

Testimony of
Nathan Bracken, Legal Counsel
Western States Water Council
before the
Senate Committee on Energy and Natural Resources
Full Committee Hearing: Rural Water Projects
July 31, 2012

I. INTRODUCTION

Chairman Bingaman, Ranking Member Murkowski, and members of the Committee, my name is Nathan Bracken and I am the Legal Counsel for the Western States Water Council (WSWC). The WSWC is a non-partisan advisory body on water policy issues that represents eighteen western states and their governors. Our members are appointed by their respective governors, and include senior state water managers and administrators. We are also closely affiliated with the Western Governors' Association (WGA). I appreciate the opportunity to discuss our support for the "Authorized Rural Water Projects Completion Act" (S.3385) and the importance of rural water projects in the West.

As discussed below, the WSWC supports S. 3385 as authorizing a timely federal investment of modest amounts that will minimize long-term federal expenditures, create more jobs now, and fulfill long-standing promises and trust responsibilities to rural and Tribal communities, some of which date back decades. My testimony today is based primarily on WSWC Position #343 (attached as Attachment A), which we sent to Chairman Bingaman and Ranking Member Murkowski in the form of a letter on June 8, 2012, expressing our support for legislative action to establish a dedicated funding source for the completion of federal rural water projects authorized by Congress for construction by the Bureau of Reclamation. Portions of my

testimony are also based on WSWC Position #333 (attached as Attachment B), which sets forth the WSWC's long-standing policy in support of using receipts accruing to the Reclamation Fund to finance western water development, including the types of rural water projects that would receive funding under S. 3385.

II. THE NEED FOR RURAL WATER PROJECTS IN THE WEST

Across the West, rural communities are experiencing water supply shortages due to drought, decreasing groundwater supplies, and inadequate infrastructure. Some communities have had to haul water over substantial distances. Moreover, those water supplies that are available to these communities are often of poor quality and may be impaired by naturally occurring and man-made contaminants, including arsenic and carcinogens, which impacts their ability to comply with increasingly stringent federal water quality and drinking water mandates. At the same time, many rural and Tribal communities in the West are suffering from significant levels of unemployment and simply lack the financial capacity to pay for drinking water system improvements.

Since the 1980s, Congress has authorized Reclamation to address this need by designing and constructing projects to deliver potable water supplies to rural communities in the 17 western states. Furthermore, Congress established Reclamation's Rural Water Supply Program when it enacted the Rural Water Supply Act of 2006 (Pub .L. 109-451), authorizing the agency to work with rural communities in the West, including Tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies.

In 2009, the WSWC worked closely with Reclamation to identify sources of information on potable water supply needs in non-Indian rural areas of the West. Reclamation recently released a draft assessment report on July 9, 2012 ("Draft Report") that discusses the results of

this effort, finding that the identified need for potable water supply systems in rural areas of the 17 western states ranges from \$5 billion to \$8 billion, not including another estimated \$1.2 billion for specific Indian water supply projects.¹

The Draft Report notes that there are currently eight active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota, including the Lewis and Clark Rural Water Supply Project, which is located mostly in South Dakota but encompasses parts of the non-Reclamation states of Iowa and Minnesota.² The report also notes that of eleven rural water projects that Congress authorized Reclamation to undertake between 1980 and 2007 (when the Rural Water Supply Act was enacted), only four have been completed.³

According to Reclamation, the total amount of Federal funding needed to complete these eight authorized projects is now \$2.6 billion, which is substantially higher than the \$2 billion that Congress originally authorized. This increase is due in part to the rising costs of materials and labor as well as inflation. Nevertheless, Reclamation estimates that these authorized projects could be completed by 2029 at a total Federal cost of around \$3 billion, so long as Federal funding reflects the estimates provided in the original final engineering reports for each of the authorized projects – about \$162 million annually. However, at current funding levels of around \$50 million for construction, Reclamation estimates that some projects could be delayed beyond 2063 despite the expenditure of almost \$4 billion in Federal funds by that point. Moreover, an additional \$1.1 billion in Federal expenditures would be needed to complete those projects that are not completed by 2063.⁴

¹ BUREAU OF RECLAMATION, ASSESSMENT OF RECLAMATION'S RURAL WATER ACTIVITIES AND OTHER FEDERAL PROGRAMS THAT PROVIDE SUPPORT ON POTABLE WATER SUPPLIES TO RURAL COMMUNITIES IN THE WESTERN UNITED STATES, 8 (July 9, 2012), available at: <http://www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf>.

² *Id.* 3 – 4.

³ *Id.* at 1 – 3.

⁴ *Id.* at 5.

III. FEDERAL FUNDING FOR RURAL WATER PROJECTS UNDER S. 3385

S. 3385 would provide \$80 million per year for each of fiscal years 2013 through 2029 to complete the construction of rural water projects that have already received Congressional authorization. Other projects may be eligible for funding if: (1) the Secretary of the Interior completes a feasibility report for the project by September 30, 2012 that recommends its construction; and (2) Congress authorizes the project's construction after S. 3385's enactment.

This funding represents a relatively modest Federal investment, compared to the increased costs that will likely occur if funding remains at current levels. We recognize that there are Federal budget constraints. Nevertheless, such constraints do not negate the Federal responsibility to complete authorized rural water projects, particularly those intended to fulfill in part a solemn Federal promise and trust responsibility to compensate States and Tribes for lost resources as a result of the construction of Federal flood control projects. It is also important to note that the Federal expenditures provided under S. 3385 would generate significant and actual returns on this investment, including but not limited to:

- National Economic Impacts: According to a 2008 U.S. Conference of Mayors report, one dollar invested in water supply and sewer infrastructure increases private output, or Gross Domestic Product, in the long-term by \$6.35. Furthermore, for each additional dollar of revenue generated by the water supply and sewer industry, the increase in revenue that occurs in all industries for that year is \$2.62.⁵
- Economic Impacts and Job Creation in Rural Communities: Investments in rural water projects have a direct impact on the economies of the communities serviced by those projects. For example, a 2006 study by HDR, Inc. on the economic impacts of constructing the Lewis and Clark Rural Water System, which would receive funding under S. 3385, found that the total economic impact to South Dakota, Iowa, and Minnesota would total \$414.4 million. The report also estimates that the project's construction would directly or indirectly create 7,441 jobs. On a yearly basis, this equals the creation of 533 direct and indirect jobs with average annual salaries ranging

⁵ THE U.S. CONFERENCE OF MAYORS: MAYORS WATER COUNCIL, LOCAL GOVERNMENT INVESTMENT IN MUNICIPAL WATER AND SEWER INFRASTRUCTURE: ADDING VALUE TO THE NATIONAL ECONOMY, i (August 2008), available at: <http://www.usmayors.org/urbanwater/documents/LocalGovt%20InvntInMunicipalWaterandSewerInfrastructure.pdf>.

from \$25,591 to \$33,462. Approximately 72% of the economic impacts would be realized in South Dakota, with 17% in Iowa and 11% in Minnesota.⁶

- Improved Potential for Economic Development in Rural Areas: The economy of every community, especially rural communities, requires sufficient water supplies of suitable quality. Such supplies depend upon adequate water infrastructure. Improving the water infrastructure of the rural and Tribal communities that would be affected by S. 3385 will improve their ability to develop their economies in ways that are not possible with their current water supplies.
- Improved Quality of Life: The types of water projects that would receive funding under S. 3385 would meet the same water quality standards as public systems. These projects would therefore provide a higher quality of safe drinking water and associated health benefits than the water supplies upon which these communities currently rely.
- Reduced Costs: Rural communities would no longer need to expend limited resources drilling and maintained wells, softening and treating water, or hauling water. In addition, such communities would see decreased electrical pumping costs.
- Rural Fire Protection: Rural water systems provide access to water supplies for fire protection.
- Livestock Use: Rural water projects provide a more reliable and better supply of water for livestock. They also have the potential to decrease the impacts of livestock grazing on riparian areas by allowing for the delivery of water away from these sensitive areas.
- Increased Property Values: In some areas, the resale value of property may increase with a more reliable, safe, clean and adequate water supply.

IV. THE USE OF THE RECLAMATION FUND UNDER S. 3385

Section 3(a) of S. 3385 would provide funding for eligible rural water projects by establishing a Reclamation Rural Water Construction Fund (RRWCF) within the U.S. Treasury that would be financed from revenues that would otherwise be deposited in the Reclamation Fund. These funds would not be subject to further appropriation, would be in addition to other amounts appropriated for the authorized projects, and should not result in corresponding offsets to other critical Reclamation and Department of the Interior programs. The Secretary of the

⁶ HDR, INC., THE ECONOMIC AND FISCAL IMPACTS OF CONSTRUCTING THE LEWIS AND CLARK RURAL WATER SYSTEM: 2004 STUDY AND 2006 UPDATE, 2 – 3, 63 – 64 (March 2006), available at: <http://www.lcrws.org/pdf/EconomicImpactStudy/EconomicImpactStudy.pdf>. See also BUREAU OF RECLAMATION, *supra* note 1 at 4 (discussing Federal costs for currently authorized rural water projects)

Interior would also invest the portion of these receipts not needed to meet current withdrawals, and the resulting interest and proceeds from the sale or redemption of any obligations would become part of the RRWCF. The RRWCF would terminate in September 2034, at which point its unexpended and unobligated balance would transfer back to the Reclamation Fund.

Congress established the Reclamation Fund when it enacted the Reclamation Act of 1902 (P. L. 57-161) and it was intended to be the principle means of financing Federal western water and power projects in the 17 western states. As stated in Section 1 of the Reclamation Act, it provides monies "...reserved, set aside, and appropriated as a special fund in the Treasury."

The Reclamation Fund's receipts are derived from water and power sales, project repayments, and receipts from public land sales and leases in the 17 western states, as well as oil and mineral-related royalties. However, the receipts that accrue to the Fund each year are only available for expenditure pursuant to annual appropriations acts. Over the years, rising energy prices and declining Federal expenditures from the Fund for Reclamation purposes have resulted in an increasingly large unobligated balance.

According to the Administration's FY 2013 budget request, actual and estimated appropriations from the Reclamation Fund are \$953 million for FY 2011, \$877 million for FY 2012, and \$859 million for FY 2013. While these appropriations have decreased, the Fund's unobligated balance has grown from an actual balance of \$9.6 billion in FY 2011 to an estimated \$12.4 billion by the end of FY 2013. Contrary to Congress' original intent, instead of supporting western water development, much of this money has gone instead to other Federal purposes.

The WSWC has long supported using the Reclamation Fund for its intended purpose of financing western water development, including the types of rural water projects that would

receive funding under S. 3385. As stated in WSWC Position #333, Congress and the Administration should:

[F]ully utilize the funds provided through the Reclamation Act and subsequent acts for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs – recognizing and continuing to defer to the primacy of western water laws in allocating water among uses – and work with the States to meet the challenges of the future.

Unlike typical Congressional authorizations that often do not specify a funding source and may require more Federal monies in addition to current authorizations, the RRWCF would rely on the established stream of receipts and associated interest that already accrue to the Reclamation Fund. Furthermore, as required by Section 3(b)(3) of S. 3385, no amounts may be deposited or made available to the RRWCF if the transfer or availability of the amounts would increase the Federal deficit.

It is also important to note that the concept of using receipts accruing to the Reclamation Fund to establish a separate account to finance specific water projects is not new. Specifically, Congress established the Reclamation Water Settlements Fund (RWSF) under Title X of the Omnibus Public Lands Management Act of 2009 (Pub .L. 111-11). Like the RRWCF, the RWSF consists of receipts transferred from the Reclamation Fund and provides specified levels of funding starting in FY 2020 for a period of 10 years to help finance specified water infrastructure projects that are part of Congressional-authorized water settlements, especially Indian water rights settlements. The WSWC supports the RWSF for the same reason it supported the establishment of the RRWCF as proposed in S. 3385 – the use of these funds furthers the construction of much needed water infrastructure in the West in accordance with the Reclamation Fund’s original intent and purpose.

V. FUNDING PRIORITIZATION UNDER S. 3385

Before expenditures from the RRWCF could be made, Section 3(c)(3) of S. 3385 would require the Secretary of the Interior to develop programmatic goals to ensure that the authorized projects are constructed as expeditiously as possible, and in a manner that reflects the goals and priorities of the projects' authorizing legislation and the Rural Water Supply Act of 2006. The bill would also require the Secretary to develop funding prioritization criteria that would consider: (1) the "urgent and compelling need" for potable water supplies in affected communities; (2) the status of the current stages of completion of a given project; (3) the financial needs of affected rural and Tribal communities; (4) the potential economic benefits of the expenditures on job creation and general economic development in affected communities; (5) the ability of a given project to address regional and watershed level water supply needs; (6) a project's ability to minimize water and energy consumption and encourage the development of renewable energy resources, such as wind, solar, and hydropower; (7) the needs of Indian tribes and Tribal members, as well as other community needs or interests; and (8) such other factors the Secretary deems appropriate.

As the WSWC stated in its June 8 letter, these programmatic goals and funding priorities "...should be developed in a transparent manner in consultation with the affected communities and States – and should consider existing state water plans and priorities." States and the affected communities have on the ground knowledge of the facts and circumstances associated with the authorized projects that would receive funding under S. 3385, and are therefore the most appropriate entities to assist the Secretary in developing these goals and priorities.

VI. CONCLUSION

The expedited construction of authorized rural water projects will save money in the long run as costs continue to rise, and fulfill Federal obligations in a more timely manner, including Federal tribal trust responsibilities. Postponing spending on this obligation through inadequate or insufficient funding levels only increases Federal costs and perpetuates hardships to rural and Tribal communities in the West. S. 3385 would not only fulfill solemn Federal obligations, but also provide needed economic development and job creation.

Importantly, the bill would use receipts that are already accruing to the Reclamation Fund for their intended purpose of financing the construction of western water projects.

I appreciate the opportunity to testify on behalf of the Council, and we urge the Committee to approve S. 3385 and work with the States towards its effective implementation.

ATTACHMENT A



WESTERN STATES WATER COUNCIL

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Web Page: www.westgov.org/lwswc

June 8, 2012

Position No. 343

Senator Jeff Bingaman, Chairman
Energy and Natural Resources Committee
United States Senate
SD-364 Dirksen Senate Office Building
Washington, DC 20510

Senator Lisa Murkowski, Ranking Member
Energy and Natural Resources Committee
United States Senate
SD-312 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

On behalf of the Western States Water Council, which represents eighteen states, I am writing to express our support for legislative action to establish a dedicated funding source for the completion of federal rural water projects authorized by the Congress for construction by the Bureau of Reclamation. These projects include components that benefit both Indian and non-Indian rural communities. Many of these communities, particularly smaller communities, are struggling to provide adequate water supplies to meet the needs of their citizens of a quality consistent with federal mandates.

It is essential that these projects be completed in a timely manner for the benefit of these communities in fulfillment of long-standing promises and trust responsibilities, some dating back decades. Another important consideration is the impact on the federal budget and economic growth. Accelerated construction scheduling, made possible by a more timely federal investment of modest amounts, will minimize long-term federal expenditures and create more jobs now.

With respect to programmatic goals and funding priorities established pursuant to directives in any legislation, these should be developed in a transparent manner in consultation with the affected communities and States -- and should consider existing state water plans and priorities.

We appreciate the opportunity to express our interests and look forward to working with you to address this important need.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip C. Ward". The signature is stylized with a large, looped initial "P" and a distinct "W" at the end.

Phillip C. Ward
Chairman
Western States Water Council

ATTACHMENT B

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
THE RECLAMATION FUND
Bend, Oregon
July 29, 2011**

WHEREAS, in the West, water is indeed our “life blood” - a vital and scarce resource the availability of which has and continues to circumscribe growth, development and our economic well being and environmental quality of life - the wise conservation and management of which is critical to maintaining human life, health, welfare, property and environmental and natural resources; and

WHEREAS, recognizing the critical importance of water in the development of the West, the Congress passed the Reclamation Act on June 17, 1902 and provided monies “reserved, set aside, and appropriated as a special fund in the Treasury to be known as the ‘reclamation fund,’ to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of water for the reclamation of arid and semiarid land...” in seventeen western states, to be continually invested and reinvested; and

WHEREAS, then President Theodore Roosevelt stated, “The work of the Reclamation Service in developing the larger opportunities of the western half of our country for irrigation is more important than almost any other movement. The constant purpose of the Government in connection with the Reclamation Service has been to use the water resources of the public lands for the ultimate greatest good of the greatest number; in other words, to put upon the land permanent homemakers, to use and develop it for themselves and for their children and children’s children...;”⁷ and

WHEREAS, the Secretary of the Interior was authorized and directed to “locate and construct” water resource projects to help people settle and prosper in this arid region, leading to the establishment of the Reclamation Service – today’s U.S. Bureau of Reclamation; and

WHEREAS, western states and the Bureau of Reclamation have worked in collaboration to meet the water-related needs of the citizens of the West, and protect the interests of all Americans, recognizing changing public values and the need to put scarce water resources to beneficial use for the “ultimate greatest good of the greatest number;” and

⁷State of the Union Address, 1907

WHEREAS, the Bureau of Reclamation has built facilities that include 348 reservoirs with the capacity to store 245 million acre-feet of water, irrigating approximately 10 million acres of farmland that produce 60 percent of the nation's vegetables and 25 percent of its fruits and nuts, as well as providing water to about 31 million people for municipal and industrial uses, while generating more than 40 billion kilowatt hours of energy each year from 58 hydroelectric power plants, enough to serve 3.5 million homes, and further providing flood control, recreation, and fish and wildlife benefits; and

WHEREAS, project sponsors have and continue to repay the cost of these facilities, which also produce power receipts that annually return about \$600 million to the United States Treasury, prevent some \$500 million in damages due to floods each year, and generate billions of dollars in economic returns from agricultural production; and

WHEREAS, the water and power resources developed under and flood control provided by the Reclamation Act over the last century supported the development and continue to be critical to the maintenance of numerous and diverse rural communities across the West and the major metropolitan areas of Albuquerque, Amarillo, Boise, Denver, El Paso, Las Vegas, Los Angeles, Lubbock, Phoenix, Portland, Reno, Sacramento, Salt Lake City, Seattle, Tucson and numerous other smaller cities; and

WHEREAS, western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet our present water needs in the West and those of future generations, within the framework of state water law, as envisioned by President Roosevelt and the Congress in 1902; and

WHEREAS, according to the Administration's FY 2009-2011 requests actual and estimated appropriations from the Reclamation Fund are \$981 million for FY 2007, \$1.05 billion for FY 2008, \$870 million for FY 2009, \$974 million for FY 2010, \$950 million for FY 2011 and \$906 million for FY 2012 - compared to actual and estimated receipts of \$1.85 billion, \$2.09 billion, \$2.49 billion, \$1.729 billion, \$1.794 billion and \$2.013 billion respectively; and

WHEREAS, the unobligated balance in the Reclamation Fund continues to grow from an actual balance of \$5.67 billion at the end of FY 2006, to an estimated \$9.368 billion by the end of FY 2012; and

WHEREAS, under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principle means to finance federal western water and power projects with revenues from western resources and its receipts are derived from water and power sales, project repayments, certain receipts from public land sales, leases and rentals in the 17 western states, as well as certain oil and mineral-related royalties –

but these receipts are only available for expenditure pursuant to annual appropriation acts; and

WHEREAS, with growing receipts in part due to high energy prices and declining federal expenditures for Reclamation purposes, the unobligated figure gets larger and larger, while the money is actually spent elsewhere for other federal purposes contrary to the Congress' original intent.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council asks the Administration and the Congress to fully utilize the funds provided through the Reclamation Act and subsequent acts for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs -- recognizing and continuing to defer to the primacy of western water laws in allocating water among uses -- and work with the States to meet the challenges of the future. Such “needs” may include the construction of Reclamation facilities incorporated as part of a Congressionally approved Indian water right settlement.

BE IT FURTHER RESOLVED, that the Administration and the Congress investigate the advantages of converting the Reclamation Fund from a special account to a true revolving trust fund with annual receipts to be appropriated for authorized purposes in the year following their deposit (similar to some other federal authorities and trust accounts).