

**Statement of Alan Mikkelsen**  
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**Before the**  
**Committee on Energy and Natural Resources**  
**Subcommittee on Water and Power**  
**United States Senate**  
**on S. 1556, 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**  
**February 28, 2018**

Chairman Flake, Ranking Member King, and Members of the Subcommittee, I am Alan Mikkelsen, Senior Advisor to the Secretary of Interior for Water and Western Resource Issues, and former Deputy Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 1556, a bill to designate funding to pay for construction of authorized rural water projects and for implementation of Indian water rights settlements.

The Department supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural and tribal residents, but believes federal support for Reclamation rural water projects and for future Indian Water rights settlements should come through discretionary appropriations. 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 2019 Budget includes \$34 million for Reclamation's rural water projects. As the bill sponsors and this Committee know, the Congress has, in recent years increased appropriations for the construction of authorized projects. Since 2012, approximately \$181.6 million in additional appropriations have been included for rural water construction projects. The Administration also continues to strongly support Indian water rights settlements in order to increase opportunities for Indian Tribes to develop, manage and protect their water and related resources.

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, dam safety, and other activities needed to address future water- and energy-related needs. Notwithstanding the importance of rural water projects, current budgetary constraints have limited the ability to make federal investments that match on-the-ground capabilities.

S. 1556 would create the Reclamation Rural Water Construction Fund and a separate Settlement Implementation Fund; two separate accounts with revenues that would otherwise be deposited into the Reclamation fund totaling \$115 million annually for 20 years.

The legislation directs that the first account designate a constant level of mandatory funding for the construction of authorized rural water projects to deliver water to smaller, isolated communities. Similarly, the second account would be structured to designate a constant level of mandatory funds for compensation to resolve Indian tribe claims against the United States related to the use of Indian tribe land by the United States for the generation of hydropower and

to underwrite implementation of authorized Indian water rights settlements, including planning, design and construction of water projects.

It is the Department's belief that federal investments in such projects must recognize ongoing fiscal constraints and the need to make tough choices in prioritizing those investments. The Administration supports the goals embodied by S. 1556 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.

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 experienced 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 35 to 40 years. The rural water supply projects authorized for Reclamation's involvement provide a resource to these rural communities, and Congress has authorized federal assistance to these communities.

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.

We believe the author's intent is for the funding provided by S. 1556 to be used to achieve earlier completion of authorized water projects and to enable the payment of compensation associated with authorized Indian water rights settlements. Section 103(c) of the bill restricts the availability of designated funds with the intent of not increasing the deficit. The Department supports this commitment to fiscal responsibility. Designated funds could become available in conjunction with an equivalent offset. 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. As indicated above, the Department believes funding for rural water projects and Indian Water rights settlements should come through discretionary appropriations to enable appropriate annual review and oversight.

Section 103 of S. 1556 provides that, for each fiscal year from 2018 through 2038, \$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 of S. 1556 limits expenditures from fiscal year 2018 through 2038 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. 1556 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.

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 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. Reclamation applies funding criteria to guide decision-making and 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 reflected in Section 202(b)(2) of S. 1556, 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 completed?
- 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. 1556 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. The Department assesses these needs annually, through the budget process.

The Department continues to strongly support Indian water rights settlements grounded in the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements have the potential to resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users with a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve environmental health conditions on reservations.

To date, Congress has enacted 30 Indian water settlements, a good start in addressing the need for reliable water supplies in Indian country. There are over 280 federally recognized tribes in the West alone (excluding Alaska), and we are seeing increased interest in Indian water rights settlements east of the 100<sup>th</sup> Meridian. Many of these tribes need: 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 implementation responsibilities fall to Reclamation, the Bureau of Indian Affairs (BIA), the relevant tribe or tribes, and other agencies based on the terms of the settlement enacted by Congress. To support these efforts, the President's FY 2019 Budget for the Bureau of Reclamation requests \$133.7 million for Indian water rights settlements (\$6.4 million for negotiation and legal support and \$127.3 million for implementation).

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 and mandatory funding authorized to partially fund several settlements authorized in the Claims Resolution Act of 2010, water rights settlements generally have been funded through the Department's discretionary appropriations. Work to be performed under the settlements by Reclamation has been funded within Reclamation's budget, and trust funds and other settlement costs generally have been funded within 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 these cases, the Administration has worked successfully with Congress to secure funds to continue to implement and complete signed settlements. The Administration will continue to work with Congress on these issues.

In conclusion, I want to underscore the importance of these settlements to the Department. 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 Department believes that we must be 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.