to pay for any additional operation and maintenance costs that the project may incur under this bill?

Answer. The Mni Wiconi Act (P.L. 100-516), as amended and currently in force, does not require repayment of project costs. Instead, it required a 20% cost share for the non-tribal components, which has been fully met. Reclamation estimates that the FY 2013 appropriation request of \$23 million will be sufficient to cover the remaining construction obligation for project completion as currently authorized. With respect to operation and maintenance costs, in general the Department opposes requirements for federal funding of projects' operation and maintenance costs. S. 3464 would increase Reclamation operation and maintenance obligations by adding payments of water bills on trust lands within White River and by funding initial improvements to existing community water systems.

Question 3. Within your rural water program, if you were to prioritize the projects, where would the Mni Wiconi project fall within a prioritization system?

Answer. Reclamation's recently completed draft assessment report titled "Assessment of Reclamation's Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States" (www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf) details the prioritization criteria to be applied to authorized rural water projects. Given Reclamation's application of funding criteria, the Mni Wiconi project has ranked favorably, qualifying for an appropriations request sufficient to complete the federal cost share under the authorized ceiling, assuming that the President's FY 2013 request of \$23 million is appropriated.

S. 3483

Question 1. Has the Administration proposed that hydro should be developed at this facility? How long has the Administration studied the possible development of hydro at this facility? In addition, what process is being undertaken to ensure that all federal agencies are working towards making this a possibility?

Answer. In 2010, Reclamation contracted with HDR to complete a conceptual level feasibility study that ultimately determined that development of hydropower by the Federal government at Arthur R. Bowman Dam (Bowman Dam) on the Crooked

River was technically feasible. Since Bonneville Power Administration (BPA) is the federal power marketing agency in the Pacific Northwest, Reclamation provided the study to BPA. After reviewing the study and consulting with their rate payers, BPA notified Reclamation that while technically feasible, they did not believe federal development of hydropower at Bowman Dam was warranted at this time. Bowman Dam was listed as a potential development site in Reclamation's March 2011 Hydro-power Resource Assessment at Existing Facilities. The reconnaissance level analysis contained in that report estimated that Bowman Dam could accommodate hydro-power development of approximately 3,293 kilowatts, with annual production of approximately 18,282 megawatt hours.

As stated in the Department's written testimony on S. 3483, we believe that Reclamation has the authority to permit non-federal power on the Crooked River Project pursuant to the language of Section 2406 of Public Law 102-486. Therefore, we have recommended that Section 2(B) of the bill be modified to add "or Bureau of Reclamation" after the words "Federal Energy Regulatory Commission." Recently, two private entities have expressed interest in developing hydropower at this site. The U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Reclamation have all been involved to varying degrees with the private entities. However, neither the Federal Energy Regulatory Commission nor the Bureau of Reclamation will process applications before the Crooked River Wild and Scenic River boundary is relocated downstream of Bowman Dam.

Question 2. Please describe what can be done administratively to help improve the water situation within the area if this legislation is not passed.

Answer. Since the early 1990s, Reclamation has operated Bowman Dam to improve flow conditions in the Crooked River for downstream fish, wildlife and recreation needs, while also meeting water user contractual deliveries. With cooperation from the contract holders and State of Oregon, we have used our flood control authority to shape flood control releases to nearly a year round operation, such that we have been able to augment downstream Crooked River flows to provide fishery and recreation benefits. For example, while statutorily authorized to only provide a 10 cubic feet per second (cfs) minimum winter flow for fishery purposes, we have consistently provided a winter-long minimum flow of 50 -75 cfs (35 cfs in the driest of years) by reshaping flood control releases. In addition, during the irrigation season, Reclamation routinely releases additional flow above that needed strictly for irrigation (typically 15 to 30 cfs, but some years higher) to ensure stream continuity and fishery benefits accrue downstream of irrigation diversions.

Absent this legislation, we would expect to continue similar operations, but recognize that current operations could change in the future if more of the reservoir were contracted for irrigation or other uses, thereby reducing our flexibility to shape flood control flows. Reclamation could potentially work with the Oregon Department of Fish and Wildlife, the Confederated Tribes of the Warm Springs, and other entities to coordinate and shape releases of non-contract water to benefit downstream fish and wildlife purposes. Administratively, Reclamation also could potentially work with Ochoco Irrigation District (OID) to adjust its district boundary to include and deliver project water to McKay Creek water users; S. 3483 exempts OID from environmental compliance for this inclusion. Reclamation also could continue to issue contracts upon request for irrigation purposes. However, the first fill provision for existing contractors and the City of Prineville would not be possible without legislation.

RESPONSES OF JOHN KATZ TO QUESTIONS FROM SENATOR SHAHEEN
(SUBMITTED ON BEHALF OF SENATOR BINGAMAN)

Question 1. You testified that enactment of S. 3265 would not affect FERC's budget since the land use fees are paid into the Treasury rather than retained by FERC. But what effect would the bill's enactment have on Treasury collections? How much money do the annual land use charges on power site reservations bring into the Treasury? What effect would the bill's enactment have on payments to the Reclamation Fund, the States in which the sites are located, and the tribes on whose reservations the sites are located?

Answer. If enacted, S. 3265 would likely reduce Treasury collections to some extent. In FY12, the Commission issued bills totaling \$8,277,850.69 for the use of federal lands. As I explained in my written testimony, the Commission has never had a reason to track separately federal land use charges that are attributable to lands that have been opened to location, entry, or selection and transferred or exchanged. Thus, I do not know what part of the annual land use charges is based on power site reservations alone or what part of those charges is attributable to lands that

would be exempted under the proposed legislation. Total FY12 federal land charges for the projects identified by Senator Murkowski's staff as including lands that have been transferred or exchanged by the United States were \$240,216.35. The portion of those charges attributable to transferred or exchanged lands (as opposed to those still owned by the United States) would represent a smaller figure.

Pursuant to section 17 of the Federal Power Act, 12 percent of charges for the use of federal lands are paid into the Treasury, 50 percent of the charges are paid into the Reclamation Fund, and 37.5 percent of the charges are paid to the state(s) in which the lands are located. These payments would be reduced, in appropriate percentages, by any charges that were foregone as a result of S. 3265. I do not believe that receipts by tribes on whose reservations power sites are located would be affected by the draft legislation. Annual charges for use of tribal reservations are established, pursuant to FPA section 10(e), subject to the approval of the affected tribe. The Commission's practice is that the tribe and the licensee negotiate the annual charge, with the Commission intervening only if the parties cannot agree, something that has never to my knowledge occurred. Further, I am not aware of any instance in which the United States has transferred tribal reservation lands subject to a power site reservation to a licensee.

Question 2. You appear to have said, in response to a question at the hearing, that once a power site reservation under section 24 of the Power Act has been developed, the purpose of the reservation has been served, and collecting a land use charge on the power site reservation serves no further purpose. But isn't the historic basis of the land use charge the notion that the nation's water resources belong to the nation as a whole and should not be given to private owners, "forever and for nothing," without reasonable compensation to the public? (See, for example, *Chemehuevi Tribe of Indians v. FPC*, 489 F.2d 1207, 1219 n.54 (D.C. Cir. 1973).) Hasn't the principle of assessing a reasonable charge for the use of the Nation's power resources been one of the principal tenets of the part I of the Federal Power Act since its enactment in 1920, and indeed, a fundamental principle of the Theodore Roosevelt and William Howard Taft Administrations before the Act's enactment? Wouldn't S. 3265 exempt the beneficiaries of federal power site reservations from this principle?

Answer. The legislative history underlying section 24 makes clear that Congress intended to preserve for the people of the United States the ability to develop water power on federal lands, hence the requirement that any transfer by the United States of lands on which there is a power site reservation include a reservation of the right of the United States or its peuditees to enter upon, occupy, and use of any part of the lands deemed by the Commission to be necessary for water power purposes. The principle of assessing a reasonable annual charge for the use of federal lands has also been a long-term part of the FPA and its predecessors. The FPA does not, however, address the issue of collecting annual charges once entry is allowed to federal lands, and I am not aware of any legislative history that deals with the matter.

Question 3. You stated that the views you expressed were "not necessarily those of the Commission or of the Chairman or any individual Commissioner." What are their views on exempting power site users from the "reasonable charge" principle of the Federal Power Act?

Answer. The Commission speaks through its orders and has not had occasion to address this matter. I do not know the views of the Commissioners regarding the proposed legislation.

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF MARK CRISSON, PRESIDENT & CEO, AMERICAN PUBLIC POWER ASSOCIATION, ON H.R. 2842

On behalf of the American Public Power Association, I am writing to express our support for H.R. 2842, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2011. APPA is the national service organization representing the interests of over 2,000 community-owned, non-for-profit electric utilities. These utilities include state public power agencies, municipal electric utilities, and special utility districts that provide electricity and other services to over 46 million Americans.

APPA supports authorizing power development at the Bureau of Reclamation's conduits. This new authorization in H.R. 2842 will help clarify and streamline the multi-agency inefficiencies associated with hydropower development on these federal projects by cutting duplicative processes and reducing the regulatory burdens that many of our members have encountered. Further, the legislation also protects existing agreements that water users have on conduit generation projects and provides additional safeguards to ensure such projects do not undermine water deliveries. This bill is a needed fix to a burdensome process.

Also, APPA applauds the definition of a conduit in the bill that includes all the various small hydropower opportunities like ditches, pipelines, canals, and other similar manmade water conveyances that are operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. The energy potential for these smaller projects will help alleviate power costs across the nation once in use.

Thank you for scheduling this worthwhile legislative hearing on H.R. 2842. I hope you will feel free to contact me or the APPA government relations staff with any questions.

STATEMENT OF THOMAS O'KEEFE, PHD, PACIFIC NORTHWEST STEWARDSHIP DIRECTOR, AMERICAN WHITEWATER, SEATTLE, WA, ON S. 3483

We are writing today in support of the Crooked River Collaborative Water Security Act (S. 3483), legislation that will improve flows in the Crooked River, improve water supply reliability for farmers and the local community, and allow for hydroelectric development on an existing dam. We ask that you consider one minor amendment to the bill that would further clarify and recognize the value and benefits of releases from the reservoir for downstream recreation.

American Whitewater is a national non-profit 501(c)(3) river conservation organization founded in 1954. We have over 5500 individual members and 100 local-based affiliate clubs, representing whitewater paddlers across the nation. American Whitewater's mission is to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely. As a conservation-oriented paddling organization, American Whitewater has an interest in the Crooked River that supports whitewater recreation. A large percentage of our members reside in Oregon and for those who do not, the state is a popular travel destination for whitewater paddlers from across the country and around the world.

The Crooked River is a Wild and Scenic River in Central Oregon with a spectacular whitewater run downstream of Prineville Reservoir. The Crooked attracts whitewater boaters from Oregon, Idaho, and Washington when the river has sufficient flows to support recreation. Our organization initiated a recreational flow study between the summer of 2006 and 2007 for two whitewater reaches on the

Crooked River.¹ Established methodology published by the National Park Service² was used to examine the instream flow-recreation relationship for the river.

Researchers found a range of acceptable flows, from a minimum of 1,400 cfs ranging up to 4,600 cfs. In addition to providing a recreation opportunity, flows in this range also have an important ecological function—these flushing and channel maintenance flows are critical for maintaining and enhancing aquatic habitat.

American Whitewater fully supports the goals and objectives outlined in this legislation but requests the committee consider alternative language in Section 7(a) that adds recreation. Our suggested language is as follows: “. . .the Secretary shall store in and release from Prineville Reservoir all remaining stored water quantities for the benefit of fish, wildlife, and recreation downstream of Bowman Dam.” Given concerns that have been expressed regarding impacts to reservoir recreation, we believe it is important to recognize that river-based recreation downstream of Bowman dam sees a benefit when water is released into the river. While these benefits are recognized in Section 2 with the proposed revised language for 16 U.S.C. 1274(a)(72)(B)(i) that references the scenic, recreational, and fishery values of the river, we believe a reference to recreation should also be included in Section 7(a) of the legislation.

We fully support all the other provisions of the legislation, including the amendment to the Wild and Scenic Rivers Act that will allow for hydropower development at the existing dam, language that will benefit the fish and wildlife resources of the Crooked River, and the opportunity to provide water certainty for the City of Prineville and local farmers.

The Crooked River Collaborative Water Security Act (S. 3483) resolves long-standing conflicts about unallocated water in the Crooked River watershed and strikes a balance between community water needs and those of fish, wildlife, and river-based recreation.

September 18, 2012.

Hon. JEFF BINGAMAN,
Chairman.

Hon. LISA MURKOWSKI,
Ranking Member, U.S. Senate, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI: On behalf of our organizations' members, we are writing to express our opposition to H.R. 2842, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2012. Specifically, we strongly oppose the provision in Section 2 of H.R. 2842 that waives the National Environmental Policy Act (NEPA) with respect to small conduit hydropower projects at Bureau of Reclamation (BOR) facilities.

Our organizations support the responsible development of conduit hydropower projects at Bureau facilities. We believe that there is significant potential for new hydropower generation at these facilities that can be tapped with minimal impact to the local environment. This development can and should be encouraged.

H.R. 2842 does not represent a balanced approach to promoting new conduit hydropower development. While the bill attempts to resolve some jurisdictional and process issues associated with developing conduit hydropower at BOR facilities, these issues were largely resolved administratively when BOR updated the Reclamation Manual earlier this year to improve the process for obtaining a Lease of Power Privilege at its facilities. These revisions to the Reclamation Manual have made many of H.R. 2842's provisions superfluous.

More troubling, H.R. 2842 creates a harmful blanket waiver of NEPA for small conduit hydropower projects at Bureau facilities. Not only is this bad policy, it is completely unnecessary. The Federal Energy Regulatory Commission (FERC) has successfully employed a categorical exclusion from NEPA for many years to permit small conduit projects in order to facilitate their construction. Reclamation's revisions to the Reclamation Manual follow this example, relying on an existing categorical exclusion for small construction projects to expedite the permitting and review of small conduit projects that will have minimal environmental impact. Waiving NEPA will not result in the deployment of one additional kilowatt of new generation at a BOR facility.

¹ <http://www.americanwhitewater.org/content/Document/view/documentid/430/>

² Flows and Recreation: A Guide to Studies for River Professionals, by Doug Whittaker, Bo Shelby, and John Gangemi, for the Hydropower Reform Coalition and National Park Service—Hydropower Recreation Assistance, 2005 <<http://www.nps.gov/hydro/flowrec.htm>>

At its best, H.R. 2842 largely restates existing regulations. At its worst, it unacceptably and without purpose waives basic environmental review requirements. We hope that in the course of Senate consideration of the bill, the NEPA waiver language can be removed. Pending that, we oppose H.R. 2842 in its current form.

Sincerely,

THOMAS CHRISTOPHER,
Director, New England FLOW.

KEVIN COLBURN,
National Stewardship Director, American Whitewater.

KEVIN LEWIS,
Conservation Director, Idaho Rivers United.

JOHN SEEBACH,
Senior Director, Federal River Management, American Rivers.

CHRIS SHUTES,
FERC Projects Director, California Sportfishing Protection Alliance.

STATEMENT OF ROBERT S. LYNCH, COUNSEL AND ASSISTANT SECRETARY/TREASURER,
IRRIGATION & ELECTRICAL DISTRICTS ASSOCIATION OF ARIZONA, PHOENIX, AZ

The Irrigation & Electrical Districts' Association of Arizona is an Arizona non-profit association celebrating its 50th year of service to the State of Arizona. Our 25 Members and Associate Members take power and water from federal facilities on the Colorado River either directly or, in case of Hoover power, through the Arizona Power Authority, and in case of Colorado River water in central Arizona, the Central Arizona Water Conservation District, one of our Associate Members.

A number of our members operate federal water facilities and others built or acquired water facilities from the federal government. One of our members has already gone through the painful process under Section 30 of the Federal Power Act in dealing with the Federal Energy Regulatory Commission. Others would like to go through a sensible and streamlined process with the Bureau of Reclamation to install small hydropower units in existing water facilities whose water energy is currently being wasted. With this interest in mind, we offer the following comments on the April 4th Temporary Directive & Standard and appreciate the opportunity to do so.

TIMELINES

The Temporary Directive & Standard (D&S) is structured along lines of responsibility by various officials within the Bureau of Reclamation. As such, it is very difficult to get a sense of when things are supposed to happen and what timelines exist for seeing to it that they do. A number of the tasks assigned to various people are not identified as being associated with any particular timeline and the timelines that are stated in the D&S. For that reason, we have attempted to create a timeline that would show a potential applicant the path it would have to take between expressing a "formal request" to Reclamation and actually having an operating electrical device. Our timeline is attached. It contains a number of question marks that indicate that the timeframe and positioning of that particular task was not identified. In our view, it is this very sort of checklist that potential applicants need up front in order to understand what they are getting into, what the requirements are and when they occur. We think Reclamation should consider developing such a timeline and going one step further by identifying the as yet un-timed tasks as either fitting within a timeline already identified or one you assign in order to properly gauge the sequence and timing of events.

OTHER COMMENTS

For ease of reference, we will now provide other comments to you in the order in which they relate to the Temporary D&S.

Applicability

We do not understand the reference to Reclamation "development authority". Does that mean that there is a specific authorized feature of a project that Reclamation has not developed and is therefore off limits to an applicant? Currently Reclamation only has jurisdiction over its facilities that are part of a project authorization that includes power development. One could read this paragraph as saying that any proposed application where Reclamation has jurisdiction could be denied on the basis of Reclamation deciding to do itself. We doubt that was the intent but this divergent

point of who does what needs clarifying. No one wants to go through a process or begin to go through a process only to find out that the agency has decided to do it itself.

Definitions

We do not understand the meaning of the phrase “conveyance of water over or through a dam, its abutments, or foundation via existing or proposed conveyance features.” This is an addition to the definition of conduit that has been used in pending federal legislation and is very close to the definition used by the Federal Energy Regulatory Commission (FERC). Are there existing conveyance features that convey water over or through a dam, its abutments, or foundation? We are not familiar with such facilities but knowing what is already out there may make it easier for us to understand why this addition is important and necessary.

We do not understand why gross revenue would be something that includes renewable energy certificates (RECs). If one of your water districts or water users associations or someone else is going to spend money, go through this process and essentially do all the work and pay Reclamation for its oversight, why would gross revenue be the parameter for deciding the fee and most especially why would it also include the REC. Reclamation has done absolutely nothing except allow a portion of one of its facilities to be utilized at someone else’s total expense to generate electricity. The portion of the facility used will most likely be very small in comparison to the overall project of which the site is a part. In a shopping center lease, the triple net lease would be based on gross revenue of whatever store is occupying that particular space but not on its tax breaks. Moreover, for small projects, say 5 megawatts or below, the paperwork to keep track of these calculations and collections would be more expensive than the revenue that would be created. We think the basis for charging needs to be rethought. All of the comments we have seen show that everyone wants the new facilities owner or benefactor to pay a fair share of project obligations. To the best of our knowledge, there has been no real public debate over how one would calculate that. Nor has there been any debate over what concepts should be used for the very smallest of facilities that should not have to go through the entire process. In short, a one-size-fits-all rate structure will only inhibit the development of additional hydropower in Reclamation facilities in our view. We think this process needs work.

Formal Request

This term first appears in subparagraph 5.A(3) on page 4. There is no discussion within the document about what constitutes a formal request, what paperwork is required for such a request and whether or not there is any information requirement that precedes it. Yet it is the precipitating event of the process, initiating everything that follows. We presume without knowing that receiving a formal request will initiate the process within Reclamation to decide whether or not Reclamation will turn the requester aside and develop the site in question. Certainly Reclamation would make that decision early and not let an applicant spend a lot of time and money before shutting them out. That Reclamation decision should have a timeline of its own in order to ensure an applicant that it will not get played.

Requests for Extension of Time

This first appears in subparagraph 5.A(9) and appears to only apply to timeframes outlined in the Lease of Power Privilege (LOPP). Reclamation does intend to consider extension requests for an entity holding a Preliminary Lease. See Section 8. That reference should be included here.

Public Safety

In paragraph 5.C, the responsibility of the Chief of the Dam Safety Office is outlined but that individual’s role in the timeline is nowhere to be found. The subject matter is brought up in a number of places but not with regard to the role this individual plays in executing the timeline.

Notifications

The appropriate Regional Power Manager or Area Office Manager is responsible for ensuring the publication of solicitations for applicants for a LOPP, apparently after being notified of the receipt of a “formal request” and a “formal determination of jurisdiction (5.A(3)). The 3 following responsibilities are all intended to precede that event. The list appears to have been created backwards rather than forwards. Just as importantly, this duty includes notifying “any other appropriate stakeholders”. If someone claims to be an appropriate stakeholder and was not notified, is that grounds for stopping work on the timeline? Is there a remedy for being excluded? What standard is supposed to be applied in the various regions to decide

who is an “appropriate” stakeholder? It is our experience that these discretionary vague terms only lead to conflict. Reclamation should consider clarifying this mechanism.

LOPP Lead

In subparagraph (2), federal power customer organizations are added to a requirement that Reclamation meet with a federal water user that has an operation, maintenance and replacement transfer contract with the relevant project but is not a participant in the proposed LOPP. Reclamation law only allows irrigation districts and water users associations to play that role and so the reference to a federal power customer organization is inappropriate where it is placed. It should be inserted on the next line after the word “project”. It is certainly worthwhile to bring federal power customer organizations into these dialogues early and we think this is a good provision. However, the qualification of the federal power organization should be not based on a task it cannot by law undertake. We are also concerned because we are not sure whether the 30-day requirement follows after the issuance of the Preliminary Lease or comes before. Whichever is intended should be clarified but we rather suspect that your water and power customers would prefer it being before and not after you’ve already selected a Preliminary Lessee. The same paragraph also requires a documentation of “agreed upon terms, roles and responsibilities resulting from this meeting”. What happens if agreement does not ensue? Are the terms, roles and responsibilities those outlined in an already issued Preliminary Lease? Is the documentation in question to become part of the Preliminary Lease? Part of the LOPP?

The same assumption about agreeing is also found in Section 6 noting the need for agreement on jurisdiction between the Senior Advisor, Hydropower and the respective Regional Director. Here again, what if they don’t agree? What happens? What if FERC doesn’t agree?

Selection of Lessee

In paragraph C., there are criteria that Reclamation intends to apply that “will give more favorable consideration to proposals” that meet two criteria. The two criteria talk about developing and conserving and utilizing water and natural resources. We fail to see what that has to do with putting a turbine in a conduit. Reclamation will also favor an application that demonstrates that the offeror is qualified to develop the facility and to maintain it but does not say how one demonstrates those qualifications. Is an irrigation district that wants to put a turbine in a conduit but has never done so before less qualified than a private company that would do that same thing merely because the company has done it elsewhere? Does the preference stated in the following paragraph override the considerations in paragraph C.?

In the following subparagraphs in paragraph D., the language in subparagraph (1) is not the same as in paragraph C. Subparagraph (2) does not address the issue of what happens when there are two equally qualified preference entities, such as two irrigation districts that take water from the same conduit. Is an irrigation district that takes water less qualified automatically than the other irrigation district that’s maintaining the conduit? Subparagraph (3) likewise delves into the use of preference concept but does not deal with the competing preference entity problem. Nor does it tell us what “utilize in the public interest or water resources project” is supposed to mean. If you are putting a turbine in a conduit, the water is already flowing down the conduit. You are not using the water. You are using the energy in the water and the water is continuing on down the conduit. What public interest differentiation could be made in such a situation?

In paragraph 7.E., subparagraph (1) mentions “scoring criteria” but does not tell us what they will be, who will develop them, and whether or not they will be tailored to the specific solicitation or be a set of standards developed separately. In the following subparagraphs, proposal requirements must include expected generation under average, wet and dry hydrologic conditions. Are these to be predefined in the solicitation? Will they be the same for all applications or project by project standards? If these brackets have to be determined by the applicant, what standards will they use? The proposal also has to define the ability of the generation to provide ancillary services. Shouldn’t there be a cutoff level of say 15 megawatts at or below which one would not expect a facility to be able to generate ancillary services? Likewise, it is really necessary to do a present worth analysis of a small turbine installation in a conduit?

Timeframes for Development

These two paragraphs (8.A.&B.) delineate timeframes for installation of a facility on a dam on the one hand and in a conduit on the other. They are not cross-ref-

erenced to the duties of the Regional Director nor is the prior reference cross-referenced to these or inclusive of both. Also, since the Regional Director will determine whether there is just cause for any delay, should we assume that some more detail on what that constitutes, akin to a force majeure clause in a contract, will be articulated in the Preliminary Lease and the LOPP? If not, how will this process of deciding on delays be standardized throughout the agency?

PMA Right of First Refusal

In paragraph 9.D. and again in subparagraph H(3), there is a discussion of right of first refusal. One provision relates to PMAs and the other to “the federal government”, whatever that means. Is this a clerical error? If not, are you saying that the local air force base could swoop in and take the turbine power away from the irrigation district? Is there a real need to a right of first refusal for small conduit installations? What would the PMA do with a 12 kV turbine?

LOPP Charges

In Section 10 and then in Section 11, this subject is treated. We do not understand why charges would be determined differently on transferred works rather than those that have not been transferred. A turbine is a turbine. A project is a project. If there is capital repayment, there is capital repayment. If there is O&M, there is O&M. Determining what a fair contribution to these costs ought to be depends on a number of factors, including whether the project is paid out or not and whether the particular installation has any impact on project O&M. LOPP charges ought to be fair and ought to be simple. One-size-fits-all charging will not promote the widest range of hydropower development on existing Reclamation facilities. We agree that an installation that is devoted to project use and thus relieves Reclamation from supplying that power from the project itself should be treated differently than others. But we also believe that small installations should have a simplified method of contributing to costs in terms of charges that are rational and don't require a lot of paperwork. A 50 megawatt power plant at a dam and a 1 megawatt turbine in a conduit are two totally different things. They should be recognized as such in the charging scheme that Reclamation ultimately settles on.

In summary, we have offered these comments because we very strongly believe in this program and very strongly believe that the wasted hydropower in our existing water deliveries should be harnessed. We believe it is imperative that the ultimate Directive & Standard for this process define a series of business models that will make the process attractive to your existing water and power beneficiaries as well as to third parties who may wish to participate. A good start would be the development of a checklist for 15 megawatt and below conduit applications, similar to the CE checklist in Reclamation's NEPA Manual, that would allow a proposal to bypass most of this process and most of the cost associated with it.

We appreciate the opportunity to comment on the Temporary Directive & Standards and we look forward to working with Reclamation in further refinement of this program.

Temporary Directive & Standards
LOPP Timelines

RSL
6-4-12

Initiation of Process

Cite	Time	Task
5.A(3), 2	?	"Formal request" or Federal development investigation
5.A(3)	30 days	Jurisdictional Determination
5.A(4)	?	- Senior Advisor, Hydro concurrence
6	?	- RD concurrence
5.A(1)	?	Notice to Power Resources Office and Dam Safety Office
5.A(2)	?	Contact stakeholders and Power Marketing Administrations
5.D(4)	?	RPM/AOM notify contractors and other appropriate stakeholders
5.D(3)	?	RPM/AOM notify Power Marketing Administration
5.D(2)	?	RPM/AOM notify Power Resource Office and Dam Safety Office of intent to issue
5.D(5)	?	RPM/AOM creates selection team
5.D(6)	?	RPM/AOM assigns a LOPP lead
5.E(1)	?	LOPP lead coordinates before or at solicitation
5.D(1)	60 days	RPM/AOM prepares and insures publication of solicitation of applications
7.B.	90 days	Applicants submit proposals
5.F(1)	?	Selection Team reviews all LOPP proposals
5.F(2) & 7.B	30 days	Selection Team recommends Preliminary lease award

Issuance of Preliminary Lease

Cite	Time	Task
5.A(6)	?	RD designates "responsibility" for development of the LOPP and hydropower development oversight
5.A(7)	?	RD selects Preliminary Lease
5.A(8)	7 days	RD notifies of selection
5.A(10)	?	RD does NEPA, et al., screening
5.A(11)	?	RD notifies Senior Advisor, Hydropower (SA) of NEPA approach

Preliminary Lease Issued

Cite	Time	Task
4.H	?	Cost recovery agreement entered into
5.E(6), 11.A.	?	LOPP Lead ensures collection of advance cost
5.E(3) & 9.F.	?	LOPP Lead coordinates meeting with Preliminary Lessee on public safety issues
5.E(4)	?	LOPP Lead coordinates studies
5.E(2)	30 days	LOPP Lead has meeting with ID/WUA O&M or Federal Power customer (<u>mistake</u>)
?	?	LOPP Lead receives studies from Preliminary Lessee
5.E(5)	45 days	LOPP Lead coordinates study review
9.H(2)	?	Preliminary Lessee provides bond to LOPP Lead
5.C.	?	Chief, DSO advises RD in public safety issues?
5.A(12)	?	RD resolves public safety, security & O&M recommendations concerning LOPP projects facility impacts
8	?	RD resolves extension requests

Issuance of LOPP

Cite	Time	Task
5.A(13)	?	SA concurs in issuance of LOPP
5.A(13)	?	RD reviews and signs LOPP if SA concurs
5.A(14)	?	- RD establishes maximum timeframe for construction
11.A.	?	Lessee advances costs to Reclamation
5.A(9), 8	?	RD resolves extension requests
9.F.	?	Public safety issues may arise after issuance of LOPP
5.B(5)	5 years	SA reviews LOPP charges re Project Use Power replacement

STATEMENT OF ROBERT S. LYNCH, ROBERT S. LYNCH & ASSOCIATES, ON BEHALF OF THE IRRIGATION & ELECTRICAL DISTRICTS' ASSOCIATION OF ARIZONA, ON H.R. 2842

The Irrigation & Electrical Districts' Association of Arizona (IEDA) is a voluntary association organized in 1962 to represent the interests of irrigation, electrical and other special districts, rural communities and other public entities in the acquisition and use of federal hydropower and water from Reclamation projects. As our 50th anniversary approaches on December 14th, we are pleased to file this Statement supporting H.R. 2842, the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2012. We supported and testified in favor of the bill in the House of Representatives and are pleased to offer you our views on this excellent bill for your consideration.

Over the last century and more, Arizona has a long history of developing irrigated agriculture, both in central Arizona and along the Colorado River. We have developed systems of canals and laterals which now serve both irrigated agriculture and municipal and industrial water users. Much of these canal systems are Reclamation project systems built over the years as successive projects were authorized by Congress. The water that flows in these systems contains energy. Indeed, the water would not flow if it did not. That energy is largely unused as the water courses through these systems until it reaches its ultimate destination and stops moving. The energy is dissipated at that point. Lost.

Recent improvements and innovations in the development of small hydropower generating turbines has made the idea of installing multiple small turbines in these systems a potentially attractive source of electric energy. This technical advance comes at a time when our electricity providers are scrambling to find alternatives to fossil fuel generation, developing conservation and demand side management programs and otherwise trying to make existing electric resources go farther.

Our members would very much like to be part of that effort and participate in a new widespread small hydropower installation program that could be implemented throughout the West.

One key to making this happen is to reduce bureaucratic red tape and costs to make small hydropower installation economically attractive in the same fashion it

has become technically attractive. Since the Bureau of Reclamation holds title to so many of these facilities in the West, we and others in the Western Reclamation states have been working with the Bureau of Reclamation to try to reduce costs and paperwork toward that end. Some of the hurdles we identified along the way needed to be addressed by Congress. Hence, H.R. 2842.

H.R. 2842 provides a simplified path for the development of small hydropower facilities in Reclamation managed federal conduit. It recognizes the primacy of water delivery as a Reclamation mission. It recognizes the position that Reclamation law has always historically given to irrigation districts and water users' associations. It answers questions that Reclamation officials have been debating and it gives those of us in the Reclamation West a clear incentive to begin working aggressively toward using flowing water in these conduits for electric generation instead of letting that energy go to waste.

At the same time, we have been working with Reclamation to develop environmental and permitting guidelines that would complement the direction Congress, we hope, will give the agency on this subject. However, Reclamation's reaction to this legislation has not been as helpful as we would have hoped for. Indeed, the Interim Directives and Standards that Reclamation produced this spring appears to us to complicate rather than simplify the process. We are attaching the comments that we made on the Interim Directives and Standards to give you an idea of the problems we have identified in them. These include a two-page timeline we tried to piece together because the Interim Directives and Standards address who does what rather than giving us a path and a timeline.

In sum, we strongly support H.R. 2842. We hope the Committee will mark and report it, if possible, in this session. There is an enormous amount of energy being wasted every day as water flows through these conduits to its ultimate destination. We now have the technology to capture a great deal of that energy in small increments which collectively can provide an enormous resource for the West. This clean, renewable hydropower is waiting for us to use it. We need your help. H.R. 2842 is a big step forward toward that end.

Thank you for the opportunity to provide this Statement to the Subcommittee. We would be happy to answer any questions or provide any additional information that the Committee might desire as it deliberates over this important and very much needed legislation.

STATEMENT OF THE OGLALA SIOUX TRIBE, ROSEBUD SIOUX TRIBE, LOWER BRULE SIOUX TRIBE AND WEST RIVER/LYMAN-JONES, ON S. 3464

INTRODUCTION

Thank you for the opportunity to submit testimony on this most important legislation, S.3464, the Mni Wiconi Project Act Amendments of 2012. This testimony has been developed conjunctively and is offered on behalf of the Oglala Sioux Tribe, West River/Lyman-Jones, Inc., the Rosebud Sioux Tribe and the Lower Brule Sioux Tribe, the four beneficiaries and sponsors of the Mni Wiconi Rural Water Supply System in southwestern South Dakota (Figure 1)*. S. 3464. re-authorization of the Mni Wiconi Project, will:

- increase the authorized project ceiling for construction by \$14.308 million (October 2011 dollars) for completing drinking water distribution projects on the Pine Ridge and Rosebud Indian Reservations,
- extend the completion of construction through 2015
- ensure the service area of the Oglala Sioux Rural Water Supply System (OSRWSS) includes a small area of reservation trust land in Nebraska
- provide for interagency agreements between the Bureau of Reclamation and
 - EPA,
 - Department of Agriculture
 - Department of Health and Human Services and
 - Department of Housing and Urban Development
 - Bureau of Indian Affairs

to assist with completing the tribal water systems including the upgrade of existing facilities in Reservation communities and, in the case of the Department of Agriculture and Bureau of Indian Affairs, assist in distribution of livestock water to Reservation rangelands consistent with the original intent of the project.

*Figure has been retained in subcommittee files.

S. 3464 will also require federal agencies to work with the tribes to establish an emergency plan for the water systems, address specific cultural resources concerns, and update the waste water disposal system needs.

Individually and collectively, the Project Sponsors support S. 3464 and seek the support of the Subcommittee.

PROJECT HISTORY

The Mni Wiconi Project Act of 1988 (Public Law 100-516) authorizes and directs the Secretary of the Interior to construct the Mni Wiconi Rural Water Supply Project to provide a safe and adequate municipal, rural, and industrial water supply to both Indian and non-Indian residents of South Dakota. The Act recognizes the poverty on the reservations and severely poor water quantity and quality on the reservations and in the West River/Lyman-Jones service area.

The Mni Wiconi Project has reached an historic milestone following the long struggle beginning in 1988 of the Oglala Sioux Tribe and West River/Lyman-Jones to complete this invaluable drinking water project. Similarly, the Rosebud Sioux Tribe began work on their rural water system in 1984 and became part of the Mni Wiconi Project with the passage of P.L. 103-434 in 1994. S. 3464 provides the means to fulfill the vision of safe and adequate water supply for Rosebud Sioux.

The Project is a testament to the ability of the tribal sponsors and non-Indian neighbors to collaborate to improve the health and welfare of our respective constituencies. When the Project was initiated, relationships between us were strained at best and governed by events many generations before us but still fresh in the minds of our peoples. As the Project reaches its conclusion, we have built a mutual respect and relationship that evolved from the necessity of working together toward a common good. None of this would have been possible without the continuous efforts of the Committee and the South Dakota delegation, and especially the sponsor of S. 3464, the Honorable Tim Johnson.

It is important that the Committee understand the background upon which we embarked to build the largest rural water project in the world. In the beginning we were joined by our partners in the project, West River/Lyman-Jones, for the purpose of bringing good quality water from the Missouri River to the Badlands of Western South Dakota. The Missouri River as a water source is important to the Lakota people because the River is contained within the Great Sioux Reservation established by the Treaty of 1868. Our forefathers saw to it that the entire Missouri River was included in the lands reserved to us. The water users in the West River/Lyman-Jones service area live within the boundaries of the Great Sioux Reservation, which includes all of South Dakota west of the east high bank of the Missouri River.

As formulated in the late 1980s, the Project was of great concern to the members of the Oglala Sioux Tribe. They felt the history of water projects on Indian reservations at that time would be played out on the Pine Ridge Indian Reservation: that non-Indian interests would receive water and project benefits quickly and Indians would be left with delay and necessary project features unfinished. They looked at the projects authorized on the San Juan River in June 1962, and observed that non-Indians received project benefits immediately, but the Indians still struggle to get their projects completed decades later, even though they were authorized half a century before. They observed opposition to Indian projects from the Office of Management and Budget. Based on these concerns, the majority of members of the Oglala Sioux Tribe were opposed to the Project in its early years.

The initial concerns were overcome by a better understanding of the provisions of the Mni Wiconi Project Act, PL 100-516 (102, Stat 2567, October 24, 1988), a reformulation of the project in the Final Engineering Report of May 1993 and amendment of the Act to include the Rosebud Sioux Tribe and Lower Brule Sioux Tribe. Significantly and of high importance to the Tribe, the United States acknowledged a trust responsibility in the Mni Wiconi Project Act to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Pine Ridge Indian Reservation.

Also, important to the comfort level of the Oglala Sioux Tribe was the Act's provision that title to the Oglala Sioux Rural Water Supply System (OSRWSS) would be held in trust by the United States for the Tribe. This includes the principal components of the Mni Wiconi Project such as the intake on the Missouri River, the regional water treatment plant on the Missouri River and the main transmission pipelines from the Missouri River to West River/Lyman-Jones, the Rosebud Sioux Tribe and the Lower Brule Sioux Tribe.

Pursuant to the Act, the Oglala Sioux Tribe entered into a PL 93-638 (Indian Self-Determination and Education Act) cooperative agreement with the Bureau of Reclamation to plan, design, construct, operate, maintain and replace OSRWSS.

The Mni Wiconi Act Amendments of 1994 (Public Law 103-434, Title 8) added construction of the Rosebud Sioux and the Lower Brule Sioux Rural Water Systems to serve the respective reservations, thereby increasing the number of Project "Sponsors" to four. The amendments also raised the authorized appropriation ceiling for the Project from \$87.5 to \$263.2 million (1993 dollars), subject to cost indexing, and provided that the systems would generally be constructed in accordance with the Project's Final Engineering Report, dated May 1993 for the purpose of providing domestic, commercial, municipal, rural, industrial, and livestock water.

The overall Project includes a 14.5 million gallon per day regional water treatment plant, 4,500 miles of pipeline, 60 booster pump stations, and 35 water storage reservoirs. The Project will ultimately serve more than 52,000 people, including more than 40,000 on the three Indian reservations. It is a monumental endeavor which is providing myriad benefits to those most in need. It is a project that must be reauthorized.

IMPACT ON QUALITY OF LIFE AND HEALTH

It is respectfully submitted that the Project is unique and that no other project in the Nation has greater human needs. The Project beneficiaries, particularly the three Indian Reservations, have the lowest income levels in the Nation. Poverty in the Indian service areas is consistently deeper than elsewhere. At the beginning of the third millennium one could not find a region in our Nation in which social and economic conditions were more deplorable.

Before the Mni Wiconi Project, health risks to the Indian people from drinking unsafe water were severe. Health effects of water borne diseases were consistently more prevalent than elsewhere in the Nation, due in part to (1) lack of adequate water in the home and (2) poor water quality where water was available. Higher incidences of impetigo, gastroenteritis, shigellosis, scabies and hepatitis-A were well documented on the Indian reservations of the Mni Wiconi Project area.

Poverty is the harbinger of the severe health care crisis facing the Indian people in the Northern Great Plains. The extra costs of health-care during the lifetime of each 24,000 members of the Indian population in the Mni Wiconi Project are estimated at \$1.12 to \$2.25 billion (in 2010 dollars). This is not total costs of health care; it is the present value of the extra cost of life time health care relative to the rest of the population off the reservations. Regional data suggests clear relationships between income levels and higher mortality rates for heart disease, cancer and diabetes with correspondingly higher federal health-care costs.

The Mni Wiconi Project is a part of the solution. It brings much needed employment, which, in turn, engages part of our unemployed and underemployed and brings about measurable improvement in the health of the Lakota Nation, thereby reducing federal health-care costs and, most of all, the tragedy in the families affected. Mni Wiconi builds the dignity of many, not only through improvement of drinking water, but also through increased employment and earnings during planning, construction, operation and maintenance and from commercial enterprises supplied with Project water.

The Project has accomplished much improvement of water quality . Using a combination of water from the Missouri River and from the Ogallala Aquifer. Homes previously reliant on water laced with unsafe levels of arsenic, uranium and nitrite/nitrates have been placed on a safe and reliable drinking water system, and we expect corresponding reductions in mortality.

PROJECT FUNDING STATUS

As shown in the table below, the Project will be 95% complete at the end of FY 2012. Construction funds remaining after FY 2012 will total \$23.137 million within the current authorization (in October 2010 dollars). The funds will not be adequate to complete the Project as originally planned.

Total Federal Construction Funding (Oct 2011 \$)	\$471,300,000
Estimated Federal Spent Through FY 2012	\$448,163,000
% Spent Through FY 2012	95.09%
Amount Remaining after 2012 (Est 2013\$)	\$23,137,000
Completion Fiscal Year (Statutory FY 2013; PL 110-161)	2013

Cost indexing over the last five years has averaged 4.72% for pipelines and last year was 7.83%. Pipelines are the principal components yet to be completed.

The extension of the Project from 2008 to 2013 did not provide for budgeting of Reclamation oversight, administration or other "overhead" costs, which will have diverted \$26.696 million from construction. These costs have been and will continue

to be incurred at the expense of construction elements. The slow pace of budgeting and appropriations has extended the project by six additional years. The overhead costs in those years have depleted construction funds by \$26.696 million. S. 3464 asks that \$14.3 million be restored.

CONSTRUCTION CEILING INCREASE

Reauthorization of the funding ceiling by \$14.3 million and a time extension through 2015, the fourth construction sunset date extension, are needed on the Pine Ridge and Rosebud Indian Reservations to complete the drinking water systems. The West River/Lyman-Jones and Lower Brule Rural Water Systems are complete. Under-budgeting and the slow pace of appropriations underlie the need to reauthorize and extend the Project.

The \$23 million remaining in authorized construction funds was included in the President's FY2013 Budget Request. The budgeting will be adequate to complete the allocation of currently authorized funding but will be inadequate to fully complete the drinking water system to people in need. These are people that were contemplated in the Final Engineering Report and included in the project design.

The Project authorization date was extended by PL 110-161 (2008) through 2013 without accompanying budgeting for administration and other overhead costs after FY 2007. The extension was necessary because funds had not been appropriated at a rate sufficient to complete funding of Project construction within the authorized construction ceiling. Funds that would have gone to construction were necessarily used to cover annual overhead costs, and Reclamation encouraged the use of construction funds allocated for livestock to cover overhead. Overhead costs for the OSRWSS (\$17.990 million) and the Rosebud Sioux Rural Water System (RSRWS) (\$8.706 million), a total of \$26.696 million, severely impacted the funding available for construction.

Because the budgeting of non-contract costs was not included in previous funding authorities after FY 2007, the necessary expenditures for Reclamation oversight and Project administration have reduced the funds to complete construction projects. OSRWSS would have ended the Project with a surplus in its construction budget of \$5,101,000 after finishing its construction projects if it had not been required to expend unbudgeted funds on non-contract costs after FY 2007. The surplus could have been applied to community systems upgrades or the livestock program.

The Concept Paper for completing the Project (prepared in several versions in 2011 and included for the record as Exhibit A) documented a need for an increase in the authorized construction ceiling of \$29.369 million. Since the Concept Paper was completed the Director of OWRWSS, Mr. Frank Means, took every possible step to achieve cost savings and to limit activities strictly to our first priority of completing the drinking water systems to serve the present and future growing populations on the Reservations. The Rosebud Sioux Tribe did likewise. Lower Brule dropped \$1.74 million in reservoir expansions that would improve their system completed 5 years ago. The cost reductions limit the necessary reauthorization to \$14.3 million as presented in Table 1 and as shown in Figure 2* on the Pine Ridge Indian Reservation.

In an effort to be reasonable yet steadfast to complete the Project, our request for reauthorization of the Project is focused only on completing the drinking water systems. We propose to use other avenues to accomplish community system upgrades and livestock watering projects:

1. Funds to upgrade existing community systems on the Reservations, a prerequisite, according to Reclamation, for transferring them to the Project as contemplated by the Act and the Final Engineering Report (FER) are not requested. The re-authorization requires Reclamation to submit a plan to Congress for upgrades and transfer within two years of the reauthorization and to implement the transfer according to the plan. While we disagree, Reclamation requires transfer before making operation, maintenance and replacement funding available.
2. The high level of investment now required by Reclamation for upgrading the community systems was not contemplated by Reclamation in the 2002 reauthorization (PL 107-367), December 19, 2002. This high level of cost prevents the transfer of existing community systems to the Project and enables their continued deterioration due to absence of funding for operation, maintenance and replacement.
3. The livestock components of the Project on the Pine Ridge and Rosebud Indian Reservations will be developed outside the new authorization through ex-

* Figure has been retained in subcommittee files.

isting programs of the Bureau of Indian Affairs and the Department of Agriculture, and new funding authorization is not requested,

4. While \$26.969 million in unbudgeted overhead costs from 2007 through 2015 will be spent, an amount that has and will be expended at the expense of construction elements, we are only requesting \$14.308 million to complete the drinking water systems on the Pine Ridge and Rosebud Indian Reservations.

The completion of the Project on the Pine Ridge Indian Reservation with the \$8.633 million requested in the construction ceiling reauthorization will serve 2,350 people or 11% of the design population. The completion of the Project on the Rosebud Indian Reservation will serve 2,000 people or 11% of the design population. The \$14.3 million is necessary to ensure that these intended beneficiaries will be served. S. 3464 will increase the authorized appropriations ceiling by this amount. We support the bill on this ground. We also support it for its several other provisions that address the other needs for finishing the Project as intended which are not covered by the \$14.3 million increase.

COMMUNITY SYSTEM UPGRADES

The Mni Wiconi Act clearly states that the OSRWSS, RSRWS, and Lower Brule Rural Water System (LBRWS) shall include the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents on the reservations. Sections 3(a)(4), 3A(a)(4), and 3B(a)(4). Further, Sections 3(a)(8), 3A(8), and 3B(a)(8) state that the aforementioned authorized rural water systems shall also include other facilities deemed necessary to meet the water supply, economic, public health and environmental needs of the reservations, including facilities for the tribes, reservation villages, towns and municipalities. Finally, Sections 3(b)(3), 3A(b)(3) and 3B(b)(3) reference the purchase, improvement and repair of existing systems. Congress intended for existing water systems to become a part of the Mni Wiconi Project. In fact, the objectives of the Mni Wiconi Project cannot be met unless the community systems are connected. Without inclusion of such systems, the Project as intended by Congress and the Tribe would not be complete.

Reclamation has determined the costs for community system upgrades. Overall, the costs for community system upgrades total \$26.657 million. Of this, \$13.164 million is for OSRWSS. The total for the RSRWS is \$11.693 million and for the LBSRWSS is \$1.8 million.

Upgrades of the cost magnitude now proposed by Reclamation for these existing systems were not previously contemplated in the FER or by Reclamation in PL 107-367, the 2002 reauthorization of the Mni Wiconi Project Act. Reclamation's current proposal would have the systems in near perfect condition prior to their transfer into the Project rather than accepting these currently working systems and improving them as needed over a period of time—when the lifetime of a feature has come to an end. S. 3464 contains language to direct the transfer of existing community systems to OSRWSS, RSRWS or LBSRWSS as other federal agencies' funds and project operation, maintenance and replacement funds are applied to the upgrade of those systems.

It does not make sense to hold up completing the Project, which must include these existing systems, by requiring the existing systems to be in nearly new condition prior to transfer. Instead, systems should be transferred into the Project and a schedule for conducting priority upgrade work should be established using operation, maintenance and replacement (OMR) Project funding.

OSRWSS is working to seek funding from other federal agencies such as HUD, Rural Development, IHS and EPA to assist in upgrading the existing community systems. Two central issues have arisen: (1) the S. 3464 language on the community system upgrades is needed to direct the agencies to assist; and (2) Reclamation cannot evade its responsibility. Reclamation is still the responsible federal agency, and it must adhere to its trust responsibility and share a portion of the costs of community systems upgrades, a central component for ensuring adequate and safe water to the people on the reservation, through the operation, maintenance and replacement program. This said, we support the continuation of operation, maintenance and replacement funding by other agencies that have historically contributed, including HUD and BIA, to assist in limiting funding required from Reclamation.

S. 3464 would direct the necessary other agency assistance for the community systems upgrades and direct that the systems be transferred and the operation, maintenance and replacement monies appropriated to Reclamation under the Act be used to improve, repair and replace those systems. These provisions of S.3464 are fundamentally important to the completion of the overall Project and for ensuring the Project can function and serve its beneficiaries as intended.

LIVESTOCK NOT INCLUDED IN FUNDING REQUEST

Water for livestock on the Pine Ridge Indian Reservation was contemplated in the Final Engineering Report and in the original Project authorization and subsequent reauthorization.

OSRWSS has reduced its livestock distribution system from \$24.024 million to \$11.380 million, and OSRWSS has removed its reduced livestock plan from the funding needed in the amendment of the Mni Wiconi Project Act. The Oglala Sioux Tribe plans are to work with the Natural Resources Conservation Service and the Bureau of Indian Affairs to construct the livestock distribution systems over a period of 15 years. However, enactment of S. 3464 is needed to direct these agencies to undertake the work and fund this important and intended component of the Project. As stated previously, the Bureau of Reclamation urged that funding intended for livestock construction be used to finance the overhead costs after 2007, and the livestock program was sacrificed for necessary non-construction activities that had not been budgeted.

EXTENSION OF OSRWSS BOUNDARY INTO NEBRASKA

S. 3464 is needed to ensure that the portion of the Pine Ridge Indian Reservation that extends into Nebraska is included in OSRWSS under the Mni Wiconi Project Act, and, specifically, to ensure the Tribe's nursing home can be served with Mni Wiconi Project water.

There are no associated construction costs as the Indian Health Service is expected to construct the pipeline extension to the Nebraska tract from existing authority. There would be minor operation and maintenance costs for the line estimated at less than \$5,000 per year.

SERVICE TO ROSEBUD SIOUX ON TRUST LAND IN WHITE RIVER

S. 3464 is needed to ensure that tribal members and tribal facilities located on trust lands in the town of White River receive the same benefits as other tribal members in the Primary Service Area of the RSRWS. Indians in White River were included in the design population of RSRWS but because they are customers of the town rather than WR/LJ they are not addressed by the comprehensive agreement between RSRWS, WR/LJ and Reclamation for water service in Mellette County.

S. 3464 authorizes the reimbursement to the town of White River for operation and maintenance costs for the provision of water to service connections of the Rosebud Sioux Tribe and tribal members located on trust land within the town. This is similar to the current agreement with Tripp County Water Users District in Tripp and Gregory Counties and does not involve any construction. There are very few trust lands within the town and the cost is estimated at less than \$6,000 per year.

ADEQUATE FUNDING FOR OPERATION, MAINTENANCE AND REPLACEMENT

In addition to expressing our support for S. 3464, we take this opportunity to raise a very important concern of the tribal sponsors: the need for adequate operation, maintenance and replacement (OMR) funding. The Mni Wiconi Act clearly sets forth the trust responsibility of the United States to ensure adequate and safe water supplies are available to meet the economic, environmental, water supply and public health needs of the reservations, and established the framework for Reclamation to fund the construction and OMR of the Project. Section 2(a)(5), Section 10(a) and (b). The Act authorizes, among other things, the construction, operation and maintenance of municipal, rural and industrial water systems which include the existing water systems. Section 3(a), 3A(a) and 3B(a). Reclamation needs to work with the OSRWSS, RSRWS and LBRWS to ensure the remaining features of the Project, including the work related to existing community systems, are completed as planned and the intended beneficiaries are served.

The Act's trust responsibility provision also applies equally to construction and OMR. Anything less than sufficient funding for OMR threatens the significant investment of the United States in construction.

Reclamation needs to work with the OSRWSS to adequately fund OMR of the core and distribution systems. The OSRWSS core facilities serve all Project Sponsors, including the Lower Brule Sioux Tribe, Rosebud Sioux Tribe and West River/Lyman-Jones, as well as the Pine Ridge Indian Reservation. Reclamation advises us that OMR is its first priority. The statutory trust responsibility requires OMR to remain at the forefront of Reclamation's funding obligations. Funding should be adequate to ensure a safe drinking water supply for all Project Sponsors. As we move forward, the Mni Wiconi Project must remain a Reclamation priority. Our OMR funding

needs should not be affected by other authorized projects' construction funding needs or by Indian water rights settlements in the years ahead.

Threatening an unnecessary increase in the costs of OMR for the Mni Wiconi project are the Surplus Water Policies of the Corps of Engineers that would require payment for stored water in Lake Oahe. The Corps of Engineers proposes a cost of \$15-\$20 per acre foot of water derived from Pick Sloan storage. The Oglala Sioux Tribe believes that the Corps of Engineers policy on surplus water is flawed and that the charges proposed would simply require Congress to appropriate more OMR funds for the Mni Wiconi Project for payment of Corps of Engineers charges.

MNI WICONI PROJECT EMERGENCY PLAN

S. 3464 includes a new Title for the Mni Wiconi Act which would direct the Departments of Interior, Homeland Security and Defense (Army Corps of Engineers) to work with the Project Sponsors to develop a comprehensive emergency plan for the Project in case of major breakdowns of the systems.

Project Sponsors, Reclamation and the Federal Emergency Management Agency have met and will continue to meet and update state-of-the-art emergency response plans. S. 3464 would assist efforts to address any major catastrophe that might adversely impact the Project's rural water systems.

Of considerable concern to the Oglala Sioux Tribe is the crossing by the Keystone XL Pipeline of the Missouri River in Montana and the Western Dakota tributaries of the Missouri River, including the Cannonball, Grand River, Moreau, and Cheyenne River crossings that enter Lake Oahe and pose a risk to the Mni Wiconi Project intake below Oahe Dam. A major spill from this pipeline would be carried by those streams to our water source. We oppose the pipeline, but if we are unsuccessful in our opposition and the pipeline is built, it provides a prime example of the need for a specific Mni Wiconi Project emergency plan.

MITIGATION OF FISH & WILDLIFE LOSSES

Section 6(b) of the Mni Wiconi Act was included in the original version of the Act. The Section requires the Secretary, in cooperation with the State, all Indian tribes residing on reservation within the State and other federal agencies, to develop and submit recommendations to Congress for implementing and financing mitigation plans for fish, wildlife and terrestrial losses incurred as a result of the construction and operation of the Oahe Dam and Reservoir and the Big Bend Dam and Reservoir. Section 6 of S.3464 would include important revisions to Section 6(b). First, it would add a date by which the recommendations would be submitted to Congress. Further, it would ensure that the recommendations for the mitigation plans include losses of Native American cultural resources, human remains, ceremonial plants and herbs, gathering rights, access to sacred sites, other usufructuary rights and impacts to groundwater on the Missouri River tributaries. It would also include the Fort Randall Dam and Reservoir. Significantly, S. 3464 would require the Secretary to set forth a process by which he will carry out meaningful consultation with the tribes on the development of the recommendations, something of utmost importance to the tribes. S.3464 also specifically directs relevant agencies, the Army Corps of Engineers, the National Park Service, and the Fish and Wildlife Service to provide the Secretary with assistance in completing the recommendations, which would ensure their cooperation and engagement on these issues.

WASTE WATER DISPOSAL SYSTEMS

In 1994, the Mni Wiconi Act was amended to include a provision authorizing and directing the Secretary, in consultation with the tribes, to conduct feasibility studies on the need to develop waste water disposal facilities and systems and rehabilitate existing systems on the reservations. S. 3464 revisits the waste water disposal systems provisions, Section 12(c), to ensure that their intent is carried out. Importantly, S. 3464 would have the tribes, in consultation with the named relevant federal agencies, update and complete the feasibility studies and sets forth what specifically the studies must address. The amendment is necessary to move waste water disposal systems piece of the Act forward.

CONCLUSION

The Mni Wiconi Project is like no other in terms of human needs. Mni Wiconi means "the water of life." It is unique in that the Act which authorized it acknowledges the United States trust responsibility to ensure adequate and safe water supplies for the Pine Ridge, Rosebud, and Lower Brule Reservations. S.3464 will enable the United States to carry out this trust responsibility by completing the Project as

contemplated. Without S.3464, thousands of intended project beneficiaries, some who have been waiting for clean water since 1988, will not be served.

We thank the Committee for its consideration of this important legislation and respectfully request that S. 3463 move forward to enactment as soon as possible.

SUPPLEMENTAL STATEMENT OF THE OGLALA SIOUX TRIBE, ROSEBUD SIOUX TRIBE,
LOWER BRULE SIOUX TRIBE AND WEST RIVER/LYMAN-JONES, ON S. 3464

Thank you for the opportunity to submit supplemental testimony on S.3464, the Mni Wiconi Project Act Amendments of 2012 following the hearing on September 19, 2012. This supplemental testimony has been developed conjunctively and is offered on behalf of the Oglala Sioux Tribe, West River/Lyman-Jones, Inc., the Rosebud Sioux Tribe and the Lower Brule Sioux Tribe, the four beneficiaries and sponsors of the Mni Wiconi Rural Water Supply System in southwestern South Dakota (Figure 1).

Having reviewed the testimony of Mr. Grayford Payne, Deputy Commissioner for Policy, Administration and Budget, on behalf of the Bureau of Reclamation, the Oglala and Rosebud Sioux Tribes, in particular, will seek mutually agreeable resolution of conflicts between our positions and those of the Bureau of Reclamation on the amount of funding required to complete the remaining components of the Project, the number of persons that will benefit by the completion of the Project and other subject areas where the testimony of the Sponsors and the Bureau of Reclamation may be different.

Because the Tribes, through the efforts of the Oglala Sioux Tribe, had kept the Bureau of Reclamation fully informed of funding needs to complete the drinking water portion of the Project and had provided documentation of detailed costs frequently (including quantities and unit prices of incomplete Project segments), we were surprised that the Bureau of Reclamation claimed (1) it did not have necessary details to evaluate the proposed increase in the authorized Project ceiling for construction by \$14.308 million (October 2011 dollars) and (2) that the Project could be "completed" with the FY 2013 funding request in the President's budget.

Clearly, a fundamental difference for the Oglala and Rosebud Sioux Tribes is our definition of Project "completion" for which the \$14.308 million will be used. To us, this means the completion of the construction of the drinking water portion of the Project without completing the livestock portion or community upgrades. The Bureau of Reclamation definition of Project "completion" apparently means simply the expenditure of the currently authorized funding ceiling. The currently authorized funding ceiling, however, will not be adequate to complete the construction of the drinking water portion of the Project. Further, the livestock portion and community upgrades are essential components of the overall Project, which also must be addressed. S. 3464 sets out methods for ensuring these features are addressed and finished so that the Project can function as intended.

The intent of the Oglala and Rosebud Sioux Tribes is to work with the Bureau of Reclamation during the congressional recess to reach agreement on the full scope of S. 3464 and to inform the Committee upon its return of the areas where we have reached complete agreement and areas where we have not, if any. Our working relationship with the Bureau of Reclamation has been extremely good over the last 20 years of development, and we are confident that differences are minimal and can be resolved.

We will work with the Bureau of Reclamation and fully advise the Committee of the resolutions we have successfully reached so that legislation necessary for the Project can move forward.

STATEMENT OF STEVE MOYER, VICE PRESIDENT FOR GOVERNMENT AFFAIRS,
ARLINGTON, VA, ON H.R. 2842

On behalf of Trout Unlimited and its nearly 150,000 members nationwide, we write in support of S. 3483 and in support of an amended H.R. 2842 as described below. Please include this letter in the record for the above-referenced hearing.

Trout Unlimited is a national not-for-profit membership organization dedicated to conserving, protecting and restoring our nation's coldwater fisheries and their habitats.

S. 3483—CROOKED RIVER COLLABORATIVE WATER SECURITY ACT

Trout Unlimited supports S. 3483—a bill designed to improve water management at Bowman Dam and provide more dependable flows for fish and wildlife habitat in the Crooked River basin. This bill encourages pragmatic, creative solutions and

partnerships to restore Crooked River fisheries, including steelhead. The bill improves water supply certainty for the City of Prineville and local irrigators, and sets the stage for hydropower development at Bowman Dam, while at the same time creating new opportunities for improved flows for fish and wildlife in the Crooked River downstream.

Among other benefits for fisheries habitat, the bill:

- Gives clear authority and direction to store and release water for downstream fish and wildlife purposes.
- Gives state and tribal officials more authority and flexibility to manage releases and target them for the benefit of downstream fish and wildlife resources.
- Supports year-round flows in the Crooked River by authorizing release of mitigation water for the City of Prineville, regardless of whether it is needed by the City for mitigation purposes, thereby ensuring an additional 5,100 acre feet of flows annually through the Crooked River.
- Provides a path forward to reduce or eliminate water diversions from McKay Creek, a tributary of the Crooked that provides critical habitat for steelhead below the dam. By reducing or eliminating surface diversions from this key tributary, this bill helps to ensure that McKay Creek will be ready once again to support steelhead and native trout.
- Creates new opportunities for voluntary measures to improve fish flows and habitat by providing opportunities for instream leasing, water conservation and other voluntary water sharing agreements.
- Supports opportunity for future development of hydropower at Bowman Dam.
- Establishes a clear path forward for development of collaborative solutions to improve river conditions in dry years.

The western states have a long history of water shortage and over-allocations. In a situation that is nearly unheard of in the West, Prineville Reservoir behind Bowman Dam holds nearly 80,000 acre-feet of unallocated water. This situation presents a unique opportunity to provide for downstream fisheries while continuing to meet existing irrigation demand and support economic development opportunities for the City of Prineville. Since the completion of Bowman Dam in the 1960s, there have been multiple attempts to reach agreement on expanded water management.

S. 3483 represents the carefully balanced solution to this decades old effort. S. 3843 breaks a nearly 40-year old log-jam related to water management at Prineville Reservoir and creates an opportunity to improve conditions in the Crooked River in a manner that supports local irrigators, communities and business development. We thank Senators Merkley and Wyden for their leadership on this issue and strongly urge the committee's support for this bill in its current form.

H.R. 2842—BUREAU OF RECLAMATION SMALL CONDUIT HYDROPOWER DEVELOPMENT
AND RURAL JOBS ACT OF 2012

H.R. 2842 aims to clarify jurisdictional issues and improve the regulatory process for developing hydroelectric projects at Bureau of Reclamation (BOR) facilities.

Trout Unlimited supports hydropower projects that are properly managed and operated to minimize impacts to coldwater fisheries and their habitats. We believe that significant potential exists for responsible development of hydropower at existing BOR facilities that can be tapped with minimal impact to the local environment.

Although we generally support the objectives of this bill, we have concerns with some of its provisions—specifically we oppose bill language in Section 2 amending the Reclamation Project Act of 1939 to exclude small conduit hydropower development from review under the National Environmental Protection Act (NEPA).

Trout Unlimited generally supports regulatory efficiency; however, we do not support elimination of regulatory oversight or reduction of environmental standards for projects simply in the name of expediency. A waiver of the NEPA review process is a harmful and unnecessary sacrifice. Alternatives exist to promote expediency without sacrificing environmental safeguards. For instance, the NEPA process allows for development of categorical exclusions to help move certain categories of activities through the review process more quickly. The Federal Energy Regulatory Commission (FERC) has successfully employed a categorical exclusion from NEPA for many years to permit small conduit projects in order to facilitate their construction. Reclamation's revisions to the Reclamation Manual follow this example, relying on an existing categorical exclusion for small construction projects to expedite the permitting and review of small conduit projects that will have minimal environmental impact. Such approach could be taken here.

Furthermore, the BOR has recognized the need to provide clarity for small conduit hydro development and has updated their manual accordingly. We encourage

the committee to examine whether those updates satisfy the needs of hydro developers prior to advancing legislation.

Finally, H.R. 2642 precludes NEPA review for projects producing 1.5MW or less. However, even small-scale developments can have significant adverse effects. Development of a categorical exclusion with strong impact based sideboards would more appropriately distinguish minimal impact projects from those with more significant environmental effects—allowing for minimal impact projects to proceed quickly while ensuring that harmful or damaging projects are subject to more thorough review under NEPA.

We thank the Subcommittee for the opportunity to comment on these bills.

STATEMENT OF KIMBERLEY PRIESTLEY, SENIOR POLICY ANALYST, WATERWATCH,
PORTLAND, OR, ON S. 3483

Founded in 1985, WaterWatch of Oregon is a non-profit river conservation group dedicated to the protection and restoration of natural flows in Oregon's rivers. We work to ensure that enough water is protected in Oregon's rivers to sustain fish, wildlife, recreation and other public uses of Oregon's rivers, lakes and streams. We also work for balanced water laws and policies. WaterWatch has members across Oregon who care deeply about our rivers, their inhabitants and the effects of water laws and policies on these resources.

On behalf of WaterWatch of Oregon's members and supporters we write in support of S. 3483, the Crooked River Collaborative Water Security Act, as introduced.

S. 3483, CROOKED RIVER COLLABORATIVE WATER SECURITY ACT

In the Crooked River Basin there exists a rare opportunity to pass a bill that could benefit all economic sectors in the region—farmers, cities and fisheries. In a situation that is nearly unheard of in the water parched West, Prineville Reservoir behind Bowman Dam holds over 80,000 acre feet of water that has not been allocated to any particular use. This fact presents an extraordinary opportunity to release the unallocated stored water to restore flows to the river and its economically important fisheries, without taking water away from existing irrigation districts or impeding growth opportunities for the City of Prineville.

S. 3483 takes advantage of this rare opportunity and delivers a bill that:

- Dedicates nearly 80,000 acre feet of water stored in Prineville Reservoir to downstream fisheries. The water must be released in a way to maximize the biological benefits to downstream fish, including newly reintroduced steelhead. This bill will result in significant flow increases to the historically water-parched Crooked River.
- Provides the City of Prineville with 5,100 acre-feet of water to serve as instream mitigation to offset the impacts of new groundwater pumping (under state law, new groundwater wells in this basin must provide instream mitigation).
- Provides farmers who currently hold irrigation contracts for water from the reservoir with guarantees to their longstanding use.
- Allows hydropower development to now proceed on Bowman Dam.
- Charts a path forward for flow restoration projects on McKay Creek (a creek that is key to steelhead introduction efforts).
- Requires dry year management planning.

S.3483, as introduced, represents a carefully crafted agreement between conservation groups, irrigation districts, the State of Oregon, the City of Prineville and the Confederated Tribes of the Warm Springs Reservation. We thank Senators Merkley and Wyden for introducing this bill that represents a balance amongst varied basin interests that, until now, was unattainable.

S. 3483 marks the end of over 30 years of fighting over the unallocated water behind Bowman Dam. The vision provided by this groundbreaking legislation could not only help save the Crooked River, its prized redband trout, and its newly reintroduced steelhead—it could also make a major contribution to the region's economy.

We urge the subcommittee to pass S. 3483 as introduced.
Thank you for this opportunity to comment.

STATEMENT OF BRETT SWIFT, NORTHWEST REGIONAL DIRECTOR, AMERICAN RIVERS,
PORTLAND, OR, ON S. 3483

American Rivers is the nation's leading voice for healthy rivers and the communities that depend on them. We believe that rivers are vital to the health, safety and quality of life of all Americans. Since our founding in 1973, we have worked to protect and restore rivers and seek balanced solutions that benefit all stakeholders. On behalf of American Rivers' thousands of members and supporters I write in support of S. 3483, the Crooked River Collaborative Water Security Act in its current form.

S. 3483, CROOKED RIVER COLLABORATIVE WATER SECURITY ACT

The Crooked River is one of Oregon's treasures. It has an outstanding fishery, spectacular scenery and various recreational activities that depend upon a healthy river with adequate flows. S. 3483 takes advantage of a rare opportunity found in the West—water in Prineville Reservoir that is not currently allocated to any particular use—to improve flows in the Crooked River for the benefit of fish and wildlife below Bowman Dam. In addition, S. 3483 provides greater certainty to water users in the basin including local farmers and the City of Prineville.

S. 3483 provides the following benefits:

- Allocates water stored in Prineville Reservoir to downstream fisheries, which will benefit ESA listed steelhead that recently have been reintroduced to their historic habitat.
- Allows for flow restoration projects on McKay Creek, a critical tributary supporting steelhead reintroduction efforts.
- Removes barriers to voluntary water leasing and conservation projects in the basin.
- Provides the City of Prineville with water to support the community's municipal water needs.
- Provides local farmers with a reliable supply of water from Prineville Reservoir.
- Opens the door to new hydropower development on Bowman Dam.

S. 3483 resolves a longstanding conflict over unallocated water in the Crooked River Basin and strikes a balance for water users and the environment while improving conditions for the fish and wildlife that rely on the Wild Scenic Crooked River. Importantly, it sets the basin on a path toward working collaboratively to address water needs and meet a range of interests in the long-term.

In conclusion, thank you for holding a hearing on this bill concerning Oregon's outstanding Crooked River. We urge the subcommittee to pass S. 3483 as introduced. Thank you for considering our views.

STATEMENT OF BETTY ROPPE, MAYOR, CITY OF PRINEVILLE, OR, ON S. 3483

I am writing on behalf of the City of Prineville in support of S. 3483, the Crooked River Collaborative Security Act, introduced by Oregon Senators Ron Wyden and Jeff Merkley.

For over 30 years, local, state and federal agencies, and many stakeholders, have sought agreement on the best management of the U.S. Bureau of Reclamations' Bowman Dam and Prineville Reservoir. Each of those efforts has failed to produce consensus, until now.

Senators Wyden and Merkley, and their staff, are to be commended for writing legislation that amends several outdated laws and policies to equally promote social health, economic prosperity and environmental enhancement. We are pleased the legislation ensures our City would have access to a long-term water supply, so we can responsibly plan for the future and our local businesses can create jobs and make essential capital investments. Of course, we are also pleased with the other benefits that the legislation would create for Central Oregon.

Upon enactment, the Crooked River Collaborative Water Security Act would provide immediate benefits to our region. In addition to the new water supply for the City, many local farm and ranch families would secure long-term certainty to continue to produce crops and livestock. On the Crooked River, fish and wildlife species, including reintroduced steelhead, would benefit from a new release schedule of uncontracted water stored annually in the reservoir. And a "water rights switch" on McKay Creek would benefit local families and result in higher instream flows for steelhead and other species. Finally, the Portland General Electric Company could seek approval to build a small hydropower facility at the base of the dam, capable of serving 4,500 homes.

The City of Prineville appreciates the Subcommittee's expedited hearing on the bill, and we encourage you to immediately work to secure its passage. Please call me personally if we can provide you with any additional information on our community's needs or why this legislation's enactment is so crucial to the City of Prineville.

STATEMENT OF KEN FAHLGREN, CROOK COUNTY COMMISSIONER,
PRINEVILLE, OR, ON S. 3483

I am writing on behalf of Crook County in support of S. 3483, the Crooked River Collaborative Water Security Act, introduced by Oregon Senators Ron Wyden and Jeff Merkley.

We are pleased the legislation would provide Crook County, the City of Prineville, and many of our local farmers and ranchers with the water supply certainty they need to meet current and future needs. This certainty will enable our agricultural sector and other businesses, including new technology companies, create jobs, make significant investments, and responsibly plan for the future.

We understand the bill would provide numerous benefits to our community and the environment. For example, farmers and ranchers with a U.S. Bureau of Reclamation contract would be able to accelerate their payments to the U.S. for their share construction costs for Bowman Dam, and could also temporarily lease water instream for fisheries purposes. Further, providing farm families on McKay Creek with a supply of water from Bowman Dam would result in greater water supply reliability, and also increase instream flows for steelhead and other species on this creek. The management of uncontracted water supplies for fish and wildlife would also benefit steelhead, redband trout and other species in the Crooked River. Finally, moving the wild and scenic boundary would enable the construction of a small hydropower facility at the base of the dam, creating carbon-free electricity and new property tax revenues. The Portland General Electric Company is well respected in our community, and I understand the company will seek the approval to build that facility.

Crook County appreciates your scheduling this hearing. Please call me personally if I can provide you with additional information regarding our support for the Crooked River Collaborative Water Security Act.

STATEMENT OF MIKE BRITTON, SECRETARY/GENERAL MANAGER, NORTH UNIT
IRRIGATION DISTRICT, MADRAS, OR, ON S. 3483

I am writing on behalf of the North Unit Irrigation District in support of S. 3483, the Crooked River Collaborative Water Security Act, introduced by Oregon Senators Ron Wyden and Jeff Merkley. We appreciate your scheduling this hearing on the bill.

We commend Senator Wyden and Senator Merkley, and their staff, for writing this legislation and doing so in a manner that fully protects agricultural water supplies, including the North Unit Irrigation District. This certainty will enable our district as well as the other districts, farm and ranch families that rely upon the water supplies of Bowman Dam, to have the same assurances of an annual irrigation supply as we all have now. For our district, this is the most important aspect of the bill as North Unit and its patrons rely on the Crooked River to supply irrigation water to nearly 9,000 acres of productive agricultural lands in Jefferson County. The 10,000 acre-feet of water set-aside for our district in the bill is an absolute need and must be available to the district every single year, whether we call upon those supplies or not. Further the bill should "do no harm" to existing water right holders so that irrigators who are using these water supplies today have the same access to the legal use of this water in the future, after enactment of the bill. This is consistent with the position of Oregon Governor John Kitzhaber, noted in his August 1, 2012 letter to Senator Wyden and Senator Merkley.

Our district appreciates your scheduling this hearing. Please call me personally if I can provide you with additional information regarding our support for the Crooked River Collaborative Water Security Act.

STATEMENT OF STEVE FORRESTER, CITY MANAGER,
CITY OF PRINEVILLE, OR, ON S. 3483

I am writing on behalf of the City of Prineville in support of S. 3483, the "Crooked River Collaborative Water Security Act," introduced by Oregon Senators Ron Wyden

and Jeff Merkley. We would appreciate your including this letter in the September 19, 2012 Subcommittee on Water and Power hearing record.

The City of Prineville, as well as Crook County, Ochoco Irrigation District and many others are pleased to support S. 3483, the "Crooked River Collaborative Water Security Act." Senator Wyden and Senator Merkley deserve credit for their hard work, extraordinary patience, and understanding of our Community in the development of this legislation. We are appreciative of their work in writing this legislation and look forward to the benefits that enactment would provide for our entire community.

Prineville, located in Central Oregon's Deschutes Basin, is one of Oregon's most historic cities. It is the largest city in Crook County with a population of 10,000. Today, our City is facing an unusual combination of challenges and opportunities. This legislation would take a tremendous step forward in addressing them.

Over the past several years, our unemployment rate has ranged between 14 and 20 percent, one of the highest rates in the United States. Business failures, job losses, and home foreclosures have been a constant problem for us, and they've significantly stressed our City's social services.

Not long ago, vibrant timber operations, a highly successful national tire business, and small productive family farms and ranches served as our economic foundation. But changes to our Nation's timber harvest policy drove once-thriving mills and family-owned businesses into closure. The tire operation moved away. And then, our national economy collapsed. These events struck our region particularly hard. We lost one family business after another, and along with them, hundreds of family-wage jobs. Successful family farms and ranches kept our community from spiraling even further downward.

In the midst of the downturn, Apple and Facebook selected Prineville as a location for their new data centers. Facebook has completed construction on a new, state-of-the-art, LEED certified, 300,000 square-foot data center near our airport. Facebook is now beginning to develop a second facility. Apple is also constructing a new facility in our community. Both companies have created family wage jobs, made significant financial investments in our community, and have sparked an economic resurgence we have not seen in a long time.

Prineville is a progressive city regarding natural resources. Mayor Betty Roppe serves on the board of directors of the Deschutes River Conservancy, a consensus-based, non-profit organization dedicated to river restoration. The City is collaborating with irrigation districts, conservation groups, and others to develop a multi-species Habitat Conservation Plan, which will ultimately set in motion conservation measures designed to improve habitat for species including bull trout and reintroduced hatchery steelhead listed as "threatened" under the Endangered Species Act. Finally, the City is re-creating a 280-acre lower Crooked River wetland at a cost of \$8.5 million, which will improve riparian habitat and further cleanse our wastewater discharges. The Portland General Electric Company and Confederated Tribes of Warm Springs are helping to finance this innovative project.

At this point, we have taken as many steps as we possibly can to recover our economy and enhance our environment. But we can only fully resolve our problems if Congress enacts new law to remove several barriers to our recovery, including a lack of water supply certainty. To resolve this problem, Congress must amend the underlying authorization of the Crooked River Project to ensure our community has certainty for economic and environmental uses. Doing so will promote a more dynamic business climate that will allow us to strengthen our commitment to basic social services, improve environmental conditions, and bring about real, permanent improvements for Prineville, Crook County, and Central Oregon.

THE CROOKED RIVER PROJECT

The U.S. Bureau of Reclamation's Crooked River Project was authorized on August 6, 1956 (70 Stat. 1058) for irrigation and flood control purposes. A key feature of the Crooked River Project is Arthur R. Bowman Dam, constructed in 1960 and 1961, which has an active storage of approximately 148,633 acre-feet of water annually.

Sixteen irrigation districts and families have long held contracts to 68,273 acre-feet to irrigate 25,000 acres of small, family farms and ranches in Crook County. Valuable crops, including grain, garlic, hay, mint, and seed are grown on these lands, along with livestock. Because irrigation needs are also satisfied with natural flow rights, the use of stored water for irrigation is often less than the total stored water contract amounts. Since the late 1960s, Reclamation has contracted five times with North Unit Irrigation District to supply water to that district's farmers and ranchers. These contract amounts have averaged roughly 13,600 acre-feet. Reclama-

tion also provides releases for fish and wildlife purposes, including releases of an authorized minimum 10 cubic feet per second (cfs) annually, and often a voluntary release up to 75 cfs in the winter months. For more than thirty years, there has been an ongoing community discussion about this project, and the potential to use the uncontracted water stored in Bowman Dam for various purposes. Every effort to address this situation has failed to produce consensus, until now. This legislation is supported by a broad array of interests, including Oregon's Governor John Kitzhaber, agricultural, conservation and irrigation interests, the Confederated Tribes of Warm Springs, Crook County, City of Prineville and Portland General Electric Company. The broad support for the legislation is based on the unprecedented social, economic, and environmental benefits it would create for Central Oregon.

REMOVING FEDERAL BARRIERS TO PROMOTE ECONOMIC AND ENVIRONMENTAL BENEFITS

I want to compliment Senator Wyden and Senator Merkley, and their staff, for writing this legislation. The legislation includes changes to specific provisions of the underlying authorization for the Crooked River Project, and adds several new provisions. All of these provisions are collectively necessary to remove the barriers that stand in the way of meaningful economic recovery and environmental enhancements. The legislation would provide significant benefits, including a new water supply for the City of Prineville, longterm water supply certainty for irrigation districts and farming families, dedicated water releases for reintroduced steelhead and for other fish and wildlife on McKay Creek and the Crooked River, and the potential to develop carbon-free hydropower at an existing dam. The legislation also enables local farmers to accelerate the repayment of their obligations to the Bureau of Reclamation and would establish a process for a dry-year management plan, developed collaboratively and relying upon voluntary measures.

This legislation presents a remarkable opportunity to enhance not only social and economic values in Oregon, but to significantly enhance instream values for fish and wildlife as well. We understand some may not fully appreciate the specific language in the bill to accomplish these tremendous benefits, but I have come to learn that there is a price for consensus. In this case, it is not federal funding or the construction of new federal facilities, but instead it is legislative recognition of the extraordinarily unique situation of Bowman Dam and its potential value for all of Central Oregon. The real precedent of this bill is a remarkable series of collaborative benefits, socially, economically and environmentally, at no federal expense.

WATER FOR THE CITY OF PRINEVILLE

The City of Prineville needs a long-term, reliable water supply to meet its current and future needs. All of the City's supplies are met with groundwater. In addition to the needs of two new companies, Apple and Facebook, the City needs new supplies for our current residents. There are 500 homes inside our City limits without City water service, not because the City does not want to serve them, but because we lack a reliable supply. These homes, many with low-income families, draw their potable water from private, unregulated on-site wells connected to a shallow aquifer. Many of these homes also maintain on-site septic systems, and given the small sizes of the lots, the situation presents an unacceptable long-term risk.

Prineville has evaluated every practical option to meet its needs. For example, we've taken conservation as far as we can. Almost all of the homes and businesses in the City are fully metered; we adhere to a strict odd/even summer residential landscape-watering schedule; and we are replacing nearly one-mile of our main water line each year. Our water rates are also higher than nearly every other major city in Central Oregon.

While the City is capable of drawing more water from its existing wells, it is restricted from doing so by the State. Because Oregon has deemed groundwater in the Deschutes Basin to be hydrologically connected to surface water, and because all surface water in the basin is fully appropriated, the State requires any new groundwater use to be "mitigated." Such mitigation typically involves buying irrigation rights and leaving those supplies instream. Under State law, this transfer of an existing out-of-stream surface water right to a new instream use (resulting in a "mitigation credit") offsets any impacts arising from the new groundwater pumping. In the Crooked River subbasin, however, mitigation credits are scarce due to a lack of willing sellers and other constraints. Lacking these credits, the City cannot pump any additional groundwater.

This legislation meets the City's needs by authorizing the Bureau of Reclamation to release 5,100 acre-feet of water annually as a mitigation credit under state law. This step will enable the City to pump the additional groundwater necessary to

meet all of its needs into the foreseeable future. The bill also directs the Secretary to work with the State of Oregon to ensure these supplies are protected instream.

PROTECTING EXISTING WATER USE

Agriculture, one of our region's economic mainstays, also needs certainty. To provide it, the bill clarifies that Bowman Dam will continue to be managed so the water supplies of the existing contract holders, and one district that occasionally purchases water from Reclamation (North Unit Irrigation District), will be available each year as these supplies have been since the project's construction. This is absolutely essential for our community's social and economic standing. It will ensure family farms and ranches continue to receive their water supplies without interruption. This will sustain agricultural productivity, enabling farmers and ranchers to continue to invest in seed, fertilizer, and fuel, and to rely upon local businesses for custom farming, insurance, and other needs.

S. 3483 requires Reclamation to store and release a sufficient amount of water, whether from infill or carryover, to meet the sixteen existing irrigation contracts, the City's needs, and the needs of North Unit Irrigation District that may arise from time to time. It is important to note this provision is limited to the districts and families who presently hold contracts with Reclamation, including North Unit Irrigation District. No new contracts will be approved and no new supplies will be made available, with the exception of the McKay Creek Water Rights Switch, discussed below.

S. 3483 provides clear assurances to the families who live and work in our community that their water supplies will be protected, and that their way of life will be improved. Right now, that is critical for our community's well being.

PROTECTING RECREATION

Recently, some members of our community have raised questions regarding the potential drawdown of Prineville reservoir to provide higher downstream releases of water for fish and wildlife. In particular, questions have been raised as to whether this may affect recreation at the reservoir. We understand these concerns are related to the potential "stranding" of several boat ramps in consecutive dry years, and the possible long-term impacts to fish and wildlife habitat in the reservoir.

For the past 52 years, Prineville Reservoir has been a recreational treasure. With 43 miles of shoreline, and nearly 100 homes, it is a camping, fishing, and water destination for families from all over Oregon. It is also an economic asset for our community. A 2005 census report showed that over 90 percent of the 615,000 visits to Prineville Reservoir were from out of our area. Purchases of food, fuel, and supplies are a key source of revenue for local businesses.

Governor Kitzhaber's August 1, 2012 letter to Senators Merkley and Wyden (see attached) acknowledges this concern. Importantly, the Governor's letter commits the State to work with our community, and others, to address impacts on recreation and fish and wildlife in the reservoir if they occur. We're committed too. We are also very comfortable with our partners, the Confederated Tribes of Warm Springs and the Portland General Electric Company, and their respective roles established by the legislation, and in conjunction with it. While some may be uncomfortable with the State and tribal management of the uncontracted water supplies, we are supportive of this provision because it builds upon an existing relationship between Oregon Department of Fish and Wildlife, and the Confederated Tribe of Warm Springs and would include Ochoco Irrigation District, United States Bureau of Reclamation.. We understand annual management decisions of the uncontracted water supplies will be based upon the best available information and science, and adaptively managed. The City of Prineville and Crook County will work with our community, and all our partners, including our community, our Congressional delegation, and others to improve Prineville Reservoir so that it continues to be a safe, fun, and enjoyable destination.

THE MCKAY CREEK WATER RIGHTS SWITCH

S. 3483 will also accelerate the McKay Creek fisheries restoration project. Local farm and ranch families, currently outside of OID's boundary, have expressed interest in exchanging their existing McKay Creek water rights for stored water supplies from Bowman Dam. Up to twenty-three families may ultimately participate in this exchange, which could result in less overall water use per acre, but provide a more reliable supply for these families. State and private funds would finance the entire cost of the project.

To accomplish this exchange, S. 3483 authorizes two important steps. First, the bill expands OID's boundary from its present size, which includes approximately

20,000 irrigated acres, to add approximately 685 additional acres that are currently irrigated with water from McKay Creek. Second, the bill enables OID to supply stored water to these additional 685 acres, but only after the landowners permanently transfer their existing natural stream flow water rights, with some of the water rights dating to the 1800s, to instream use. Thus, S. 3483 authorizes OID to supply up to 2,740 acre-feet to enhance instream flows in McKay Creek. This project is an important steelhead restoration initiative supported by the Confederated Tribes of the Warm Springs Reservation, the Crooked River Watershed Council, Deschutes River Conservancy, Portland General Electric Company, the Deschutes Land Trust, and many others.

WILD AND SCENIC MOVE

S. 3483 also proposes to move an existing wild and scenic river boundary on the Crooked River. This will allow the construction of a small hydropower facility at the base of Bowman Dam, above the new boundary. In 1988, Congress designated the Lower Crooked River (or Chimney Rock Segment) as a Recreational River Area in the Omnibus Oregon Wild and Scenic Rivers Act. Following passage of this law, the Bureau of Land Management (BLM) established the upstream “interim” boundary of this 8-mile long segment on the crest of Bowman Dam, in the center of State Highway 27. Although BLM has stated this location was never intended to be the final starting point of the designation, it has been unable or unwilling to administratively move the boundary. The current boundary is an absolute restriction on the development of carbon-free, renewable hydropower generation at Bowman Dam.

S. 3483 will require the Secretary to relocate the upstream boundary of the wild and scenic designation to a point one-quarter mile downstream from the toe of the dam. This minor shift would enable a small, minimally intrusive facility to be constructed, including a small powerhouse and related facilities.

I understand the project would operate with existing water releases, without any changes to release schedules, amounts, or reservoir recreation levels. In addition to power generation, the project may also improve water quality below the dam by reducing total dissolved gas (TDG) concentrations. Fish can be affected by elevated TDG concentrations, which has occurred recently, for example, in the Columbia River. Relocating the boundary and the construction of a hydropower facility will not impair Redband trout spawning areas, and river access for fishing will not be impacted except as necessary for public safety.

Finally, the eventual license holder will be required by the Federal Energy Regulatory Commission to evaluate impacts to the designated “Outstandingly Remarkable Values” in the quarter-mile reach between the dam and the new boundary. If impacts are identified, full mitigation will be required. Besides the potential fisheries benefits, this project will create enough carbon-free, renewable electricity to power 4,500 homes.

OCHOCO IRRIGATION DISTRICT CONTRACT CHANGES

Ochoco Irrigation District’s present water supply contract with Reclamation does not allow OID to participate in “Conserved Water Projects” under Oregon law. Under the terms of its contract, water allocated to OID can only be used for irrigation purposes.

Since these contracts were signed, the State of Oregon has enacted laws to encourage water users to conserve water. The Oregon Conserved Water statute (ORS 537.455 et seq.) is one such program. This statute requires at least 25 percent of any water saved by a conservation project to be left instream and protected with an instream water right. Because OID’s contract with Reclamation does not allow water to be dedicated to instream uses, OID cannot participate in this program. S. 3483 would remove this barrier to water conservation by amending OID’s underlying contract so it can conserve water consistent with Oregon law and return a portion of the savings to instream uses, forever.

S. 3483 makes a second amendment to OID’s contract. This change will enable District landowners to voluntarily repay their respective share of construction costs associated with Bowman Dam and the Crooked River Project earlier than their present repayment schedule allows. These farmers and ranchers are prohibited from paying off their obligations to the United States before the contract repayment date of 2023. This change is important because it will enable District landowners to purchase additional lands inside OID while still using water from Bowman Dam. Larger holdings can promote greater efficiencies, economies of scale, and a more dynamic business climate.

Collectively, these amendments to OID’s contract would allow for greater flexibility and creativity in land use decisions and water management, benefitting the

economy and environment. They would facilitate conservation efforts, instream leasing, and more dynamic business practices. Congress has previously approved similar provisions for Oregon irrigation districts (see P. L. 110-229, Section 509(d); and P.L. 109-138).

CONCLUSION

S. 3483 will, if enacted, accelerate real, meaningful social, economic, and environmental benefits for the people of Prineville, Crook County, and all of Central Oregon. I encourage the Subcommittee to act quickly on this legislation.

ATTACHMENT.—LETTER OF GOVERNOR KITZHABER

STATE OF OREGON,
Salem, OR, August 1, 2012.

Hon. JEFF MERKLEY,
U.S. Senate, 313 Hart Senate Office Building, Washington, DC.

Hon. RON WYDEN,
U.S. Senate, 221 Dirksen Building, Washington, DC.

Re: Draft legislation regarding Oregon's Crooked River basin

DEAR SENATORS: My administration is very appreciative of your work to advance legislation to improve the environment and economy of central Oregon. The Crooked River basin encompasses one of Oregon's truly special places. It presents many challenges and opportunities, especially with respect to the issue of water associated with Prineville Reservoir and the Bowman Dam. I want to personally commend all of the stakeholders—including the Confederated Tribes of the Warm Springs of Oregon, the Ochoco and North Unit Irrigation Districts, Crook County, the City of Prineville, Portland General Electric, and several conservation groups—for their years of effort, collaboration, and leadership in reaching common ground around this historic legislation.

My understanding is that the legislation would result in numerous benefits. For the City of Prineville, the legislation provides releases of Prineville Reservoir water, allowing the City to acquire new groundwater rights needed for economic development and the associated instream mitigation credits required by Oregon law. The legislation also slightly modifies an existing Wild and Scenic River boundary to enable development of hydroelectric energy at the existing Bowman Dam. In addition, the legislation would provide needed certainty for Ochoco Irrigation District and the other 15 U.S. Bureau of Reclamation contract holders to ensure irrigation water will continue to be put to productive agricultural use. Finally, I understand that all remaining un-contracted reservoir water, which in some years could amount to upwards of 80,000 acre feet, will be dedicated to the primary benefit of downstream fish and wildlife, with the Confederated Tribes of Warm Springs and the State of Oregon entering a new chapter of partnership to help guide the Bureau of Reclamation's release of this water. This water provides unprecedented opportunities for steelhead and other species of concern in the Crooked River as well as the larger Deschutes River system. The legislation envisions exactly the sort of mutual win that Oregonians expect for the economy, the environment, and communities.

I want to underscore one issue with you that is separate from the specific legislative language itself but, should it be enacted into law, related to implementation of the legislation's direction of water releases for downstream fish and wildlife. This issue centers on Oregon state water law and water rights. One of my longstanding principles throughout the development of the legislation has been that conditions for fish and wildlife in the Crooked River can and should be improved, but not at the expense of existing legal use of water from the Crooked River. I understand that this legislation's approach to addressing the stakeholder's collective interests in Crooked River water will likely require a new water management regime for Prineville Reservoir, along with increased care around water use accounting and collaboration around dry-year planning. With that in mind, I want to ensure the above principle is not undercut.

It is my expectation that, following the enactment of the proposed legislation, the U.S. Department of Interior through the Bureau of Reclamation will apply for or authorize an application to the State to protect releases of stored, un-contracted Prineville Reservoir water with a state-issued flow augmentation water right or some other form of instream water right. In advancing such an application, my expectation is the Bureau will support an approach that ensures existing holders of Crooked River primary surface flow water rights below Bowman Dam who do not also hold storage right—supplemental or otherwise—have legal access to water consistent with current levels of legal water use. These users include the North Unit

Irrigation District and a number of smaller family irrigators. For water right holders who currently have access to stored water, whether through contracts or otherwise, my expectation is that they would utilize water identified in the “first fill” provisions of the legislation to satisfy their existing levels of legal water use.

Based on this, I ask for your assistance in ensuring that any Bureau of Reclamation application for flow augmentation or instream water rights is conditioned on this outcome, and I foresee any such state-based flow augmentation or instream water right carrying forward the requested condition to protect existing levels of legal water use as described above, while still advancing a level of meaningful instream flow protection for fish and wildlife benefit.

I understand the North Unit irrigation District is currently working on potential changes to its system of water management and water source. Providing the above protection is not intended to undermine or artificially enhance that effort with a right to water that at some point may not be needed. To be clear, the “do no harm” concept as conceived above would only apply to existing legal levels of use tied to existing water rights, and not to full paper water rights or future uses under future water rights. In addition, during dry years when water scarcity is an elevated concern, this concept is not intended to undermine the value of uncontracted water releases for downstream fish benefit or restrict efforts by irrigators and others to collaborate over voluntary dry-year management solutions that benefit fish. It would simply and importantly mean that existing irrigators have available to them the same access to the legal use of water as before the legislation takes effect. I support and am committed to working with the relevant parties to enter into a Memorandum of Understanding to memorialize this approach.

In addition, the legislation’s direction for managing uncontracted Prineville Reservoir water for the benefit of downstream fish and wildlife may affect seasonal reservoir levels and associated reservoir recreation. I expect that as a practical matter, the State, Tribes, and Bureau will collaborate with other relevant interests to assess and consider ways to address potential recreation, cultural resource, and safety impacts while still serving and achieving primary downstream fisheries benefits. If impacts to state investments in boat access and associated infrastructure will foreseeably occur on a repetitive basis, I expect the State, Bureau, our congressional delegation and others will work together on investments to mitigate these effects.

Again, I commend you, your staff, and all the parties for their leadership and continued collaboration, and I look forward to working with you to advance the legislation in the final days of this Congress.

Sincerely,

JOHN A. KITZHABER, M.D.,
Governor.

STATEMENT OF STANLEY “BUCK” SMITH, CHAIRMAN, TRIBAL COUNCIL, THE
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

On behalf of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, I am writing to express our strong support for S. 3483, Crooked River Collaborative Water Security Act—introduced by Senators Merkley and Wyden.

In short, this legislation is the result of countless hours of deliberation of a diverse group of local stakeholders. It helps resolve a decades-long question of how to balance water interests between municipal and irrigation users, while also ensuring the recovery of salmon, trout and steelhead in the Crooked River.

Specifically, the Confederated Tribes believe that the “first fill” provision for irrigators is firmly balanced by the dedication of un-allocated water for downstream fish and wildlife. For both provisions to work and for the policy to be defensible in the future, we also believe the ESA provisions are appropriately and narrowly crafted. This will allow the collaborative management process to achieve ecological results with all stakeholders at the table.

Thank you for scheduling a hearing on this landmark legislation.

STATUS REPORT ON MNI WICONI PROJECT SPONSORS’ NEGOTIATIONS WITH BUREAU
OF RECLAMATION, ON S. 3464

This status report has been developed conjunctively and is offered on behalf of the Oglala Sioux Tribe, West River/Lyman-Jones, Inc., the Rosebud Sioux Tribe and the Lower Brule Sioux Tribe, the four beneficiaries and sponsors of the Mni Wiconi

Rural Water Supply System in southwestern South Dakota (See Supplemental Testimony Dated September 2012).

The Oglala and Rosebud Sioux Tribes sought good-faith resolution of conflicts between our positions and those of the Bureau of Reclamation on funding required to complete the remaining components of the Project and on community system rehabilitation where the testimony of the Sponsors and the Bureau of Reclamation was different. Documentation of the subjects presented in those discussions is provided in Attachments A, B, C: our position paper presented to the Bureau of Reclamation by letter dated October 29, 2012, the response of Commissioner Connor dated November 14, 2012, and our response to the Commissioner's letter dated November 21, 2012.

In exchange for Reclamation support for the funding (\$14.308 million in October 2011 dollars) needed to complete the drinking water parts of the Oglala Sioux Rural Water Supply System (OSRWSS) and Rosebud Rural Water Supply System (RRWS) and for support to transfer 40-plus Indian communities into the Project and to fund the operation, maintenance and replacement of those systems thereafter, as always intended, we offered to eliminate the following from S. 3464:

- Section 6 Mitigation of Fish and Wildlife Losses associated with Pick Sloan dams,
- Section 7 (b)(1) related to reimbursement of the City of White River for the Rosebud Sioux Tribe or members,
- Section 8 Wastewater Disposal Systems,
- Section 9 and Title II, Mni Wiconi Project Emergency Assistance Planning Act.

We were unsuccessful in changing Reclamation's opposition despite the facts that Reclamation has:

1. spent, in part, and proposes to spend, in part, over 20% (Attachment C, p. 2, paragraph 4) of the \$14.308 million needed to complete the drinking water systems on the Pine Ridge and Rosebud Indian Reservations on its office building and exorbitant oversight, both of which are outside the scope of the project,
2. failed to account for overhead costs between 2007 and 2013 in its Final Cost Containment Report that will consume \$14.86 million funds that otherwise could have been used by OSRWSS to complete its project and fund part of the community system upgrades from construction and \$8.71 million that could have been used for the same purposes by RRWS,
3. placed the greatest hardship of inadequate budgeting by the Administration and appropriations from Congress on OSRWSS due to its geographical location at the end of the project and Reclamation policy that would not permit OSRWSS to build concurrently with rural water systems closer to the Missouri River and has placed a similar hardship on RRWS,
4. created artificially high costs (\$25 million) of community system rehabilitation on 40-plus Indian communities to transfer to OSRWSS, RRWS and LBRWS, as a pre-requisite for their transfer and eligibility for operation, maintenance and replacement (OMR) funds, and
5. required unworkable provisions that (a) other federal agencies fund the \$25 million in rehabilitation costs or (b) the Indian Sponsors use Reclamation construction funds to rehabilitate community systems knowing that other federal agencies are resisting participation and the funds are not available from the authorized construction ceiling for Mni Wiconi.

We remain willing to work with the Bureau of Reclamation but must advise the Committee that S. 3464 is essential to complete our drinking water systems and transfer existing communities to the Indian rural water systems despite the inflexibility of the Bureau of Reclamation to alter its opposition.

November 21, 2012.

MICHAEL CONNOR,
Commissioner, Bureau of Reclamation, U.S. Department of the Interior, 1849 C Street, NW, Room 7657, Washington, DC.

Re: Mni Wiconi Project

DEAR COMMISSIONER CONNOR: Our meeting in San Diego on November 1, 2012, with Deputy Commissioner Murillo was a pleasure. He received us graciously and listened attentively to our position on S 3464, the final amendment, if successful, of the Mni Wiconi Project Act. At the end of the meeting, he was very clear that the Department does not support S 3464, and he promised a letter from the Bureau of Reclamation in response to the position paper that we presented. While we were

disappointed in the outcome, it was a very cordial meeting thanks to Deputy Murillo.

Your response letter dated November 14, 2012, has been received and reviewed. The position of Reclamation was expected but highly disappointing. On behalf of the Oglala Sioux Rural Water Supply System (OSRWSS) and the Rosebud Rural Water System (RRWS) and with the support of the other sponsors, we would like to address the opposition of the Department to S. 3464.

As our position paper presented, we are willing to remove the following provisions and associated costs from S. 3464:

- Section 6 Mitigation of Fish and Wildlife Losses associated with Pick Sloan dams,
- Section 7 (b)(1) related to reimbursement of the City of White River for the Rosebud Sioux Tribe or members,
- Section 8 Wastewater Disposal Systems,
- Section 9 and Title II, Mni Wiconi Project Emergency Assistance Planning Act.

The hope was that Reclamation would be willing to compromise if the Oglala and Rosebud Sioux Tribes were willing to compromise and significantly reduce the costs of S. 3464. We cannot understand why Reclamation cannot compromise on this extremely important project, even though the level of funding required to complete the project is limited to 3% of the total cost.

As the basis for the decision that the Department cannot support S. 3464, you expressed concern about adding to the scope of an existing project that is nearly complete.

Nearly complete is not sufficient. Pursuant to Section 2(a)(5) of the Mni Wiconi Project Act the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply and public health needs of the reservations. For the benefit of the members of the Oglala Sioux Tribe and the Rosebud Sioux Tribe, the drinking water project must be completed, and the current funding authority is inadequate. An additional \$9.29 million is required to complete OSRWSS and an additional \$5.68 million is required to complete RRWS, a total \$14.96 million in October 2012 dollars. This is not an addition to the scope of the project. It is the restoration of funding diverted for other purposes that is now needed to complete the scope of the project related to drinking water while foregoing additional funds to complete the scope of the project for livestock.

Before you became Commissioner, the Bureau of Reclamation used \$1.5 million of our funding authority to build an office building in Pierre that was not contemplated in the Final Engineering Report (FER) of 1994. This was a unilateral scope change in the project by Reclamation that diminished our ability to complete the drinking water project. Reclamation proposes an additional \$1.5 million in costs to oversee the project in FY 2013 and FY 2014 even though the current funding authority extends only through FY 2013. The \$3 million in the new office building and the oversight over the next 2 years accounts for approximately 20% of our need for additional funding to complete the project.

The additional construction funds proposed in S. 3464, are not an expansion of the scope of the project. All facilities proposed in the additional construction funding are for purposes contemplated in the FER, unlike Reclamation's new office building in Pierre, which was an expansion of the existing project and not included in the FER. Our opposition to the expenditure on the office building only arises because Reclamation has opted not to support the additional construction funding needed to complete OSRWSS and RRWS. We are required to show the inconsistency of action and support from Reclamation.

As presented throughout this, the overhead costs of administering the project after FY 2007 and community system upgrades were unbudgeted in Bureau of Reclamation's Final Cost Containment Report prepared in 1999 that contemplated project completion in 2007. The extension of the project beyond 2007 due to inadequate budgeting by Reclamation and inadequate appropriations by Congress strung out the project through at least 2013 without amendment and through 2014 with amendment and has required all sponsors to divert funds needed for drinking water construction to cover unbudgeted overhead.

The burden of extending the time to complete the project has fallen most sharply on OSRWSS and RRWS. West River/Lyman-Jones and the Lower Brule rural water systems were able to complete their projects earlier due to the construction sequence required by Reclamation between the Missouri River and the Pine Ridge Indian Reservation. Earlier completion reduced the years of unbudgeted overhead costs by those sponsors, and the last projects to complete construction (OSRWSS and RRWS)

necessarily have experienced greater diversion of funds to overhead at the expense of project completion.

On the Pine Ridge Indian Reservation, particularly, the entreaties of OSRWSS to allow construction of pipelines concurrently with other sponsors, even though those pipelines would be dry until the OSRWSS core system could be constructed from the Missouri River to the Reservation, were met with Reclamation disapproval. When the OSRWSS core system reached the northeast corner of the Pine Ridge Indian Reservation in 2009, only 40% of the distribution system, all dependent on groundwater, had been constructed. The Lower Brule Rural Water System was complete, the West River/Lyman-Jones Rural Water System was nearly complete, and the Rosebud Rural Water System was 70% complete: Whether Reclamation policy on construction sequence was appropriate or not, the effect on OSRWSS was that the burden of completing the project was the greatest as was the deduction of overhead costs from the funds available for construction. This was the fear our tribal members expressed in 1992 when they rejected the Mni Wiconi Project by referendum on the basis that the United States could not be trusted to finish the project on the Pine Ridge Indian Reservation after the non-Indian service areas had been completed.

S. 3464 addresses the inequity of completing the project last for both the OSRWSS and RRWS systems.

Transfer of existing community systems to the Indian rural water systems for operation, maintenance and replacement funding eligibility was a cornerstone of the original project. Recently, and without previous identification as a need in the Reclamation's Final Cost Containment Report prepared in 1999, Reclamation has identified \$25 million in upgrades as a pre-requisite for transfer to the respective Indian rural water systems: OSRWSS, RRWS and LBRWS. This has the effect of withholding project OMR funds from over 40 community systems.

Your letter makes transfer virtually impossible by conditioning support of S. 3464 on funding from other federal agencies to "rehabilitate" those systems to "reasonable standards." Alternatively, your letter would approve the use of Reclamation construction funds within the project ceiling but opposes an increase in the construction funding ceiling. Either option is unworkable.

We are committed to working with you to obtain funds from other agencies for community system rehabilitation but not as a pre-requisite to transfer and project OMR funding. It is unthinkable that Congress would invest \$460 million in the Mni Wiconi Project and allow 40 plus Indian community systems to fall into disrepair because Reclamation is unwilling to transfer systems in good, workable condition into the project and to fund future OMR unless (1) other federal agencies bring existing community systems to a "Cadillac" condition by expending \$25 million or (2) Reclamation construction funds in the amount of \$25 million are used, which are outside the construction ceiling and which Reclamation opposes as an addition to the "scope" of funding for the project.

The \$25 million in "rehabilitation" of community systems is not within the realm of reasonable expectation of funding from other federal agencies. Reclamation posture seems to be a clever innovation to frustrate transfer and the eligibility of the community systems for Reclamation OMR budgeting and funding. Each of the 40 plus community systems is currently a functional system and is in such a state of repair to successfully distribute water received from the new Reclamation rural water systems. We feel the systems should be transferred in their current state of repair, which would make them eligible for OMR funding.

Thank you, and please do not hesitate to contact me if you have any questions or would like additional information.

Sincerely,

FRANK MEANS,
OSRWSS Director.