

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
on
S. 1291
To Authorize Early Repayment Within the Northport Irrigation District
June 18, 2015

Chairman Lee and members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 1291, legislation to authorize the early repayment of obligations within the Northport Irrigation District within the State of Nebraska. The Department supports this bill.

S. 1291 would authorize landowners served by the Northport Irrigation District to prepay the remaining portion of construction costs allocated to them for the North Platte Project. Completed repayment will relieve the landowners within the District from the full cost pricing, compliance and land use certification obligations associated with the Reclamation Reform Act of 1982 (RRA). Subsection 213(c) of the RRA specifies that no authority is provided for lump sum or accelerated repayment of construction costs, except for repayment contracts that provide for lump sum or accelerated repayment that were in effect as of the enactment of RRA. Therefore, Reclamation and the Congress have interpreted current law to require water contractors to obtain additional statutory authority to make accelerated repayments of construction costs allocated to irrigation, except for those contracts already in effect as of the RRA's enactment, or for contracts otherwise exempt from the provisions of the RRA.

Northport is the only remaining district in the North Platte Project that is subject to RRA acreage limitations. All other districts with the Project have repaid their construction obligations in full to Reclamation, which relieved those districts from the full-cost pricing, compliance and land use certification obligations associated with the RRA.

As long as proposals such as this do not reduce revenues or negatively impact the United States, Reclamation typically supports legislation authorizing the pre-payment of repayment contracts, and has done so previously before the Congress¹. Specific statutory authorization for early or accelerated repayment is not required in all cases involving construction costs that are allocated to irrigation, but would be in the case of Northport.

¹ HR 4562 testimony June 10, 2014; HR 818 testimony May 12, 2011; HR 5666 testimony July 27, 2006; HR 4195 testimony November 9, 2005

In general, early repayment authority in contracts is limited to landowners. In other words, a district cannot pay out early; rather, each landowner can decide if his or her land should be paid out early. It is Reclamation policy to require landowners who want to pay out early to pay out all of their land in the subject district and not just a portion of their land. This policy would continue to be applied for Northport and the North Platte Project if S. 1291 were to be enacted. Early payout would accelerate the repayment of these project costs to the United States Treasury. Where these repayment obligations are not accompanied by interest, early repayment has a net positive impact on overall repayment to the Treasury and we are highly confident that this will be the case under this bill.

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

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
on
S. 593, the Bureau of Reclamation Transparency Act
June 18, 2015

Chairman Lee and members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 593, the Bureau of Reclamation Transparency Act. The Department supports S. 593.

S. 593 is a reintroduced version of bipartisan legislation previously introduced by Senators Barrasso and Schatz during the 113th Congress. The prior bill was numbered S. 1800, was also titled the Bureau of Reclamation Transparency Act, and Reclamation testified on the bill in February of 2014. Reclamation appreciates the constructive work conducted with the sponsor's offices and this Subcommittee to develop a number of specific changes to the bill consistent with our 2014 testimony. These changes were all incorporated into the current version of S. 593. Reclamation recognizes the value in obtaining additional information on the status of our infrastructure. The bill is consistent with a draft Infrastructure Investment Strategy and process Reclamation has initiated proactively, which I will briefly summarize here.

For the past year, Reclamation has been developing a draft Infrastructure Investment Strategy (Strategy) for assessing and reporting on infrastructure investment needs for Reclamation's approximately 4,000 unique assets. The Strategy builds upon Reclamation's ongoing asset management planning and budget processes, including the existing major rehabilitation and replacements (MR&R) database. Much of the initial focus of this Strategy has been on "reserved works"; facilities constructed, owned, and operated by Reclamation, as opposed to "transferred works", which are those facilities that were built and are owned by Reclamation, but which are operated and maintained by water and power customers pursuant to contracts.

Consistent with the directives in S. 593, Reclamation's Strategy process will focus on: improving data collection, analysis, and reporting on the condition of Reclamation-owned infrastructure; categorizing potential investments according to relative importance and urgency; and collaboration with water and power customers in planning for these investments.

Based on arrangements originating with Section 6 of the Reclamation Act of 1902, over two-thirds of Reclamation's facilities are transferred works, managed by non-federal project beneficiaries. These operating entities provide valuable input to the formulation of Reclamation's annual asset management activities. At present, Reclamation's annual budget requests include estimates of the appropriated funds needed for maintenance conducted by Reclamation at its facilities. The estimates in the budget request do not include the amounts

funded by non-federal beneficiaries for their maintenance of Reclamation facilities. Reclamation's budget documents, delivered to Congress annually and posted online, are developed over a multi-step 18-month process that begins at the field office level where managers consider the condition of the facilities under their jurisdiction, safety considerations associated with facilities' condition, and – very importantly – the ability of operating partners to fund the work identified pursuant to the terms of their contract and requirements of Reclamation Law. Investments in MR&R are analyzed and prioritized at the field, regional, and bureau levels based on criteria such as: Engineering Need; Risks and Consequences of Failure; Efficiency Opportunities; Financial Feasibility; and availability of Non-Federal Cost Share.

During this process, Reclamation categorizes the information that will go into its budget requests using its Programmatic Budget Structure (PBS). The PBS uses two of its five primary categories to show the budget request for Operations and Maintenance (O&M) activities: 1. Facility Operations, and 2. Facility Maintenance and Rehabilitation. It should be noted that in addition to the appropriated funds in these two categories, a substantial portion of O&M activities is paid for directly by water and power users with their own funds or project revenues.

The Facility Operations category includes items and activities that are necessary to operate Reclamation facilities to produce authorized project benefits for water supplies, power, flood control, fish and wildlife, and recreation. This category includes not only facility operations by Reclamation at reserved works, but also Reclamation's oversight of the operations of facilities performed by water user entities at transferred works. Facility Operations includes all routine or preventive maintenance activities. Routine maintenance is defined as recurring daily, weekly, monthly, or annually, and most tasks performed by Reclamation maintenance staff are included in this category. Also included in this category are routine safety and occupational health items, including those for workplace safety inspection and hazard abatement. The amount budgeted under this category for each facility is the funding necessary to perform routine O&M activities. On an annual basis, each region, along with centralized program management staff, determines the appropriate budget level to support staffing and other resources necessary at each facility for continued operations to deliver authorized project benefits.

The second category, Facility Maintenance and Rehabilitation, addresses the needs over and above the resources in Facility Operations, and corresponds roughly to the concept of MR&R. The Facility Maintenance and Rehabilitation category includes major and non-routine replacements and extraordinary maintenance of existing infrastructure. This category also includes activities to review and conduct condition assessments (facility O&M and dam safety inspections), as well as funding necessary for the correction of dam safety deficiencies (dam safety modifications), the implementation of security upgrades, and building seismic safety retrofits. Consequently, most of the budgeted items under this category are related to site-specific facility needs.

After Reclamation's field offices identify MR&R activities in their jurisdiction that require appropriated funds, they are evaluated at the regional level where these are compared to the needs and priorities of other activities and facilities in that region. There are five regions within Reclamation. The regions' PBS allotments for Facility Maintenance and Rehabilitation each year are then evaluated at the next level of internal review, with Reclamation's Budget Review

Committee (BRC) process. A given year's BRC is working in advance of a budget request two years into the future, and is comprised of senior management from across the agency, providing the maximum breadth of relevant experience and program knowledge. Each region presents its priorities to the BRC, which evaluates the MR&R needs and priorities against those of other regions in order to ensure that Facility Maintenance and Rehabilitation activities reflect Reclamation's greatest overall need and agency priorities. No urgent maintenance issues necessary to the safe operation of a facility are deferred in the budgeting or facility review processes. The end result is a budget request that has been prioritized and vetted across the organization, concurrent with input from the Department and Reclamation leadership.

For the purpose of reporting asset condition to the Federal Real Property Profile to meet requirements of the Executive order 13327, "Federal Real Property Management," and to better understand upcoming needs, Reclamation develops and annually updates estimates of MR&R needs. This effort, which informs the annual budget process, represents an outlook of Reclamation's best estimate of reported deferred maintenance, and identified extraordinary maintenance, dam safety modifications, repairs, rehabilitation, and replacement activities at a point in time looking forward five years, regardless of funding source, for all assets. The estimated total in 2012 amounted to \$2.5 billion over five years (fiscal years 2013-2017)¹. It is important to note that a substantial portion of projected needs to address the rehabilitation of aging infrastructure (roughly \$1.2 billion of the \$2.5 billion estimate) will be financed directly by our water and power customers. Cost estimates associated with these identified needs range from "preliminary" to "feasibility" level, and should not be collectively assumed to be at one particular uniform level of detail. Variability in the MR&R estimates from year to year may be the result of additional information received from the estimating source (i.e., Reclamation field offices and non-federal operating entities), changes in field conditions, further evaluations conducted, and work priorities, thus impacting the inclusion or deletion of specific identified needs within a particular year, or from year to year.

As stated in prior testimony before this Subcommittee, one of the main challenges Reclamation faces in securing funding for the identified near-term needs as well as longer-term MR&R needs is the varying economic strength of our operating partners. Given the requirement under Reclamation Law for the repayment of maintenance costs either in the year incurred or over time, Reclamation must work in collaboration with our water and power partners that must repay these investments. For some of these partners, the cost-share requirements associated with MR&R work are simply beyond their financial capabilities. Like any organization tasked with constructing, operating, and maintaining a wide portfolio of assets, Reclamation has to prioritize its actions to maximize the benefits derived from its investment of both federal and non-federal funds. Given the substantial economic and financial interest of Reclamation's non-federal partners, the development of cost estimates for maintenance requirements on reserved and transferred works is both collaborative and dynamic. We acknowledge there are tradeoffs associated with decisions to fund one identified need versus another, but Reclamation's annual budget request reflects our best effort to balance those constantly evolving needs associated with all elements of our mission.

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www.usbr.gov/assetmanagement/Asset%20Inventory/FY%202012%20Reclamation%20Asset%20Management%20Plan.pdf

The requirements of S. 593 would complement the processes described above, and the bill makes allowance for the valuable input from operating partners that is central to Reclamation's asset management program.

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

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
on
S. 982, the Water Rights Protection Act
June 18, 2015

Chairman Lee, Ranking Member Hirono and members of the Subcommittee, thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 982, the Water Rights Protection Act. I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at Bureau of Reclamation. S. 982 threatens the Federal Government's longstanding authority to manage federal lands and associated water resources, uphold proprietary rights for the benefit of Indian tribes, and ensure the proper management of public lands and resources. The legislation is overly broad, drafted in ambiguous terms, and likely to have numerous unintended consequences that would have adverse effects on existing law, tribal water rights, and voluntary agreements. The Department opposes S. 982.

The federal government retains the right to regulate government lands under Article IV, Section 3 of the Constitution, which grants the United States authority to reserve water rights for its reservations and its property. Similarly, Article I, Section 8 of the Constitution granted the United States power to regulate commerce with Indian tribes, which courts have cited, along with the treaty power found in Article II, Section 2, as authority to reserve Indian water rights. Although the federal government generally defers to the States in the allocation and regulation of water rights, dating back to 1908 the Supreme Court has held that the establishment of federal reservations – whether by treaty, statute, executive order, or otherwise - impliedly reserved water necessary to fulfill the purposes of those reservations, in what is known as the doctrine of federal reserved water rights. Originally expressed as the power to reserve water associated with an Indian reservation, over time, the Supreme Court and other courts have revisited and built on the doctrine in holding that reserved rights applied to all federal lands. In the West, these reservations come with priority dates that often serve as protection from injurious surface and groundwater diversions by parties with junior priority. Whether to provide a homeland for Indian tribes, protect national parks or wildlife refuges, protect endangered or threatened species, secure safe and reliable drinking water supplies, safeguard public resource values, or maintain access for recreational uses associated with federal lands, the doctrine of federal reserved water rights along with existing federal land management authorities are a critical component in allowing the Department to fulfill its mission to protect and manage the Nation's natural resources and cultural heritage and honor its trust responsibilities and special commitments to American Indians.

Section 2 of S. 982 establishes a general definition of “water right” that is unclear and could create uncertainty among water right holders in light of the established doctrine of federal

reserved water rights. If enacted, we would interpret this definition as having no applicability to disputes involving federal reserved water rights.

Section 3 of S. 982 would prohibit the Secretary of the Interior or the Secretary of Agriculture from: (1) conditioning any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the limitation, encumbrance, or transfer of any water right directly or indirectly to the United States, (2) requiring any water user to apply for or acquire a water right in the name of the United States under State law, (3) asserting jurisdiction over groundwater withdrawals or impacts on groundwater resources, or (4) infringing on the rights and obligations of a State in evaluating, allocating, and adjudicating the waters of the State originating on or under, or flowing from, land owned or managed by the Federal Government.

Section 3 would jeopardize the Departments of the Interior and Agriculture's ability to exercise its long-standing authority to establish conditions on the use of public lands and resources, interfering with the Departments' ability to protect the lands and resources they are entrusted to manage. The intent of this Section, along with the savings clauses in Section 5, is unclear and could potentially tie up established practices and lead to extensive and wasteful litigation. For example, the Department is concerned that this provision could lead to parties challenging the renewal of public lands use permits that are conditioned on assurances that water will continue to be available for specific on site purposes, as well as for the purposes of the reservation. This sort of legal ambiguity could hinder ongoing water use in a time where many communities are experiencing significant drought-related hardship.

Sections 3 and 4 would create uncertainty for many existing voluntary arrangements that are designed to produce a more efficient operation of U.S. facilities in the wake of ongoing drought, climate change and reduction of water supplies. We are concerned these provisions may prohibit parties from voluntarily entering into agreements with the Department or its bureaus with respect to water rights in order to protect state, federal or third party interests. For example, this bill could prevent the Bureau of Reclamation from partnering with parties who use groundwater to support recreational activities on Reclamation lands, since the recreational users often apply jointly with Reclamation for a state permit since Reclamation is the land owner. Further, there are numerous examples where Reclamation has contracts with water users that include the transfer or relinquishment of pre-existing private water rights in exchange for a license or contract that provides project benefits at Reclamation facilities, e.g. storage or delivery of water. The bill, as written, may prohibit renewal of such contracts, thus interfering with voluntary, mutually-beneficial agreements that improve water resource management.

S. 982 could preclude Departmental bureaus from protecting property interests or resource values as mandated by Congress. The bill could result in the transfer of water rights off federal reservations that may impede the Department from managing facilities and resources. For example, the legislation would prohibit the National Park Service from exercising its authority to perfect water rights in the interest of the United States for waters diverted from or used on National Park Service lands, including operations associated with National Park Service concessioners, lessors or permittees. The requirement that all water rights on National Park Service lands be held in the name of the United States is grounded, in part, on the potential damage and disruption that privately held water rights could cause to park resources and

operations. The bill could also hinder the U.S. Fish and Wildlife's implementation of the National Wildlife Refuge Administration Act if any conditions pertaining to groundwater flows, whether in or out of a refuge or hatchery, are deemed to be more restrictive than a State's law.

S. 982 would restrict the Secretary of the Interior and Secretary of Agriculture from acquiring water rights under State law, which could seriously reduce these agencies' ability to meet the established purposes of federal reserved lands, such as the National Wildlife Refuges or National Fish Hatcheries. The legislation would also put these agencies at a disadvantage, as other federal agencies would not be under similar restrictions. This restriction could also hinder the Bureau of Reclamation's ability to acquire water rights for the purposes of developing future water projects.

S. 982 would also impose unnecessary restrictions on the Bureau of Land Management's (BLM) ability to manage water-related resources vital to many multiple uses on public lands and cooperatively mitigate impacts to sensitive water resources. Under the Federal Land Policy and Management Act, the BLM has the authority to consider terms and conditions on right-of-way applications to mitigate impacts to water-related resources. The BLM does not require the transfer or relinquishment of water rights as a condition of authorizations for public land use. However, S. 982 could undermine cooperative arrangements with ranchers and local communities where BLM frequently partners with public land users through collaborative agreements to plan, finance, and develop water resources. BLM also commonly applies for new livestock water rights to the extent allowed by the laws of the State in which the land is located. Where grazing preferences are associated with a water right, the bill could limit BLM's ability to conduct grazing preference transfers. The legislation would not provide additional protections for the holders of water rights beyond current BLM policy, and if enacted, would jeopardize the BLM's ability to manage water-related resources vital to many multiple uses on public lands.

In terms of groundwater, Section 3(3) could prevent the Department from protecting against damage to groundwater-dependent resources, such as thermal features, cave-forming process, and springs, located in reserved federal lands and Indian reservations, some of which rely on springs for their daily water needs. Section 3(3) precludes Departmental managers from "asserting jurisdiction" over groundwater withdrawals or impacts, unless such assertion would impose no greater restrictions than state laws, regulations or policies regarding the protection and use of groundwater. Some states allow for unregulated groundwater use and provide no protection for groundwater-dependent resources. Because states have different laws regarding groundwater use and protection, it would be extremely difficult, if not impossible, for federal reservation managers to make such determinations on a state-by-state basis. The bill could lead to inconsistent approaches by federal managers in different states having different laws, and even potentially to litigation as parties attempt to sort out the relative levels of restriction inherent in the laws, regulations or policies of different states.

Undermining the Department's ability to manage groundwater resources could lead to significant damages to the purpose of a reservation of federal land. This Section also raises concerns about whether Reclamation can continue to exercise existing rights to return flows, including groundwater returns, at a number of Reclamation projects in various western States. In addition, Section 4(a)(2) would require the Department to "coordinate with the States in the adoption and

implementation of ... *any* rulemaking, policy, directive, management plan” [emphasis added] to ensure consistency with State groundwater laws and programs. This has the potential to impose onerous new obligations on Reclamation every time a policy or directive and standard (D&S) is adopted or implemented, given that Reclamation already provides the opportunity for public review of new policies D&S’s. The term “coordinate” is unclear in Section 4, and may therefore raise challenges to addressing the tremendous variability in the states’ approach to groundwater regulation. In addition, Section 4(b) includes a sweeping prohibition on taking “any action that adversely affects” water rights granted by a State, a State authority over water rights, or specified State definitions related to water rights. This provision would likely generate substantial litigation and would likely interfere with legitimate federal water management activities.

It is unclear what the effect of Section 5 would be on Sections 3 and 4 of the bill. Section 5 provides a savings clause that indicates S. 982 does not: limit or expand any existing “legally recognized authority” of the Secretary of the Interior or the Secretary of Agriculture; interfere with Bureau of Reclamation contracts entered into pursuant to reclamation laws; affect the implementation of the Endangered Species Act; limit or expand any existing or claimed reserved water rights of the Federal government; limit or expand certain authorities under the Federal Power Act; and limit or expand any water right or treaty right of any federally recognized Indian tribe. Depending on the interpretation of “legally recognized authority” this provision appears to be in direct conflict with Sections 3 and 4 of the bill, and could lead to future litigation and uncertainty.

We appreciate the opportunity to present the Department’s views on S. 982. As detailed above, the bill would negatively impact the Department’s ability to manage water resources to protect ongoing public lands uses and the environment, allow for maximum beneficial use of Federal water facilities, and ensure adequate water is available for fisheries or threatened or endangered species. For these reasons and the potential for unintended consequences associated with its enactment, the Department opposes this bill.

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

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
on
S. 1305
Amendment to the Colorado River Storage Project Act on Increasing the Active Capacity
of Fontenelle Reservoir
June 18, 2015

Chairman Lee and members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 1305, which would amend the Colorado River Storage Project Act (Public Law 84-485). The amendment authorizes Reclamation to increase the active capacity and, as a result, the amount of water developed by Fontenelle Reservoir in Wyoming. With the concerns described below appropriately noted, the Department does not oppose S. 1305 in its current form.

Fontenelle Reservoir is part of the Seedskafee Project, a participating project under P.L. 84-485. The dam and reservoir are located in the Upper Green River Basin in southwestern Wyoming about 50 miles from Rock Springs. Fontenelle Dam is an embankment dam standing 139 feet high with a crest length of over a mile (5,421 feet). Fontenelle Reservoir has a total capacity of 345,360 acre-feet and is operated for municipal and industrial water use, power production, flood control, and fish and wildlife—in support of the Seedskafee National Wildlife Refuge. Recreation facilities at Fontenelle Reservoir are managed by the Bureau of Land Management under an agreement with Reclamation.

The intent of S. 1305 is to increase the yield of Fontenelle Reservoir, further developing the State of Wyoming's allocation of Colorado River water under the Colorado River Compact. To understand how S. 1305 would increase the water available to Wyoming, it is important to review some basic engineering features associated with Fontenelle Dam.

In general, the active capacity of a reservoir is the space between the highest elevation at which water can be stored and the lowest elevation from which water can be released so as to allow operation for all authorized purposes. Power is an authorized purpose of the Seedskafee Project. The lowest elevation at which Fontenelle Powerplant can be safely operated is approximately 40 feet above the bottom elevation of the inlet to the powerplant, and is referred to as "minimum power pool elevation."

In order to protect the upstream face of a dam from erosion caused by wave action, large stones that are resistant to erosion and wave action are placed on the upstream side of the dam. These

stones are referred to as “riprap”. In keeping with engineering practices, Fontenelle Dam includes riprap protection on the upstream face of the embankment. Because the dam would not be operated with any frequency below the lowest power production elevation, original construction and subsequent modifications did not include placing riprap on the upstream face of dam below minimum power pool elevation.

For some years, the State of Wyoming has expressed interest in placing riprap below the minimum power pool elevation, and this project has come to be known as the “Riprap Project.” By doing so, it would be possible to operate the reservoir within a greater range of elevations—increasing the operating range and yield of the reservoir. S. 1305 would authorize the Department to undertake the “study, planning, design and construction activities” necessary to consider and implement the Riprap Project (a lowering of the elevation of the riprap).

In considering the Riprap Project, Reclamation has had concerns, and we appreciate the chance to review this legislation as it was drafted over the past several months. We are pleased to note that each of these concerns appears to be addressed in the introduced language of S. 1305.

S. 1305 amends P.L. 84-485 to authorize consideration and implementation of the Riprap Project. In doing so, it grounds the Riprap Project on the statute that originally authorized the Seedskafee Project. S. 1305 relies upon the authority of the Contributed Funds Act (Act of March 4, 1921) as the means for the State of Wyoming to provide the funding to consider and undertake the Riprap Project. With this arrangement, Reclamation believes that the Riprap Project can be implemented without any request for new appropriations, and with no foreseeable impact to Reclamation’s already constrained budget.

It is unlikely that the Riprap Project will adversely affect other states dependent on the Colorado River or Mexico beyond what they would face when the Upper Basin States make full utilization of their apportionments, considering their apportionments and required releases from the Upper Basin to the Lower Basin under current operational guidelines that implement key provisions of the Law of the River including the Colorado River Compact. Having said that, if S. 1305 becomes law, it will be important to conduct additional analysis to ensure that other interests are protected. S. 1305 includes the following elements that should provide some assurance of no adverse impacts to other water uses.

First, S. 1305 appears to create robust sideboards to prevent the Riprap Project from conflicting with law, compacts, and treaties. This protects against Wyoming expanding its entitlement to Colorado River water. In Section 2, S. 1305 provides reassurance that it will not modify, conflict with, preempt, or otherwise affect any applicable federal statutes or decrees, including, but not limited to:

- Boulder Canyon Project Act
- Colorado River Compact of 1922
- Boulder Canyon Project Adjustment Act
- Treaty between the United States of America and Mexico relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande
- Upper Colorado River Basin Compact

- Colorado River Storage Project Act (P.L 84-485), other than as indicated in Section 1 of S. 1305
- Colorado River Basin Project Act (Public Law 90–537; 82 Stat. 885)
- Any State of Wyoming or other State water law

Second, S. 1305 amends P.L. 84-485 to authorize the planning, design, and construction of the Riprap Project. The bill’s stated purposes include “making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively.” P.L. 84-485 sets a clear boundary around the Riprap Project; it cannot permit Wyoming to expand its entitlements under the Colorado River Compact and the Upper Colorado River Basin Compact.

Another important element of S. 1305 is the definition of active storage capacity. Although active capacity can generally be understood as the difference between the upper and lower elevations at which a reservoir may be operated, the elevation of both the upper and lower limit may also be defined by considerations beyond engineering. Other considerations often limit the degree to which a reservoir may be drained. These considerations include issues of law, hydrology, economics, and environment. S. 1305 acknowledges these limitations; in the bill “active storage capacity” is “defined or limited by legal, hydrologic, structural, engineering, economic, and environmental considerations.”

Environmental compliance concerns also are addressed under S. 1305. The bill requires compliance under the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act.

While S. 1305 is clearly written to integrate with existing law, regulations and contracts, there are some questions associated with operation and design that may limit the scope of the Riprap Project. Reclamation has not studied the operation of Fontenelle Dam at the lower elevations proposed under the Riprap Project. The original planning and design for the facility did not include operations at such low levels. Operation at lower levels could raise the following issues that should be explored by the study to be authorized by this Act:

- Water Delivery Requirements – At lower reservoir elevations, the rate at which the reservoir can be drained is slowed (because of the reduced hydraulic head). Without the study and planning that would be conducted pursuant to this bill, Reclamation does not know whether water can be delivered at such rates as would be necessary.
- Instream Flows – Under current operations and agreements, Reclamation is required to deliver 5,000 acre-feet to the Seedskafee National Wildlife Refuge for fish and wildlife purposes on an annual basis. As noted above, without additional study Reclamation does not know whether it will be able to meet these flow requirements at lower reservoir levels.
- Power Generation – Operating the reservoir at lower elevations will affect powerplant operations. There would be periods when the powerplant cannot be operated efficiently and when the powerplant cannot be operated at all. The result will be impacts on Reclamation’s

ability to generate and deliver power under P.L. 84-485. There is a potential for impacts to irrigators and municipalities that use Colorado River Storage Project power as well as to the members of the Colorado River Energy Distributors Association, which rely upon and purchase the power.

That concludes my statement. I am pleased to answer questions at the appropriate time.

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
on S. 1365

**A Bill to authorize the Secretary of the interior to use designated funding to pay for
Construction of authorized rural water projects, and for other purposes**
June 18, 2015

Chairman and Members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). I am pleased to be here to provide the views of the Department of the Interior (Department) on S. 1365, a bill to authorize the Secretary of the Interior to use designated funding to pay for construction of authorized rural water projects and for implementation of Indian water rights settlements. My statement today will draw upon testimony delivered before this Committee regarding S. 715 in the 113th Congress and S. 3385 during the 112th Congress.

Like the sponsors of the legislation being considered today, the Department supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural residents. Rural water projects help to build strong, secure rural communities and are important to our non-federal sponsors, which is why the President's FY 2016 Budget includes \$36.6 million for Reclamation's rural water projects. Likewise, the importance of rural water has led Congress in recent years to increase appropriations for the construction of authorized projects. Since 2012, approximately \$88 million in additional appropriations have been included for rural water construction projects. The Administration also recognizes that water is a sacred and valuable resource for Indian people and therefore has reaffirmed the Federal Government's commitment to addressing the water needs of Native American communities through Indian water rights settlements.

The Department has a solid history of supporting Reclamation's rural water program, allocating almost \$450 million of funding between FY 2010 and FY 2015 to construct, operate, and maintain authorized rural water projects. This is in addition to \$232 million provided for these projects in the American Recovery and Reinvestment Act (Recovery Act). Still, as important as the rural water program is, it must compete with a long list of other priorities within the Budget, including aging infrastructure, environmental compliance and restoration actions, and other activities needed to address future water- and energy-related needs, including the shifting challenges associated with the effects of climate change. Notwithstanding the importance of rural water projects, current budgetary constraints have limited the ability to make federal investments that match on-the-ground capabilities.

Despite such constraints Reclamation has worked diligently to promote sustainability and resiliency for water users in the West and to support the basic drinking water needs of rural communities – tribal and nontribal – as directed by the Congress.

S. 1365 would create the Reclamation Rural Water Construction and Settlement Implementation Fund. In contrast to S. 715 and S. 3385 from the previous two Congresses, which would have established a single account receiving \$80 million annually for 20 years to address rural water needs, S. 1365 would establish two accounts with deposits totaling \$115 million annually for 20 years.

In the first account, S. 1365 aims to provide a constant level of mandatory funding to support the construction of authorized rural water projects to deliver water to smaller, isolated communities. Similarly, the second account would be structured to provide a constant level of mandatory funds to underwrite implementation of authorized Indian water rights settlements, including planning, design and construction of water projects.

Regarding the first account, it is the Department's belief that federal investments in such projects must recognize the current fiscal constraints and the need to make tough choices in prioritizing those investments. The Administration supports the goals embodied by S. 1365 of advancing the economic security of Americans living in rural areas and on tribal lands. Constructing basic water infrastructure projects will not only help to provide the economic and health benefits associated with clean, reliable, drinking water systems that many Americans take for granted, but it would also assist in creating jobs in the short-term through ongoing construction, but the Administration supports discretionary funding for these projects.

Since the 1980s, Congress has authorized Reclamation to undertake the design and construction of specific projects intended to deliver potable water supplies to rural communities located in North Dakota, South Dakota, Montana, New Mexico and the non-Reclamation states of Minnesota and Iowa. These authorized projects exist in communities that have long experienced urgent needs for water due to poor quality of the existing supply or the lack of a secure, reliable supply. For example, in rural Montana, some communities have, from time-to-time, been subject to "boil water" orders due to the unsafe conditions of the existing drinking water supplies. In Eastern New Mexico, the communities currently rely on the diminishing Ogallala Aquifer and the current drinking water systems are projected to be depleted within 40 years. The rural water supply projects authorized for Reclamation's involvement provide a resource to these rural communities, and the Congress has authorized federal assistance to meet those needs.

In 2006, the Rural Water Supply Act (P.L. 109-451) authorized Reclamation to establish a program to work with rural communities – including tribes – in the 17 Western States to assess rural water supply needs and conduct appraisal and feasibility studies without individual acts of Congress. Pursuant to the Rural Water Supply Act, Reclamation created a program to enable coordinated examination of the various options to address rural communities' water supply needs through a cost-effective, priority-based process.

In addition to authorizing appraisal investigations and feasibility studies, Section 104 of the Rural Water Supply Act required that the Secretary of the Interior – in consultation with the

Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development and the Secretary of the Army – develop a comprehensive assessment of the status of the existing, authorized rural water projects. Section 104 also directed Reclamation to describe its plans for completing the design and construction of the authorized rural water projects.

In response to Section 104, Reclamation conducted a review and, in 2014, issued a report titled “Assessment of Reclamation’s Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States” which is posted on Reclamation’s website (www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding.pdf). It should be noted that the assessment was open to public comment and that the comments – from rural water project sponsors, water districts, Indian Tribes, and other interested parties – were carefully reviewed and resulted in modifications to the assessment and the criteria used to allocate project funding.

In addition to providing a report on the status of the existing authorized rural water projects, the assessment report describes how Reclamation’s Rural Water Supply Program will be carried out and coordinated with other Federal programs that support the development and management of water supplies in rural communities in the western states while maximizing efficiency of the various programs by leveraging Federal and non-Federal funding to meet the shared goals of the programs.

As described in the assessment report, each of the Acts of Congress authorizing Reclamation’s involvement in the rural water supply projects required that the cost ceilings included in the original authorizing legislation be indexed to adjust for inflation, estimated to be 4% annually. The result of these indexing requirements is that the overall cost of the authorized rural water projects has risen and continues to rise, such that the total estimated funding that would be required to complete these projects is as of 2014 approximately \$2.4 billion, which is substantially higher than the original authorization amounts, which totaled \$2.0 billion.

Reclamation has recognized the need to make meaningful progress in constructing authorized rural water projects, even amid severe pressure on Reclamation’s budget across nearly all program areas. At the levels provided in the 2016 budget, and without additional non-federal funding, progress would be made toward project completion, but some of the currently authorized projects would be completed much later, perhaps not until well after 2063, despite close to \$4.0 billion being invested by that time. In fact, it is estimated that, as of 2063, an outstanding balance of approximately \$1.1 billion would remain to complete construction of currently authorized projects.

Across the country, state, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the federal government would have in the past. Constrained federal budgets do not preclude the ability of non-federal parties to move forward with important investments in water resources infrastructure and the Department stands ready to support that effort, even with the additional resources made available through S. 1365.

S. 1365 would create a dedicated Reclamation Rural Water Construction and Settlement Implementation Fund in the United States Treasury comprised of monies that would otherwise be deposited into the Reclamation Fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093). This funding source would afford earlier completion of authorized water projects and would enable the payment of compensation associated with authorized Indian water rights settlements. Section 103(c) of the bill provides that the bill's cost would be offset so as to not increase the deficit. The Department supports such language. However, even if an equivalent and acceptable offset is identified, use of those funds must be weighed against other priorities across the federal government, including deficit reduction.

Section 103 of S. 1365 provides that, for each fiscal year from 2015 through 2035, \$115,000,000 per year will be deposited into the Fund in addition to interest earned on invested money that is available in the Fund but not utilized for the current withdrawal. Section 104(c) of S. 1365 limits expenditures from fiscal year 2015 through 2035 from the Fund to not more than \$115,000,000 in addition to interest accrued in that same fiscal year, with an allowance for the use of funds carried over from prior years. The bill further divides the total figure of \$115 million between the two accounts – \$80 million for the Rural Water Project Account, and \$35 million for the Reclamation Infrastructure and Settlement Implementation Account.

Specific to the Rural Water Project Account, S. 1365 provides that if a feasibility study has been submitted to the Secretary by February 27, 2015, and those rural water projects are subsequently authorized by Congress, they may be eligible to receive funding through the Reclamation Rural Water Project Account. S. 1365 directs the Secretary of the Interior to develop programmatic goals enabling the expeditious completion of construction of the existing rural water projects and to establish prioritization criteria for the distribution of funds, a requirement addressed through the completion of Reclamation's assessment report.

With respect to its rural water program, Reclamation's first goal is to advance the construction of rural water projects that meet the most urgent water supply needs in the shortest amount of time, given our current budget constraints. The second goal is to give priority to rural water projects that address Indian and tribal water supply needs.

Within the context of the above goals, Reclamation recognizes that current and projected funding levels may not be sufficient to expeditiously complete the federal funding portion of every project and that it must prioritize the allocation of available funding. The assessment report outlines prioritization criteria to guide Reclamation's decision-making to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities in as short a period as possible, and to reflect the diverse needs and circumstances facing each individual project. The water construction prioritization criteria identified by Reclamation, and also reflected in Section 202(b)(2) of S. 1365, take into account the following:

- Is there an urgent and compelling need for potable water supplies in the affected communities?
- How close is the Project to being?
- What are the financial needs of the affected communities?

- What are the potential economic benefits of the expenditures on job creation and general economic development in the affected communities?
- What is the ability of the Project to address regional and watershed level water supply needs?
-
- Does the project minimize water and energy consumption and encourage the development of renewable energy resources such as wind, solar, hydropower elements?
- Does the project address the needs of tribal communities, tribal members, and the other community needs or interests?

The criteria would also take into account “such other factors as the Secretary determines to be appropriate to prioritize the use of available funds.” Regarding the second account, for Indian water rights settlements, Title III of S. 1365 further defines the Reclamation Infrastructure and Settlement Implementation Account, stipulating that no less than \$35 million, plus accrued interest, be expended to provide compensation to resolve congressionally authorized Indian water rights settlements and to complete planning, design and construction of authorized water projects associated with those settlements. Creating a mandatory fund for Indian Water Settlements would foster certainty in water rights and boost economic growth in Indian Country.

The Administration is proud of its record on Indian water rights settlements, and we continue to be committed to settlements as an important way to address the water needs of Native American communities. Indian water rights settlements are consistent with the general Federal trust responsibility to American Indians and with Federal policy promoting tribal sovereignty, self-determination, and economic self-sufficiency. Water settlements not only secure tribal water rights but also help fulfill the United States’ promise to tribes that Indian reservations would provide their people with permanent homelands. These settlements resolve what has often been decades of controversy and contention among tribes and neighboring communities over water, replacing those conflicts with certainty, which fosters cooperation in the management of water resources and promotes healthy economies. As drought and climate change intensifies, it is all the more urgent to plan for settlement costs, enable the timely resolution of tribes’ rights, and provide water to Native Americans nationwide.

Since 2009, the Administration has supported and Congress has enacted six Indian water rights settlements for nine tribes at a total Federal cost of slightly more than \$2 billion. All told, these settlements resolved disputes and litigation spanning well over a century. Most recently, the Administration was pleased to support two smaller and less comprehensive water rights settlements involving Tribes, in the 113th Congress: the Pyramid Lake Paiute Tribe-Fish Springs Ranch Settlement Act and Bill Williams River Water Rights Settlement Act of 2014. The Administration is working with all of the affected tribes now to implement these settlements.

This Administration’s active involvement in settlement negotiations has resulted in both significant improvements in the terms of the settlements and substantial reduction in their Federal costs, which ultimately led to our support for these six Indian water rights settlements. We stand ready to support Indian water settlements that result from negotiations with all stakeholders, including the Federal government, and that represent a good use of taxpayer dollars and good cost share contributions from states and other benefitting parties.

To date, Congress has enacted 29 Indian water settlements, a good start in addressing the need for reliable water supplies in Indian country. There are 277 federally recognized tribes in the West alone (excluding Alaska), and we are seeing increased interest in Indian water rights settlements east of the 100th Meridian. Many of these tribes are in need of: clean, reliable drinking water; repairs to dilapidated irrigation projects; and the development of other water infrastructure necessary to bring economic development to reservations.

Once a settlement is enacted by Congress, and appropriations are authorized to implement it, primary funding responsibilities fall to Reclamation and the Bureau of Indian Affairs (BIA), although other agencies can and do contribute based on the particular terms of a settlement. To support these efforts, the President's FY 2016 Budget requests \$244.5 million for Indian water rights settlements (\$40.8 million for negotiation and legal support and \$203.7 million for implementation, including \$136 million for Reclamation and \$67.7 million for the Bureau of Indian Affairs).

With some notable recent exceptions, such as the \$180.0 million in mandatory funding authorized by P.L. 111-291 and directed to the Navajo-Gallup Water Supply Project between the fiscal years of 2012-2014, water rights settlements generally have been funded through the Department's discretionary appropriations. Work to be performed under the settlements by Reclamation has come out of Reclamation's budget, and trust funds and other settlement costs generally have come out of the BIA's budget, but all Departmental agencies have been asked from time to time to expend discretionary funds from their budgets on implementation of these water settlements. In all of these cases, the Administration has worked successfully with Congress to secure funds to continue to implement and complete signed settlements. The Administration will certainly need to continue to work with Congress on these issues.

In conclusion, I want to underscore the importance of these settlements to this Administration. Indian water rights settlements can resolve uncertainty, produce critical benefits for tribes and bring together communities to improve water management practices in some of the most stressed water basins in the country. The Administration believes that discretionary funding is the appropriate avenue for addressing water rights settlements' while remaining cognizant of and responsive to the many competing needs for limited budgetary resources, particularly given widespread drought throughout much of the West.

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

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
on S. 1365

**A Bill to authorize the Secretary of the interior to use designated funding to pay for
Construction of authorized rural water projects, and for other purposes**
June 18, 2015

Chairman and Members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). I am pleased to be here to provide the views of the Department of the Interior (Department) on S. 1365, a bill to authorize the Secretary of the Interior to use designated funding to pay for construction of authorized rural water projects and for implementation of Indian water rights settlements. My statement today will draw upon testimony delivered before this Committee regarding S. 715 in the 113th Congress and S. 3385 during the 112th Congress.

Like the sponsors of the legislation being considered today, the Department supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural residents. Rural water projects help to build strong, secure rural communities and are important to our non-federal sponsors, which is why the President's FY 2016 Budget includes \$36.6 million for Reclamation's rural water projects. Likewise, the importance of rural water has led Congress in recent years to increase appropriations for the construction of authorized projects. Since 2012, approximately \$88 million in additional appropriations have been included for rural water construction projects. The Administration also recognizes that water is a sacred and valuable resource for Indian people and therefore has reaffirmed the Federal Government's commitment to addressing the water needs of Native American communities through Indian water rights settlements.

The Department has a solid history of supporting Reclamation's rural water program, allocating almost \$450 million of funding between FY 2010 and FY 2015 to construct, operate, and maintain authorized rural water projects. This is in addition to \$232 million provided for these projects in the American Recovery and Reinvestment Act (Recovery Act). Still, as important as the rural water program is, it must compete with a long list of other priorities within the Budget, including aging infrastructure, environmental compliance and restoration actions, and other activities needed to address future water- and energy-related needs, including the shifting challenges associated with the effects of climate change. Notwithstanding the importance of rural water projects, current budgetary constraints have limited the ability to make federal investments that match on-the-ground capabilities.

Despite such constraints Reclamation has worked diligently to promote sustainability and resiliency for water users in the West and to support the basic drinking water needs of rural communities – tribal and nontribal – as directed by the Congress.

S. 1365 would create the Reclamation Rural Water Construction and Settlement Implementation Fund. In contrast to S. 715 and S. 3385 from the previous two Congresses, which would have established a single account receiving \$80 million annually for 20 years to address rural water needs, S. 1365 would establish two accounts with deposits totaling \$115 million annually for 20 years.

In the first account, S. 1365 aims to provide a constant level of mandatory funding to support the construction of authorized rural water projects to deliver water to smaller, isolated communities. Similarly, the second account would be structured to provide a constant level of mandatory funds to underwrite implementation of authorized Indian water rights settlements, including planning, design and construction of water projects.

Regarding the first account, it is the Department's belief that federal investments in such projects must recognize the current fiscal constraints and the need to make tough choices in prioritizing those investments. The Administration supports the goals embodied by S. 1365 of advancing the economic security of Americans living in rural areas and on tribal lands. Constructing basic water infrastructure projects will not only help to provide the economic and health benefits associated with clean, reliable, drinking water systems that many Americans take for granted, but it would also assist in creating jobs in the short-term through ongoing construction, but the Administration supports discretionary funding for these projects.

Since the 1980s, Congress has authorized Reclamation to undertake the design and construction of specific projects intended to deliver potable water supplies to rural communities located in North Dakota, South Dakota, Montana, New Mexico and the non-Reclamation states of Minnesota and Iowa. These authorized projects exist in communities that have long experienced urgent needs for water due to poor quality of the existing supply or the lack of a secure, reliable supply. For example, in rural Montana, some communities have, from time-to-time, been subject to “boil water” orders due to the unsafe conditions of the existing drinking water supplies. In Eastern New Mexico, the communities currently rely on the diminishing Ogallala Aquifer and the current drinking water systems are projected to be depleted within 40 years. The rural water supply projects authorized for Reclamation's involvement provide a resource to these rural communities, and the Congress has authorized federal assistance to meet those needs.

In 2006, the Rural Water Supply Act (P.L. 109-451) authorized Reclamation to establish a program to work with rural communities – including tribes – in the 17 Western States to assess rural water supply needs and conduct appraisal and feasibility studies without individual acts of Congress. Pursuant to the Rural Water Supply Act, Reclamation created a program to enable coordinated examination of the various options to address rural communities' water supply needs through a cost-effective, priority-based process.

In addition to authorizing appraisal investigations and feasibility studies, Section 104 of the Rural Water Supply Act required that the Secretary of the Interior – in consultation with the

Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development and the Secretary of the Army – develop a comprehensive assessment of the status of the existing, authorized rural water projects. Section 104 also directed Reclamation to describe its plans for completing the design and construction of the authorized rural water projects.

In response to Section 104, Reclamation conducted a review and, in 2014, issued a report titled “Assessment of Reclamation’s Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States” which is posted on Reclamation’s website (www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding.pdf). It should be noted that the assessment was open to public comment and that the comments – from rural water project sponsors, water districts, Indian Tribes, and other interested parties – were carefully reviewed and resulted in modifications to the assessment and the criteria used to allocate project funding.

In addition to providing a report on the status of the existing authorized rural water projects, the assessment report describes how Reclamation’s Rural Water Supply Program will be carried out and coordinated with other Federal programs that support the development and management of water supplies in rural communities in the western states while maximizing efficiency of the various programs by leveraging Federal and non-Federal funding to meet the shared goals of the programs.

As described in the assessment report, each of the Acts of Congress authorizing Reclamation’s involvement in the rural water supply projects required that the cost ceilings included in the original authorizing legislation be indexed to adjust for inflation, estimated to be 4% annually. The result of these indexing requirements is that the overall cost of the authorized rural water projects has risen and continues to rise, such that the total estimated funding that would be required to complete these projects is as of 2014 approximately \$2.4 billion, which is substantially higher than the original authorization amounts, which totaled \$2.0 billion.

Reclamation has recognized the need to make meaningful progress in constructing authorized rural water projects, even amid severe pressure on Reclamation’s budget across nearly all program areas. At the levels provided in the 2016 budget, and without additional non-federal funding, progress would be made toward project completion, but some of the currently authorized projects would be completed much later, perhaps not until well after 2063, despite close to \$4.0 billion being invested by that time. In fact, it is estimated that, as of 2063, an outstanding balance of approximately \$1.1 billion would remain to complete construction of currently authorized projects.

Across the country, state, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the federal government would have in the past. Constrained federal budgets do not preclude the ability of non-federal parties to move forward with important investments in water resources infrastructure and the Department stands ready to support that effort, even with the additional resources made available through S. 1365.

S. 1365 would create a dedicated Reclamation Rural Water Construction and Settlement Implementation Fund in the United States Treasury comprised of monies that would otherwise be deposited into the Reclamation Fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093). This funding source would afford earlier completion of authorized water projects and would enable the payment of compensation associated with authorized Indian water rights settlements. Section 103(c) of the bill provides that the bill's cost would be offset so as to not increase the deficit. The Department supports such language. However, even if an equivalent and acceptable offset is identified, use of those funds must be weighed against other priorities across the federal government, including deficit reduction.

Section 103 of S. 1365 provides that, for each fiscal year from 2015 through 2035, \$115,000,000 per year will be deposited into the Fund in addition to interest earned on invested money that is available in the Fund but not utilized for the current withdrawal. Section 104(c) of S. 1365 limits expenditures from fiscal year 2015 through 2035 from the Fund to not more than \$115,000,000 in addition to interest accrued in that same fiscal year, with an allowance for the use of funds carried over from prior years. The bill further divides the total figure of \$115 million between the two accounts – \$80 million for the Rural Water Project Account, and \$35 million for the Reclamation Infrastructure and Settlement Implementation Account.

Specific to the Rural Water Project Account, S. 1365 provides that if a feasibility study has been submitted to the Secretary by February 27, 2015, and those rural water projects are subsequently authorized by Congress, they may be eligible to receive funding through the Reclamation Rural Water Project Account. S. 1365 directs the Secretary of the Interior to develop programmatic goals enabling the expeditious completion of construction of the existing rural water projects and to establish prioritization criteria for the distribution of funds, a requirement addressed through the completion of Reclamation's assessment report.

With respect to its rural water program, Reclamation's first goal is to advance the construction of rural water projects that meet the most urgent water supply needs in the shortest amount of time, given our current budget constraints. The second goal is to give priority to rural water projects that address Indian and tribal water supply needs.

Within the context of the above goals, Reclamation recognizes that current and projected funding levels may not be sufficient to expeditiously complete the federal funding portion of every project and that it must prioritize the allocation of available funding. The assessment report outlines prioritization criteria to guide Reclamation's decision-making to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities in as short a period as possible, and to reflect the diverse needs and circumstances facing each individual project. The water construction prioritization criteria identified by Reclamation, and also reflected in Section 202(b)(2) of S. 1365, take into account the following:

- Is there an urgent and compelling need for potable water supplies in the affected communities?
- How close is the Project to being?
- What are the financial needs of the affected communities?

- What are the potential economic benefits of the expenditures on job creation and general economic development in the affected communities?
- What is the ability of the Project to address regional and watershed level water supply needs?
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- Does the project minimize water and energy consumption and encourage the development of renewable energy resources such as wind, solar, hydropower elements?
- Does the project address the needs of tribal communities, tribal members, and the other community needs or interests?

The criteria would also take into account “such other factors as the Secretary determines to be appropriate to prioritize the use of available funds.” Regarding the second account, for Indian water rights settlements, Title III of S. 1365 further defines the Reclamation Infrastructure and Settlement Implementation Account, stipulating that no less than \$35 million, plus accrued interest, be expended to provide compensation to resolve congressionally authorized Indian water rights settlements and to complete planning, design and construction of authorized water projects associated with those settlements. Creating a mandatory fund for Indian Water Settlements would foster certainty in water rights and boost economic growth in Indian Country.

The Administration is proud of its record on Indian water rights settlements, and we continue to be committed to settlements as an important way to address the water needs of Native American communities. Indian water rights settlements are consistent with the general Federal trust responsibility to American Indians and with Federal policy promoting tribal sovereignty, self-determination, and economic self-sufficiency. Water settlements not only secure tribal water rights but also help fulfill the United States’ promise to tribes that Indian reservations would provide their people with permanent homelands. These settlements resolve what has often been decades of controversy and contention among tribes and neighboring communities over water, replacing those conflicts with certainty, which fosters cooperation in the management of water resources and promotes healthy economies. As drought and climate change intensifies, it is all the more urgent to plan for settlement costs, enable the timely resolution of tribes’ rights, and provide water to Native Americans nationwide.

Since 2009, the Administration has supported and Congress has enacted six Indian water rights settlements for nine tribes at a total Federal cost of slightly more than \$2 billion. All told, these settlements resolved disputes and litigation spanning well over a century. Most recently, the Administration was pleased to support two smaller and less comprehensive water rights settlements involving Tribes, in the 113th Congress: the Pyramid Lake Paiute Tribe-Fish Springs Ranch Settlement Act and Bill Williams River Water Rights Settlement Act of 2014. The Administration is working with all of the affected tribes now to implement these settlements.

This Administration’s active involvement in settlement negotiations has resulted in both significant improvements in the terms of the settlements and substantial reduction in their Federal costs, which ultimately led to our support for these six Indian water rights settlements. We stand ready to support Indian water settlements that result from negotiations with all stakeholders, including the Federal government, and that represent a good use of taxpayer dollars and good cost share contributions from states and other benefitting parties.

To date, Congress has enacted 29 Indian water settlements, a good start in addressing the need for reliable water supplies in Indian country. There are 277 federally recognized tribes in the West alone (excluding Alaska), and we are seeing increased interest in Indian water rights settlements east of the 100th Meridian. Many of these tribes are in need of: clean, reliable drinking water; repairs to dilapidated irrigation projects; and the development of other water infrastructure necessary to bring economic development to reservations.

Once a settlement is enacted by Congress, and appropriations are authorized to implement it, primary funding responsibilities fall to Reclamation and the Bureau of Indian Affairs (BIA), although other agencies can and do contribute based on the particular terms of a settlement. To support these efforts, the President's FY 2016 Budget requests \$244.5 million for Indian water rights settlements (\$40.8 million for negotiation and legal support and \$203.7 million for implementation, including \$136 million for Reclamation and \$67.7 million for the Bureau of Indian Affairs).

With some notable recent exceptions, such as the \$180.0 million in mandatory funding authorized by P.L. 111-291 and directed to the Navajo-Gallup Water Supply Project between the fiscal years of 2012-2014, water rights settlements generally have been funded through the Department's discretionary appropriations. Work to be performed under the settlements by Reclamation has come out of Reclamation's budget, and trust funds and other settlement costs generally have come out of the BIA's budget, but all Departmental agencies have been asked from time to time to expend discretionary funds from their budgets on implementation of these water settlements. In all of these cases, the Administration has worked successfully with Congress to secure funds to continue to implement and complete signed settlements. The Administration will certainly need to continue to work with Congress on these issues.

In conclusion, I want to underscore the importance of these settlements to this Administration. Indian water rights settlements can resolve uncertainty, produce critical benefits for tribes and bring together communities to improve water management practices in some of the most stressed water basins in the country. The Administration believes that discretionary funding is the appropriate avenue for addressing water rights settlements' while remaining cognizant of and responsive to the many competing needs for limited budgetary resources, particularly given widespread drought throughout much of the West.

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

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
on
S. 1533, the Water Supply Permitting and Coordination Act
June 18, 2015

Chairman Lee and members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 1533, the Water Supply Permitting and Coordination Act. This testimony draws upon an earlier statement presented by the Department in February 2014 during the 113th Congress' consideration of predecessor legislation HR 3980¹.

S. 1533 directs the Secretary of the Interior to coordinate federal and state permitting processes related to the construction of new surface storage projects on lands managed by Interior and the U.S. Department of Agriculture (USDA). Section 3(a) of the bill would establish Reclamation as the "lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under Federal law to construct qualifying projects." A series of deadlines and timelines are mandated in Section 4 for notifying and consulting with cooperating agencies, completing environmental reviews, and determining project schedules. While nothing in the bill would facilitate more regular federal funding for any of these activities, the bill does allow for contributed funds from non-federal entities. Section 6(c) of the bill would prohibit use of any contributed funds for "a review of the evaluation of permits" by the Reclamation Regional Directors in the region in which qualifying projects would be built.

This legislation raises several concerns. First, establishing Reclamation as the lead agency for permitting for storage projects on Interior and USDA administered lands is problematic. Since those lands exist in all 50 states, this would put Reclamation in a significantly expanded role of administering the permitting process for activities beyond the 17 Western states where Reclamation has typically had jurisdiction under Reclamation law.

Next, in Section 2(4) the definition of "cooperating agency" leads to confusion and is inconsistent with established regulations and judicial interpretations. For example, it is inconsistent with the definition under the National Environmental Policy Act (NEPA) and its implementing regulations which identify federal, Tribal, State, and local governmental entities as potential cooperating agencies and further allows those governmental entities with subject matter

¹ www.usbr.gov/newsroom/testimony/detail.cfm?RecordID=2521

expertise to be designated cooperating agencies. In addition, it is unclear what purpose is served by the bill's limitations on the use of agencies' funding in Section 6(c).

On the whole, it is unclear what public policy problem would be addressed by the bill. Under NEPA, as well as the newly updated Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies (P, R and G's), existing regulation, and other laws, there is already ample basis for review of projects and coordination among federal agencies involved in water supply planning.

We are not aware of any Reclamation or USDA-sited surface water storage projects that have been denied construction because of delays associated with project review or permitting, or shortcomings in communication among Reclamation, USDA, or any other state or federal partners. Rather, as stated above and in prior testimony in February 2014 and at a February 2012 House Natural Resources Committee oversight hearing on surface water storage², project economics and the pricing and repayment challenges in the potential markets where projects would be built are the primary reasons for some projects being authorized but not constructed. If nothing else, this bill reduces the time necessary to establish the merits of projects and, in some ways, could make favorable recommendations for project construction less likely. Reclamation is proud of its history constructing the surface water storage projects that are central to life in the West and our national economy, but what is rarely considered in the political discussion of surface storage are the realities of project repayment and market conditions associated with building large dams today. The most frequent reasons for fewer large surface storage projects being built today center around economics or an inadequate potential water market associated with the given facilities. In other cases, environmental, safety or geologic challenges came to light during a project's development, and rendered construction, completion or operation unfeasible.

This legislation places significant new requirements on the review of prospective construction of new surface water storage. But the underlying economic issues that prevent projects from being built – the difficulty of repayment – are unchanged by this bill. Reclamation's focus today must include meeting the challenge of rehabilitating the existing, aging, water and power infrastructure on which Western economies depend. We would be glad to work with the Subcommittee on this important aspect of the debate surrounding new surface water storage.

The Department believes that legislation focused on surface-storage projects should reflect consideration for the economic return to the Nation. We would be glad to work with the Subcommittee to explore these issues further. In conclusion, the Bureau of Reclamation will continue to pursue surface storage as one of many options to meet water demands in the West.

² "Water for Our Future and Job Creation: Examining Regulatory and Bureaucratic Barriers to New Surface Storage Infrastructure." www.usbr.gov/newsroom/testimony/detail.cfm?RecordID=2061

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

Statement of Dionne Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Bureau of Reclamation
U.S. Department of the Interior
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
on
S. 1552 Clean Water for Rural Communities Act
June 18, 2015

Chairman Lee and members of the Subcommittee, I am Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs at the Bureau of Reclamation (Reclamation). I am pleased to be here to provide the views of the Department of the Interior (Department) on S. 1552, the Clean Water for Rural Communities Act, which would authorize construction of the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System in the States of Montana and North Dakota. For the reasons described below, the Department cannot support S. 1552 at this time.

Like the sponsors of this legislation, the Department supports the goals of encouraging a vibrant rural economy and ensuring safe, reliable sources of drinking water in Montana and North Dakota. Rural water projects help build strong, secure communities and are important to local economies. Public Law 109-451 authorized Reclamation to establish a Rural Water Supply Program to help rural communities and tribes in the western United States analyze and develop options for meeting water supply needs through the completion of appraisal investigations and feasibility studies. However, we have concerns with the legislation as currently written and we request the opportunity to work with Congress to adequately address our concerns. S. 1552 authorizes construction of two separate projects and my statement will speak to each of those projects separately.

Dry-Redwater

Section 4(a)(1) of S. 1552 applies to the planning, design, and construction of the Dry-Redwater Regional Rural Water Authority System in eastern Montana and a small service area in northwest North Dakota, and would require the Federal government to provide up to 75 percent of the System's overall construction cost. Reclamation estimates that this authorization would amount to federal appropriations of at least \$200 million dollars. The Department last testified before the Subcommittee on legislation related to the Dry-Redwater project in May of 2011, and

prior to that, in July of 2009. Since 2011, the Dry-Redwater Regional Water Authority (Authority) has made steady progress planning and designing their System.

The Department is concerned about process issues raised by legislation authorizing a project for construction before the Dry-Redwater Regional Water System Feasibility Study (Feasibility Study) is complete, the potential strain on Reclamation's budget that could come about from this authorization, the cost share requirement proposed in the bill, and the proposed use of power from the Pick-Sloan Missouri Basin Program (P-SMBP) for non-irrigation purposes.

In 2012, the Authority submitted a Feasibility Study to Reclamation for review. Upon initial review of the Study, Reclamation was unable to identify a technically viable water treatment alternative that presented a National Economic Development (NED) plan with net positive benefits to the nation. Reclamation informed the Authority that the Study could not be supported as being financially or economically feasible under the requirements of Reclamation's Rural Water Supply Program. Consequently, there are significant review findings and recommendations that must be addressed to bring the Study up to Reclamation's standards. Since project costs have not been fully developed by the Sponsor and reviewed by Reclamation, there is both real and unknown potential for this project being financially unsustainable for the project sponsors and could result in an additional strain on Reclamation's budget.

Because of the importance of this issue, a Reclamation Design, Cost Estimating, and Construction (DEC) review further evaluated the Study in order to provide an independent analysis. The estimated cost to address the DEC Report Findings and Recommendations is in excess of \$5.5 million. Neither Reclamation nor the Authority has sufficient funding to revise the Study to address the DEC Report Findings. In order to maintain their original service area and related project benefits, the Authority ruled out a scaled down approach. As a result of this decision, Reclamation entered into a Memorandum of Understanding (MOU) with the Authority on April 27, 2015, with the objective of completing a summary report that documents the current status of the draft Study. The MOU also identifies the additional level of effort needed to revise the Study technically in order to meet the requirements of Reclamation's Rural Water Supply Program. Given the findings that resulted from Reclamation's review of the Study, we are not in a position to support the project as financially viable or verify that the total project cost estimate is economically sound.

The Department is also concerned about the non-federal cost share for the System. As stated above, S. 1552 contemplates that the United States would fund 75 percent of the cost of constructing the System for the benefit of Montana citizens of Dawson, Garfield, McCone, Prairie, and Richland Counties, and North Dakota citizens of McKenzie County. While this has been the cost share level proposed in other rural water projects enacted into law, it represents the maximum federal cost share allowed under Title I of the Rural Water Supply Act of 2006 (PL

109-451), which includes a requirement for a Feasibility Report that includes an analysis of the sponsor's capability-to-pay and identifies an appropriate contribution by the local sponsors.

Section 5 of S. 1552 authorizes the delivery of 1.5 megawatts of P-SMBP pumping power to be used and delivered between May 1 and October 31 for the benefit of this System at the firm power rate. Section 5(b)(2)(A) of the bill requires that the System be operated on a "not-for-profit basis" in order to be eligible to receive power under those terms. Reclamation is not certain of the impact the bill's requirements could have on Western Area Power Administration's existing contractual power obligations. In addition to those concerns mentioned above, we have yet to verify whether or not water rights issues associated with the System have been adequately addressed.

We suggest System sponsors continue working with Reclamation's Great Plains Regional and the Montana Area Offices to further evaluate the System for scale and economic viability in an effort to refine the National Economic Development accounting such that the ratio of total benefits exceeds costs. We also recommend that they work with the Western Area Power Administration and their contractors on the issues related to the System's pumping power needs

Musselshell-Judith

Section 4(a)(2) of S. 1552 would authorize the planning, design, and construction of the Musselshell-Judith Rural Water System in central Montana and would authorize appropriations of at least 75 percent of total project costs. Since the total estimated construction cost of the project is \$87,102,000, Reclamation estimates that the total federal contribution of 75% would equate to \$65,327,000 (2014 dollars). While a 75% cost share level has been proposed in other rural water projects enacted into law, the Department also does not support this cost share for the same reasons as stated previously -- this represents the maximum federal cost share allowed under the Rural Water Supply Act of 2006, which includes a requirement for a Feasibility Report that includes an analysis of the sponsor's capability-to-pay and identifies an appropriate contribution by the local sponsors, based upon that analysis.

Earlier this year, the Central Montana Rural Water Authority's (Authority) Musselshell-Judith Rural Water System Feasibility Study (Feasibility Study) was submitted to Reclamation for technical review under Public Law 109-451. Even though initial indications suggest the System is technically feasible and provides benefits in excess of its costs, the Department is concerned about the strain on Reclamation's budget resulting from additional authorized rural water projects.

Common - Both Water Systems

Another unique feature to the language of S. 1552 is in Section 7(b), which addresses the cost indexing for the authorization of appropriations. Reclamation is not aware of a specific rationale for the differing indexing dates prescribed in the legislation. For the ‘such sums as are necessary’ appropriations authorized for the Dry-Redwater System, appropriations are to be indexed to January 1, 2008. For the Musselshell-Judith, the appropriations are to be indexed to November 1, 2014. Obviously this implies a different value in the funding authorizations, and while both projects have been on different timelines, is not clear on the specific policy rationale for these provisions since neither project has been certified by Reclamation as having a complete feasibility study at this time.

Authorized rural water projects compete with a number of priorities within Reclamation’s Budget, including aging infrastructure, Indian water rights settlements, environmental compliance and restoration actions, developing sustainable water supply strategies, and other priorities intended to address future water and energy related challenges. In the Fiscal Year 2016 Budget, the Administration carried forward the President’s commitment to be prudent with taxpayer dollars while setting consistent spending priorities for Reclamation. The 2016 budget request includes \$36.5 million for rural water projects, \$18.0 million of that total is for operation and maintenance of completed tribal systems and the remaining \$18.5 million is for continued construction of authorized projects.

The Department has concerns about adding to the backlog of Reclamation’s authorized rural water projects seeking federal construction funding. Discretionary rural water funding has enabled Reclamation to make progress in promoting certainty, sustainability, and resiliency in support of basic drinking water needs of rural western communities. However, Reclamation’s ability to make federal investments that match on-the-ground capabilities has its limitations. Presently, the estimated federal funding requirement to complete construction on six authorized rural water supply projects exceeds \$1.4 billion. Furthermore, Acts of Congress authorizing Reclamation's involvement in the existing six rural water supply projects require indexing of cost ceilings to adjust remaining construction cost balances for inflation, which is estimated at about 4 percent annually. In a climate of constrained budgets, indexing widens the gap between the original authorized amounts and the total estimated funding required to complete rural water supply projects.

Of Reclamation's six currently authorized rural water projects under construction or funded at some level today, all of the projects pre-date Title I of the Rural Water Supply Act of 2006. Authorizing additional rural water projects may delay rural water projects that are already under construction. For example, two of six authorized rural water construction projects are located in Montana and like the proposed Systems, these projects present compelling needs. As of

September 30, 2014, the Fort Peck Reservation/Dry Prairie Rural Water System was approximately 50 percent complete and the Rocky Boy's/North Central Rural Water System was approximately 22 percent complete, as financially determined. These two Montana rural water projects not only represent over \$381 million in authorized federal need, but also represent significant on-the-ground construction investments and the promise of water delivery to Native American and other communities. In the 15 years since these two projects were authorized, the federal government has invested over \$247 million dollars; demonstrating the long-term commitment of resources to existing rural water projects in Montana. Various levels of federal need can also be demonstrated by sponsors for other authorized rural water projects in North Dakota, South Dakota, Iowa, Minnesota, and New Mexico.

Conclusion

Given existing constraints on program resources and other rural water project commitments as described earlier, Reclamation does not recommend the authorization of Federal assistance for these Water Systems as contemplated in S. 1552 at this time.

That concludes my written statement. I am pleased to answer questions at the appropriate time.