

**Statement of Estevan Lopez**  
**Commissioner, Bureau of Reclamation**  
**U.S. Department of the Interior**  
**before the**  
**Subcommittee on Water and Power**  
**Committee on Energy and Natural Resources**  
**United States Senate**  
**on**  
**S. 2533 (Feinstein) – California Long Term Provisions for Water Supply and Short Term**  
**Provisions for Emergency Drought Relief Act**  
**May 17, 2016**

Chairman Lee, Ranking Member Hirono and members of the Subcommittee, I am Estevan Lopez, Commissioner of the Bureau of Reclamation, in the Department of the Interior (Department). Thank you for the opportunity to appear before the Subcommittee today to provide the Department's views on S. 2533, the California Long Term Provisions for Water Supply and Short Term Provisions for Emergency Drought Relief Act. We understand that the overall goals of S. 2533 are to maximize water supplies, increase our scientific understanding of the ecosystem, and maintain compliance with the Endangered Species Act (ESA) and the current biological opinions governing operation of the state and federal water projects. The Department supports these goals as the appropriate approach for both the near-term and long-term in addressing the impacts of drought in California. Focused attention and efforts from all levels of government, as well as the private sector, will be necessary to increase water supply reliability while maintaining environmental protections that are critical to California. This approach is simply a reality given long-term drought, climate change, and other challenges facing the Bay-Delta region.

The Department appreciates the seriousness of the current water supply situation in California and continues to take actions that address drought in the short-term as well as to build drought resiliency over the long-term. As the Subcommittee knows, the Department and its bureaus have worked with an unprecedented level of cooperation across agency lines and in partnership with the State of California to maximize water supplies and reduce the impact of the current drought while also protecting the environment. We also want to acknowledge Senator Feinstein, who has been a leader in these efforts and a strong supporter of strategies to address the impacts of the drought on families, farms, the economy of the State of California, and the environment. We appreciate Senator Feinstein's efforts in developing S. 2533 and the frequent technical assistance reviews undertaken with the Department and other agencies operating in California as the bill has been in development.

At the operational level, the bill provides operational directives on pumping rates during stormflow events, fish entrainment, reduced predation of listed fish, and real-time monitoring of listed fish species of concern to the projects. These provisions may result in the ability to provide modestly more water for agricultural users and could create ecosystem benefits if implemented, at least in some flow and seasonal weather scenarios. The bill brings visibility to several aspects of the operations of the Central Valley Project, allowing the Department and other agencies to allocate resources and to be better poised to take advantage of opportunities

that improve water management. As one example, provisions of the bill extending the time period to convey voluntary water transfers may provide additional options to drought-stricken water users for obtaining water supplies, while addressing issues related to the timing of the conveyance of that water through the Bay-Delta. The bill allows federal agencies to ensure necessary actions related to the transfers are in process with sufficient time to ensure benefits from the transfers can be maximized. Another example is the authorization to increase pumping during some winter storm events. This authorization allows the agencies to be prepared on very short notice to take advantage of this additional potential water supply, while remaining protective of listed species.

We are aware of much discussion by some stakeholders over whether the provisions of S. 2533 are consistent with the ESA and biological opinions governing operation of the state and federal projects. The provisions of this bill add new statutory language to direct the actions of the Secretaries in the implementation of their responsibilities under the ESA and other applicable law, generating issues around whether these provisions are intended to supersede or otherwise modify existing requirements in the current biological opinions governing the system. We understand that the author of the legislation intends that these provisions be interpreted as consistent with the ESA and implemented in a manner that is consistent with the current biological opinions, even while directing the Secretaries to exercise their existing discretion to adaptively manage these operations based upon the best available science and as conditions warrant. We very much appreciate and concur with this intent, and we believe that we are able to implement these directives in a manner that is consistent with the ESA and the biological opinions.

We are also mindful that new statutory language generates new litigation opportunities, which we hope to minimize. We are therefore open to working with the bill sponsor and the Members of this Committee to address some of the ambiguities in the current text. For instance, the operative language in Title III prohibits actions that would cause additional adverse effects to listed species beyond those analyzed in the biological opinions. Our interagency review has determined that there is a potential drafting anomaly in that the operative language- “the Secretaries shall take no action pursuant to this Act that would cause additional adverse effects on the listed fish species beyond the range of effects anticipated to occur [under] the applicable biological opinion” - is found in sections 301(e) and 303(a), but is not present in section 302. While the operative language modifies the entire Act, in order to minimize any attempt to construe Section 302 as not being subject to this standard, we recommend similar operative language is included in Section 302 so it is clear that all actions under Section 302 are subject to this standard. We would also note that the proposed operable standard contemplates a longer time period (for the duration of the opinions) than may be pertinent to the actions at hand (short-term, real time), suggesting that some modest language changes might be warranted.

We also note the savings clause in section 701 which states that S. 2533 shall not be interpreted or implemented in a manner that “overrides, modifies, or amends” the ESA or the application of the biological opinions. The combination of these provisions leads us to conclude that the directives in this legislation are to be implemented in a manner consistent with the ESA and the current biological opinions for the federal and state projects. We stand ready to work with the bill sponsor and the Committee on modest technical and conforming amendments to the

language where warranted. We would also like to encourage the use of crystal clear legislative history in the form of committee reports and accompanying floor statements to minimize litigation during implementation, and we would be pleased to work with the Member on such supporting material.

Moreover, while S. 2533 codifies the flexibility we have exercised in our drought contingency plans over the past several years, we also wish to be clear that there is little, if any, operational flexibility remaining in the biological opinions beyond that already being exercised. Consequently, as indicated by the 2015 Statement of Administration Position on H.R. 2898 (Valadao), the Department will be concerned with, and likely oppose, any subsequent change in the authorizations contained in S. 2533 that purport to create additional flexibility in the biological opinions by amending those opinions or the ESA itself. It is critical that the decision-making involved in operating Reclamation's Central Valley Project and California's State Water Project be based on the best available science as applied pursuant to existing environmental laws.

In the longer term, S. 2533 authorizes significant new investments in proven water supply and conservation activities that will help make California's water supplies more resilient in the face of drought. Locally-supported projects such as water recycling, water efficiency improvements, desalination, groundwater storage, distributed treatment systems and surface water storage are given thoughtful consideration in S. 2533, with requirements for robust non-federal cost sharing for new projects. It has become clear that the traditional Reclamation business model, where feasibility studies for federal projects must be authorized, undertaken and then provided to Congress before an authorization for construction is received, does not always address the needs of project sponsors at the state and local level. Of the five California storage studies referenced in Section 115 of the bill, one is now complete and was submitted to Congress in July 2015 (Shasta Lake Water Resources Investigation); three are still in development (North of Delta Offstream Storage/Sites Reservoir, Los Vaqueros Reservoir, and Upper San Joaquin/Temperance Flat); and the latter, Upper San Joaquin/Temperance Flat is undergoing final review within the Administration; and the final study, referenced at Section 313(b)(5), San Luis Low Point Improvement Project (SLLPIP), requires further analysis and resolution of identified safety concerns at B.F. Sisk Dam (B.F. Sisk impounds San Luis Reservoir).

We are finding that state and local jurisdictions are developing their own funding for many of these types of projects and would like to have a federal partner but are unable to wait for an authorization for Reclamation to participate in such a project. Consequently, we are of the view that in addition to the traditional Reclamation paradigm for study, authorization, then participation in federal water projects, Congress should revisit a standing authorization that allows some level of investment in state and local projects as is contemplated in S. 2533. If enacted, the Department would implement the bill such that participation would be based on performance-based criteria for overall economic, technical, financial, and environmental feasibility for the proposed project. While it is anticipated that the state and local sponsors would undertake the required planning and pre-authorization studies, the Secretary would be able to provide technical assistance on these studies.

Sections 112, 121, and 131 through 141 of S. 2533 contain many new authorizations with different funding mechanisms. In general, the Department appreciates the bill's recognition that federal water resource investments can effectively leverage additional state, local, and private funds to encourage drought resiliency. The Department appreciates and fully supports the increase in WaterSMART funding authorization to \$500 million. The water and energy efficiency grant program has been tremendously successful in stretching water supplies in the West, and building drought resiliency. The Department advises that it is still assessing and evaluating the information necessary for it to determine whether RIFIA presents an effective and efficient use of taxpayer dollars. The Administration is exploring alternatives for infrastructure financing, including public-private partnerships, through the newly created a Natural Resources Investment Center within the Department of the Interior. We also understand the intent of these activities is to facilitate the best use of federal and non-federal dollars to reduce risk and improve the reliability of the Nation's infrastructure. While we support these goals, the authorizations in these sections do potentially overlap, thus we are appreciative of the clarification in section 121(c) prohibiting an eligible project from receiving grant funding from more than one program.

Section 113, dealing with Reservoir Operation Improvement, would direct the creation of pilot projects to implement revisions to water operations manuals. The Department notes that the directives of Section 113 fall on the U.S. Army Corps of Engineers, and that, pursuant to subparagraph 113(g)(3), the activities referenced would exclude Bureau of Reclamation (Reclamation) facilities. Reclamation agrees that maintaining operational standards that reflect both the current state of science as well as changes in climate and hydrology is an important part of supporting water resource management. In Fiscal Year 2015 Reclamation began a Reservoir Operations Pilot Initiative as part of the WaterSMART program. Historically, uncertainties in weather prediction and assumptions of an unchanging climate have resulted in conservative federal operating criteria for reservoir management. It is expected that in some locations these criteria will have to be updated with consideration for weather forecast technology and shifts in climate conditions. In 2015 Reclamation selected five pilot studies, one within each of Reclamation's regions, to initiate work that is expected to be completed in FY 2018. The Reservoir Operations Pilot Initiative is a high priority action under Reclamation's Climate Change Adaptation Strategy with a goal to increase water management flexibility. These activities are critical to understand where flexibilities may be increased through identifying trends in historic and projected climate, hydrology, sedimentation, and conjunctive groundwater management.

As stated in Deputy Secretary Connor's October 2015 testimony on S. 1894, the Department supports the discretionary approach to authorities found in Section 203 for the benefit of fish and wildlife. Provisions intended to build upon the agencies' current actions to improve data gathering, monitoring, and scientific methodologies can greatly benefit operations with respect to water supply and species protection. In particular, the language authorizing federal participation in a 100-percent locally funded pilot program to protect native anadromous fish in the Stanislaus River, Delta and other tributaries, if based upon well-shaped research strategies and developed through a collaborative scientific and technically disciplined process (akin to our work in the Collaborative Adaptive Management Team), could help create a strengthened predation research program able to provide near- and long-term benefits for the environment and for state and federal water users across California.

Finally, as noted above, we recognize that some stakeholders have expressed concern about the potential for differing interpretations of the language in S. 2533, particularly the emergency operations provisions in Sections 302 and 303. We appreciate that, in the day-to-day operational context of California water and drought, divergent perspectives could expect different outcomes from implementation of this bill. As a consequence, we acknowledge there is increased litigation risk under S. 2533 and that ongoing litigation could hamper the flexibility we are currently utilizing under the biological opinions to maximize water deliveries while maintaining full compliance with applicable environmental laws. We are also concerned that an increase in litigation could also have adverse effects on the development of California Water Fix, as collaboration is an important part of that process.

On balance, however, S. 2533 represents a constructive approach that contrasts with far more proscriptive language in House legislation, which the Department is on record as strongly opposing. While we are of the view that S. 2533 will help California's water supply, we are mindful that concerns voiced by other stakeholders regarding the operational provisions of S. 2533 have resulted in some controversy over the legislation. Thus, while the Department believes that concerns expressed about S. 2533 have been carefully considered, in the interest of providing additional tools to address the impacts of drought, we are prepared to work closely with this Subcommittee to discuss viable approaches to move forward legislation that addresses areas where widespread agreement exists, such as providing support for scientific studies, water conservation, reuse, recycling, and desalination. We believe these provisions are consistent with California's Water Action Plan as set forth by Governor Brown in 2014. As this Subcommittee is aware, water is a finite resource, and the more tools we have to increase our existing supply, the more options we have for meeting the many competing demands for this resource.

The Department appreciates the ongoing efforts of Senator Feinstein and this Subcommittee to work with our bureaus on the bill, and we pledge to continue this partnership moving forward. I would be pleased to answer questions at the appropriate time.

**Statement of Estevan Lopez**  
**Commissioner, Bureau of Reclamation**  
**U.S. Department of the Interior**  
**before the**  
**Subcommittee on Water and Power**  
**Committee on Energy and Natural Resources**  
**U.S. Senate**  
**on**  
**S. 2616 (Gardner) – Cost Sharing and Revenue**  
**Provisions relating to the Arkansas Valley Conduit**

**May 17, 2016**

Chairman Lee and members of the Subcommittee, I am Estevan Lopez, Commissioner of the Bureau of Reclamation, in the Department of the Interior. I appreciate the opportunity to testify on S. 2616. The Administration is still reviewing S. 2616 and does not have a position at this time. The Department supports the goal of assisting non-federal sponsors with accessing non-federal capital for the construction of projects. However, the bill raises some concerns discussed below.

The Arkansas Valley Conduit (AVC) was originally authorized in 1962. However, the beneficiaries' inability to repay construction of the project, along with competing water infrastructure needs across the West have made it difficult to fund large-scale projects like the AVC at the federal or local level. Currently AVC area communities use groundwater to supply most of their drinking water, and that water has been determined to contain high levels of naturally occurring radium and uranium. Twelve water providers have concentrations of these elements in the water supplies that exceed federal Safe Drinking Water Act mandatory standards. As a result, the State has issued enforcement actions requiring these water providers to remove the contaminants or find a better quality water source. In addition, water providers in the lower Arkansas River Basin generally have difficulty meeting non-mandatory secondary drinking water standards for salts, sulfate and iron.

Given these circumstances, it is extremely important for these communities to find an alternative water supply that would meet existing and future municipal and industrial potable water demands for citizens in the six southeastern Colorado counties of the Lower Arkansas River Basin: Pueblo, Crowley, Otero, Bent, Prowers, and Kiowa. AVC would serve approximately 53,000 residents (estimated to increase to 74,000 by the year 2070) with an estimated construction cost of \$400 million (2011 dollars). Feasibility level designs are being prepared with an anticipated completion date of September, 2016.

Replacing contaminated groundwater supplies with local surface water from the Arkansas River is problematic because the river downstream of the City of Pueblo contains high levels of selenium, sulfates, uranium, and salts. The AVC, which is an authorized feature of Reclamation's Fryingpan-Arkansas Project (Fry-Ark Project), would address these problems by providing high quality surface water via a least-cost regional system.

The existing Fry-Ark Project Act, as amended in 2009 by Public Law 111-11, authorizes appropriations for construction of the AVC; allows miscellaneous revenues to be used to construct AVC; and, upon completion, provides for miscellaneous revenues to be credited to the actual costs of AVC. P.L. 111-11 also provides a cost sharing plan of 100% percent federal financing and 35 percent non-federal repayment, over a period of 50 years, starting after project completion. In August 2013 a Final Environmental Impact Statement was completed and the Record of Decision was signed in February 2014. Through FY 2016, approximately \$21 million in federal appropriations has been provided for AVC.

Representatives of the Southeastern Colorado Water Conservancy District (District) and the Department and Bureau of Reclamation (Reclamation) began discussions in the summer of 2015 to develop an approach for funding AVC construction while reducing the need for federal appropriations. With an objective of accomplishing sufficient final engineering and design work to allow award of the first construction contract during fiscal year (FY) 2019, the goal is to obtain funding from multiple sources to permit completion of construction in a timely fashion.

The District and the state of Colorado are contemplating a \$100 million loan to finance part of the construction of this project. S. 2616 authorizes and directs Reclamation to provide, without appropriation, miscellaneous revenues to the District so they can, in turn, use those funds to the extent needed, repay a loan or loans from the Colorado Water Conservation Board (CWCB). Under current law, those miscellaneous revenues are controlled by Reclamation, and at the Secretary's discretion, can be used to offset various project costs, finance further construction of the Fry-Ark Project (potentially including the AVC), or deposited to the Reclamation fund to reduce the Federal deficit.

If S. 2616 were enacted:

- The District would remain obligated to repay 35 percent of the federal appropriations made for the AVC, with such repayment to come from the crediting of miscellaneous revenues to the AVC or from District sources if those miscellaneous revenues are insufficient.
- The miscellaneous revenues not needed to repay a loan or loans to the District from the CWCB or to meet the District's obligation to repay 35 percent of federal appropriations would be available for Reclamation to credit to the repayment of the remaining 65 percent of the AVC's construction costs paid for with federal appropriations.
- The costs of the Ruedi Dam and Reservoir, Fountain Valley Pipeline, and South Outlet Works at Pueblo Dam and Reservoir, plus interest, will be repaid before miscellaneous revenues could be used to pay for AVC costs during construction.

Under current law, all miscellaneous revenues generated by the Fry-Ark Project are currently devoted to repayment of the investment in the AVC.

S. 2616 directs that miscellaneous revenues be provided to the District. The District envisions that these revenues would be used to repay the monies it would borrow from the CWCB for about \$100 million in non-federal financing for the construction of the AVC. While we are still undertaking a detailed analysis of the full implications of such a reallocation of federal receipts,

the reallocation of federal revenues to a non-federal entity for the benefit of that non-federal entity should be given careful consideration, including budgetary effects.

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

**Statement of Estevan López, Commissioner  
Bureau of Reclamation  
U.S. Department of the Interior  
Before the  
Energy and Natural Resources Committee  
U.S. Senate  
on  
S. 2902  
S. 2902 (Flake) Western Water Supply and Planning Enhancement Act  
May 17, 2016**

Chairman Lee, Ranking Member Hirono and Members of the Subcommittee, I am Estevan López, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to provide the views of the Department on S. 2902, the Western Water Supply and Planning Enhancement Act. Several provisions of S. 2902 include distinct and targeted provisions that touch on operational, environmental, planning and budget functions, many of which the Department has previously testified on. For this reason, much of my statement will summarize the Department's previously expressed views on the proposals in those provisions rather than the bill as a whole.

**Title I, Subtitle A – Water Supply Improvements**

Section 101 of S. 2902 contains language of interest to the Bureau of Reclamation (Reclamation) and Army Corps of Engineers. Section 101, dealing with Reservoir Operation Improvement, would direct the creation of pilot projects to implement revisions of water operations manuals. The Department notes that the directives of Section 101 fall on the U.S. Army Corps of Engineers (Corps), and that, pursuant to subparagraph 101(h)(3) the activities referenced would exclude Bureau of Reclamation (Reclamation) facilities except under certain conditions.

Reclamation believes that maintaining operations standards that reflect both the current state of science as well as changes in climate and hydrology to be an important part of supporting water resource management. In Fiscal Year 2015 Reclamation began a Reservoir Operations Pilot Initiative as part of the WaterSMART program. Historically, uncertainties in weather prediction and assumptions of an unchanging climate have resulted in conservative federal operating criteria for reservoir management. It is expected that in some locations these criteria will have to be updated with consideration for weather forecast technology and shifts in climate conditions. In 2015 Reclamation selected five pilot studies, one within each of Reclamation's regions, to initiate work that is expected to be completed in FY 2018 as part of the Administration's Federal Drought Action Plan. The Reservoir Operations Pilot Initiative is a high priority action under Reclamation's Climate Change Adaptation Strategy with a goal to increase water management flexibility in light of changing conditions. These activities are critical to understanding where flexibilities may be increased through identifying trends in historic and projected climate, hydrology, sedimentation, and conjunctive groundwater management.

Section 102 would amend the Colorado River Storage Project Act (Public Law 84-485) to authorize Reclamation to increase the active capacity and, as a result, the amount of water developed by Fontenelle Reservoir in Wyoming. Reclamation appreciates the efforts of Senator Barrasso and his staff to work with Reclamation to address our concerns identified in our June 18, 2015 testimony on similar legislation (S. 1305) before this Committee. With the subsequent amendment to S. 1305, the Department can now support this provision.

Section 103 would require the Department and the U.S. Department of Agriculture to enter into an arrangement with National Academy of Sciences to conduct a study on the impact of salt cedar control efforts in increasing water supply and improving riparian habitat. The Departments of the Interior and Agriculture would then have 180 days to submit a report to Congress that describes a feasible plan to implement a tamarisk control plan, including a description of applicable timelines and costs.

The U.S. Geological Survey conducted an authoritative study on the effectiveness of the removal of salt cedar, which found that the removal of salt cedar from floodplain areas along rivers can lead to replacement by other vegetation that consumes roughly equal amounts of water. The study found that removing salt cedar from these areas is unlikely to produce measurable water savings once replacement vegetation becomes established. We look forward to working with the bill sponsor and the Committee to ensure that the previous report's conclusions are considered, and any new reporting requirements add value to our current understanding of salt cedar impacts.

Section 104 would amend Section 206 of the 2015 Appropriations Act and provide additional statutory direction on Colorado River operations. The Department fully recognizes the severity of the ongoing historic drought in the Colorado River basin and the importance of proactive, consensus-based efforts to conserve the limited, and declining, water resources of the Colorado River Basin. Subsection 206(a)(1), as amended, would continue Congressional direction to fund or participate in projects to increase storage of Colorado River water in Lake Mead and upstream reservoirs constructed under the 1956 Colorado River Storage Project Act. The Department supports these continued efforts.

Subsection (a)(2) would add a new provision that would preclude release of Colorado River water from Lake Mead pursuant to a 2014 Memorandum of Understanding and the ongoing efforts pursuant to the Pilot System Conservation program. While the Department recognizes that the provisions of subsection (a)(2) are narrow in scope, the Department does not believe this section is necessary for the successful implementation of these efforts and is duplicative of currently applicable provisions of Departmental policies and agreements already in force. Additionally, the language of this subsection does not appear to currently have consensus support among all seven Colorado River Basin States. We recognize that interstate cooperation is particularly essential in a time of increased risk of shortages on the Colorado River. We are currently investing significant effort to find solutions that will generate consensus support in the Basin, and suggest that subsection (a)(2) may distract from the ongoing efforts to identify

consensus tools and mechanisms to contribute to conservation of water in the Colorado River system with broad stakeholder support.

We believe Subsections (b) through (e) are intended to enhance the Department's efforts to conserve additional water in the Colorado River system in a manner consistent with current efforts. The Department supports the goals of addressing ongoing drought in portions of the western United States and the reservoir elevations in Lakes Powell and Mead. The Department continues to monitor the situation and has taken a number of steps to address these issues. The Administration is still reviewing the full implications that these sections would have and does not have a position on these sections at this time.

### **Title I, Subtitle B – Protecting Critical Water Supply Watersheds**

Title I, Subtitle B of S. 2902 contains provisions of interest to the Bureau of Land Management (BLM). (We defer to the U.S. Forest Service on provisions of this Subtitle affecting National Forest System lands.) This subtitle seeks to exclude certain vegetation treatments conducted for specific purposes from the environmental analysis and public involvement requirements in the National Environmental Policy Act (NEPA). These treatments may range from hazardous fuels reduction and treatment for invasive species to timber harvest, and the bill sets out specific purposes (e.g., increase water yield) and administrative criteria (e.g., treatment proposed by a Resource Advisory Council) for these treatments. Under the bill, if the BLM's proposed activity is for one of the enumerated purposes, the agency could remove vegetation under an exclusion from NEPA, on up to 5,000 acres. If the proposed activity also meets the administrative criteria of the bill, the BLM would be authorized to remove vegetation, under an exclusion from NEPA, on up to 15,000 acres. The Department opposes this provision because of the scale of these treatments without environmental analysis and public involvement as required in NEPA.

Title I, Subtitle B also would limit public input through the NEPA process by requiring the BLM to analyze only the proposed action and a "no-action" alternative when a BLM proposed vegetation treatment project meets the administrative criteria set out in the bill. This provision would limit the breadth and value of NEPA analysis to decision-makers.

The Department shares the sponsor's goals of efficient and effective procedures. Indeed, one of the priorities under Secretarial Order 3336 on Rangeland Fire Prevention, Management, and Restoration (Jan 5, 2015) is to encourage efforts to expedite processes, streamline procedures and promote innovations that can improve overall rangeland fire prevention, suppression and restoration efficiency and effectiveness. We would be glad to discuss these objectives further with the bill's sponsor.

### **Title I, Subtitle C – Bureau of Reclamation Transparency Act**

Subtitle C, the Bureau of Reclamation Transparency Act, requires the Secretary of the Interior to submit to Congress a report on the efforts of Reclamation to manage its infrastructure assets. As

stated in our June 18, 2015, testimony on similar legislation (S. 593), Reclamation recognizes the value in obtaining additional information on the status of our infrastructure. The Bureau of Reclamation Transparency Act is consistent with a draft Infrastructure Investment Strategy and process Reclamation has initiated proactively; therefore, the Department supports this provision.

#### **Title I, Subtitle D – Water Supply Permitting Act**

Subtitle D mirrors language in HR 2898 (Title VII), which with some modifications, largely consists of language from S. 1533 (114th), the Water Supply Permitting Coordination Act. Reclamation expressed concern in our October 8, 2015, testimony on HR 2898 before this Committee that there is already ample basis for review of projects and coordination among federal agencies involved in water supply planning, remain regarding the language in this current bill.

#### **Title I, Subtitle E – Bureau of Reclamation Project Streamlining Act**

Subtitle E aims to facilitate and streamline Reclamation's process for creating or expanding surface water storage under Reclamation law. As we testified on Title VIII of HR 2898 before this Committee, this provision would restrict the time available to establish the merits of a surface water storage project and to consider a project's potential environmental effects. Constraining or circumventing project environmental reviews and permits impedes the opportunity to consider alternatives with potential impacts on communities and the environment which may be less adverse. Such constraints could make favorable recommendations for project construction less likely and increase the potential for delay as a result of litigation, which, I would note, would have the opposite effect of the provisions' intentions. The Department does not support this provision.

#### **Title II – Protecting Existing Water Rights**

Title II of S. 2902 resembles S. 982 (Barrasso), for which the Department provided testimony before this Subcommittee in June of 2015. While we are still analyzing the new language in view of the recent introduction of S. 2902, in the Department's June statement, we continue expressed concern that the Water Rights Protection Act legislation as drafted was overly broad, drafted in ambiguous terms, and would if enacted likely have numerous unintended consequences that would have adverse effects on existing law, tribal water rights, and voluntary agreements. We are working to ascertain the extent to which the Department's previously stated concerns may or may not apply to Title II of S. 2902.

#### **Title III – Completing and Maintaining Rural Water Supply Infrastructure**

Title III of S. 2902 incorporates S. 438, the Irrigation Rehabilitation and Renovation for Indian Tribal Governments and Their Economies Act, which creates a steady stream of funding to repair, replace and maintain certain Indian irrigation projects. As stated before the Senate

Committee on Indian Affairs' March 4, 2015, hearing on S. 438, the Department supports the goals of working with tribes to address the maintenance of irrigation projects, and we look forward to working with you to address the best means of doing so given current budget constraints and the ability of irrigation projects to financially sustain themselves in the long run.

Subtitle B incorporates 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. As stated in our June 18, 2015, testimony before this Committee, the Department cannot support this language at this time, based on constraints on program resources and other rural water project commitments.

#### **Title IV – Offset**

Title IV includes language from Title IX of HR 2898, the Accelerated Revenue, Repayment and Surface Water Storage Enhancement Act on which Reclamation testified before this Committee on October 8, 2015. The bill contains provisions to enable the conversion of any water service contract to a repayment contract, with allowance for pre-payment. While Reclamation's October 2015 testimony identified several programmatic concerns about the bill, it is also noteworthy that current CVP water service contracts already contain language for their eventual conversion to repayment contracts at such time that it is determined that the remaining construction costs of the CVP can be repaid within a specified repayment term and without adversely affecting the operations of the CVP. Additionally, the bill proposes a one-year timeframe to convert existing contracts, which may not be reasonable given the realities of CVP operations and repayment status.

#### **Conclusion**

We stand ready to work with this Committee and bill sponsors to find common ground on legislation that can complement the Administration's efforts to assist communities impacted by drought. This concludes my written statement. I am pleased to answer questions at the appropriate time.

**Statement of Estevan Lopez  
Commissioner, Bureau of Reclamation  
U.S. Department of the Interior  
before the  
Subcommittee on Water and Power  
Committee on Energy and Natural Resources  
U.S. Senate  
on  
S. 2907 (Reid) – To strike the termination date for pilot projects  
to increase Colorado River System water in Lake Mead**

**May 17, 2016**

Chairman Lee and members of the Subcommittee, I am Estevan López, Commissioner at the Bureau of Reclamation (Reclamation). The Department supports the goals of addressing ongoing drought in portions of the western United States and the reservoir elevations in Lakes Powell and Mead. The Department continues to monitor the situation and has taken a number of steps to address these issues. S. 2907 would amend Section 206 of the 2015 Appropriations Act (PL 113-235) to remove the 2018 sunset data and provide \$50 million additional authority for these activities to increase Colorado River system water in Lake Mead and Lake Powell. I would like to take this time to share my thoughts on Reclamation's existing System Conservation Pilot Program.

Since June 2013, Reclamation, the Lower Basin States, and water agencies have been engaged in multi-party discussions to identify voluntary actions to protect critical reservoir elevations in Lakes Powell and Mead should drought conditions continue and worsen. In July 2014, Reclamation signed a Funding Agreement with four municipal entities in the Basin, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, the Southern Nevada Water Authority and Denver Water. The Funding Partners agreed to jointly finance an \$11 million System Conservation Pilot Program to fund voluntary conservation projects in the Upper and Lower Basins to retain additional water in Lakes Powell and Mead to help mitigate the impacts of the current drought.

Reclamation solicited pre-proposals for conservation projects from about 50 water users in the Lower Basin. Six of the approximately 20 pre-proposals received were approved for funding. To date, Reclamation has contributed \$3,085,400 to the Pilot Program in the Lower Basin, and the initial phase of the Pilot Program is nearing completion. The projects approved to date will collectively conserve approximately 63,000 acre-feet of water, at an average cost paid to the participant of \$136/acre-foot, and fully utilize the initial \$8.25 million of non-federal funding. Reclamation allocated an additional \$5 million for this Pilot Program in Fiscal Year 2016. Reclamation is meeting with partners this month to finalize non-federal matching funds.

Given the role of the Secretary as water master of the lower Colorado River, Reclamation administers the pilot program in the Lower Basin in cooperation with the funding entities. In contrast, in the Upper Colorado River Basin, given the more limited role of Reclamation, the Upper Colorado River Commission, on behalf of the four states of Colorado, New Mexico, Utah

and Wyoming administers the pilot program. Efforts in the Upper Basin are nearing completion of awards for the second phase of projects in calendar year 2016, with \$1.9 million committed to 24 projects in each of the four Upper Basin States.

Reclamation and its partners have not completed a full evaluation of the pilot program to determine whether it should be continued or whether alternatives may be warranted. We look forward to a continued dialogue with the bill sponsor and this Committee to determine if and when the pilot program should be permanently extended.

The Department and our non-federal partners on the Colorado River recognize the severity of the ongoing historic drought in the basin and the importance of proactive, consensus-based efforts to conserve limited water resources. To that end, we will continue our proactive partnerships with Basin stakeholders and strive to make more efficient and effective use of the waters of the Colorado River whenever and wherever possible.

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