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SENATE

{ REPORT  
106-358

### PALMETTO BEND CONVEYANCE ACT

JULY 24, 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### REPORT

[To accompany S. 1474]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1474) providing for conveyance of the Palmetto Bend project to the State of Texas, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Palmetto Bend Conveyance Act”.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) PROJECT.—The term “Project” means the Palmetto Bend Reclamation Project in the State of Texas authorized under Public Law 90-562 (82 Stat. 999).

(2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(3) STATE.—The term “State” means the State of Texas, acting through the Texas Water Development Board or the Lavaca-Navidad River Authority or both.

#### SEC. 3. CONVEYANCE.

(a) IN GENERAL.—The Secretary shall, as soon as practicable after the date of enactment of this Act and in accordance with all applicable law, and subject to the conditions set forth in sections 4 and 5, convey to the State all right, title and interest (excluding the mineral estate) in and to the Project held by the United States.

(b) REPORT.—If the conveyance under Section 3 has not been completed within 1 year and 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes—

- (1) the status of the conveyance;
- (2) any obstacles to completion of the conveyance; and
- (3) the anticipated date for completion of the conveyance.

**SEC. 4. PAYMENT.**

(a) **IN GENERAL.**—As a condition of the conveyance, the State shall pay the Secretary the adjusted net present value of current repayment obligations on the Project, calculated 30 days prior to closing using a discount rate equal to the average interest rate on 30-year U.S. Treasury notes during the proceeding calendar month, which following application of the State's August 1, 1999 payment, is currently calculated to be \$45,082,675 using a discount rate of 6.070%. The State shall also pay interest on the adjusted net present value of current repayment obligations from the date of State's most recent annual payment until closing at the interest rate for constant maturity U.S. Treasury notes of an equivalent term.

(b) **OBLIGATION EXTINGUISHED.**—Upon payment by the State under subsection (a), the obligation of the State and the Bureau of Reclamation under the Bureau of Reclamation Contract No. 14-06-500-1880, as amended shall be extinguished. After completion of conveyance provided for in Section 3, the State shall assume full responsibility for all aspects of operation, maintenance and replacement of the Project.

(c) **ADDITIONAL COSTS.**—The State shall bear the cost of all boundary surveys, title searches, appraisals, and other transaction costs for the conveyance.

(d) **RECLAMATION FUND.**—All funds paid by the State to the Secretary under this section shall be credited to the Reclamation Fund in the Treasury of the United States.

**SEC. 5. FUTURE MANAGEMENT.**

(a) **IN GENERAL.**—As a condition of the conveyance under section 3, the State shall agree that the lands, water, and facilities of the Project shall continue to be managed and operated for the purposes for which the project was originally authorized; that is, to provide a dependable municipal and industrial water supply, to conserve and develop fish and wildlife resources, and to enhance recreational opportunities. In future management of the Project, the State shall, consistent with other project purposes and the provision of dependable municipal and industrial water supply:

- (1) provide full public access to the Project's lands, subject to reasonable restrictions for purposes of Project security, public safety, and natural resource protection;
- (2) not sell or otherwise dispose of the lands conveyed under Section 3;
- (3) prohibit private or exclusive uses of lands conveyed under Section 3;
- (4) maintain and manage the Project's fish and wildlife resource and habitat for the benefit and enhancement of those resources;
- (5) maintain and manage the Project's existing recreational facilities and assets, including open space, for the benefit of the general public;
- (6) not charge the public recreational use fees that are more than is customary and reasonable.

(b) **FISH, WILDLIFE, AND RECREATION MANAGEMENT.**—As a condition of conveyance under Section 3, management decisions and actions affecting the public aspects of the Project (namely, fish, wildlife, and recreation resources) shall be conducted according to a management agreement between all recipients of title to the Project and the Texas Parks and Wildlife Department and shall extend for the useful life of the Project that has been approved by the Secretary.

(c) **EXISTING OBLIGATIONS.**—The United States shall assign to the State and the State shall accept all surface use obligations of the United States associated with the Project existing on the date of the conveyance including contracts, easements, and any permits or license agreements.

**SEC. 6. MANAGEMENT OF MINERAL ESTATE.**

All mineral interests in the Project retained by the United States shall be managed consistent with Federal Law and in a manner that will not interfere with the purposes for which the Project was authorized.

**SEC. 7. LIABILITY.**

(a) **IN GENERAL.**—Effective on the date of conveyance of the Project, the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to the Project, except for damages caused by acts of negligence committed prior to the date of conveyance by—

- (1) the United States; or
- (2) an employee, agent, or contractor of the United States.

(b) **NO INCREASE IN LIABILITY.**—Nothing in this Act increases the liability of the United States beyond that provided for in the Federal Tort Claims Act, (28 U.S.C. 2671 et seq.).

**SEC. 8. FUTURE BENEFITS.**

(a) **DEAUTHORIZATION.**—Effective on the date of conveyance of the Project, the Project conveyed under this Act shall be deauthorized.

(b) NO RECLAMATION BENEFITS.—After deauthorization of the Project under subsection (a), the State shall not be entitled to receive any benefits for the Project under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.).

#### PURPOSE OF THE MEASURE

The purpose of S. 1474 is to provide for the conveyance of the Palmetto Bend project to the State of Texas.

#### BACKGROUND AND NEED

The Palmetto Bend Project (Lake Texana) was authorized by Public Law 90–562. The primary purpose of the project is to provide municipal and industrial water to a large area along the Texas Gulf Coast. The project was declared complete by the Bureau of Reclamation in 1985 and was turned over to the Lavaca-Navidad River Authority for operation and maintenance.

The Lavaca-Navidad River Authority (Authority) and the Texas Water Development Board (Board) are signatories to the Federal repayment contract. Since all surface water in Texas is owned by the State, the Authority and the Board jointly hold a State water right permit for Lake Texana.

The Authority is a political subdivision of the State, created by the Texas legislature in 1959 for the purpose of controlling, storing, preserving, and distribution flood waters of the rivers and streams of the Lavaca and Navidad Basins, for all useful and beneficial purposes. Its boundaries are coterminous with Jackson County. The Authority is governed by a nine member Board of Directors, appointed by the Governor and confirmed by the State Senate. The Authority is also under the Administrative oversight of the Texas Natural Resource Conservation Commission.

The Texas Water Development Board is responsible for administering the State's water resources financing programs, and for long range water resources planning. The Board is governed by six directors appointed by the Governor and confirmed by the State Senate.

Lake Texana is located near the Gulf Coast about midway between Houston and Corpus Christi. Lake Texana is capable of supplying a dependable yield of 79,000 acre feet annually (AFA). However, to maintain the environmental health of the downstream bays and estuaries, the amount available for water supply was reduced by the state to 74,500 AFA. All the reservoir's yield has been committed, including about 42,000 AFA for municipal use (Corpus Christi and Point Comfort) and over 32,500 AFA for industrial use, largely in the regional petro-chemical-plastics industry. The city of Corpus Christi service area includes a 10 county service area.

Currently, the Authority and the Board are obligated for repayment to the Federal Government of about \$70 million with an interest rate of 3.5% over a term of 50 years. The contract between the Texas Water Development Board and Lavaca-Navidad River Authority permits the Authority to acquire the Board's interest in the project, and to assume all responsibility and potential liability of the Project.

In addition to the federally financed portion of the project, the Authority financed, constructed, and owns and operates a \$24 million pipeline, pumping plant and distribution system. The Author-

ity has constructed an additional \$8.9 million intake-pumping plant complex for delivery of water to the Lake Texana-Corpus Christi pipeline. The bonds for the Authority project are guaranteed and being repaid by the water users. The Authority operates and maintains the entire project, both Federal and State financed portions.

S. 1474 requires that the outstanding balance of indebtedness be repaid and the project purchased by the State project sponsors—the Authority and the Board. Purchase would be accomplished by payment of the net present value of the cash stream required to repay the current contractual indebtedness, discounted at U.S. Treasury rates on the date of purchase. The present value of the payment needed to repay the adjusted repayment obligation, is estimated to be \$45,082,675. Title of the Federal portion of the project would be transferred to the Authority and the Board.

#### LEGISLATIVE HISTORY

S. 1474 was introduced by Senator Hutchison on August 2, 1999 and a Subcommittee hearing was held on October 20, 1999. At the business meeting on June 7, 2000, the Committee on Energy and Natural Resources ordered S. 1474, as amended, favorably reported.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on June 7, 2000, by a unanimous voice vote with a quorum present, recommends that the Senate pass S. 1474, if amended as described herein.

#### COMMITTEE AMENDMENT

During the consideration of S. 1474, the Committee adopted an amendment in the nature of a substitute that makes several significant changes in the bill, First, the Committee amendment strikes the requirement in the original bill that the Secretary convey the Project upon receipt of payment and replaces it with a new requirement that the Secretary convey the Project as soon as practicable after the date of enactment, and in accordance with all applicable law and subject to the conditions set forth in the Committee amendment. Second, the Committee amendment changes the purchase price for the Project from a set dollar amount to an amount to be determined from the adjusted net present value of current repayment obligations. Third, the Committee amendment adds a list of six specific management measures the State must undertake as a condition of the conveyance. Fourth, the Committee amendment strikes a provision that requires State approval for use of the Project's surface estate for mineral exploration and development and replaces it with a general direction that future mineral development must be consistent with Project purposes.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* is a short title.

*Section 2* defines key terms used in the bill. Section 2(3) defines "state" to include both the Texas Water Development Board (TWDB) and the Lavaca Navidad River Authority (LNRA). Both

the TWDB and the LNRA are responsible for all aspects of Project operations, including maintenance, protecting public safety, and maintaining the authorized project purposes at a level at least equivalent to that when the Project was owned by the United States. When the Project was build and repayment contracts executed, the Department of the Interior entered into contracts with both TWDB and LNRA, thereby obligating both entities to pay the reimbursable obligation of the Project. Current expectations are that LNRA plans to purchase TWDB's share of the Project. Until that time, both entities are responsible for protecting public safety and maintaining the public purposes of the Project. At such time as LNRA acquires TWDB's share, then LNRA assumes all responsibility and potential liability of the Project.

*Section 3* provides that, subject to the conditions in sections 4 and 5, the Secretary shall, "as soon as practicable" after enactment, convey the Project title of the State of Texas, subject to applicable law and the conditions set forth in sections 4 and 5. This section also requires a report from the Secretary if conveyance is completed later than 1 year and 180 days after date of enactment. The report shall include status of conveyance, obstacles to conveyance and anticipated date for completion.

*Section 4* describes how payment shall be calculated and what obligations are extinguished upon payment. It also provides that the State bears transaction costs for conveyance and that all funds paid by the State shall be credited to the Reclamation Fund.

*Section 5* describes the general and specific conditions for future management of the Project. Specific conditions relating to fish, wildlife and recreation management and existing obligations are detailed.

*Section 6* provides that mineral interests in the Project retained by the United States shall be managed consisted with Federal law and in a manner that will not interfere with the purposes for which the project was authorized.

*Section 7* provides that the United States shall not be liable for any damages, effective on the date of conveyance, except for acts of negligence committed by either the United States or an employee, agent or contractor of the United States.

*Section 8* provides that, upon conveyance, the Project shall be deauthorized and that after deauthorization, the Project is no longer entitled to any benefits under Federal reclamation law.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs for this measure has been provided by the Congressional Budget Office.

##### *S. 1474—Palmetto Bend Conveyance Act*

Summary: S. 1474 would direct the Secretary of the Interior to convey the Palmetto Bend Reclamation Project to the state of Texas. As a condition of the conveyance, S. 1474 would require that the state pay the net present value of its repayment obligations on the project. This money would be deposited in the Reclamation Fund. The bill specifies the discount and interest rates that must be used to calculate the net present value of this revenue stream. The state also must agree to manage the project for its original purposes, which include providing a municipal and industrial water

supply, conserving and developing fish and wildlife resources, and enhancing recreational opportunities. Once the project is conveyed, the Bureau of Reclamation would no longer pay for the operation and maintenance of the project.

CBO estimates that enacting S. 1474 would result in a net decrease in direct spending of \$34 million over the 2001–2005 period. Estimated asset sale receipts of \$51 million would provide near-term savings in 2001, but these savings would be offset by the loss of offsetting receipts of about \$4 million a year over the 35-year period from fiscal year 2001 through 2035. Because enacting S. 1474 would affect direct spending, pay-as-you-go procedures would apply. CBO estimates that implementing this bill would have no significant effect on discretionary spending.

S. 1474 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The state of Texas probably would incur some costs as a result of the bill's enactment, but these costs would be voluntary.

**Estimated cost to the Federal Government:** The estimated budgetary impact of S. 1474 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority .....	0	–48	3	3	4	4
Estimated Outlays .....	0	–48	3	3	4	4

**Basis of estimate:** For this estimate, CBO assumes that S. 1474 will be enacted by the end of fiscal year 2000. We expect that the state will have paid any amounts due for fiscal year 2000 in August of this year and that the project will be conveyed to the state of Texas in fiscal year 2001.

CBO estimates that enacting S. 1474 would reduce direct spending by \$34 million over the 2001–2005 period, but would have very little net budgetary impact—on a present value basis—over the life of the Palmetto project. As a condition of conveyance, S. 1474 requires that the state pay the net present value of its repayment obligations on the project, using a discount rate based on the average interest rate on 30-year U.S. Treasury bonds in the month preceding the sale. CBO estimates that the state would pay \$51 million in 2001 for the project, based on an estimated repayment obligation of \$72 million and a projected discount rate of 6.6 percent. Once conveyed, the government would forgo payments of roughly \$4 million a year for the next 35 years.

Based on information from the bureau, CBO estimates that the agency currently spends less than \$500,000 each year for the operation and maintenance of the project. Hence, we estimate that any discretionary savings from the conveyance would not be significant. Likewise, implementing this bill may change the timing of deposits to the Reclamation Fund, but CBO expects that such changes would have a negligible effect on discretionary spending.

**Pay-as-you-go considerations:** The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in

outlays that are subject to pay-as-you procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays .....	0	-48	3	3	4	4	4	4	4	4	4
Changes in receipts .....					Not applicable						

Under the Balanced Budget Act (BBA), proceeds from nonroutine asset sales (sales that are not authorized under current law) may be counted for pay-as-you-go purposes only if the sale would entail no financial cost to the government. CBO estimates that the sale of the Palmetto Bend Project as specified in S. 1474 would satisfy the conditions in the BBA, and therefore, the proceeds would count for pay-as-you-go purposes.

Intergovernmental and private-sector impact: S. 1474 contains no intergovernmental or private-sector mandates as defined in UMRA. The conveyance authorized by this bill would be voluntary on the part of the state, and any costs it would incur to meet the conditions imposed by the bill also would be voluntary. Before the property could be conveyed to the state, the bill would require the state to pay the present value of its outstanding obligation to the United States and to pay certain transaction costs. It also would require the state to assume responsibility for operating and maintaining the project.

Estimate prepared by: Federal Costs: Rachel Applebaum. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1474. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1474, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On October 13, 1999, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1474. These reports had not been received at the time the report on S. 1474 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Commissioner of the Bureau of Reclamation at the Subcommittee hearing follows:

STATEMENT OF ELUID L. MARTINEZ, COMMISSIONER, U.S.  
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

My name is Eluid L. Martinez. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's views on S. 1474, legislation providing for the conveyance of the Palmetto Bend Project to the State of Texas.

*S. 1474—Palmetto Bend Conveyance Act*

S. 1474 directs the Secretary of the Interior to convey the Palmetto Bend Project in coastal Texas to the State of Texas, acting through the Texas Water Development Board (TWDB) and/or the Lavaca-Navidad River Authority (LNRA), which are governmental entities created by the State of Texas. As drafted, the Administration opposes S. 1474. However, let me state that good progress has been made in the past year. This is a complex multipurpose project. Apart from technical issues with the language of S. 1474, it is our view that the long list of concerns that we have raised in the past, has been narrowed down to several issues, which I will highlight in my statement. If these remaining issues could be resolved, the Palmetto Bend Project could be an appropriate candidate for title transfer.

*Background*

The Palmetto Bend Project is a multipurpose project located in Jackson County, Texas near Edna on the Navidad River, with the dam site about 4 miles above the confluence of the Lavaca and Navidad rivers. Project features consist of Palmetto Bend Dam and Lake Texana, including recreation facilities on approximately 7,000 acres of public land surrounding the lake. Palmetto Bend Dam regulates natural flows of the Navidad river to provide municipal and industrial water supplies in the counties of Jackson and Calhoun, and to the City of Corpus Christi. Through contract with Reclamation, the Lavaca-Navidad River Authority has operation and maintenance responsibility for the facilities. This project was originally authorized by Public Law 90-562 in October 1968.

In August 1997, LNRA formally requested that Reclamation enter into a process to consider transferring title of the land and facilities associated with the Palmetto Bend Project from federal to non-federal ownership. In October, 1997, Reclamation and LNRA signed an agreement to "evaluate the Authority's proposed transfer of title to the Palmetto Bend Project in an Environmental Assessment in accordance with the National Environmental Policy Act (NEPA), other applicable laws and Reclamation policy."

In December, 1997, as part of that NEPA process, two public scoping meetings were conducted in the towns of Edna and Victoria, Texas to identify issues and concerns by members of the local community and other stakeholders. At both sessions, a variety of viewpoints were rep-



resented and several important issues were raised that needed to be addressed as part of the process. In February 1998, the results of the scoping meeting, and the NEPA document outline, were provided to LNRA.

In March 1999, Reclamation released a draft environmental assessment (EA) and received numerous comments. These comments were incorporated and addressed in a final EA which was released on June 21, 1999. The issues and analysis documented in that EA form the basis for much of my testimony today.

#### *Concerns about S. 1474*

Mr. Chairman, as I stated, a great deal of progress has been made on Palmetto Bend in the past year. A final environmental assessment has been completed, and productive discussions with stakeholders are underway. However, the Department does not have some important policy as well as technical concerns about the proposal as drafted:

(1) *Compliance with NEPA and Other Laws and Treaties:* S. 1474 as introduced directs rather than authorizes the Secretary to convey the facilities of the Project. The Administration strongly opposes such directives. Such a mandate would severely diminish the value of the NEPA process by removing the Secretary's discretion to make decisions on proposed title transfers based on the results of environmental analysis and public involvement. The Administration firmly believes that meaningful NEPA compliance is critical prior to title transfer, to allow the Department, the Congress, and the public to fully explore the impacts of the proposed transfer, its alternatives, and opportunities to avoid undesirable effects on public resources and values. The Secretary's authority to condition the transfer to resolve important issues identified during the NEPA process prior to title transfer must also be clear.

(2) *Mineral Development:* As introduced, S. 1474 effectively gives the State veto authority over any development of the retained Federal mineral estate at the Project. This is problematic for a number of reasons. First, in the State of Texas, as in many States, the mineral estate is dominant over the surface estate, putting S. 1474's Section 7 in conflict with existing law. Second, the title transfer valuation assumes that the mineral estate would be administered by the United States, and would be available for leasing, development, and production consistent with applicable Federal and State laws. As written, Section 7 is likely to change the valuation as it effectively reduces potential Federal revenues from future mineral development. Third, the Bureau of Land Management has issued approximately 20 leases for the development of Federally-owned oil and gas estate within the project boundary, and the imposition of new restrictions would place an unanticipated burden upon these lessees. Fourth, in its strictest application, such as a total prohibition of surface occupancy for mineral development, this section may result in a taking of property interests.

To protect the rights of the State while addressing the above concerns, we suggest the following language: “All mineral interests in the Project retained by the United States shall be managed consistent with Federal law and with the purposes for which the Project was originally authorized.”

(3) *Future Management of Public Purposes*: The Department believes that this is a crucial issue that must be resolved before title transfer can be completed. Reclamation policy for title transfer requires that public aspects of the transferred project be protected. In the case of multipurpose projects such as Palmetto Bend, where more than \$21 million of public Federal funds have been invested in non-reimbursable recreation, fish and wildlife purposes, there are a number of authorized public purposes. They include public access to public lands and waters; and public uses and benefits, such as recreation, fish and wildlife. The Administration must protect the significant taxpayer investments.

During the environmental review process for the proposed Palmetto Bend title transfer, a number of concerns were raised by the public and government agencies regarding the need to protect fish, wildlife, environmental, recreation and other public benefits of the Project to ensure that no future degradation or diminishment occurs in these public resources and benefits. The Department shares this concern. Reclamation believes it is possible to develop a legally enforceable, long-term arrangement with an agency such as the Texas Parks and Wildlife Department (TPWD), to assure that these public resources are protected. In essence an agency such as the TPWD would assume Reclamation’s public trust responsibilities for the oversight and management of fish and wildlife resources and public recreational opportunities at the project.

I understand that for several months, LNRA and TPWD have been working on such an agreement. While a preliminary Memorandum of Understanding has been signed between these agencies, we have identified a number of areas where changes are needed. We have articulated those concerns and are pleased that LNRA has expressed a willingness to address them.

S. 1474 can provide an important statutory foundation to assure protection of the public aspects of the project. Reclamation recommends that Section 6(a) be modified to include the following:

Assurance that full public access to the project’s lands and waters will be continued, subject only to restrictions for purposes of project security, public safety, and natural resource protection;

Assurance that the project’s public lands will not be sold or otherwise disposed of;

Assurance that the project’s public lands will not be made available for private or exclusive uses;

Assurance that the project's fish and wildlife resources and habitats will continue to be managed for the benefit and enhancement of those resources;

Assurance that the project's existing recreational facilities and assets will be maintained for the benefit of the general public;

Assurance that the public will be charged recreation use fees that are no more than is customary and reasonable.

(4) *Payment*: Additional Administration review is needed to determine whether the proposed payment adequately protects the Federal financial interest. In addition, it is important to understand that in calculating the valuation, certain assumptions about future management of public surface resources and Federal mineral estate were made. Given these assumptions, clarifications in the proposed legislation, as outlined above, regarding management of surface resources and Federal estate are needed.

(5) *Tax Exempt Financing*: It needs to be clear that payments made to the United States should not be financed with the proceeds of obligations that qualify as Federally tax exempt under Section 103 of the Internal Revenue Code as amended.

#### *Technical amendments*

In addition to those issues raised above, I have a number of technical and clarifying modifications which I would like to provide:

(1) *Section 2(3) Definition of "State"*: As introduced, S. 1474 is not clear on which entity—the Texas Water Development Board or the Lavaca Navidad River Authority—will actually hold title and make the management decisions. The roles, responsibilities and liabilities of each need to be clarified.

(2) *Section 3 Conveyance*: This section states that the Project would be transferred upon payment. H.R. 2764 needs to be clarified to show that payment is one of a number of steps that must occur prior to transfer. Other activities, such as NEPA compliance, must be completed prior to transfer. Furthermore, it needs to be further clarified that the United States will retain ownership to all Project museum properties.

(3) *Section 4 Completion of Conveyance*: This section needs to make clear that in addition to NEPA, compliance with the National Historic Preservation Act and the Endangered Species Act must be completed prior to conveyance.

(4) *Section (5) Payment*: Language needs to be added to establish a "due date" for the payment.

(5) *Section 5(b)*: This subsection should be clarified to make clear that while the contracts will be extinguished, the obligations of the State in terms of management and operations will not be extinguished upon payment. Therefore the title of this subsection should be changed from "Obligations" to "Contract" Extinguished. Additionally the

subsection should be modified to make this more clear. We suggest the following revision: “On payment by the State under subsection (a), Contract No. 14–06–500–1880, as amended, between the United States and the State shall be extinguished. After completion of conveyance provide for in Section 3, the State shall assume full responsibility for all aspects of operation, maintenance and replacement of the Project.”

(6) *Section 6. Future Management:* The State does not currently hold, nor is it envisioned to hold, an interest in the Federal mineral estate. Therefore the reference to “mineral estate” in this subsection should be deleted.

(7) *Section 6(a). Future Management:* This section needs to be clarified to ensure that the Project benefits will not be diminished after transfer. We recommend replacing the phrase “implementation of fish, wildlife, and recreational activities,” with “conservation and development of the fish and wildlife resources and the enhancement of recreational activities.” We also recommend that previously discussed concerns related to public access, land disposal, private and exclusive uses, and recreation use fees be addressed in this section.

We also recommend adding the following subsection in section 6:

(b) MANAGEMENT DECISIONS.—As a condition of conveyance under section 3, specific management decisions affecting the public aspects of the project (namely, fish and wildlife resources and recreation opportunities) shall be conducted according to a management agreement between all recipients of title to the project and TPWD. This agreement is subject to the review and approval of the Secretary.

(8) *Section 6(b) Existing Obligation:* This subsection needs to be revised to clarify that the responsibilities being transferred are obligations to be assigned by the United States. The nature of the obligations also needs to be clarified. We recommend the following revision: “As a condition of the conveyance under Section 3, the United States shall assign all obligations of the United States associated with the Project existing on the date of conveyance including for contracts, recreation, fish and wildlife easements, and any permits, or license agreements including oil and gas.”

(9) *Section 7. Mineral Development:* Management of the mineral estate, which is what is envisioned in this section, constitutes more than development of the resources. As such, Reclamation recommends this section be renamed: Section 7. Management of Mineral Estate.

(10) *Section 8(a) and 8(b) Liability:* To make this consistent with liability language that we have worked out with other entities interested in title transfer, we suggest two modifications to subsection (a) and two in subsection (b). In 8(a) delete the phrase “except as related to retained mineral interests,” also, delete “with respect” and insert in lieu thereof “relating.” In 8(b), after “nothing in this” replace “section” with “Act” and following the phrase “pro-

vide for in," replace "chapter 171 of title 28, United States Code" with "the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq."

(11) *Section 9(b) No Reclamation Benefits:* As drafted, this subsection can be read to say that the State would not be eligible for any benefits under Federal Reclamation law for any Reclamation Project throughout the State (where the Texas Water Development Board has an interest). As such, this needs to be clarified by inserting the words, "for the Palmetto Bend Project" after "not entitled to received any benefits."

As you can see, Mr. Chairman, together with LNRA, we have come a long way toward addressing the Administration's concerns and those of the other stakeholders who have raised concerns about this proposed title transfer.

That concludes my remarks on S. 1474. I would be pleased to answer any questions.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1474, as ordered reported.

