

# WATER AND POWER BILLS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED TWELFTH CONGRESS  
FIRST SESSION  
ON

<b>S. 500</b>	<b>S. 715</b>
<b>S. 802</b>	<b>S. 997</b>
<b>S. 1033</b>	<b>S. 1047</b>
<b>S. 1224</b>	<b>S. 1225</b>

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JUNE 23, 2011



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# CONTENTS

## STATEMENTS

	Page
Barlow, Richard J., First Selectman, Town of Canton, Collinsville, CT .....	19
Blumenthal, Hon. Richard, U.S. Senator From Connecticut .....	3
Katz, John, Deputy Associate General Counsel, Federal Energy Regulatory Commission .....	17
Lee, Hon. Mike, U.S. Senator From Utah .....	3
Payne, Grayford F., Deputy Commissioner for Policy, Administration and Budget, Bureau of Reclamation, Department of the Interior .....	7
Shaheen, Hon. Jeanne, U.S. Senator From New Hampshire .....	1
Udall, Hon. Mark, U.S. Senator From Colorado .....	5

## APPENDIX I

Responses to additional questions .....	31
---	----

## APPENDIX II

Additional material submitted for the record .....	41
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## **WATER AND POWER BILLS**

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**THURSDAY, JUNE 23, 2011**

U.S. SENATE,  
SUBCOMMITTEE ON WATER AND POWER,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:33 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeanne Shaheen presiding.

### **OPENING STATEMENT OF HON. JEANNE SHAHEEN, U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SHAHEEN. Good afternoon, everybody. Hopefully that woke you all up. I want to call to order this hearing before the Water and Power Subcommittee and welcome everyone here this afternoon.

Senator Lee, our ranking member, we think is on his way, but we'll go ahead and begin since we have Senator Blumenthal here, and we know he has a very busy schedule.

Today's hearing involves 8 bills that are pending before the subcommittee. The bills cover several different aspects of our water and power jurisdiction. Some of the bills are similar to bills that we heard during the last Congress, and others we're hearing about for the first time today.

The bills we're covering today are: S. 500, the South Utah Valley Electric Conveyance Act, relating to facilities in Utah; S. 715, the Collinsville Renewable Energy Promotion Act, relating to a hydroelectric project in Connecticut; S. 802, the Lake Thunderbird Efficient Use Act of 2011, addressing water supply needs in Oklahoma; S. 997, the East Bench Irrigation District Water Contract Extension Act, relating to a water supply contract in Montana; S. 1033, to authorize the Secretary of the Interior to participate in the city of Hermiston, Oregon's water recycling and reuse project; S. 1047, the Leadville Mine Drainage Tunnel Act of 2011, addressing a situation in Colorado; S. 1224, the Bureau of Reclamation Fish Recovery Programs Reauthorization Act of 2011, which supports water supply projects in Wyoming, Utah, Colorado, and New Mexico; and S. 1225, the Fort Sumner Project Title Conveyance Act, relating to an irrigation project in New Mexico.

I look forward to hearing about these bills.

Now that Senator Lee has arrived, I'll ask if he has any opening comments.

Senator LEE.

[The prepared statements of Senators Lieberman and Inhofe follow:]

PREPARED STATEMENT OF HON. JOSEPH LIEBERMAN, U.S. SENATOR FROM  
CONNECTICUT, ON S. 715

Thank you, Madame Chairman. I am grateful for the opportunity to provide a statement in support of this important legislation, and I am pleased that the Subcommittee saw fit to invite the distinguished First Selectman of Canton, Connecticut, Richard Barlow, to testify on behalf of this legislation.

In April, I, along with my colleague Senator Blumenthal, reintroduced legislation that would expedite the remaining regulatory process and minimize the costs of obtaining the final FERC permits for reactivating the two Collinsville Dams. Representative Chris Murphy has introduced companion legislation in the House. The Upper and Lower Collinsville Dams are two inactive masonry hydroelectric dams owned by the Connecticut Department of Environmental Protection and located two miles apart on the Farmington River in the central Connecticut communities of Canton, Burlington, and Avon.

Following FERC's termination of a previously awarded license as a result of failure by a private developer to commence construction, the town of Canton approached the delegation with the idea to have the licenses reinstated and transferred to the town of Canton. The town would then work with the towns of Avon and Burlington. With the reactivation and repowering of these dams, they could provide municipally operated power, eventually generating around 2 megawatts of electricity, which is enough power to generate around 2,000 homes in the nearby communities.

Not only would this legislation accelerate the reinstatement of the FERC licenses, but it would also direct FERC to conduct a supplemental Environmental Assessment on both dams. These new assessments are supported by various river groups, including American Rivers and the Lower Farmington River/Salmon Brook Wild and Scenic Study Committee, as they would pave the way for improvements in fish passages at both dams.

This legislation was the product of careful and inclusive negotiations between the Congressional delegation, affected communities, the state Department of Environmental Protection, and local and national environmental groups. It is representative of an important effort to provide clean, renewable energy in an environmentally sustainable way, all with local support.

I am privileged to support this legislation along with my colleagues Senator Blumenthal and Representative Murphy. At a time of rising energy prices, the legislation will help make the Farmington River Valley more energy independent, while at the same time providing for safer passage for the fish that are so important to the area. Thank you, Madame Chairman.

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PREPARED STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM OKLAHOMA

I am writing to thank you for holding a hearing on S. 802 in the Subcommittee on Water and Power in the Committee on Energy and Natural Resources. The Lake Thunderbird Efficient Use Act of 2011 is an important piece of legislation to me and many Oklahomans.

This bill allows the Central Oklahoma Master Conservancy District to import and store non-project water into Lake Thunderbird, if the Secretary of the Interior determines there is enough capacity to do so. Allowing additional water to be stored at Lake Thunderbird would help increase municipal and industrial supplies for the cities served by the District, which include Norman, Midwest City, and Del City.

It will ensure greater access to water supplies for a growing metropolitan area. Over the last decade, the Norman area grew by 15%, making it one of the fastest growing areas in the state of Oklahoma. As this area continues to grow there will be a greater need for access to the water supplies to the Lake Thunderbird reservoir. Fortunately, no funds need be expended to accomplish this goal. It will cost the taxpayers nothing.

I respectfully ask that the bill be favorably reported from the Subcommittee to the full Committee on Energy and Natural Resources. I further ask for swift Committee consideration so the bill can be allowed to pass the Senate. Thank you for your attention to this matter.

**STATEMENT OF HON. MIKE LEE, U.S. SENATOR FROM UTAH**

Senator LEE. Thank you, Senator Shaheen. It's a pleasure to be here today, and I thank you for chairing this hearing on a number of water and power measures, one of which is integral to my home state of Utah, S. 500, the South Utah Valley Electric Conveyance Act. I've co-sponsored this bill with my colleague, Senator Hatch, from Utah.

Similar to the legislative hearing that we held last month, all of the bills before us today address many of the issues that we'll be examining over the next few years in the subcommittee, and those issues include opportunities to improve the storage and transfer amongst various different water users; different approaches to resolve jurisdictional issues among Federal agencies to avoid duplication both in cost and in efforts; and opportunities to improve our power supplies, which is always important to Americans, and especially so right now.

So while the underlying purpose of each bill before us today may be different, each of these bills attempt in some way or another to identify tools to help ensure that our water and our power facilities are safe and reliable and are being managed effectively.

I thank the Federal witnesses for their presence here today and their participation. Thank you, Senator Shaheen, for conducting this hearing. I look forward to the testimony we'll be hearing.

Senator SHAHEEN. Thank you very much, Senator Lee.

Senator Udall has also arrived and would like to make a statement, but he has said he's fine with Senator Blumenthal going first.

So, Senator Blumenthal, we're delighted you're here. I'm especially delighted you're here to have somebody speak to an Eastern water issue, as opposed to just the West.

So at this time, we'd like you to go ahead and testify.

**STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Madam Chairwoman, I'd be happy to yield to Senator Udall. If he's on a tight schedule and he wants to make a quick statement, I'm happy to have him go first.

Senator UDALL. I'd love to hear the senator talk about the Eastern waters.

Senator SHAHEEN. Good. Please go ahead, Senator Blumenthal.

Senator BLUMENTHAL. Thank you.

First of all, thank you to Chairwoman Shaheen and to Ranking Member Lee for giving me this opportunity to testify today.

I think all the members of this panel, but most particularly Senator Shaheen will have sympathy for the cause that I bring to this committee because she has done such wonderful work on renewable energy in the neighboring state of New Hampshire. Indeed, I am here to advocate for a bill that would enable the Federal Energy Regulatory Commission to reinstate the license necessary for the Town of Canton, Connecticut to operate 2 hydroelectric dams on the Farmington River.

I know that New Hampshire probably has dams like this one that once provided electric power to a thriving axe factory on the Farmington River, and the factories that it once served have gone

silent, but we have an opportunity to ensure that the Collinsville dams are once again able to provide clean, renewable energy to families and businesses along the Farmington River.

I want to thank in particular Senator Lieberman, who is an author of S. 715. He's unable to be here today, but I know he shares my strong support for this legislation.

I also want to thank First Selectman Dick Barlow of Canton, who is here today. He's been a champion of this issue. He is a former 3-year public servant at the Department of Environmental Protection in the State of Connecticut, and he's worked tirelessly to promote cooperative, municipally owned sources of clean, renewable energy for Connecticut communities such as Canton, Avon, and Burlington, which will be served by these hydroelectric dams.

Very simply and briefly, Chairman Shaheen, this bill will enable the Upper and Lower Collinsville Dams, which have been dormant since the 1960s, to have their licenses reinstated by the Federal Energy Regulatory Commission. They were granted licenses for a former owner in 2001. The licenses were renewed at the end of their-year period for 2 years and then revoked, in effect, in 2007, at the end of a 6-year period because the then-private developer was essentially inactive in going forward, and the state legislature in Connecticut passed the necessary statutes to operate the 2 dams and in effect transfer their ownership to the Town of Canton, which now seeks to operate them, and that's why we're here today, to enable Canton to have those licenses that are necessary, to reinstate them so that they can go forward.

I want to make very clear, there are conditions that would be followed. First of all, the normal environmental process, including environmental assessments that are necessary, and also a comment period for any interested party would go forward in the course of FERC's reinstating these licenses.

The reason that the hydro, the small hydropower exemption cannot be relied upon here is simply that the time and expense necessary to go through it, and the authority necessary for it to proceed expeditiously we believe can best be created by this Congress through the legislation, and there is precedent for the Congress having done exactly what we're asking it to do through this measure.

In 2003, the 108th Congress adopted a measure reinstating the FERC license for a similarly sized, small hydroelectric dam in Stuyvesant, New York. I recognize we don't have any senator from New York here today, but similarly the inactive license there had been held by a private firm and transferred to a public entity.

So I'm here today very simply to ask this subcommittee and then the committee as a whole to approve this measure so that the Town of Canton can have a reinstated license to provide clean, renewable energy to a number of towns, communities, small businesses in the area on the Farmington River. Thank you very much.

[The prepared statement of Senator Blumenthal follows:]



PREPARED STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR  
FROM CONNECTICUT

ON S. 715

Thank you, Chairman Shaheen and Ranking Member Lee for allowing me to testify today. I also would like to thank Senator Lieberman, the author of S. 715. He is unable to be here today, but I know that he shares my strong support of this legislation and its goal of allowing the town of Canton, Connecticut to operate two hydroelectric dams on the Farmington River. I would also like to recognize a witness appearing in the second panel, First Selectman Dick Barlow of Canton. He has been a champion of this issue and has worked tirelessly to promote a cooperative, municipally-owned source of clean renewable energy for the Connecticut communities of Canton, Avon and Burlington.

S. 715 will allow the residents of Connecticut's Farmington Valley to take two existing, but inoperative, hydroelectric dams and use them to provide clean, renewable energy for hundreds of Connecticut homeowners. The legislation has no direct cost to the federal government.

The Upper and Lower Collinsville dams have been dormant since the 1960s. The licenses previously issued by FERC to operate these dams are currently inactive, and this legislation would allow FERC to reinstate them and transfer them to the town of Canton, Connecticut, for operation, after a thorough environmental review and public comment period.

The State legislature has already passed legislation to operate these two State-owned dams, but Federal legislation is also needed to restore their operation.

By allowing FERC to review and reinstate a terminated set of existing licenses, we can move this project forward, while also ensuring that FERC's licensing process remains rigorous and that the environment of the Farmington River is protected. This legislation requires FERC to undertake its normal environmental review process and also requires FERC to provide an opportunity for comment by any interested parties prior to taking any action on the licenses.

S. 715 was drafted with the cooperation of FERC and state and local stakeholders, including the towns of Canton, Burlington, and Avon, the local watershed organization, the local Wild & Scenic River Study Committee, and the state Department of Environmental Protection. Support among affected stakeholders is bipartisan and nearly universal. There is broad agreement that these dams can be a great source of renewable energy in the heart of Connecticut.

In their heyday, these two small dams were used to provide electrical power to a thriving axe factory nearby. And although the factories have gone silent, we have an opportunity today to ensure that the Collinsville Dams are once again able to provide clean, renewable energy to the families and businesses along the Farmington River.

Thank you for allowing me to testify today, and I welcome your questions.

Senator SHAHEEN. Thank you, Senator Blumenthal.

Did you have any questions for the Senator?

We appreciate your testimony, and I think we will go ahead and call the second panel up at this point.

While you're coming forward, Senator Udall, can we ask you to go ahead and make your statement?

Senator BLUMENTHAL. Thank you.

Senator SHAHEEN. Thank you.

**STATEMENT OF HON. MARK UDALL, U.S. SENATOR  
FROM COLORADO**

Senator UDALL. Thank you, Senator Shaheen. Thank you, Ranking Member Lee, for giving me a piece of time just to comment on a piece of legislation I have before the subcommittee, and that's S. 1047, the Leadville Mine Drainage Tunnel Remediation Act of 2011.

I think, as the committee staff certainly knows, we've got a mine drainage tunnel in Leadville, Colorado that's been the source of some considerable worry for the surrounding community for some time; in fact, for, over 30 years.

The Leadville Mine Drainage Tunnel is owned and operated by the Bureau of Reclamation. It overlaps with the California Gold Superfund site where the Environmental Protection Agency is cleaning up historic mine waste. I'd like to add an incidental note here. The EPA just recently announced that it plans to delete one of the operable units of this Superfund site from the National Priorities List. This is really encouraging news, and I want to commend the EPA for their ongoing clean-up work.

Back to the tunnel. In 2007 and 2008, there was a collapse in the Leadville Mine Drainage Tunnel that blocked the tunnel, and then that caused a tremendous amount of water to build up. Had that water pressure caused a blowout of the tunnel, it would have been truly catastrophic because the community of Leadville and then the entire Arkansas River Basin would have been at risk from millions of gallons of water contaminated with mine waste.

The Bureau of Rec and the EPA took emergency actions that eventually stabilized the situation, but in the process we had concerns that the Bureau lacked the necessary authority to implement a permanent solution. So in short, Madam Chairwoman, in the process of addressing what was literally physical blockages within the tunnel, we found there were legal blockages as well.

So the legislation I've introduced again in this Congress clarifies that the Bureau has the authority to treat this water that's diverted into the tunnel and, if necessary, to expand the treatment plant that's already onsite to treat any additional water.

It also requires the Bureau to maintain the structural integrity of the tunnel to prevent a similar situation from occurring in the future.

Last, it creates a framework for a cooperative action among the Federal agencies, particularly the Bureau of Reclamation and the EPA, at the tunnel.

I want to say I'm reassured by the Bureau's 2008 risk assessment that found the tunnel poses no immediate danger, and I'm also reassured by the EPA's new clean-up plan for the site that should reduce the amount of contaminated water that's entering the tunnel in the first place.

But I want to ensure that such favorable conditions continue into the future, and that's what this legislation is designed to do. By resolving the question of legal authority and responsibility for the tunnel once and for all, it's my hope that the people of Leadville will have an additional measure of certainty that the Federal Government will maintain safe conditions at the tunnel in perpetuity.

Now, I've been negotiating with the Bureau and the EPA over the past year to allay as many of their concerns with the bill as possible. I have to say—I want to be respectful, but I want to be firm—that this issue is long overdue for resolution, and the people of Leadville deserve at least that from us.

I'm an eternal optimist. I know this is a good bill, I know the Senate would approve it, and I want to continue to work with the administration to understand their remaining objections.

Madam Chair, if you'd indulge me, I want to just comment on another piece of legislation before the committee. That's Senator Bingaman's Bureau of Reclamation Fish Recovery Program's Reauthorization Act of 2011. I'm pleased and proud to be a co-sponsor

of the legislation. It is critical legislation. It ensures that 2 exemplary conservation programs continue to benefit the Upper Basin of the Colorado River, which Senator Lee and I both are residents of the Upper Basin of the Colorado River.

These are 2 highly successful programs. They are model collaborative efforts between the Federal Government, States, tribes, environmental interests and water users. It expires, the authorization does, at the end of this year. So Senator Bingaman's legislation simply extends that authorization. I want to thank him for introducing the bill. I look forward to working with him.

Again, Chairwoman Shaheen, Ranking Member Lee, thanks for making a little time for me to participate. Thank you.

Senator SHAHEEN. Thank you very much, Senator Udall.

Now we'll go to our panel. Here with us this afternoon we have 2 witnesses from the administration.

The first is John Katz, who is an attorney from the Federal Energy Regulatory Commission. Mr. Katz will testify regarding S. 715, the Collinsville hydropower bill.

We also have Grayford Payne, who is the Deputy Commissioner for Policy, Administration and Budget from the Bureau of Reclamation.

Thank you both for being here.

To speak to the Collinsville bill, we also have Mr. Richard Barlow from the Town of Canton, Connecticut.

So thank you for being here, as well.

Mr. Payne, I'm going to ask if you would begin by summarizing your written testimony, and we've actually allotted 10 minutes for you, Mr. Payne, because you're going to be addressing so many of these bills. When we hear from Mr. Katz and Mr. Barlow, we're not going to give you 10 minutes. We will ask that you limit your remarks to about 5 minutes.

So if you would like to begin, Mr. Payne.

**STATEMENT OF GRAYFORD F. PAYNE, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. PAYNE. Thank you, Madam Chairman, Chairwoman. Chairwoman Shaheen and members of the subcommittee, I'm Grayford Payne. I'm the Deputy Commissioner of Policy, Administration and Budget at the Bureau of Reclamation. I'm pleased to provide the Department of the Interior's view on 7 bills before the subcommittee today: S. 500, S. 802, S. 997, S. 1033, S. 1047, S. 1224, and S. 1225. My written statements have been submitted for the record.

Let's begin with S. 500, which I understand you are a co-sponsor of, Senator Lee. The South Utah Valley Electric Conveyance Act directs that the Secretary of the Interior shall convey and assign components of the Strawberry Valley Project Electric Distribution System to the South Utah Valley Electric Distribution District.

The Department supports the transfer contemplated in this bill and has 2 straightforward revisions to recommend. First we recommend Section 3(a) changes, the phrase "the Secretary shall convey" to be changed to "the Secretary is authorized to convey,"

thereby allowing for the completion of the necessary public input and scoping pursuant to the National Environmental Policy Act.

The second language change should add to state that the District should hold the United States harmless to any claims arising from the 1986 sale of the distribution system and from actions under this legislation.

My written statements provide more details which we can discuss further. Meanwhile, we look forward to moving this transfer to the point where the Department can support the legislation.

S. 802, Lake Thunderbird Efficiency Use Act, authorizes the Secretary of the Interior to allow the storage and conveyance of non-Project water at the Norman Project in Oklahoma. The Department supports this bill.

Under the current law, Reclamation does not have the authority to approve storage of non-Project water because the purchased water does not originate from the Lake Thunderbird watershed. It requires authority—if the required authority was in place, Reclamation could approve a water service contract and provide the means for the action to move forward. The Department supports this legislation.

S. 997, the East Bench Irrigation District Water Contract Extension Act, authorizes the Secretary of the Interior to extend a contract for water services between the United States and the East Bench Irrigation District. The Department supports S. 997.

The District's water service contract with Reclamation was first executed in 1958 and expired in 2005. Pursuant to state law, execution of a new contract between the United States and any Montana irrigation district requires a state court to create.

In 2006, the District filed a petition with the court seeking confirmation of the execution of their new proposed renewed contract with Reclamation. For reasons described in my written testimony, no court decree confirming the 2006 contract has been issued. So the contract is not binding until the court confirmation is secured. Therefore, the District is seeking authorization under this legislation to extend the 1958 contract.

S. 997 would extend the contract for 4 years or until a new contract is executed and still defer to the court to take up the issue again at the time of its choosing. The Department supports this legislation because it would allow water service to the District to continue and protect the rights for contract renewal while the court confirmation process is given time to complete.

S. 1033, the city of Hermiston, Oregon Water Recycling and Reuse Project, would amend the Reclamation Wastewater and Groundwater Study and Facilities Act, commonly called Title 16, to authorize the Secretary of the Interior to participate in the design, planning and construction of permanent facilities needed to reclaim and reuse water in the city of Hermiston, Oregon. The Department cannot support this bill.

We recognize that the water reuse is an essential tool in stretching the limited water supply in the West. However, given that there are already 53 authorized Title 16 projects and numerous competing demands on Reclamation's budget, the Department cannot support the authorization of new Title 16 projects at this time.

Reclamation will, however, continue to work with project proponents to evaluate the completeness of feasibility studies of their projects.

S. 1047. The Department last testified before the subcommittee on legislation related to the Leadville Mine Drainage Tunnel in June 2010, and prior to that in April 2008. Since the last Congress, the sponsor has continued to refine the specific language of this bill and incorporate references to new information from the EPA and the Colorado Department of Public Health and Environment regarding the new management actions at the Superfund site.

S. 1047 is consistent with the Department's ongoing commitment to ensure that the Leadville Mine Drainage Tunnel poses no threat to public safety and the environment. The Department supports the revisions made to the bill to date, and looks forward to working with the committee on further refinements to clarify remaining concerns as described in my written testimony.

Two left.

S. 1224. Turning to S. 1224, the Bureau of Reclamation Fish Recovery Program Reauthorization Act of 2011. The Department strongly supports the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Recovery Implementation Program and twice testified before the 111th Congress in support of similar legislation. However, we do not support the language of S. 1224 as introduced.

The Upper Colorado River Endangered Fish Recovery Program and the San Juan River Recovery Program shall share the dual goal of recovering populations of endangered fish while water development continues to meet current and future human needs. Public Law 106-392 expressly authorized and capped the use of \$6 million per year of Colorado River Storage Project hydropower revenues from Glen Canyon Dam and other Colorado River Storage Project facilities to support the base funding needs of the program through 2011.

The bill as introduced could be interpreted to place the burden on annual appropriations requested by Reclamation. These programs have been nationally recognized for their cooperative approach to recovering aquatic native fish species, avoiding litigation, and providing Endangered Species Act compliance to Federal and non-Federal water users. Should the annual appropriations not materialize, Endangered Species Act compliance for 2,100 water projects and more than 3 million acre feet of depletion will be in jeopardy.

Finally, 1225. S. 1225 would authorize the Secretary of the Interior to convey title to all of the work of the Fort Sumner Project to the Fort Sumner Irrigation District. Although the Department supports the potential transfer of the facility in the future, we cannot support this legislation as it is written today due to many unresolved issues.

Reclamation and Fort Sumner Irrigation District are in the midst of a collaborative process to ensure that we identify and address all the operational, fiscal, environmental and other issues that arise. We need to resolve these issues before the Department can support S. 1225.

Additionally, because Reclamation has not yet had the opportunity to complete a public process, we cannot say that S. 1225 would have either a negative or a positive impact on stakeholders.

We are committed to continuing to work with the District and the committee to reach an agreement that will satisfy the needs of both the United States and the District.

This concludes my statement. On a personal note, as you know, I'm relatively new at Reclamation, so I'll do my best to answer all the questions the subcommittee may have, but I may need to get back to you in writing, and I appreciate your time. I'm happy to answer all your questions. Thanks.

[The prepared statement of Mr. Payne follows:]

PREPARED STATEMENT OF GRAYFORD F. PAYNE, DEPUTY COMMISSIONER FOR POLICY, ADMINISTRATION AND BUDGET, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

ON S. 1224

Madam Chairman and members of the Subcommittee, I am Grayford Payne, Deputy Commissioner for Policy, Administration and Budget at the Bureau of Reclamation (Reclamation). I am here today to provide the views of the Department of the Interior (Department) on S. 1224: the "Bureau of Reclamation Fish Recovery Programs Reauthorization Act of 2011." The Department strongly supports the Upper Colorado River Endangered Fish Recovery Program and San Juan River Recovery Implementation Program and twice testified before the 111th Congress in support of legislation related to S.1224. However, the Department does not support the language of S. 1224 as introduced. We would like to work with the Congress to find a mutually acceptable funding mechanism for this program.

The Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program (Programs) share the dual goals of recovering populations of endangered fish while water development continues to meet current and future human needs. Program actions provide Endangered Species Act compliance for more than 2,100 federal, tribal, and non-federal water projects depleting more than 3.7 million acre-feet of water per year in the Colorado and San Juan rivers and their tributaries. The Programs, authorized by Public Law 106-392, as amended, were established under cooperative agreements in 1988 (Upper Colorado) and 1992 (San Juan). Program partners include the states of Colorado, New Mexico, Utah, and Wyoming; the Bureau of Reclamation, Western Area Power Administration, U.S. Fish and Wildlife Service, Bureau of Land Management, National Park Service, and Bureau of Indian Affairs; Native American tribes; environmental organizations; water users; and power customers.

Public Law 106-392 expressly authorized and capped the use of \$6 million per year (indexed for inflation) of Colorado River Storage Project (CRSP) hydropower revenues from Glen Canyon Dam and other CRSP facilities to support the base funding needs of the Programs through 2011. Base funding is used for program management, scientific research, fish population monitoring, fish stocking, control of non-native fish, and operation and maintenance of capital projects. The bill, as introduced, could be interpreted to place the burden of providing annual base funding for anything other than operation and maintenance of capital projects and monitoring on annual appropriations requested by Reclamation. Given Reclamation's extensive water supply, conservation, and mitigation activities, this program would have to compete with other Reclamation priorities for funding.

These Programs have been nationally recognized for their cooperative approach to recovering aquatic native fish species, avoiding litigation, and providing Endangered Species Act compliance to federal and non-federal water users. Should the annual appropriations not materialize, Endangered Species Act compliance for 2,100 water projects and more than 3 million acre-feet of depletions will be in jeopardy.

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ON S. 500

Madam Chairman 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

rior (Department) regarding S. 500, legislation authorizing the transfer of the Federal portion of the Strawberry Valley Project Electric Distribution System to the South Utah Valley Electric Service District (District). Reclamation supports the title transfer contemplated by this bill and recommends revisions be made to the bill, which I describe below.

The Strawberry Valley Project (Project) is one of Reclamation's earliest projects, and all Federal obligations associated with the Project are fully repaid. Reclamation developed hydropower generation from the beginning because electricity was required to build the Project. Early in the Project's history, Reclamation transferred the operation and maintenance of most of the Project, including the Power System, to the Strawberry Water Users Association (Association).

The Strawberry Valley Project Power System has three parts: the powerplants are the Generation System, the high-voltage lines running from the powerplants to the substations are the Transmission System, and the low-voltage lines running from the substations to the customers are the Distribution System.

In 1986, the Association spun off the District—creating an independent service district with the capability to operate and maintain the Transmission and Distribution Systems. At the same time, the Association proposed selling the Distribution System to the District. Reclamation approved the proposed sale on the condition that the Association not transfer any Federal facilities. At the time, Reclamation required that the sale be limited to those portions of the Distribution System owned by the Association—those parts that were not completed as part of the original Strawberry Valley Project; constructed with Strawberry Valley Project revenues; and constructed on Federal lands or interests in lands. The District paid approximately \$2.7 million for the non-Federal portions of the Distribution System. Reclamation approved the sale.

In 1986, Reclamation, the Association, and the District believed that most of the Distribution System was non-Federal. Later, it was determined that this was not accurate.

The 1940 Repayment Contract between the United States and the Association states clearly that all additions to the Power System are Federal facilities; little or none of the Distribution System was owned by the Association. The District is chagrined at having paid the Association for facilities it did not receive. The purpose of this Act is to convey to the District what all parties believed the District acquired in 1986.

The Act would likely have little effect on operation of the Strawberry Valley Project. The District would receive fee interest in those Federal lands on which the Distribution System is the only Federal feature. On Federal lands sharing both Distribution System and other Strawberry Valley Project facilities, the legislation grants the District an easement for access to perform maintenance on the Distribution System fixtures. This provision preserves the interest of the United States and the public in the other Strawberry Valley Project facilities. As for the rest of the Project, the organizations would remain responsible for operating and maintaining the Generation System and the Transmission System on behalf of the United States.

Because the Strawberry Valley Project is a paid-out Reclamation project, there is no outstanding repayment obligation associated with it. For this reason, the Act does not require any payment from the District in exchange for title to the Distribution facilities. In addition, the Act eliminates Reclamation's obligations to oversee the maintenance of the Distribution System and to administer the associated lands. The result may be a slight reduction in Reclamation expenditures.

The change in ownership under the bill will be relatively invisible to the public. Because the District has been operating and maintaining the Distribution System for several years, the public will witness a change in ownership but should not experience any change in operation. The Act will eliminate uncertainty about ownership and obligations associated with the Distribution System—which will likely lead to more efficient and effective operation of the Distribution System.

The Department recognizes that there are benefits to be achieved by the proposed title transfer and has worked closely and cooperatively with the interested parties. Before the Department can support S. 500, we recommend two revisions: First, Section 3(a), directing that "the Secretary . . . shall convey and assign" the facilities to be transferred, should be changed to "the Secretary . . . is authorized to convey and assign", thereby allowing for completion of the necessary public input and scoping pursuant to the National Environmental Policy Act (NEPA). And second, language should be added to state that the District shall hold the United States harmless for any claim arising from the 1986 sale of the Distribution System and from actions under this legislation.

In recent days, we have had discussions with the District about accelerating the NEPA process and making modifications to the legislation to address the concerns

described in this testimony. As such, I am confident that we can work with the District, Senator Hatch, Representative Chaffetz, and the Subcommittee to reach our goal of supporting this legislation and transferring title to these facilities in a timely manner.

## ON S. 802

Madam Chairman 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 present the views of the Department of the Interior (Department) on S. 802, a bill to authorize the Secretary of the Interior to allow the storage and conveyance of non-project water at the Norman Project in Oklahoma. For reasons I will discuss below, the Department supports this bill.

Lake Thunderbird, located on the Little River in central Oklahoma, was constructed as part of the Norman Project for municipal and industrial water supply, flood control, recreation, and fish & wildlife purposes. The Central Oklahoma Master Conservancy District (District) operates the Norman Project under contract with the United States. The District holds all Project water rights and currently provides water to the member cities of Norman, Del City and Midwest City.

The Lake Thunderbird watershed experienced a major drought between 2005 and 2006 which resulted in unprecedented low lake levels. Shortly thereafter, the District and Reclamation jointly determined that the stored water supply in the lake would require augmentation in the future to meet demands of the member cities during potential reoccurring drought periods.

S. 802 would facilitate a proposal by the District to purchase raw water from the City of Oklahoma City in times of drought and store it in Lake Thunderbird to augment the yield of the reservoir. The water would come from Atoka Reservoir in southeast Oklahoma, which is owned and operated by Oklahoma City. Oklahoma City conveys this water approximately 100 miles through the existing Atoka pipeline which crosses the Lake Thunderbird watershed just upstream of the reservoir. The District and Oklahoma City would tap the Atoka pipeline and construct a short pipeline to Lake Thunderbird. Because the purchased water does not originate within the Lake Thunderbird watershed, Reclamation does not have authority to approve this action. If S. 802 were enacted, Reclamation could approve a water service contract and provide the means for the action to move forward.

The Department supports this legislation because: (1) Reclamation has confirmed an immediate and critical water need exists; (2) studies conducted in 2010 indicate that Lake Thunderbird can be used to store up to 4,600 acre feet of non-project water, if and when space is available, with no adverse impacts to operations, the environment, recreation, and the local economy; (3) the action would be carried out solely by the District at no cost to the Federal government; and (4) based on a well attended public meeting in 2009 and on comments received on the environmental compliance document, the proposed action is generally supported by interested parties and no known opposition exists.

## ON S. 1047

Madam Chairman 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. 1047, the Leadville Mine Drainage Tunnel Act of 2011.

The Department last testified before the Subcommittee on legislation related to the Leadville Mine Drainage Tunnel (LMDT) in June of 2010, and prior to that, in April of 2008. Since the last Congress, the sponsor has continued to refine the specific language of this bill, and incorporated reference to new information from the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE) regarding new management actions at the California Gulch National Priority List (Superfund) Site, which overlies the LMDT. S. 1047 is consistent with the Department's ongoing commitment to ensure that the LMDT poses no threat to public safety and the environment. The Department supports the revisions made to the bill to date and looks forward to working with the Committee on further refinements to clarify remaining concerns.

The bill has been substantially improved to address the concerns raised by the Department related to reimbursement and liability. In our previous testimony, the Department was particularly concerned that the bill could have been understood to create a liability for Reclamation where none currently exists. S. 1047 ameliorates these concerns by appropriately identifying ongoing responsibilities of the Secretary of the Interior. S. 1047 contains new language not found in previously introduced



versions of the Leadville Mine Drainage Tunnel Act.<sup>1</sup> In particular, Section 3 of S. 1047 acknowledges the multi-agency nature of efforts underway at Leadville, and authorizes the Department to enter into agreements with other entities for reimbursement in the event of improvements or expansion of the treatment plant in Leadville. The bill language authorizes an agreement to cover costs for “any necessary capital improvement” as well as costs associated with “flows that are conveyed to the treatment plant,” including surface water. We note that the Department interprets section 3 to affirm existing discretionary authority to improve or expand the treatment plant as well as to allow the Secretary to enter into reimbursement agreements with other entities with respect to the treatment plant.

We continue to assert that the language in Section 2 of the bill, which calls on the Secretary of the Interior to “take any action necessary to maintain the structural integrity of the [LMDT],” does not take into consideration Reclamation’s 2008 Risk Assessment on the LMDT. The Assessment’s purpose was to evaluate the stability and assess the risk associated with the LMDT. The Risk Assessment utilized a similar process to the one Reclamation uses to assess risk at its dams, a model that is an international standard for conducting risk assessments. The Risk Assessment’s independent peer review confirmed that it is highly unlikely that a sudden release of water could occur from either a blockage in the LMDT, or through the bulkheads installed in the tunnel. Moreover, the Risk Assessment concluded that even if an existing natural blockage in the upper part of the LMDT failed rapidly, a sudden release of water through the lower blockage and bulkheads is unlikely. In 2008, Reclamation also worked cooperatively with the EPA and CDPHE to install additional drainage capability into the LMDT. We have also held several public meetings with residents living in the Village at East Fork and others in the Leadville area to convey Reclamation’s findings that the LMDT is safe, and have continued an active dialogue with the EPA during the agency’s revision of the proposed remedy for Operable Unit 6 (OU6) of the California Gulch National Priority List (Superfund) Site, which lies above the LMDT. We agree with the remedy selected in EPA’s amended Record of Decision, published in 2010, which would implement actions to avoid diversion of water into the LMDT. Recent studies conducted by EPA conclude that using the mine workings and the LMDT to convey water cannot be relied on for the long term, and that it is neither cost effective nor efficient to treat diluted acid rock drainage this way in perpetuity. We have also had very productive interactions with Senator Mark Udall’s office and the Subcommittee on this legislation, and we appreciate those discussions.

We recognize the desire of Congress to assure the residents of Leadville and the Village at East Fork that Reclamation will continue to manage its facilities appropriately, and be accountable. This legislation essentially codifies these ongoing actions for the long term.

ON S. 1225

Madam Chairman 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) regarding S. 1225, which would authorize the Secretary of the Interior to convey title to all of the works of the Fort Sumner Project (including the diversion dam, easements, ditches, laterals, canals, drains, and other rights) to the Fort Sumner Irrigation District (FSID).

Reclamation was able to work from draft versions of this bill to formulate testimony in the days leading up to this hearing. Because the language has only recently been finalized for introduction this past week as S. 1225, this statement will speak to the major provisions, while some of the bill’s language is still being analyzed. At this time, the Department believes consideration or enactment of S. 1225 is premature.

The FSID has been a good partner in assisting Reclamation with difficult Endangered Species Act (ESA) issues on the Pecos River. Although the Department supports the potential transfer of this facility in the future, it cannot presently support this legislation as it is written due to many unresolved issues involved in such a transfer, as described below. Reclamation and the FSID are in the midst of a collaborative process to ensure that we identify and address all of the operational, fiscal, environmental, and other issues that arise. However, at this time, that process

<sup>1</sup>The Committee-reported version of S. 3404 during the 111th Congress was amended to include reimbursement language that is similar to the language found in this session’s S. 1047; however, the reimbursement language was not part of S. 3404 at the time Reclamation testified on the bill on June 9, 2010.

is not complete and thus title transfer of these facilities should not move forward until completion of that process.

#### *Title Transfer Process*

Over the past ten plus years, the Bureau of Reclamation has had an opportunity to work on a number of title transfer proposals. It has been our experience that the more on-the-ground coordination and work we accomplish before the legislative process, and the more issues that we can resolve in advance, the faster the legislative process will go and as importantly, the faster we can successfully implement the legislation to get the lands and facilities transferred. While some have thought that moving to the legislative phase quickly would speed up the process, it has been our experience that we are more effective when we scope out, identify, and reach agreement on all issues prior to initiating the legislative process.

In this case, while we have taken some steps toward that collaborative process, we have several steps to go and it is our hope that Reclamation, together with the FSID and other stakeholders (such as the State of New Mexico and potentially other water users in the Pecos River system) can work through that process.

Currently, there are two Reclamation projects on the Pecos River: the Carlsbad and Fort Sumner Projects. The Fort Sumner Project was developed by private interests at the turn of the last century. It was reconstructed and rehabilitated by Reclamation in the 1950s. Reclamation and the FSID executed a contract in 1948 to provide for the repayment of construction costs to rehabilitate the project. The FSID has an annual repayment obligation of about \$54,500 with an outstanding balance of approximately \$652,000.

The FSID holds a senior water right for not more than 100 cubic feet per second from the natural flow of the Pecos River. Reclamation must bypass the FSID's water through Sumner Reservoir prior to storing water for the Carlsbad Project. Over the past ten years, Reclamation has consulted with the U.S. Fish and Wildlife Service (Service) to ensure that Federal actions are not jeopardizing the existence of the Pecos bluntnose shiner or adversely modifying its critical habitat located below FSID's diversion dam. In these consultations, Reclamation has committed to the Service to keep the Pecos River from becoming intermittent. A significant cause of drying on the Pecos is due to the FSID diverting its senior water right. The only way Reclamation has been able to keep the Pecos River flowing is by purchasing water from willing sellers and by paying the FSID not to divert water through a forbearance agreement.

In August 2009, Reclamation and FSID entered into a mutually beneficial agreement whereby FSID would forbear the diversion of up to 2,500 acre-feet of water annually for ten years when they would otherwise be in priority. Instead, this water goes into Sumner Lake reservoir where it is stored and delivered for Reclamation to prevent intermittency of flows on the Pecos River in compliance with the 2006 biological opinion. Reclamation pays FSID \$60,000 annually plus \$20 per acre-foot for the water. In addition to the forbearance of this water, FSID agreed to pursue ESA Section 10 consultation with the Service and Reclamation agreed to assist them in this process. Also in this agreement, FSID indicated their desire to take title to the facilities and Reclamation agreed to work with them on that process. The forbearance agreement further provides that the annual payments of \$60,000 from Reclamation to FSID will cease upon passage of title transfer legislation. To date, this has been a mutually beneficial agreement. The forbearance water has afforded Reclamation with an additional tool to meet the biological opinion to ensure that the Pecos River does not run dry.

Therefore, initiating title transfer and the completion of the Section 10 process with the Service are closely interconnected processes. It is the Department's view that we cannot complete the title transfer without completing the Section 10 process.

As currently drafted, S. 1225 makes limited reference to the scoring or valuation issues that are important issues in title transfers. Section 5 requires the forgiveness of FSID's repayment obligation to the United States that was agreed upon by contract when the construction and rehabilitation of the facilities were undertaken. Consequently, as currently crafted, this would result in a financial loss to the U.S. Treasury. We note that this would trigger the need for consideration of fiscal impacts under the Statutory Pay-As-You-Go Act of 2010.

While Reclamation and the FSID have had some initial discussions about how to address this issue in an equitable manner, there has been no resolution and a significant amount of work needs to be done on this issue. One of the key unresolved issues is the terms of the ESA Section 10 agreement to be developed between FSID and the U.S. Fish and Wildlife Service. This agreement will have a bearing on the valuation, whether we would need to have a forbearance agreement after the title

transfer, and whether we would need to buy water to meet the current ESA obligations on the Pecos River.

Because Reclamation has not yet had the opportunity to complete a public process to determine whether other interested citizens of New Mexico have concerns or interests in the proposal, we cannot with any certainty say that the title transfer proposed by S. 1225 would have either negative or positive impacts on other stakeholders. As part of the National Environmental Policy Act process, Reclamation would typically undertake a public scoping or outreach process to solicit the views of the public. It is our hope that we will have the opportunity to complete that process before the legislation is enacted so that Reclamation and FSID can collaboratively address any concerns up front or in the terms and conditions of the title transfer.

Before agreeing to title transfer, the FSID and the Service need to enter into a habitat conservation plan under Section 10 of the ESA. Reclamation can assist in this process and facilitate a plan and an agreement between the FSID and Service; but after completing Section 10 compliance, Reclamation will need to re-consult with the Service on its continued operations on the Pecos. This and other environmental compliance measures need to be completed before finalizing title transfer.

Lastly, Reclamation is unsure of the intent behind the language in Section 7 which references "future benefits from the Reclamation Fund." We are interested in discussing this language further with the Subcommittee.

Currently, while the Department views the Fort Sumner Project as a good candidate for title transfer, legislation should await completion of the crucial and interconnected steps summarized above. To make determinations of the fiscal impact to the United States, the benefit to the public, and the responsibilities for environmental compliance, FSID and the Service, with Reclamation's support, need to complete the process outlined in Section 10 of the ESA before title transfer occurs. Once we complete that process, we will have a better understanding of the necessary and appropriate terms and conditions associated with this title transfer. However, at this time, the Department believes this legislation is premature and would raise concerns about impacts on the U.S. Treasury as discussed above.

ON S. 997

Madam Chairman 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.997, the East Bench Irrigation District Water Contract Extension Act. The Department supports S. 997.

Reclamation's Clark Canyon Dam and Reservoir are located in southwest Montana and supply irrigation water under contract to the East Bench Irrigation District (EBID). EBID's water service contract with Reclamation was first executed in October 1958 and expired on December 31, 2005. Pursuant to Section 1 of the Act of May 15, 1922 (42 Stat. 541), Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649), and Section 85-7-1957, Montana Code Annotated, execution of a new contract between the United States and any irrigation district requires a Montana 5th District Court decree.

In 2006, EBID filed a petition with the court seeking court confirmation of the execution of their new proposed renewed contract with Reclamation. A hearing was convened on December 14, 2006, in Dillon, MT. One party appeared and filed an objection to the confirmation proceedings. The parties involved in this court confirmation case have filed various petitions and motions with the court. The court issued an order on April 26, 2007, in response to EBID's petition to dismiss the objection, dismissing some of the counterclaims filed by the objectors, but continuing with other counterclaims. No trial date has been set for this case and as a result, no court decree confirming the 2006 contract has been issued.

Additionally, prior year appropriations bills have extended the contracts for terms of up to two years. EBID remains concerned about losing their right to renew their 1958 contract if it is allowed to expire prior to securing a court decree of the renewed 2006 Contract. For this reason they are pursuing extension of the 1958 contract versus relying on a temporary water service contract.

Under current law, the 2006 contract is not binding on the United States until court confirmation is secured. A final decree from the court confirming the 2006 contract has not occurred. Therefore, EBID is seeking authority under S. 997 to extend the 1958 contract. S. 997 would extend the contract for four years (to December 31, 2013) or until a new contract is executed, and still defer to the court to take up the issue again at a time of its choosing. The Department supports this legislation because it would allow water service to the EBID to continue and protects the right

for contract renewal while the court confirmation process is given time to be completed.

ON S. 1033

Madam Chairman 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. 1033, the City of Hermiston, Oregon, Water Recycling and Reuse Project. For reasons I will discuss below, the Department cannot support the bill.

S. 1033 would amend the Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102-575, 43 U.S.C. 390h et seq.), commonly called Title XVI, to authorize the Secretary of the Interior to participate in the design, planning, and construction of permanent facilities needed to reclaim and reuse water in the City of Hermiston, Oregon. The project is being implemented by the City of Hermiston.

The City of Hermiston (City), located in north central Oregon, is one of the largest communities within Reclamation's Umatilla Project area. The project proposed by the City includes upgrades and construction at their existing wastewater treatment facility and construction of a delivery system that would deliver recycled water to the West Extension Irrigation District. This recycled water would be used by the District to irrigate agricultural lands. By 2031, it is estimated that this proposed project would provide the District with an approximate 2,034 acre-feet of drought resistant water supply during the irrigation season. The current total estimated cost for this project is approximately \$25.8 million.

In January 2010, the City of Hermiston submitted their feasibility report to Reclamation for review under the Title XVI program. In April 2010, Reclamation's review team completed the review and made the certification that the proposed project "Meets Requirements" as defined under section 1604 of Public Law 102-575, as amended.

The City and Reclamation's Pacific Northwest Region are continuing to coordinate on actions that are necessary to be complete prior to implementation of the proposed project. This includes activities such as finalization of the determination of the project sponsor's financial capability, entering into a land use agreement since the delivery pipe is to cross Reclamation land, and entering into a permit to accept the delivery of this water into the canal.

S. 1033 would authorize the City of Hermiston's project under Title XVI for Federal funding not to exceed 25 percent of the total cost of the project.

While the Department supports efforts to increase local water supplies and increase recycled water use, this project would compete for funds with other needs within the Reclamation program, including other Title XVI projects currently under construction. In general, the Department supports the Title XVI Reclamation and Reuse program. The 2012 budget request includes funding for the Department's WaterSMART Program, of which Title XVI is an important element. Specifically, the 2012 budget request includes \$29 million for the Title XVI program. This represents a significant increase over funding levels for the program in recent years.

As part of this total, the Department is requesting \$23.4 million to fund Title XVI projects selected through a competitive funding opportunity process which uses criteria finalized in 2010 to identify activities most closely aligned with Title XVI statutory and program goals. Reclamation plans to invite sponsors of Congressionally authorized Title XVI projects to submit applications for funding under the program and will review and rank proposals against those criteria to identify projects for funding, subject to appropriations in fiscal year 2012. A similar procedure was used this year to identify projects for 2011 funding, which were announced last month. The remaining \$5.6 million of the Title XVI request is to continue funding projects currently underway and for program administration.

We recognize that water reuse is an essential tool in stretching the limited water supplies in the West, and I believe the FY 2012 budget request on top of \$140 million in American Recovery and Reinvestment Act funding for Title XVI has demonstrated the emphasis placed by this Administration on this Program. However, given that there are 53 already authorized Title XVI projects and numerous competing mission priorities and demands on Reclamation's budget, the Department cannot support the authorization of new Title XVI projects or extensions of existing authorized cost ceilings. Reclamation will, however, continue to work with project proponents to evaluate the completeness of feasibility studies of their projects.

Madam Chairman, this concludes my written statement.

Senator SHAHEEN. Thank you very much, Mr. Payne.

Before we go to questions, I'm going to ask if our other 2 witnesses would also testify.

So, Mr. Katz, would you like to go ahead?

**STATEMENT OF JOHN KATZ, DEPUTY ASSOCIATE GENERAL COUNSEL, FEDERAL ENERGY REGULATORY COMMISSION**

Mr. KATZ. Thank you, Chair Shaheen, Ranking Member Lee. As Chair Shaheen noted, I am representing the Federal Energy Regulatory Commission, but as a member of the Commission staff, my views are my own and do not necessarily represent those of the Commission or any individual commissioner.

As Senator Blumenthal summarized, S. 715 involves an instance of a project that was licensed by the Commission to a private developer, the license for which was subsequently terminated by the Commission as required by the Federal Power Act because the developer did not commence construction of the project within the times authorized by the Commission, which were the maximum timeframes allowed by the Federal Power Act.

S. 715 would allow but not require the Commission to reinstate the license for these projects following preparation of an environmental assessment and the provision of a period for public notice and comment; and if the Commission so chose to reinstate the project licenses, would require the Commission to transfer those licenses to the city of Canton.

As I explained in my testimony, Chairman Wellinghoff and the past several chairmen of the Commission have had a policy of not opposing reinstatement bills where the total timeframe for the commencement of construction was no longer than 10 years from when the project was originally licensed.

The reason for this policy essentially is to avoid site banking, that is where an individual developer retains but does not develop a site for an unduly lengthy period of time; to avoid staleness of the environmental record; and to avoid the impacts on competition that might be felt if a site was not available to be competed for by any entity that might be interested.

In the case of this bill, site banking is not an issue because the original entity that held the licenses, the Summit Hydro Development Corporation, is no longer involved. The project, if transferred, would be transferred to the city of Canton, which is a different entity. So site banking is not a concern here.

With regard to the environmental impacts, the bill specifically mandates that if the Commission reinstates the license, it must do an environmental analysis to determine whether there have been any changed environmental impacts, and further provides that the Commission may impose any conditions necessary to deal with such impacts.

With respect to impacts on competition during the time since the license has been terminated, the Commission is aware of no other entity than the Town of Canton that has expressed any interest in developing this project. Therefore, that does not particularly appear to be an issue here.

In light of the foregoing, I make a slight exception to my statement about not representing the Commission or any commissioners in that Chairman Wellinghoff has authorized me to say that be-

cause of the factors I've analyzed, he does not oppose the proposed legislation. Thank you.

[The prepared statement of Mr. Katz follows:]

PREPARED STATEMENT OF JOHN KATZ, DEPUTY ASSOCIATE GENERAL COUNSEL,  
FEDERAL ENERGY REGULATORY COMMISSION,

ON S. 715

Chair Shaheen, Ranking Member Lee, and Members of the Subcommittee

My name is John Katz, Deputy Associate General Counsel for Energy Projects, Federal Energy Regulatory Commission. I appreciate the opportunity to appear before you to discuss S. 715. As a member of the Commission's staff, the views I express in this testimony are my own, and not those of the Chairman (other than as specifically noted below) or of any individual Commissioner.

#### *I. Background*

On February 23, 2001, the Commission issued original licenses to Summit Hydro-power for the 373 kilowatt (kW) Upper and the 920 kW Lower Collinsville Hydro Projects, to be located at the Upper and Lower Collinsville Dams on the Farmington River, in Hartford County, Connecticut.

Section 13 of the Federal Power Act requires that licensees commence project construction by the deadline established in the license, which may be no longer than two years from the date of license issuance. The Commission may extend the deadline once, for no longer than two additional years. If construction does not timely commence, section 13 requires the Commission to terminate the license by written order.

Consistent with section 13, Article 301 of the licenses for the Collinsville Upper and Lower Hydroelectric Projects required the licensee to commence project construction within two years. On November 26, 2002, at the licensee's request, the Commission issued the maximum allowable two-year extension, moving the commencement of construction deadline to February 23, 2005.

Summit did not commence project construction by the deadline. Accordingly, by letter dated November 2, 2007, the Commission gave Summit notice of probable termination of the licenses. Summit did not reply to the notice. By order issued December 4, 2007, the Commission terminated the project licensees. The licensee did not seek rehearing of the termination order, which therefore became final on January 3, 2008.

#### *II. S.715*

S.715 would authorize the Commission to reinstate either or both of the licenses for the Upper and Lower Collinsville Projects and to extend for two years the commencement of construction deadline for the projects. Should the Commission reinstate either or both licensees, the bill requires the Commission to transfer the license or licensees to the town of Canton, Connecticut. These actions are to be taken within 270 days of the date of enactment of the bill.

In addition, S.715 requires the Commission to complete, within 180 days of the date of enactment of the bill, an environmental assessment of the projects, updating, to the extent necessary, the analysis performed in the previous licensing proceeding. The Commission is to provide for a 30-day public comment period, consider any comments that are received, and, based on the environmental assessment and the comments, incorporate in the project license or licensees such terms and condition as the Commission deems necessary. Chairman Wellinghoff and the last several Commission Chairmen have taken the position of not opposing legislation that would extend the commencement of construction deadline no further than 10 years from the date that the license in question was issued. Where proposed extensions would run beyond that time, there has been a sense that the public interest is better served by releasing the site for other public uses.

In this instance, the proposed extensions would run at least two years beyond 10 years from when the licenses for the Upper and Lower Collinsville Projects were issued. However, to Commission staff's knowledge, in the three and one-half years since the project licenses were terminated, no entity has sought to develop the projects or proposed other uses for the project sites. Moreover, because S.715 specifically provides for the preparation of an updated analysis, staleness of the environmental record, which can be of concern in cases of this type, will not be an issue. In consequence, I am authorized to state that Chairman Wellinghoff does not oppose S.715. Also, I anticipate that the Commission staff should be able to meet the deadlines established by S.715, assuming that the town of Canton is able to timely sup-

ply any information staff needs and that a need does not arise to engage in consultation under the Endangered Species Act, or to deal with other, similar matters, the timing of which is not in the Commission's control.

I would be pleased to answer any questions you may have.

Senator SHAHEEN. Thank you, Mr. Katz.

Mr. BARLOW.

**STATEMENT OF RICHARD J. BARLOW, FIRST SELECTMAN,  
TOWN OF CANTON, CANTON, COLLINSVILLE, CT**

Mr. BARLOW. Good afternoon, Chairwoman Shaheen, Ranking Member Lee. My name is Richard J. Barlow, and I'm the First Selectman of the Town of Canton, Connecticut. We're not a city. We're a small town, 10,125 residents, located on the Farmington River in the northwest portion of the State of Connecticut.

I appreciate the opportunity to appear before you to support S. 715, the Collinsville Renewable Energy Promotion Act. The Town would like to acknowledge the co-sponsors of this bill, Senators Lieberman and Senator Blumenthal, both of which I had the pleasure of working with extensively when they were Attorneys General of the State of Connecticut, and both of them have been great champions for the environment, and they certainly continue that tradition within the Senate, and I appreciate that on a personal note.

With the support of Representative Murphy, similar legislation was passed last session by the House of Representatives. Currently a companion bill, H.R. 1353, is before the House of Representatives this session.

The Collinsville Hydro Project would reactivate 2 hydroelectric facilities known as the Upper Collinsville Dam and the Lower Collinsville Dam, originally constructed by the Collins Company, one of the Nation's first manufacturers of axes, machetes, and other cutting tools. The facilities were constructed in the early 19th Century and served to provide power for the company operations until the mid-1960s, when, unfortunately, they went out of business and relocated to Central America.

In 1965, the Connecticut Power Company, the Connecticut Light and Power Company acquired the facilities and dams. That was in the time of cheap nuclear energy, and they didn't want the competition. They deactivated the facilities. Worse than that, they scuttled them. Not only did they take the generating equipment out, but they took cutting torches and cut the 10-inch solid shafts going down to the turbines just to make certain that any future use of the facility would be extremely difficult. Then after deactivating the facilities and removing the generating equipment, they gifted the dams and their liabilities to the State of Connecticut.

The Town of Canton, in partnership with the Metropolitan District Commission, a Hartford-area drinking water and sewer authority, attempted to reactive the dams in the 1980s. While that attempt failed, the data they developed in part served as the basis for an application by a private company which successfully obtained a FERC license in 2001. My written testimony did say 2003. I'd like to point out it was 2001. Unable to reach agreement on a lease for the dams and possible other reasons, the licensee failed to start construction. In December 2007, after a notice of revocation, FERC did, in fact, revoke the licenses for the project.

At that time, the Town of Canton began to consider reactivating the facilities. That action resulted in the Town filing for a preliminary FERC license on August 6, 2008. The Lower Dam is actually in the towns of Avon and Burlington, and the Town of Canton has solicited their participation to develop and operate that portion of the project. FERC issued by order a preliminary license to the Town of Canton on January 8th, 2009.

Understanding that Congress has in the past reinstated and transferred licenses to other parties, the Town began working with our Congressional delegation to seek the reissuance of the final license to the Town of Canton. After extensive consultation with stakeholders, including local environmental groups and the State Department of Environmental Protection, Representative Murphy and Senator Dodd submitted bills to accomplish that task. Unfortunately, the Senate did not approve the bill in the last session.

Since that time, the Town has established an advisory committee, and we're well on our way toward working on ways to develop the project which we feel is an important part of the culture and heritage of a small New England community. It's a way to improve the environment by providing fish passage at the dams which the State does not have the resources to do, and also a way to provide a source of clean green energy which will reduce our dependence on energy sources.

We clearly understand that generating less than 2 megawatts will not answer our energy needs, but we feel that the Town will be meeting the majority of its needs, and we think that that's an important thing to do. We've done a number of other activities over the last several years to secure licenses. We just recently passed in the State of Connecticut a virtual metering bill which will also aid in the economics of the project.

I appreciate your support for this and would be happy to try to answer any questions you may have.

[The prepared statement of Mr. Barlow follows:]

PREPARED STATEMENT OF RICHARD J. BARLOW, FIRST SELECTMAN, TOWN OF  
CANTON, COLLINSVILLE, CT

ON S. 715

Chairman Shaheen and Members of the Subcommittee on Water and Power my name is Richard J. Barlow and I am the First Selectman of the Town of Canton, as small town of 10,125 residents located on the Farmington River in northwestern Connecticut. I appreciate the opportunity to appear before you to support S. 715, a bill to reinstate and transfer certain hydroelectric licenses and extend the deadline for commencement of construction of certain hydroelectric projects (the Collinsville Renewable Energy Promotion Act). The Town would like to acknowledge the co-sponsors of this bill, Senators Lieberman and Blumenthal. With the support of Representative Murphy similar legislation was passed last Session by the House of Representatives. Currently, a companion bill, HR. 1353 is before the House of Representatives this Session.

The Collinsville Hydro Project will reactivate two hydroelectric facilities known as the Upper Collinsville Dam and the Lower Collinsville Dam originally constructed by the Collins Company, one of the nation's first manufacturers of axes, machetes, and other cutting tools. The facilities were constructed in the early 19th century and served to provide power for the Company operations until the mid 1960s when their operations were relocated to Central America. In 1965 the Connecticut Light & Power Company acquired the facilities and dams. They then deactivated the facilities, removed the generating equipment and gifted the dams to the State of Connecticut.



The Town of Canton in partnership with the Metropolitan District Commission, a Hartford area drinking water and sewer authority, attempted to re-activate the dams in the 1980s. While that attempt failed, the data they developed in part served as the basis for an application by a private company which successfully obtained a FERC license in 2003. Unable to obtain an agreement from the State to lease the dams and possibly for other unknown reasons the licensee failed to start construction. In January 2008 after issuance of a notice to revoke the licenses to which the licensee did not respond, FERC did, in fact, revoke the license for the project.

At that time, the Town of Canton began to consider re-activating the facilities. That action resulted in the Town filing for a preliminary FERC license on August 6, 2008. The Lower Collinsville Dam is actually in the Towns of Avon and Burlington and the Town of Canton has solicited their participation to develop and operate that portion of the Project. FERC issued by order a preliminary license to the Town of Canton on January 8, 2009.

Understanding that Congress has in the past reinstated and transferred licenses to other parties the Town began to work with our Congressional delegation to seek the reissuance of the final license to the Town of Canton. After extensive consultation with stakeholders including local environmental groups and the State Department of Environmental Protection Representative Murphy and Senator Dodd submitted bills to accomplish that task. Unfortunately last Session the Senate did not take action on the proposed legislation before adjournment.

Since that time, the Town has established an advisory committee to define the Project. The Town envisions the Project as a way to re-establish a part of the culture and heritage of our community, a way to improve the environment by providing fish passage at the dams and, of course, an opportunity to provide a source of clean, green energy which will reduce our dependence on foreign energy sources.

Clearly, at a generating capacity of less than two mega watts, the Project is not the answer all our nation's energy needs, but it will provide the Towns with a source to meet the majority of their public facility needs.

In the past two years, the Town has been successful in obtaining State legislation requiring the State Commissioner of Environmental Protection to provide the Towns access to the dams for the purposes of hydroelectric power generation with the provision that fish passage be established. The Town has considered fish passage to be an important component of the project development. Without this project, the State would not be able to provide the monies to accomplish that task. Local environmental groups have recognized that the State does not have monies to accomplish fish passage by construction of fish ladders or the breeching of the dams.

The Connecticut General Assembly, just this past month, enacted legislation to allow for municipalities to use virtual net metering for clean energy projects. This action, which the Town of Canton championed, greatly increases the potential to make the Project economically feasible. The State of Connecticut has also recently established a funding program for clean energy projects which the Town expects to pursue.

In the last year with \$50,000 in funding from the Connecticut Clean Energy Fund the Town was able to contract with a consultant who performed a preliminary feasibility study of the Project. With the ability to use virtual net metering the Project has reached a point where the Towns may expect a modest return on their investment in the initial years of operation.

In closing I thank the Subcommittee for the opportunity to testify before you. I would be happy to try to answer any questions you may have regarding our Project.

Senator SHAHEEN. Thank you very much. We have a lot of small towns in New Hampshire with selectmen, too, so we appreciate your being here.

Mr. BARLOW. The Senator is one up from the Attorney Generals. I went down. So I don't know what that means, but—

Senator SHAHEEN. That's OK. We're glad you're here.

I have some questions, most of them for Mr. Payne relative to the bills, nothing difficult, too difficult anyway, and I'll just take these pretty much in the order in which your testimony was given.

On S. 500, which is the South Utah Valley Electric Service District, I suspect Senator Lee may have some questions or comments on this one. But your testimony indicates that Reclamation supports this bill, but that modifications should be made to some of

the language—I think you mentioned 2 places—before we move forward.

Is Reclamation committed to working with the District and the committee on those changes to the bill? Can you help us with that?

Mr. PAYNE. Yes, Reclamation is very committed to working to get this resolved.

Senator SHAHEEN. Thank you. On S. 802, the storage of non-Project water in Lake Thunderbird in Oklahoma, I assume the Department supports this bill in part because there are no additional costs to the Federal Government. How will the costs of the additional storage be computed, and what agreements will be necessary to ensure that any costs to the Federal Government are recovered?

Mr. PAYNE. Right now, the costs associated—right now there are about 4,600 acre feet of water that the District will purchase from the Atoka Reservoir up in Oklahoma City. They will not charge for that additional water but any water above the 4,600 the region has said that they will get into contract negotiations with the District to come up with what the charged cost should be for that water.

Senator SHAHEEN. So you're comfortable with that?

Mr. PAYNE. Yes, at this point. Yes, we are.

Senator SHAHEEN. OK. Reclamation recently received an appropriation of \$121,000 to evaluate the feasibility of storing additional water at Lake Thunderbird. Can you tell me if that process has been completed, and are there any remaining steps that need to be taken to allow the District to move forward with the storage of additional water?

Mr. PAYNE. That process actually has been completed, and the water that was looked at, the water that was to be brought in, everything was favorable, and they have had a public scoping with the community, and it's been very favorable there, too.

Senator SHAHEEN. So once the scoping is done, what needs to happen then?

Mr. PAYNE. I think that, at that point in time, then the whole process, we just have to get the authorization to be able to allow us to be able to bring in non-Project water, and then we're all set, and then they will start the development of a small—I think it's a thousand-foot pipeline that will be a feeder off of an existing pipeline that's coming out of Lake Atoka that actually goes through this watershed, and they'll just feed off of that pipeline.

Senator SHAHEEN. OK. Thank you.

S. 997, the East Bench Irrigation District Water Contract Extension. To your knowledge, is the current delay in moving forward with approval of the new contract only a result of the Montana court process, or is it the fault of either the local water district or the Bureau of Reclamation?

Mr. PAYNE. It's neither the fault of the Bureau nor of the water district. This is just a process that the 5th District Court of Montana has, and my discussions with the region and the area office is it's just been a backlog.

Senator SHAHEEN. Great. So would Reclamation be supportive of a contract extension for longer than 4 years if the court process ends up extending beyond 2013?

Mr. PAYNE. I'm not sure. I feel the way we—we feel that we have talked, and the District—actually, the 5th District Court is making

a very concerted effort to get this backlog completed within the next 3 years, and the word we're hearing is that they're on a fast track to get all this done. That's why we felt that the 4 years would probably be fine, but I can get back to you with a written statement about your question.

Senator SHAHEEN. That would be great.

Mr. PAYNE. Thank you.

Senator SHAHEEN. S. 1033, city of Hermiston, Oregon Water Recycling Project. I think Senator Wyden may be coming, but there are a few questions that I have relative to this legislation. You indicated that the Department opposes the legislation. Is the primary objection that you have that Title 16 has been too popular and that you don't have the sufficient appropriation in order to meet all of the funding requirements for previously authorized projects?

Mr. PAYNE. Currently we have 53 authorized projects already, and so that is one of our issues. We've gone through a deliberate competitive process to bring these projects on. So this project, while it's a worthy project, has not gone through our competitive process, and if it was to be wedged into this line, it would then compete with projects that have already gone through a competitive process and the funding was there.

So it—did I answer it?

Senator SHAHEEN. I have a couple of follow-up questions, but my time is out.

You want me to go ahead?

Given that, and given obviously the current tight budget situation that we're in, what advice would you have for project proponents who have met all the requirements, they have good water recycling projects to go forward, but they're not going to be able—under that scenario that you've laid out, they're not going to be able to get Reclamation support?

Mr. PAYNE. You know, Senator, I am not that versed in Title 16, and so I'd appreciate if I could just get back to you with in writing.

Senator SHAHEEN. Sure. That would be great.

I have another follow-up question that you can get back to us with a written response, as well, and that is what is the status of Reclamation's review of Title 16 funding backlog, and have you determined which authorized projects will not be going forward and which projects have not yet even met the feasibility requirements?

Mr. PAYNE. Yes we will thank you.

Senator SHAHEEN. So, Senator Lee.

Senator LEE. Thank you for joining us, and thank you, Senator Shaheen.

Mr. Payne, I've got a couple of questions, one in particular related to S. 500. The change that you proposed, the first change that you proposed involves changing the language that we've got from essentially "the Secretary shall convey and assign" to essentially "the Secretary is authorized to convey and assign." This is a difference. It does make a difference. It makes a difference in much the same way that if my wife said, "Mike, take out the trash, you shall take out the trash and do the dishes," that means something different than "Mike, you may take out the trash and do the dishes." Those are 2 different things, aren't they?

So if we change the language in this, it seems to me that it's less likely to happen unless it's phrased in mandatory terms. As I understand it, we've had this issue come up a number of times since I think the early 1990s, and sometimes the language in the end has followed more or less the model that you've prescribed, and sometimes it has remained with the "shall" language.

Can you tell me, do you have sort of a thumbnail sketch idea about what the ratio is on how many times we might have used "shall" versus "is authorized to"?

Mr. PAYNE. Actually, no, Senator, I don't. I don't have a thumbnail on that.

Senator LEE. But you're aware that we've used both.

Mr. PAYNE. I'm assuming we have, right.

Senator LEE. It's my understanding that every time we use the "shall" language, it's a little bit more likely that whatever we're wanting to have happen actually happens, and that it happens in a relatively short period of time. Has that been your experience?

Mr. PAYNE. My short time here, I can't tell the answer to that. You know, I've been here 8 months. So I do not have an answer.

Senator LEE. But to your knowledge, it's not incorrect.

Mr. PAYNE. It may not be incorrect.

Senator LEE. OK.

Mr. PAYNE. I do know that we're very committed to having, to making this transfer happen.

Senator LEE. Right. If you're committed to having it happen, I assume that it wouldn't be a problem to use the "shall" language, just like it wouldn't be a problem for me, if I intended anyway to do the dishes and take out the trash, for my wife to use the word "shall."

I want to make clear, by the way, since she's not here to defend herself, she rarely uses the language "shall."

[Laughter.]

Mr. PAYNE. For me, it's used a lot at home, with 3 daughters.

[Laughter.]

Senator LEE. Yes, and that's important.

For whatever that's worth, it doesn't seem to me to be a very good idea, if we want something to happen, to say "may" rather than "shall," which is essentially what you're asking us to do.

OK. Turning to S. 1033, Reclamation has indicated that its efficiency performance measure goal for the Title 16 program is to reduce the average annual Federal cost per acre foot for Title 16 water from about \$18,173 per acre foot to about \$1,200 per acre foot. But taking into account construction inflation costs and other limitations, is an increase in efficiency along this order, is it reasonable? Is it feasible?

Mr. PAYNE. I'm—based on my discussions with our Title 16 experts, I feel it is. I think that our issue is that we're early in the phase and we need to get further down the road with more projects so we can see the return, so we can see where—because it's very early in this whole phase of whether, to see those numbers go down.

Senator LEE. OK.

Mr. PAYNE. That's probably not quite the answer you want, but I can get back to you with more written testimony about what their projections are on those numbers.

Senator LEE. That might be helpful, if you could just sort of let us know what assumptions were or were not built into that.

Mr. PAYNE. Absolutely.

Senator LEE. Thank you.

Then on S. 1224, what's the current timetable, or can you identify a current timetable and outlook for recovery of the affected species in the Upper Colorado Basin and in the San Juan Basin?

Mr. PAYNE. We've been told by our regional people that should be in 2023 according to estimates.

Senator LEE. OK; 2023? Now, if Congress were to fail, for whatever reason, to reauthorize this program, what would be the likely impact on the development rights along the Colorado River?

Mr. PAYNE. I know that if you fail to authorize this program, I don't quite have an answer for that. I'm not quite sure where you're coming from on that answer.

Senator LEE. Just—OK. I'm trying to assess what would happen to water rights along the Colorado generally if we were to do that, if that would cause broader problems, but we can probably talk about that offline at some point.

I think that pretty well covers what I need to go over with you. Yes. Thank you very much.

Mr. PAYNE. Thank you.

Senator SHAHEEN. Thank you, Senator Lee.

I will go back and actually follow up a little bit also on the fish recovery programs reauthorization act. Am I correct in assuming that the only reason Reclamation doesn't support S. 1224 is because it does not include mandatory spending? That's a double negative, but I think you got my—

Mr. PAYNE. I, you know—

Senator SHAHEEN [continuing]. Intent.

Mr. PAYNE. Right now we use the net power revenues that we get from our power projects there to be able to fund this project, and taking away that ability to use these direct funds and having to go to the appropriated dollars would then put a strain on our appropriated dollars given the tight budgets, and whether we'd be able to find the money or not to be able to fund what we think is a worthy project is what the issue is.

Senator SHAHEEN. But wouldn't going forward with an authorization of funding still be better than allowing that authorization to expire? So going forward with the bill as it is, even given the concerns that you've expressed, be preferable to nothing?

Mr. PAYNE. I think it may be preferable, but I'd like to get back to you on that question.

Senator SHAHEEN. OK.

Mr. PAYNE. Give you a detailed understanding of that. It's a fairly complicated subject.

Senator SHAHEEN. Does Reclamation have suggestions for programs to cut or revenues to generate so that the legislation can move forward in the way that you would like?

Mr. PAYNE. We prefer the language that was I think proposed in the prior—we'd like to be able to continue with the process the way

it currently is, where we can use our net revenues from this project.

Senator SHAHEEN. Secretary Salazar submitted a required report to Congress last year and indicated that the Department would like to explore cost saving measures for the programs. Have—has that effort begun, and are there cost saving efforts that would ensure base funding needs continue to be met?

Mr. PAYNE. I also need to get back to you on that.

Senator SHAHEEN. OK.

Mr. PAYNE. I apologize for that.

Senator SHAHEEN. That's fine. Submit all of those questions for you.

To go back to the Leadville Mine Drainage Tunnel Act, does Reclamation support moving forward with this bill as introduced, or are there specific changes that Reclamation is recommending?

Mr. PAYNE. Reclamation supports the bill as it's been revised. We feel that Senator Udall's office has worked really hard on improving this legislation and responding to the issues that we had previously had, and so we very much appreciate those discussions and work and all the work that's gone into that.

I think the real issue is that we need to get together as an administration, the administration has to get together and kind of work this all out among ourselves about what our issues are and how we can all support this.

Senator SHAHEEN. So when you said that the department supports the bill with revisions, you're not suggesting that the revisions that you would like to see are reflected in the current bill that's before the committee? You're suggesting that there need to be additional revisions?

Mr. PAYNE. I think that we need to get together with the other, like EPA and the rest of them, get us all in a room and come up with some consensus on this whole issue and where we all stand. That's pretty much what I know about the bill.

Senator SHAHEEN. OK. Thank you.

Mr. PAYNE. We will provide you, if you'd like, a little detail on that.

Senator SHAHEEN. I think that would be very helpful for the committee.

Mr. PAYNE. Thank you.

Senator SHAHEEN. On the Fort Sumner project conveyance, S. 1225, in 2009 Reclamation entered into a forbearance agreement with the Fort Sumner Irrigation District and agreed to support language in the title transfer legislation which would relieve the District's repayment. Is Reclamation committed to working with the District to ensure that it can meet its commitment to purchase sufficient water from the District to equal the value of the repayment amount?

Mr. PAYNE. We are committed to working with the District on that issue.

Senator SHAHEEN. Does Reclamation have specific recommendations for how to address the financial loss that your testimony suggests may be present? Isn't the amount of loss given what you just said in the control of Reclamation because it's dependent on the rate that Reclamation pays the District for water in the future?

Mr. PAYNE. We're currently in negotiations on the terms and conditions with the Fort Sumner Irrigation District to work all that out to see if we can come with—so we can get to the point where we see that it's favorable financially for the United States.

Senator SHAHEEN. S. 1225 authorizes Reclamation to transfer title once NEPA and all other necessary conditions have been met.

Mr. PAYNE. Correct.

Senator SHAHEEN. So the bill is subject to an agreement governing the transfer process that Reclamation has already negotiated with the District; correct?

Mr. PAYNE. Yes.

Senator SHAHEEN. So under those circumstances, aren't Reclamation's process concerns addressed, and why is it not appropriate to go ahead and move forward with this bill?

Mr. PAYNE. We still feel that the negotiations of the terms and conditions, that the results of those negotiations need to be embedded in the bill so everybody understands what the concerns are and what all the parties' responsibilities are. That's really where we're coming from.

Senator SHAHEEN. But given that it took 2 years for Reclamation to move forward with the title transfer, can you assure the District that Reclamation will continue to move this process forward?

Mr. PAYNE. Yes. We're very committed. We've talked to the region as well as the area office. I think in the past we did have some turnover there, and we are working very diligently to get this done. We're very supportive, and we're willing to help them get through the Section 10 process and so forth. So we do definitely want to help get this moving along.

Senator SHAHEEN. OK. Thank you.

Senator Lee?

Senator LEE. Thank you. I've got a couple of technical lingering questions just related to the funding mechanism contemplated in S. 1224. But because those get fairly far into the weeds, if it's OK, I may just submit one or 2 of those questions in writing and we'll deal with it that way.

Mr. PAYNE. I appreciate that.

Senator LEE. Thank you very much.

Senator SHAHEEN. Thank you, Senator.

I have only a couple of questions for Mr. Katz and Mr. Barlow.

Mr. Katz, your testimony indicates that FERC does not oppose S. 715 even though the legislation would violate the previously held position that FERC does not support extensions of time to develop hydroelectric projects for more than 10 years after the date of the original license. Does this mean that there's been a shift in FERC's position on these matters, or do the particular circumstances in this case warrant some kind of a special consideration?

Mr. KATZ. Senator Shaheen, there has not been a shift in the Chairman's position from that he's previously taken or the other chairmen of the agency, as I understand it. The circumstances which I discussed take this essentially outside this policy and make it a different type of case as far as Commission staff is concerned.

Senator SHAHEEN. Great. Similarly, this bill would substitute a new licensee for the previous licensee. Is that standard practice for

FERC to support that outcome, or again, is this part of the unique circumstances in this case?

Mr. KATZ. It's a relatively unusual circumstance. Typically when there are reinstatement bills, the project is reinstated to the original licensee. But under the circumstances of this case, the Commission does not—or the Chairman has authorized me to say that he does not oppose this legislation.

Senator SHAHEEN. OK. How did the timeline specified in the bill compare to the timelines that FERC would ordinarily follow for processing an application?

Mr. KATZ. The timelines are fairly consistent with what Commission staff thinks can be done. As I said in my testimony, I do add one caveat, which is that Commission staff will need to gather more information. It may need to look to the town—forgive me for elevating you to a city—the Town of Canton for that information, and it's also conceivable that issues would arise involving the Fish and Wildlife, either Federal or state agency, that might take more time to resolve. But absent that sort of thing occurring, Commission staff feels that those timelines are reasonable.

Senator SHAHEEN. Great. Has FERC received any notice from the prior licensee, Summit Hydro, regarding the current efforts to redevelop the hydropower at the location?

Mr. KATZ. I don't believe so. I think there were times earlier on, years ago, when Summit Hydro may have opposed that, but I checked the record before I came here and I don't think there's anything within the last few years in that regard.

Senator SHAHEEN. Good. Would the Collinsville Project be eligible for small hydropower exemptions because the power generated at those sites will be less than 5 megawatts?

Mr. KATZ. I believe that's the case, but there are other qualifications that apply that I'm not certain of. But, yes, I believe they would qualify for that exemption.

Senator SHAHEEN. OK. Perhaps, Mr. Barlow, you could answer that question.

Mr. BARLOW. If I could, Senator. I'd like to refer to an order granting re-hearing issued May 19, 2011. It was for a project in Troy, Vermont. The project number is 13381-002. In part, the license was reestablished after the hearing, but in the finding number 11 of the FERC hearing commissioners, they said "Therefore, on a prospective basis, we conclude that projects where the power house is located no further than 500 feet from the project dam." In this case, it was a dam in a pen stock, and the power house was not actually sitting on the dam.

What they said is, "Therefore, on a prospective basis, we conclude the projects where the power house is located no further than 500 feet from the project dam which derive a significant portion of head from the dam will qualify for a 5-megawatt exemption." In the case of the Lower Collinsville Dam, we're 650 feet distance between the power house and the dam. So I would offer that based on this recent decision, that we probably would not qualify for an exemption.

Mr. KATZ. Senator, if I might just add—

Senator SHAHEEN. Yes, go ahead.



Mr. KATZ. What the Commission has previously said is that where a project is small and non-controversial, there really is not much, if any, additional requirement or burden placed on an entity to get a regular license, as opposed to a 5-megawatt exemption license. So we would hope that we could work with the town if indeed the licenses are reinstated to make the process as painless and inexpensive as possible.

Senator SHAHEEN. I'm sure the town will appreciate that.

Mr. BARLOW. We do.

Senator SHAHEEN. It sounds like this is a project that will be very beneficial to the Town of Canton, and that you have been successful so far at least in working with FERC to move this application forward.

Mr. BARLOW. If I might add, in response to their comments about needing further information on environmental assessments, we have received a grant from the State of Connecticut Department of Environmental Protection for \$100,000 to do a management study of the upper impoundment, which is the most significant one, and the results of that will be coming out within the fall. So that will provide information on both the aquatic community, the resources there, and the recreational issues that could be of help in their study.

Senator SHAHEEN. Great. A final question. Has the town heard from the previous license holder, Summit?

Mr. BARLOW. There has been protracted discussions over a period of time, nothing recently. They initially wanted us to support them in a re-license and then purchase the rights from them. We have gone out to bid to have a preliminary feasibility study done. They had an opportunity to use the expertise they had developed over their application submission and to have put a proposal in for those consulting services. They chose not to do that. So we think that they have had an opportunity to participate, and they haven't.

Senator SHAHEEN. OK. Thank you.

Senator Lee, do you have other questions?

Senator LEE. Nothing further. Thank you.

Senator SHAHEEN. I have no other questions. If there's no further testimony, Mr. Payne, we appreciate your marathon responses on all of those pieces of legislation and thank all of the witnesses who are here this afternoon.

The testimony and written submissions from today's witnesses will be part of the official hearing record, and we'll keep the record open for a period of 2 weeks to receive additional statements. So, Mr. Payne, you'll have lots of time to respond to those questions.

For the information of the senators and their staffs, questions for the record are due by close of business tomorrow.

So, with that, the hearing is adjourned.

[Whereupon, at 3:32 p.m., the hearing was adjourned.]



## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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RESPONSES OF GRAYFORD F. PAYNE TO QUESTIONS FROM SENATOR SHAHEEN

S. 997

*Question 1.* Would Reclamation be supportive of a contract extension for longer than four years if the Court process ends up extending beyond 2013? If not, why not?

Answer. Yes, Reclamation would be supportive of a contract extension for longer than four years if the Court process extends beyond 2013. Reclamation has committed to continue to negotiate the renewal of the 1958 contract with East Bench Irrigation District and supports a contract extension until the Court decree is issued. Legislation or the Montana Court decree are necessary in order to ensure that the contract remains valid.

S. 1033

*Question 1.* What is the status of Reclamation's review of the Title XVI program funding backlog? Have you determined which authorized projects will not be going forward? Which projects have not yet met the feasibility requirements?

Answer. The survey of sponsors of authorized Title XVI projects was developed during the fall of 2010 and conducted in the spring of 2011 to avoid conflict with deadlines for submission of FY 2011 funding applications. Responses from most sponsors were received in April 2011. Reclamation continues to work with some project sponsors to clarify responses where necessary. However, at this point we believe that nine of the 53 authorized Title XVI projects have no plans requiring funding in FY 2011, FY 2012, or FY 2013 and can be said to be "inactive" at this time. These are:

- Central Valley Water Recycling Project, Utah;
- City of West Jordan Water Reuse Project, Utah;
- Kalaeloa Seawater Desalination Project, Hawaii;
- Lahaina Wastewater Reclamation Facility, Hawaii;
- Lakehaven Water Reclamation and Reuse Project, Washington;
- Las Vegas Area Shallow Aquifer Desalination Project, Nevada;
- San Joaquin Area Water Recycling and Reuse Project, California;
- Truckee Watershed Reclamation Project, Nevada; and
- Willow Lake Natural Treatment System Project, Oregon.

None of the projects listed above has yet met Title XVI feasibility study requirements, although the Las Vegas Area Shallow Aquifer Desalination Project is a demonstration project not subject to Title XVI feasibility study requirements. In addition, the sponsor of one other project, the Cucamonga Valley Water Recycling Project in California, has met Title XVI feasibility study requirements but we understand does not plan to move forward with its project as currently authorized and plans to seek authorization for a revised project instead.

In addition to the projects listed above, three authorized projects expected to move forward in the next few years have not yet met Title XVI feasibility study requirements:

- City of Pasadena, California;
- Kealahou Water Recycling Project, Hawaii; and
- Phoenix Metropolitan Water Reuse Project, Arizona.

One other authorized Title XVI project, the Southern California Desert Region Integrated Water and Economic Sustainability Plan, has met Title XVI feasibility study requirements for a portion of the project but will likely include additional feasibility studies in the future.

S. 1047

*Question 1.* Does Reclamation support moving forward with this bill as introduced or are there specific changes Reclamation is recommending?

Answer. Reclamation and the Department support the revisions made to the bill and affirmed this in written testimony, citing the sponsor's adoption of language to address previous concerns related to reimbursement and liability. We understand the objective of this language is to affirm existing discretionary authority to improve the Reclamation-owned treatment plant at Leadville, as well as broaden authority to enter reimbursement agreements with other entities for further improvements to the tunnel or treatment plant upon mutual agreement on funding responsibility.

S. 1224

*Question 1.* Although Section 9107 of the 2009 Omnibus Public Lands Management Act extended the deadlines for several sections of the legislation authorizing the Bureau of Reclamation to fund programs to implement the Upper Colorado and San Juan Endangered Fish Recovery Programs, that legislation did not extend the authority to utilize power revenues for "base funding" activities. Does Reclamation have sufficient authorization to continue those activities after 2011 or is additional authorization beyond 2011 necessary?

Answer. Reclamation believes there is sufficient legal authority to use appropriated dollars for base funding activities of the Programs. Enactment of S. 1224 would provide a more explicit statutory authority in this area but does not include an annual indexed ceiling as is currently the case with P.L. 106-392.

S. 1225

*Question 1.* Your testimony indicates the bill may result in a financial loss to the Treasury. Please describe the basis for that opinion. Does Reclamation foresee a way to structure an agreement with the District so that the Treasury remains whole?

Answer. Yes. Section 5 of the bill terminates repayment revenues being collected by Reclamation for repayment of the Fort Sumner Reclamation Project, and Section 6(a) terminates a portion of the funding being paid by Reclamation to the Fort Sumner Irrigation District (FSID) for the purchase of water for endangered species habitat. The bill does not terminate the Forbearance Agreement nor the obligation of the United States therein to continue to purchase water for mitigation of the environmental impacts of FSID's diversions through 2019. Since the repayment stream for the Fort Sumner project is greater than the funding from Reclamation to the FSID for water, Reclamation identified a potential financial loss to the Treasury under Sections 5 and 6 of the bill. Through negotiations underway with the FSID, Reclamation is working to formalize a Memorandum of Agreement in order to determine responsibility for mitigation of FSID's diversions, and thereby prevent any financial loss to the Treasury under the bill. Recognition of a resolution of this could be included in an explicit amendment to the bill.

*Question 2.* How does the potential need to acquire water to meet Endangered Species Act requirements impact the repayment obligations associated with the Fort Sumner Project?

Answer. The need to acquire water to meet the Endangered Species Act (ESA) does not have any direct relationship with the repayment obligations associated with the Fort Sumner Project. It is only through the title transfer legislation that these processes have become linked.

#### RESPONSES OF GRAYFORD F. PAYNE TO QUESTIONS FROM SENATOR LEE

S. 500

*Question 1.* Has there been a title transfer of a reclamation facility done administratively?

Answer. No. Pursuant to the Reclamation Act of 1902, the Bureau of Reclamation has no general authority which would permit the transfer of title to Reclamation facilities through an administrative procedure. As a result, unless specifically authorized, no title transfers can be completed without a specific Act of Congress. However, in order to complete the title transfers in a timely and efficient manner, Reclamation has developed an administrative process to negotiate the terms and

conditions of each title transfer at the local level, taking into consideration the local concerns and issues that are relevant. Once Reclamation and the transferee reach an agreement under the administrative process, both parties work with Congress to enact the necessary legislation to effectuate the agreement. The purpose of this process, which was originally developed in 1995, and then updated in 2006 as part of Reclamation's Managing for Excellence effort, is to efficiently and collaboratively facilitate title transfers in a consistent and comprehensive way. This process, as articulated in the Framework for the Transfer of Title, is structured such that interested non-Federal entities may work with and through Reclamation to identify and address all of the issues that will enable the title transfer to move forward in an open and transparent manner. One of the important ways to ensure that all of the issues and local concerns are addressed is through completion of the process required under the National Environmental Policy Act (NEPA). This ensures that the public has an opportunity to have their views heard and addressed, which can limit unanticipated obstacles when the legislative process begins.

*Question 2.* Please describe the number of transfers that have occurred, both administratively, and directed congressionally. In addition, please identify the transferred projects that included language that the Secretary shall convey the project to the interested parties.

*Answer.* Bureau of Reclamation has transferred title to 27 projects or parts of projects across the west pursuant to various Acts of Congress. Of those 27 projects, 15 included language that required the Secretary to convey the project pursuant to the conditions of the legislation. It is important to note, however, that in many of those transfers which were completed between about 1997 and 2004, which included the language "shall convey" in the legislation, the public processes required under NEPA were completed and the terms and conditions were publicly negotiated prior to the legislation being enacted. Consequently, the underlying concern that was raised in my testimony on S. 500—that the public be given the opportunity to raise and have concerns addressed prior to enactment—was addressed in those situations. As an aside, this concern was raised in testimony by the Department of the Interior for those bills at that time and the issues were addressed successfully.

*Question 3.* Does the Bureau of Reclamation anticipate any change of use in the transferred facilities described in the bill?

*Answer.* No, as far as we understand, Reclamation does not anticipate any change of use in the transferred facilities described in this bill. Because the District has been operating and maintaining the Distribution System for several years, the public will witness a change in ownership but should not experience any change in operation. The Act will eliminate uncertainty about ownership and obligations associated with the Distribution System—which will likely lead to more efficient and effective operation of the Distribution System.

S. 802

*Question 1.* Would implementing this bill cost any money? Would the bill result in any additional water supply?

*Answer.* Enactment of S. 802 would not result in any cost to the Federal government. All costs associated with importation of non-project water into Lake Thunderbird would be borne by the Central Oklahoma Master Conservancy District and its member cities.

Implementation of S. 802 would allow the Central Oklahoma Master Conservancy District to store non-project water in Lake Thunderbird as a means to fulfill its existing contractual M&I water deliveries to project beneficiaries during periods of severe drought. The existing water supply contract quantities were based on Reclamation's May 1961 Definite Plan Report (DPR) which assumed integration of groundwater production with the operation of the Norman Project. Conditions have changed, including lower Environmental Protection Agency (EPA) standards for acceptable Arsenic levels, and supplemental groundwater supplies which were expected to be available during periods of severe drought appearing to no longer be adequate. Implementation of this legislation could provide a means for the District to continue to fulfill its contractual water deliveries through severe drought periods.

S. 997

*Question 1.* Is there a legislative precedent for extending this contract? If so, how many times has it been extended legislatively?

*Answer.* Yes, this contract was extended through two prior appropriations bills: Public Law 108-447 in the 108th Congress and Public Law 110-161 in the 110th Congress.

*Question 2.* Would a delay in extending the contract cause any short or long-term problems? If so, please describe them.

Answer. Yes, a delay in extending the contract could result in the contract expiring and the East Bench Irrigation District losing the legal right to renew granted to them in the 1958 Contract.

S. 1033

*Question 1.* Beyond the certification of the feasibility study, where in the process is the city and the BOR for determining Federal environmental compliance actions, water contracts, determination of the project sponsor's financial capability and so on?

Answer. Reclamation has completed the Federal environmental compliance actions required under NEPA and Endangered Species Act, which were necessary prior to a Reclamation Title XVI action (i.e., discharge of City of Hermiston's reclaimed water into the West Extension Main Canal). Reclamation's Columbia-Cascades Area Office and Umatilla Field Office staff are continuing to work through implementation issues associated with:

- a. construction, operations, and maintenance of the City's pipeline and associated facilities which will be located on Reclamation owned fee title land, (a Reclamation license has been agreed to and is currently being signed by all parties); and
- b. the City's discharge of reclaimed water into Reclamation's West Extension Main Canal (a Reclamation permit to discharge recycled water into the canal is currently in draft and being discussed among the parties).

Reclamation staff continues to work with the City to finalize the permit to discharge reclaimed water into the West Extension Main Canal. According to a letter from the Oregon Department of Environmental Quality to the City dated June 29, 2011, the issue of the City discharging Class A water into the canal was resolved, which appears to clear up the remaining issue with the permit language.

Reclamation made a favorable determination on the City's financial capability to meet the non-Federal portion of the project on August 17, 2011. All necessary financial information has been provided by the City and is being reviewed by Reclamation.

*Question 2.* What is the status of the survey of authorized Title XVI projects that the BOR requested from project sponsors last fall?

Answer. The survey of sponsors of authorized Title XVI projects was conducted in the spring of 2011, after deadlines for submission of FY 2011 funding applications. Responses from most sponsors were received in April 2011. Reclamation continues to work with some project sponsors to clarify responses where necessary. However, at this point we believe that enough information has been gathered to determine the general status of each of the 53 authorized Title XVI projects as explained above.

*Question 3.* Did you survey all Title XVI projects, or just those that have not received funding?

Answer. Reclamation gathered information about all 53 authorized Title XVI projects. A small number of projects for which Reclamation already had current information were excluded from the survey.

*Question 4.* What were the results of the survey?

Answer. As a result of survey responses, at this point we believe that nine of the 53 authorized Title XVI projects have no plans requiring funding in FY 2011, FY 2012, or FY 2013 and can be said to be "inactive" at this time. In addition, the sponsor of one other project, the Cucamonga Valley Water Recycling Project in California, does not plan to move forward with its project as currently authorized and plans to seek authorization for a revised project instead. Twenty-five authorized Title XVI projects are either currently under construction or are expected to seek additional funding in FY 2012 or FY 2013. Finally, 18 authorized projects have now received their full amount of Federal funding.

*Question 5.* Specifically, how many projects are no longer feasible or are no longer seeking funding?

Answer. As set forth above, nine of the 53 authorized Title XVI projects have no plans requiring funding in FY 2011, FY 2012, or FY 2013 and can be said to be "inactive" at this time and one other does not plan to move forward with its project as currently authorized and plans to seek authorization for a revised project instead.

*Question 6.* How many remain "active" (and how do you define active)?

Answer. Twenty-five authorized Title XVI projects are either currently under construction or are expected to seek additional funding in FY 2012 or FY 2013. Those projects could be said to be “active” on that basis.

*Question 7.* How many would you consider to be “inactive” or perhaps no longer viable?

Answer. See Response to Question No. 5, above.

*Question 8.* What will be the agency’s strategy if it does not get the lump sum funding for Title XVI project funding, as depicted in the FY2012 Budget?

Answer. In FY 2012, Reclamation is requesting \$23.4 million in funding to be awarded via a competitive funding opportunity, and \$5.4 million in funding for six specific Title XVI projects identified for funding previously. Reclamation’s process to identify projects for FY 2012 funding will be similar to the process used in FY 2011, including the use of criteria developed in 2010, and awards will be subject to FY 2012 Congressional appropriations. If competitive funding is not included in final appropriations, Reclamation will move forward with modifications to financial assistance agreements to allocate any funding provided for the six projects listed in the budget request.

*Question 9.* How long might project sponsors expect to wait for project funding under the proposed new system?

Answer. The obligation and expenditure of any appropriations to Title XVI project sponsors—whether identified through a funding opportunity or included specifically as part of appropriations—requires a valid financial assistance agreement between Reclamation and the project sponsor, as well as the submittal of reimbursement forms by the project sponsors, before funding can be released. In FY 2011, projects identified for award through Reclamation’s funding opportunity were selected in May, once appropriations were available. Reclamation expects to obligate funding for each identified project by the end of FY 2011—or about four months after the selection of each project.

*Question 10.* What has been the experience in using the funding criteria thus far?

Answer. Projects identified for the award of FY 2011 appropriations through Reclamation’s funding opportunity were announced by Reclamation on May 23, 2011, once appropriations were made available. Eight projects were selected for construction and will together leverage \$11.3 million in Federal funds to complete a total of \$99 million in construction activities. The use of a funding opportunity afforded project sponsors a chance to communicate to Reclamation the expected benefits of each project—how each project can be expected to contribute to water supply sustainability, benefits to the environment and water quality, and any contributions to increased energy efficiency in the delivery of water, among others. We believe the process has been successful at allowing Reclamation to prioritize the projects that most closely match program goals for funding through a process that is transparent to all potential applicants and the public.

*Question 11.* Reclamation has stated that its “efficiency” performance measure goal for the Title XVI program is to reduce the average annual Federal cost per acre-foot for Title XVI water from approximately \$1,873 a/f (FY2012 cost) to \$1,200 per acre foot (by 2016). Given construction inflation costs and other limitations, is an increase of this magnitude a realistic goal? What are the assumptions underpinning this estimate and how does Reclamation plan to achieve it?

Answer. Reclamation calculates the referenced performance measure goal by estimating the amount of water expected to be delivered by all Title XVI projects in a given year and also estimating the cumulative amount of Federal funding expected to be provided to all projects by that point in time (i.e., program funding since 1992). Many projects have received significant Federal funding but are under construction and do not yet contribute water deliveries toward the goal. As those additional Title XVI projects are completed, the total annual acre-feet of reclaimed water through the program is projected to increase—from 313,152 acre-feet of deliveries in 2012 to 529,429 acre-feet of deliveries in 2016. In other words, the average total Federal cost per acre-foot today includes a significant amount of funding that will not result in water deliveries for several years. We anticipate that once those deliveries are included in the calculation, the average cost per acre-foot of reclaimed water will be lower than the current figure.

S. 1047

*Question 1.* Please describe the work that the BOR has conducted, as it relates to the safety of the Leadville tunnel. Do you believe it is the obligation of the Bureau of Reclamation to be the lead Federal agency?

Answer. Beginning in 2007, Reclamation began a Risk Assessment of the Leadville Mine Drainage Tunnel (LMDT) in response to concerns in the community

about perceived dangers posed by water blockages inside the tunnel. The assessment's purpose was to evaluate the stability and assess the risk associated with the LMDT. When initial findings were available, they were independently peer reviewed. The Risk Assessment utilized a similar process to the one Reclamation uses to assess risk at its dams, a model that is an international standard for conducting risk assessments. The independent peer review confirmed Reclamation's analysis that it is highly unlikely that a sudden release of water could occur from either a blockage in the LMDT, or through the bulkheads installed in the tunnel. Moreover, the assessment concluded that even if an existing natural blockage in the upper part of the LMDT failed rapidly, a sudden release of water through the lower blockage and bulkheads is unlikely. When the Risk Assessment was published in the early Fall of 2008, it was posted on the Internet and distributed to the media. Reclamation conducted three public meetings and sought public comment on the findings. We remain confident in the value of the Risk Assessment and the validity of its findings. As the owner of the LMDT, Reclamation is the lead Federal agency for the specific facility.

*Question 2.* If additional work is needed, do you believe the BOR should be the lead agency, as it relates to any public safety and environmental issues that may arise?

Answer. Insofar as the LMDT and the water treatment plant are Reclamation facilities, the Department agrees that Reclamation is the lead Federal agency for any public safety or environmental issues that may arise that are unique to those facilities.

*Question 3.* If not, who should be the lead Federal agency, as it relates to the operations of the tunnel, and any costs associated with additional mitigation, if necessary.

Answer. As stated above, insofar as the LMDT and the water treatment plant are Reclamation facilities, the Department agrees that Reclamation is the lead Federal agency for any public safety or environmental issues that may arise that are unique to those facilities. If additional improvements to the LMDT or expansion of the treatment plant are recommended by other beneficiaries or by agencies involved at Leadville, Reclamation supports the language in S. 1047 providing the Secretary with the authority to enter into negotiations with those entities for voluntary cost sharing agreements for those improvements.

*Question 4.* Please describe the role that the BOR has played at other superfund sites, in addressing water related issues. Is this a core mission of the BOR?

Answer. Reclamation is not active at other superfund sites, and remediation of environmental contamination is not a core mission of Reclamation as defined by the Reclamation Act of 1902 and subsequent authorities.

*Question 5.* Does Reclamation have any intention of walking away from the project?

Answer. No. Reclamation maintains title to the LMDT and treatment plant, and requests annual appropriations for operation of the plant. As provided in Public Law 102-575, Reclamation is responsible for the operation and maintenance of the treatment plant, and is also committed to ensuring that waters discharged from the treatment plant do not violate Federal and state law.

*Question 6.* Is the Leadville Treatment plant going to be part of your budget in the foreseeable future? If yes, to what extent?

Answer. Yes. As stated above, pursuant to Public Law 102-575 Reclamation is responsible for the operation and maintenance of the treatment plant, and is also committed to ensuring that waters discharged from the treatment plant do not violate Federal and state laws and regulation. The FY 2012 request for operation and maintenance at the LMDT was \$4,652,000.

#### S. 1224

*Question 1.* Please describe the potential effect on overall Federal budgetary resources if this bill is authorized.

Answer. S. 1224 authorizes the Program to use appropriated dollars and allows the current express authority for the use of Colorado River Storage Project hydro-power revenues under Section 3(d) of Public Law 106-392 to expire. This could increase pressure on Reclamation's existing budget. The use of appropriated dollars is within existing authorities. If S. 1224 were to be enacted, funding for these programs would have to compete with other Reclamation priorities and programs.

*Question 2.* If the program is not extended, or if extended, not fully funded by the Bureau of Reclamation, what would be the likely impact on water users within the basin?



Answer. As stated in testimony, Program actions provide Endangered Species Act compliance for more than 2,100 Federal, tribal, and non-Federal water projects depleting more than 3.7 million acre-feet of water per year in the Colorado and San Juan rivers and their tributaries. Without the Program's activities, reinitiation of ESA Section 7 consultations may be required by Federal agencies, resulting in an assortment of potential new recommendations for water users obliged to comply with reasonable and prudent alternatives in existing and potentially updated biological opinions. Given Reclamation's extensive water supply, conservation, and mitigation activities, this program would have to compete with other Reclamation priorities for funding in this environment.

*Question 3.* Does the Administration support recovery through reliance on hydro reoperations that impact the generation of clean, renewable hydropower?

Answer. Yes. The Administration supports the continued use of power revenues to support the Recovery Programs. Under the Upper Colorado and San Juan Recovery Programs Reclamation works with the FWS, WAPA and power consumers to minimize impacts to hydropower generation while achieving flow regimes which are compatible with endangered species recovery. Flow regimes are one component of a comprehensive overall strategy to achieve recovery.

*Question 4.* What is the current timetable and outlook for recovery of these species in the Upper Colorado and San Juan Basins?

Answer. The table that follows outlines the downlisting and recovery of species in the Upper Colorado and San Juan Basins. These estimates are based on the best scientific information available and we believe the goals are achievable.

Species	Downlist	Delist
Colorado Pike Minnow	2013	2020
Humpback Chub	2016	2019
Razorback Sucker	2020	2023
Bonytail Chub	2020	2023

*Question 5.* How will you know when recovery has taken place?

Answer. The Recovery Goals for the species specify the population demographic criteria that must be met along with the threats to the species and their habitat that must be addressed. The Programs are conducting monitoring activities to determine when these criteria are met.

*Question 6.* Since the program began, have your goals changed on what you would determine recovery to be?

Answer. For the most part the demographic criteria and species threats specified in the Recovery Goals have remained essentially constant although they are reviewed and updated on a periodic basis.

*Question 7.* Does the Administration have this funding request included in its current budget request? (If not, what would be the implications to the Program beginning in October 1, 2011?)

Answer. Reclamation does not have funding included in the appropriations budget request but does have the funding included as part of the Revenues budget submission in FY2012 and beyond as a placeholder in the event that continued funding occurs through power revenues. If these Programs are not funded there is a potential for re-opening existing Biological Opinions and loss of Satisfactory Sufficient Progress Determinations by FWS.

#### RESPONSES OF GRAYFORD F. PAYNE TO QUESTIONS FROM SENATOR WYDEN

S. 1033

*Question 1.* Mr. Payne, your written testimony today is that the Bureau recognizes the importance of water re-use projects like the Hermiston project. Your testimony also states that the Bureau agrees that the Hermiston project meets all of the requirements of Title XVI. However, you stated today that the Bureau does not support S. 1033 because there are already 53 authorized projects and you don't want any additional projects competing for funding with those already authorized projects. You seem to take this position regardless of whether the additional projects are more meritorious or even if the existing projects are feasible. It is my understanding that a number of the 53 authorized projects have not, in fact, completed the feasibility review and determination that the Hermiston project has completed. Is that correct? If so, please provide a list of all of the previously authorized projects

that have not yet completed a feasibility study and been determined to qualify for Title XVI. For each of those projects, also provide the total estimated cost of the project and the share that would be funded by the Bureau under Title XVI.

Answer. It is correct that a number of authorized Title XVI projects have not yet met Title XVI feasibility study requirements. Because total estimated cost is not available for many projects that have not yet completed feasibility studies, the share subject to Federal funding through the Title XVI program can be recorded as the maximum authorized cost share under P.L. 102-575. The following is a summary of projects that have not yet met Title XVI feasibility study requirements:

- Central Valley Water Recycling Project, Utah (\$20 million Federal cost share);
- City of West Jordan Water Reuse Project, Utah (\$20 million Federal cost share);
- Kalaeloa Seawater Desalination Project, Hawaii (\$20 million Federal cost share);
- Lahaina Wastewater Reclamation Facility, Hawaii (\$20 million Federal cost share);
- Lakehaven Water Reclamation and Reuse Project, Washington (\$20 million Federal cost share);
- Las Vegas Area Shallow Aquifer Desalination Project, Nevada (\$20 million Federal cost share);
- San Joaquin Area Water Recycling and Reuse Project, California (\$20 million Federal cost share);
- Truckee Watershed Reclamation Project, Nevada (\$20 million Federal cost share);
- Willow Lake Natural Treatment System Project, Oregon (\$20 million Federal cost share);
- City of Pasadena, California (\$50 million estimated project cost; \$12.5 million Federal cost share);
- Kealahou Water Recycling Project, Hawaii (\$18 million estimated project cost; \$4.5 million anticipated Federal cost share); and
- Phoenix Metropolitan Water Reuse Project, Arizona (\$20 million Federal cost share).

One other authorized project, the Southern California Desert Region Integrated Water and Economic Sustainability Plan, has met Title XVI feasibility study requirements that cover a portion of the project but will likely include additional feasibility studies in the future. That project has an estimated cost of \$95 million, including a \$20 million Federal cost share.

*Question 2.* I understand that resources are scarce, but from a management perspective what would be wrong with the Bureau prioritizing the Title XVI projects based on their merits? Why should a project that's already been shown to be feasible be excluded because others simply got to front the line before they did?

Answer. The Title XVI program is part of the Department's efforts through WaterSMART to secure and stretch water supplies for use by existing and future generations. Reclamation has, in fact, recently established a process to prioritize authorized Title XVI projects for funding. In 2010, Reclamation developed funding criteria to identify projects that most effectively stretch water supplies and contribute to water supply sustainability; address water quality concerns or benefit endangered species; incorporate the use of renewable energy or address energy efficiency; deliver water at a reasonable cost relative to other water supply options; and that meet other important program goals. In FY 2011, Reclamation incorporated those criteria into a funding opportunity announcement and invited eligible project sponsors to apply for funding. Proposals were then evaluated against those criteria to identify project phases for funding. Eligibility was limited to authorized projects that had either completed an approved feasibility study or submitted a feasibility study for review by the application deadline. Reclamation will not provide construction funding for any Title XVI project unless a feasibility study has been approved for that project. Reclamation plans to allocate Title XVI Commissioner's Office funding through a similar process in FY 2012.

#### RESPONSES OF GRAYFORD F. PAYNE TO QUESTIONS FROM SENATOR UDALL

S. 1047

*Question 1.* In your testimony on S.1047, the Leadville Mine Drainage Tunnel Act of 2011, you stated that "the Department interprets section 3 to affirm existing discretionary authority to improve or expand the treatment plant as well as to allow the Secretary to enter into reimbursement agreements with other entities with respect to the treatment plant." Please expand upon what authority the Department

believes it has with respect to performing alterations to the treatment plant, including expansion of the treatment plant. Also, please expand upon what authority the Department believes the Secretary has to enter into reimbursement agreements for services at the treatment plant and performing alterations to the treatment plant.

Answer. The Department relies primarily on the language found in Title VII of Public Law 102-575 as authority for its activities at Leadville. Those authorities relate to design, construction, operations and maintenance of the treatment plant and the rehabilitated portion of the LMDT, up to the engineered bulkhead installed at Station 4 +66 (466 feet up tunnel from the portal).

Section 705 directs that the treatment plant "shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel." However, we do not interpret that language to explicitly preclude the plant from treating surface waters diverted into the LMDT by U.S. EPA, as is done via the Marian Shaft using an existing reimbursement agreement with U.S. EPA.

Finally, with respect to cost sharing authorities, the Economy Act (31 USC 1535) and existing Public Law 102-575 Section 708(c) provide authority to the Secretary for reimbursement or cost-sharing agreements. However, the existing statutory language in P.L. 102-575 is not as broad as the two new authorities found in Sections 3 and 4 of S. 1047. The Department interprets Section 3 of S. 1047 as authorizing cost-sharing agreements for an increase in any operation, maintenance, replacement, capital improvement, or cost that is necessary as a result of the expansion of the existing treatment plant due to an agreement "with any other entity or government agency". These other entities could be the state of Colorado, a municipal subdivision or county, or other entity. Separately, the Department interprets Section 4 of S. 1047 as authorizing cost sharing agreements with U.S. EPA or other entity or government agency, that are conditioned upon the EPA's issuing a new or amended Record of Decision for Operable Unit 6 of the California Gulch Superfund site for the improvement or expansion that would be undertaken with the funding. Because of its use of the term "agreement," and by conditioning the transmittal of any funding on specific recommendations from the funding entity, the Department interprets S. 1047's language as preserving the discretion of any and all participating entities.

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#### RESPONSES OF JOHN KATZ TO QUESTIONS FROM SENATOR SHAHEEN

##### ON S. 715

Your testimony indicates that FERC does not oppose S. 715 even though the legislation would violate the previously held position that FERC does not support extensions of time to develop hydropower projects for more than 10 years after the date of the original license.

*Question 1a.* Has there been a shift in FERC's position on these matters, or do the particular circumstances in this case warrant some kind of special consideration?

Answer. I do not believe that there has been any shift in Chairman Wellinghoff's position regarding extension bills. As I testified, the factors that have caused concern to Chairman Wellinghoff and previous chairmen have been whether an extension involves site banking, whether there is a negative impact on competition in hydropower development, and whether the environmental record for the project in question is stale. These concerns do not arise with respect to the Collinsville projects because (1) the project is not being held by the prior licensee, but rather is being transferred to another entity which has not previously had the chance to develop the project, (2) in the time since the project license was terminated, the Commission is not aware of other entities beside the Town of Canton seeking to develop the project site, and (3) the bill requires the Commission to complete an environmental assessment updating the environmental record to the extent necessary.

*Question 1b.* Similarly, this bill would substitute a new licensee for the previous licensee. Is it a standard practice for FERC to support that outcome?

Answer. To my knowledge, because a legislative substitution of one licensee for another is so rare, the Commission does not have a standard practice with respect to taking a position on such legislation. I am only aware of one previous instance, Section 315 of P.L. 107-137, involving the Stuyvesant Falls Project No. 2696, in which Congress required such an outcome. I do not believe that then-Chairman Wood expressed support for that legislation.

*Question 1c.* How do the deadlines specified in this bill compare to the timeframes that FERC would ordinarily follow for processing an application? Would moving forward with this bill save the Town any time?

Answer. S. 715 would require the Commission to reinstate and transfer the licenses for the Collinsville Project within 270 days of the date of enactment. The timeframes that the Commission requires to process a filed application vary widely, depending on the complexity of the case, whether it is contested, and how much time federal and state resource agencies take to issue any necessary conditions and approvals. The 270-day deadline established in the bill is consistent with the timeframes for a case that is not complex, not contested, and does not involve significant time for agency action. Moving forward with the bill might save the town time compared with filing a new application, again dependent on the factors I have mentioned, particularly the amount of time it would take resources agencies to act with regard to a new application.

*Question 2.* What notice has FERC received from the prior licensee, Summit Hydro, LLC, regarding the current efforts to redevelop hydropower at this location?

Answer. To the best of my knowledge, Summit Hydro, LLC has not made any filing with the Commission in the last several years regarding the current efforts by the Town of Canton to redevelop the Collinsville Projects.

## APPENDIX II

### Additional Material Submitted for the Record

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STATEMENT OF ED BROOKSHIER, CITY MANAGER, CITY OF HERMISTON, OR,  
ON S. 1033

Madam Chairman Shaheen and Members of the Subcommittee, thank you for holding this hearing and allowing me to testify in support of S.1033 that will authorize the Bureau of Reclamation to participate in the construction of the City of Hermiston Water Recycling Project. My name is Ed Brookshier and I am the City Manager for the City of Hermiston, Oregon. I wish to publicly thank Senator Ron Wyden for introducing this important piece of legislation that is crucial to the City's reclamation and reuse of its municipal wastewater. This reclamation effort will provide high quality recycled water for reuse as a source of irrigation supply. The City's recycled water production is estimated to be 3,600 acre-feet annually, of which 1,800 Acre-feet will supply irrigation and 1,800 acre-feet will be discharged to the Umatilla River in winter. This new partial source of drought proof irrigation water will provide an added supply to the Bureau of Reclamation owned and locally operated West Extension Irrigation District (WEID).

The City is in the process of negotiating an easement license with the Bureau of Reclamation for the recycled water pipeline that will deliver the recycled water to the WEID Main Canal. This license allows the City to construct and operate the recycled water pipeline for a period of 25 years with the ability to extend the license based on mutual agreement of the Bureau of Reclamation and the City. The City is also in the process of negotiating the permit to discharge the recycled water to the irrigation canal. This permit will establish the water quality criteria and operating conditions for the recycled water discharge to the irrigation canal. The Bureau of Reclamation and the City are meeting to finalize this agreement in June 2011 and it is anticipated that the final permit will be signed in August 2011. A comprehensive feasibility study has been completed on the project and the Bureau of Reclamation has certified that it meets the requirements to be eligible for the Bureau's Title XVI Water Recycling Program.

Hermiston, Oregon is a progressive, growth-oriented urban center with a total trade area population of 320,900. Located in a relatively dry section of the state of Oregon, positioned between the Cascade Mountains to the west and the Blue Mountains to the East, Hermiston is placed in a unique geographical area that offers an extended growing season and a variety of agricultural crops and products. The immediate Hermiston area has been able to diversify its economy with food processing, cold storage and warehousing and distribution facilities.

The benefits of developing a high quality source of recycled water followed by its use as a source of irrigation are numerous and extend to: The West Extension Irrigation District, the City of Hermiston, The Confederated Tribes of the Umatilla Indian Reservation and the region as a whole.

The West Extension Irrigation District benefits from this project by obtaining an additional source of supply, which is both high in quality and drought proof. Since water is delivered to the District, energy required for pumping is also reduced by approximately \$13,000 annually. In addition, the 1,800 acre-feet of irrigation water provided annually will supply water to 600 acres, reducing the demand on the District's surface water supply sources. Finally, this added source of partial irrigation water improves the District's operational flexibility.

The City of Hermiston benefits primarily through meeting its upcoming National Pollutant Discharge Elimination System Permit (NPDES), which is currently being negotiated with the Oregon Department of Environmental Quality (ODEQ). The City has received support for this project at the highest levels of ODEQ and has been promised that the resources will be made available to complete the permitting process by early 2012. This permit requires the City to both develop high-quality recycled water and remove its discharge from the Umatilla River continuously from

April 1 to October 31 of each year. The West Extension Irrigation District provides the long term, multi-farm discharge option that allows the City to remove its discharge from the River during this period of each year. If the City is unable to discharge to the District it will be in continuous violation of current temperature standards and periodic violation of the ammonia standard contained within the City's NPDES Permit. Secondary benefits to the City include a reduction in energy cost from reduced pumping, estimated to be \$42,000 annually, and the certainty that this solution, though expensive, will provide service for decades to come.

The Confederated Tribes of the Umatilla Indian Reservation will also benefit from development of high-quality recycled water throughout the year. These benefits include a significant improvement in the quality of recycled water discharged to the Umatilla River in winter, further protection of sensitive salmonid habitat during summer when the recycled water is used for irrigation in lieu of River discharge, increased environmental monitoring at the recycled water treatment facility and the long-term nature of this solution.

The region as a whole also benefits from treatment that develops high-quality recycled water. This water source is protective of the environment in both summer and winter and provides an added source of irrigation supply to agriculture, which is the backbone of the Hermiston economy. The City is planning on beginning construction of the Recycled Water Plant in early 2012 to take advantage of a very competitive construction-bidding environment. This effort will have an immediate economic impact to our local economy as much needed jobs will be created through an infrastructure project of this size. More importantly, the addition of the new and reliable water source created by this project will have a profound long-term impact to the farming industry in our area, which faces an uncertain future due to dwindling water supplies.

Madam Chairman, while I understand and appreciate the strict budgetary limitations that your Committee and Congress as a whole are faced with, I believe that the Hermiston Recycled Water facility is a worthwhile federal investment due to the numerous federal objectives that will be advanced through this project. Combined with the serious regulatory issues the City of Hermiston is faced with and the need for added drought proof sources of recycled water in the Hermiston Area for irrigation, it is essential that we complete construction of this project in a timely manner. The City has secured the necessary local matching funds for this project and is prepared to contribute 75 percent of the total project cost. Federal participation in this endeavor is vital to ensure that this becomes a reality.

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STATEMENT OF RICHARD D. MOORE, MAYOR OF PAYSON CITY, PAYSON, UT

ON S. 500, S. 715, S. 802, S. 997, S. 1033, S. 1047, S. 1224, S. 1225

I appreciate the opportunity to submit this statement for the record in support of S. 500, the South Utah Valley Electric Conveyance Act. My name is Richard Moore and it is my privilege to serve as Mayor to the best little town in Utah, Payson City. Payson was incorporated as a city on January 21, 1853 and has a present day population of around 18,500 residents. Payson is one of the fastest growing communities in Utah.

I want to also thank Senator Orrin Hatch and Senator Mike Lee for introducing this important legislation. S. 500 would direct the Secretary of the Interior to convey and transfer title to those portions of the electrical distribution system that are owned by the United States, including the land on which those facilities are located. It will also provide license and use of shared power poles and access to lands where distribution facilities are located. SED's electrical distribution system overlaps land and system fixtures that are still owned by the United States. Consolidation of ownership and service will create an opportunity for savings that will eventually lower rates to all our customers and make the maintenance and expansion of the system more efficient.

Payson has historically been a farming community. Principal crops have been grass hay, which the pioneers found growing wild when they arrived, lucerne (alfalfa), and grains such as wheat, barley, oats, and corn; beets, potatoes, and onions and fruit such as apples and cherries. Cattle, sheep, and hogs are also raised in the area. Gradually we have attracted businesses and new industry. Over recent years, we have attracted manufacturing plants for motor homes, campers and trailers, and fiberglass boats. As the area grew and Payson needed to annex more land for homes and businesses, Payson has worked to find adequate water and electricity. Additional water will become available following the construction and Central Utah

Project Bonneville Unit, which promises to deliver new supplies of water to our area when the Utah Lake System of pipelines is completed.

Electrical customers in Payson City boundaries are generally served as retail customers of Payson Power and Light Department whose mission has been to serve the residents of Payson with safe, efficient and reliable power, at the most economical cost. We receive a portion of our power over SESD distribution lines. Recently, the Payson City Council approved an inter-local agreement to integrate our city power functions with SESD. This agreement will avoid a duplication of service in the area surrounding Payson city. We have found that if we don't work together it is detrimental to the growth of the community.

SESD serves the areas outside the South Utah County cities and delivers power to us for delivery inside our city boundaries. Payson has concluded that we need to consolidate all our electric distribution operations to avoid duplication of service and capitalize on inefficiency. S. 500 will be a tremendous help to accomplish this goal because it will consolidate the mish mash of ownership over miles of distribution lines throughout the south county. There are costs and inefficiencies resulting from this unconsolidated patchwork quilt ownership pattern. For example, when property is annexed into Payson City, the city is required to buy out all of SESD'S facilities and pay lost revenues for 10 years and pay severance costs. After this requirement has been completed, then the developer is required to install new facilities as per Payson Power Department's standards.

By joining together and utilizing the efficiencies of employees, equipment, inventory, resource management and all other aspects of a power system optimization management plan we can reduce costs to our customers and residents. In addition, we lower costs to businesses seeking to relocate or developers planning to annex into Payson City. Consolidation will create an opportunity for future businesses to locate in Payson without expensive upfront costs. We fully support S. 500 as it will help us achieve these goals to stimulate growth and job creation in our area.

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STATEMENT OF BLAIR R. HAMILTON, CHAIRMAN OF THE BOARD OF DIRECTORS, SOUTH UTAH VALLEY ELECTRIC SERVICE DISTRICT

ON S. 500, S. 715, S. 802, S. 997, S. 1033, S. 1047, S. 1224, S. 1225

I am grateful to be able to submit this statement in support of S. 500, the South Utah Valley Electric Conveyance Act. My name is Blair Hamilton and I serve as Board Chairman of South Utah Valley Electric Service District (SESD). I want to also thank Senator Orrin Hatch and Senator Mike Lee for introducing this important legislation. SESD was formed by the Utah State legislature to deliver electricity to the unincorporated rural communities in south Utah County including the cities of Elk Ridge and Woodland Hills. SESD also provide service to many customers in the cities of Payson, Salem, Spanish Fork, Santaquin and Mapleton.

SESD's electrical distribution system overlaps land and system fixtures that are still owned by the United States. S. 500 would direct the Secretary of the Interior to convey and transfer title to those portions of the electrical distribution system that are owned by the United States, including the land on which those facilities are located. It will also provide license and use of shared power poles and access to lands where distribution facilities are located. S. 500 will help to provide certainty to SESD as it continues to make improvements to the system and operate and maintain what is in place today.

On April 7, 1986, the Strawberry Water Users Association conveyed by sale to SESD both ownership and operation of the entire electric distribution system. The SESD electric distribution system was originally built as part of the Strawberry Valley Project, which was completed by June 30, 1922. The Strawberry Valley Project was one of the earliest Bureau of Reclamation irrigation projects to develop hydro-electric energy. Original project features included Strawberry Dam and Reservoir, Indian Creek Dike, Strawberry Tunnel, two diversion dams, three power plants, a main canal system, and a portion of the lateral system. Electric power from these facilities was used to construct the Strawberry Tunnel and Dam. Two of the power plants were constructed by the Strawberry Water Users Association (Association). Approximately 4,000 kilowatts of power are developed in three power plants on the project and are delivered through transmission lines to our distribution system. Today, most of the water conveyance features of the Strawberry Valley Project have been integrated into the Bonneville Unit of the Central Utah Project.

Historically, the Strawberry Water Project was governed by a 1926 Repayment contract between the Bureau of Reclamation and the Strawberry Water Users Association, which was amended on November 20, 1928 and again on October 9, 1940.

This Repayment agreement transferred responsibility to the Association for the operation and maintenance of the power system, which included power generation, transmission and distribution facilities. The Repayment contract did not transfer title to any of these facilities to the Association, which remained in the name of the United States. On August 8, 1972, the Office of the Solicitor stated in an opinion that the United States owned those portions of the power system constructed with project revenues or that "became fixtures on the lands to which title was in the United States." An additional Solicitor's Opinion dated August 14, 1985 clarified further that:

Title was reserved in the United States to all project property (including the power system) as of the time of the 1940 contract, but title was not reserved in the United States to such additions to the project (including additions to the power system) as were made after the 1940 contract unless the additions became fixtures on the lands to which title was in the name of the United States or unless it was expressly provided in connection with and approval sought from the Secretary."

Despite this clarification, it is difficult to determine exactly which parts of the system are owned by the United States and which are now owned by SESD. There remains no dispute that the United States retains title to those portions of the distribution system constructed prior to 1940 with Strawberry Valley Project revenues or that are located on lands titled to the United States. However, from a practical standpoint, there has been increased uncertainty regarding where project revenues were spent for either construction of or improvements to the electric distribution system. Much of the electric distribution system was constructed on easements over private lands owned by Association members. This creates significant operational challenges as SESD complies with the Operation and Maintenance Agreement.

Furthermore, Reclamation and SESD just concluded a new agreement whereby SESD agrees to operate and maintain the federal portions of the SESD distribution system. The agreement requires SESD to assume a number of special responsibilities regarding maintenance or improvements to the federally owned portions of the system. The agreement recognizes that it is not presently possible to determine with certainty which portions of the system are owned by the United States and contemplates a further need to inventory the distribution system to ascertain ownership. Reclamation estimates it will take years to accurately determine which portions were constructed prior to 1940, with project revenues or are located on federally owned lands. This places a significant cost burden on SESD and Reclamation.

In order to resolve these complications, SESD has been working with the Bureau of Reclamation and it was suggested that transferring title is the right approach.

Although we are not seeking to transfer a water project, we believe that this transfer is consistent aspects of the Framework for the Transfer of Title Bureau of Reclamation Projects of August 7, 1995. That policy document outlines six criteria for the title transfer of uncomplicated, single purpose reclamation projects or features and although it was drafted primarily to apply to water projects.

They are as follows:

- 1) The Federal Treasury, and thereby the taxpayer's financial interest, must be protected.
- 2) There must be compliance with all applicable State and Federal laws.
- 3) Interstate compacts and agreements must be protected.
- 4) The Secretary's Native American trust responsibilities must be met.
- 5) Treaty obligations and international agreements must be fulfilled.
- 6) The public aspects of the project must be protected.

By transferring the federally-owned portion of the SESD electric distribution system, S. 500 will not only simplify SESD's ability to operate and maintain this system, but it will provide mutual benefits to Reclamation by transferring once and for all legal responsibility for the system to SESD.

Again I want to thank you for the opportunity to submit this for the record.