

Statement of Grayford F. Payne
Deputy Commissioner for Policy, Administration, and Budget
Bureau of Reclamation
U.S. Department of the Interior
Before the
United States Senate
Committee on Energy and Natural Resources
Subcommittee on Water and Power
S. 3464 – Mni Wiconi Project Act Amendments of 2012
September 19, 2012

Madam Chair and members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration, and Budget at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 3464, the Mni Wiconi Project Act Amendments of 2012. If enacted, S. 3464 would expand the scope and authorization ceiling of the Mni Wiconi Rural Water Supply Project and have significant impacts on the budgets of both Reclamation and the Bureau of Indian Affairs. For the reasons described below, the Department cannot support S. 3464.

The Mni Wiconi Rural Water Supply Project is a municipal, rural and industrial project that serves both tribal and non-tribal populations of the Pine Ridge, Rosebud, and Lower Brule Indian Reservations and the West River Lyman-Jones Rural Water System in seven counties of southwestern South Dakota. Responsibilities of the Secretary under the Mni Wiconi Rural Project Act (Public Law 100-516) include the operation and maintenance of existing water systems, including the core treatment plant and pipelines, and appurtenant facilities on the Pine Ridge, Rosebud and Lower Brule Indian Reservations. With the funding requested in the President's FY 2013 budget, the majority of the population of the project will be served. The Lower Brule and West River Lyman-Jones portions of the project will be completed. Generally those not connected to the project (approximately 2.5% of the population on Rosebud and Pine Ridge Reservation) are served by community water systems or individual wells. Reclamation would be happy to facilitate or coordinate action with other federal agencies to address the needs identified by the bill's sponsor. Reclamation has a backlog of authorized but not constructed projects. Therefore, we have concerns about adding to the scope of an existing project that is nearly complete.

Section 3(a) of S. 3464 would expand the service area of the Oglala Sioux Rural Water Supply to include land that is part of the Pine Ridge Indian Reservation in the State of Nebraska. The Mni Wiconi Project Master Plan, a working document that identifies remaining construction contracts to be completed, does not include construction contracts to serve the population in Nebraska. It is our understanding that other entities are involved with funding new housing facilities in this area, which will include the costs for connecting these new facilities to the Mni Wiconi water system. Given these considerations, adding this portion of the Pine Ridge Indian Reservation to the authorized Project service area does not add to the current authorized cost ceiling of the project or schedule within the existing sunset date.

Sections 3, 4, and 5 of S. 3464 direct the Secretary of the Interior to develop a plan for

completion of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, and the Lower Brule Sioux Rural Water System, respectively. Planning the completion of the systems is dependent on future appropriations as well as Reclamation's need for flexibility in decision-making relative to all authorized rural water projects. Reclamation must constantly assess and prioritize these kinds of projects to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities as efficiently as possible, and to reflect the diverse needs and circumstances facing each individual project. The Department would like to work with project sponsors of the bill to discuss plans for completion, and clarifying the roles, responsibilities, and authorities of Federal agencies involved in the project.

Section 6 of S. 3464 would require the Secretary to submit to Congress recommendations for financing and implementing mitigation plans for fish and wildlife losses, and Native American cultural resources, resulting from the construction and operations of the Oahe, Fort Randall, and Big Bend Dams and Reservoirs. The legislation does not address how provisions of this section may have already been addressed by other Acts of Congress intended to provide equitable compensation to Indian tribes adversely impacted by Pick-Sloan projects on the Missouri River; including the Tribal Parity Act (PL 105-132) and the Cheyenne River Sioux Tribe Equitable Compensation Act (PL 106-511), as amended.

Section 7 of S. 3464 would increase the authorized Mni Wiconi cost ceiling by an additional \$14,308,000, based on October 1, 2011, price levels. Reclamation has worked closely with the project sponsors to ensure completed features will be functional and provide intended benefits within the currently authorized cost ceiling. The Department believes the FY 2013 President's request of \$23 million for construction provides sufficient funding to meet the objectives of the Project as authorized. Reclamation has not been provided the details necessary to analyze the cost estimates that are contained in S.3464.

Section 7(b)(1) would authorize appropriations for operation and maintenance to be used to reimburse costs for water service to members of the Rosebud Sioux Tribe living in White River, South Dakota. Reclamation is concerned that this shifts operation and maintenance costs that have been a non-Federal responsibility of the West River Lyman-Jones Rural Water System and the city of White River to the United States, further compounding the budget challenges during these fiscally difficult times. The Department is also concerned about the precedent of Federal funding to cover payment of water bills for tribal members residing in an incorporated city. The Department has testified in other circumstances about the concerns it has with taking on operation and maintenance obligations or subsidizing those costs.

Section 7(b)(5) would authorize appropriations for operation and maintenance to be used for the improvement, repair, and replacement of existing public or tribal water systems prior to their transfer into the respective project system. Reclamation had previously determined that the costs of upgrading existing community facilities should be properly allocated to the construction component of the project. Since these existing systems were originally constructed using funds and authorities of other agencies, Reclamation believes any funding for improvements needed to correct deficiencies in existing systems should be discussed among the various responsible agencies before those systems are accepted into the project.

Section 8 of S. 3464 would direct the Secretary to update and submit to Congress feasibility studies addressing wastewater disposal needs of the reservations, any deficiency assessments associated with existing waste water systems, and construction, operation and maintenance costs of new wastewater disposal facilities and systems that may be recommended. Reclamation's general authorities and expertise are associated with water supply and not wastewater treatment and disposal. Reclamation believes that other agencies with existing authorities and programs that address wastewater facilities and systems may be better suited as the responsible agency for completing these studies.

Section 9 of the bill amends PL 100-516 to insert a "Mni Wiconi Project Emergency Assistance Planning Act," which would require federal agencies to develop and implement a five-year plan to meet the needs of the Mni Wiconi Project Rural Water Systems in emergency situations. While we agree that it is important to document potential threats and emergency response measures in a written plan, it is not feasible to forecast the "emergency management needs of each rural water system" as described in the proposed Section 204(b)(1). Furthermore, the collaborative effort by the Secretaries of the Interior, Secretary of Defense, and Secretary of Homeland Security to carry out the provisions of this section with consultation with the Indian Tribes with an interest in the project would be extremely difficult to achieve by the date specified of January 1, 2014.

The proposed Section 205 would establish an Emergency Assistance Fund to carry out this title. Reclamation is responsible for extensive water and power infrastructure that is exposed to the same natural disasters and potential man-made threats that could affect the Mni Wiconi Project Rural Water Systems. Funding needed for emergency repairs are made available from annual appropriations and prioritized as necessary to perform work to restore facilities to operational status after damage occurs. This is a more efficient use of federal funds than creating an emergency fund that is reserved for a specific project, such as the Mni Wiconi Project.

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