

MISCELLANEOUS WATER BILLS

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

S. 900	S. 2243
S. 1876	H.R. 1648
S. 1957	H.R. 1732
S. 2304	H.R. 3209

MAY 19, 2004



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

U.S. GOVERNMENT PRINTING OFFICE

96-084 PDF

WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

PETE V. DOMENICI, *New Mexico, Chairman*

DON NICKLES, Oklahoma	JEFF BINGAMAN, New Mexico
LARRY E. CRAIG, Idaho	DANIEL K. AKAKA, Hawaii
BEN NIGHTHORSE CAMPBELL, Colorado	BYRON L. DORGAN, North Dakota
CRAIG THOMAS, Wyoming	BOB GRAHAM, Florida
LAMAR ALEXANDER, Tennessee	RON WYDEN, Oregon
LISA MURKOWSKI, Alaska	TIM JOHNSON, South Dakota
JAMES M. TALENT, Missouri	MARY L. LANDRIEU, Louisiana
CONRAD BURNS, Montana	EVAN BAYH, Indiana
GORDON SMITH, Oregon	DIANNE FEINSTEIN, California
JIM BUNNING, Kentucky	CHARLES E. SCHUMER, New York
JON KYL, Arizona	MARIA CANTWELL, Washington

ALEX FLINT, *Staff Director*

JUDITH K. PENSABENE, *Chief Counsel*

ROBERT M. SIMON, *Democratic Staff Director*

SAM E. FOWLER, *Democratic Chief Counsel*

SUBCOMMITTEE ON WATER AND POWER

LISA MURKOWSKI, *Alaska, Chairman*

BEN NIGHTHORSE CAMPBELL, *Colorado Vice Chairman*

GORDON SMITH, Oregon	BYRON L. DORGAN, North Carolina
JON KYL, Arizona	BOB GRAHAM, Florida
LARRY E. CRAIG, Idaho	RON WYDEN, Oregon
JAMES M. TALENT, Missouri	TIM JOHNSON, South Dakota
JIM BUNNING, Kentucky	DIANNE FEINSTEIN, California
CRAIG THOMAS, Wyoming	CHARLES E. SCHUMER, New York
	MARIA CANTWELL, Washington

PETE V. DOMENICI and JEFF BINGAMAN are Ex Officio Members of the Subcommittee

KELLIE DONNELLY, *Counsel*

PATTY BENEKE, *Democratic Senior Counsel*

CONTENTS

STATEMENTS

	Page
Bennett, Hon. Robert F., U.S. Senator From Utah	2
Bingaman, Hon. Jeff, U.S. Senator From New Mexico	4
Burns, Hon. Conrad R., U.S. Senator From Montana	3
Carman, John Robert, General Manager, Metropolitan Water District of Salt Lake & Sandy, Sandy, UT	38
Core, Andrew B., Senior Hydrologist, Hydrology Bureau, Administrative Litigation Unit, New Mexico Office of the State Engineer, on behalf of John R. D'Antonio, Jr., PE, State Engineer	37
Graves, Thomas, Executive Director, Mid-West Electronic Consumers Association, Wheat Ride, CO	30
Groat, Charles G., Director, U.S. Geological Survey, Department of the Interior	15
Johnson, Hon. Tim, U.S. Senator From South Dakota	3
Jones, C. Allan, Director, Texas Water Resources Institute, College Station, TX	34
Keys, John W., III, Commissioner, Bureau of Reclamation, Department of the Interior	5
Murkowski, Hon. Lisa, U.S. Senator From Alaska	1
Nypen, Jerry, Manager, Lower Yellowstone Irrigation Projects, Sidney, MT	23

APPENDIXES

APPENDIX I

Responses to additional questions	47
---	----

APPENDIX II

Additional material submitted for the record	61
--	----

MISCELLANEOUS WATER BILLS

WEDNESDAY, MAY 19, 2004

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

The subcommittee met, pursuant to notice, at 2:32 p.m. in SD-366, Dirksen Senate Office Building, Hon. Lisa Murkowski presiding.

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

Senator MURKOWSKI. Good afternoon and welcome to the Subcommittee on Water and Power of the Energy Committee. It's my pleasure to welcome you all here today. We've got seven bills before our subcommittee today. They are, in the following order: S. 900, the Lower Yellowstone Reclamation Projects Conveyance Act, introduced by the good Senator Burns; S. 1876, the Provo River Project Transfer Act, introduced by Senator Bennett; S. 1957, the United States-Mexico Transboundary Aquifer Assessment Act, introduced by Senator Bingaman; S. 2304, a North Loup Acreage Clarification Measure, introduced by Senator Hagel; S. 2243, a Hydroelectric Project Deadline Extension bill that I have introduced; H.R. 1648, the Carpinteria and Montecito Water Distribution System Conveyance Act, introduced by Representative Capps; and H.R. 1732, the Williamson County Water Recycling Act of 2003, introduced by Representative Carter.

I'd like to extend a special welcome to our Administration witnesses, who will be appearing on the first panel: Commissioner Keys from the Bureau of Reclamation and Director Groat from the USGS; appreciate you being here today. I'd also like to welcome the witnesses who will testify before the subcommittee's second panel: Jerry Nypen, the manager of the Lower Yellowstone Irrigation Project and Thomas Graves, the executive director of the Mid-West Electric Consumers Association, who will both present testimony on S. 900. We also have C. Allan Jones, the director of the Texas Water Resources Institute and Andrew Core, a senior hydrologist with the State Engineer's Office in New Mexico, who will testify on S. 1957. Finally, we have John Carman, the general manager of the Metropolitan Water District of Salt Lake and Sandy, Utah, who will speaking to S. 1876.

The remainder of the bills on the subcommittee's agenda will be addressed by statements submitted for the record. We've already received many of these statements, including one from Senator

Bennett on S. 1876. They will all be made part of the official hearing record.

So again, I welcome all the witnesses here today, look forward to hearing your testimony. Before we get started, I would ask if there are any Senators who would like to make any opening comments.

Senator Burns.

Senator BURNS. Well, I have a statement with regard to S. 900.

Senator MURKOWSKI. Are you interested in just introducing it into the record or would you like to make it?

Senator BURNS. I'd like to make the statement if I could. Is that the first one you're going to consider?

Senator MURKOWSKI. That's the first one I'm going to consider, that's correct.

[The prepared statements of Senators Bennett and Johnson follow:]

PREPARED STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR
FROM UTAH, ON S. 1876

Madam Chair, and members of the subcommittee, I thank you for holding this hearing on S. 1876, the Provo River Project Transfer Act.

This legislation, introduced late last year, would authorize the title transfer of certain features of the Provo River Project, Utah, from the Bureau of Reclamation to nonfederal ownership. This title transfer will result in several benefits for both the local government and the federal government, including economic, environmental, recreational, and safety benefits.

The facilities to be transferred are the Provo Reservoir Canal and associated lands and structures, the Salt Lake Aqueduct and associated lands and structures, and a 3.79 acre parcel of land in Pleasant Grove, Utah. The Provo Reservoir Canal is a large, open, mostly unlined, 21.5 mile long canal that was constructed by the United States in the 1940s. The water transported through the Provo Reservoir Canal is used principally for municipal and industrial purposes. The Salt Lake Aqueduct is a 41.7 mile long, 69 inch diameter pipe, constructed by the United States and completed in 1951. The Provo River Water Users Association recently constructed a 2 million dollar office and shop complex on the Pleasant Grove property, without the use of federal funds.

Title transfer will facilitate the use of tax-exempt bond financing and low-interest loan financing for needed improvements. Currently, there is no Reclamation program for rehabilitating aging Reclamation facilities. Federal ownership of the facilities prevents low interest loans from being obtained. On the federal level, the transfer would eliminate the demands on limited Reclamation resources for the administration of the Salt Lake Aqueduct and the Provo Reservoir Canal.

It is anticipated that following title transfer needed improvements would be made. For example, the Provo Reservoir Canal would be enclosed to provide for the conservation of water, improved water quality and security, the construction of a public trail system on top of the canal, and to eliminate the hazards of an open unlined canal in an urban environment. The critical importance of eliminating the safety hazard of an open canal in an urban setting was recently reinforced by the tragic death of two young men who unfortunately were lured by the thrill of attempting a swim through the canal. The enclosure of the canal would eliminate this safety risk and hopefully prevent any others from making a similar mistake.

The transfer has significant local support, including Utah County, Salt Lake County, Sandy City, Salt Lake City, Lindon City, Draper, Pleasant Grove City, Orem City and American Fork City. I look forward to working with the Metropolitan Water District of Salt Lake & Sandy, the Provo River Water Users Association, the Bureau of Reclamation, and all other interested parties to make this title transfer a success.

PREPARED STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR
FROM SOUTH DAKOTA, ON S. 900

Chairwomen Murkowski, thank you for calling today's hearing of the Water and Power Subcommittee. I'll use my opening statement to address my concerns with one of the bills under discussion at today's hearing.

I want to express my opposition to certain provisions of S. 900, the Lower Yellowstone Reclamation Projects Conveyance Act that, if not amended, will negatively impact the federal firm power customers and ratepayers in South Dakota and throughout the Missouri River basin.

I am concerned that the bill establishes a harmful precedent of providing subsidized electric transmission benefits to a group that no longer chooses to adhere to the federal rules or the responsibilities and obligations that are attached to that benefit. Switching out one set of federal obligations—Bureau of Reclamation oversight—while retaining some of the benefits—subsidized transmission costs—weakens the concept of the Pick-Sloan Missouri River basin program and unfairly shifts costs to other participants, such as rural electric cooperatives and municipal electric utilities. Ultimately, these costs will manifest themselves through higher power rates, discouraging the very type of economic development that the multi-purpose Pick-Sloan program was created to produce.

Enacting this bill without first amending the terms and conditions from which these three federal irrigation projects receive subsidized power costs opens the door to abuse of the long-established allocation and transmission of Pick-Sloan Missouri River basin federal hydropower. I do not oppose, and ultimately could support, the concept of transferring these three federal irrigation projects to the pertinent irrigation districts in Montana and North Dakota. Notwithstanding the conceptual merits in privatizing some irrigation projects, as a matter of equity and long-standing precedent, the legislation fails to protect other authorized purposes. Therefore, it would be premature for the committee to move the bill forward in its present form.

The stakeholders, Bureau of Reclamation, the states, and federal firm power customers have made some progress toward improving the power supply provisions of the bill, but more must be done to equitably treat all authorized participants and beneficiaries of Pick-Sloan power.

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

Senator BURNS. Thank you, Madam Chairman, for holding this hearing on this bill, S. 900, the Lower Yellowstone Reclamation Projects Conveyance Act. Yesterday a similar hearing was held in the House of Representatives, before its Water and Power Committee, on the House companion bill. I think this action here will allow us to move forward for the best interest of everyone involved. I want to thank John Keys for being here today, the Reclamation Director, and his continued attention and support for the reclamation infrastructure. I read in his report here about how the project's a little premature and give all the reasons for it; but I've introduced the same bill in the 106th Congress and the 105th Congress and I wonder how much time it's going to take to be premature. I'll ask you that question later on, John, and you'll have to deal with that some way or other. And also to Jerry Nypen, manger of the Lower Yellowstone Irrigation Projects and Tom Graves, the director of the Mid-West Electric Consumers Association; thanks to all of you for making the trip and moving this issue forward.

The concept outlined in the bill is not new. I sponsored the legislation, of course, in the 107th and 106th Congresses. Simply put, the goal is to allow certain irrigation districts along the Lower Yellowstone River to gain title to the irrigation projects that they now operate. Right now the Federal Government holds title to those projects even though they are successfully managed by the districts and will be completely paid for as a part of this legislation. Irrigation is the backbone, of course, of Montana's economy in northeast

Montana along the Yellowstone River; it is key to developing our State today as they were when they were built some 100 years ago; and they're still important. Five hundred families in northeast Montana depend on the four irrigation projects identified in this bill: the two Lower Yellowstone projects, the Intake project and the Savage project. And, in the best interest of the Federal taxpayers as well as the local communities to cede these properties to the folks who can operate them most efficiently.

While I am supportive of turning over the Federal projects to the people who manage and operate them, I understand that S. 900 does contain some challenges in its current form. We've been working with the Bureau of Reclamation and the irrigators and the power community to bring each of these concerns to resolution. Today's hearing may give us an opportunity to listen to each other again and if we've got any new ideas, to bring them to the forefront and talk about them.

And I want to thank each and all of the principles for being here today and I look forward to working with all of you as we try to move this to a final solution. And I thank the chairman.

Senator MURKOWSKI. Thank you.

Senator Bingaman.

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR
FROM NEW MEXICO**

Senator BINGAMAN. Thank you very much, Madam Chairman, for having this hearing, and I wanted to say just a few words about S. 1957, which is the bill that I've introduced that is subject to this hearing. Also, I want to particularly welcome Andy Core from the New Mexico State Engineer's Office. And I know we have others, C. Allan Jones, the director of the Texas Water Resources Institute, who's also going to testify on this bill.

This is a bill that came out as a result of a field hearing that we had 2 years ago in Las Cruces, New Mexico. The discussion there concerned water supply issues along the U.S.-Mexico border and particularly as it related to the Juarez-El Paso area in southern Doña Ana County in my State. What struck me most at the hearing was the lack of any consensus on the long-term sustainability of the groundwater resources in the region. Many of those groundwater resources are aquifers that are shared between the United States and Mexico. We've got rapid population growth, we've got increased demand for water; in my view we need to have a common understanding of the limits of the shared groundwater resources, and in order to accomplish that we developed S. 1957. It's intended to achieve a bi-national consensus on the extent and the availability of water supplies along the border. It does this by establishing a scientific program involving the entities on both sides of the border to comprehensively assess transboundary aquifers. The information and scientific tools developed would be, in my view, very valuable to state and local resource managers.

The efforts to be led in this bill, we call for it to be led by the U.S. Geological Survey working in partnership with the border States—that's Texas, New Mexico, Arizona and California—and also the local entities. I should note that the bill not only provides resources and technical assistance; it also maintains and protects

the primacy of those States over water resources. I'm very pleased that we have widespread support and I have various letters of support that I will urge be included in the record, Madam Chairman, as part of this hearing.

Senator MURKOWSKI. They will be included.

Senator BINGAMAN. Thank you very much. And I also very much appreciate Senator Domenici and Senator Kyle co-sponsoring the bill. And I appreciate you, again, having the hearing. Thank you.

Senator MURKOWSKI. All right. At this time we will turn to our first panel; Commissioner John Keys with the Bureau of Reclamation. If you would present us with your testimony, please.

**STATEMENT OF JOHN W. KEYS, III, COMMISSIONER, U.S.
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. KEYS. Madam Chairman, it's certainly my pleasure to be here again this afternoon. We have submitted official testimony on all five of these bills and we would appreciate them being included in the record.

Senator MURKOWSKI. They will be included in the record.

Mr. KEYS. Thank you. It's a pleasure to be here and talk about the bills before the committee today—S. 2304, the North Loup Missouri River Project; H.R. 1648, Carpinteria and Montecito Conveyance Act; H.R. 1732, Williamson County Water Recycling; S. 900, the Lower Yellowstone Project Conveyance Act, and S. 1876, the Provo River Tidal Transfer.

Madam Chairman, let me begin with Senator Hagel's North Loup bill, S. 2304. This is a good bill; it's needed by the project's sponsors and the administration supports it. It clarifies that the acreage for which the North Loup Project is authorized to provide irrigation water is approximately 53,000 acres. This minor acreage change will allow for practical and economic project development in light of current and future circumstances.

The second bill, H.R. 1648, Carpinteria and Montecito Conveyance Act, would transfer title to two sets of facilities—pipelines and laterals, pumping plants, and real estate to the water districts that use them. Madam Chairman, these two title transfers are about local control. Once the titles are transferred the districts will no longer have to seek approval for easements, crossing permits or work to be done on the project. Reclamation also wins because our administrative load would lighten because of that transfer.

Madam Chairman, these districts deserve a pat on the back for their cooperative spirit through the detailed title transfer process. The path has been smooth and the process cost-effective for all involved. Others considering title transfers should look to this one as a model of how to get it done well. The administration strongly supports passage of H.R. 1648.

Madam Chairman, the third bill, H.R. 1732, would authorize a water reclamation project for Williamson County, Texas. The Lower Colorado River Authority has some conceptual plans for this project and Reclamation's taken a look at them but we have not performed an appraisal-level study of these plans yet. We don't know whether the Authority's work meets Reclamation requirements; we don't know that a full-blown feasibility study would be possible in following the criterion set out in title XVI of Public Law

102-575. Unless and until we perform an appraisal-level study we can't answer these questions. Therefore, it's not possible for us to support H.R. 1732 at this time.

S. 900 also presents some tough issues. In fact, Madam Chairman, my predecessor and I combined have testified on Lower Yellowstone title transfer bills three times since 1999. On none of these occasions was Reclamation able to support the legislation, and I regret to say that although we have made a number of accommodations and have worked through a number of the tough issues there, we still cannot support it today, at least in its present form.

The major impediment to our support is the bill's requirement that we continue providing districts with Pick-Sloan Missouri Basin project-use power although the facilities would no longer be owned by the United States. These costs increased when wholesale power was deregulated such that the wheeling cost now exceeds the cost of energy. Because the payments are made out of Western Area Power Administration revenues the result would be preferred power customers subsidizing the wheeling costs for a non-Federal project.

The fish protection devices provided for in section 7 of S. 900 also present timing problems. The bill requires Reclamation to provide the devices within 2 years after enactment, followed by a 2-year monitoring period. Any needed modifications based on monitoring results would be required within 3 years after initial construction of the devices. This may not be enough time to allow us to see how the fish protection devices work in normal flow conditions. While we've been talking with the Fish and Wildlife Service, we are not yet in formal consultation under section 7 of the Endangers Species Act. So we cannot yet measure our cost exposure on fish protection. Other technical concerns are set out in our formal testimony. For now, you and Senator Burns and the rest of the Montana delegation have our pledge to continue working with you on those details to seek solutions for the Lower Yellowstone title transfer.

Finally, Madam Chairman, let me explain where we are on the Provo River title transfer, S. 1876. We began working with the Provo River Water Users Association and the Metro Water District of Salt Lake and Sandy in late 2002. We've made a lot of progress since then. In August 2003, we signed an agreement with the Association and District for accomplishing the title transfer process. Since then, other districts have joined the process. To start the NEPA-required public review process, our working group compiled a list of more than 2,000 interested parties in this title transfer. In September 2003, a letter describing the proposal went to all on that list. At the end of October we held three public hearings, at which many issues were raised, and kept the comment period open through November. Reclamation is now drafting and is close to completion of the environmental assessment as we speak.

Madam Chairman, we need to hammer out several agreements among all the parties to make sure that the title transfer works without adversely impacting other parties. One of these is the Central Utah Project, which runs so closely to the Provo River Project property that the two share access roads to get into the infrastructure.

Madam Chairman, other concerns we have with S. 1876 are set out in our prepared testimony. Mainly, they're technical corrections to the bill. We think that they can all be alleviated if we and the interested parties can continue moving forward with our title transfer process and then come back to Congress with a more clear picture of how the transfer legislation should look. With the recommended issues and technical corrections addressed I believe that the Department could support passage of S. 1876 at that time. Of course, we will not slow down in our efforts to complete our part of the work to get the Provo River Project title transfer completed.

Madam Chairman, that completes my oral testimony and I would certainly respond to any questions that you all might have.

[The prepared statements of Mr. Keys follow:]

PREPARED STATEMENT OF JOHN W. KEYS, III, COMMISSIONER,
BUREAU OF RECLAMATION

ON S. 900

Madam Chairman, my name is John Keys. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on S. 900, the Lower Yellowstone Reclamation Project Conveyance Act which directs the Secretary of the Interior to transfer title of the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program (P-SMBP), and the Intake Irrigation Project to the respective irrigation districts.

In October 1999, March 2000, and June 2002, Reclamation testified before Congress on proposals similar to S. 900. In each case, Reclamation opposed the legislation as premature since significant issues related to the delivery of Pick-Sloan Missouri Basin Program power, fish and wildlife mitigation, and a number of other issues remained unresolved. Since that time, Reclamation has worked closely with the districts, the State of Montana and the U.S. Fish and Wildlife Service on a number of these issues. Progress has been made and changes have been incorporated into the legislation to reflect that progress but significant issues remain. Therefore, it is not yet possible for the Department of the Interior to support S. 900 in its present form.

Delivery of Project Use Power After Transfer: Section 6 of S. 900 requires the Secretary to continue providing the districts with P-SMBP project-use power although the facilities would no longer be owned by the Federal government. While the legislation proposes to set the rate paid equal to the "preference" or "firm" power rate as well as to eliminate the adjustment to the rate based upon the districts' ability-to-pay, the districts would continue to enjoy the subsidized benefit of their power wheeled across non-Federal lines.

The 1944 Flood Control Act requires that P-SMBP deliver project use power directly to the major project pumping plants. This means that when Federal transmission lines are not available to the major pumping plants and the project use power is wheeled to the major pumping plants over non-Federal transmission lines, the P-SMBP, is responsible for these "in-lieu-of" costs. The cost of this wheeling significantly increased with deregulation of the wholesale power market.

Currently, the Federal government is paying wheeling costs to the rural electric cooperative serving the Lower Yellowstone and Savage Irrigation Districts. For both the Lower Yellowstone and Savage Irrigation Districts the cost of wheeling exceeds the cost of the energy. In 2003, \$69,012 was paid for wheeling costs associated with the Lower Yellowstone Irrigation Districts and \$78,372 was paid to wheel power to the Savage Irrigation District.

Payments are made by Western Area Power Administration and the costs are then incorporated into the P-SMBP Power Repayment Study. This results in the preference power customers subsidizing most of the wheeling costs for a non-Federal project. It is the Administration's view that the federal government should not be asked to continue subsidizing the cost of transmitting power to these customers.

Authorization: S. 900 includes language that may make title transfer a nondiscretionary action. If Congress intends for this action to be treated as discretionary, the word "shall" should be replaced by "is authorized to" in section 3, Conveyance of Projects.

Yellowstone River Fisheries Protection: Section 7 of S. 900 requires the Secretary in cooperation with the irrigation districts to provide fish protection devices within

two years of enactment, and then to complete all modifications within three years after they are constructed. Reclamation would be required to provide these devices on a non-reimbursable basis even though they will ultimately become part of a non-Federal project.

While informal discussion with U.S. Fish and Wildlife Service is underway on Project operations including fish protection devices, formal consultation under Section 7 of the Endangered Species Act has not begun. The two year monitoring period to measure the effectiveness of the fish protection devices begins at the same time as a three year window in which modifications based on the monitoring must be completed. These time limits may be insufficient to determine whether or not the devices operate successfully under normal flow conditions.

Price and Valuation: Section 3(a)(4)(a) provides that title to Reclamation withdrawn lands be transferred “for their value in providing operation and maintenance benefits” only. This condition on valuation departs from formulas used in other title transfers and may result in undervaluation. Valuation should be based on fair market value.

Technical Issues: In addition to the items raised above, we have also identified several technical issues that should be addressed:

Withdrawal Revocation Section: While the technical corrections presented in our last testimony have been incorporated into S. 900, in order to ensure that all the withdrawals are lifted it is suggested section 3(b) be replaced with the following:

All Bureau of Reclamation withdrawals are hereby revoked in their entirety; however, such revocation shall apply only to the lands within the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project and shall not extend to lands outside of the project boundaries.

Contract Citation: The contract identified in section 3(a)(4)(B)(i) has expired and has not been renewed. Savage Irrigation District has been operating under interim contracts. We suggest section 3(a)(4)(B)(i) be revised to read:

As a condition of transfer, the Secretary shall receive an amount from the Savage Irrigation District computed as the present value of the remaining water supply repayment obligation of \$52,680 as full payment of the Savage Irrigation District's share of the remaining unpaid construction costs of the Savage Unit.

Power Assistance Payments: The first sentence of section 3(a)(4)(B)(ii) should be amended to read as follows to reflect the amount from which preference value will be calculated. This will ensure that the discounted amount stays accurate as rates change.

As a condition of transfer, the Secretary shall accept an amount computed as the present value of \$635,879, as determined by the Secretary, as payment from the Pick-Sloan Missouri Basin Program (Eastern Division) power customers under the terms specified in this section.

Additionally, in the second sentence of this section, payment should be made to the Reclamation fund of the Treasury in Fiscal Year 2004 or in the year in which the Act becomes law, instead of Fiscal Year 2003 as currently stated.

Power: The term “preference power rate” in section 6 is undefined. If the intent is for the rate to be the 16.04 mills/kWh rate sometimes referred to as the “preference power rate” the wording should be changed to read “Pick-Sloan Missouri Basin Program Eastern Division Firm Power Service Rate.”

In closing, Reclamation continues to work with the districts and the states of Montana and North Dakota on this title transfer. The project power issue is difficult, but we will continue working with this Committee, the districts, Senator Burns and the Montana delegation to identify solutions.

That concludes my statement, I would be happy to answer any questions.

ON S. 1876

My name is John Keys and I am the Commissioner of the Bureau of Reclamation. I am pleased to present the views of the Department regarding S. 1876, legislation to authorize the Secretary of the Interior to convey certain, lands and facilities of the Provo River Project in Utah.

The Department of the Interior (Department), has an active title transfer program and supports transferring ownership of certain Reclamation project facilities to non-Federal entities, particularly in cases where transfers could create opportunities, not just for those who receive title, but for other stakeholders and the public as well. While we believe this transfer has the potential to create such opportunities, the

Department has several concerns with S. 1876, as it was introduced. It is our understanding that the proponents of this transfer intend to suggest a number of specific revisions to S. 1876 which could help to resolve some of our concerns.

Background

The Provo River Project stores and delivers water from the Provo River for irrigation and municipal and industrial uses along the Wasatch Front, a highly urbanized area, located within Utah and Salt Lake Counties. The three features of the project under consideration for transfer are the 22-mile-long Provo Reservoir Canal; a 3.79-acre office building site, which would be transferred to the Provo River Water Users Association (Association); and the 42-mile-long Salt Lake Aqueduct, which would be transferred to the Metropolitan Water District of Salt Lake & Sandy (District).

Reclamation began discussing this transfer with the Association and the District in November 2002. Since that time much work has been done and a great deal of progress has been made.

In August 2003, Reclamation, the Association, and the District signed an agreement entitled "Contributed Funds Act and Memorandum of Agreement" (Contract No. 03-WC40-8800) which articulated the respective roles, responsibilities, and cost obligations for carrying out the title transfer process. Since that time, several other water user entities, including the Central Utah Water Conservancy District (Central) and the Jordan Valley Water Conservancy District (Jordan Valley) also have become involved. A title transfer work group made up of these entities and Reclamation was formed to discuss the issues of importance to the entities involved, and that work group has been meeting regularly.

In order to initiate the public review process required under the National Environmental Policy Act (NEPA), the title transfer work group assembled a list of more than 2,000 individuals, agencies, and other entities having a potential interest in this transfer. This list includes a large number of owners of private property located adjacent to the transfer facilities. It also includes several state and federal agencies and environmental and recreational interest groups. On September 29, 2003, an initial scoping letter describing the proposal was mailed to all on this list. Public scoping meetings were held on October 27, 28, and 30, 2003 in Sandy, Lehi, and Provo respectively. Many concerns and issues were raised at these meetings and in subsequent calls, letters and e-mails by interested stakeholders. To enable anyone else with interests and concerns to have an opportunity to voice them, the official public comment period was held open until November 26, 2003.

As the lead agency, Reclamation is in the process of completing a draft environmental assessment. The Department of the Interior's Central Utah Project Completion Act Office, the U.S. Forest Service, and the National Park Service are cooperating agencies. The draft environmental assessment is expected to be released to the public for review and comment by the end of May 2004.

S. 1876

S. 1876 requires the Secretary to convey to the Provo River Water Users Association, pursuant to a transfer agreement still being drafted, all right, title, and interest of the United States in certain lands, rights-of-way, and facilities that are part of the Provo River Project in Utah. The bill does not impair any existing contracts that allow for, or create a right, to convey water through the Provo Reservoir Canal.

Section 6 of S. 1876 requires that the Association and the Metropolitan Water District of Salt Lake & Sandy pay or contribute to administrative costs, real estate transfer costs, and the costs of compliance with the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act of 1973 (ESA), the National Historic Preservation Act, and other Federal cultural resource laws included in the transfer agreement. S. 1876 clearly states in Section 7 that before any property is conveyed, the Secretary must complete all actions required under NEPA, the ESA, and all other applicable laws. Section 6 also requires the Association and the District to pay the net present value of the property being transferred.

Finally in Section 9, the bill makes it clear that, upon conveyance of the land and facilities, the United States will not be liable for future occurrences on those lands and facilities, and the Association and District will not be entitled to receive any future Reclamation benefits with respect to the transferred properties, except those benefits available to other non-Reclamation facilities.

Issues of Concern

Despite the Administration's support for the transfer of these lands and facilities, we have a number of concerns about S. 1876 as drafted.

Agreements: During the course of its deliberations, the members of the work group identified several written agreements among the parties that are needed in order to ensure that the transfer achieves its intended purposes without adversely impact-

ing the other affected parties. At present, many of the identified agreements are being drafted by the work group, but none have been completed or signed. Section 3(a) of the bill partially addresses this issue by requiring that the Association provide the Secretary with certification, prior to transfer. We are concerned that this does not fully address our situation or the issue.

We believe that completing the agreements prior to passage of the legislation will expedite implementation of the transfer. Our experience has shown that transfers move more expeditiously when involved parties complete preliminary work, including written agreements, before proceeding with legislation. In many cases where agreements were not completed before legislation was passed, significant delays occurred while issues were identified, negotiated, and satisfactorily addressed in agreements.

If agreements are not completed prior to passage of the legislation, then we believe the legislation should specify that certain minimum requirements be included in the agreements. For example, Section 2(8) of the bill defines a transfer agreement among the United States, the District and the Association and requires the transfer to be completed in accordance with the terms of that transfer agreement. While the work group has been actively engaged in drafting the transfer agreement, it is not yet finalized or signed. This transfer agreement should include descriptions and maps of land interests to be transferred, including rights-of-way. Also, at a minimum, the agreement defined in Section 2(8) should include terms which: (1) provide for orderly and efficient transfer and protect public interests; (2) preserve access for operation and maintenance of nearby facilities which will continue to be federally owned; (3) provide for coordinated operation of transferred and retained portions of the Provo River Project; and (4) ensure the Department can continue to fulfill its obligations.

Certification of Agreements: Section 3(a) directs the Secretary to convey the lands and facilities of the Project when the Association has certified that the agreements entered into are satisfactory to the Association, District, Central, and Jordan Valley. Since many of the features and facilities of the Project will not be conveyed and because of the close relationship between this project and the Central Utah Project, which will not be transferred, the Secretary will be a party to several of these agreements. As such, we believe that both the Association and the Secretary should certify the agreements are satisfactory.

Operational Access: The canal and the aqueduct to be transferred in S. 1876 are in close proximity and operationally related to the Central Utah Project which will remain in Federal ownership. For example, for a sizable portion of its alignment, the canal lies so near key Central Utah Project facilities that lack of access to the canal right-of-way, would make operation and maintenance of those Central Utah Project facilities difficult. Conversely, operation and maintenance of the canal would be problematic without access to Central Utah Project lands. Therefore, as indicated above, it is important that provisions for reciprocal access are included in the agreement defined in Section 2(8) of the bill.

National Forest System: In several locations, the Salt Lake Aqueduct crosses lands lying within the boundaries of the Uinta and Wasatch-Cache National Forests under the jurisdiction of the U.S. Forest Service. Prior to constructing the aqueduct, Reclamation withdrew significant blocks of land in locations where the aqueduct alignment crosses through these National Forests. At present, operation and maintenance of the aqueduct by the District within National Forest boundaries is possible solely because the aqueduct is federally owned and located upon Reclamation withdrawals. Any revocation of Reclamation's withdrawals will return primary jurisdiction of these areas to the U.S. Forest Service. S. 1876 needs to address this issue or it will significantly delay conveyance of the lands and rights-of-way and will negatively impact the District's ability to operate and maintain the facilities once transferred. We also recommend the transfer agreement defined in Section 2(8) include a suitable provision covering replacement of withdrawals with a linear permanent easement for the District. We recommend that the Department of the Interior issue the easement of the Aqueduct. At that point, the Bureau of Reclamation would revoke the withdrawal on the National Forest System lands, and then the Forest Service would administer the easement.

Timpanogos Interagency Land Exchange Act (P.L. 107-329): On December 6, 2002, Congress passed the Timpanogos Interagency Land Exchange Act (TILEA), P.L. 107-329. This Act authorizes the acquisition of land and construction of an interagency administrative and visitor facility by the National Park Service and the U.S. Forest Service at the entrance to American Fork Canyon. The proposed exchange would be with a private landowner who is willing to trade property in Highland City, Utah, for six parcels of National Forest Land. The private property proposed to be acquired for the site of the administrative and visitor facility is bisected by

a strip of land owned in fee title by the United States and administered by Reclamation for the aqueduct. If fee title were transferred to the District at this location, the administrative and visitor facility site would be bisected by a strip of District-owned lands. To avoid this situation, we believe the transfer agreement defined in Section 2(8) should provide for the Secretary to convey an appropriate permanent easement to the District for the aqueduct where it bisects the administrative and visitor facility site and then to transfer jurisdiction over the same area to the U.S. Forest Service to be administered as part of the administrative and visitor facility site.

Impact on the On-Going Utah Lake Basin Water Delivery System EIS: Central and the Department recently released a draft environmental impact statement (EIS) for the Utah Lake Basin Water Delivery System (ULS) to the public. This draft EIS indicates that about 24,000 acre-feet of CUP M&I water would be conveyed through the Provo Reservoir Canal for use in Salt Lake County, which is proposed for transfer under S. 1876. As part of this legislation, or the transfer agreement for these facilities, it is important to ensure that this transfer does not impact the NEPA compliance process for the ULS or, more importantly, prevent the utilization of the canal to convey CUP M&I water.

Technical Issues

In addition to the policy and procedural issues identified above, we have identified several minor technical corrections to S. 1876 that are needed in order to facilitate completion of the transfer.

Include Both Reservoirs at the Salt Lake Aqueduct: In the definition for the Salt Lake Aqueduct, S. 1876 refers to the “Terminal Reservoir located at 3300 South and I-215.” There are in fact two reservoirs located at the terminus of the Salt Lake Aqueduct. We believe any transfer should include both. Therefore, Section 2(g) of the bill should be amended to change “Terminal Reservoir” to “Terminal Reservoirs”.

Make Consistent with Existing Contributed Funds Act Agreement and Memorandum of Agreement: On August 21, 2003 Reclamation, the Association, and the District signed an agreement entitled “Contributed Funds Act Agreement and Memorandum of Agreement” (Contract No. 03-WC-40-8800) (Contributed Funds Act Agreement) to formalize, among other things, the cost-sharing obligations of the various parties for transfer-related expenses. To ensure that the legislation is consistent with the already signed Contributed Funds Act Agreement, Section 6(a) of the bill should be amended to read “The Secretary shall require, as a condition of the conveyance under section 3, that the Association and the District pay all administrative costs and real estate transfer costs, and half of costs associated with compliance with the National Environmental Policy Act of 1969, the Endangered Species Act, the National Historic Preservation Act, and other federal cultural resource laws, all as described in the Agreement.” This would make it consistent with the terms of the existing Contributed Funds Act Agreement.

Modify Payment Requirement: Section 6(b)(1) requires the Association to pay “the net present value of the Provo Reservoir Canal and the Pleasant Grove Property”. Similarly, Section 6(b)(2) requires the District to pay “the net present value of the Salt Lake Aqueduct.”

We believe the intent of these sections is to require the transfer recipients to pay, not the net present value of a facility (potentially, a very large sum), but rather the present value of the remaining obligations for that facility. Therefore, we recommend these portions of Section 6(b) be amended to read:

(1) “In addition to subsection (a) the Secretary shall also require, as a condition of the conveyances under Sections 3(a) and 3(b), that the Association pay to the United States the net present value of the remaining debt obligation, including future miscellaneous revenue streams, attributable to the Provo Reservoir Canal and the Pleasant Grove Property, as described in the Agreement; Provided, however, that the Association may deduct from the net present value such sums as are required to accomplish the reimbursement described in the Contributed Funds Act Agreement.”

(2) “In addition to subsection (a) the Secretary shall also require, as a condition of the conveyance under Section 3(c), that the District pay to the United States the net present value of the remaining debt obligation, including, future miscellaneous revenue streams, attributable to the Salt Lake Aqueduct, as described in the Agreement; Provided, however, that the Association may deduct from the net present value such sums as are required to accomplish the reimbursement described in the Contributed Funds Act Agreement.”

National Environmental Policy Act Citation: Section 7 should be modified to correct an error in the citation for the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.).

Conclusion

The Department recognizes significant benefits that may be achieved by the proposed title transfer. Much work has already been accomplished. If the above-mentioned issues and technical corrections can be addressed, I believe the Department could support passage of this legislation.

Mr. Chairman, we appreciate the excellent work and cooperation we have had with the district, the Association, Central, Jordan Valley, the Central Utah Project Completion Act Office, the U.S. Forest Service and the National Park Service. We look forward to continuing that effort and to working with Senator Bennett, Committee staff, as well as the Association, the District, the Title Transfer Working Group and anyone else to craft provisions necessary to resolve these issues. That concludes my testimony. I would be pleased to answer any questions.

ON S. 2304

My name is John W. Keys III. I am Commissioner of the Bureau of Reclamation. I am pleased to present the views of the Department of the Interior on S. 2304 and H.R. 3209.

S. 2304 and H.R. 3209 would amend Title V, Section 501 of Public Law 92-514 known as the Reclamation Project Authorization Act of 1972. The original Act provided for the reauthorization of the North Loup Division of the Pick-Sloan Missouri Basin Program. The North Loup Division was to provide irrigation water for 53,000 acres of land. S. 2304 and H.R. 3209 would amend that authorization to "approximately 53,000 acres".

There is no practical method of final project development that results in exactly 53,000 acres. The number of acres under irrigation is subject to change due to factors such as continuing project development and land use changes. The passage of S. 2304 and H.R. 3209 which amends the current reauthorizing language by striking "fifty-three thousand acres" and inserting "approximately 53,000 acres" would provide for authorization of minor acreage changes to allow for practical and economical project development in light of current and future circumstances.

Mr. Chairman, the Department supports S. 2304 and H.R. 3209. Again, thank you for the opportunity to appear before you today. That concludes my statement. I would be pleased to answer any questions.

ON H.R. 1648

Good Afternoon, I am John Keys, Commissioner of Reclamation. I am pleased to be here today to provide the Administration's views on H.R. 1648, legislation to authorize the Secretary of the Interior to convey certain Federally-owned water distribution systems of the Cachuma Project in California to the Carpinteria Water Valley District and the Montecito Water District. We strongly support this legislation and applaud the committee for considering it today.

Madam Chairman, H.R. 1648 would actually authorize two distinct title transfers, both of which are reflected in separate agreements that can be executed as soon as the authorizing legislation is adopted.

The proposed transfers would include the following facilities:

Carpinteria: The distribution system located in the City of Carpinteria, California. This system consists of 36 miles of pipelines and laterals; Gobernador Reservoir; Shephard Mesa Tank; Lateral IOL, Carpinteria and Shephard Mesa pumping plants; several pressure regulating vaults located throughout the system; fences and structures; and rights-of-way, easements, leases and other property permitting access to the Federal system.

Montecito: These facilities, located in Montecito, California consist of 9½ miles of pipelines and laterals; the Asegra Pumping Plant (a deactivated pumping plant connected to a portion of lateral 3 located on Asegra Road); Ortega Ridge Pumping Plant located on Ortega Ridge Road; pressure regulating vaults, fences and structures appurtenant to the distribution system; and rights-of-way, easements, leases, and other property permitting access to the Federal system.

The transfer would apply only to lands and facilities associated with these facilities and would not affect the Districts' existing water service contract with the Santa Barbara County Water Agency nor the Federal government receipts from water deliveries under that contract.

Anticipated Benefits of These Title Transfers: We believe that these title transfers will enable the districts to gain greater local control of the distribution facilities that were constructed for their use. It will also eliminate the need for duplicative and

unnecessary administrative obligations that exist for the Districts based upon the fact that title to the facilities is held by the United States. Once title is transferred, the district will no longer have to seek approval for easements, crossing permits, or any work on the facilities, required while these facilities are Federally owned.

For Reclamation, while we currently expend limited resources on these facilities, there is an important benefit as well. Upon title transfer, periodic inspections and the processing of paperwork that is currently required by Reclamation will no longer be necessary. We can redirect our resources to other priority activities.

Title Transfer Processes: The successful processes that we went through to complete these two title transfers have been cooperative, smooth, efficient and—most importantly—cost effective. The relationship and the process is a model for others to follow. Let me outline how that went:

Carpinteria: On March 4, 1999, the Carpinteria Valley Water District requested title to the distribution system referenced above, which they have operated and maintained since 1956. Upon receipt of that request, Reclamation and the District developed an agreement on responsibilities and costs for carrying out the title transfer process, spelling out who is responsible for which activities and how costs are distributed. The District and Reclamation signed it in December 1999.

On April 25, 2000, Reclamation and the District jointly held a public scoping session to solicit comments on the proposed transfer of ownership from United States to the District. No issues were identified.

Subsequently the District in consultation with Reclamation, completed activities pursuant to NEPA, the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and the Fish and Wildlife Coordination Act, (FWCA). On August 30, 2000, a Finding of No Significant Impact (FONSI) was issued.

On September 19, 2000, in Carpinteria, California, Reclamation and the District held a public negotiation session to develop a title transfer agreement for the Federally-owned facilities (Agreement No. 00-XC-20-0364), which spells out the terms and conditions of this title transfer and is the basis of this section of the legislation.

Montecito: The process with the facilities to be transferred to the Montecito Water District resembled the one for Carpinteria.

On March 23, 1999, the Montecito Water District contacted Reclamation to formally request title to the distribution system used exclusively by them and which they have operated and maintained since 1995, when they assumed responsibility from the Summerland County Water District, who had operated the system since 1956.

In April 2000, the District signed a letter of agreement with Reclamation to address costs and responsibilities for the title transfer process.

On November 29, 2000, Reclamation and the District jointly held a public scoping session to solicit comments on the proposed transfer of ownership from United States to the District. No issues were identified.

Subsequently, the District, in consultation with Reclamation, completed activities pursuant to NEPA, the NHPA, the ESA, and the FWCA. On August 6, 2001 a FONSI was issued.

On March 15, 2001, in Montecito California, Reclamation and the District held a public negotiation session to develop a title transfer agreement for the Federally-owned facilities (Agreement No. 01-XC-20-0365), which spells out the terms and conditions of this title transfer, which is the basis of the transfer of these facilities in the legislation.

On March 26, 2001, the proposed draft Agreement was made available for a 30-day public review and comment period. No comments were received.

On April 24, 2002, Representative Capps asked Reclamation to help draft legislation to implement both the Carpinteria and Montecito agreements. On April 29, 2002, the Department of the Interior provided such a drafting service to Representative Capps.

General Background on Reclamation's Title Transfer Activities

Having explained why Reclamation fully supports H.R. 1648 and feels ready to carry it out, may I briefly update the committee on Reclamation's recent title transfer activities.

Since 1996, the Bureau of Reclamation has transferred title to sixteen projects or parts of projects across the west—pursuant to various Acts of Congress. Of those sixteen, Reclamation has been given authority by Congress to transfer title to thirteen projects or parts of projects since 2000, including the transfer of facilities and lands to the Fremont-Madison Irrigation District in Idaho which was passed by this Congress and signed into law by the President on September 30, 2003. Since each project is unique, each of the laws enacted by Congress has different terms, and each requires that different actions—such as the completion of the process under

the National Environmental Policy Act (NEPA) or agreements with State and local agencies over recreation or cultural resources management be taken prior to transfer.

I am pleased to say that Reclamation has been moving expeditiously to implement each of these laws. Since May 2001, Reclamation has transferred nine projects, or parts of projects. This means that only three of the transfers that are currently authorized have yet to be implemented. Of those three, one (Humboldt) was adopted late in the 107th Congress, one (Wellton Mohawk) required that an EIS be completed and the transfer is expected to be completed in 2005, and one (Fremont-Madison) was adopted in the 108th Congress and is moving forward on schedule.

It is important to note that each of the completed transfers was done on time or ahead of our schedule and within the budgets that we estimated when we started. I commend the hard work and cooperation we have received from the water districts and entities who have been the recipients of these facilities as well as the other stakeholders who have been involved. I am also gratified by our staff's dedication to completing these transfers in a timely and cost-effective way.

Conclusion

As I conclude my remarks Madam Chairman, I would like to commend several people who worked hard to make these transfers possible. I would like to thank Representative Capps for working closely with us and with the District to move this legislation forward. Charles Hamilton, General Manager and Secretary of the Carpinteria Valley Water District, and Fred Adjarian of the Montecito Water District were absolutely instrumental in making this happen. They were creative and cooperative in identifying and solving issues even before they became controversial or problematic. Sheryl Carter from Reclamation's South Central California Area Office did an outstanding job coordinating this entire process for Reclamation.

In summary, Madam Chairman, we strongly support passage of H.R. 1648. It is a good bill, a good title transfer, and provides a benefit to both the Districts and to Reclamation. I urge the Committee to move this legislation.

That concludes my testimony; I would be pleased to answer any questions.

ON H.R. 1732

My name is John Keys III. I am the Commissioner of the Bureau of Reclamation. I am pleased to present the views of the Department of the Interior on H.R. 1732, concerning the Williamson County water reclamation project in the State of Texas.

H.R. 1732 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (Title XVI of Public Law 102-575), authorizing the Secretary of the Interior in cooperation with the Lower Colorado River Authority, to participate in the design, planning, and construction of a water reclamation project in Williamson County, Texas. H.R. 1732 limits the Federal share of project costs to 25 percent of the total project costs and restricts the Secretary from providing funding for the operation and maintenance. Additionally, existing law, section 1631 of Public Law 102-575, limits the Federal share of project costs to not exceed \$20 million (October 1996 prices).

The Lower Colorado River Authority has developed conceptual plans for the project, and Reclamation has completed a cursory review of this proposal. Reclamation has not yet conducted an appraisal level study. This appraisal study would be needed to determine if the preliminary work initiated by the Lower Colorado River Authority meets Reclamation's requirements and to evaluate the potential for a feasibility study per criteria developed in accordance with Title XVI of P.L. 102-575. In that respect, until we have more information, we cannot comment on the merits of the project itself and therefore cannot support H.R. 1732.

The Department also believes enactment of this legislation authorizing new construction projects is likely to place an additional burden on Reclamation's already constrained budget. With the tremendous backlog of Title XVI projects that already exist (currently estimated at about \$2.6 billion), we do not support the addition of new wastewater projects at this time.

For the record, Mr. Chairman, in 1992, the Reclamation Projects Authorization and Adjustment Act (Public Law 102-575) was enacted. Title XVI of this Act, the Reclamation Wastewater and Groundwater Study and Facilities Act, authorized construction of five water reclamation and reuse projects. The Secretary was also authorized to undertake a program to identify other water recycling opportunities throughout the 17 western United States and to conduct appraisal level and feasibility level studies to determine if those opportunities are worthy of implementation. In addition, the Secretary was authorized to conduct research and to construct, op-

erate, and maintain demonstration projects. Reclamation has been administering a grant program to fund these Title XVI activities since FY 1994.

In 1996, Public Law 104-266, the Reclamation Recycling and Water Conservation Act, was enacted. This Act amended Title XVI and authorized the Secretary to participate in the planning, design, and construction of 18 additional projects, including two desalination research and development projects. To date, Congress has provided funding to plan or construct 19 of 25 specifically authorized projects. Under the general authority of Title XVI, funding has been provided to identify and investigate, at the appraisal or feasibility level, eight potential water recycling projects, and to conduct three research and demonstration projects.

In summary, the Department strongly encourages local water recycling efforts and is engaged in numerous water reuse and recycling projects around the West. However, for the reasons provided above, the Department cannot, at this time, support authorizing this new request for Federally-assisted construction.

Thank you for the opportunity to comment on H.R. 1732. This concludes my statement and I would be happy to answer any questions.

Senator MURKOWSKI. I appreciate it. Thank you for the testimony. And next let's go to Mr. Charles Groat, the Director at the U.S. Geological Survey.

**STATEMENT OF CHARLES G. GROAT, DIRECTOR, U.S.
GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR**

Mr. GROAT. Thank you, Madam Chairman. I would prefer to summarize my comments; we've submitted formal testimony for the record, if you'll accept that.

Senator MURKOWSKI. Absolutely. It will be accepted as part of the record.

Mr. GROAT. Thank you very much. It's a pleasure to be here and have the opportunity to talk about S. 1957 and the forces that drive it, the significant challenges in water resources along the U.S.-Mexico border.

This is a good bill. It recognizes the fact that the regional problems along the border related to water related to the significant economic development are serious and are being taken seriously by a large number of entities that have resource management responsibilities along the border. When we recognize the fact that almost the entire length of that international boundary is semi-arid, it's easy to understand why the most challenging natural resource in the area is water. And when we recognize that it has to sustain not only the growing urban and industrial areas, but it has to sustain the traditional agricultural base and sustain the natural systems that are present along that border, it makes it even more daunting. The limited surface water resources in the border area have been allocated for several decades under both international and domestic agreements.

That leaves us, then, with the best hope for increased water supplies and more efficient use of water supplies in the area of having to deal with the groundwater resource. Not only would the proposed legislation allow us to have a better understanding of the existing aquifers and groundwater systems near the border, but provide perhaps the only chance for increasing the amount of water available there as a more detailed assessment of those aquifers is done, thus increasing the potential that we might find more resources. And we have to be looking, Madam Chairman, not only at the freshwater resources that we know and love so much, but the fact that there are saline groundwater resources there that, for example, El Paso was already utilizing and desalting as a means for

providing drinking water. We need to understand those resources as well because they are part of our future resource endowment. This act would do that.

S. 1957 directs the Secretary of the Interior to establish the United States-Mexico Transboundary Aquifer Assessment Program and to systematically assess those priority transboundary aquifers and to provide scientific foundation for State and local action, the managers of these resources, to address the water resources challenges in the border area. The bill also directs the Secretary of the Interior to implement this program in cooperation with—and it's more than cooperation, in fact, it's partnership—with the border States, universities, Water Resources Research Institutes and organizations that are cooperating on the other side of the border in Mexico.

S. 1957 objectives include expanding the existing agreements between the USGS and border States, Water Resources Research Institutes and that points out that we do have a good working relationship with them, and working with them in the future on this important work will be a natural thing for us as it will for them, and also with the appropriate authorities in both the United States and Mexico as we conduct these joint investigations. This collaboration would provide what managers need most, and that's a scientifically based and hopefully a very timely understanding of those aquifer systems upon which they can base the difficult decisions they make in their allocation responsibilities.

The role for the Department of the Interior in this bill is really consistent with what the USGS does in many of its resource monitoring, research, and assessment processes; that is, deal as a coalescer on issues related to resources that cross State boundaries and that cross international boundaries.

So in summation, Madam Chairman, we've talked with our partners a lot about this necessary work. There's good general agreement that what is needed is what this legislation provides, that systematic and thorough scientific and engineering assessment of these important groundwater systems. This would provide the most significant hope that there would be for having not only a better understanding, as I said earlier, but perhaps an expanded water supply base for the region. So, as I said earlier, this is a useful bill; it provides the research efforts that are necessary to address the water issues on the border, it contributes to a more comprehensive understanding of those resources, and it allows more interaction among the many parties in the region interested in those resources from both a scientific and managerial point of view. It's really important that a bi-national, multi-disciplinary effort be made and that it be a scientific approach to assess these inter-related issues. This bill makes this happen.

Thank you, Madam Chairman, I'd be happy to answer questions.
[The prepared statement of Mr. Groat follows:]

PREPARED STATEMENT OF CHARLES G. GROAT, DIRECTOR, U.S. GEOLOGICAL SURVEY,
DEPARTMENT OF THE INTERIOR, ON S. 1957

Madam Chairman and Members of the Subcommittee, thank you for the opportunity to participate in this hearing to discuss the important role of water in the U.S.-Mexico Border Region and to provide the Administration's views on S. 1957, the "United States-Mexico Transboundary Aquifer Assessment Act." The Adminis-

tration supports the provisions of S. 1957, "The United States-Mexico Transboundary Aquifer Assessment Act", however, we note that we currently are undertaking some work in the areas covered by the bill and that no new authorities are needed. The program authorized in this bill would need to compete among the Survey's other priorities for funding.

BACKGROUND

The international border region of the United States and Mexico (border region) has, during the past decade, experienced significant economic expansion accompanied by rapid population growth and urban development. The removal of international trade barriers quickly transformed the region's several small to mid-size cities into some of the fastest growing population centers in both countries. As a result, the people residing on both sides of the border now face numerous complex social, political, economic, infrastructure, public health, natural resource, and environmental-quality challenges. Along the entire length of the mostly arid international border region, perhaps the greatest challenge is how to effectively address the need for safe, sustainable supplies of good quality water for public, industrial, and agricultural uses, while maintaining a delicate balance with the needs of a very fragile natural-resource system.

The limited surface-water supplies along the border have been allocated for several decades under international treaties and domestic laws. However, allocation of ground water in the border region is poorly regulated because little is known about its availability, sustainability, and quality; about how ground water interacts with surface-water bodies; and about the susceptibility of ground water to contamination. Ground water also is an important source of life-sustaining base flow to many streams and essential for maintaining critical aquatic habitats.

Ground-water pumping has lowered the water table, depleted aquifers, and reduced the base flow of many streams thus decreasing the quantity of water available to support critical riparian habitats. Excessive ground-water pumping in some major urban centers, such as in the El Paso/Juarez metropolitan region, has caused land subsidence that has damaged homes and essential urban infrastructure. In addition to the effects of ground- and surface-water depletion, degradation of water quality has reduced habitat suitability for the region's diverse biota. The problems associated with limited water quantity and competing uses of water also have resulted in impaired and degraded water quality and serious issues related to human health on both sides of the border. Water quantity and quality will most likely be the determining and limiting factors that ultimately control future economic development, population growth, and human health along the United States-Mexico border.

S. 1957

S. 1957 directs the Secretary of the Interior to establish a United States-Mexico Transboundary Aquifer Assessment Program to systematically assess priority transboundary aquifers and provide the scientific foundation necessary for State and local officials to address pressing water resource challenges in the border region. The bill further directs the Secretary of the Interior to implement this program in cooperation with the Border states as well as with other appropriate entities, including affected Indian tribes.

The proposed, collaborative scientific investigations and research efforts would address critical water supply, environmental, and natural-resource issues in the border region, and contribute to an improved understanding of the relations between the border region's many water, natural-resource, biological, and human-health related issues. We agree that a multi-discipline, bi-national, scientific approach is needed to address these complex, interrelated transboundary issues. Additionally, these studies would develop and document the tools, scientific methodologies, and procedures for collecting and integrating hydrologic, geologic, biologic, and other spatial data into a bi-national geographic information system for analysis and modeling applications.

S. 1957 objectives include expanding existing agreements between the USGS, Border states, State Water Resources Research Institutes, and appropriate authorities in the United States and Mexico to conduct joint investigations; document, manage, and share data; and carry out the necessary bi-national work efforts. Such collaboration would produce timely, widely accepted scientific products and understanding of each priority bi-national aquifer that is needed by water and natural-resource managers to effectively accomplish their missions.

The role identified for the Department of the Interior in this bill is consistent with the USGS leadership role in monitoring, interpretation, research, and assessment

of the health and status of the water and biological resources of the Nation. As the Nation's largest water, earth, and biological science, and civilian mapping agency, the USGS provides the largest single non-regulatory hydrologic investigative and research capability in the Nation.

This proposed scientific collaboration by Federal, State, Tribal, and academic institutions touches on many of the interdisciplinary core competencies of the USGS. At its heart, the proposed collaboration would effectively capitalize on the collective scientific capability and resources of the partnering institutions. The integration of this relevant science would address the most pressing and complex natural resource and environmental problems in these very fragile landscapes and complex ecosystems.

The USGS has been active in a number of relevant programs and investigations in the arid southwest and hence has a working knowledge of proven methods and innovative technologies for effectively characterizing, monitoring, and mapping the border region's ground-water resources. We believe we have the authority to implement the activities called for in the bill and would continue to provide resources to address the goals of the S. 1957, provided these activities successfully compete against other USGS priorities. In FY 2004, roughly \$500,000 will be spent on such on-the-ground activities by USGS. The President's FY 2005 Budget sustains this funding level. USGS scientists working from offices in each of the four Border states actively participate in these programs and investigations, and are called upon by the States and border communities to provide essential technical insight and understanding for solving critical water supply and natural-resource problems. Our scientists serve on a large number of relevant committees, task forces, and advisory groups in the border region. Regional coordination and communication of USGS programs and activities along the international border is further enhanced internally through our Border Strategy Team as well as within the Department of the Interior as a result of our active participation on the U.S.-Mexico Field Coordination Committee.

Talking with our partners in the Border states and communities, in the other Interior Bureaus, and other Federal agencies, as well with scientists and government officials in Mexico, it is widely acknowledged that the lack of a standardized, bi-national database on the availability, use, and quality of transboundary ground-water resources is perhaps the most significant impediment in addressing the Border region's numerous complex water-supply and natural-resource challenges. The lack of basic inventory and monitoring information pertaining to border water resources and water-dependent environments prevents a comprehensive understanding of watershed and regional processes and issues, and hinders the ability of science to provide the essential predictive capability to characterize or describe potential cause and effect relations associated with alternative land and water use and management actions.

The program and investigations called for in this bill would support the development and maintenance of such a standardized, bi-national hydrologic database and associated data analysis tools. Early into the program, it would be essential that bi-national consensus be reached on common investigative approaches, common field data collection protocols, laboratory methodologies, and data management, documentation, and reporting systems. Once these technical issues are resolved, it would be much easier to streamline the treaty requirements related to the review and public release of impartial, transboundary scientific data. Such consensus has been reached in the past for transboundary investigations having limited scope. Obtaining this consensus for the entire Border region would greatly enhance transboundary scientific collaboration in the future.

SUMMARY

The proposed investigations and pertinent research efforts authorized by S. 1957 would address critical water, environmental, and health issues in the Border region and contribute to a more comprehensive understanding of the relations between the region's many water, natural-resource, biological, and health related issues. It is important that a bi-national, multi-discipline scientific approach be taken to address these interrelated issues. Additionally, these bi-national studies would develop and document the tools, methodologies, and procedures to collect and integrate hydrologic, biologic, and other spatial data into a geographic information system for analysis and modeling applications.

Thank you, Mr. Chairman, for the opportunity to present this testimony. I will be pleased to answer questions you and other Members of the Subcommittee might have.

Senator MURKOWSKI. Thank you, Mr. Groat.

Commissioner, let's start with S. 900, the Lower Yellowstone Reclamation Projects. You've indicated that there are some concerns that you have and didn't really speak to the difference that we have with this project. Most title transfers are relatively—or have been, I guess, smaller in scope. This one is, in comparison, relatively large. How much of a problem is this? Can title transfers of this size lead to, one would hope, significant cost savings for the Federal Government or does this make it more problematic?

Mr. KEYS. Madam Chairman, I think title transfers of this size are possible. I think in most cases where we have been talking with them about it, they're going to happen. They give the local district a lot more ability to deal with issues as they arise. It gives them a certain degree of freedom in dealing with some of the Federal laws that they may be more constricted in if they're a Federal project. This one has a couple of challenges that are different than most of the others that we have dealt with. The largest one is the power issue. All three of those districts there, one of them in particular, receives a large amount of power from the Pick-Sloan Missouri Basin Program. That power is served as project use power and currently the project use power rate is about 10½ mils per kilowatt hour. Until recently, the ability to pay entered into the payment for that project use power and in most cases they were only paying about 2½ mils per kilowatt hour for that power. If they become a private district, we have talked to them and have come to an agreement that they would go to a preference power rate. Preference power rate, under the Pick-Sloan Program, is 16½ mils. That's the good news. The bad news is that as a private district they should be paying for the wheeling of the power to get it there. After deregulation, wheeling went sky high, and wheeling in that area now ranges from 30 to 50 mils per kilowatt hour, which is what we said about it being more than the cost of power. So that's the one big issue involved in this title transfer.

The second one is the fish passage facilities and protecting fish from going into the canal. There again we have talked with the districts and have come to an agreement with those folks that if it's authorized and funded we would provide those facilities. In other words, the ability to keep small fish out of the canals and then to provide passage for the fish to move up the river.

So those are two real challenging parts of this title transfer. One of them we think that we have come to agreements with the parties on; the other is still out there.

Senator MURKOWSKI. You mentioned the issue with the Pick-Sloan Project Use Power. Are there any other non-Federal irrigation projects who receive a Pick-Sloan Project Use Power?

Mr. KEYS. Madam Chairman, we think that this one would be precedent-setting. There are some other private districts that receive Federal power but this would be the first one of the title transfer programs where you would have a non-Federal project receiving Pick-Sloan Power.

Senator MURKOWSKI. So, what other—give me a current example, then, where public power is paying the wheeling cost for private irrigation district through Pick-Sloan.

Mr. KEYS. Madam Chairman, there's not another example.

Senator MURKOWSKI. There is none?

Mr. KEYS. Where we are paying the wheeling, that's correct.

Senator MURKOWSKI. Okay. So this would be first in line?

Mr. KEYS. Yes.

Senator MURKOWSKI. On the Provo River Project, just very quickly, you had mentioned that there were several agreements that were required for the title transfer to take place and you specified central Utah. Is that the only other agreement that is required? Are there more and what is the status of those agreements?

Mr. KEYS. Madam Chairman, there are a number of agreements that still are to be done. The one with the Central Utah Project is one that is accommodation among all three of us. In other words, Central Utah Project, the Bureau of Reclamation as the Federal family, and the parties that would take title to the facilities. And it's mainly an agreement to live together. In other words, we use the same access roads; in some cases our security providing would be—we could work with each other to do that. There are a number of issues there that we still need agreements on. I'm fumbling a little bit because there's about a half-a-dozen different agreements that we still have to get done.

Senator MURKOWSKI. I guess I don't need to know the specific details but in terms of the status of the agreements and whether we're getting any closer to reaching conclusion so that we can move forward.

Mr. KEYS. Madam Chairman, we are working on all of those agreements. I see no snags in them at this time. It's just the time that it takes to get them done. We're working on NEPA right now. I think that we just finished the draft environmental impact statement—or the draft NEPA compliance last Friday. So it's just getting all of those things together. Our preference is to have those agreements signed before the legislation's passed. There are differing opinions on that and certainly I'm sure you'll hear a different one later on. We would just prefer to have them signed before we go ahead because having them signed, you have nailed down the relationships that you need to make this thing successful.

Senator MURKOWSKI. Okay.

Senator Burns.

Senator BURNS. Thank you, Madam Chairman. Mr. Keys, I wanted to also ask a question of Tom Graves; they might try to answer these things. We've agreed to everything but the wheeling costs, I think. You know, I think the power, the 14 mils there, I think that's okay, but I think we're talking about file miles of line of wheeling costs. And for the four projects I get a total of about \$140,000 last year. Is that a correct figure?

Mr. KEYS. Madam Chairman and Mr. Burns, that's very close.

Senator BURNS. They're pretty proud of that 5 miles. Is that enough?

Mr. KEYS. Madam Chairman and Mr. Burns, I think that is a good question for Mr. Graves.

[Laughter.]

Senator BURNS. Is Mr. Graves in the audience? Would Mr. Graves like to come up and visit with us about that?

Senator MURKOWSKI. He's going to be giving his testimony in the second panel, Senator Burns.

Senator BURNS. What?

Senator MURKOWSKI. He's going to be testifying in the second panel. So he will be coming up. We'll have an opportunity to check in with him.

Senator BURNS. Okay. All right. Well, that's where most of my questions come from. And I guess I've got to talk to Tom more than anybody else. I don't know, in my own mind, who sets the wheeling rate.

Mr. KEYS. Madam Chairman, I can answer that one.

Senator BURNS. Yes.

Mr. KEYS. The Lower Yellowstone Valley Electric Cooperative is the co-op that is wheeling the Federal Project Use Power into the project.

Senator BURNS. Okay, and they set that \$140,000 rate. Is that correct?

Mr. KEYS. They set a mil rate for however much power is delivered and they charge that mil rate. That's the 30 to 50 mils that I talked about earlier.

Senator BURNS. Okay.

Mr. KEYS. There are a number of other charges involved in that. You asked about the \$140,000—

Senator BURNS. Yes. Just expound on that, if you would.

Mr. KEYS. The \$140,000 it's actually \$150,000 or so, but that includes a \$6 a kilowatt hour demand charge. It includes almost 80 mils per kilowatt hour for the first 5,000 kilowatt hours; it then drops down to about 70 mils per kilowatt hour for over 5,000 kilowatt hours. And then there's a base charge involved there. So there are a number of charges that come out of the co-op there for the delivery of that power.

Senator BURNS. Well, I tell you what. We could probably skip a lot of these things just as long as I know they set the rates. How many kilowatt hours do they use a year?

Mr. KEYS. Yes sir. I have some average figures here. Based on the year 2003, the Intake district used 67,551 kilowatt hours. Lower Yellowstone Number One and Two used 862,803 kilowatt hours. And Savage used 1,177,300 kilowatt hours.

Senator BURNS. Okay. That's all the questions I have, Madam Chairman.

Senator MURKOWSKI. Senator Bingaman.

Senator BINGAMAN. Thank you very much for the testimony, Director Groat, on this S. 1957; I appreciate it. Let me ask about one thing that is in your written testimony that I don't believe you alluded to in your statement. But in there you refer to work currently underway that is related to the programs described in S. 1957. I assume that that is a reference to this U.S.-Mexico Border Human Health Initiative. And my understanding, though, is that the Border Health Initiative is different from the cooperative program to assess transboundary aquifers that we're proposing here. Is that your understanding? Am I right about thinking that that is what you're referring to?

Mr. GROAT. Yes, Senator Bingaman. The USGS has several projects in the border area. The one to which you refer, the Border Health Initiative, is not part and parcel of what this program would do. We're doing some work in the San Pedro River Basin, for example, on surface water that has some relation to groundwater.

And it's true in other parts of the border. But none of those projects, while they might be related in some way, carry out the functions that are addressed in this bill. And so they are quite different in that sense.

Senator BINGAMAN. Okay. We tried—and you did sort of allude to this in your statement—in the provisions of S. 1957 to establish a framework for the program to be carried out as a partnership among USGS, the border states and the local parties. Is that a workable approach to this kind of work as you see it? I mean, have you had experience in these kinds of things, that kind of framework before so that you feel comfortable with that?

Mr. GROAT. Yes sir. I think it's the only way it will work. We bring certain capabilities but certainly the State Engineer's Office and the Water Resources Research Institute have skills and capabilities related to aquifers in their areas that only they can bring in that level of detail. And also, they as well as we have relationships with the appropriate universities and agencies in Mexico that can cooperate in bringing and sharing data across the border. So it is the right partnership.

Senator BINGAMAN. All right. Well, thank you again, very much. Appreciate it. Madam Chairman. That's all I had.

Senator MURKOWSKI. Thank you. Commissioner, I had a couple more questions that we're going to submit to the record. These were on some of the other legislation that had been presented that seem to be relatively non-controversial. I appreciate your testimony.

Director Groat, I appreciate your comments and your support of S. 1957. Do you think that the legislation goes far enough to solicit state and local comment when you're identifying the priority aquifers for the study?

Mr. GROAT. Madam Chairman, I think that's one aspect that is not spelled out in detail in the legislation. It makes it clear that these priority aquifers will be identified; it does not describe in detail the process. And in the light of Senator Bingaman's question, the assumption is that it is the partners, which include a heavy input from States, and from Water Resources Research Institutes that will come to agreement on what these priority aquifers are and that they will therefore become part of the system with that agreement in place. Senator Bingaman might have more detail on that but that's my understanding of how it would work. I mean, I think there is adequate local input.

Senator MURKOWSKI. Senator Burns, did you have any further questions of this first panel?

Senator BURNS. I just wanted to clarify one thing, Madam Chairman. John, you said the intake was 57,581? Yellowstone One, 862,803? Is that correct? This is for 2003?

Mr. KEYS. Madam Chairman, Mr. Burns, the intake was 67 instead of 57.

Senator BURNS. Sixty-seven.

Mr. KEYS. Five fifty-one. The other figure was correct.

Senator BURNS. And Yellowstone Two, 1,177,300?

Mr. KEYS. That's correct.

Senator BURNS. What about Savage? Is Savage included in the intake?

Mr. KEYS. I'm sorry. Intake was 67,551. Savage was 1,177,300. Senator BURNS. Well, that's Savage?

Mr. KEYS. Yes.

Senator BURNS. Okay. All right. Now, don't we have a fourth one in there somewhere, don't we?

Mr. KEYS. Well, Lower Yellowstone No. 1 and No. 2 were together for 862,803.

Senator BURNS. Okay. That's where I made my mistake. Thank you very much. Thank you.

Senator MURKOWSKI. Thank you. If there's no further comments or questions, gentlemen, thank you for your testimony. Appreciate it.

And to join us on the second panel we have Jerry Nypen, the manager of Lower Yellowstone Irrigation Project; C. Allan Jones, the director of the Texas Water Resources Institute; John Robert Carman, the general manager of Metropolitan Water District of Salt Lake and Sandy, Utah; Thomas Graves, the executive director of Mid-West Electric Consumers Association and Andrew Core, senior hydrologist, Hydrology Bureau of the Administrative Litigation Unit in New Mexico. Welcome to the committee, gentleman. And Mr. Nypen, if you want to lead off, please.

**STATEMENT OF JERRY NYPEN, MANAGER, LOWER
YELLOWSTONE IRRIGATION PROJECTS, SIDNEY, MT**

Mr. NYPEN. Thank you, Madam Chairman, and thanks for holding this hearing, and thank you very much for the invitation. Madam Chairman and members of the subcommittee, my name is Jerry Nypen and I'm the manager of the irrigation districts that are involved in this title transfer legislation.

We are pursuing the title transfer for several reasons. We have met the obligations of our contracts with the Bureau and with the taxpayer. We have debts that we have paid. The districts have successfully operated these projects for 75 years and we've put a great deal of capital into them. We can save the taxpayer money. The transfer eliminates duplication of efforts amongst the local, State and Federal agencies. Probably the most compelling reason, one that I hear on the streets, is that it would establish a sense of security for our citizens and that is, our local economy. The Bureau of Reclamation can no longer give assurance that public policy will protect water operations for irrigation in the future. Often the term "privatization" is used to describe the transfer by making it known that the districts are public corporations, they are governed by State statutes.

We believe that the Federal Electric Power Service for pumping is the obstacle in getting this legislation passed, specifically the wheeling. The districts receive Pick-Sloan Irrigation pumping power to lift water to the projects' main canals. This power is what got the projects constructed and this power is what allows them to operate year in and year out. The most frustrating part of this transfer has been to find a solution that is affordable. The Bureau and the Pick-Sloan electric power customers say the districts are not eligible for Pick-Sloan power after transfer. We have contended that we are and those reasons are described in more detail in my written testimony. Without the irrigation pumping power the com-

munity costs of getting water to the farm goes up from \$25 to \$40 an acre, depending on the lift. It's prohibitive when you add the \$25 to \$30 that these districts already pay for public distribution systems.

We have put forth a lot of items for compromise. We have studied and re-studied affordability. In the bill before you today, the ability to pay a discounting has been removed from the rate. In addition, there is an elevation of project use rate to a level equal to the firm power or preference rate; it raises the rate from 2½ mils to 17 mils. These are conciliatory moves on the part of the irrigation district. There is now a more recent compromise, a compromise due to the efforts of Senator Burns and Mr. John Keys.

The irrigation districts must find a way to obtain affordable power and they have agreed to these conditions: No. 1, the Bureau will keep the existing power contracts in effect until they expire in the year 2020; No. 2, they will install a linear, annual step-up increase in fees during the last half of the contract period; No. 3, the irrigation districts will find the means to rehabilitate the projects and cut power consumption by 40 percent before contracts expire; and No. 4, the districts will accept preference power after the contracts expire. These moves are made recently to overcome the opposition and to get this title transfer accomplished. And we have gone to a great deal of risk to accommodate. We have put the farmers at risk, knowing that possibly this can be done, we're going in that direction, we've got time to do it with a transitional period and we're willing to take that challenge. This compromise should erase any concerns that the Pick-Sloan electric consumers have. Unfortunately, it did not. I might add that we have been unable to reach any kind of compromise with the Pick-Sloan electric consumers since we began this transfer. We have tried diligently to reconcile with them but we have not had any acknowledgments, reconciliatory moves on their part, even though there's huge advantage to the Pick-Sloan electric consumer from the irrigation function of Pick-Sloan. The projects are highly successful and we think they exemplify the Reclamation program in the Pick-Sloan program.

There's a big spin-off from the dollars that go into the project. There's been a sugar beet factory there since 1925 that puts out \$70 million in crop products in products annually. There's a million-and-a-half bushel malt and barley depot that was recently put in. There's a 1,000-cow dairy. All of this because of the water. The projects mean everything to the 6,000 or so citizens in the project area.

Madam Chairman, please accept the conciliatory items that I've mentioned, as we anticipate an appropriate amendment to be included when the bill is marked up.

Thank you, Congressman Burns, for introducing the bill and for the diligent work you have done. And thank you, Mr. John Keys, if he's still here, for the diligent work that he has done in finding solutions to the affordability issue. Especially thank you for this opportunity to provide testimony for this bill, again, and we appreciate very much the efforts that this committee has put forth in title transfers. Thank you.

[The prepared statement of Mr. Nypen follows:]

PREPARED STATEMENT OF JERRY NYPEN, MANAGER, LOWER YELLOWSTONE
IRRIGATION PROJECT BOARD OF CONTROL, INTAKE IRRIGATION DISTRICT, SAVAGE
IRRIGATION DISTRICT, ON S. 900

Mr. Chairman and members of the Subcommittee, my name is Jerry Nypen. I am the manager of four irrigation districts located in the Lower Yellowstone Valley near Sidney, Montana. Thank you for opportunity to provide testimony on S. 900, Lower Yellowstone Reclamation Projects Conveyance Act. We appreciate this committee's support for the transfer of Bureau of Reclamation features to local public entities.

We thank you Congressman Rehberg for introducing this Bill and for the diligent efforts of you and your staff in pursuing an important transfer for the people of the Lower Yellowstone Valley. We appreciate the Bureau of Reclamation's efforts in accomplishing transfers in the West and especially for the efforts of Mr. John W. Keys III and his staff to accomplish the transfer of the Lower Yellowstone Projects.

BACKGROUND

There are three Federal irrigation projects involved in this legislation. They are the Lower Yellowstone, Savage, and Intake Projects, which are located adjacent to a 72-mile section of the Yellowstone River near the borders of the states of North Dakota and Montana. There are four irrigation districts involved; the Lower Yellowstone Irrigation Districts 1 and 2 operate the Lower Yellowstone Irrigation Project. Intake and Savage Irrigation Districts operate the Intake and Savage Projects.

The Irrigation Districts have had a very long partnership with the Bureau of Reclamation. The Bureau constructed the Lower Yellowstone Irrigation Project 94 years ago and transferred the facilities to the Lower Yellowstone Districts for operation and maintenance purposes 78 years ago. The Bureau also constructed the pumping units at Intake and Savage, 46 and 55 years ago. The Districts assumed operation and maintenance responsibilities shortly after the pumping units were constructed.

The Projects were constructed solely for irrigation purposes. Yellowstone River water is diverted and delivered to about 500 farms in the Lower Yellowstone Valley.

The Irrigation Districts are non-profit public corporations that operate under the auspices of Montana and North Dakota State Governments. Local elected officials administer them.

These projects have experienced an exceptional record of success. A small Federal investment of just over \$5 million currently yields over \$25 million in annual gross crop values. The cumulative yield in crop values is about \$1 billion. The economic spin-off has been tremendous. For example, the irrigation developments have allowed a local sugar factory to operate continuously since 1925, a factory having annual product sales of \$70 million while employing 350 people in the area. The Projects' resources continue to draw other industries. A 1.5 million bushel malting barley depot and a 1,000-cow dairy are the most recent additions to our area.

These Projects truly provide the most reliable contribution to national, state, and regional economies that can be obtained in this country. The public's investment in these Projects has been returned many times over. Perhaps those who have declared that it is not are not aware of the extension of benefits that irrigated agriculture offers.

Features to be transferred in this Bill include irrigation water rights, lands and easements, and physical water control features. Physical features include a low-head diversion dam, 5 small pumping units, about 400 miles of water conveyance ditches, and numerous water control structures.

REASONS FOR TRANSFER

The main reason we are pursuing transfer is to be assured that our irrigation projects will continue to secure and protect our sound and stable economy into the future. The Federal Government has jurisdiction here, but they cannot give us the assurance we need that public policy will protect our interests into the future.

We've always understood that the order of events under our contracts with the Bureau of Reclamation's was construction, settlement, transfer of operation and maintenance responsibility to local districts, recovery of the original cost, and finally the transfer of ownership. The master contracts between the Districts and the Bureau define this process very well. The purpose this legislation is to simply complete the last activity, the transfer of ownership.

The transfer will give our constituents the proprietary interest they anticipated and deserve. This will enable them to become true custodians of the public works that we have managed for decades. We have invested substantial dollars rehabilitating and replacing the federal infrastructure. For example, we have replaced all

of the pumping units and the majority of the water distribution facilities at our expense. It is important for us to define the title to these works at this time.

The transfer will reduce costs for the Bureau and the Districts, and consequently the U. S. Taxpayer. The Federal Government is obligated to monitor and care for its assets. For example, they must be involved in actions of third parties such as permitting on public lands. They must be involved in reviewing and implementing Federal laws, rules and regulations on rehabilitation activity and conservation measures that are not of daily routine. The Bureau must spend a considerable amount of time listing, reviewing and reporting features and activities, a duplication of what we are required to do for the State of Montana. I would like to point out that our Projects are on the North Dakota/Montana State line and it is 375 miles to the Bureau's Area Office in North Dakota, and 300 miles to the Bureau's Area Office in Montana, which makes the Bureau's work more difficult and more expensive.

FINANCIAL INTERESTS AND OBLIGATIONS

The taxpayers' financial interests will be protected with this transfer. The Federal investment in constructing the projects was \$5,135,900 and the irrigation districts obligation was \$4,313,900. All of our debt obligations are paid except an outstanding debt for Savage Irrigation District of \$47,221. This debt will be paid prior to transfer.

A Pick-Sloan Missouri Basin Program feature allows a portion of the Savage Project's construction costs to be paid through the sale of power. The current value of this assignment is \$154,226. The Bureau of Reclamation's title transfer guidelines require that this be paid to the Secretary at the time of transfer.

We require about 640 acres of withdrawn lands for operation and maintenance activities. This land was not included in the repayment debt and will be purchased by the Districts.

LOCAL AND REGIONAL SUPPORT

Local and regional supporters realize that the irrigation projects are the backbone of the area's economy. The irrigation projects offer the local communities the ultimate in economic stability. The projects are in a semi-arid area where irrigation water has provided consistent non-failing crop success since 1910. The communities realize that local control will guarantee that the projects will continue to operate in the same unfailing fashion.

We have received letters of support for this legislation from the County Commissioners of Richland County, the Sidney Chamber of Commerce, Richland County Economic Development, Williston Economic Development, and numerous businesses and private individuals. We have also received regional letters of support from the Governor of Montana, the Montana Water Resources Association, and the Upper Missouri Water Resources Association.

YELLOWSTONE RIVER FISHERY PROTECTION

The project's source of water, the Yellowstone River, has a healthy fish population. The Bureau of Reclamation and others have identified 25 native species amongst 34 species known to exist. The pallid sturgeon, an endangered species listed in 1990, is known to utilize the lower reach of the Yellowstone River.

A very significant issue with this title transfer has been the concern for this fishery. The results of studies by the Bureau of Reclamation and others reveal that there is sufficient entrainment of fish in the Projects' Main Canal. The results also reveal that the diversion dam can affect migration of bottom dwelling species including the endangered pallid sturgeon. There is a strong cooperative effort underway to install a screening device in the Main Canal and a passage facility at the low-head diversion dam. Participants in studies and design are the Districts, Bureau of Reclamation, Corps of Engineers, U.S. Fish and Wildlife Service, and the Montana Fish, Wildlife, and Parks.

There is a Section 7, Endangered Species Act process in progress. A Biological Assessment was submitted to the U.S. Fish and Wildlife Service in August 2001. Although deadlines to complete the Section 7 have come and gone, H.R. 2257 allows another 5 years to complete it. We think this Legislation is necessary to complete this action.

PICK-SLOAN PUMPING POWER

Why has this title transfer not taken place after all the time has been spent trying to do so? The Districts had no idea when they started that there would be a question regarding the continuation of Federal power service.

We have received Pick-Sloan Missouri River Basin Program (P-SMBP) *project use power* for operating our community pumps since the projects were constructed. Non-eligibility would mean that Districts would pay for power at the *preference power* rate, but more importantly would pay for wheeling as well. The District constituents cannot afford these costs added to their existing District operation and maintenance assessments. Rates would go up from a Districts' average assessment of \$26 per acre to an average of \$60 per acre. The Savage District would experience a \$40 increase from \$30 to \$70. A recent economic study by the State of Montana concluded that net return for Lower Yellowstone Projects constituents is only about \$50 per acre. That tells us what we know as an impossible situation.

It is very important in this testimony to know our definition of *project use power* and *preference power*. *Project Use Power* is power from the Pick-Sloan system that is used to carry out the irrigation function. It is delivered to the Districts' main pumping plants. The rate is the general Pick-Sloan Program rate that would cover all operation and maintenance of the system. It is discounted due to the District's ability to pay. Today it is 1.076 cents per kilowatt-hour discounted to 0.25 cents per kilowatt-hour due to the ability-to-pay factor, unique feature of the Pick-Sloan Program.

Preference power on the other hand is power that is available for an entirely different function. It is power that is sold to preference customers for paying back the P-SMBP costs including the irrigation assistance. It is available off the Federal transmission system and the Districts would pay wheeling charges.

Some additional perspective on P-SMBP is also important. The intent of the Flood Control Act of 1944 is to perform 4 main functions. They are 1) Irrigation, 2) Flood Control, 3) Navigation, and 4) Power. The main theme in 1944 was to reduce flooding, increase navigation on the river below Sioux City, Iowa, and develop irrigation in the upper basin states. The irrigation has two main purposes, provide economic development in the upper basin states and replace the rich bottom farmland that are flooded by the reservoirs in Montana and the Dakota's. The Projects in this Legislation fit the theme well and are a great success to the P-SMBP.

FEDERAL PROJECT/NON-FEDERAL PROJECT ISSUE

The power customers insist that project use power is limited to Federal Projects only. It is an eligibility issue due to language in the 1944 Flood Control Act. The Act ties project use power to Federal Projects. Federal projects would be the only way to develop 6,000,000 acres of irrigation in a structured time frame. Many attempts had already been made by non-Federal entities to build canal systems and pump water to elevated acres, but most of them failed because of the lack of expertise and adequate revenue. One of the first tasks of the Bureau of Reclamation in project development was to establish irrigation districts to assume responsibility. Projects were operated and maintained by the Bureau during a development phase until they were transferred to the irrigation districts for that purpose. It was necessary to retain ownership of the features so that there was assurance that the district's repayment obligation was met. After repayment obligations are met, title transfer takes place, just as is mentioned in the repayment contracts.

Sidney Water Users Irrigation District, and another upstream, Kinsey, are 2 irrigation districts nearby that operate non-Federal projects that obtain Pick-Sloan's project use power. They are like our Projects; they were developed from the same mold; they were all identified in the Bureau of Reclamation's Yellowstone Pumping Division in 1939 to be served by the Fort Peck power facilities. All of the districts were included in the P-SMBP plan for wide-scale development of the Missouri River Basin. Sidney Water Users and Kinsey operate non-federal projects, and they were put into the P-SMBP by Congressional action. It seems very inappropriate that our Districts who have been operating Federal Projects and have been in the P-SMBP's Program now for over 50 years are being declared non-eligible for the Program because they are going from Federal to non-Federal status.

Those that oppose the power section of this bill have stated when referring to our eligibility status, "you either are or you aren't a Federal Project". But how can I stand and look directly across the river at a non-federal project receiving project use power and think that this rule is valid.

We cannot believe that it was ever the intent of the Pick-Sloan Program to abandon the project use power service because of title transfer. It was the catalyst that made them feasible to construct and the catalyst that allows them to continue to

operate for public benefit. But the 44 Act does not address the issue of title transfer even though it is a prescribed procedure. It is time for this Congress to correct this oversight.

PRECEDENT ISSUE

The second concern the power customers have is that this Bill will induce a precedent. Their concern is very dramatized as they contend that it could destroy the integrity of the entire P-SMBP. They fear a precedent that would allow all non-federal irrigation entities to obtain project use power. But Federal ownership has not been a condition for receiving Pick-Sloan project use power in the past. The Sidney Waterusers, Kinsey, Haidle, and Hammond irrigation developments in the Lower Yellowstone Valley, and the Hilltop and Gray Goose irrigation districts in South Dakota are all involved in non-Federal facilities and receive Congressionally authorized Irrigation Pumping Power. The authorities are the 1944 Flood control Act, P.L. 102-575, and P.L. 99-662. The Bureau has discredited these situations as not applicable examples. But the undisputed fact is that Congress has authorized these entities to receive P-SMBP project use power when title to their irrigation works remain in the name of the districts.

There has been precedent for maintaining existing power contracts involving title transfers as well. Public Law 105-351, a transfer of the Minidoka Project to the Burley Irrigation District, provides for continuation of "Project Reserved Power" under existing contract terms. Public Law 106-221, transfer of the Gila Project to the Wellton-Mohawk Irrigation and Drainage District, provides for continuation of "Project Priority Use Power" in accordance to existing contract terms. In both cases, Federal power benefits continue and more importantly, the terms of the existing Federal/District contracts prior to transfer remained in effect after the transfer. It is interesting to note that the in these two cases, the Federal Government owned the transmission lines to the main pumping units and they were transferred to the Districts. Federal power is delivered across non-Federal lines near our Projects and even though this is a Pick-Sloan responsibility, it presents a very contentious issue in negotiating the power service after transfer.

Continuing with P-SMBP project pumping power for our districts certainly doesn't offer a green light for any non-federal entities to receive the same. Congress must approve all developments, and irrigation entities must be public and pay their respective costs of the assigned power facilities. In our opinion a prerequisite for an irrigation entity having a legitimate issue of precedent would include the following conditions: 1) must be a public entity, 2) must be custodian of a project that was constructed by the Federal Government, 3) must possess a contract rate-of-delivery from the irrigation suballocation, 4) must have paid the cost of power facilities associated with an assigned share of the irrigation suballocation.

We do not understand the fear of rampant irrigation development that the preference power customers have eluded would happen with passage of this bill. Only 28 districts representing only 120,000 acres in the entire Missouri River Basin have evolved in the last 64 years since the relationship between irrigation and pumping power began. Water on the Yellowstone and Missouri main stem is fully appropriated in Montana. There is some reserved water available for about 90,000 acres, but individuals, not public irrigation developments, are steadily consuming most of this. Other states experience the same conditions of low water availability. Significant irrigation development will just not happen.

There is also a limit on the amount of power that can be used for Pick-Sloan irrigation development. The irrigation suballocation is a unique feature of the Pick-Sloan Program to encourage irrigation development. It represents 15.8% of the total Pick-Sloan power capacity of 2,600 megawatts. A small portion of this has been used leaving about 13% of the total Pick-Sloan capacity remaining. This means that there can only be at best about 350 more megawatts used for irrigation development, not an amount that would destroy the P-SMBP as the power customer's fear.

Congress must also approve all assignments of the irrigation suballocation as required by the McGovern Amendment. This is a safety shield for controlling the use of power for irrigation.

The Districts in this title transfer legislation have been assigned a rate of capacity from the irrigation suballocation. It is cumulatively about 1 megawatt (the suballocation is 400 megawatts and the system capacity is 2,600 megawatts). The Districts have met the obligations assigned to them for this power. The Savage Irrigation District has paid their share of the cost of power facilities associated with power delivered to them. The other older Districts were not involved in paying for power facilities, but regardless, a share has been assigned to them by contract.

Knowing this, it is difficult to understand why the Districts would be severed from the suballocated power because of title transfer

If this severance is made with the Districts, what happens to power that was associated with the suballocation? The allocation cannot be adjusted because of the conditions of the McGovern Amendment, so we presume that it becomes uncommitted even though it was assigned and duties were paid.

You will find that the preference power community is very concerned about the irrigation benefits of the Pick-Sloan Program. They benefit dearly by unaccomplished irrigation development, especially the deferred portion of the irrigation suballocation. They benefit by the low cost power that it produces, and they benefit from the low cost investment capital that exists and that is continuously received on its behalf.

The deferred portion of the irrigation suballocation produces about 1.6 billion kilowatt-hours of electricity from its 350-megawatt capacity. The cost of marketing this power is very low because the taxpayer investment for the power facilities associated therewith is interest-free and the repayment is deferred. It won't be repaid until 50 years after these facilities are assigned to an irrigation project. Putting this power in the mix definitely compliments the preference power rate.

A good percentage of the first capital investment costs are deferred. What about new investments. All new investment capital for such things as interconnects, reliability addition, transmission extensions, and general improvements is also discounted because of the unused and uncommitted portion of the irrigation suballocation. In the 1963 Report on Financial Position of the P-SMBP, total investment in generators, transformers, substations, and transmission lines, and reservoirs was estimated to be about \$884 million with the amount of \$170 million associated with the irrigation suballocation. In fiscal year 2000, the power investment was reported to be about \$2.6 billion and the amount associated with the irrigation suballocation was \$408 million. The point to make here is that 15.8% of new investment money is categorized as interest-free with a deferred repayment. This again compliments the rate setting and is a benefit to the power customer. Often we have heard that the irrigation function of the P-SMBP is unfair to the preference power community when it has been quite the contrary, it has helped keep rates low for the past 50 years.

Let me share with you what we understand has happened with the title transfer of the Middle Loup Division in Nebraska. They like us had a proportionate share of the suballocation assigned to their Irrigation Districts. The cost of power facilities associated with this proportionate share was paid as a condition of the transfer. But we understand that the suballocation percentage has not changed. The same 15.8% of any new power investment added to the P-SMBP is still being deferred.

The Irrigation Districts have considered the issues of opposition on the power service many times and have offered several compromises. We have agreed to discontinue the ability-to-pay feature that requires us to pay full cost for the project use power. We have offered to pay a price for project use power equivalent to the preference power rate. These accommodations raise the rates from 0.25 cents per kilowatt-hour to 1.08 cents per kilowatt-hour to 1.7 cents per kilowatt-hour.

Senator Conrad Burns, Commissioner John Keys, and the Districts have been working diligently in efforts to compromise and put together a plan that would be affordable to the Districts. We think now that such a compromise has been found. The details are as follows:

- The existing Bureau/District power contracts for delivery of project use power shall stay in effect until they expire in the year 2020.
- A linear annual step increase in fees shall be implemented during the last seven years of the contract beginning in year 2014 and ending in 2021 (8 step increases)
- Western Area Power Administration shall issue preference power contracts for the full contract rate of delivery after the existing Bureau/District contracts are terminated to each of the Districts involved in this transfer. Full contract rate of delivery shall be maintained throughout all future contracts.

This establishes a transition period that allows the Districts time to implement programs to substantially reduce the power usage through institutional and physical changes. Time is needed to establish resources that will cut power consumption by 40%. This is indeed challenge and a risk the Districts are willing to take.

The Districts are willing to accept the preference power service after contracts expire in year 2020, a move that certainly should neutralize the precedent setting concern.

Mr. Chairmen, we hope that you will accept this compromise and we hope that by amending the Bill to incorporate the same, that the title transfer will be accom-

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

Senator MURKOWSKI. Thank you. Appreciate your testimony.
Mr. Graves.

**STATEMENT OF THOMAS GRAVES, EXECUTIVE DIRECTOR,
MID-WEST ELECTRIC CONSUMERS ASSOCIATION, WHEAT
RIDE, CO**

Mr. GRAVES. Thank you, Madam Chairman. My name is Thomas Graves and I'm the executive director of the Mid-West Electric Consumers Association. Mid-West was founded in 1958 as the regional coalition of Federal firm power customers that purchase hydro-power generated at the Federal facilities in the nine-State region of the Pick-Sloan Missouri Basin Program. Representing over 300 rural electric cooperatives, municipal electric utilities and public power districts, Mid-West's members serve over 3 million people in the Missouri River Basin.

Privatizing Federal reclamation projects is not a new concept. However, in Pick-Sloan only one Federal irrigation project, the Middle Loup in Nebraska, has been privatized. There are a myriad of issues involved in the transfer of Federal reclamation projects into private hands. For Federal power customers, the transfer of the Middle Loup Project embraced three policies critical to the equitable divestiture of Federal irrigation assets—repayment of the remaining Federal investment by water and power users at the net present value of those obligations; retention of the Federal power allocation by the irrigation district, and payment of the Pick-Sloan firm power rate by the irrigation district under the same terms and conditions as other Federal firm power customers.

Mid-West supported the privatization of Middle Loup and successfully worked with the irrigation district to develop and implement the policies noted above, that the legislation embraced and Congress enacted. Middle Loup now has a firm power contract with the Western Area Power Administration under the same terms and conditions as other firm power customers in the region.

The legislation before you does not follow that prototype, and instead sets an unfair precedent for the treatment of power supply for non-Federal irrigation projects in the River Basin. Our problem lies with the power supply provisions of the bill, and we will limit our testimony to that section. What concerns us is not the retention of the Federal power allocation by the irrigation projects, but the terms and conditions of that allocation. Let me explain, please.

The Pick-Sloan Missouri Basin Program was established by the Flood Control Act of 1944 and envisioned multi-purpose development in the Missouri River Basin. Under that plan Pick-Sloan would serve a variety of purposes meant to enhance economic development in the region—flood control, irrigation development, hydro-power generation, navigation, and municipal and industrial water supply. Hydro-power generation was looked upon as the cash register to finance many of these investments. Pick-Sloan firm power customers are responsible for repaying, through power rates, the Federal investment, with interest, in power generation and transmission facilities, and power share of multi-purpose costs, such as the dam, the reservoir, etcetera. In addition, Congress vest-

ed power customers with the responsibility and obligation to help repay the capital costs of Federal irrigation development deemed too expensive for the Federal irrigation districts to repay.

What all that means is that the 300 plus Pick-Sloan power customers—rural electric cooperatives, municipal electric utilities, public power districts, Federal and State agencies and Native American—tribes are responsible for not only repaying roughly \$2.5 billion in power investment, but also another \$726 million in aid to irrigation. To date, Pick-Sloan power customers have repaid almost \$1.2 billion of the \$3.2 billion Federal investment in power and aid to irrigation. If a firm power customer is not directly connected to the Federal transmission system, the additional transmission service costs to deliver that Federal power are paid for by that customer.

Under the legislation before you, the Federal Government would be responsible for paying the transmission costs beyond the Federal transmission system incurred by these non-Federal irrigation projects. No other firm power customer in the Pick-Sloan region receives this benefit; no other non-Federal irrigation project receives this benefit. When I say the Federal Government would be responsible for paying these wheeling costs, what I am really saying is that the Pick-Sloan firm power customers throughout the region are responsible for repaying these costs through their rates.

Pick-Sloan Missouri Basin irrigation projects, Federal irrigation projects, pay a rate for power subsidized by other firm power customers. Until 1999, the costs of that wheeling were borne by the irrigation districts but with deregulation, as has been noted, the cost changed dramatically.

The bill before you would transfer the irrigation districts into non-Federal ownership but permit the continuation of benefits—payment of those wheeling costs only available heretofore to Pick-Sloan Federal irrigation districts.

We cannot support a privatization effort that results in neither fish nor fowl. Responsibilities to the Bureau of Reclamation relating to Federal irrigation development travel with the benefits of a subsidized Federal power supply; one goes with the other. To unencumber the irrigation project from its responsibilities to the Federal Government while retaining the special treatment of Federal irrigation projects with respect to power supply costs seems to be an attempt to eat one's cake and have it, too.

We support the continued development of Federal irrigation projects in Pick-Sloan; we support the privatization of formerly Pick-Sloan Federal projects into private hands, but we cannot support the terms that are embraced in S. 900. We continue to try to work with the irrigation district to find a solution to these problems. It is not an easy issue. But we do recognize the value of irrigation in the region and particularly Montana, and we recognize the difficulty of this project, but we cannot support those terms and conditions. We have not ever made an issue of the irrigation district retaining its Federal power allocation. We have supported that concept from the very beginning and that is a very important distinction.

And with that, I will end my remarks and wait for questions. Thank you very much.

[The prepared statement of Mr. Graves follows:]

PREPARED STATEMENT OF THOMAS P. GRAVES, EXECUTIVE DIRECTOR,
MID-WEST ELECTRIC CONSUMERS ASSOCIATION, ON S. 900

Good morning. My name is Thomas Graves. I am the executive director of the Mid-West Electric Consumers Association. We appreciate the opportunity to testify before the Senate Energy and Natural Resources Committee, Subcommittee on Water and Power today on proposed legislation S. 900 to privatize the Lower Yellowstone Irrigation Project (LYIP).

Mid-West was founded in 1958 as the regional coalition of federal firm power customers that purchase federal hydropower in the nine states of the Pick-Sloan Missouri Basin Program (Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota, and Wyoming). Representing over three hundred rural electric cooperatives, municipal electric utilities, and public power districts, Mid-West's members serve over three million people in the Missouri River basin.

Privatizing federal reclamation projects is not a new concept. However, in Pick-Sloan, only one federal irrigation project, the Middle Loup in Nebraska, has been privatized. There are a myriad of issues involved with the transfer of federal reclamation projects into private hands. For federal power customers, the transfer of the Middle Loup project embraced three policies critical to the equitable divestiture of federal irrigation assets:

- Repayment of remaining federal investment by water and power users at the net present value of those obligations;
- Retention of the federal power allocation by the irrigation project; and
- Payment of the Pick-Sloan firm power rate by the irrigation district under the same terms and conditions as other federal firm power customers;

Mid-West supported the privatization of the Middle Loup project and successfully worked with the irrigation district to develop and implement the policies (noted above) that the legislation enacted by Congress embraced. Middle Loup now has a power contract with the Western Area Power Administration on the same terms and conditions as other firm power customers in the region.

The legislation before you today does not follow the prototype established by the Middle Loup transfer, and instead sets an unfair precedent for the treatment of power supply for non-federal irrigation projects in the river basin.

Our problems lie in the power supply provisions of the bill, which can be found in section 6 of the proposed legislation. Section 6 deals with the power supply for the irrigation projects after transfer. The terms and conditions proposed for this power supply are unique and troublesome. If the legislation is enacted as proposed, these now nonfederal irrigation projects would receive an allocation of Pick-Sloan power but retain benefits afforded only to federal irrigation projects in the Pick-Sloan Missouri Basin Program. What concerns us is not the retention of the irrigation projects' allocation of Pick-Sloan power, but the terms and conditions of that allocation.

Let me explain.

The Pick-Sloan Missouri Basin Program was established by enactment of the Flood Control Act of 1944, and envisioned multi-purpose development in the Missouri River basin. Under that plan, Pick-Sloan would serve a variety of purposes meant to enhance economic development in the region—flood control, irrigation development, hydropower generation, navigation, and municipal and industrial water supply. Hydropower generation was looked upon as the cash register to finance many of these investments. Pick-Sloan firm power customers are responsible for repaying through power rates the federal investment, with interest, in power generation and transmission facilities, and power's share of multi-purpose costs (the dam, the reservoir, etc.). In addition, Congress vested power customers with the obligation to help repay the capital costs of federal irrigation development deemed too expensive for the federal irrigation districts to repay. This responsibility for repaying a share of irrigation investment in the region is commonly called "aid to irrigation."

What all that means is that the 300 plus Pick-Sloan power customers—rural electric cooperatives, municipal electric utilities, public power districts, federal and state agencies and Native American tribes—are responsible for not only repaying roughly \$2.5 billion in power investment, but also another \$726 million in aid-to irrigation. To date, Pick-Sloan power customers have repaid almost \$1.2 billion of the \$3.2 billion federal investment in power and aid to irrigation.

Also, if a firm power customer is not directly connected to the federal transmission system, the additional transmission service costs to deliver that federal power are paid for by that customer.

Under the legislation before you, the federal government would be responsible for paying the transmission costs beyond the federal transmission system incurred by these non-federal irrigation projects. No other firm power customer in the Pick-Sloan region receives this benefit. No other non-federal irrigation project receives this benefit. When I say the federal government would be responsible for paying these wheeling costs, what I am really saying is that Pick-Sloan firm power customers will be paying for these costs through their power rates.

Pick-Sloan Missouri Basin Program irrigation projects—federal irrigation projects pay a rate for power subsidized by other firm power customers. Until 1999, the costs of wheeling the power over non-federal lines to federal irrigation districts were borne by the irrigation districts.

In 1999, without hearing or public process, the Bureau of Reclamation determined that for federal irrigation projects in Pick-Sloan, transmission costs beyond the connection to the federal system would be included as obligations of power users to support irrigation in the river basin. Although Mid-West objected to the Bureau's determination at the time and still objects to applying aid-to-irrigation to water users' operation and maintenance financial obligations, that discussion is for another time.

The bill before you would transfer the irrigation district into non-federal ownership, but permit the continuation of benefits—payment of wheeling costs only available to Pick-Sloan federal irrigation projects.

Mid-West cannot support a privatization effort that results in a creature neither fish nor fowl. Responsibilities to the Bureau of Reclamation relating to federal irrigation development travel with the benefits of a subsidized federal power supply. One goes with the other. To unencumber an irrigation project from its responsibilities to the federal government while retaining the special treatment of federal irrigation projects with respect to power supply costs seems to be an attempt to eat one's cake and have it too.

Even though non-federal irrigators in the Missouri River basin receive Pick-Sloan power as part of the power resource of their rural electric cooperatives, there are many nonfederal irrigation projects seeking direct allocations of Pick-Sloan power. If this legislation is enacted and permits a non-federal irrigation district to receive benefits—payment of transmission costs beyond the federal transmission system—heretofore only provided to Pick-Sloan federal reclamation projects, the non-federal irrigation projects in the region are sure to add this to their efforts. It is difficult to see how Congress will be able to stanch the demand for special treatment of all non-federal irrigators. Every year will bring to Congress not one Lower Yellowstone but scores of Lower Yellowstones.

The low cost power provided through the Pick-Sloan Missouri Basin Program is the economic life-blood of the region. Power users are not simply an open checkbook for private entities. Transmission service costs must be paid by everyone, including irrigators, and not shifted to other users. It is unreasonable to expect power customers to accept this kind of inequitable cost shifting. Pick-Sloan power rates are already increasing. By the end of this calendar year, power users will have seen a 15.6% increase in the firm power rate. Next year, we are expecting another rate increase, perhaps another 10%.

These costs are being added to a shrinking Pick-Sloan power resource. In 1995, Mid-West supported a proposal by the Western Area Power Administration to establish a Resource Pool to provide allocations of Pick-Sloan power to Native American tribes in the river basin and eligible new preference customers. To accomplish that, Western's existing preference customers gave up 4% of their Pick-Sloan power allocations. Today, we are anticipating a smaller withdrawal to develop a Resource Pool for eligible preference entities. If the wrangling over the Corps of Engineers' Master Manual ever ends, Pick-Sloan power customers may see their allocations reduced yet again to reflect the new hydrology of the river.

Mid-West supports the continued development of federal irrigation projects under the Pick-Sloan Missouri Basin Program. Mid-West supports privatization of federal reclamation projects that follow the power provisions of the Middle Loup transfer. Mid-West cannot support the power supply provisions in S. 900/H.R. 2257. The National Rural Electric Cooperative Association also opposes the power supply provisions in this legislation. A copy of their resolution is attached.

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

62ND ANNUAL MEETING RESOLUTIONS

Adopted at the 62nd Annual Meeting February 10-18, 2004 New Orleans, Louisiana

POWER AND WATER RESOURCES COMMITTEE (H)

DILUTION OF PREFERENCE POWER

NRECA opposes changes in the allocation of federal or state preference power that would expand rights to this power to non-traditional customers. Such changes will upset a carefully crafted legal balance among many preference customers.

Rural America is the most vulnerable to harm should these changes occur. Preference power protects fragile rural economies from unstable power rates. Any consideration of such changes in preference power allocation exposes rural America to a wide range of competing demands from others. These changes, including precedent-setting proposals requiring preference customers to bear the costs of wheeling federal power to non-federal customers, will dilute preference power benefits of existing legitimate preference power customers leading to unaffordable electricity rate increases for rural Americans.

Our opposition to expansion of preference power rights relates to proposals that would allow preference power to automatically flow across IOU distribution lines through lease arrangements with new public power entities. Such sham public power entities could easily be formed by private power marketers and others exploiting unmerited access to cost-based preference power as a means to gain a competitive advantage. We believe the ability of nontraditional customers and IOUs to obtain increased access to preference power through lease arrangements encourages the export of low-cost private power resources in one region to customers outside the region. Such exports could easily threaten the stability of regional rates. We oppose attempts to redefine preference based upon the classification of end users, as opposed to the type of utility distributing the energy. (01-H-1)

Senator MURKOWSKI. Thank you.

Mr. Jones.

STATEMENT OF C. ALLAN JONES, DIRECTOR, TEXAS WATER RESOURCES INSTITUTE, COLLEGE STATION, TX

Mr. JONES. Thank you, Madam Chairman. My name's Allan Jones; I'm the director of the Texas Water Resources Institute. I'd like to thank you and the subcommittee for the opportunity to testify concerning S. 1957, the United States-Mexico Transboundary Aquifer Assessment Act.

I think it goes without saying that water is very important in the far west Texas-southern New Mexico area. I'll skip any remarks about that importance and go on to the importance of S. 1957, which is designed to help State and local water planning and management agencies to do a number of things. First, to build upon previous groundwater studies and to help develop high quality, comprehensive groundwater data bases for the transboundary aquifers along our border with Mexico. Second, to analyze trends in groundwater quality, including salinity, toxic pathogens, and nutrients in those aquifers. Also to improve existing groundwater flow models that we use to manage our water supplies and to help improve and develop new hydro-geologic maps in the area. All of these things will help our state and local organizations, agencies that plan and manage the use of our groundwater in their very important responsibilities.

The Texas Water Resources Institute has worked very closely with the Texas Water Development Board staff to provide input to the committee, and we'd like to thank the staff of the committee for being very receptive to our comments and to taking them seri-

ously, working with us. We strongly support the close coordination among Federal, State and local authorities in all of these areas—aquifer characterization and modeling, cooperative selection of other important transboundary aquifers to be studied, and collaborative data collection sharing and analysis. I'd like to note that the committee has received a number of supporting letters. I won't go into all of those but we're very pleased to see that the major water users in far west Texas have signed on and feel that this is a very important bill.

My counterpart in New Mexico, Dr. Karl Wood, who's here today, the director of the New Mexico Water Resources Research Institute, and I are committed to bringing the expertise of New Mexico and Texas institutions of higher education to bear on the problems addressed by S. 1957. We look forward to working with U.S. Geological Survey and with facilitating its cooperation with the State agencies and the local authorities in our respective States. We also look forward to cooperating with USGS in engaging Mexican institutions with expertise and interest in these issues.

The experience in Texas suggests that the best public policy results from engaging a wide variety of local and regional stakeholders with their Federal counterparts in the design and implementation of water resource planning and management. In my judgment, S. 1957 will certainly accomplish that goal and we look forward to working on it.

Thank you.

[The prepared statement of Mr. Jones follows:]

PREPARED STATEMENT OF C. ALLAN JONES, DIRECTOR, TEXAS WATER RESOURCES
INSTITUTE, COLLEGE STATION, TX, ON S. 1957

I would like to thank the Committee for the opportunity to provide input to its consideration of this important bill. The "United States-Mexico Transboundary Aquifer Assessment Act" authorizes the Secretary of Interior, "to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes." The purpose of this written testimony is, first, to inform the Committee of the importance of scientific assessment of transboundary aquifers. Second, I wish to stress the need for cooperation among local, state and federal organizations in the characterization, mapping, and modeling of transboundary aquifers.

The Texas Water Development Board is in the process of implementing a Groundwater Availability Model (GAM) for each of the state's major and minor aquifers. This marks a major step in groundwater assessment and management for Texas, and the GAMs are being used by many of the state's groundwater districts to plan and manage groundwater use. The Mesilla Basin and Hueco Bolson in Far West Texas, southern New Mexico, and adjacent Mexico are two of the most important sources of water in this dry region. Their wise use and long-term sustainability are extremely important to the economic development of the area. A good scientific understanding of the aquifers' characteristics and response to pumping is needed for local and state water authorities to plan and manage their use. Aquifer data bases and models developed under S. 1957 will improve the Texas GAMs for the state's transboundary aquifers, improving our ability to plan and manage our groundwater resources.

The Hueco Bolson is the sole drinking water source for Ciudad Juarez and a major source of water for El Paso. It has little recharge, water levels have declined by more than 250 feet, and its quality is deteriorating. The U.S. Geological Survey (USGS) in Albuquerque in cooperation with El Paso Water Utilities has developed a GAM of the Hueco Bolson aquifer in Texas, New Mexico, and Mexico. While useful, this model does not provide adequate detail, especially with regard to water movement and quality within the aquifer to accurately assess the effects of pumping on future groundwater quantity and quality. The Mesilla Basin is the largest rechargeable aquifer in the region. It is used for domestic and supplemental irrigation

water, but its recharge by waters of the Rio Grande is poorly understood, its southern boundary in Mexico is poorly defined, and there have been no bi-national modeling efforts to date. If enacted, S. 1957 will help state and local water planning and management agencies:

- Build on previous groundwater studies to develop high-quality, comprehensive, groundwater quantity and quality databases for the Mesilla Basin, Hueco Bolson, and other important transboundary aquifers.
- Analyze trends in groundwater quality, including salinity, nutrients, toxics, and pathogens in these aquifers.
- Improve existing groundwater flow models, or if appropriate develop new models to facilitate regional water assessment and planning.
- Improve or develop new hydrogeologic maps of both surface and bedrock deposits associated with transboundary aquifers.
- Evaluate strategies to use groundwater supplies wisely and protect groundwater quality.

I expect that these tasks will be addressed by multi-institutional teams of scientists reporting to and receiving feedback from local water user groups. It is important that cooperating institutions clearly define the scope and time line for each task to avoid unnecessary delay and expense.

The Texas Water Resources Institute has worked closely with Texas Water Development Board staff to provide input to Committee staff concerning the bill. We have stressed the importance of developing scientifically sound data and models that will assist state and local agencies responsible for groundwater planning and management. We strongly support close coordination among federal, state, and local authorities in aquifer characterization, and modeling; cooperative selection of other important transboundary aquifers for future study; and collaborative data collection, sharing, and analysis. These data can be used, where applicable, to improve and strengthen existing groundwater models. We also understand that nothing in this Act affects the jurisdiction or responsibility of the cooperating states or local entities to plan, manage, or use water from a transboundary aquifer. Based on these understandings, the Texas Water Resources Institute strongly supports its passage.

I am pleased to note that a number of local, regional, and transboundary organizations have written letters or otherwise indicated support for S. 1957, including: Border Trade Alliance, City of Deming, City of Las Cruces, Doña Ana County, Elephant Butte Irrigation District, El Paso County Water Improvement District Number 1, El Paso Water Utilities, Far West Texas Water Planning Group, New Mexico-Texas Water Commission, Southwest Regional Water Plan Steering Committee, and the Water Resources and Desalination Consortium. The Paso del Norte Water Task Force also written a letter of support for the comprehensive groundwater assessment authorized by S. 1957. The Task Force's membership consists of the City of Las Cruces, Elephant Butte Irrigation District, New Mexico State University, Crowder Enterprises, City of El Paso, Texas A&M University-El Paso Center, University of Texas-El Paso, El Paso Community Foundation, Environmental Defense, Houston Advanced Research Center, International Garment Processors, Ciudad de Juarez, Universidad Autonoma de Ciudad Juarez, Juarez Distrito de Irrigacion No. 9, and Grupo Bermudez. Ex-officio members include the International Boundary and Water Commission and its Mexican counterpart.

My counterpart in New Mexico, Dr. Karl Wood, Director of the New Mexico State University Water Resources Research Institute, and I are committed to bringing the expertise of New Mexico and Texas institutions of higher education to bear on the problems addressed by S. 1957. In addition, we look forward to our role of facilitating cooperation with state agencies and local authorities in our respective states. Through our institutes, we will cooperate with USGS to engage Mexican institutions with expertise and interest in improving aquifer characterization, modeling, and management. These organizations will be valuable partners in securing and interpreting groundwater and water use data for Mexico. They are expected to include: Tecnológico de Monterrey; Universidad Autonoma de Ciudad Juarez; Colegio de la Frontera Norte; Comision Internacional de Limites y Aguas; Instituto Nacional de Investigaciones Forestales, Agrícolas, y Pecuarias; and Ciudad de Juarez.

Experience in Texas suggests that the best public policy results from engaging a wide variety of local and regional stakeholders in the design and implementation of water resource planning and management. In my judgment, S. 1957 will accomplish that goal and serve well the people of Far West Texas, southern New Mexico, and adjacent Mexico.

Senator MURKOWSKI. Thank you, Mr. Jones.
Mr. Core.

**STATEMENT OF ANDREW B. CORE, SENIOR HYDROLOGIST,
HYDROLOGY BUREAU, ADMINISTRATIVE LITIGATION UNIT,
NEW MEXICO OFFICE OF THE STATE ENGINEER, ON BEHALF
OF JOHN R. D'ANTONIO, JR., PE, STATE ENGINEER**

Mr. CORE. Thank you, Madam Chairman. I appreciate you holding this hearing. I would like to note that John D'Antonio, who is the State engineer of the State of New Mexico has submitted a written statement and I would appreciate it being considered as part of the record.

Senator MURKOWSKI. It will be included as part of the record.

Mr. CORE. Thank you, ma'am. The mission of the Office of the State Engineer is to quantify and apportion water within the State of New Mexico to protect the uses of senior water right holders throughout the state and we are committed to finding new and better ways to do that.

S. 1957 is potentially very good for the State of New Mexico because it addresses cooperative research that can lead to new solutions to water shortages in the rapidly growing Las Cruces-El Paso-Juarez metropolitan area. I understand that negotiations are underway to make some changes to the original draft of the bill; we have seen a very current draft today and we do consider those changes very positive.

The New Mexico agencies are working very diligently to develop fresh and saline water sources throughout the State, saline water being a priority of the Governor, and we are looking for ways to implement those priorities and this bill does a very interesting thing in including these saline water sources in the transboundary aquifer study. We are also fully engaged in attempts to regionalize water sources, water conservation and active resource management. This bill really brings a great deal of funding toward the development of pathways that reach those regional goals.

One of the things that New Mexico is proud of is that we were the first State to implement conjunctive water resource management, and this bill recognizes the importance of groundwater-surface water interaction. And we are very committed to helping develop ways to further that kind of research.

We really are very interested in engaging the USGS, the various WRIs and other agencies that will be involved in this project to provide a proper level of guidance. The thing that we are really interested in is seeing new data, new drill holes, new testing, new measurements; we don't want any rehash of old material if we can help it. And this bill provides us a great deal of that kind of guidance, I believe.

So, I would like to express support for the bill. And with that I will take any questions that you'd like.

[The prepared statement of Mr. D'Antonio follows:]

**PREPARED STATEMENT OF JOHN R. D'ANTONIO, JR., PE, NEW MEXICO STATE
ENGINEER, ON S. 1957**

Senate Bill 1957 is potentially good for the state of New Mexico because it addresses cooperative research that can lead to new solutions to water shortages in the rapidly growing Las Cruces-El Paso-Juarez metropolitan area. I am aware that negotiations have been underway to introduce some changes to the original draft. The changes that my staff has analyzed seem very positive.

New Mexico agencies, including mine, are working diligently to develop new fresh and saline water sources and the technologies to make them available for our citizens. This bill adds significantly to that effort.

The New Mexico water community is engaged fully in an attempt to regionalize water sources, water conservation and active resource management. This bill provides funds for the development of pathways toward those regional goals.

Of primary interest to New Mexico is the doctrine of conjunctive management, which administers water in major river valleys and their connected aquifers as one combined source. New Mexico was the first state to put this doctrine into practice more than forty years ago. The common link in the Mesilla and Hueco aquifers noted, as a priority within the bill is the historic Rio Grande. We welcome the opportunity to see a true regional study of the Lower Rio Grande Basin.

I believe that the proposed study does need to have a proper level of guidance and control that includes the state agencies directly involved in water resource management. Furthermore, I believe that a strong bias toward new data collection that builds upon previous studies should be an important component of the bill.

I want to express my support for the passage of this bill and look forward to working with the New Mexico congressional delegation to bring this effort to fruition.

Senator MURKOWSKI. Thank you, Mr. Core.
Mr. Carman, your testimony.

**OPENING STATEMENT OF JOHN ROBERT CARMAN, GENERAL
MANAGER, METROPOLITAN WATER DISTRICT OF SALT LAKE
& SANDY, SANDY, UT**

Mr. CARMAN. Thank you, Madam Chairman, members of the committee. We appreciate the opportunity to be here today to testify on this bill. We wanted to thank Senator Bennett and his staff, particularly Luke Johnson, for their assistance in introducing our bill.

The Metropolitan Water District of Salt Lake and Sandy provides wholesale supplemental drinking water to Salt Lake City and Sandy City. In most years we also provide water to our sister agency, the Jordan Valley Water Conservancy District, the other large public water wholesaler located in Salt Lake County. The Metropolitan Water District of Salt Lake and Sandy is a major shareholder in the Provo River Water Users Association. The Association is a non-profit, private mutual irrigation company. I'm currently serving as the president of their board of directors, and their general manager, Keith Denos, is here with me today. The District and the Association we're here representing are the entities responsible for repayment to the United States of all the costs of construction for the Provo River Project, which kicked off in 1935. Repayment for operation and maintenance of the two divisions of the project, the Aqueduct Division, the responsibility is with Metro and the Provo or, the Deer Creek Division of the Provo River Project is with the Association.

We're interested in pursuing title transfer on three components of the project: the Provo Reservoir Canal; the office-shop complex in Pleasant Grove and the Salt Lake Aqueduct. The Salt Lake Aqueduct has been operated by my district, Metropolitan, and basically is a pipeline that's 41.7 miles long, with a drinking water reservoir at the other end. The Provo Reservoir Canal is about 21.7 miles long; it's an earthen canal that goes through an increasingly suburbanized area. And the office-shop complex is a four-acre piece of land upon which we just built the Association's office and shop complex at no cost to the Federal Government.

I'm going to skip over some of this additional detail if we can have my written comments put in Senator MURKOWSKI. The full text of your comments will be included in the record.

Mr. CARMAN. Thank you. The proposed title transfer in our view will be an important first step in accomplishing the following goal: improved public safety. The canal itself is in an area, as I previously mentioned, that's increasingly suburban. In the past 20 years, 14 people have died in that canal through drownings in the siphons. Enclosing that canal would virtually eliminate the risk and so this title transfer is the first step for a future project of enclosing that canal. Ironically, since it's held in the name of the Federal Government, our district can't use its tax exempt status to bond for these improvements. So by transferring the title of the canal and to a local public entity, that's how we hope to utilize our own tax exempt financing. That non-Federal financing in the tax exempt form is very important to us. In terms of the owners of the Provo River Water Users Association, a private, non-profit mutual irrigation company, more than 90 percent of the ownership is now in government hands.

The enclosure project, which is what we're contemplating, this being the first step to, will produce a number of important benefits. Water conservation is a key issue; we're in the fifth or sixth year of a drought in Utah and we estimate that approximately 8 percent of the water going through the canal is lost to seepage. So by enclosing it we get that water back. We anticipate that some or all of that conserved water would be sent to the Department of the Interior in a deal to help pay for the enclosure, so that's part of the deal that's on the table. And this would soon be an increase to the Central Utah Project water supply. Our district is the second largest petitioner to the Central Utah Project and it's very important to us that they have a complete supply to make their supplies available to us. Enclosing that canal will improve drinking water protection from a water quality perspective as well as from a security perspective. The canal goes through many communities and it's very hard to protect as an open canal. We believe that the enclosure project would make for more efficient and coordinated use of the water conveyance facilities and water treatment facilities of the large water providers on the Wasatch front. In addition, the canal is in a right-of-way that would make a great recreational opportunity for Utah County, and we are engaged in discussions to help facilitate that process. And finally, we believe that transfer of these assets will reduce the demands on Reclamation resources while it will increase ours.

Completion of the title transfer to the Salt Lake Aqueduct and Pleasant Grove property will require a title transfer agreement with the Secretary. Completion of title transfer to the Provo Reservoir Canal will require certain agreements among impacted local entities and the United States. Completion of the title transfer will require NEPA and other compliance work. The first step, in our view, is congressional authorization of this process. We ask for your support in this critical first step.

I wanted to add our appreciation for John Keys and his staff, their work on the NEPA process, proposed changes to legislation and the agreements we've been working on has been outstanding.

We really appreciate their support. We believe that most of the concerns that were addressed by Commissioner Keys have been worked out in concept and will come out during the mark-up. Therefore, we believe it's timely for the Senate to move forward on this legislation.

Again, I wanted to express my appreciation for this opportunity to testify, and I'd be happy to answer any questions you might have.

[The prepared statement of Mr. Carman follows:]

PREPARED STATEMENT OF JOHN ROBERT CARMAN, GENERAL MANAGER,
METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY, SANDY, UT, ON S. 1876

My name is John Carman. I am the General Manager of the Metropolitan Water District of Salt Lake & Sandy.

The Metropolitan Water District of Salt Lake & Sandy provides wholesale supplemental drinking water to Salt Lake City and Sandy City. In most years our District also provides water to a sister agency, Jordan Valley Water Conservancy District, the other large public wholesaler located in Salt Lake County.

The Metropolitan Water District of Salt Lake & Sandy is the major shareholder in the Provo River Water Users Association. I serve as the President of the Board of Directors of the Provo River Water Users Association.

The District and the Association I represent are the entities responsible to repay to the United States all of the costs of construction of the Provo River Project. Repayment for, and the operation and maintenance of, the Aqueduct Division of the Provo River Project is the responsibility of the District. Repayment for, and the operation and maintenance of, the Deer Creek Division of the Provo River Project is the responsibility of the Association.

The District and the Association are interested in pursuing a title transfer of certain features of the Provo River Project in Utah. The Association and the District are seeking title to the Salt Lake Aqueduct, the Provo Reservoir Canal, and a 3.79 acre parcel of land in Pleasant Grove, Utah that is being used for the Association's Office and Shop Complex.

Construction of the Salt Lake Aqueduct was initiated in 1939. The Salt Lake Aqueduct consists of a new intake structure, recently constructed without federal funds, located at the base of Deer Creek Dam, at the top of Provo Canyon in Wasatch County, Utah. From the intake structure water is conveyed through approximately 41.7 miles of pipe with an inside diameter of 69", as well as several tunnels. The Salt Lake Aqueduct reaches from the intake to the District's Little Cottonwood Water Treatment Plant in Salt Lake County. From the plant, water is conveyed to two 20 million gallon finished water reservoirs located at approximately I-215 and 3300 South in Salt Lake City.

The Provo Reservoir Canal is approximately 21.5 miles long and reaches from the mouth of the Provo Canyon, through eight Utah County cities to the south end of Salt Lake County. For most of its length the canal is an open, unlined, earthen structure, perched on foothills above and below a rapidly urbanizing area. The Provo Reservoir Canal includes four large siphons to move water under streams and roads.

The Provo Reservoir Canal was privately constructed in the early 1900s. Legal title to the Provo Reservoir Canal was conveyed to the Bureau of Reclamation in 1939 to facilitate financing of canal improvements through the Reclamation Act of 1902. Ironically, because the United States holds legal title to the Provo Reservoir Canal, the local governmental entities are inhibited from obtaining locally financed improvements that are critically needed.

The 3.79 acre parcel of project land in Pleasant Grove, Utah is the location of a new \$2 million Office and Shop Complex recently completed by the Association using no federal dollars. Though the Association was given a perpetual right to use this land in 1956, title to the land remains in the name of the United States.

The proposed title transfer will be the first step to accomplishing the following goals:

1. *Improved public safety.* The land surrounding the canal is quickly developing, and interactions with the canal are increasing exponentially. Approximately 14 people have drowned in the Provo Reservoir Canal in the last 20 years. Enclosure would virtually eliminate this risk.

On one occasion the earthen canal failed, flooding lands below. Those lands are more developed today. On another occasion a slip in the canal bank was detected

before the canal was filed for the season. Enclosure would virtually eliminate this risk.

2. *Improved public drinking water protection and security.* Today the majority of the water moved through the Provo Reservoir Canal is treated and used for drinking water. The open canal exposes the water to a number of contaminants.

3. *Non-federal financing of necessary facility improvements.* While the Salt Lake Aqueduct is generally in very good condition, we anticipate accelerating repairs in the coming decades to improve security, seismic safety and longevity of the facility. In the near future we anticipate a seismic upgrade to the two 20 Million Gallon reservoirs that are a part of the Salt Lake Aqueduct.

The Provo Reservoir Canal must be enclosed. We anticipate an enclosure project in partnership with the Central Utah Project.

The fact that title is held by the United States prevents certain low-cost, non-federal financing sources.

4. *Water conservation.* It is estimated that the unlined Provo Reservoir Canal loses approximately 8% of the water moved through that facility. The proposed enclosure would make that water available for use.

5. *Use of some of the conserved water for stream habitat.* It is anticipated that some of the saved water will be used by the Department of the Interior for instream purposes in the lower Provo River by agreement. The lower five miles of the Provo River have been designated critical habitat for the June Sucker.

6. *An increase in the Central Utah Project (CUP) water supply.* It is anticipated that several petitioners for CUP water will be able to turn back some CUP water because of the availability of the water saved through enclosure of the Provo Reservoir Canal.

7. *More efficient and coordinated use of water treatment and conveyance facilities for the benefit of a number of local governmental entities.* The Provo Reservoir Canal, the Salt Lake Aqueduct and the Jordan Aqueduct all serve water to north Utah County and Salt Lake County. Several water treatment plants are or will be tied together with this facility, and additional facilities currently being constructed by this District. Transfer of title to the Salt Lake Aqueduct and the Provo Reservoir Canal, and enclosure of the canal, will allow a more comprehensive and coordinated use of these facilities, to the benefit of all of the communities involved. It is anticipated that the coordinated use of these facilities will assist the Central Utah Project in meeting some minimum instream flow commitments.

8. *New public recreational opportunities.* Water quality and safety concerns prevent the lawful use of the Provo Reservoir Canal maintenance road as a public trail. When the canal is enclosed the surface could be used safely for a public trail.

9. *The elimination of demands on limited Reclamation resources.* The Bureau of Reclamation provides dedicated and competent staff support and resources to assist with the maintenance of the aqueduct and canal rights of way. Those responsibilities will be assumed completely by the District and the Association, and Reclamation resources will be freed up for other federal needs.

Completion of title transfer to the Salt Lake Aqueduct and the Pleasant Grove Property will require a title transfer agreement with the Secretary. Completion of title transfer to the Provo Reservoir Canal will require certain agreements among the impacted local entities and the United States. Completion of title transfer will require NEPA compliance and other compliance work. The first step is Congressional authorization of this process. We ask for your support of this critical first step.

Senator MURKOWSKI. Thank you. I appreciate your testimony.

Let me just very quickly begin with you and we'll work backward. I believe the comment was made that the transfers will take some time or the agreements that are pending will take some time, and that it's not necessary to have those complete before the legislation goes through. You've indicated that the legislation is a priority. You don't see this as being an impediment to moving this issue forward?

Mr. CARMAN. No, we believe it would help. Right now we have a lot of folks spending a lot of money in the hopes that this legislation will go through. I could give one example. We have communities, cities, that own shares in irrigation companies in Utah County, that they use for their water supply. Those irrigation companies are private, non-profit entities that own capacity in this

canal. So to work out the joint public agency concept that we've all agreed to as a premise going forward, there has to be a lot of legal work to unentangle the capacities that are owned by those cities through these private companies and then transfer those into a government entity so that we can finance that component of the canal with tax exempt financing. So we feel that getting the legislation in place will give everybody a better level of comfort that those investments and the legal costs to unentangle their assets, it will help that process move forward.

Senator MURKOWSKI. Good, good. A question for either Mr. Jones or Mr. Core. If there were to be significant groundwater contamination or depletion found on either side of the border, what kind of cooperative agreement, or is there some agreement between the State of Texas and Mexico to address and remedy a situation like this?

Mr. JONES. Madam Chairman, I don't believe at this time there is that sort of an agreement in place.

Senator MURKOWSKI. So, if it were to happen we'd just work through it and hope for the best? The purpose of this legislation, obviously, is to use some science to help us with these allocation issues so that we don't get to a point where we have a problem that we've got to rectify or remedy. But what you're saying is if we were to find something or if there are significant depletion problems we really don't have any kind of an agreement in place at this time?

Mr. JONES. That's my understanding and I think what we lack here is a scientific understanding of the situation. And then, if we do find significant problems, I'm certain that we would address those appropriately with a good scientific basis for our action.

Senator MURKOWSKI. Good. And you would concur, Mr. Core?

Mr. CORE. Yes ma'am, I would. In fact, I think the dearth of information from the Mexican side is one of our biggest problems at the moment and any cooperative effort that we can put together than increases our scientific knowledge of those entire systems will feed directly into solving any contamination problem.

Senator MURKOWSKI. Good. Mr. Nypen, at the end of your testimony you suggested that a proposed amendment could or will phase out this project use power. Can you describe the power cost differences between what's currently in the bill and then what the proposed amendment might do in terms of the cost difference?

Mr. NYPEN. Well, what's currently in the bill, if it were to pass, would be—the cost of power would be 10 mils.

Senator MURKOWSKI. Okay.

Mr. NYPEN. Excuse me. It would be at the preference power rate which is about 17 mils.

Senator MURKOWSKI. And that's the current language?

Mr. NYPEN. That's the current language. The compromise is to absorb the wheeling. And again, we have this wheeling issue. And it would result in about 100 mils because when I look at wheeling, I look at dividing the total dollars by the amount that's used. And when you do that, it isn't 3½ or 4 or 5 cents per kilowatt hour; it's 8, it's 7½ or 8, and I think maybe I'm thinking the same way that Mr. Burns is thinking when asking the questions about being specific on the amount that we use and the dollars. When you divide those out, that's what we look at. So you have to add the 17

mils for the power and the wheeling on top of that which is, you know, another 80 mils.

Senator MURKOWSKI. And do these numbers—I'm assuming that all of the districts, as part of this proposal or the plan, are all making the assumption that you have. What would be the impact if one of the districts were to withdraw from the title transfer proposal?

Mr. NYPEN. That's part of really studying the affordability and what we can do. The problem is that they're all linked together. There's one diversion dam and the main canal was constructed in 1909 for the two large irrigation districts. A third irrigation district was added in 1946; it gets its water from the main canal, not the river, so the Federal facilities diverge and convey water to the point at which the southern district pumps its water from. Likewise farther downstream another district was added in 1950. So it's a real problem because the Bureau has not been able to tell us what happens if we divide them up. There would have to be Federal water conveyed through facilities that were transferred to get to these two districts. And so they're all, you know, linked together and that's a big problem and we haven't been able to take them apart.

Senator MURKOWSKI. Senator Burns.

Senator BURNS. Thank you. Just got a couple of questions. Mr. Graves, from Mr. Nypen's testimony that Federal ownership has not been a condition of receiving Pick-Sloan power in the past, citing places like Kensie Irrigation Development. What's your response to this?

Mr. GRAVES. Sir, the Kensie Irrigation District was developed back in the 1930's, I believe it was.

Mr. NYPEN. Twenties.

Mr. GRAVES. Twenties? Way before Pick-Sloan, when they were developing Ft. Peck, which you know was the first of the dams to be completed and later incorporated into the Pick-Sloan plan. My understanding is the Bureau of Reclamation at that time was shopping for customers because this was a new dam, they wanted to serve irrigation, and so by administrative action they began providing them with Ft. Peck power. There was no pumping rate, there was no aid to irrigation; none of those things existed at that time. And then it was incorporated by reference with the establishment of the Flood Control Act of 1944.

Senator BURNS. Okay. And now, on the Middle Loup title transfer.

Mr. GRAVES. Yes, sir.

Senator BURNS. How does that compare to this transfer on the Lower Yellowstone?

Mr. GRAVES. The primary difference is the wheeling costs.

Senator BURNS. There are wheeling costs in the Loup?

Mr. GRAVES. There are but as Jerry will tell you and we certainly agree all irrigation projects are very different, and in Nebraska, they obviously do not have the same kind of lift out of the river in terms of their power costs. They're all different, but yes, there are wheeling costs involved and there are power costs involved.

Senator BURNS. Is there any area in your mind where we can reach middle ground on this?

Mr. GRAVES. Well, ironically enough, Senator, you don't have to be worried about my mind; it's my board's mind. But we are working on this. We continue to work on this. I have been racking my brain, quite frankly, to try to figure out a way to reduce the costs to the district and continue to do so. I do know that Lower Yellowstone, when they had to establish these wheeling rates because of FERC Order 888, did employ an engineering firm that does this kind of thing as a matter of record. We continue to look for it. Our concern is what happens after, if this legislation were enacted. Because as you know, the overwhelming majority of irrigation development in the whole River Basin is not Federal. It's non-Federal. There are only about 27 Federal irrigation projects in the district. And if one non-Federal irrigation project starts getting additional costs covered, they're all going to be coming in, banging on the door, asking for the same deal.

Senator BURNS. I think it's great.

[Laughter.]

Mr. GRAVES. Thanks.

Senator BURNS. And I don't want to crimp your lifestyle or anything, but I think, you know, that's the reason the cooperatives were established in the first place, to provide power out there where we had no power. And I think maybe we've gotten away from that a little bit. Maybe I have a skewed vision of that, but I'll tell you what I want to do. I want to sit down with you and all the stakeholders. If we have to do it in Montana we'll do it in Montana. But there has to be a way, because this wheeling cost, I think for five miles, is just—I mean, evidently that's acceptable to the irrigation districts, the wheeling costs, but, nonetheless, what would be the preferred rate? Or the firm power rate?

Mr. GRAVES. The firm power rate today is about 16.3 mils; come October 1 it will be going up to 16.8 mils.

Senator BURNS. What's driving the cost on that?

Mr. GRAVES. There are a couple of things. One is just agency costs, because we're talking about the Western Area Power Administration, Corps of Engineers and the Bureau of Reclamation, and the lack of the liquid stuff we need to irrigate the projects; drought. But we are expecting next year, as well, to get another rate increase.

Senator BURNS. Can we get you all together out there?

Mr. GRAVES. Any time you want, sir. This is not a happy issue.

Senator BURNS. I know it's not. It's very unhappy; I don't like it at all. Because I'm very supportive of the co-ops and I want to see them survive, and I'm very supportive of what these people have in mind up there. If you know what I mean.

Mr. GRAVES. Yes sir. And we would like very much to facilitate and make this transfer happen if that's what the districts want, but we have the economy in the Upper Great Plains, as you know, is not exactly robust, and we have to be very careful about the costs we're adding to the Pick-Sloan resource. Our resource is shrinking so we have costs being spread over a smaller base. In 1999, we supported Western Power Administration in creating a resource pool, withdrawing 4 percent of the power from every co-op and municipality in the region to establish a resource pool to provide new power to Native American tribes and to other preference-

qualifying entities. If the Corps of Engineers ever finishes the master manual we may see our resource shrink again because of changed hydrology in the river. Our contracts also provide for withdrawals as Federal irrigation development does come on-line. So, we share your goal and we share your concern.

Senator BURNS. Mr. Nypen.

Mr. NYPEN. Yes, sir?

Senator BURNS. Well, I think that's the way we'll proceed on this. And I'll try to get together out there sometime this spring and we'll set a date and see if we can't come up. I want to get some more figures, but I'll do them in private. I'll get some more figures from both of you and we'll do some figure-crunching here and then we'll try to set up that meeting.

And I thank the chairman for having this hearing today. That's very, very important that we get our cards on the table and we start working on this thing in earnest because I've worked two Congresses on this thing and it's time to finish it. And, you know, then, I thank you both for coming. I appreciate that very much.

Mr. GRAVES. Thank you, Senator.

Senator MURKOWSKI. Thank you, gentlemen. Appreciate your testimony this afternoon. If there are any follow-up questions we'll send them to you. We appreciate your time. And we will look forward to working with all of you on these issues, to resolve them so we can move forward. Thank you. We're adjourned.

[Whereupon, at 3:50 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

DEPARTMENT OF THE INTERIOR,
OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS,
Washington, DC, August 27, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are responses prepared by the Bureau of Reclamation to questions submitted following the May 19, 2004, hearing before the Subcommittee on Water and Power on S. 900, to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts; S. 1876, to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project; S. 1957, to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers; S. 2304 and H.R. 3209, to amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project; H.R. 1648, to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District; and H.R. 1732, to amend the Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

JANE M. LYDER,
Legislative Counsel.

[Enclosure.]

QUESTIONS FROM SENATOR DORGAN

S. 900 THE LOWER YELLOWSTONE RECLAMATION PROJECTS CONVEYANCE ACT

Question 1a. Lower Yellowstone (S. 900)—I understand that the Bureau has been working with the local irrigation districts on this title transfer proposal for some time. Please summarize for us the benefits that you believe would be obtained from this title transfer.

Answer. Reclamation supports title transfer for projects that could be efficiently and effectively managed by a non-federal entity. This title transfer would divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project.

Question 1b. What are your concerns?

Answer. As we have testified on several occasions, Reclamation believes this title transfer is premature since significant issues remain to be resolved related to the continued delivery of Pick-Sloan Missouri Basin Program (P-SMBP) power following title transfer, fish and wildlife mitigation, and appropriate pricing and valuation of lands being transferred to the non-Federal entity.

Question 2a. Lower Yellowstone (S. 900)—I know that one of the witnesses on the next panel has concerns regarding the implications of subsidizing the cost of wheeling power to the project once the title transfer is complete. Do you share this concern?

Answer. Yes. Reclamation has testified consistently, and it is the Administration's view, that the federal government should not be required to provide irrigation pumping power at subsidized rates to projects that are transferred out of federal ownership.

Question 2b. Would we be setting a new precedent?

Answer. Yes, as proposed the legislation sets two significant precedents related to the manner in which power is provided: 1) this legislation would create a non-federal irrigation district with a federal wheeling subsidy, and 2) this legislation would provide a Western firm power customer with a federal wheeling subsidy. Western's preference/firm power customers are currently not entitled to federally subsidized wheeling when the power is moved over non-federal distribution lines.

Question 2c. How would this impact power customers in the region?

Answer. The P-SMBP firm or preference power users (power customers) currently pay most of the costs of providing power to the federal irrigation districts along the lower Yellowstone River. S. 900/H.R. 2257 as introduced would reduce some of the costs paid by power customers because the irrigation districts would pay for power at a rate that recovers the costs of making the power available. However, Pick-Sloan customers would continue to pay for the federal wheeling subsidy.

Question 3a. Lower Yellowstone (S. 900)—I understand that in 1999, the Bureau started including in the obligations of Pick-Sloan power users the costs of transmitting power across non-federal lines to federal irrigation projects. What impact did this have on the rates paid by the water districts that are advocating the title transfer under S. 900?

Answer. Prior to 1999, Federal irrigation districts paid for their project use power up to their ability-to-pay. This included 1 mil/kwh for wheeling. In 1999, Reclamation determined that the Pick-Sloan legislation obligated the Federal government to absorb wheeling costs incurred in delivering project use power to the district's pumps as a Pick-Sloan power expense. Between 1999 and about 2001, Reclamation reimbursed the districts for their wheeling costs. Since that time, the costs of transmitting power for Federal irrigation districts across non-federal lines have been included as costs to be recovered from the Pick-Sloan power rate payers. Most irrigation districts in the Great Plains Region have no additional ability-to-pay, and therefore the power rate paid by the districts was not affected by this. The economic effect is that wheeling costs incurred by the districts are now paid by firm power customers, driving the districts' costs down. Since 2001, wheeling costs have significantly increased, imposing additional costs upon firm customers of about \$500,000 per year, or .05 mills/kWh for Pick-Sloan power rate payers, but resulting in no additional charges to the districts.

Question 3b. If this policy hadn't been changed in 1999, would the districts be paying these wheeling charges now?

Answer. Yes. If the policy had not been changed and procedures remained as they were before 1999, the irrigation districts would have continued to pay the cost of wheeling power over non-Federal lines. These costs have increased substantially over the past five years as a result of the unbundling of costs following deregulation.

Question 4. Lower Yellowstone (S. 900)—Mr. Nypen's testimony provides several examples of instances where non-federal projects have received project use power (Sidney Water Users, Kinsey, Haidle, and Hammond irrigation developments in the Lower Yellowstone Valley; Hilltop and Gray Goose Irrigation districts in South Dakota; Minidoka Project transfer to Burley Irrigation District; and Gila Project transfer to Wellton-Mohawk Irrigation and Drainage District). For the record, can you please explain the circumstances, terms and conditions under which this project use power (or project reserved power) is received, and whether these instances are analogous to the situation presented in S. 900?

Answer. In 1946, Reclamation entered into contracts to provide Kinsey Irrigation Company and the Sidney Pumping Project electrical service under authority of the 1938 Ft. Peck legislation. These Ft. Peck power contracts were later converted to P-SMBP project use power contracts when Congress integrated the Ft. Peck power system into P-SMBP. The present contracts for these districts run until 2020, are at a 2.5 mil rate, and wheeling is included in the rate. Lower Yellowstone Irrigation District I and II, as well as Savage Irrigation District, are similar to Kinsey and Sidney in that they were also to receive power from Ft. Peck Dam, and were later incorporated into P-SMBP for project use power. However, they were constructed as Reclamation projects and as such remained under Federal ownership after construction, unlike Kinsey and Sidney. These projects are not analogous to Lower Yellow-

stone because they became eligible to receive P-SMBP project use power through the integration of Ft. Peck into P-SMBP.

In 1986, legislation was enacted authorizing Hilltop and Grey Goose Irrigation Districts as P-SMBP units and making them eligible for P-SMBP power. The present contracts for these districts run until 2020, are at the 2.5 mil rate, and wheeling costs are included. Both projects were constructed under USDA programs. This is not analogous to the situation presented in S. 900. Hilltop and Grey Goose were originally private irrigation districts that were converted to Federal ownership by legislation.

In 1992, legislation was enacted making P-SMBP power available to Haidle Irrigation Project and Hammond Irrigation District. The power was to come from the project use allocation (pumping power) but was to be marketed by Western as firm power. The present contracts for these districts run until 2020; are through Western at the firm rate; and wheeling is not included. These projects are not analogous to Lower Yellowstone because, like all Western firm power customers, these irrigation districts are responsible for their own wheeling costs in excess of 1 mil/kwh.

Public Law 105-351 authorized the Secretary to convey certain facilities of the Minidoka Project to the Burley Irrigation District. A provision in the law allows for the continued receipt of project reserved power in accordance with the terms of the existing contracts. The administration testified against the continued provision of subsidized power after transfer. This instance is not analogous to Lower Yellowstone because wheeling above 1 mil/kwh was always the responsibility of Burley Irrigation District.

In the instance of the Gila Project transfer to the Wellton-Mohawk Irrigation and Drainage District, the District will continue to receive and pay the full cost of project use power where the project use rate is equal to the actual cost of operation, maintenance, replacement and amortization. This instance is not analogous to the present situation because wheeling costs were a responsibility of Wellton-Mohawk Irrigation District.

Question 5. Lower Yellowstone (S. 900)—Do you believe the bill as drafted would give the Bureau sufficient time to complete necessary environmental compliance?

Answer. No. Section 7 of S. 900 requires the Secretary, in cooperation with the irrigation districts, to provide fish protection devices within two years of enactment, and then to complete all modifications within three years after they are constructed. Reclamation would be required to provide these devices on a non-reimbursable basis even though they will ultimately become part of a non-Federal project.

Informal discussions with the U.S. Fish and Wildlife Service are underway on project operations, including fish protection devices. Consultation under Section 7 of the Endangered Species Act will follow. The decisions resulting from the Section 7 process will define the fish protection requirement. This consultation process will take from 6 months to well over a year, depending on the conclusions reached in the biological opinion. Under the bill as currently drafted, a two-year monitoring period to measure the effectiveness of the fish protection devices runs concurrently with a three year window in which modifications based on the monitoring must be completed. These time limits may not be sufficient to determine whether or not the fish protection devices operate successfully under normal flow conditions.

Following ESA compliance, NEPA and cultural resource compliance would be necessary. Preliminary internal scoping suggests that the City of Glendive and others will be concerned about the economics/viability of the paddlefish fishery. Depending upon the magnitude of these concerns, we will determine whether an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) will be required. That decision and the cultural resource compliance will both affect the timeframe for environmental compliance.

Question 6. Lower Yellowstone S. 900—You note in your testimony that there are issues relating to the price and valuation of the withdrawn lands that will be transferred. How does the valuation contemplated in the bill differ from the formulas used in other title transfers?

Answer. This bill provides that the valuation process must determine the value of the withdrawn lands based on “their value in providing operation and maintenance benefits” only. Assets should be accounted for in a valuation process that appropriately protects the financial interests of the Treasury, not limited or conditioned to the value of the assets being used in a particular way.

Question 7. Lower Yellowstone (S. 900)—Does this title transfer conform to the Bureau of Reclamation guidelines governing such transfers?

Answer. With the exception of the wheeling subsidy issue, the Districts have worked diligently with Reclamation on completion of the title transfer process, in accordance with Reclamation’s guidelines and policies.

S. 1876 PROVO RIVER PROJECT TITLE TRANSFER

Question 8a. I understand that the Bureau of Reclamation would prefer that certain agreements be in place prior to the passage of this legislation. Can you please describe these agreements and tell us when you think they will be completed?

Answer. The members of the Title Transfer Working Group identified several written agreements among various parties that will be needed either prior to or subsequent to transfer. The Secretary will be a party to two of these agreements. These two agreements, which are in draft final awaiting approval by the parties, are described in the following paragraphs:

(a) A master title transfer agreement entitled "*Agreement among the United States, the Provo River Water Users Association, and the Metropolitan Water District of Salt Lake & Sandy to Transfer Certain Lands and Facilities of the Provo River Project.*" This key agreement is defined in Section 2(8) (Contract No. 04-WC-40-8950), and referenced in Sections 3(a), 3(b), and 3(c) of S. 1876. This agreement establishes very specific terms upon which the title transfer legislation, if passed, will be implemented. It provides essential details regarding the duties of the parties, manner of conveyance, and exceptions and reservations. It also ensures that the interests of all affected parties, including the public, are protected after transfer.

(b) A multiparty operating agreement entitled "*Agreement Regarding the Coordinated Operations of Provo Reservoir Canal, Salt Lake Aqueduct, and Jordan Aqueduct System among the United States, Provo River Water Users Association, Metropolitan Water District of Salt Lake & Sandy, Central Utah Water Conservancy District, and Jordan Valley Water Conservancy District.*" Each of the parties to this agreement hold various interests in the use, operation, and maintenance of one or more of three large water conveyance facilities (Provo Reservoir Canal, the Salt Lake Aqueduct, and the Jordan Aqueduct) which transport water from the Provo River in Utah County to end users located in Utah and Salt Lake Counties. All of the parties believe coordinated use and management of these three facilities is highly desirable. Currently, these three facilities are owned by the United States and are operated by the other parties pursuant to contracts with the United States. S. 1876 would transfer two of these facilities, the Provo Reservoir Canal and the Salt Lake Aqueduct, out of federal ownership. This multiparty operating agreement articulates the operational roles and responsibilities and environmental commitments of the various parties. It also commits the parties to coordinated and cooperative management of the facilities before, during, and after title transfer.

The Title Transfer Working Group met on June 29, 2004, and adopted final drafts of these two agreements. Reclamation supports both draft agreements and is prepared to sign them as soon as NEPA compliance has been completed. The comment period for NEPA compliance is now closed and we foresee no issues that would cause a delay. The Secretary will not be party to other agreements. The parties may want to enter into agreements with each other, and we believe those agreements can be developed after transfer is completed.

Question 8b. I understand that there is a proposal to convey Central Utah Project municipal and industrial water through the Provo Reservoir Canal for use in Salt Lake County. Have the details of this arrangement been completed and formalized in an agreement?

Answer. The Department of the Interior and the Central Utah Water Conservancy District filed a draft EIS for the Utah Lake Water Delivery System (ULS) with the Environmental Protection Agency (EPA) on March 25, 2004. The deadline for public comments was June 11, 2004. The draft EIS indicates that about 24,000 acre-feet annually would be conveyed through the Provo Reservoir Canal for use in Salt Lake County, and the draft EIS also indicates that an agreement would be required to convey this Central Utah Project (CUP) M&I Water through the canal. It has been assumed that title transfer of the canal would not occur prior to the execution of the conveyance agreement and therefore, the Department has assumed that title transfer of these facilities would not impact the NEPA compliance process for the ULS or prevent the utilization of the canal to convey CUP M&I Water.

Question 8c. Is legislation premature at this time?

Answer. No. At the time S. 1876 was introduced, Reclamation believed that the legislation was premature. Now that the parties have resolved key issues and negotiated final drafts of the master title transfer agreement and the multiparty operating agreement which capture those understandings, we no longer believe the legislation is premature.

Question 9. Provo River Project Title Transfer (S. 1876)—What are the benefits of this transfer? What concerns, if any, do you have about the transfer of these facilities?

Answer. Reclamation believes this transfer has potential to yield multiple benefits:

(1) The Provo River Water Users Association (PRWUA) desires to enclose the Provo Reservoir Canal, and the Metropolitan Water District of Salt Lake & Sandy (MWDSLS) desires to rehabilitate both terminal reservoirs of the Salt Lake Aqueduct.

Because federal funding for such major rehabilitation programs is no longer available, PRWUA and MWDSLS must each secure financing from the private sector. Private sector financing opportunities are extremely limited because neither PRWUA nor MWDSLS owns the facilities in question. Transfer of title would facilitate private financing of major rehabilitation activities at very favorable interest rates.

(2) Enclosure of the Provo Reservoir Canal (currently cost-prohibitive under federal ownership) would promote water conservation and enhance public safety. Additionally, there is great public interest in development of a public recreation trail along the canal alignment. Safety considerations preclude development of a trail next to the open canal. Enclosure of the canal would make development of a trail feasible.

(3) These facilities are located in a highly urbanized area. Reclamation receives numerous requests for crossing and right-of-use agreements annually and must use its limited staffing and resources to review and process these requests. Additionally, MWDSLS must review and concur with any request that impacts the facility they manage. Transfer of these facilities out of federal ownership would allow Reclamation to devote limited staff and resources to management of other projects and facilities. It would also allow applicants for rights-of-use to seek approval directly from MWDSLS or PRWUA, rather than dealing with both Reclamation and the water users.

Question 10. Provo River Project Title Transfer (S. 1876)—Does this title transfer conform to the Bureau of Reclamation guidelines governing such transfers?

Answer. Yes.

Question 11. Provo River Project Title Transfer (S. 1876)—Will the United States receive a fair return on the land and facilities under this transfer?

Answer. Yes. Sections 6(a) and 6(b) of S. 1876 requires PRWUA and MWDSLS to pay an appropriate share of expenses incident to title transfer. Sections 6(c)(1) and 6(c)(2) require PRWUA and MWDSLS to pay the net present value of the portion of their respective debt obligation to the United States which is associated with the lands and facilities to which they will receive title. They are also required to pay the net present value of historic revenue streams which have been collected by the United States for rights-of-use issued on these lands and facilities.

Question 12. Provo River Project Title Transfer (S. 1876)—Does this title transfer proposal raise issues with respect to the coordination of operations with the Central Utah Project? If so, please describe. How will these issues be addressed?

Answer. On November 1, 1994, the United States of America, the Central Utah Water Conservancy District, and the Provo River Water Users' Association executed an agreement entitled "*Deer Creek Reservoir/Jordanelle Reservoir Operating Agreement*." This agreement, along with the multiparty operating agreement among the same parties (now in final draft) as part of the title transfer, will define the terms of the coordinated operation of Central Utah and Provo River projects. These agreements should address any operations issues.

H.R. 1648 CACHUMA PROJECT TITLE TRANSFER

Question 13a. Does this transfer conform to the Bureau of Reclamation guidelines governing such transfers?

Answer. Yes, both the Carpinteria Valley Water District (CVWD) and the Montecito Water District (MWD) worked closely with Reclamation and followed Reclamation's processes and guidelines to complete this transfer.

Question 13b. Will the Federal Government receive fair return on the land and facilities to be conveyed under the bill?

Answer. Yes, we have completed a complete valuation assessment of both sets of facilities and believe that there has been a fair return on the lands and facilities for conveyance. In July 2000, CVWD completed its repayment obligation to the Federal Government for the construction costs of their distribution facilities. The costs of the easements, rights of way, and lands purchased in fee title have been included in the construction costs of repayment contracts for CVWD.

MWD has a minimal amount remaining on their repayment contract for the construction costs of their distribution facilities and has agreed to make a final lump sum payment prior to title transfer. The costs of the easements, rights of way, and

lands purchased in fee title have been included in the construction costs of repayment contracts for MWD.

Question 13c. Have you complied with all environmental laws?

Answer. Yes. In both the Carpinteria and Montecito transfers, Reclamation has complied with all environmental laws including the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and the Fish and Wildlife Coordination Act. There are no Indian Trust Assets within the project area. On August 30, 2000 a Finding of No Significant Impact (FONSI) was issued for CVWD and on August 6, 2001 a FONSI was issued for MWD.

LOWER YELLOWSTONE IRRIGATION DISTRICTS,
Sidney, MT, July 14, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Subject: S. 900—The Lower Yellowstone Reclamation Projects Conveyance Act,
Reply to your letter dated June 30, 2004.

DEAR SENATOR DOMENICI: I appreciate the opportunity to answer questions of Lisa A. Murkowski, Chairperson, Subcommittee on Water and Power, pertaining to S. 900. The responses are enclosed and are submitted for the record.

Sincerely,

JERRY NYPEN,
Manager.

[Enclosure.]

QUESTIONS FROM SENATOR MURKOWSKI

Question 1. What financial benefits will this transfer grave to the local irrigators?

Answer. There are no financial benefits for irrigators associated with the transfer; however, there will be prevention of future financial impact. Districts are non-profit public corporations governed by state law and will not capitalize in any way on the transfer of title. The Districts continue with their function after transfer, i.e. divert a fixed water right and distribute it to farms in an equitable manner via community features the same as they have for decades.

Our utmost concern is the costs associated with the government agencies administering Section 7 of the ESA. The Bureau of Reclamation and the Fish and Wildlife Service are currently in a painfully slow consultation process that involves the endangered Pallid Sturgeon and the federally owned diversion dam. The cost of fish protective devices for this feature is estimated to be \$9 million. The Bureau assumes responsibility for the cost at this time, but we expect that this will not always be the case. The bill provides that the ongoing ESA process be completed in a timely manner. If the bill does not pass, the districts are at great risk of assuming this anticipated cost as well as the cost of any future Section 7 processes. We have no control over this process whatsoever—Fish protection devices such as those anticipated now could cost about \$10 per acre per year for 40 years, not to mention the probability of loss due to federal involvement in the water operations.

There is also significant financial impact on one of the districts, the Savage Irrigation District, if the bill does not pass. A water supply contract has expired and would be renewed at an estimated cost of \$100,000. This district is very small, 2,300 acres, and the cost of contract renewal and other contract requirements could cost the districts another \$5 per acre.

All of the Districts are subject to the costs incurred by the Bureau of Reclamation in administering federal assets. The cost of review of maintenance of facilities, cost of contracting and permitting on federal lands and rights-of-way, and the general costs of administering Reclamation Law and updating rules and regulations are being passed on to the Districts. The Bureau is just now beginning to pass these costs on to the districts and a dollar amount is not available.

Question 2. Please describe the power cost differences between what is currently in the bill and the proposed amendment phasing out Project Use Power.

Answer. The current bill allows continuation of the Project Use Power to the districts' main pump units, not at the Project Use Power rate, but at a rate equal to the Preference or Firm power rate. The current bill provides that wheeling of low-voltage power over short distances to the pumps remains a Pick-Sloan function. The total annual cost of power for the districts would be \$31,550.

The amended bill allows the current power rate to remain in affect until 2014 when a step increase begins. By year 2021, the beginning of a new contract period, the total annual cost is \$157,210 without adjustment for inflation.

The four districts (two operating jointly) have power requirements that vary significantly. Enclosed are individual tabulations illustrating the costs of power over the next 20 years,

Question 3. What would be the impact if one of the districts withdrew from the title transfer proposal?

Answer. There would not be any significant impact. The two smaller districts, Intake and Savage, obtain their water supply from the other two districts, Lower Yellowstone Irrigation Districts 1&2 (operating jointly). They contract the use of the Lower Yellowstone Irrigation Project's Diversion Dam and the first few miles of the Main Canal. It is awkward to transfer two out of three districts, but arrangements could be made to deal with the integrated features. The bill must specify the conditions for dealing with the integrated features if any of the districts withdrew from the title transfer effort.

Average Usage (kwh)663,431
Ave REA wheeling (mills/kwh) 69.5
Acres served2,347

**POWER COSTS FOR THE NEXT 20 YEARS—LOWER YELLOWSTONE
IRRIGATION DISTRICTS 1&2**

[LL-MC Pump Only]

Year	As Introduced ¹	Proposed Amendment ²
2006	\$10,947	\$1,659
2007	10,947	1,659
2008	10,947	1,659
2009	10,947	1,659
2010	10,947	1,659
2011	10,947	1,659
2012	10,947	1,659
2013	10,947	1,659
2014	10,947	8,243
2015	10,947	14,827
2016	10,947	21,411
2017	10,947	27,996
2018	10,947	34,580
2019	10,947	41,164
2020 ³	10,947	47,767
2021	10,947	57,055
2022	10,947	57,055
2023	10,947	57,055
2024	10,947	57,055
2025	10,947	57,055
Total	\$218, 932	\$494,532
mills/kwh, year 2025	16.5	86.0
Cost/acre, year 2005	\$4.66	\$24.31

¹Power is project use power but at a rate equal to the firm power rate of 16.5 mills/KWH. All wheeling is included in the rate.

²Power is project use power. A step increase begins in year 2014 for the purpose of accepting the REA wheeling fees for 1 mile of line now utilized by WAPA but owned by REA.

³End of existing contract.

Average Usage (kwh)1,196,713
Ave REA wheeling (mills/kwh) 61.8
Acres served2,309

POWER COSTS FOR THE NEXT 20 YEARS—SAVAGE IRRIGATION DISTRICT

Year	As Introduced ¹	Proposed Amendment ²
2006	\$19,746	\$2,992
2007	19,746	2,992
2008	19,746	2,992
2009	19,746	2,992
2010	19,746	2,992
2011	19,746	2,992
2012	19,746	2,992
2013	19,746	2,992
2014	19,746	13,553
2015	19,746	24,114
2016	19,746	34,675
2017	19,746	45,236
2018	19,746	55,797
2019	19,746	66,358
2020 ³	19,746	76,949
2021	19,746	93,703
2022	19,746	93,703
2023	19,746	93,703
2024	19,746	93,703
2025	19,746	93,703
Total	\$394,915	\$809,129
mills/kwh, year 2025	16.5	78.3
Cost/acre, year 2005	\$8.55	\$40.58

¹Power is project use power but at a rate equal to the firm power rate of 16.5 mills/KWH. All wheeling is included in the rate.

²Power is project use power. A step increase begins in year 2014 for the purpose of accepting the REA wheeling fees for 3 mile of line now utilized by WAPA but owned by REA.

³End of existing contract.

Average Usage (kwh) 70,200
Ave REA wheeling (mills/kwh) 75.4
Acres served 827

POWER COSTS FOR THE NEXT 20 YEARS—INTAKE IRRIGATION DISTRICT

Year	As Introduced ¹	Proposed Amendment ²
2006	\$1,158	\$176
2007	1,158	176
2008	1,158	176
2009	1,158	176
2010	1,158	176
2011	1,158	176
2012	1,158	176
2013	1,158	176
2014	1,158	931
2015	1,158	1,687
2016	1,158	2,443
2017	1,158	3,199
2018	1,158	3,955
2019	1,158	4,711
2020 ³	1,158	5,469
2021	1,158	6,451
2022	1,158	6,451
2023	1,158	6,451
2024	1,158	6,451
2025	1,158	6,451

POWER COSTS FOR THE NEXT 20 YEARS—INTAKE IRRIGATION DISTRICT—
Continued

Year	As Introduced ¹	Proposed Amendment ²
Total	\$23,166	\$56,055
mills/kwh, year 2025	16.5	91.9
Cost/acre, year 2005	\$1.40	\$7.80

¹Power is project use power but at a rate equal to the firm power rate of 16.5 mills/KWH. All wheeling is included in the rate.

²Power is project use power. A step increase begins in year 2014 for the purpose of accepting the REA wheeling fees for 1 mile of line. The line is owned by the WAPA and expected to be transferred to the REA.

³End of existing contract.

TEXAS A&M UNIVERSITY SYSTEM,
TEXAS WATER RESOURCES INSTITUTE,
College Station, TX, August 25, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: This is in response to your request for my response to Senator Murkowski's two questions concerning S. 1957.

Question 1. If significant sources of groundwater contamination or depletion are found on either side of the border, is there a cooperative agreement between the State of Texas and Mexico to address and remedy the problem?

Answer. To my knowledge, there is no such cooperative agreement.

Question 2. There is a well established hydrologic relationship established between surface and groundwater contamination. Do you think S. 1957 goes far enough to address the significant contamination of the Rio Grande River and its effect on the sustainability of ground water storage?

Answer. Yes, S. 1957 would facilitate the scientific investigations needed to understand the movement of water and contaminants into and through transboundary aquifers. This information is necessary for authorized state and local authorities to manage for sustainable use of the aquifers.

Thank you for the opportunity to respond to these questions.

C. ALLAN JONES,
Director.

BUREAU OF RECLAMATION'S RESPONSES TO QUESTIONS FROM SENATOR MURKOWSKI

S. 900, THE LOWER YELLOWSTONE RECLAMATION PROJECTS CONVEYANCE ACT

Question 1. Most title transfers have been small in scope. This one is relatively large. Can title transfers of this size lead to significant cost savings for the federal government?

Answer. Potentially, but not in this case. The Districts currently operate and maintain the project with minimal Reclamation oversight. The costs savings generated by the transfer of these facilities would be minimal.

Question 2a. Your testimony raises concerns with the delivery of Project Use Power after transfer. Specifically, you state that the "districts would continue to enjoy the subsidized benefit of their power wheeled across non-federal lines." The proponents of this legislation argue that there is already precedent for such action. How do you respond?

Answer. In 1946, Reclamation entered into contracts to provide Kinsey Irrigation Company and the Sidney Pumping Project electrical service under authority of the 1938 Ft. Peck legislation. These Ft. Peck power contracts were later converted to P-SMBP project use power contracts when Congress integrated the Ft. Peck power system into P-SMBP. The present contracts for these districts run until 2020, are at a 2.5 mil rate, and wheeling is included in the rate. Lower Yellowstone Irrigation District I and II, as well as Savage Irrigation District, are similar to Kinsey and Sidney in that they were also to receive power from Ft. Peck Dam, and were later incorporated into P-SMBP for project use power. However, they were constructed as

Reclamation projects and as such remained under Federal ownership after construction, unlike Kinsey and Sidney. These projects are not analogous to Lower Yellowstone because they became eligible to receive P-SMBP project use power through the integration of Ft. Peck into P-SMBP.

In 1986, legislation was enacted authorizing Hilltop and Grey Goose Irrigation Districts as P-SMBP units and making them eligible for P-SMBP power. The present contracts for these districts run until 2020, are at the 2.5 mil rate, and wheeling costs are included. Both projects were constructed under USDA programs. This is not analogous to the situation presented in S. 900. Hilltop and Grey Goose were originally private irrigation districts that were converted to Federal ownership by legislation.

In 1992, legislation was enacted making P-SMBP power available to Haidle Irrigation Project and Hammond Irrigation District. The power was to come from the project use allocation (pumping power) but was to be marketed by Western as firm power. The present contracts for these districts run until 2020; are through Western at the firm rate; and wheeling is not included. These projects are not analogous to Lower Yellowstone because, like all Western firm power customers, these irrigation districts are responsible for their own wheeling costs in excess of 1 mil/kwh.

Public Law 105-351 authorized the Secretary to convey certain facilities of the Minidoka Project to the Burley Irrigation District. A provision in the law allows for the continued receipt of project reserved power in accordance with the terms of the existing contracts. The administration testified against the continued provision of subsidized power after transfer. This instance is not analogous to Lower Yellowstone because wheeling above 1 mil/kwh was always the responsibility of Burley Irrigation District.

In the instance of the Gila Project transfer to the Wellton-Mohawk Irrigation and Drainage District, the District will continue to receive and pay the full cost of project use power where the project use rate is equal to the actual cost of operation, maintenance, replacement and amortization. This instance is not analogous to the present situation because wheeling costs were a responsibility of Wellton-Mohawk Irrigation District.

Question 2b. Are there any non-federal irrigation projects who receive Pick-Sloan project use power?

Answer. Yes, Sidney Pumping Project Users and Kinsey Irrigation Company. Please see the first paragraph of the response above describing Sidney/Kinsey for additional information.

Question 2c. Is there any other current example in the Pick-Sloan Missouri Basin Program where public power is paying the wheeling costs for a private irrigation district?

Answer. Sidney Pumping Project Users and Kinsey Irrigation Company, both of which receive project use power, have their wheeling costs included as an operation and maintenance cost of the overall P-SMBP power program.

Question 3. Under the Irrigation Districts' compromise proposal, what is the total cost to power customers for wheeling federal power to the irrigation districts?

Answer. This would depend upon the actual cost of wheeling power over the next 17 years, 2004 through 2020. If we used the 2003 actual costs, the total costs would be approximately \$2.1 million in present day dollars.

Question 4a. If this transfer doesn't take place, will project use power "subsidies" continue indefinitely on these three irrigation projects? Are there non-federal irrigation projects that receive Pick-Sloan project use power?

Answer. The districts' current power contracts include a right to renew. If title to the projects is not transferred, the current power contracts will remain in place.

There are two non-federal irrigation districts receiving Pick-Sloan project use power. They are Kinsey and Sidney Irrigation Districts. These projects were provided electrical service under the 1938 Ft. Peck legislation and later integrated into Pick-Sloan.

Question 4b. Some point to other transfers that keep project use power benefits. Were these transfers similar in scope to this proposed transfer?

Answer. See response to Question #2 above.

Question 5a. How similar are the wheeling expenses for other transferred projects (Burley Irrigation District and Wellton-Mohawk)?

Answer. Subsidized wheeling is not included in the power rates provided to the Burley Irrigation District or Wellton-Mohawk. Wheeling costs were and continue to be the responsibility of those irrigation districts.

Question 5b. Are there any private irrigation districts waiting in line to receive this same kind of public power subsidy?

Answer. We anticipate a significant increase in the requests for Pick-Sloan Missouri Basin project use power by private irrigation districts if the precedent is set for providing subsidized power to non-federal projects.

QUESTIONS FROM SENATOR DOMENICI

Question 1. S. 900 requires the Secretary to provide fish protection devices on a non-reimbursable basis. How much will such fish protection devices cost?

Answer. Although final determination of the magnitude of fish protection devices necessary to protect the pallid sturgeon is pending formal consultation under Section 7 of the Endangered Species Act, the current construction estimates for these features range from \$10 to \$20 million.

S. 1876, PROVO RIVER PROJECT TITLE TRANSFER

Question 6a. What agreements are required for this title transfer to take place?

Answer. The members of the Title Transfer Working Group identified several written agreements among various parties that will be needed either prior to or subsequent to transfer. The Secretary will be a party to two of these agreements. These two agreements which are in draft final awaiting approval by the parties, are described in the following paragraphs:

(a) A master title transfer agreement entitled "*Agreement among the United States, the Provo River Water Users Association, and the Metropolitan Water District of Salt Lake & Sandy to Transfer Certain Lands and Facilities of the Provo River Project.*" This key agreement is defined in Section 2(8) (Contract No. 04-WC-40-8950), and referenced in Sections 3(a), 3(b), and 3(c) of S. 1876. This agreement establishes very specific terms upon which the title transfer legislation, if passed, will be implemented. It provides essential details regarding the duties of the parties, manner of conveyance, and exceptions and reservations. It also ensures that the interests of all affected parties, including the public, are protected after transfer.

(b) A multiparty operating agreement entitled "*Agreement Regarding the Coordinated Operations of Provo Reservoir Canal, Salt Lake Aqueduct, and Jordan Aqueduct System among the United States, Provo River Water Users Association, Metropolitan Water District of Salt Lake & Sandy, Central Utah Water Conservancy District, and Jordan Valley Water Conservancy District.*" Each of the parties to this agreement hold various interests in the use, operation, and maintenance of one or more of three large water conveyance facilities (Provo Reservoir Canal, the Salt Lake Aqueduct, and the Jordan Aqueduct) which transport water from the Provo River in Utah County to end users located in Utah and Salt Lake Counties. All of the parties believe coordinated use and management of these three facilities is highly desirable. Currently, these three facilities are owned by the United States and are operated by the other parties pursuant to contracts with the United States. S. 1876 would transfer to two of these facilities, the Provo Reservoir Canal and the Salt Lake Aqueduct, out of federal ownership. This multiparty operating agreement articulates the operational roles and responsibilities and environmental commitments of the various parties. It also commits the parties to coordinated and cooperative management of the facilities before, during and after title transfer.

Question 6b. What is the status of those agreements?

Answer. The Title Transfer Working Group met on June 29, 2004, and adopted final drafts of these two agreements. Reclamation supports both draft agreements and is prepared to sign them as soon as NEPA compliance has been completed. The comment period for NEPA compliance is now closed and we foresee no delaying issues. The Secretary will not be party to other agreements. The parties may want to enter into agreements with each other, and we believe those agreements can be developed after transfer is completed.

Question 6c. It is my understanding that the proponents of this measure believe that only one agreement—the Title Transfer Agreement—is essential for passage of the bill. How do you respond?

Answer. Reclamation believes that both the master title transfer agreement and the multiparty operating agreement described above are essential. It is our understanding that the proponents concur that both of these agreements are necessary. Reclamation is prepared to sign them as soon as NEPA compliance has been completed.

When we were first asked to testify on S. 1876, the Provo River Title Transfer Working Group, comprised of all of the water districts and Reclamation and set up to work through the issues associated with this proposed title transfer, had just begun to scope out the issues and to identify the agreements that might be necessary. Therefore, our testimony at the time expressed concern that the legislation was premature, given that the issues and agreements referenced in the legislation

were not even initiated. However, since that time, the Working Group has made an enormous effort and progressed to the point that there is consensus on the terms and conditions of the title transfer and post-transfer operating agreement. These terms and conditions are memorialized in the Title Transfer Agreement and Coordinated Operations Agreement discussed in the answer to Question 6(A). Given that these documents have been developed, that they are in final draft form, and that there is agreement on them, we believe that the concern that we raised in our earlier testimony regarding whether this legislation is premature has been addressed.

At this point, given the progress that has been made, the high level of cooperation that has been shown and the fact that these two agreements are in draft final form, we believe that it is appropriate to move S. 1876 forward, regardless of whether the agreements have been formally ratified by all the district boards and signed by all the participants.

Question 6d. How will the transfers of title interface with the National Forest Service land, and the National Forest Service and National Park Service plans for the American Fork Interagency Administrative and Visitor Facility?

Answer. The Forest Service and the National Park Service plan to construct the American Fork Interagency Administrative and Visitor Facility on a parcel of private land to be exchanged for National Forest lands. The Salt Lake Aqueduct intersects that private parcel, and is located on a strip of fee land acquired by Reclamation decades ago for the Salt Lake Aqueduct. With or without title transfer, that strip may be used for a parking lot for the center. The master title transfer agreement (now in final draft) contains a provision, approved by the Forest Service and the National Park Service, which addresses this issue. The Salt Lake Aqueduct crosses the corner of several parcels of forest lands. In the 1930s, Reclamation did not survey a right of way for the Salt Lake Aqueduct across those National Forest lands, but rather, the Secretary simply withdrew large parcels in aliquot parts from the Forest lands, pursuant to former Section 3 of the Reclamation Act. The master title transfer agreement (now in final draft and approved by the Forest Service) contains a provision that will convey an appropriately sized easement for the aqueduct as a part of title transfer. After that land is conveyed, the withdrawal will be revoked. There will be a net gain in lands under primary Forest Service jurisdiction. Reclamation has coordinated with the local Forest Service representatives and has received their support.

H.R. 1648, CHACHUMA PROJECT TITLE TRANSFER

Question 7. What about this title transfer has made it so ideal?

Answer. There are many important factors that made these transfers good candidates and that made the process for coming to agreement on the terms and conditions so smooth and cooperative. First, these are simple conveyances of the distribution facilities and the associated acquired lands. Both CVWD and MWD title transfers provided for only the repayment of the construction costs for their distribution facilities. There were no land, water rights, or power issues to consider.

Second, the purpose and goal for the entities seeking title was very clear and it was well articulated to both Reclamation and to other Stakeholders. This enabled the participants in the transfer process to focus on the interests and needs of the districts to identify a solution that meets all the needs of the participants.

Third, both CVWD and MWD were very cooperative with Reclamation and willing to identify and address any and all issues that existed. There was also a strong willingness by all parties to address the issues and concerns in a public and open manner. There were public scoping meetings held at the very beginning of each transfer and all the negotiation sessions were open to the public to attend.

As we stated in our testimony, we believe that this transfer and the open and cooperative process that was used should be a model to others who may be interested in title transfer. It was a cooperative, efficient and cost effective process.

H.R. 1732, THE WILLIAMSON COUNTY WATER RECYCLING ACT OF 2003

Question 8a. Has the Bureau met with the local sponsor to discuss this project?

Answer. Yes. The Lower Colorado River Authority (LCRA) has developed conceptual plans for the project, and Reclamation has completed a cursory review of this proposal.

Question 8b. Does this project fit the Bureau's criteria for a Title XVI project?

Answer. At this point, this is unknown. Reclamation has not yet conducted an appraisal level study for this project. This study would be needed to determine if the preliminary work initiated by the Lower Colorado River Authority meets Reclamation's requirements, and to evaluate the potential for a feasibility study per Title XVI criteria.

Question 8c. Does it appear that the local sponsor is ready and able to provide the local cost share?

Answer. Yes. The LCRA proposes to coordinate through its alliance with Brazos River Authority to combine several current and future projects into a Williamson County Reuse System. Under this proposal the LCRA would partially finance and construct certain reuse facilities, and the Brazos River Authority would operate them. The Lower Colorado River Authority has advised that funding will be allocated in 2004 to begin appraisal investigations.

Question 8d. Williamson County is one of the fastest growing counties in Texas. Is the Bureau involved with reuse projects throughout the State of Texas? If so, how many and where?

Answer. Yes. Reclamation is currently conducting three feasibility studies in Texas with the cities of San Antonio, Austin and Brownsville.

APPENDIX II
Additional Material Submitted for the Record

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, June 22, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Re: Comments on Legislation (S. 2243) Relating to a Hydroelectric Project in the State of Alaska, FERC No. P-11480

DEAR MR. CHAIRMAN: Thank you for your June 16, 2004 letter asking for my comments on S. 2243, a bill to extend the deadline for commencement of construction for a hydroelectric project in the State of Alaska.

I submitted testimony for the record of the hearing held on May 19, 2004 by the Subcommittee on Water and Power to consider this bill and other pending measures. I am enclosing a copy of my testimony in response to your request for comments.

If I can be of further assistance to you in this or any other matter, please let me know.

Best regards,

PAT WOOD, III,
Chairman.

[Enclosure.]

STATEMENT OF PAT WOOD, III, CHAIRMAN,
FEDERAL ENERGY REGULATORY COMMISSION

Madam Chairman and Members of the Subcommittee, I appreciate the opportunity to comment on S. 2243, a bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska. Section 13 of the Federal Power Act requires that construction of a licensed project be commenced within two years of issuance of the license. Section 13 authorizes the Federal Energy Regulatory Commission to extend this deadline once, for a maximum additional two years. If project construction has not commenced by this deadline, the Commission is required to terminate the license. Section 13 also authorizes the Commission to extend the deadline for completion of construction when not incompatible with the public interest.

THE PROJECT

On October 24, 2000, the Commission issued a license to Haida Corporation to construct, operate, and maintain the 5-megawatt Reynolds Creek Project No. 11480, on Prince of Wales Island, in southeast Alaska. The original deadline in the license for the commencement of construction, October 23, 2002, was, at the licensee's request, extended by the Commission to October 23, 2004, four years after license issuance. The request cited the lack of a power purchase contract.

Construction of Project No. 11480 entails building a 20-foot-long, 6-foot-high diversion dam, a 3,200-foot-long penstock, a powerhouse with two turbine-generator units, and a transmission line.

THE LEGISLATION

S. 2243 would authorize the Commission, at the request of the project licensee, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under

that section, to extend the time period during which the licensee is required to commence the construction of the project for three consecutive two-year periods beyond the date that is four years after the date of issuance of the license.

In cases where project-specific extensions of construction deadlines are authorized by the Congress, it has been the position of prior Commission chairmen that such extensions should not go beyond ten years from the date the project was licensed. I have no reason to depart from this extension policy.

S. 2243 would permit the licensee for Project No. 11480 to extend the deadline for commencement of construction for three consecutive 2-year periods beyond the date that is four years after the date of issuance of the license. Accordingly, construction could commence no later than ten years from the date the license was issued. This time frame is consistent with the Commission's policy, and I have no objection to the bill.

PASO DEL NORTE WATER TASK FORCE,
El Paso, TX, September 12, 2003.

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

DEAR SENATOR BINGAMAN: We would like to thank you for meeting with the Paso del Norte Water Task Force on July 3 at the Water Resources Research Institute in Las Cruces. We appreciated the opportunity to discuss with you the water problems and possible solutions along the U.S. and Mexico Border.

We appreciate your offer to assist us and as such, I am providing you with the following summary of what we discussed during your visit.

Groundwater Issues

- We support the need for funding to conduct a comprehensive groundwater assessment for both fresh and brackish waters as the extent of these waters is not well known in this region.
- We appreciate your support for the desalination research facility in Alamogordo along with planned new municipal facilities in El Paso and other cities of the region.

Surface Water Issues

- We encourage federal help for conversion of river water for municipal use with development of new facilities and regional planning.
- We have concerns about water quality as it relates to irrigation and human health. Secure and safe water is dependent on federal help for these border-wide problems.
- Irrigation efficiency is critical to our region and we ask for continued support for research, instrumentation, delivery, and application technology.

Environmental Issues

- Many environmental enhancements are needed in the region. We encourage your support of programs that are representative of local community needs and goals.
- Invasive and exotic plant species are present along the border and pose many problems to water management. Solutions for their management need to be found.

We also request your help for preparing a region-wide assessment of future water needs. Such an assessment is essential for regional water planning. Currently, it does not exist. Instead, partial assessments are prepared for Las Cruces, El Paso, Far West Texas, and Juarez, each using different timeframes, methods, and assumptions. This project will require participation of water managers from Mexico and the United States.

Again, your visit and discussion were greatly appreciated. We look forward to working with you and your staff. If a follow-up visit with you and/or your staff is desirable, we can meet in New Mexico or Washington, D.C.

Sincerely,

DR. KARL WOOD,
Chairman.

CITY OF LAS CRUCES,
Las Cruces, NM, January 7, 2004.

Hon. SENATOR BINGAMAN,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Re: S. 1957, United States-Mexico Transboundary Assessment Act

DEAR SENATOR BINGAMAN: I am writing on behalf of the City of Las Cruces to express appreciation and support for introducing legislation, specifically S. 1957, cited as the United States-Mexico Transboundary Assessment Act, which will address pressing water resource challenges in the United States-Mexico border region.

As you know, in the desert region of the border, surface water is scarce and unreliable making ground water the primary and in some areas the only source of water. Successful management of shared ground water resources by state and local authorities in the United States and appropriate authorities in Mexico requires cooperation in assessing and understanding ground water resources. It is imperative that a multi-discipline and multi-organization approach be taken to integrate expertise and scientific capabilities. Investigations will be conducted in close collaboration with the United States Geological Survey, border Water Resources Research Institutes, Sandia National Laboratory and appropriate state agencies and Mexican counterparts.

Issues requiring immediate attention include:

- Inadequate data and knowledge of transboundary water resources
- Increasing water demands
- Need for understanding the extent, depletion rates, water quality and solute movement of transboundary aquifers
- Need for understanding conjunctive surface and ground water
- Drought impacts on water quantity-quality
- Develop and improve ground water flow models for bi-national aquifers to facilitate regional water resource assessment and planning
- Assess movement and interaction of water resources
- Analyze trends in ground water quality, including salinity, nutrients, toxics and pathogens
- Apply the new data and models to evaluate strategies to protect water quality and enhance supplies

The City fully supports the purpose of this program and the positive impact it will have on future water planning efforts.

Sincerely,

WILLIAM MATTIACE,
Mayor.

BORDER TRADE ALLIANCE,
Phoenix, AZ, February 20, 2004.

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

DEAR SENATOR BINGAMAN: We write to you today to convey the Border Trade Alliance's (BTA) support for your bill, S. 1957, the United States-Mexico Transboundary Aquifer Assessment Act. As an organization concerned with the future of the U.S.-Mexico border region's water supply, we applaud the objectives of your bill.

We concur with your bill's findings that increased cooperation between officials in the United States and Mexico is necessary "for the successful management of shared groundwater resources" of our two countries. The BTA believes that establishing a United States-Mexico transboundary aquifer assessment program, as called for by S. 1957; would be key in fostering such cooperation.

The bill's objective to "develop and implement an integrated scientific approach to assess transboundary groundwater resources," is a worthy one and will help authorities on both sides of the border gain a better grasp of the water resource challenges facing this growing region. Should this bill become law, the BTA will be pleased to act as a liaison between the Department of the Interior and the appropriate border-region agencies to encourage full participation in the project.

We look forward to working with you and your staff to ensure that S. 1957, the United States-Mexico Transboundary Aquifer Assessment Act, becomes law. The

Border Trade Alliance offers its 17 years of border affairs experience as we work together to achieve this goal.

Sincerely,

JESSICA M. PACHECO,
Chair,

STEPHEN L. BIRDSALL,
Chair, Agribusiness and Fisheries Committee.

ELEPHANT BUTTE IRRIGATION DISTRICT,
Las Cruces, NM, February 25, 2004.

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

DEAR SENATOR BINGAMAN: I am writing on behalf of the Elephant Butte Irrigation District to express appreciation and support for legislation introduced by yourself, specifically S. 1957, cited as the United States-Mexico Transboundary Assessment Act, which will address pressing water resource challenges in the United States-Mexico border region.

As you know, in the desert region of the border, surface water is scarce and unreliable making ground water the primary and in some areas the only source of water. Successful management of shared ground water resources by state and local authorities in the United States and appropriate authorities in Mexico requires cooperation in assessing and understanding ground water resources. It is imperative that a multi-discipline and multi-organization approach be taken to integrate expertise and scientific capabilities. Investigations will be conducted in close collaboration with the United States Geological Survey, border Water Resources Research Institutes, Sandia National Laboratory and appropriate state agencies and Mexican counterparts.

Issues requiring immediate attention include:

- Inadequate data and knowledge of transboundary water resources
- Increasing water demands
- Need for understanding the extent, depletion rates, water quality and solute movement of transboundary aquifers
- Need for understanding conjunctive surface and ground water
- Drought impacts on water quantity-quality
- Develop and improve ground water flow models for bi-national aquifers to facilitate regional water resource assessment and planning
- Assess movement and interaction of water resources.
- Analyze trends in ground water quality, including salinity, nutrients, toxics and pathogens
- Apply the new data and models to evaluate strategies to protect water quality and enhance supplies

The Elephant Butte Irrigation District fully supports the purpose of this program and the positive impact it will have on future water planning efforts.

Sincerely,

GARY L. ESSLINGER,
Treasurer-Manager.

CITY OF DEMING,
Deming, NM, March 1, 2004.

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

DEAR SENATOR BINGAMAN: Attached please find two resolutions in support of the U.S.-Mexico Transboundary Aquifer Assessment Act. The City of Deming Resolution was passed unanimously following an excellent presentation by Dr. Karl Wood, Director, and Bobby Creel, Associate Director, New Mexico Water Resources Research Institute.

The Second Resolution indicates unanimous support by the Southwest Regional Steering Committee. The Southwest Regional Water Planning Steering Committee is composed of representatives from four counties (Catron, Hidalgo Luna and Grant), ten municipalities, six Soil and Water Conservation Districts and several members at large.

Thank you for your interest in identifying more accurately the amount of this scarce resource in our area.

Sincerely,

JOHN STRAND.

[Enclosure.]

RESOLUTION 04-01

SUPPORT OF THE U.S.-MEXICO TRANSBOUNDARY AQUIFER ASSESSMENT ACT

Whereas, water in New Mexico is a scarce and finite recourse, and

Whereas, the State of New Mexico has completed a State Water Plan and ten or twelve of sixteen regional water plans each calling for more accurate information on water availability, and

Whereas, the information as to the quantity and quality of the aquifers we share with Mexico in the Southwest Region is of vital importance to our Regional Water Plan, and

Whereas, the U.S.-Mexico Transboundary Aquifer Assessment Act sponsored by Senator Jeff Bingaman provides federal dollars to assist us in determining the water supply available in those aquifers along the U.S.-Mexico border,

Therefore Be It Resolved That, the Southwest Regional Water Plan Steering Committee supports without reservation the passage of the U.S.-Mexico Transboundary Aquifer Assessment Act

PASSED, ADOPTED, AND APPROVED this 26th day of February, 2004

ATTEST:

TOM BATES

Southwest Regional Water Planning Manager

EL PASO UTILITIES BOARD,
WEATHER SERVICE,
El Paso, TX, May 12, 2004.

Hon. JEFF BINGAMAN,

Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR BINGAMAN: I want to express the support of the Public Service Board of the El Paso Water Utilities for S. 1957, United States-Mexico Transboundary Aquifer Assessment Act, that provides for hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers.

The El Paso Water Utilities (EPWU) is the regional planner and provider of water and wastewater services to nearly 700,000 people in the greater metropolitan area of El Paso. The combined regional population that includes the City of Juarez in the State of Chihuahua, Mexico is over two million. The population within this region continues to grow at a near constant rate. During the last ten years, the El Paso Water Utilities Public Service Board has begun to implement long range plans to ensure sustainable supplies of water. The aquifers or bolsons provide approximately 50% of our City's water needs and 100% of the water needs for the City of Juarez. Southern Dona Ana County, New Mexico relies exclusively on water from the Mesilla Bolson for its municipal supplies which include those for the City of Las Cruces.

Because of planned demand water increases expected by El Paso, Juarez and southeastern New Mexico municipalities, we are faced with the challenge of extending the life of these aquifers by identifying and developing new sources of supply, conserving and making the best use of our existing resources, and partnering with other entities within the region. The El Paso water utilities will work with entities within the region to identify bi-state and bi-national solutions to the region's water problems. The challenges are not easy to overcome given different political, jurisdictional, environmental, legal, and technical differences that each area must abide by. It is worth noting that there is sufficient water within the region to sustain us far 50 years and beyond. However, the costs to ensure that are going to be significant. We believe that S. 1957 provides mechanisms that will assist us in addressing these challenges.

The City of El Paso, Texas and the City of Juarez, Chihuahua, Mexico are engaged in preliminary regional water studies and, as a result, have developed approaches for the long-term protection of drinking water within the region. The El Paso Water Utilities continues to take an active role in working with the Juarez Water Utility and anticipates being able to use S. 1957 to support the work we have initiated. Federal assistance would help continue studies for the protection of the

region's drinking water programs. We believe the legislation will allow for implementing programs to protect regional aquifers that expedite Texas/New Mexico/Mexico regional solutions for preserving long-term water supply for the entire region.

Sincerely,

EDMUND G. ARCHULETA, PE,
General Manager.

FAR WEST TEXAS WATER PLANNING GROUP,
El Paso, TX, May 18, 2004.

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

DEAR SENATOR BINGAMAN: At our most recent meeting, the Far West Texas Water Planning Group ("the Planning Group") voted unanimously to voice strong support for S. 1957. For the last seven years, the Planning Group has studied the water resources and demands of the seven counties of Far West Texas in an attempt to craft a water plan for our region for the next fifty years. Since many of the aquifers of Far West Texas also underlie parts of Mexico and New Mexico, we have been repeatedly frustrated by our inability to address the entirety of our resources and our needs. The lack of data regarding our common aquifers is perhaps the most significant limiting factor to the Planning Group being able to achieve our legislated mandate.

The Planning Group believes that the United States-Mexico Transboundary Aquifer Assessment Act could be of significant help to water planners and scientists in both the United States and Mexico. It is unquestioned by anyone that we are over-drafting—mining—our border aquifers. However, no one can evaluate the current effect on both quantity and quality because of the lack of long-term data, and no one can predict future quality and quantity.

Our lack of data is both geographical and historical. On the one hand, we really cannot define even the physical boundaries of our joint aquifers, without which effective planning is seriously limited; on the other, we cannot relate current demands and supplies in Far West Texas with future demands and supplies. S. 1957 holds great promise for bridging those gaps. The Planning Group urges you to support it.

Respectfully yours,

TOM BEARD,
Chairman.

STATEMENT OF TWIN LOUPS RECLAMATION DISTRICT AND
TWIN LOUPS IRRIGATION DISTRICT

To the Honorable Chairman Murkowski and Members of the Committee, thank you for this opportunity to provide information regarding the need for passage of Senate Bill 2304.

Public Law 92-514—October 20, 1972, known as the Reclamation Project Authorization Act of 1972 provided for the reauthorization of the North Loup Division of the Pick-Sloan Missouri basin Program in Nebraska. Among other things, the Act authorizes the Project "... for the purposes of providing irrigation water for fifty-three thousand acres ..."

Contracts between the Twin Loups Reclamation District and Twin Loups Irrigation District (Districts) and the U.S. Bureau of Reclamation require the Bureau of Reclamation to make a determination of acres eligible for Project irrigation following final Project development. Construction and development of the North Loup Division is complete, Project operation, maintenance are now responsibilities of the Districts.

Nebraska Statutes require a final filing of acres for water rights on acres that have received irrigation service. The State of Nebraska has issued notice to the Districts that determination of acres for final filings of water rights must be made on acres that will have received irrigation service prior to October 1, 2004.

As the Districts and the Bureau of Reclamation proceed with the required Project acreage determinations it has become evident that it will be impossible to designate exactly 53,000 irrigable acres, as The Act specifically requires, and still comply with State and other Federal requirements. In the future, adjustments to Project acres will become necessary due to road construction, water conservation practices, Federal Farm Program requirements, conservation easements, and other reasons as yet unknown, all of which will cause a variance from 53,000 acres as directed by the explicit language of The Act.

The Districts can not provide an exact, final number of acres at this time as the process of finalization for water rights and Bureau of Reclamation records is ongoing. The Districts anticipate that the final number of acres may exceed 53,000 acres.

A change in the total acres does not necessarily indicate an increase in utilization of water. Many of the Districts' fields are odd shaped due to topography or civil development. It is not uncommon for water demand to exceed 1,100 gallons per minute for gravity irrigated fields containing 60 to 100 acres. As these fields change to pivot sprinkler irrigation it is often necessary to add acres to make the irrigated field circular, and/or make the expense of pivot development feasible. The most common rate of demand for District fields utilizing pivot development is about 800 gallons per minute. Changing from gravity irrigation, pivot irrigation usually results in lowering water delivery demands.

Initial applications for District water rights were filed in years past and do contain restrictions such as: No diversion of water from streams during the months of July and August, and no diversion from streams during September if storage water is available. In addition, construction of District dams for the diversion from streams and for storage of water in reservoirs is complete. The amount of water that can be taken from streams and stored in District reservoirs for irrigation use is limited by the capacity of the dams and reservoirs. Changes in final acreage amounts can not and will not increase District storage water capacity.

District contracts with the Bureau of Reclamation require payment of water distribution works construction costs "... based on the estimated 53,000 acres ...". (Contract 6-07-70-W0115) Paragraph 4b. of the same contract states in part that, "This obligation shall be adjusted to the actual acreage of irrigable lands in the District as determined by the Secretary." Adjustment of Project acres to an amount other than 53,000 acres is not a new concept and was evidently contemplated in 1976 when the Contract was signed.

Enactment of Senate Bill 2304 will allow the Bureau of Reclamation and the Districts to finalize Project acres in compliance with State and Federal regulations and not be contrary to Congressional directives.

We ask that you support enactment of Senate Bill 2304 and the companion bill H.R. 3209.

STATEMENT OF DON CHRISTIANSEN, GENERAL MANAGER,
CENTRAL UTAH WATER CONSERVANCY DISTRICT

Chairman Murkowski, Senators Bennett and Hatch and members of the Committee, I appreciate the opportunity to submit written testimony today in support of S. 1876 the Provo River Project Transfer Act to authorize the transfer of title to certain features of the Provo River Project. You might wonder why the Central Utah District cares about this bill. The Central Utah Project and the Provo River Project have been intertwined and co-dependent for decades. Both projects have dams for water storage on the Provo River, both projects capture this high quality water and divert it through conveyance structures to water users in Northern Utah and Salt Lake Counties and both Projects share a duty to the recovery of the June sucker in the lower Provo River and Utah Lake.

This bill is important to us at several levels. First, the District is finalizing planning and NEPA review for the construction of the facilities required to distribute the remaining water supply being developed by the Bonneville Unit for use along the Wasatch Front. While we have not selected a proposed action, several of the alternatives being studied contemplate the delivery of new supplies of water to Salt Lake County. Salt Lake presently "drinks" its Provo River supplies through one of three "straws"; the Provo Reservoir Canal, the Salt Lake Aqueduct and the Jordan Aqueduct. Our new Bonneville Unit water must be delivered through one or more of these existing conveyance straws. We believe that the coordinated operation of these three conveyance "straws" will maximize the efficient delivery of water at the least cost. Hence, before title is transferred out of federal ownership to two of these three straws, we believe it is important to advance this dialogue among the various water districts.

Of particular importance to the Central Utah Water Conservancy District are the provisions of the bill authorizing the title transfer for the Provo Reservoir Canal. When the Canal was first planned, there were only a few communities along its right of way, one of which is a beautiful community of Alpine where I lived for twenty five years. Nearly two decades ago while serving as the Mayor of Alpine, I started a campaign to convince the Bureau of Reclamation to replace the open canal with a buried pipeline. I failed then ... but my journey led me from Mayor to Chair-

man of the Board of Trustees and then to General Manager of the Central Utah Water Conservancy District.

My concern then as Mayor was one of safety for the community. This concern remains, just last year two young men drowned in a tragic accident in the Provo Reservoir Canal. In addition to the safety issues of an open canal, which now runs through numerous residential neighborhoods, we estimate that over 8,000 acre feet of water are wasted through evaporation and leakage. The Central Utah Water Conservancy District has offered to pay half of the estimated \$115 million cost to enclose the canal in return for which we would receive the conserved water. This water would then be made available to the Secretary under provisions of the Central Utah Project Completion Act, which enables the water to be applied to in stream flows in the lower Provo River to help recover the endangered June sucker through the recovery program. I want to point out that the obligation to the June Sucker Recovery Program is one that is shared by all of the water users who divert water from the Provo River, including the water districts that operate the storage facilities on the Provo River.

It is our plan to create a Joint Public Agency among the Central Utah District, the Jordan Valley Water Conservancy District, and the Metropolitan Water District of Salt Lake & Sandy to take title to a portion of the capacity in this facility. This is a vital step in order for us to be able to finance the project with tax advantaged bonds which are available only to local public water districts.

We understand that the Department supports the concept of this title transfer bill but believes that the bill should not proceed until after all the details have been negotiated to the several agreements that will govern the operation of the facilities. While we agree that these agreements are vital, it is our view that the legislation should proceed simultaneously with the negotiations on the several agreements associated with the title transfer. If we were to wait another six to eight months, the time it will take to conclude our discussions, it will be too late in the legislative process to advance the bill from introduction to enactment. To address the Department of the Interior's concerns, we have built a mechanism into the bill draft that restricts the Secretary's authority to transfer the title to the Provo Reservoir Canal until the Provo River Waters Users Association certifies that the necessary future ownership, financing, operation and transfer agreements have been completed. I want to thank John Carmen and the Metropolitan Water District of Salt Lake & Sandy and Senators Bennett and Hatch for working with us on this provision. With its inclusion, we urge you to move forward with this bill as soon as your calendar permits. Thank you.

RESOLUTION OF DOÑA ANA COUNTY

RESOLUTION NO. 04-01

A RESOLUTION

WHEREAS, the Doña Ana County Board of Commissioners is tasked to represent and address the needs of its residents, and

WHEREAS, The prudent allocation of groundwater resources is a paramount concern for the residents of Doña Ana County now and in the future so as to support sustainable economic growth that enhances the health, safety and welfare of all residents, and

WHEREAS, Federal legislation has been introduced by New Mexico Senator Jeff Bingaman which will establish a United States/Mexico Transboundary Aquifer Assessment Act, which will fund significant studies of aquifer resources in southern New Mexico, southwest Texas and northern Chihuahua in the Republic of Mexico, and

WHEREAS, The aforementioned studies will benefit all residents of this region by identifying the extent and lifetimes of groundwater resources to support current use and future growth, and

WHEREAS, This Board of County Commissioners understands the gravity of prudent groundwater allocation throughout the region, as well as the importance of sustainable conservation initiatives, and

WHEREAS, Study after study shows that New Mexico is depleting its groundwater resources faster than they can be replenished, thereby exacerbating an ongoing drought that is adversely affecting run-off and surface water quantity, and

WHEREAS, The state's water pacts with neighboring states and the Republic of Mexico will be bolstered and enhanced by Sen. Bingaman's legislation,

NOW THEREFORE, the Doña Ana County Board of Commissioners does hereby endorse without reservation the United States/Mexico Transboundary Aquifer Assessment Act, and does pledge the support of Doña Ana County in any supportive role that maybe asked or required.

PASSED, APPROVED AND ADOPTED this 13th day of January, 2004

BOARD OF COUNTY COMMISSIONERS,
Doña Ana County, New Mexico.

○