

INDIAN DAMS SAFETY ACT OF 1993

HEARING
BEFORE THE
SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

ON

H.R. 1426

**TO PROVIDE FOR THE MAINTENANCE OF DAMS LOCATED ON INDIAN
LANDS BY THE BUREAU OF INDIAN AFFAIRS OR THROUGH CON-
TRACTS WITH INDIAN TRIBES**

HEARING HELD IN WASHINGTON, DC
JULY 2, 1993

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INDIAN DAMS SAFETY ACT OF 1993

FRIDAY, JULY 2, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m. in room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the Subcommittee) presiding.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. I would like to begin by welcoming everybody here to hear testimony on H.R. 1426, the Indian Dams Safety Act of 1993.

The Safety of Dams Program was established within the Department of the Interior by Secretarial Order in 1980. The purpose of the program was to provide for the periodic inspection of about 1,800 of the department's dams and for the implementation of corrective action to address identified or suspected safety problems. The BIA has responsibility for 300 of these dams.

In 1989, a report prepared by the Office of the Inspector General in the Department of the Interior revealed that the Bureau of Indian Affairs had not taken sufficient actions to address safety concerns at 31 dams under its jurisdiction.

In September 1992, the BIA submitted to the Senate a list of 69 dams within its jurisdiction which were considered to pose a high or significant hazard. Of the dams listed, 53 were classified as high hazard and 15 were significant hazard. Today, we will hear a status report from the BIA to learn how many of the deficiencies have been addressed since 1992.

H.R. 1426 would provide a statutorily mandated dam safety operation and maintenance program in the BIA to ensure the maintenance and monitoring of the condition of each dam identified.

Thus, in addition to performing rehabilitation, the bureau would take measures to prevent future threats to loss of life and property by maintaining these dams. This would also be cost effective by addressing deficiencies before the damage requires major repairs.

Today we will hear from four tribes in addition to the Bureau of Indian Affairs: the Pueblo of Zuni, the Navajo Nation, the Northern Arapahoe, and Shoshone Tribes. I look forward to hearing your testimony.

Let me also take this opportunity to remind the witnesses to summarize your testimony in five minutes or less. Your full written statements will be made a part of the record.

Without objection, the bill's background information and section by section analysis will be made a part of the record.

[The bill H.R. 1426, background and section-by-section analysis follows:]

103D CONGRESS
1ST SESSION

H. R. 1426

To provide for the maintenance of dams located on Indian lands by the Bureau of Indian Affairs or through contracts with Indian tribes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1993

Mr. RICHARDSON introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To provide for the maintenance of dams located on Indian lands by the Bureau of Indian Affairs or through contracts with Indian tribes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Indian Dams Safety
5 Act of 1993".

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the Secretary of the Interior (hereafter in
9 this Act referred to as the "Secretary") has identi-

1 fied 53 dams on Indian lands that present a high
2 hazard to human life in the event of a failure;

3 (2) because of inadequate attention in the past
4 to regular maintenance requirements for dams oper-
5 ated by the Bureau of Indian Affairs (hereafter in
6 this Act referred to as the "Bureau"), unsafe Bu-
7 reau dams continue to pose an imminent threat to
8 people and property;

9 (3) many Bureau dams have operation and
10 maintenance deficiencies regardless of their current
11 safety condition classification and the deficiencies
12 must be corrected to avoid future threats to human
13 life and property;

14 (4) safe working dams on Indian lands are nec-
15 essary to supply irrigation water, to provide flood
16 control, to provide water for municipal, industrial,
17 domestic, livestock, and recreation uses, and for fish
18 and wildlife habitats; and

19 (5) it is necessary to institute a regular dam
20 maintenance program, utilizing the expertise in the
21 Bureau, Indian tribes, and other Federal agencies.

22 **SEC. 3. DAM SAFETY OPERATION AND MAINTENANCE PRO-**
23 **GRAM.**

24 (a) **ESTABLISHMENT.**—The Secretary shall establish
25 a dam safety operation and maintenance program within

1 the Bureau to ensure maintenance and monitoring of the
2 condition of each dam identified pursuant to subsection
3 (c) necessary to maintain the dam in a satisfactory condi-
4 tion on a long-term basis.

5 (b) REHABILITATION.—The Secretary shall perform
6 such rehabilitation work as is necessary to bring the dams
7 identified pursuant to subsection (c) to a satisfactory con-
8 dition. Upon the completion of rehabilitation work on each
9 dam, the dam shall be placed under the dam safety oper-
10 ation and maintenance program established pursuant to
11 subsection (a) and shall be regularly maintained under the
12 guidelines of such program.

13 (c) IDENTIFICATION OF DAMS.—

14 (1) DEVELOPMENT OF LIST.—The Secretary
15 shall develop a comprehensive list of dams located on
16 Indian lands that describes the dam safety condition
17 classification of each dam, as specified in paragraph
18 (2).

19 (2) DAM SAFETY CONDITION CLASSIFICA-
20 TIONS.—The dam safety condition classification re-
21 ferred to in paragraph (1) is one of the following
22 classifications:

23 (A) SATISFACTORY.—No existing or poten-
24 tial dam safety deficiencies are recognized. Safe

1 performance is expected under all anticipated
2 conditions.

3 (B) FAIR.—No existing dam safety defi-
4 ciencies are recognized for normal loading con-
5 ditions. Infrequent hydrologic or seismic events
6 would probably result in a dam safety defi-
7 ciency.

8 (C) CONDITIONALLY POOR.—A potential
9 dam safety deficiency is recognized for unusual
10 loading conditions that may realistically occur
11 during the expected life of the structure.

12 (D) POOR.—A potential dam safety defi-
13 ciency is clearly recognized for normal loading
14 conditions. Immediate actions to resolve the de-
15 ficiency are recommended; reservoir restrictions
16 may be necessary until resolution of the prob-
17 lem.

18 (E) UNSATISFACTORY.—A dam safety de-
19 ficiency exists for normal loading conditions.
20 Immediate remedial action is required for reso-
21 lution of the problem.

22 (d) LIMITATION ON PROGRAM AUTHORIZATION.—
23 Work authorized by this Act shall be for the purposes of
24 dam safety operation and maintenance and not for the
25 purposes of providing additional conservation storage ca-

1 capacity or developing benefits beyond those provided by the
2 original dams and reservoirs.

3 (e) TECHNICAL ASSISTANCE.—To carry out the pur-
4 poses of this Act, the Secretary may obtain technical as-
5 sistance from other departments and agencies. Notwith-
6 standing any such technical assistance, the dam safety
7 program (established by the Secretary by order dated Feb-
8 ruary 28, 1980, to prevent dam failure and the resulting
9 loss of life or serious property damage) and the dam safety
10 operation and maintenance program established under
11 subsection (a) shall be under the direction and control of
12 the Bureau.

13 (f) CONTRACT AUTHORITY.—In addition to any other
14 authority established by law, the Secretary is authorized
15 to contract with appropriate Indian tribes (as defined in
16 section 4(e) of the Indian Self-Determination and Edu-
17 cation Assistance Act (25 U.S.C. 450b(e))) to carry out
18 the dam safety operation and maintenance program estab-
19 lished under subsection (a).

20 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

21 There is authorized to be appropriated such sums as
22 may be necessary to carry out this Act.

BACKGROUND ON H.R. 1426 Indian Dams Safety Act of 1993

PURPOSE

Chairman Richardson introduced H.R. 1426 on March 18, 1993. The purpose of the bill is to provide for the maintenance of dams, which are located on Indian lands, by the Bureau of Indian Affairs or through contracts with Indian tribes. S. 442, which was introduced by Senator Bingaman on February 25, 1993, is the Senate companion bill.

BACKGROUND

Although the Safety of Dams Program (SOD) was established by Secretarial order within the Department of the Interior in 1980, the Bureau of Indian Affairs did not have a program or administrative organization in place until 1991. In 1989 a report prepared by the Office of the Inspector General in the Department of the Interior revealed that, throughout the 1980's, the Bureau of Indian Affairs (BIA) had not taken sufficient actions to address safety concerns at 31 dams under its jurisdiction. 54 of the 300 dams administered by the BIA had structural problems which were classified as presenting high or significant hazards to human life and property in the event of a failure of a dam. Citing the BIA's inadequate progress in carrying out the dam safety program, the Secretary of the Interior's fiscal year 1991 and 1992 budget requests proposed transferring BIA's program responsibilities to the Bureau of Reclamation.

The Bureau of Reclamation is responsible for overall program coordination and develops standards, criteria, and guidelines for dam design and safety inspections. Individual Interior agencies are responsible for ensuring compliance with Reclamation's program requirements for the dams they manage. This includes inspecting dams for safety deficiencies and correcting any identified deficiencies.

A 1992 report issued by the Government Accounting Office (GAO) assessed the BIA's overall progress in carrying out the SOD program activities. The GAO reported that tribal government and the BIA had made significant progress over a two-year period in carrying out dam safety program responsibilities. Congress had made additional funds available to support the program in fiscal years 1991 and 1992. The BIA had begun a corrective action process on 44 of the 54 dams cited in the 1989 report. The GAO found that the key factors contributing to the BIA's overall limited progress were: "(1) few staff resources, (2) BIA's decision to encourage tribes to assume responsibility for carrying out program activities under contracts authorized by the Indian Self-Determination and Education Assistance Act (P.L. 93-638), and (3) the absence of a management information system to provide a basis for monitoring and directing program activities at the field level."

Under the Department of Interior's SOD Program, dams are assessed for the hazard they pose and their safety condition is determined through Safety Evaluation of Existing Dams (SEED) assessments. A dam's hazard classification is based on the dam's physical

location relative to people and property downstream that would be at risk if the dam should fail: high, significant, or low. High and significant hazard dams undergo a SEED assessment to determine their safety classification. Safety deficiencies are physical conditions that can cause the sudden uncontrollable release of reservoir water through partial or complete dam failure. The dam's safety is classified as satisfactory, fair, conditionally poor, poor, or unsatisfactory.

In September 1992 the BIA submitted to the Senate a list of 69 dams within its jurisdiction considered to pose a high or significant hazard. Of the dams listed, 53 were high hazard, 15 were significant hazard, and 1 was low hazard. At that time the safety of dams classification for the physical conditions of the 69 dams was as follows: satisfactory (5); fair (4); conditionally poor (14); poor (28) and unsatisfactory (5). Thirteen were unclassified.

H.R. 1426 would statutorily mandate a dam safety operation and maintenance program in the BIA to **ensure maintenance and monitoring** of the condition of each dam identified. This would not only help to prevent future threats to loss of life and property, but would be cost effective in keeping down the cost of rehabilitation through monitoring. The bill lays out the following scheme for addressing the safety of dams:

-Rehabilitation: H.R. 1426 requires rehabilitation work necessary to bring the dams to a satisfactory condition.

-List of Dams: The bill authorizes development of a comprehensive list of dams which describes the dam safety condition classification of each dam.

-Technical Assistance: The bill authorizes the Secretary of the Interior to obtain technical assistance from other departments and agencies within the Department.

-Contract Authority: The bill authorizes the Secretary of the Interior to contract with the appropriate Indian tribes (under P.L. 93-638) to carry out the dam safety operation and maintenance program.

**SECTION-BY-SECTION ANALYSIS
OF H.R. 1426
INDIAN DAMS SAFETY ACT OF 1993**

SECTION 1. TITLE

Section 1 cites the bill as the "Indian Dams Safety Act of 1993."

SECTION 2. FINDINGS

Section 2 sets out the findings of the Congress, including a finding that the Secretary of the Interior has identified 53 dams on Indian lands that present a high hazard to human life in the event of a failure, and that safe working dams on Indian lands are necessary to supply irrigation water, to provide flood control, to provide water for municipal, industrial, domestic, livestock, and recreation uses, and for fish and wildlife habitats.

SECTION 3. DAM SAFETY OPERATION AND MAINTENANCE PROGRAM

ESTABLISHMENT. Section 3 establishes a dam safety operation and maintenance program within the Bureau of Indian Affairs. Subsection (a) directs the Secretary to establish this program within the Bureau to ensure maintenance and monitoring of the condition of each dam identified necessary to maintain the dam in a satisfactory condition on a long term basis.

REHABILITATION. Subsection (b) directs the Secretary to first perform the rehabilitation work necessary to bring the dams identified to a satisfactory condition. Upon completion of rehabilitation work, the dam shall be placed under the dam safety operation and maintenance program established pursuant to subsection (a) and shall be regularly maintained under the guidelines of such program.

IDENTIFICATION OF DAMS. Subsection (c) sets out procedures for identification of dams. Paragraph (1) directs the Secretary to develop a list of dams located on Indian lands that describes the dam safety condition classification of each dam. Paragraph (2) sets out the dam safety conditions classifications: "Satisfactory," "Fair," "Conditionally Poor," "Conditionally Poor," "Poor," and "Unsatisfactory."

LIMITATION ON PROGRAM AUTHORIZATION. Subsection (d) places a limitation on the work authorized, providing that work authorized by this Act shall be for the purposes of dam safety operation and maintenance and not for the purposes of providing additional conservation storage capacity or developing benefits beyond those provided by the original dams and reservoirs.

TECHNICAL ASSISTANCE. Subsection (e) provides that the Secretary may obtain technical assistance from other departments and agencies. This subsection also clarifies that, notwithstanding any such technical assistance, the dam safety program established by the

Secretary in 1980 and the dam safety operation and maintenance program established under this Act shall be under the direction and control of the Bureau.

CONTRACT AUTHORITY. Subsection (f) authorizes the Secretary to contract with appropriate Indian tribes (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b))) to carry out the dam safety operation and maintenance program established under the Act.

SECTION 4. AUTHORIZATION OF APPROPRIATIONS.

Section 4 authorizes for appropriation such sums as may be necessary to carry out this Act.

Mr. RICHARDSON. I would like to recognize my distinguished Minority Member, the gentleman from Wyoming.

STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman.

I appreciate you having this hearing, particularly because we do have some problems in Wyoming that fall into this category.

I am very pleased to recognize two of our leaders from the Arapahoe and Shoshone Tribes. We are delighted to have you here.

Certainly this is an important issue. Safe, working dams on Indian lands are necessary, particularly in the West for irrigation, for flood control from municipal water and wildlife, of course, all those things.

Sixty-nine dams, as the Chairman points out, are in the BIA jurisdiction and pose a significant or high hazard. One of these is located on Wind River Reservation. I remind the Chairman, he was good enough to visit there this spring and saw the dam and saw the erosion of the dam surface and the signs of leaking and the sink holes.

So I am very pleased we could have this hearing. I am pleased these folks could be here.

Thank you, Mr. Chairman. I look forward to the testimony.

Mr. RICHARDSON. I thank the gentleman.

The gentleman is correct, I did visit that dam, in some of the most beautiful country that I have ever seen.

I would like to welcome Mr. Patrick Hayes, Director of the Office of Trust and Economic Development, Bureau of Indian Affairs, Department of the Interior. He will be accompanied by Mr. Sam Miller, Chief, Division of Water and Land Resources, and Mr. Bernie Burnham, Acting Chief, Branch of Irrigation and Power.

Mr. Hayes, welcome. You are a veteran in testifying before this Committee. You know our procedures. We ask that you summarize your statement. Please proceed.

STATEMENT OF PATRICK HAYES, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY SAM MILLER, CHIEF, DIVISION OF WATER AND LAND RESOURCES, AND BERNIE BURNHAM, ACTING CHIEF, BRANCH OF IRRIGATION AND POWER

Mr. HAYES. Thank you, Mr. Chairman, and good morning. Good morning to you and the Members of the Committee. I am pleased to be here this morning to present the views of the Department of the Interior on H.R. 1426, a bill to provide for the maintenance of dams located on Indian lands by the Bureau of Indian Affairs or through contracts with Indian tribes.

I am accompanied today, as you recognized and mentioned, by Mr. Sam Miller, the Chief of our Division of Water and Land, and by Mr. Bernie Burnham, who is the Acting Chief of our Branch of Irrigation and Power.

If you have no objection, Mr. Chairman, I intend to ask them to assist me in answering any questions which I may have difficulty with.

And as you also mentioned, I have a prepared statement which I have submitted for the record, and I would like to summarize.

We appreciate the interest you have exhibited, Mr. Chairman, in the field of natural resources, by holding hearings on subjects of importance to us and to Indian people. It is through these hearings that attention can be focused on our concerns and we can work together to bring resolution to these long-standing problems.

With some modifications, which are detailed in my written statement, Mr. Chairman, we can support the bill and the purposes for which it was intended.

It might be useful, Mr. Chairman, if I spent just a moment talking about the current Safety of Dams Program of the Bureau of Indian Affairs. I would begin by saying that the Bureau of Indian Affairs is a participating member of the Department of the Interior's Working Group on Dam Safety. This is a group chaired by the Commissioner of Reclamation, with representatives from all bureaus within Interior who are responsible for dam operations.

Our charge is basically to be the forum where current dam safety operations are discussed and where policy and future needs can be addressed to assist in program accomplishment throughout the department.

It is this group, Mr. Chairman, that establishes the technical priority rating. That rating lists in order from No. 1 to No. 388 all dams within Interior which carry a high or significant hazard potential.

The dam safety hazard classification is based solely upon the potential for direct loss to downstream life and property resulting from a dam failure. There are many Interior dams which are classified as low hazard in that they pose no significant hazard or threat due to their failure. But they do provide, oftentimes, substantial resource benefits.

Within those 388 dams classified as high or significant hazard, the bureau has 24 in the top 50, an additional 22 in the next 50, seven in the next 50, and 17 in the remaining 238.

Mr. Chairman, we have 69 dams in the Interior Dams Safety Program. There are basically two elements which are looked at when dam safety is measured. First, is the hazard potential, and second are the engineering evaluation factors.

It is the hazard classification which gets everyone's attention because you talk about high hazard dams and significant hazard dams and low hazard dams. This is not, and I emphasize, not the condition of the dam. It is only a measure of downstream conditions or what the effect on life or property might be in the event of a catastrophic dam failure.

The measure which assesses and assigns a rating to dam safety is the technical priority rating which evaluates dams based upon engineering evaluation factors.

It uses measures such as seepage, hydrology, static stability, landslide potential and so forth.

Mr. Chairman, in regard to H.R. 1426 particularly, I would like to emphasize a couple of the points made in my written testimony. We would urge that the bill impose the limitation and adopt the definition of dam found in the National Dam Safety Inspection Act of 1972.

Generally, this means that for purposes of safety, a dam is a structure 25 feet or higher or impounding 50 or more acre feet at a depth of six or more feet.

Further, we believe those structures need to be limited to those with a high or significant hazard. In Section 3 of the bill, Mr. Chairman, we believe the inclusion of an operation component detracts from the purpose of the bill. The bill is intended to provide for maintenance of dams and including operations may produce confusion.

The same can be said for Section 3(b) where there is a provision for rehabilitation. The primary purpose of the bill is maintenance, and the inclusion of rehabilitation, which is construction oriented, may tend to confuse.

We would suggest that section 4 be added to and clarified the extent to which maintenance expenditures may be considered reimbursable.

In conclusion, Mr. Chairman, we believe that benefit could be derived from having a BIA-specific dam safety program.

We believe safe dams are a vital part of tribal use of water resources and rights, and safe dams obviously minimize risk to people and their property and the Federal investment.

In this regard the administration has in its fiscal year 1994 budget request currently before the Congress a request for \$18 million for dam safety construction and rehabilitation, and \$2 million for maintenance.

The maintenance request is a first time ever for the Bureau of Indian Affairs in response to a 1989 Inspector General audit finding.

Mr. Chairman, that concludes my summary statement. I would be happy to respond to any questions you or other members of the Committee may have.

[Prepared statement of Mr. Hayes follows:]

STATEMENT OF PATRICK HAYES, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, U. S. HOUSE OF REPRESENTATIVES, ON H.R. 1426, A BILL "TO PROVIDE FOR THE MAINTENANCE OF DAMS LOCATED ON INDIAN LANDS BY THE BUREAU OF INDIAN AFFAIRS OR THROUGH CONTRACTS WITH INDIAN TRIBES."

July 2, 1993

Mr. Chairman and Members of the Committee, I am here today to discuss H.R. 1426, a bill "To provide for the maintenance of dams located on Indian lands by the Bureau of Indian Affairs or through contracts with Indian tribes."

We commend the Committee for its interest in improving the Safety of Dams Operations by the Bureau of Indian Affairs (BIA). The Department of the Interior has authority to address dam safety issues for the dams under its jurisdiction. We note that the Administration has proposed for FY 1994, to initiate a maintenance program for dams under BIA's jurisdiction and has included at least \$2 million for maintenance to prevent further deterioration of existing systems and \$18 million for the existing Safety of Dams Rehabilitation Program. This was proposed in response to IG concerns over deterioration of BIA dams. However, there could be advantages to having a distinct BIA dam safety program for maintenance.

We could support H.R. 1426 if it were amended to restrict the scope of authorization to dams on Indian land, to focus on monitoring and dam safety maintenance.

If the following issues are resolved, we believe H.R. 1426 would significantly contribute to the productive development and use of water resources on Indian lands. H.R. 1426 would also contribute to minimizing risk to people, property, and the Federal investment.

The title of the bill as well as language throughout the bill can be interpreted to mean

that it is the intent of Congress for the Federal Government to provide maintenance of all dams located on Indian lands. At this time we believe there are approximately 6,800 dams located on Indian lands. These dams range in size from less than one acre-foot of water storage to more than 800,000 acre-foot of water storage. Nearly all of these dams are small in size and few present risk to public health and/or welfare. Therefore, we question whether Federal funds appropriated under this bill should be spent on these structures. We recommend that the structures covered by this bill be limited to those that fall under the definition of "dam" as defined in the "National Dam Safety Inspection Act of 1972" (Pub. L. 92-367, 86 Stat. 506). This would include approximately 89 dams under BIA jurisdiction. Further we believe the structures included under this bill should be limited to those dams found to represent high or significant risk to life and/or property. This would include 69 of the 89 aforementioned dams. This risk hazard finding should be made consistent with existing Bureau of Reclamation (BOR) Safety of Dams criteria which should also be referenced in H.R. 1426.

Section 3 is titled "Dam Safety Operations and Maintenance Program." The Department requests that the words "operation and" should be deleted from the title as its inclusion indicates that it is the intent of the bill to provide appropriated funding for dam operations. This change should be made throughout this bill.

Section 3 (b), as written, would commit the Secretary to perform rehabilitation on all dams on Indian lands. This commitment appears to be inconsistent with the intent of the bill in that it goes beyond maintenance and addresses rehabilitation. We recommend this section be deleted from the bill and the scope of the bill be limited to authorize Federal maintenance for safety purposes of high and significant hazard dams under BIA jurisdiction.

The Department suggests that Section 3 (c) (1) should be expanded to require that the list developed by the Secretary also include an indication of the hazard rating associated with the dams. On dams with high or significant hazard ratings a maintenance action plan for each dam and a prioritization of actions to be taken should be defined.

We also suggest that at the end of Section 3 (d) following be added "This Act is not intended to preclude development of increased storage or benefits under other authority".

Section 4 should be expanded to clarify the specific intent of Congress where existing authority provides that dam maintenance funding is to be provided by the direct beneficiaries of the facility. This section should be amended to clarify the extent to which funds appropriated for safety of dams maintenance are to be considered reimbursable.

This concludes my prepared statement. I will be happy to respond to any questions that you or Members of the Committee may have.

Mr. RICHARDSON. Thank you, Mr. Hayes.

The Chair recognizes the gentleman from Wyoming.

Mr. THOMAS. Thank you, Mr. Chairman.

Mr. Hayes, help me a little bit. I admit to not being real familiar with this proposition. Where does the expertise for dam maintenance and particularly the work on dam safety reside in the department?

Mr. HAYES. The Bureau of Reclamation is the bureau recognized as possessing the primary responsibility for dam safety expertise within the Department of the Interior. However, Mr. Thomas, the other bureaus within Interior all have dams that are under their jurisdiction and control, and while we all may not be the experts within Interior, we all possess some degree of knowledge and capability in that regard.

Mr. THOMAS. What do you look to the BOR to provide to you?

Mr. HAYES. We have a Memorandum of Understanding (MOU) with the Bureau of Reclamation, and they provide for us the initial evaluation, which is called a SEED report.

Mr. THOMAS. They go on the site and make this evaluation?

Mr. HAYES. Yes, sir. They make the initial evaluation which is called, as I said, the SEED report, which is the Safety Evaluation of Existing Dams.

Mr. THOMAS. As they would for their own dam?

Mr. HAYES. That is correct. They do it on a cost-reimbursable basis. We pay the costs as they occur.

As part of the Memorandum of Understanding between our two bureaus, in the event that Indian tribes do not enter into 638 contracts, Public Law 93-638 contracts, where the process is leading up to construction, we in turn through the MOU access the services and capabilities of the Bureau of Reclamation to assist us.

Mr. THOMAS. I see. I guess I hope all of us are driven by the notion of how we do this most efficiently, and I guess I don't know the answer to that. But how many of the tribes are there? Do they move towards having the 638 contracts? Do most of them take care of their own dams, or does BIA still do that for the most part?

Mr. HAYES. Of the dams that are the subject of this hearing, 56 of the dams—that doesn't mean there are 56 tribes—but 56 of the dams have either contracted through the 638 mechanism or are in active negotiation to obtain a 638 contract.

Eight of the dams located on reservations, those tribal governing bodies have declined to enter into 638 contracts, and we will provide the steps necessary to make the dams safe, and we will do it through the MOU process.

Four dams are not in any sort of negotiation or active consideration at this time, primarily because there are no funds to begin addressing them. And one dam we don't have a SEED that is completed yet.

Mr. THOMAS. So in a case where a tribe has jurisdiction or has taken-takes a 638 contract to do it, then you are actually out of the operation; is that right? They go directly to BOR?

Mr. HAYES. Not entirely. The Bureau of Indian Affairs is still involved in the monitoring aspect of it. We are a partner, if you will, with the tribe, and whoever it is they choose as their contractor to do the work, be it BOR or some other independent contractor.

Mr. THOMAS. I see. I hope we can find some ways to move. Apparently it is a tedious job to get something moving. I hope it isn't too much bureaucracy. I hope it isn't people insisting they get to sign off on the form and all that sort of thing. And I don't know that it is. I hope it is not that.

I guess I must tell you I don't quite understand the role of BIA in this process. But maybe I will learn.

Is there anything we can do to make it work more clearly, to make it work more quickly, to make it move to actually do something with the dams? Do you think there is too much burden of bureaucracy involved here?

Mr. HAYES. I don't think so. It is a process, if you will be patient with me just a second here I can give us some indication of approximately how long the tasks take.

These are just generalizations, of course, but from the time that a dam is first identified and a hazard classification assigned to it, from that point of time normally we would be dealing with essentially a five-phase activity. And the total amount of time is approximately 6½ years, plus or minus a little bit, total time of 81 months.

What we are looking at is to get the SEED examination, Safety Evaluation of Existing Dams, getting that examination done will take 9 months, before the other phases in the process. The next phase, you would go to a deficiency verification analysis, that will take about 11 months or a year. You would then get into the conceptual design, which is going to take about 10 months. Then you would have the final design of the dam, which is 12 months. And then the construction estimated at 36 months.

Now, not all construction, obviously, is going to take the full 36 months, so that time is backed down, oftentimes considerably. But that is just the general time that has been the experience, not only within the Bureau of Indian Affairs but also the Bureau of Reclamation, as to how long it takes to get these activities accomplished.

Mr. THOMAS. Well, you are very kind to help me with this. As you can tell, I am just sort of generally frustrated with how long it takes to do things. And I think all of us, including you, that are in the agencies and so on ought to be seeking to find ways to make this thing move more quickly and efficiently, and sometimes I suspect that we build up some bureaucracies that spend a good deal of their time simply protecting their turf. I am not accusing you of that.

Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman.

Last year, Mr. Hayes, you provided the Senate with a list of 69 dams considered to pose a significant or high hazard. Of these 53 were classified high hazard, 50 were significant hazard.

What is the present situation in addressing the safety deficiency of these dams? Could you just give us an update on some of these classifications?

Mr. HAYES. I would be happy to, Mr. Chairman. The activities as they are broken down within the numbers that you mentioned, Mr. Chairman, we have three that are currently within the preparation of a SEED report, Safety Evaluation of Existing Dams, the

initial step to all of it. We have three that are in that category. We have one of those dams that we are going to recommend breaching. There are 38 that are in the deficiency verification analysis phase.

Seven are in conceptual design. Nine are in final design. And a few of those are fairly close to being ready to go to construction, lacking only the resources to begin the construction. We have five that are in construction, and five where construction is completed. I hope that totals 69.

Mr. RICHARDSON. I think it does. What is the status of the \$18 million that you mentioned in your testimony for the fiscal year 1994 rehabilitation programs? And could you provide us some information on how this program historically has been funded?

Mr. HAYES. Yes, sir. Mr. Chairman, the \$18 million that we have requested for fiscal year 1994, there is scheduled \$10.9 million for construction at Ganado on the Navajo Reservation and Pablo dam on the Flathead Reservation, and \$7.1 million distributed among a number of other dams to begin or continue efforts regarding the deficiency verification and the design work.

I have a list of the particular dams. Do you want me to run through the list, Mr. Chairman?

Mr. RICHARDSON. Why don't you submit those for the record. My main interest was over the years, has this been an authorized program?

[The information follows:]

BIA SAFETY OF DAMS PROGRAM
FISCAL YEAR 1990 - 93 (As of July 1993)

SAFETY OF DAMS PROGRAM- APP				FY1990	FY1991	FY1992	FY1993
				12,803,700	9,408,000	9,977,000	11,104,800
BIA	DOI	DAM	STATE BIA AREA	ESTIMATED	ESTIMATED		
0	0	LAKE CAPOTE	CO ALBUQUERQUE	0	0	0	
1	4	GANADO	AZ NAVAJO	200,000	22,000	1,060,000	0
2	8	ROUND ROCK	AZ NAVAJO	370,000	0	128,800	3,000,000
3	7	BLACK ROCK	NM ALBUQUERQUE	1,350,000	1,000,000	0	0
4	10	BONNEAU	MT BILLINGS	0	800,000	0	0
5	11	EQUALIZER	ID PORTLAND	370,000	280,000	210,500	0
6	12	CROW CREEK	SD ABERDEEN	200,000	1,000,000		0
7	18	MANY FARMS	AZ NAVAJO	400,000	0	110,000	0
8	19	STANDING ROCK NO. 1	SD ABERDEEN	185,700	100,000	200,000	0
9	22	CANYON DIABLO	AZ NAVAJO	0	0		180,000
10	25	PABLO	MT PORTLAND	280,000	215,000	670,000	2,200,000
11	27	DULCE	NM ALBUQUERQUE	1,580,000	0	0	350,000
12	28	ROSEBUD	SD ABERDEEN	220,000	900,000	900,000	0
13	29	HE DOG	SD ABERDEEN	750,000	0	300,000	1,500,000
14	32	WHITE CLAY	SD ABERDEEN	280,000	400,000	400,000	
15	35	WASHAKIE	WY BILLINGS	420,000	400,000	0	550,000
16	37	MCDONALD	MT PORTLAND	180,000	225,000	680,000	850,000
17	38	SANTA ANA	NM ALBUQUERQUE	240,000	340,000	0	0
18	41	OGLALA	SD ABERDEEN	620,000	300,000	200,000	0
19	42	LOWER DRY FORK	MT PORTLAND	370,000	55,000	380,000	
20	44	WEBER	NV PHOENIX	900,000	0	0	0
21	47	TUFA STONE	AZ PHOENIX	200,000	0	0	50,000
22	48	INDIAN LAKE	OR PORTLAND	0	182,000		
23	49	JOCKO	MT PORTLAND	380,000	0	0	
24	50	BLACK LAKE	MT PORTLAND	280,000	1,500,000	3,500,000	30,000
25	53	PARMELIE	SD ABERDEEN	240,000	0	100,000	0
26	56	ACOMITA	NM ALBUQUERQUE	840,000	80,000	0	0
27	57	CAPTAIN TOM	AZ NAVAJO	0	0	0	0
28	58	LOWER MUNDO	NM ALBUQUERQUE	0	0	0	0
29	59	UPPER DRY FORK	MT PORTLAND	380,000	180,000	480,000	
30	63	EAST FORK	MT BILLINGS		100,000	0	0
31	65	INDIAN SCOUT	SD ABERDEEN	0	100,000	0	0
32	66	PAGUATE NO. 1	NM ALBUQUERQUE	0	0	650,000	0

39	67	PAGUATE NO. 2	NM	ALBUQUERQUE	0	0	0	0
34	68	PASTURE CANYON	AZ	PHOENIX	0	0	0	0
39	69	WHEATFIELDS	AZ	NAVAJO	0	0	0	0
36	70	CROW	MT	PORTLAND	0	0	0	0
37	72	PONCA	SD	ABERDEEN	240,000	200,000	200,000	750,000
38	78	AGENCY	MT	BILLINGS	0	0	0	0
39	76	RAY LAKE	WY	BILLINGS	235,000	225,000	0	0
40	78	NINEPIPE	MT	PORTLAND	0	0	0	0
41	80	KICKING HORSE	MT	PORTLAND	0	0	0	0
42	81	LA JARA	NM	ALBUQUERQUE	0	0	0	0
43	82	LAKE MESCALERO	NM	ALBUQUERQUE	0	345,000	0	0
44	83	WANBLEE	SD	ABERDEEN	0	100,000	0	0
45	84	KYLE	SD	ABERDEEN	0	100,000	100,000	0
46	114	TUVE	AZ	PHOENIX	0	0	0	0
47	127	CUTTER	NM	NAVAJO	0	0	0	0
48	130	TABOR	MT	PORTLAND	0	285,000	0	130,000
49	131	WAUNKA	AZ	NAVAJO	0	0	0	0
50	132	HELL ROARING	MT	PORTLAND	0	0	0	0
51	138	ELGO	AZ	PHOENIX	0	100,000	0	0
52	144	TWIN (TURTLE)	MT	PORTLAND	0	0	0	0
53	163	LITTLE BITTERROOT	MT	PORTLAND	0	0	0	0
54	180	GHOST HAWK	SD	ABERDEEN	0	100,000	0	0
55	183	RING THUNDER	SD	ABERDEEN	0	100,000	0	0
56	198	ASSAYI	NM	NAVAJO	0	0	0	0
57	203	TRALE	AZ	NAVAJO	0	0	0	0
58	218	ALLEN	SD	ABERDEEN	0	100,000	0	0
59	220	RED LAKE	NM	NAVAJO	0	0	0	0
60	226	WLD HORSE	ID	PHOENIX	0	0	0	0
61	244	HUBBART	MT	PORTLAND	0	0	0	0
62	260	BOTTLE HOLLOW	UT	PHOENIX	0	20,000	0	0
63	261	MISSION	MT	PORTLAND	0	0	0	0
64	288	LOWER TWO MEDICIN	MT	BILLINGS	0	0	0	0
65	272	BLACKFOOT	ID	PORTLAND	0	0	0	0
66	304	WILLOW CREEK	MT	BILLINGS	0	0	0	0
67	340	HEADGATE ROCK	AZ	PHOENIX	0	0	0	0
68	393	BLUE CANYON	AZ	NAVAJO	0	0	0	0
69	398	TAT MCWOLKOT	AZ	PHOENIX	0	0	0	0
		AREA OFFICE ADMIN.						540,000
		CENTRAL OFFICE Program						864,800
		SHIPROCK/GANADO	AZ	NAVAJO	280,000			
		NO DESCRIPTION		PHOENIX	1,133,000			
		PAPAGO WATER RIGH		PHOENIX				
		COOLIDGE		PHOENIX-OWNED BY BIA-MAINTAINED BY RECLAMATION.				
		(WOO) 64 FIRE COSTS						
		PT. SELNAP		BILLINGS	100,000			

Mr. HAYES. Yes, it has. It has been around for about a dozen years, 13 years, I believe. I believe it came into existence about 1980, approximately. And the program has met with some success, and we have experienced a large number of difficulties.

I believe the 1989 Inspector General audit report pointed out a number of those difficulties and a number of the shortcomings in the program. There was a subsequent General Accounting Office report which visited the same issue and wasn't quite as critical as our Inspector General's report was. However, it pointed out that we do continue to have problems.

But the GAO indicated that we are making progress, we are moving forward, and the situation is not quite as bleak as what the Inspector General pointed out. We continue to be concerned about safety of dams on Indian reservations and continue to do what we can within our available resources to address those problems. The problems are fairly well documented in not only the I.G. report but also in the GAO report, Mr. Chairman.

Mr. RICHARDSON. Now, you also made a suggestion in your testimony about Section 4. Could you elaborate a little bit on that?

What are your recommendations on Section 4?

Mr. HAYES. The recommendation, Mr. Chairman, deals with the suggestion that Section 4 needs to be expanded to clarify where and when dam maintenance funding may be repayable.

I would ask Mr. Burnham, Bernie Burnham, to supplement that explanation, if I could, Mr. Chairman.

Mr. BURNHAM. Mr. Chairman, we have irrigation projects, that have reservoirs as part of the irrigation infrastructure, and the legislative history of these irrigation projects provide that operation and maintenance (O&M) funds, are to be paid by the water users, the direct beneficiaries.

We are concerned that we have statutes that define how these O&M costs are to be paid, as opposed to what might come under this bill, which could be controversial. We are asking that it be explained or clarified so that we wouldn't create a problem.

Mr. HAYES. Mr. Chairman, if I might add to his supplement, in regard to safety of dams rehabilitation, or the construction appropriations, there has been an ongoing question about whether or not those expenditures are reimbursable, and in the fiscal year 1994 President's budget request we requested appropriation language to clarify that issue so that these funds will not be reimbursable. And we just don't want to get into the same situation relative to maintenance, for the maintenance part of it.

Mr. RICHARDSON. On Section 3(d) of the bill, the suggestion you made about us adding language relating to increased storage, why do we need to do that? Are you aware of any tribes that need this increased storage capacity?

Mr. HAYES. Yes, sir, I am. There is a tribe in Montana that the Deputy Commissioner for Indian Affairs last year, after some fairly extensive discussion with staff as well as with the tribe, authorized an increase in height to the dam as a part of the safety of dams activities. And that increase in height is or can be safety related, but at the same time it also increases the storage or it has the potential for increasing the storage.

We are concerned that there be language in there which does not unduly restrict the discretion, in this case, of the Commissioner of Indian Affairs, the decision-makers on how these monies may be expended.

Mr. RICHARDSON. Is there increased authority needed? You have existing authority, but do we have to give you the storage capacity under another authority?

Mr. HAYES. It is within existing authority.

Mr. RICHARDSON. Within existing. Okay.

Can you in the Safety of Dams Program allow for expansion of a dam?

Mr. HAYES. Within the existing authorities we think that the Commissioner of Indian Affairs or the Assistant Secretary has some discretion in there. And if it makes sense from a safety perspective, then I think that the decision-makers, the Commissioner and the Assistant Secretary, may authorize those expenditures, which has the result of increasing the storage capacity of that dam.

Mr. RICHARDSON. So basically you support the bill, provided that we make the changes in Section 3 and Section 4; is that correct?

Mr. HAYES. That is correct. As my written testimony points out, there are some concerns that we have expressed, but generally, Mr. Chairman, we support the bill and the concept and the purpose behind it.

Mr. RICHARDSON. I thank you very much for appearing.

Does my colleague have any further questions?

I want to thank Mr. Hayes, Mr. Miller, and Mr. Burnham for coming this morning. We appreciate it.

Mr. HAYES. You are welcome, Mr. Chairman. Thank you very much.

PANEL CONSISTING OF HON. ROBERT E. LEWIS, GOVERNOR, PUEBLO OF ZUNI, NEW MEXICO; HON. VIRGINIA SUTTER, CO-CHAIRPERSON, NORTHERN ARAPAHOE BUSINESS COUNCIL, WIND RIVER RESERVATION, WYOMING; HON. FLOYD PHILLIPS, MEMBER, SHOSHONE BUSINESS COUNCIL; HON. RAYMOND PARKER, JR., VICE CHAIRMAN, CHIPPEWA CREE BUSINESS COMMITTEE, ROCKY BOYS RESERVATION, MONTANA; AND JOHNNIE FRANCIS, DIRECTOR, WATER DEVELOPMENT AND MAINTENANCE DEPARTMENT, NAVAJO NATION'S DIVISION OF NATURAL RESOURCES, WINDOW ROCK, ARIZONA

Mr. RICHARDSON. I would like to welcome our second panel. The Honorable Robert Lewis, Governor, Pueblo of Zuni, New Mexico; the Honorable Virginia Sutter, Vice Chairperson, Northern Arapahoe Business Council, Wyoming, accompanied by Floyd Phillips, a Council Member; the Honorable Raymond Parker, Jr., Vice Chairman, Chippewa Cree Business Council, Montana; Mr. Johnnie Francis, Director, Water Development and Maintenance Department, Navajo Nation Division of Natural Resources.

Ladies and gentlemen, please be seated. I will ask each one of you to summarize your statements and again, I welcome all of you. I know that my colleague has several of his constituents here, as I do.

I would like to first welcome Governor Robert Lewis from the Pueblo of Zuni.

Governor, welcome.

STATEMENT OF HON. ROBERT LEWIS

Mr. LEWIS. Thank you, Mr. Chairman.

My name is Robert E. Lewis. I am the Governor of the Pueblo of Zuni in New Mexico. I thank you and the Committee for giving me the time to testify on behalf of H.R. 1426, the Indian Dams Safety Act of 1993.

We find H.R. 1426 very complete and well written in reference to any bureau dams that have operation and maintenance deficiencies, regardless of their safety condition classification presently, and which must be corrected to avoid future threats to life and property.

Among the 53 dams identified on Indian lands that pose this threat, our Blackrock Dam is one in the top eight as very unsafe and virtually useless as a storage dam for irrigational purposes.

Built over 80 years ago and not on a live stream, a 60-70 foot canyon is completely silt filled. The structure is three miles east and above the Pueblo. All tributaries that enter into the Zuni River from the south and northeast at flood times bring flood waters over the dam and on through the pueblo, creating a hazardous situation to life and property.

To alleviate this situation of danger, Public Law 101-486, the Zuni Land Conservation Act of 1990, was enacted, which directs the Secretary of the Interior to establish a Trust Fund of \$17 million, which would be invested to generate interest for the implementation of a resource development plan. The final increment of \$9 million has not been received.

The repair of severely eroded reservation lands which contribute to the flooding problem that we describe in our testimonies will be implemented with monies from the Trust Fund.

BOR has been given the responsibility of creating the deficiencies on the dam and the Army Corps the responsibility to work on the riverbed through the pueblo. The plan is due in September of 1993.

Because we understand the problems that exist regarding unsafe dams in other places, the Pueblo of Zuni Tribal Council fully endorse the passage of H.R. 1426 and recommend Section 4, authorization of appropriations, denote specific yearly appropriated sums as necessary to carry out this act.

I would be glad to answer any questions you may want to ask. Thank you.

Mr. RICHARDSON. Thank you very much, Governor Lewis. The Chair recognizes the Honorable Virginia Sutter.

STATEMENT OF HON. VIRGINIA SUTTER

Ms. SUTTER. Thank you, Mr. Chairman and the panel. I appreciate the opportunity to testify on H.R. 1426.

My name is Virginia Sutter, Co-Chairman of the Northern Arapahoe Tribe. With me is Mr. Floyd Phillips, a member of the Shoshone Business Council. Both tribes join in the testimony provided today.

We support H.R. 1426, the Indian Dams Safety Act. The safety of our dams and their repair is a top concern of the tribes. We do, however, suggest a few changes to the bill.

We believe that Section 3(a) should be changed to provide more direction to the BIA by establishing safety standards equal to those for non-Indian dams and by requiring emergency action plans for all dams.

Number two, we also believe that Section 3(b) and 3(c) should be amended to make it clear that the BIA should proceed immediately to correct problems at the 53 dams with identified safety problems.

Second, the Secretary should be required within six months to provide a funding request to Congress with the amount necessary to complete repairs on these dams within the next five years.

Also Section 3(d) should be amended to allow up to 20 percent of the cost of the project to relate to nonsafety benefits. In addition, if a new structure also will resolve safety problems at an old structure, the cost of fixing the old structure's safety problems should be applied to the new or enlarged structure.

We believe that these changes will strengthen the current bill and make it address all the needs on the reservation.

For example, on our Washakie Dam we have trees growing out of the dam. When you visited our reservation, Mr. Thomas, Mr. Richardson, you saw the trees growing out of Washakie Dam. As you are aware, trees have enormous root systems. When the tree itself decays, the root system creates a channel for the water to follow. This basically creates a hole in the dam which could result in a dam failure.

There are several other problem areas from the foundation to the spillways which are cause for concern. The exact problems are spelled out in the written testimony submitted.

These problems with the dam create a huge emotional burden for our members of the tribe. Most of our members and many non-Indians live below the dams. Our members, especially the elderly living directly below the dam are constantly worried that there will be a failure in the dam and they will be wiped out as far as property and lives are concerned.

Our experience with establishing an emergency action plan illustrates the problem and the need to implement them for all dams as a routine matter. Our dams should have had emergency action plans since the day they were built. When this crisis first came to the council, we learned there was no emergency action plan in place as should have been developed at the beginning of the dam's construction.

There have been problems with the Washakie Dam since it was first time built in 1935. An active emergency planning was only implemented this year. That caused concern to our people because they saw the police being involved, they saw some of the emergency equipment being involved, they became very concerned because they believed this to be an immediate crisis of the day.

The reason that it was implemented so late, we do not know. But the residents became aware not only of the need for such a plan but are now afraid that each rainstorm, the dam will fail. We have calls daily, Is the dam okay? This is a real concern for us as a business council. Had such a plan been implemented when the dam was constructed, the cause for concern, which is real, would not have been blown out of proportion as it is today.

Two weeks ago today, when there was extensive rains on the reservation, the business council went up to the dam site for inspection. We took a boat out on the reservoir and looked at the potential problem areas. There were problems with the foundation works out to the spillways.

The very fact that the joint business council went to the dam had a number of people upset because they assumed there was a very difficult problem there, and a major problem.

While as elected leaders we can try to assure the people we are doing everything we can to protect their safety, the residents of our reservation are not going to sleep comfortably until these dams are repaired. Problems at the dams are real problems and they affect the daily lives of our tribal members.

In summary, we support H.R. 1426 with amendments to provide clear direction to the BIA to provide prompt correction of identified problems and to provide flexibility to allow us to solve other dam-related problems when the safety problems are addressed.

Again, the tribes appreciate this opportunity to present their views on H.R. 1426, the Indian Dams Safety Act of 1993. The tribes urge prompt passage of this act so that our severe safety problems can receive the kind of attention which they deserve.

And I would like to pass this on to Mr. Phillips. He has a few comments to make.

[Prepared statement of Ms. Sutter follows:]

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE COMMITTEE ON NATURAL RESOURCES

HEARING ON H.R. 1426, INDIAN DAM SAFETY ACT OF 1993

Testimony of the
Shoshone and Northern Arapaho Tribes
of the Wind River Reservation

Mr. Chairman:

I would like to thank you for the opportunity to present the views of the Shoshone and Northern Arapaho Tribes on H.R. 1426, the Indian Dam Safety Act of 1993. My name is Virginia Sutter and I am the Co-Chairman of the Northern Arapaho Business Council of the Wind River Reservation. I have with me today Floyd Phillips, a member of the Shoshone Business Council, whose Tribe shares the Wind River Reservation with my Tribe. My testimony is joined in by the Shoshone Tribe. The Tribes appreciate the Chairman's introduction of H.R. 1426, a much needed piece of legislation addressing a very serious problem on reservations. We also would like to thank Mr. Thomas for suggesting our Tribes as witnesses on this important issue.

The failure of the Bureau of Indian Affairs to properly maintain, construct, and repair dams on our Reservation causes both economic and social problems for our members and other residents of our Reservation. We have two dams with significant safety problems, Ray Lake dam and Washakie dam. While these dams are not extremely large by non-Indian standards, they are very important to our Tribes. The dams provide flood control, irrigation water, and municipal water.

Problems at Ray Lake dam include cracks in the earthen structure, extensive erosion from wave action, inadequate spillway capacity, and deteriorating concrete structures. While the problems at Ray Lake dam are serious, our problems with Washakie dam are critical.

Safety problems at Washakie dam have been identified since at least 1935, shortly after the reservoir was first filled. The critical problems at Washakie dam include uncontrolled seepage and high foundation pore pressures beneath the main embankment, the inability of the dam to accommodate floods greater than 47% of the probable maximum flood, the hydraulic inadequacy of the service spillway for floods larger than 32% of the probable maximum flood, the possibility of dike no. 2 failing due to discharges from the spillway eroding the toe of the dike, and the static stability of the dikes. In addition, other problems need to be corrected such as control of seepage under and around the spillway, improvements

to the upstream slope to improve dynamic stability, and reducing erosion potential of the spillways and outlet works.

While these are technical descriptions of the problem, a practical description of the safety issues is appropriate. First, there are trees growing out of our dam! As the Congressmen are aware, trees have very substantial root systems and when a tree dies the roots decay. If a tree is allowed to grow on a dam such as in our case, the potential for failure is increased enormously. Should the tree die and the roots decay, there will then be channels for the water seeping through the dam to follow. This results in erosion and possible failure of the dam. Our trees are currently alive, but waiting another 57 years to fix the problem is no longer an option.

Second, each year a sand bar forms on the downside portion of the dam. This sand bar is formed by water migrating through the dam structure and carrying particles of the dam with it. While we closely monitor this problem, the only real solution is to fix the structural problems. Only recently has work been undertaken to correct these problems at the dam.

The safety problems cause economic and social concerns for the Tribes. Economic concerns arise because the dams must be managed to control existing safety problems and to prevent new safety problems. This needed management program at times conflicts with the need for water for irrigation and municipal uses. Fort Washakie and Ethete, our main Indian communities, both rely on water which passes through Washakie dam for their drinking water. These problems could be remedied with a properly repaired and maintained facility.

The social cost may be even higher. The majority of our Tribal members live below Ray Lake dam and Washakie dam. Through implementation of our emergency action plan, the community is more fully educated about the conditions at the dam. Many of our residents are constantly worried every time it rains or there is increased snow melt that the dam is going to fail. We spend a considerable amount of our time as Tribal leaders answering questions of Tribal members about the dam and trying to assure our members that the Tribes are taking all reasonable steps to get the problems at the dams resolved. You cannot imagine the stress it puts on some of our people with the constant worry that the dam just upstream may someday fail. While we are doing all that we can through daily monitoring by our Tribal Water Engineer's Office and strict management of the reservoir through the Bureau, the peace of mind for our residents will not be restored until the identified repairs are completed.

As an example, the Joint Business Council last week went to Washakie dam to observe the annual safety inspection. When word spread through the community that the Business Council members had

all gone to the dam, people began assuming and questioning whether a new problem had occurred at the dam or whether the dam was in danger of failing. This preoccupation with the safety of the dams places unneeded stress on our people who already must deal with poor living conditions and high unemployment.

If the dam is not repaired, the chances of a failure will likely increase over time. Any failure has a chance of resulting in loss of life and significant property damage. Shutting down the dam is not an option. The dams provide both irrigation water and municipal water which are critical to the meager economy of the Reservation. Without the dams, several Indian and non-Indian farmers will be put out of business. While the non-Indian may choose to move, the Reservation is our homeland and we need it to provide a viable living for our Tribal members.

Our familiarity with not one, but two dams with safety problems, cause us to be enthusiastic about H.R. 1426. We believe that the bill provides some very needed direction to address a life-threatening problem on Indian reservations. However, we do have a few suggestions for changes to the proposed legislation.

In section 3(a), the Subcommittee should consider requiring the Bureau's dam safety operation and maintenance program to meet the minimal levels applied to other federally operated dams. If we had received the level of resources and expertise devoted to non-Indian dams in the past, we would not be experiencing our current problems. Our experience with the Bureau in the past has indicated that more specificity in legislation is appropriate to ensure proper implementation of Congress' directions. The safety program for each dam also should be required to implement and regularly test an emergency action plan with required consultation and participation with the Tribe and local residents.

The interaction of Section 3(b) and 3(c) causes us some concern. Washakie dam in particular has been identified for years as having serious safety problems and is probably one of the top ten dams in need of repair. We are concerned that the Bureau may delay rehabilitation work until it has completed the comprehensive list required by Section 3(c). Our people have waited long enough, repairs need to proceed quickly. Because many of the dams with the most critical problems have been identified, we suggest that the Secretary be directed to proceed with rehabilitating immediately the 53 dams identified in Section 2 that "present a high hazard to human life in the event of failure." We further suggest that the Secretary be required to provide a funding request to Congress within six months for bringing these dams, including Washakie and Ray Lake on the Wind River Reservation, up to appropriate safety standards within the next five (5) years. Our experience suggests that a five (5) year period is appropriate for identifying the extent of the safety problems, preparing alternative solutions, preparing final designs, and starting actual construction.

Our Tribes also believe that additional funding needs to be allocated to meet the needs of the dam safety program. The costs of providing repairs to our dams is high. We estimate approximately \$10 million between Washakie and Ray Lake dams. We can not afford to have these funds come out of education, economic development, or social programs within the Bureau of Indian Affairs. Most of the dam maintenance and safety work on non-Indian dams is subsidized by the federal government through hydropower revenues. Therefore, those who benefit in the local non-Indian community bear little if any of the burden of the costs of a dam. Our Tribes should be placed on at least equal footing. We not only have lived with the threat to human life for years, our irrigation and municipal water supplies have been adversely affected by the operations of the dams. We strongly urge that the funds to repair these life threatening dangers not be taken from economic, education, and social programs which, if reduced beyond their current meager funding, would be equally as life-threatening.

We appreciate the concern in Section 3(d) that the funding for this very important safety program established in H.R. 1426 not be diverted to other reservoir related uses. However, we believe that Section 3(d) is too restrictive. Most, if not all, of the Indian irrigation projects have never been completed. In addition, the water available to these projects is either taken for non-Indian projects or is incapable of being regulated as to time or place of delivery. To address these problems with a dam structure after the dam safety problems have been corrected will create unnecessary duplication of work, increased costs, and unfair delays. On some projects, the cost of addressing related water management concerns at the same time as fixing the safety problems only results in a small incremental cost, but has in a large benefit. We suggest that Section 3(d) be amended to provide that no more than 20% of the costs of repairs under this program may be devoted to other water related management concerns. In addition, this section should be amended to provide that, if a new storage project would, as part of its construction, solve the existing safety problems at an old structure, the funds allocated to correcting such safety problems should be available for use in the new storage project. Moreover, any benefits beyond those of correcting safety problems should directly benefit the Indians on the reservation.

Again, the Tribes appreciate this opportunity to present their views on H.R. 1426, the Indian Dam Safety Act of 1993. The Tribes urge prompt passage of this act so our severe safety problems can receive the kind of attention which they deserve.

/s/ Joe W. Redman

Mr. RICHARDSON. Mr. Phillips, please proceed.

Before you do, let me thank both you and Vice Chairperson Sutter for being such gracious hosts during our visit to the dam and to the community.

STATEMENT OF FLOYD PHILLIPS

Mr. PHILLIPS. Thank you, Mr. Chairman.

I want to thank you for allowing me to testify on H.R. 1426. My name is Floyd Phillips. I am a member of the Shoshone Business Council. The Shoshone Tribe concurs with what Co-Chairperson Sutter has stated.

Some of the comments I would like to make today are that Congress needs to provide additional funding for the dam safety program. And as an example, Washakie and the Ray Lake repairs will cost approximately \$10 million. This funding should not come out of economic development, education, social services, or other BIA programs. These programs are already short of funding.

H.R. 1426 needs to be amended to allow flexibility for solving other dam-related problems. Up to 20 percent of the cost of the dam repair project should be allowed for non-safety benefits. Resolving safety and non-safety problems separately will create an unnecessarily and fiscally irresponsible duplication of funding. In addition, the cost of correcting the safety problem should be applied to the new project.

Correcting dam and safety problems is a high priority for the tribe and they should be addressed in a manner that is cost effective. H.R. 1426, with the proposed changes, will resolve the safety problems in a practical matter.

I thank you for this opportunity to testify. Mrs. Sutter and myself are available to answer any questions that you may have.

Thank you.

Mr. RICHARDSON. Thank you very much, Councilman.

The Chair recognizes the Honorable Raymond Parker, Vice Chairman, Chippewa Cree Business Council, Montana

STATEMENT OF HON. RAYMOND PARKER, JR.

Mr. PARKER. Thank you, Mr. Chairman and members of the committee. My name is Raymond Parker, Jr. I am Vice President of the Chippewa Cree Business Council for the Chippewa Cree Tribe located in Montana. It is an honor to present the views of the Chippewa Cree Tribe on H.R. 1426, the Indian Dams Safety Act of 1993. I will highlight most of our testimony.

The Chippewa Cree Tribe was one of the first tribes in the country to enter into a Public Law 93-638 contract for the Safety of Dams Project through the Bureau of Indian Affairs. The Bonneau Dam project is located in Rocky Boy's Reservation about 20 miles southwest of Havre, Montana. The dam was designed and constructed in 1939 and 1940 by the United States Indian Service, which is presently known as the Bureau of Indian Affairs.

The overall safety dams classification of Bonneau Dam is poor. Assuming a 50-year remaining life, there is a 63 percent probability or approximately a two out of three chance of the dam overtopping and failing within its remaining life.

Presently three dams in the Rocky Boy's Reservation have been classified as significant or high hazard dams and are the only dams shown on the BIA's inventory list. The tribe conducted an additional inventory and located six more dams that could qualify for BIA's Safety of Dams Program. None of the six dams are presently on the BIA inventory, and there has been absolutely no work of any kind done on those dams, which all were built by the United States Government. The neglect of these dams includes routine O&M.

H.R. 1426 will provide an excellent startup, operating and maintaining dams and correcting O&M deficiencies of dams located on Indian reservations. There are, however, other important areas and issues related to dams on Indian reservations that should be addressed in this bill.

H.R. 1426 is somewhat limited in scope and should be slightly expanded. We made some observations about the bill. I will reference some of the most important points.

The bill states that 53 dams have been classified as high hazard dams. However, inventories of dams on Indian reservations need to be completed, and for that reason the provisions of Section 3 are very important.

The tribe is positive that other dams will be reclassified and identified. The many problem dams in Indian country, they will show up in inventories when the inventories are completed.

H.R. 1426 states "rehabilitation shall be performed to bring dams to a satisfactory condition." However, it is not always clear whose standards one is supposed to follow in determining what is satisfactory. There may be some further discussion on this matter.

Another concern we have with the present program is that there are no clear guidelines for managing an SOD contract. The only real fundamental problem we have with the legislation is found in Section 3(d), which would statutorily prohibit any SOD money from being used for additional storage or for developing benefits at identified dams beyond those originally intended. This action therefore limits dam work to rehabilitation and O&M only.

The BIA has generally followed the practice of not using SOD funds for enlargement of dams, but this has been simply a practice. We are unaware of a rule, regulation or law which would outright prohibit it. We do not understand the wisdom of such a prohibition, and we have an example of how such an provision would have worked for the Chippewa Cree Tribe had it been in law a year ago.

We have a desperate need for additional storage at Bonneau Dam as we lose a significant amount of water during the annual spring runoff without more storage capacity. It simply runs down the river.

Additionally, we are in the middle of a water rights negotiation with the State of Montana. It is significantly to our benefit if during the course of our negotiations we can show the State that we have both the need and the ability to store more water.

Finally, there are in fact sound ideological reasons for adding to the height of the dam and therefore potentially adding storage as part of the dam rehabilitation. For example, adding to the height of the storage could reduce the potential of a flood.

We understand the Bureau of Reclamation, adding to the height and storage capacity of the Buffalo Bill Dam in Wyoming, used a similar rationale. It will cost the Federal Government much more money if we were to undertake the needed rehab with SOD money and then come back separately to access other BIA funds, presumably the irrigation construction account, which has very little money in it for the expansion of the dam.

This would require two separate designs, conceptual design and final design, and two separate construction contracts. We could save hundreds of thousands, if not billions, if we could do these two items together.

Last year the Deputy Commissioner of BIA agreed with us on this matter, because we could both rehab and add to the storage of a dam at a very minimum cost beyond what rehab would cost.

If approved, our request would be to make an exception to what had been general practice and allow us to do the expansion and rehabs simultaneously with SOD dollars. We think it is very important to preserve this discretionary authority of the Secretary and its Commissioners to approve the use of SOD funds in situations like ours.

We understand the need not to turn the SOD program into a major construction program. But we think the bill goes too far in the other direction. We would be pleased to have our staff work with the alternative language.

Without water there will be no life, because nothing can exist without water. Whether it is in the confines of this bill or another, we do think Congress needs to ensure that the funds are made available to tribes for dam construction and enlargement of the existing dams. They simply must have enhanced potential to hold, store, capture and utilize water. Funds and clear authorization are needed to maximize and develop additional storage of water in Indian reservations.

We think it would be important for the bill to contain a section that would require the BIA to report to the congressional authorizing and appropriating committees on a twice-a-year basis as to where they stand in assessing and rehabilitating dams on Indian reservations. Part of this report must include updated cost estimates on repair of each dam as it goes through the design and construction phase.

We are quite concerned that the BIA and the Interior Department are not requesting significant funds now that many of the SOD projects around the country are reaching the construction phase.

BIA is nickel and diming the program. I am sure we will later hear that the program is not being well run. But you can't run a construction program on these types of minimal budgets and expect good results.

This concludes my testimony, and I thank you. I thank the Committee for holding this hearing and soliciting the views of the Chipewya Cree Tribe.

[Prepared statement of Mr. Parker follows:]

The Chippewa Cree Tribe of the Rocky Boy's Reservation

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TESTIMONY OF THE CHIPPEWA CREE BUSINESS COMMITTEE

PRESENTED BY VICE CHAIRMAN RAYMOND PARKER, JR.

TO THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

OF THE COMMITTEE ON NATURAL RESOURCES

ON H.R. 1426

THE INDIAN DAMS SAFETY ACT OF 1993

UNITED STATES HOUSE OF REPRESENTATIVES

JULY 2, 1993

Mr. Chairman and Members of the Committee,

It is an honor to present the views of the Chippewa Cree Tribe of the Rocky Boy's Reservation on H.R. 1426, the Indian Dams Safety Act of 1993.

Present Status of Safety of Dams Activity on Rocky Boy's Reservation

The Chippewa Cree Tribe was one of the first tribes in the country to enter into a P.L. 93-638 contract for the Safety of Dams Project through the Bureau of Indian Affairs. The Bonneau Dam Project is located in Rocky Boy's Reservation about 20 miles southwest of Havre, Montana. The dam was designed and constructed in 1939 and 1940 by the United States Indian Service, which is presently known as the Bureau of Indian Affairs. The overall Safety of Dams classification of Bonneau Dam is "POOR". This classification is assigned due to the severe hydrological inadequacy of the facility. The dam will be overtopped by an approximately 50-year return interval flood. Failure upon overtopping is highly probable for this small earthfill embankment. Assuming a 50-year remaining life, there is a 63 percent probability, or approximately a 2 out of 3 chance, of the dam overtopping and failing within its remaining life. Other dam safety issues identified in Rocky Boy's include the potentially inadequate static and seepage stability of the embankment and the uncertain condition of the outlet work.

Overall Safety of Dam Needs on Rocky Boy's Reservation

Specifically, the needs regarding dam safety on the Rocky Boy Reservation are supported by the following information:

Presently, three (3) dams on Rocky Boy's Reservation have been classified as significant or high hazard dams and are the only dams shown on the BIA's inventory list. The Tribe conducted an additional inventory and located six (6) more dams that could qualify for the BIA's Safety of Dams Program. None of the six dams are presently on the BIA inventory and there has been absolutely NO work of any kind done on or with those six dams all of which were built by the United States government. The neglect of the dams includes routine Operation and Maintenance (O & M).

One of the three Rocky Boy's Reservation dams in the BIA inventory had final designs completed on correcting safety of dam deficiencies. Costs for correcting the deficiencies are estimated to exceed \$10,000,000 and this does not include any O & M costs. This one dam gives an idea of the extent of "other" problems that are associated with dams which need to be corrected.

The Tribal Perspective of H.R. 1426

H.R. 1426 will provide an excellent start on operating and maintaining dams and correcting O & M deficiencies of dams located on Indian Reservations. There are, however, other important areas and issues related to dams on Indian Reservations that should be addressed

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in this bill. H.R. 1426 is somewhat limited in scope and should be slightly expanded. We make the following observations about the bill.

The bill states that 53 dams have been classified as high hazard dams. However inventories of dams on Indian Reservations need to be completed and for that reason the provisions of Section 3(c) are very important. The Tribe is positive that other dams will be reclassified and will identify the many problem dams out in Indian Country. This will show up when inventories are completed.

There are safety deficiencies that need to be corrected on almost all Indian Reservation dams. A majority of these dams were built in the 1930s and 1940s before structure standards were required and there are no plans or drawings for many of these dams.

H.R. 1426 states rehabilitation shall be performed to bring dams to a satisfactory condition. However, it is not always clear whose standards one is supposed to follow in determining what is "satisfactory." There may need to be some further discussion on this matter. Another concern we have with the present program is that there are no clear guidelines for managing a SOD contract. We have found the BIA in the Billings Area Office to be extremely arbitrary in how they have dealt with us. Our concern about suggesting the adoption of guidelines is that it would probably take the BIA five years to come up with guidelines and we would hate to see the program put on hold while that happens.

The only real fundamental problem we have with the legislation is found in section 3(d) which would statutorily prohibit any SOD money from being used for additional storage or for developing benefits at identified dams beyond those originally intended. This section therefore limits dam work to rehabilitation and O & M only. The BIA has generally followed the practice of not using SOD funds for enlargement of dams but this has been simply a practice, we are aware of no rule, regulation or law that would outright prohibit it.

We do not understand the wisdom of making such a prohibition statutory and we have an excellent example of how such a provision would have worked to the detriment of the Chippewa Cree Tribe had it been law a year ago. We have a desperate need for additional storage at Bonneau Dam as we lose a significant amount of water during the annual spring runoff that, without more storage capacity, simply runs down the river. Additionally, we are in the middle of water rights negotiations with the state of Montana. It is significantly to our benefit if, during the course of our negotiations, we can show the state that we have both the need and the ability to store more water. Finally, there are in fact sound hydrologic reasons why adding to the height of the dam (and thereby potentially adding storage) is part and parcel of dam rehabilitation. For instance, adding to the height and storage could reduce the

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potential of a flood. We understand that the Bureau of Reclamation added to the height and storage capacity of the Buffalo Bill Dam in Wyoming using similar rationale. It would cost the federal government much more money if we were undertake the needed rehab of Bonneau Dam with SOD money and then come back and separately access other BIA funds -- presumably the irrigation construction account (which never has any money in it) -- for the expansion of the dam. This would require two sets of engineering drawings (conceptual design, final design, etc.) and two separate construction contracts. We could save hundreds of thousands (if not millions of dollars) if we could do these two items together. Last year, the Deputy Commissioner of the BIA agreed with us on this matter and -- because we could both rehab and add to the storage of Bonneau Dam at very minimal costs beyond what rehab only would cost -- he approved our request and directed the Billings Area Office to make an exception to what had been general practice and allow us to do expansion and rehab simultaneously with SOD dollars. We think it is very important to preserve this discretionary authority of the Secretary (and/or Commissioner) to approve the use of SOD funds in situations like ours. We understand the need not to turn the SOD program into a major construction program but we think the bill goes too far in the other direction. We would be pleased to have our staff work with yours on alternative language.

Without water there is nothing -- there will be no life because nothing can exist without water. Whether it is within the confines of this bill or another, we do think the Congress needs to ensure that there are funds made available to tribes for dam construction and the enlargement of existing dams. Tribes simply must have enhanced potential to hold, store, capture, and utilize water. In order to do so, funds and clear authorization are needed to maximize and develop additional storage of water on Indian Reservations.

The Chippewa Cree Tribe commends the sponsor of the bill for keeping the SOD program within the BIA. During the last Administration there was a concerted three year effort by the Bureau of Reclamation to have the BIA's SOD program transferred to the BOR. Since the BOR is sometimes now known as an agency without a mission we understand that they are anxious to create work but we were pleased that the Congress blocked that proposed transfer for three years in a row. While the BOR certainly has technical capabilities that are useful to tribes in the SOD arena, and while many tribes that contract from the BIA for SOD are in fact subcontracting some work (i.e., design) to BOR, we would not want to see BOR come into a policy making role on Indian reservations which is what would have happened if they had been allowed to take over the program. BOR has as its main constituency, non-Indian irrigation districts. Those districts frequently compete with Indian tribes for water. BOR would therefore be in a serious conflict of interest situation if they were to be making decisions about how much water a tribe could store when they are representing interests who covet that same water. BOR should be an entity to whom the tribes and the BIA can turn

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to for technical assistance but their role should not go beyond that. We think the bill is well drafted in that regard.

We would recommend an addition to the bill. We think it would be important for the bill to contain a section that would require the BIA to report to the congressional authorizing and appropriating committees on a twice a year basis as to where they stand in assessing and rehabilitating dams on Indian reservations. Part of this report must included updated cost estimates on the repair of each dam as it goes through the design and construction phase. We are quite concerned that the BIA and the Interior Department are not requesting sufficient funds now that many of the SOD projects around the country are reaching the construction phase. When the BOR was attempting to take over SOD they were proposing - with the Department's blessing - funding levels far in excess of what the BIA has asked for in FY 93 and FY 94. In FY 94, the BIA has only requested \$10.8 million in construction costs for two dams and Bonneau Dam, which is estimated to cost \$8-10 million alone, is not one of the two. As usual, the BIA is nickel and diming a program and I am sure we will later hear that the program is not being well run but you can't run a construction program on these type of minimal budgets and expect good results. The Department should have allowed the BIA to submit the same levels of budget requests as they allowed the BOR to propose. The FY 94 and FY 95 SOD budgets must be changed to reflect the realities of construction costs.

This concludes my testimony and I thank the Committee for holding this hearing and soliciting the views of the Chippewa Cree Tribe.

Mr. RICHARDSON. Thank you very much, Mr. Parker.
The chair recognizes Mr. Johnnie Francis.

STATEMENT OF JOHNNIE FRANCIS

Mr. FRANCIS. Thank you, Chairman Richardson and distinguished members of the Subcommittee.

The Navajo Nation appreciates this opportunity to comment on H.R. 1426, the Indian Dams Safety Act of 1993. My name is Johnnie Francis. I am Director of the Water Development and Maintenance Department of the Navajo Nation's Division of Natural Resources.

On behalf of the Navajo Nation, we support H.R. 1426 because it would provide much needed support and assistance to upgrade the 12 major dams on the Navajo reservations that are in need of desperate repairs. This legislation will also restore fully the dam operations and maintenance programs whose defunding by the Bureau of Indian Affairs led directly to the critical dam safety problems we now face.

The Navajo Nation holds sovereign jurisdiction over 18 million acres within the States of Arizona, New Mexico and Utah. The Navajo Nation lies on the arid and semiarid uplands of Colorado Plateau, with an average elevation of six thousand feet above sea level, and with an average annual precipitation ranging from less than eight inches of rainfall per year in the Painted Desert and the San Juan River Valley, to more than 20 inches on the isolated mountain peaks.

As previously mentioned, there are currently at least 12 major unsafe dams within the Navajo Reservation. Eight dams are located in Arizona and five or four located in New Mexico. Of these 12, eight are currently listed as high or significant hazard on the national Department of the Interior Dam Safety Program's technical priority rating system and are to be rehabilitated. Once rehabilitated, these eight dams would have a combined surface storage capacity of 35,780 acre feet.

Due to the inadequacies of the existing surface water storage structures on the Navajo Reservation, an estimated 150,000 acre feet of surface water annually escapes from Navajo watersheds into the Colorado River system. This run-off carries with it millions of tons of sediment and topsoil from the Nation's rangelands and farmlands, contributing significantly to the salt and sediment loads of the Colorado River.

In the arid Southwest, water is life. The unsafe conditions of many of the Navajo Nation's water storage dams and the lack of adequate reservoir storage capacity have severely constrained the Nation's ability to make beneficial use of its scarce water resources for domestic and livestock use, farming and irrigation, economic development, aquifer recharge, recreation and fish and wildlife purposes.

Because of this, the Navajo Nation testified before the Subcommittee on Indian Affairs in support of similar legislation last year. The Navajo Nation stated that the scope of the legislation needed to be broadened to include all dams across Indian country, not just in New Mexico as last year's bill provided.

We are pleased that H.R. 1426 applies to all dams in the Indian country, and the companion legislation, Senate bill 442, does the same as H.R. 1426, addresses the need to rehabilitate unsafe dams on Indian lands and would provide adequate operation and maintenance to those dams after such safety deficiencies are remediated or remedied. The intent of this measure is highly commendable and long overdue.

There are a critical need for dam maintenance and repairs on the Navajo Reservation. I would like to re-emphasize that these 12 major dams are in desperate need of repairs and in some cases complete reconstruction to meet Department of the Interior dam safety specifications. These 12 dams total 71,130 acre feet of surface water storage, which is approximately 90 percent of the total storage capacity on the Navajo Nation.

When safe and operative, these dams will supply irrigation water to 8,380 acres of Navajo farmlands. It will also provide irrigation water to nearly 60 acres on the Navajo Indian Irrigation project.

Three, it will provide flood control benefits to Navajo communities located downstream from the 12 dams. It will also provide dependable municipal water to the populous Fort Defiance-Window Rock and St. Michaels area.

It will also allow the Navajo Nation to provide water for domestic and livestock purposes, allow the Navajo Nation to promote economic development by developing a water system for rural and industrial use. And finally, allow the Navajo Nation to begin to provide for recreation and fish and wildlife water habitat.

Most importantly, this legislation is needed because most of the dams on the Navajo Reservation will not withstand a major flood. This poses an imminent threat to the lives and property of Navajo Nation residents and communities.

The Many Farms Dam in Arizona and the Camp Assayi Dam in New Mexico will only withstand 15 percent and 21 percent of the probable maximum floods, respectively. Most of the other dams on the Navajo Reservation will accommodate less than 40 percent of the probable maximum floods.

Such structural inadequacies need to be corrected: Excessive water seepage through the dams and dike foundations which threaten the structures of the dam embankments, inadequate or damaged inlet and outlet structures, including inadequate discharge capabilities and conditions of spillways, inadequate upstream and downstream slope protection of embankment, erosion of embankment due to improper drainage, inadequate storage capacities due to a build-up of sedimentation and the need for upstream erosion and sediment control practices and structures. These problems could lead to a failure of the dams and the loss of lives and property on the Navajo Reservation.

The Federal Government's responsibility for Indian Dams Safety Program is based on Secretarial Order 3048, which originally mandated a Dams Safety Program on the Department of the Interior lands. This order also establishes and assigns responsibility for agencies within the Department of the Interior to carry out their trust responsibility and prevent dam failures which threaten the loss of life or property.

According to Walter Mills, Acting Assistant Secretary of Indian Affairs, in its July 17, 1989 response to the Report 89-108 of the Inspector General, he stated, "The dam safety business, under ideal conditions, is a time-consuming process which at any time can be given the appearance that no action or process is taking place."

However, according to the Inspector General's Report, 89-108, only the BIA, of all the Department of the Interior agencies, has failed to respond in timely fashion to dam safety concerns as mandated by Secretarial Order 3048.

Under the bureau's jurisdiction, 25 of the 50 dams ranked as most unsafe. Located on the Navajo Reservation are eight dams in Arizona, and four in New Mexico under the BIA's jurisdiction that have high or significant hazard rating and evaluated as in poor or unsatisfactory condition by the Inspector General's report.

Despite this and additional Federal guidelines and policy statements requiring agency officials to ensure that dams are properly maintained, no sufficient measures have been taken by the BIA to initiate correction of this dangerous situation.

In conclusion, and in light of the BIA's history with respect to the fiscal and technical management of the Federal safety of dams program, the Navajo Nation highly commends the safety comments, the dam safety operation and maintenance program established by H.R. 1426 and the provision of flexibility for tribes to contract under Public Law 93-638, safety of dams evaluations, repairs and subsequent operations and maintenance functions from the BIA.

The Navajo Nation notes that its water development department does have the technical and professional capability to conduct dams safety operation and maintenance programs if it would be funded adequately.

The water development department is presently contracting with the BIA to provide technical oversight of existing minimal safety of dams program on the Navajo Reservation. However, we can only provide minimal compaction work because of inadequate resources. With the implementation of this legislation, tribes should have the opportunity to undertake dam evaluation and repairs.

Further, the Navajo Nation recommends that the BIA secure adequate funding in its base budget for Indian dams.

In closing, Mr. Chairman and members of this Committee, the Navajo Nation believes that H.R. 1426 is needed for the protection and welfare of all those who reside on Indian reservations. We urge this Subcommittee to support the passage of H.R. 1426.

Thank you for the opportunity to comment on H.R. 1426. We look forward to working with the Subcommittee on this important legislative effort.

Thank you.

[Prepared statement of Mr. Francis follows:]



THE NAVAJO NATION

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PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE PRESIDENT

Testimony of the Navajo Nation before the House Subcommittee on Native American Affairs regarding H.R.1426, the Indian Dams Safety Act of 1993

July 2, 1993

Introduction

Chairman Richardson and distinguished members of the Subcommittee, the Navajo Nation appreciates this opportunity to comment on H.R. 1426, the Indian Dams Safety Act of 1993. My name is Johnnie Francis, Director of the Water Development and Maintenance Department of the Navajo Nation's Division of Natural Resources. On behalf of the Navajo Nation, we support H.R.1426 because it would provide much needed support and assistance to upgrade the twelve major dams on the Navajo reservation that are in desperate need of repair. This legislation will also restore fully the dam operations and maintenance programs whose defunding by the Bureau of Indian Affairs (BIA) led directly to the critical dam safety problems we now face.

The Navajo Nation

The Navajo Nation holds sovereign jurisdiction over 18 million acres within the states of Arizona, New Mexico, and Utah. The Navajo Nation lies on the arid and semi-arid uplands of the Colorado Plateau, with an average elevation of 6,000 feet above sea level, and with an average annual precipitation ranging from less than 8 inches in the Painted Desert and San Juan River Valley, to more than 20 inches on isolated mountains peaks.

As previously mentioned, there are currently at least twelve major unsafe dams within the Navajo reservation. Eight dams are in Arizona and four are in New Mexico. Of these twelve, eight are currently listed as "high" or "significant" hazard on the national Department of Interior Dam Safety Program's technical priority rating system and are to be rehabilitated. Once rehabilitated, these eight dams would have a combined surface storage capacity of 35,780 acre-feet.

Statement of the Navajo Nation
July 2, 1993

Due to the lack and inadequacies of existing surface water storage structures on the Navajo reservation, an estimated 150,000 acre-feet of surface water annually escapes from Navajo watersheds into the Colorado River system. This runoff carries with it millions of tons of sediment and topsoil from the Nation's rangelands and farmlands, contributing significantly to the salt and sediment load of the Colorado River.

In the arid Southwest, water is life. The unsafe conditions of many of the Navajo Nation's water storage dams, and the lack of adequate reservoir storage capacity, have severely constrained the Nation's ability to make beneficial use of its scarce water resources for domestic and livestock use, farming and irrigation, economic development, aquifer recharge, recreation, and fish and wildlife purposes.

Because of this, the Navajo Nation testified before the Senate Committee on Indian Affairs (SCIA) in support of similar legislation last year. The Navajo Nation stated that the scope of the legislation needed to be broadened to include all dams across Indian country, not just in New Mexico as last year's bill provided. We are pleased that H.R.1426 applies to all dams in Indian country and the companion legislation, S.442, does the same. H.R.1426 addresses the need to rehabilitate unsafe dams on Indian lands and would provide adequate operation and maintenance to those dams after such safety deficiencies are remedied. The intent of this measure is highly commendable and long overdue.

Critical Need for Dam Maintenance and Repair on the Navajo Reservation

I would like to re-emphasize that these twelve major Navajo dams are in desperate need of repair and in some cases complete reconstruction to meet Department of Interior Dam Safety specifications. These twelve dams total 71,130 acre-feet of surface water storage which is approximately 90% of the total storage capacity on the Navajo Nation. When safe and operative, these dams will:

- 1) supply irrigation water to 8,380 acres of Navajo family farms;
- 2) supply irrigation water to nearly 60,000 acres at the Navajo Indian Irrigation Project;
- 3) provide flood control benefits to Navajo communities located downstream from the twelve dams;
- 4) provide dependable municipal water to the populous Fort Defiance-Window Rock-St. Michaels area;

Statement of the Navajo Nation
July 2, 1993

- 5) allow the Navajo Nation to provide water for domestic and livestock purposes;
- 6) allow the Navajo Nation to promote economic development by developing a water system for rural and industrial use, and;
- 7) allow the Navajo Nation to begin to provide for recreation, and fish and wildlife water habitat.

Most importantly, this legislation is needed because most of the dams on the Navajo reservation will not withstand a major flood. This poses an imminent threat to the lives and property of Navajo Nation residents and communities. The Many Farms dam in Arizona and the Camp Assayi dam in New Mexico will only withstand 15 percent and 21 percent of the probable maximum floods, respectively. Most of the other dams on the Navajo reservation will accommodate less than 40 percent of probable maximum floods. Such structural inadequacies need to be corrected. Excessive water seepage through dam and dike foundations threaten the structure of dam embankments. Inadequate or damaged inlet and outlet structures including diversion inlet dams and sluiceways are common. Other structural problems include: inadequate discharge capacities and conditions of spillways; inadequate upstream and downstream slope protection of embankments; erosion of embankment due to improper drainage; inadequate storage capacities due to the build up of sedimentation; and, the need for upstream erosion and sediment control practices and structures. These problems could lead to a failure of the dams and the loss of lives and property on the Navajo reservation.

Federal Government Responsibility for Indian Dams Safety

Secretarial Order No. 3048 originally mandated a dam safety program on Department of Interior lands. This order also establishes and assigns responsibilities for agencies within the Department of Interior to carry out their trust responsibility and prevent dam failures which threaten the loss of life or property. According to Walter Mills, Acting Assistant Secretary of Indian Affairs, in the Bureau's July 17, 1989 response to the Report (89-108) of the Inspector General, he stated, "[t]he dam safety business, under ideal conditions, is a time-consuming process which at any time can be given the appearance that no action or process is taking place." However, according to the Inspector General's report 89-108, only the Bureau of Indian Affairs, of all Department of Interior agencies, has failed to respond in timely fashion to dam safety concerns - as mandated by Secretarial Order No. 3048. Under the Bureau's jurisdiction, 25 of the 50 dams ranked as most unsafe. Located on the Navajo reservation are 6 dams in Arizona and 2 dams in New Mexico under the BIA's

Statement of the Navajo Nation
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jurisdiction that have a "High" or "Significant" hazard rating and evaluated as in "Poor" or "Unsatisfactory" condition by the Inspector General's report. (see Attachment A). Despite this and additional federal guidelines and policy statements requiring agency officials to ensure that dams are properly maintained, no sufficient measures have been taken by the BIA to initiate correction of this dangerous situation.

Conclusion

In light of the BIA's history with respect to the fiscal and technical management of the Federal Safety of Dams program, the Navajo Nation highly commends the Dam Safety Operation and Maintenance Program established by H.R.1426, and the provision of flexibility for tribes to contract, under P.L. 93-638, safety of dams evaluations, repairs, and subsequent operations and maintenance functions from the BIA. The Navajo Nation notes that its water development department does have the technical and professional capability to conduct dams safety operation and maintenance programs, were adequate funding available. The water development department is presently contracting with the BIA to provide technical oversight of the existing minimal safety of dams program on the Navajo reservation. However, we can only provide minimal compaction work because of inadequate resources. With the implementation of this legislation, tribes should have the opportunity to undertake dam evaluation and repairs. Further, the Navajo Nation recommends that the BIA secure adequate funding in its base budget for Indian dams.

In closing, Mr. Chairman and members of this Subcommittee, the Navajo Nation believes that H.R.1426 is needed for the protection and the welfare of all those who reside on Indian reservations. We urge this Subcommittee to support the passage of H.R.1426. Thank you for the opportunity to comment on H.R.1426. We look forward to working with the Subcommittee on this important legislative effort.

Statement of the Navajo Nation
July 2, 1993

**DEPARTMENT OF THE INTERIOR DAM SAFETY PROGRAM
TECHNICAL PRIORITY RATINGS OF NAVAJO NATION DAMS
(total of 385 DOI Dams Listed as Having "High" or "Significant" Hazard)**

October 25, 1991

<u>PRIORITY RATING</u>	<u>DAM</u>	<u>STORAGE (acre-feet)</u>	<u>LOCATION</u>
4	Ganado*	3,000	Upper Pueblo Colorado watershed Ganado, Apache County, ARIZONA
5	Round Rock*	800	Upper Lukachukai watershed Round Rock, Apache County, ARIZONA
19	Many Farms*	18,400	Middle Chinle watershed Many Farms, Apache County, ARIZONA
23	Canyon Diablo*	4,000	Lower Canyon Diablo watershed Leupp, Coconino County, ARIZONA
57	Captain Tom*	1,050	Upper Chaco River watershed Two Grey Hills, San Juan County, NM
69	Wheatfields*	3,880	Upper Wheatfields watershed Wheatfields, Apache County, ARIZONA
126	Cutter	18,000	On Navajo Indian Irrigation Project main canal from Navajo Reservoir; South of Farmington, San Juan, NM
129	Wauneka	50	Middle Wide Ruins watershed Wide Ruins, Apache County, ARIZONA
191	Assayi*	650	Upper Black Creek watershed Crystal, McKinley County, NM
205	Tsaile*	4,000	Upper Tsaile watershed Tsaile, Apache County, ARIZONA
232	Red Lake	15,500	Upper Black Creek watershed Red Lake, McKinley County, NM
349	Blue Canyon	1,800	Upper Black Creek watershed Fort Defiance, Apache County, ARIZONA

* In "Poor" or "Unsatisfactory" condition

Mr. RICHARDSON. The Chair recognizes the gentleman from Wyoming.

Mr. THOMAS. Thank you, Mr. Chairman.

Thank you all for your testimony. Just a couple of brief questions.

Chairman Sutter, what you suggested is that we should establish standards and provide more direction to the BIA. What standards would you suggest? I mean, are there a set of standards that you think would be acceptable?

Ms. SUTTER. Mr. Thomas, I think that oftentimes policies are developed within the Bureau of Indian Affairs that we have no knowledge of and sometimes these policies are vague and are not followed, and I think that that is something that would be in line with the standards.

I think they have a trust responsibility to us involving the dam itself and probably the States, back when the dam was first built, it was considered unsafe at that time and there were some problems, but I think that the standards possibly that you are referring to would be those that are used for non-Indian dams and that we feel like that we should be treated fair and equitably in that way, is that the standards for use of non-Indian dams should also apply to all Indian reservations.

Mr. THOMAS. The standards that are applied to the BOR, would you find those to be satisfactory?

Ms. SUTTER. I think they probably would if those were followed out and continued and not started and then not completed.

Mr. THOMAS. Does the BIA utilize the standards that are used by the bureau and other places, do you know?

Ms. SUTTER. I really couldn't answer that, sir.

Mr. THOMAS. It would seem like they should. I guess I may be a little overly sensitive, but I sense that there is a little territorial pushing and shoving going on here, but I am not sure of that.

Bureau of Reclamation is the one that really lays these out and I presume that they are acceptable standards under most conditions and therefore—

Ms. SUTTER. There again, I would also assume that. But oftentimes, I think that that would be a part of the BIA's responsibility to see that our dams are built on the same standards that non-Indian dams are and they should follow up on that and make sure that that takes place.

Mr. THOMAS. I agree with you.

Let's see here. Mr. Parker, Chairman Parker, you indicated you had some reservations about the BOR becoming very involved, I guess, and you alluded to the notion that perhaps it would be competitive with your district. Doesn't State law generally control the distribution of water?

Mr. PARKER. On non-Indian lands they do. I don't know if you misunderstood my—could you restate the question?

Mr. THOMAS. Well, I guess I am sort of seeking to see how we could more efficiently do this thing, but you had some reservations about BOR becoming very involved in Indian dams and I think you alluded to the notion that sometimes irrigation districts are competitive with the Indian water.

Mr. PARKER. Yes.

Mr. THOMAS. And I am suggesting to you that it seems to me that there are either Federal laws on the reservation or State laws in the State that would adequately deal with the distribution of the water.

Mr. PARKER. Well, I think in the case of Montana, the State has considerably overappropriated, I guess, for lack of a better term, or words, the water within the State. Like I stated, we are in active negotiations with the State of Montana on a water rights compact that we hope to finalize by 1995.

Mr. THOMAS. I see.

Mr. Phillips, let's talk about time for a minute. How long has the question of doing something about Washakie Dam been before you? How long have you been working at the problems there?

Mr. PHILLIPS. We have been active for, I would estimate, the last 5 years, but one thing about the Washakie Dam is that when they initially built it, and I will explain that, the Washakie and Ray Lake Dams were constructed by the Bureau of Indian Affairs, whereas the other three dams that are located on the reservation were constructed by the Bureau of Reclamation, and the Washakie Dam was constructed in 1935. And at that time they had problems even then, so it has been a long history, but we have been actively with the 638 contracts approximately the last 5 years.

Mr. THOMAS. Are you making progress? Where are you in terms of all these steps, this and that?

Mr. PHILLIPS. Especially with the Washakie Dam, currently we are allowing the Bureau of Reclamation to submit a final design for that, so we have proceeded quite far. Since they are an agency, we think that they will move a little faster if we allow them to submit, and I think Congress could allow them to build it being that they are in the dam-building business.

Mr. THOMAS. That makes sense to me.

Mr. PHILLIPS. Yes.

Mr. THOMAS. I am a little confused and I guess probably none of us really know whether this delay is a matter of process in terms of moving through with BIA. Moving expeditiously, ultimately, however, it is going to come to money, isn't it?

Mr. PHILLIPS. Yes, that is correct, Mr. Thomas, and I think in this day and time I hope this will alleviate.

One thing I do want to state is that it seems like I am taking anywhere from five to ten people a week up to our dam because it is real hard for me as tribal leader to assure our people that the dam is in good shape, and verbally sitting down in the valley I really can't emphasize to our people that the dam is okay.

So I have taken the initiative to take the members up to the dam and show them where the weak spots are and how we are monitoring it, and to assure them that until we get the funding to repair the dam that I cannot even myself feel comfortable. Until that time comes that the money is appropriated through a payor, especially Washakie, just due to the structure of the valley, if the dam should fail—I mean, it is going to—actually the destruction would be anywhere from, I would estimate, 40 to 70 miles down the river just down to the obstruction of the valley.

Mr. THOMAS. I understand.

I appreciate you all being here and I am going to support the Chairman's bill and I appreciate his introducing it.

Mr. RICHARDSON. Thank you very much, Mr. Thomas.

Mr. Francis, has the Navajo Tribe contracted with the BIA under the Safety of Dams Program to perform some of the work you outlined on the reservation?

Mr. FRANCIS. Mr. Chairman, members of the Committee, we did sign a contract with the Bureau of Indian Affairs only to set up a coordinating office between our office and the Bureau of Indian Affairs to insure that we have our dams maintained on the national priority listing, and then we also deal with our own legislative process as well as working with the local chapter through this coordinating office that we have established.

But as far as getting the contract, the management, the construction management, we have brought in the Bureau of Reclamation to help us do those technical construction management programs.

Mr. RICHARDSON. Now, have any of the dams on the Navajo Reservation reached the construction phase?

Mr. FRANCIS. No, there is none, but hopefully by the third week in August we may have the ground rock construction started. We have been informed by the BIA that we had a \$3 million set aside, but as of Friday, we have been informed that we are only getting around a little over \$2.3 million.

So what has happened to the rest of that money, we were never informed. Apparently the money has been transferred out. That is what has happened here at the central office level and—

Mr. RICHARDSON. Well, that is something that we need to look into. I know Governor Lewis was informing us that two weeks ago the last \$9 million payment might be decreased to \$4 million and this affects the Zunis because they need the interest to carry out the Zuni Land Conservation Act Program that we passed last year.

Isn't that right, Governor Lewis? Is that information correct?

Mr. LEWIS. That is right, Mr. Chairman.

Mr. RICHARDSON. And did they give you any reason for the \$9 million not being available?

Mr. LEWIS. Well, we had been assured until two weeks ago when we wrote the letter that it was still forthcoming in the 1994 budget. However, it was only the next day that we were informed that cuts done by the Department of the Interior had whacked off \$5 million and we would only get \$4 million, which would impede the implementation portion of the plan that we have in regard to soil erosion controls and flood controls.

Since we are not on the live stream, we do get tremendous floods at times when cloud bursts occur in different areas that the tributaries are that enter down into the Zuni River, and our desire is to build structures designed to slow down the flood waters and at the same time impound water for our water table and create drinking areas for stock, and we cannot do that unless we had the full amount of \$17 million in the trust fund to get the interest to do what we had planned to do as mentioned.

Mr. RICHARDSON. Now, Vice Chair Parker, you stated in your testimony, there aren't any clear guidelines for managing the safety of dams contract and that you found the BIA office in Billings to be basically arbitrary in dealing with you. Do you want to elaborate

on that? Would you also suggest to us a way that we could deal with these lack of guidelines?

Mr. PARKER. The Chippewa Cree Tribe entered into a 93-638 contract here approximately about a year and a half ago to do the conceptual final design. Final designs are on probably our last phase. We should have final designs within the next month or so.

We are looking at entering into a 90 modification to the contract if possible for the construction phase. But as far as the guidelines, working with the Bureau of Indian Affairs, what they told us, it is usual for a tribe to 638 them as far as any guidelines to follow. The process is monitoring, et cetera. There was none in place, so what they had told us, we are more or less a pioneer.

I don't know if that is in the Montana area or Indian country as a whole, but as far as guidelines, what I would suggest is that from the conceptual drawing phase to actual 638 contracting of the O&M phase of it, some type of guidelines be drafted. At this point, Mr. Chairman, I really am not sure what those guidelines could entail. I am sure there are guidelines out there on non-Indian dams that could be looked at, possibly adopt some of them.

Mr. RICHARDSON. Obviously, we need clearer guidelines.

Mr. PARKER. Clear guidelines. Not so much a regulation, limits on authority, et cetera, but a process, at least for the tribes to follow, you know.

Mr. RICHARDSON. Chairperson Sutter, as I recall, a majority of your tribal members live below Ray Lake Dam and the Washakie Dam, so dealing with this problem is very important because we are talking about the possible loss of property and life; is that correct?

Ms. SUTTER. That is exactly correct.

Mr. RICHARDSON. Do you have any statistics on how many tribal members and homes are located in the area that would be affected by a potential catastrophe?

Ms. SUTTER. Overall, there are 14,000 people that live on the reservation and a lot of those people are in what we call cluster housing and we have communities where there are a lot of people who live in each community. This would include the Ft. Washakie area and the Ethete area as well as the Arapahoe area, and were these dams to break they have estimated there would be a possible 25-foot wall of water that would originate from the breaking of the dam and that would flow, as Mr. Phillips has told you, 70 miles down through the reservation and cover most of the major areas of population where the Indians live and also the non-Indians.

Mr. RICHARDSON. So a majority of these 14,000 would be affected?

Ms. SUTTER. Yes. There are ranches that are outlying. They are just large ranches but the accumulation of the population is generated in those three areas.

Mr. RICHARDSON. Well, I saw that dam. It is about to burst.

Ms. SUTTER. Yes, it is.

Mr. RICHARDSON. In fact, I didn't want to spend much time there.

Ms. SUTTER. We even get uneasy when we walk across it and inspect it.

Mr. RICHARDSON. It is a beautiful dam.

Ms. SUTTER. But we are truly concerned about it. We still have some snow melt in the mountain. We are monitoring it every day and when it is so bad where the spillway was running high, we a had 24-hour watch on it with an emergency line at the police station.

Mr. RICHARDSON. Have they started the recreation activities at the lake?

Ms. SUTTER. Yes, they have.

Mr. RICHARDSON. You promised to invite me back.

Ms. SUTTER. Yes, we certainly will. The fishing is great.

Mr. RICHARDSON. Governor Lewis, what is the status of the Black Rock Dam? You stated it is about 80 years old. Did the BIA, prior to 1989, perform any inspections or maintenance on the dam?

Mr. LEWIS. Yes, Mr. Chairman. At one time back in the 1930s and perhaps down to the early 1940s, there used to be a branch into the Bureau of Indian Affairs irrigation branch that had the responsibility of overseeing the maintenance of the dam. I do not think it was only Zuni, but in other areas. And when they did away with that branch, then nobody else had any watch over the structures that had been built.

At the time that they built Black Rock Dam, it was for the purpose of setting up farms along a canal that would run from the dam on down to the west end of the valley. Prior to that, my people planted 12,000 to 13,000 acres every year of crops for consumption, but we also helped immigrants passing through going West and helped in the building of Ft. Wingate and Ft. Defiance when they were constructed, those two forts. Nobody else could furnish the feed for horse and men, people.

But the design was not stable enough in this construction. They burst it twice, and when they did finally finish it, it cost more than they had anticipated and silt was already coming in.

The flow that comes down to it from the tributaries that I mentioned, six inches would start going over the spillway and on down to the village. When you get out there right now it looks like there is a lot of water out there, but it is only about a foot deep except in the channel that goes down to the outlet, and we cannot use that for irrigation, for all the farms that are down below.

And so we had contracted with the Bureau of Reclamation to alleviate the danger of flooding down in the Pueblo, and we have elected some options that they gave us. We discarded some that they suggested, but they will be ready to do some construction work this month. And because of the siltation down below where the debris is formed along the bottom of a grove of trees that were put in in the 1930s, we have the silt-back siltation on the riverbed, and the Army Corps is now making a study on the things that they feel like we should do on the riverbed.

We cannot seem to get anyone to look at our dam and give us any suggestions on dredging. We are looking for a machine that we might use to do it ourselves, but it is all level ground now and there is no real amount of water that can be stored there anymore.

We have four dams up in the northeast corner of the reservation. They all directly enter into one bigger dam and then flow down to the Zuni River and onto the spillway and on through the community, and the Raymond Dam up above, 22 miles east of us, if it ever

burst, it would knock out Viscaro Dam, get in the Zuni River and down on into the Pueblo and these are not the safest dams either.

So what we are trying to do is drain these almost as deep and just as wide and criss-cross our reservation after the erosion started, and so we have a problem that we would like to work on with the money that we are-have gotten from the land conservation legislation.

Mr. RICHARDSON. Right.

Now, Vice Chair Parker, let me ask the last question. You made a good case for amending Section 3(d). Do you have construction funds now? Would you be able to expand?

Mr. PARKER. Well, that is basically what BIA told us as far as it was concerned, but looking at the 1994 appropriations, we weren't identified in there and we were under the understanding that there would be dollars made available for the construction phase to safety dams, but looking at the line items in our budget, it wasn't included.

Looking at the \$18 million that is requested for 1994, our project is estimated at approximately \$10 million, which would take basically their whole line item for construction. So I am not sure where we stand at this point to tell you the truth, Mr. Chairman.

Mr. RICHARDSON. Okay.

Well, let me once again thank all the witnesses for providing very good testimony. I think you provided compelling reasons for us to act on this bill, and after discussing with the BIA the ways we can deal with Section 3 and Section 4, we will move ahead and mark this bill up.

So we thank the witnesses. We appreciate your coming.

The hearing stands adjourned.

[Whereupon, at 11:05 a.m., the Subcommittee was adjourned.]

APPENDIX

JULY 2, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD



OFFICE OF THE GOVERNOR

TELEPHONE 505/552-6604
FAX 505/552-6600

July 16, 1993

The Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs
United States House of Representatives
1522 Longworth Building
Washington, D.C. 20515

Dear Congressman Richardson:

Thank you for informing the Pueblo of Acoma of the upcoming testimony on H. R. 1426, the "Indian Dams Safety Act of 1993". The Tribal Administration fully supports the bill and encourages Congress to favorably consider the enactment of this legislation.

As clearly stated within the bill, Indian dams throughout the country must receive proper maintenance to ensure the safety of Indian people and Indian lands. For many years, the Bureau of Indian Affairs (BIA) has overlooked the need to maintain dams on Indian reservations. As a result, many Indian tribes now suffer due to the lack of controls, maintenance and development of Indian dams. Therefore, the Pueblo of Acoma, who is among those listed on the BIA Safety of Dams program, strongly uphold the objectives identified within H. R. 1426.

As you are aware, the Acoma Dam (Acomita Lake Reservoir) served many purposes prior to it becoming polluted by upstream contaminants. The Pueblo of Acoma continues to pursue full operation and maintenance of the dam so as to provide an adequate irrigation water supply for the Acoma and Laguna Pueblo's. Furthermore, future development of the reservoir will enable the Pueblo to establish an economic and recreational resource for both Acoma and surrounding communities. In order to implement these efforts, the assurance that the dam itself will be safe and adequate for storage must first be addressed.

The Pueblo of Acoma strongly urges Congress to accept the "Indian Dams Safety Act of 1993" along with sufficient funding required to successfully administer the provisions within the bill. Again, we thank you for the opportunity to share our concerns with you and I look forward to hearing of the success of H. R. 1426.

Sincerely Yours,



Reginald T. Pasquel
Governor

STATEMENT OF THE HOPI TRIBE REGARDING

H.R. 1426

INDIAN DAMS SAFETY ACT OF 1993

HOPI INDIAN TRIBE
KYKOTSMOVI, ARIZONA

JULY 19, 1993

The Hopi Tribe of Arizona is pleased to submit the following comments in support of H.R. 1426, introduced by Congressman Bill Richardson of New Mexico.

Two dams on the Hopi Indian Reservation located near Tuba City, Arizona, provide irrigation water to Hopi and Navajo Indian farmland near the Hopi village of Moenkopi. This farmland is referred to as the "Kerley Valley farms." The irrigation use is made possible by the storage capacity of Pasture Canyon Dam and Tuve Dam, both earthen fill dams with storage reservoirs. The agricultural water use is very important to area farmers, as irrigable acreage is scarce in the primarily harsh and arid environment.

The Pasture Canyon and Tuve Dams are potential high hazard dams due to their height and storage capacity. Dam failure could result in harm to the Hopi and Navajo Indian populations living downstream of the structures: the village of Moenkopi and Navajo dwellings to the west.

The engineering and operation of these dams must be addressed to ensure the safety of the people living downstream. The following issues deserve attention:

1. Every measure must be taken to ensure dam integrity. Leaks, faults, and cracks must be attended. Adequate emergency spillways must be provided.
2. A reservoir water release system must be employed. Such a system will remove water from the reservoirs to prevent downstream flooding. Further, the system could provide the additional benefit in serving as the irrigation water delivery system. The system could utilize lined ditches or PVC pipe.

The Hopi people have been farming in the fertile soil of the Moenkopi Wash for up to a thousand years. Through the centuries, the Hopis have been subject to nature's droughts and floods. The construction of Pasture Canyon Dam, which also includes a delivery system to the farms via dirt ditches, has provided a reliable water

supply in recent years. In the 1970's, this system was upgraded through the installation of pipelines and rock-lined ditches. This system is in need of engineering design and replacement to ensure increased irrigation efficiency and proper management of the delivery system.

The Kerley Valley farms, which have been in agricultural production since the early 1900's, have been subject to periodic flooding, including recent flooding in the Spring of this year. An irrigation project that is properly designed should be able to withstand large amounts of unseasonal precipitation, protect the loss of property, and reduce the risks to the health and safety of the population.

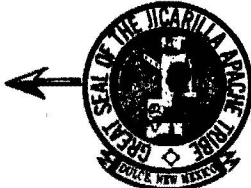
The benefits of an "Indian Dams Safety Act" to the Moenkopi area are obvious: lives and property would be protected and an ancient agricultural area would be preserved.

The tasks which must be undertaken for both dams include:

- *assessment (damage to the system, needed repairs, replacement, etc.);
- *alternative development and planning (including NEPA and NHPA compliance);
- *design (including construction specifications and costs); and
- *funding authorization.

The project is estimated to require a minimum of \$750,000.

The Hopi Tribe appreciates the opportunity to comment on H.R. 1426. The legislation addresses an important problem. The Tribe looks forward to working with Chairman Richardson and other Members of this Committee to see that H.R. 1426 is signed into law during the 103rd Congress. Thank you.



Jicarilla Apache Reservation
February 11, 1887-1987

THE JICARILLA APACHE TRIBE

EXECUTIVE OFFICES
P.O. Box 507; Dulce, New Mexico 87528-507
(505) 759-3242

July 15, 1993

TELEFAX (202) 226-0522

Honorable Bill Richardson
Chairman
Subcommittee on Native American Affairs
1522 Longworth Building
Washington, D.C. 20515

Re: H.R. 1426, The Indian Dam Safety Act of 1993

Dear Mr. Chairman:

On behalf of the Jicarilla Apache Tribe, I would like to urge you to pass into law H.R. 1426 which would provide for the maintenance of dams on Indian lands in New Mexico. The bill will provide the congressional mandate to require the BIA, together with other federal agencies, to fulfill its obligations under the existing dam safety program.

The importance to the Jicarilla Apache Tribe of H.R. 1426 is evident from the fact that we presently have eight earth dams on the Reservation. Structural deficiencies of dams classified in 1989 have not been corrected. On the Jicarilla Apache Reservation, high hazard deficiencies classified a decade ago have not yet been remedied. The Dulce Lake Dam was listed with a high hazard classification in 1982 and the Lower Mundo Dam was listed with a high hazard classification in 1983. Although the conditions of these dams have only deteriorated in the last decade, there has been insufficient funding available through the BIA to perform even the most basic operation and maintenance program. Another dam located at La Jara Lake has a significant hazard classification. The remaining five dams were also in disrepair, although they do not have high hazard classifications.

None of the dams built in the 1930s have operating spillways and all have seepage problems. Although the dams were ostensibly built for irrigation purposes, the deterioration of the spillways and gateways has undermined the usefulness in this regard. The fields below La Jara and Dulce Lake do not receive the benefit of these reservoirs. Additionally, there is no way to release water during peak flows exacerbating the possibility of flooding and complete dam failure. Several dams suffer overflow every year. The danger to people from flooding and a possible breakdown of the dams is illustrated by the number of people living downstream from Dulce Lake. Because of the narrow valley, many homes and, indeed, the town of Dulce would likely be flooded in the event of a dam failure at Dulce Lake. If La Jara Dam failed, fields and homes downstream would be destroyed.

Chairman Bill Richardson
July 15, 1993
Page 2

H.R. 1426 promises the Jicarilla Apache Tribe and all New Mexico tribes some relief in this regard. The Tribe applauds the Bill's provisions regarding specific Secretarial action. A dam safety operation and maintenance program required in Section 3 is essential to ensure the safety and welfare of tribal members. However, we should learn a lesson from BIA's past experience. The existing operational and maintenance program at the BIA has been ineffective because of lack of operating monies. Congress must ensure that the program of work specified in H.R. 1426 is adequately funded or else the benefits of this Bill will never materialize.

The Jicarilla Apache Tribe would like to thank Congressman Richardson for introducing this bill to remedy a serious and long standing problem existing on New Mexico reservations.

Respectfully submitted,

NORDHAUS, HALTOM, TAYLOR,
TARADASH & FRYE

By:


Lester K. Taylor
Attorneys for the Jicarilla Apache Tribe
Suite 1050
500 Marquette Avenue N.W.
Albuquerque, NM 87102
Telephone: 505/243-4275

cc: President Leonard Atole
Jicarilla Apache Tribe



COLORADO RIVER INDIAN TRIBES
Colorado River Indian Reservation

ROUTE 1, BOX 23-B
TELEPHONE (602) 689-9211
PARKER, ARIZONA 85344

In reply, _____
refer to: ..

July 15, 1993

Chairman Bill Richardson
House Subcommittee on Native American Affairs
of the House Committee on Natural Resources
204 Cannon House Office Building
Washington, DC 20515-3103

Dear Chairman Richardson:

Thank you for this opportunity to present testimony. We believe that H.R. 1426 demonstrates your continued commitment to making the House Native American Affairs Subcommittee available as a forum for addressing important issues and matters of concern in Indian Country today. Maintaining the infrastructure on Indian reservations, especially those facilities that may pose a danger to the health, safety and welfare of the residents of Indian reservation is, of course, a matter of high priority with tribal governments and we are pleased to see that it is also a matter of concern of yours.

Please contact me if I can be of any further assistance.

Sincerely,

COLORADO RIVER INDIAN TRIBES


Daniel Eddy, Jr.

Tribal Council Chairman

STATEMENT
OF
TRIBAL COUNCIL
COLORADO RIVER INDIAN TRIBES
BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE HOUSE COMMITTEE ON NATURAL RESOURCES
JULY 2, 1993

RE: H.R. 1426 INDIAN DAMS SAFETY ACT OF 1993

The Tribe agrees with the need to create a dam safety operation and maintenance program within the Bureau of Indian Affairs. Although we recognize, and the bill allows, for much technical expertise to come from other Interior agencies and bureaus, the Tribes still foresee that a BIA based program would be much more responsive to tribal concerns. Also, we assume that tribes with a number of dams will wish to utilize P.L. 93-638 process to take over management responsibilities. Although this option will be available even if the tribal dam safety program is administered by the Bureau of Reclamation, the Tribes feel that the BIA has greater familiarity with this process and will be more amenable to such changes.

The Tribes feel that the Committee may wish to consider broadening the scope of H.R. 1426 to include the dam safety matters addressed in the Reclamation Safety of Dams Act of 1978 43 U.S.C. §§ 506-509. Specifically, the Tribes believe that a very clear distinction should be made between addressing any project operation and maintenance (O&M) deficiencies and safety concerns. Unlike the 1978 Act, however, for projects on most Indian reservations, both categories will generally constitute nonreimbursable costs. Dam safety should, in general, constitute a nonreimbursable cost. Congress recognized this fact in FY 1992 Appropriation.¹ With respect to O&M costs, the Tribes believe that a distinction should be made between those additions, modifications, or adjustments to dam structures and operations that relate to the maintaining the capital investment in that project. These are clearly project costs that, in the case of Headgate Rock Dam, at least, are to be paid by the federal government.² Another category of O&M expenditures would relate to the operation of irrigation projects. These are the only costs under this program that may be considered reimbursable. Even with respect to these costs, however, careful attention must be paid to specific reservation and irrigation project history to determine

¹See, April 17, 1992 Memorandum from Office of TRust and Economic Development, To: Aberdeen, Albuquerque, Navajo, Phoenix, Portland, and Sacramento Area Directors, Re: Reimbursability of [BIA] Safety of Dams Appropriations.

²The federal government, itself, has recognized that Congress may have acted contrary to its responsibilities to tribes and its obligations to certain tribal governments when it required the reimbursement of the capital cost for some irrigation projects. This view is implicit in the 1932 and 1936 Leavitt Acts, 25 U.S.C. §386a and 389-389e and the Bureau of Indian Affairs in Report to the Senate Comm. on Interior & Insular Affairs, on the Status of Construction of Indian Irrigation Projects (October 1975).

whether they are appropriately borne by the federal government.

The Tribes also points out that there is not a substantial difference between a dam that would constitute a "High" versus a dam that would constitute a "Significant" threat to life and property in the event of its failure.³ For this reason, the Tribes believe that two categories should be employed: "Low," would remain unchanged and "Significant" and "High," should be combined. For those structures that are within the second combined category, the Tribes believe that economic considerations should be taken into account in allocating money for safety and O&M.

With these considerations, the Tribes recommend approval of H.R. 1426.

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³The main difference appears to be that a the failure of a "High" Hazard rating dam is projected to result in a loss of life for greater than 6 people, whereas a "Significant" Hazard rating is projected to result in less than six fatalities.



CROW CREEK SIOUX TRIBE
FORT THOMPSON, SOUTH DAKOTA 57339

July 15, 1993

TRIBAL COUNCIL Honorable Bill Richardson, Chairman
U.S. House of Representatives
Duane Big Eagle, Chairman
Subcommittee on Native American Affairs
Washington, D. C. 20515-6201

Donald McGhee
Vice-Chairman

Whitney Rencountre, Treasurer
Re: H. R. 1426

Tina Grey Owl
Secretary

Dear Mr. Richardson:

Wanda Marks
Council Member

Ronald Kirkie, Sr.
Council Member

Loren "Rocky" Fallis
Council Member

For several years, the Crow Creek Sioux Tribe has been working through a P.L. 93-638 contract with the Bureau of Indian Affairs, to upgrade the BIA dam in the Crow Creek District of our reservation. Consequently, the Tribe has experienced first-hand the difficulties of working with BIA on dam safety. I am encouraged to see that a legislative proposal had been developed to facilitate the improvements that are needed at such dams, and I am writing to comment on H.R. 1426.

I agree with the bill's approach, that a dam safety O & M program be established within BIA, to facilitate the process of identifying and classifying problems at these facilities. At this point, it is clear that notwithstanding the recommendations of the General Accounting Office, the BIA has not dedicated adequate resources to dam safety. There needs to be a separate department for dam safety, instead of the status quo, whereby dam safety is something of an added responsibility to the Irrigation and Power Branch of BIA.

The experience of the Crow Creek Sioux Tribe bears this out. We have been in the planning stage on our project, for nearly two years. There have been delays in disbursements from the Bureau's Aberdeen Area Office, which have delayed the planning process. This results from the fact, as mentioned above, that dam safety is simply an added responsibility in the Irrigation Branch. There is no separate office whose sole mission is ensuring the safety of dams in Indian Country. The establishment of such a program within BIA would help enhance the Tribe's efforts, rather than obstruct them.

Under Crow Creek's contract for dam safety, the delays have meant that planning shall take three years. We are still developing an Environmental Impact Statement on alternatives for upgrading the dam. This process shall not be complete for several more months. Upon completion of the draft EIS, there shall be a public comment process, after which we shall finalize the EIS. At that point, we must design the improvements, which shall require several months more work, prior to letting and awarding bids and moving on to construction. The planning and design phases simply should not take that long. Thus, based on the experience of the Crow Creek Tribal Council, Section 3 of the bill takes the proper approach in reforming the administrative process.

P.O. BOX 50 • TELEPHONE: (605) 245-2221 • FAX # 245-2470



CROW CREEK SIOUX TRIBE

FORT THOMPSON, SOUTH DAKOTA 57339

Letter to Chairman Richardson

RE: H. R. 1426

July 15, 1993

Page Two

TRIBAL COUNCIL

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Council Member

Loren "Rocky" Falls

Council Member

However, in our opinion section 3 (d) should be deleted, and a section should be added that has the opposite effect of the existing section 3(d). BIA's Dam Safety Program should be about more than simply protecting the government from liability in the event of a failure of the dam. For example at Crow Creek the dam and reservoir constitutes a substantial recreation opportunity Tribal members and others. It is currently used for fishing and swimming, although there is poor access to the reservoir, and the Tribe has no resources for stocking the lake with fish.

The Crow Creek Reservoir would be a terrific place for the Tribe to develop further. Through its dam safety program, the BIA should work with Tribes not only in upgrading the facilities, but also in further developing the dam and reservoir sites for recreational and economic uses. Otherwise, the program will provide for public safety by preventing failures at the dams, but the facilities themselves shall otherwise provide no useful purpose for Indian communities such as Crow Creek.

The dam safety program established under H.R. 1426 should include a component for recreation development for upgraded facilities. Fundable activities should include road construction, planning and development funds for campsites and boat ramps, and fisheries. In this manner, the program will comprehensively address the needs and potential uses for the existing facilities.

Historically, BIA's water development program has failed to serve the needs of the Indian people. Irrigation projects, such as that at Crow Creek, have been poorly planned, constructed and maintained. Our rural water needs remain severe. The dams whose construction provided employment during the depression and potential water development benefits, are in danger of failing, and BIA continues to move slowly and inadequately. This program should be improved, through the establishment of a separate program within BIA for Dam Safety and O & M. Yet the concept of operation and maintenance should include operation of the dam and reservoir in a comprehensive manner, that includes recreation and fisheries development.

In sum, the Crow Creek Sioux Tribe supports the establishment of separate program within BIA for dam safety. Our own experience in planning the improvements at the Crow Creek dam reflect this need. However, H.R. 1426 does not go far enough. It should authorize funding and direct BIA to work with Tribes in planning and developing roads and recreation sites, at the upgraded dam and reservoir projects. In this manner, the program can address both the public safety and economic and recreation development needs on reservations such as Crow Creek.

Thank you very much for your consideration of the concerns of the Crow Creek Tribe. If the Tribe can provide any additional information concerning



CROW CREEK SIOUX TRIBE

FORT THOMPSON, SOUTH DAKOTA 57339

Letter to Chairman Richardson
RE: H. R. 1426
July 15, 1993
Page Three

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Council Member

our experience working with BIA's current dam safety program or the status of our project and plans for the Crow Creek dam and reservoir, please contact my office.

Sincerely,

Duane Big Eagle, Chairman
Crow Creek Sioux Tribe

dm/dbe

cc: Councilmembers

MNI-SOSE Intertribal Water Rights Coalition

Phone (605) 343-6054
P.O. Box 226
Rapid City, South Dakota 57709

July 26, 1993

The Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs
House Natural Resources Committee
1522 Longworth House Office Building
Washington, D.C. 20515-6201

Attn: Barbara Robles
Re: Hearing Record on H.R. 1426 "Indian Dams Safety Act".

Dear Chairman Richardson:

Enclosed is a resolution from the Mni Sose Inter-tribal Water Rights Coalition offered in support of H.R. 1426. The Coalition's Board of Directors met on July 21-23, 1993 in Billings, Montana and undertook consideration of the text of the legislation which you introduced. Although the Board was generally supportive of the intent of H.R. 1426, it did not support the statutory prohibition in Section 3(d) concerning the enlargement of existing dams for increased water storage capacity or developing benefits beyond those provided by the original dams and reservoirs. It was understood that this prohibition marks a significant departure from the existing policy of Secretarial discretion to approve additional dam work, on a case-by-case basis, beyond the scope of mere rehabilitation and operation and maintenance.

The effect of retaining and strengthening Secretarial discretion in regard to the operation, maintenance and rehabilitation of existing Indian dams would allow the Tribes, for example, to improve their water storage and supply capacity for agricultural, industrial, domestic and recreational needs as deemed appropriate on a case-by-case basis. This could occur in some cases at very little additional cost. It was the consensus of the Board that the statutory prohibition would detrimentally affect the water rights of the Coalition members, therefore, it is respectfully requested that the restriction in Section 3(d) be deleted and the legislation not restrict the existing Secretarial discretion with respect to Indian dams.

The Coalition has notified all of its member Tribes and urged them to submit responses. However, in view of the short time frame for submission, only two of the member Tribes have been able to submit responses: the Standing Rock Sioux Tribe and the Crow Creek Sioux Tribe. If possible, the Coalition would ask that the Subcommittee also consider any other Tribal responses which might be forthcoming.

Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs
Page Two

Again, the Coalition appreciates your consideration of its position and is encouraged by your efforts in regard to the safety of Indian dams. We genuinely hope that our comments are useful to you in developing H.R. 1426 so that it serves the best interests of its intended beneficiaries, the Indian people.

Sincerely,

A handwritten signature in cursive script that reads "Colleen DuFour Baird". The signature is written in dark ink and is positioned above the printed name and title.

Colleen DuFour Baird
Legislative Analyst

MNI-SOSE Intertribal Water Rights Coalition

Phone (605) 849-6054

P.O. Box 226

Rapid City, South Dakota 57709

July 14, 1992

The Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs
House Natural Resources Committee
1522 Longworth House Office Building
Washington, D.C. 20515-6201

Attn: Ms. Barbara Robles

Re: Hearing Record on H.R. 1426 "Indian Dams Safety Act".

Dear Chairman Richardson:

I am writing on behalf of the Mni-Sose Intertribal Water Rights Coalition. Mni-Sose is comprised of twenty (20) member Indian Tribes who have water rights in the Missouri River Basin. The objective of Mni-Sose is to assert, develop, enhance and protect the water rights of its members.

Mni-Sose is generally supportive of the Indian Dams Safety Act (H.R. 1426) would like an opportunity to provide testimony for the record on the legislation. Mni-Sose has also urged its membership to contact your subcommittee directly to offer their testimony. In view of the relatively short time frame for the development of additional testimony and the need for the Mni-Sose Board of Directors to meet and develop its testimony, it is respectfully requested that the record be left open until at least July 27, 1993. The Mni-Sose Board of Directors will be holding its quarterly meeting in Billings, Montana on July 22-23, 1993, and will likely adopt a formal resolution in support of the legislation.

The additional time for submission of testimony by the Mni-Sose and its members Tribes would not only be greatly appreciated but hopefully, assist your subcommittee in the final drafting of this important legislation.

Sincerely,


Colleen DuFour Baird
Legislative Analyst

MNI-SOSE Intertribal Water Rights Coalition

Phone (605) 343-6054
P.O. Box 226
Rapid City, South Dakota 57709

RESOLUTION

OF

MNI SOSE INTER-TRIBAL WATER RIGHTS COALITION

WHEREAS, Mni Sose Inter-tribal Water Rights Coalition, Inc., (hereinafter Mni Sose) is a non-profit corporation that is dedicated to the preservation, enhancement and protection of the water rights of Indian Tribes in the Missouri River Basin;

WHEREAS, legislation introduced by Chairman Bill Richardson on March 18, 1993, known as the Indian Dams Safety Act (H.R. 1426) would provide for the maintenance of dams located on Indian lands by the Bureau of Indian Affairs or through contracts with Indian Tribes;

WHEREAS, the Secretary of the Interior has identified fifty-three (53) dams on Indian lands that pose a high hazard to human life and property due to inadequate and deficient maintenance;

WHEREAS, it is critical to the economic development of Indian Tribes and the health and welfare of its members to have ample dam and reservoir water storage capacity for agricultural irrigation, municipal, domestic, industrial, livestock, recreation, fish and wildlife habitats and safe dams for flood control;

WHEREAS, in addition to repair, rehabilitation, and the long term operation and maintenance of dams on Indian lands, there is a need for enlargement of existing dams to provide for increased storage and other development benefits;

WHEREAS, the Secretary of the Interior currently retains the discretion to approve on a case-by-case basis additional improvements to existing Indian dams as funds are available;

WHEREAS, Section 3(d) of H.R. 1426 would statutorily prohibit any work authorized by the Act for the purposes of dam safety operation and maintenance to provide additional conservation storage capacity or developing benefits beyond those provided by the original dams and reservoirs;

Mni Sose Resolution
H.R. 1426
July 26, 1993

WHEREAS, Section 3(d) would statutorily prohibit the Secretary from exercising such discretionary authority with respect to the rehabilitation and operation and maintenance of existing dams.

THEREFORE BE IT RESOLVED, that the Mni Sose Inter-Tribal Water Rights Coalition supports the Indian Dams Safety Act (H.R. 1426) as amended to remove the statutory prohibition in Section 3(d) pertaining to the enlargement of existing dams to increase water conservation storage capacity or developing other benefits beyond those provided by the original dams and reservoirs;

THEREFORE BE IT RESOLVED, the Coalition supports the retention of Secretarial discretion to determine on a case-by-case basis whether improvements to the existing Indian dams for the purpose of providing other benefits is appropriate;

BE IT FURTHER RESOLVED, that the Coalition supports the individual positions of its member Tribes with respect to other provisions of the legislation, including the provision of additional benefits beyond those provided by the original dams and reservoirs.

This is to certify that the above resolution was adopted and duly passed by the Board of Directors of the Mni Sose Inter-Tribal Water Rights Coalition on July 22, 1993, pursuant to authority vested in the Board under Article VI, Section 1 and 10 of its Charter. A quorum was present at the meeting wherein this resolution was passed.


Raymond Smith
President

Oglala Sioux Tribe

Box H
Pine Ridge, South Dakota 57770
(605) 867-5821
Fax: (605) 867-1004



JOHN YELLOW BIRD STEELE
President

EARL T. LOWE PELL
Vice President

THERESA TWO BULLS
Secretary

MELVIN CUMMINGS
Treasurer

WILSON BENTON LODGE
Fish Member



Office of the President
JOHN YELLOW BIRD STEELE

July 14, 1993

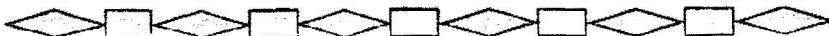
The Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs
1522 Longworth HOB
U.S. HOUSE OF REPRESENTATIVES
Committee on Natural Resources
Washington, DC 20515-6201

Dear Chairman Richardson:

Thank you for the opportunity to submit testimony on the Indian Safety of Dams Act of 1993 (H.R. 1426) that you introduced on March 18, 1993. The Oglala Sioux Tribe (OST) contracted the Safety of Dams (SOD) Program from the Bureau of Indian Affairs (BIA) in February of 1989 and has been very aggressive since then to get the dams in operational order.

To date, the OST has five dams in its SOD Program that have been rated either Significant Hazard or High Hazard by the Bureau of Reclamation's (BOR) Safety Evaluation of Existing Dams (SEED) reporting process. These five dams include White Clay, Oglala, Kyle, Allen, and Wanblee Dams. With the aforementioned classifications, via the respective SEED Reports, the dams warranted immediate rehabilitation funds and the program has attempted to utilize these engineering and construction appropriations in as efficient a manner as possible. These dams would probably be classified as poor and unsatisfactory in H.R. 1426's proposed classifications.

The Pine Ridge Indian Reservation also has four (4) additional dams that were classified low hazard and thus, not of immediate concern. These include Denby, Caines, Poor Bear, and East Dams. Upon monitoring them



however, they are currently scheduled for reevaluation in the upcoming fiscal year (FY-1994). These dams would probably be classified as conditionally poor in H.R. 1426's proposed classifications, prior to any reevaluations.

To date, progress on the dams have been substantial. The SOD Program has completed all of the engineering work and construction rehabilitation work on Oglala and White Clay Dams, and it has initiated the Deficiency Verification Analysis (DVA) phase activity on Kyle and Allen Dams. Activity at Wanblee Dam however, has not yet been initiated due to the fact that it is currently undergoing research by the Solicitor's Office to resolve the issue of the fee patent status of the land.

Since its inception in February of 1989, the SOD Program has been appropriated \$3,830,798.26. A summary of the program's activities reveal that throughout this four and a half (4 1/2) year period, the tribe incurred \$324,944.78 in administrative costs alone, just managing these various projects. These administrative costs were spent managing engineering activity that totaled \$1,448,558.00 and construction activity that totaled \$1,457,239.00 throughout this period. The SOD program costs incurred to date therefore total \$3,230,741.78. The remaining \$600,056.48 that the SOD Program currently has remaining in its budget will be utilized on the program's remaining activities. As can be seen, the remainder will be nowhere near enough and the program will have to be budgeted additional appropriations to complete the remaining dams.

A quick review of the costs that have been incurred to date however, reveal that the engineering design and inspection activities totaled \$675,124.93 for Oglala Dam and \$507,170.07 for White Clay Dam. Kyle and Allen Dams' initial engineering contracts that have been awarded total \$192,075.00 and \$74,188.00 respectively, although work is still in progress. The construction costs are equally as impressive. White Clay Dam was bid out to a private construction firm, it was completed in May of 1992, and the final cost totaled \$702,239.00. Oglala Dam was undertaken by the tribe itself as the Prime Contractor, it will be completed in July of 1993, and the final cost will total approximately \$755,000.00.

A quick note that should be highlighted at this point is the fact that the tribe undertook the Oglala Dam Construction Project as the Prime Contractor utilizing the P.L. 93-638 Construction Contracting Amendments currently proposed in P.L. 100-472. The fact that the Oglala Sioux Tribe is one of the first tribes to undertake such a project, and having done it so effectively, is a tribute to the tribe's commitment to the development of

one of its resources. The Indian Dam Safety Act of 1993 (H.R. 1426), that you introduced earlier this year, will now provide the tribe with the operation and maintenance capabilities to care for the resources they have put so much time and effort into renovating. As a result, the tribe's SOD Program will be utilizing two new pieces of enabling legislation, P.L. 100-472 and H.R. 1426, in the development and maintenance of a substantial water resource on the Pine Ridge Indian Reservation. The SOD projects therefore put the Oglala Sioux Tribe on the leading edge of these two new pieces of enabling legislation, a fact that the other tribes will no doubt be trying to emulate in the near future.

As was determined earlier, the aforementioned appropriations of \$600,056.48 that the program still has budgeted, will be nowhere near enough to complete the required engineering and construction activity on the unfinished dams. As a result, funds from the BIA Safety of Dams FY-1994 appropriations are being budgeted this fall to complete the engineering design and inspection activities at Kyle and Allen Dams. Upon completion of the design work, construction funds for at least Kyle Dam are going to be sought for the 1994 summer construction season and the tribe will again undertake the construction project as the Prime Contractor. The budgetary planning process with the BIA's Aberdeen Area Office is therefore well underway and the SOD Program should be experiencing a similar level of funding and program activity in FY-1994 as in the previous four and a half (4 1/2) years.

With such an aggressive SOD Program, that has invested so much time, effort, and finances in the renovation of these first two dams (Oglala and White Clay Dams), the BIA's Pine Ridge Agency is currently in the process of turning the operation and maintenance of these two dams over to the tribe. The Pine Ridge Agency is doing so at the recommendation and encouragement of the BIA's Aberdeen Area Office Safety of Dams Division. With a total investment of \$1,606,245.00 in Oglala Dam and \$1,358,233.78 in White Clay Dam, the tribe and the local BIA agency are now in the position of having no funds to correctly operate and maintain these structures. As a consequence, the tribe cannot assume control and responsibility of these structures from the BIA until funds can be obtained to do so properly. Until such time, the \$2,964,478.78 that has been invested in Oglala and White Clay Dams is again sitting isolated, without the proper full-time supervision such investment warrants.

The Indian Dams Safety Act of 1993 (H.R. 1426) is therefore the natural extension of the Reclamation Safety of Dams Act of 1978 (Public Law 95-578), that has been the enabling legislation for these projects to

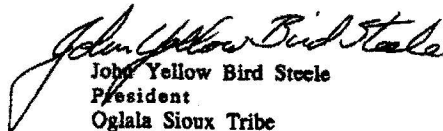
this point. Your act will now enable the tribes to protect the huge investments they are currently putting into the restoration of the integrity of their existing dam structures, in their efforts to make them safe again and no longer a threat to the populations down stream.

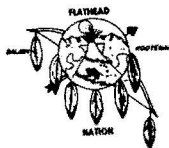
The Oglala Sioux Tribe therefore commends you and fully support the Indian Dams Safety Act of 1993. However, we feel strongly that the bill is too restrictive in that Section 3(d) of the legislation would statutorily prohibit any SOD funds from being used for additional storage capacity or developing benefits beyond those provided by the original dams and reservoirs. We feel that the Congress needs to ensure that funds and clear authorization be available to maximize and develop additional storage of water on Indian Reservations, in addition to providing for rehabilitation construction, and operation and maintenance. The ability to do so during rehabilitation design and construction would be much more cost effective than having to access other federal funds at a later date for this additional storage capacity design and construction. The cost figures presented above should justify the need to minimize development costs wherever possible. Implementing the development process once would generate substantially fewer costs than would be generated should the entire process have to be repeated over, after having just completed it.

With the implementation of this act and the availability of funds, as amended to include additional storage capacity (ideally), the tribe will not hesitate to assume control of their newly renovated dams. The transition process currently on-going between the Oglala Sioux Tribe and the BIA Pine Ridge Agency would therefore be given the necessary impetus it is currently lacking, as the tribe cannot afford to assume responsibility without the corresponding financial resources. The renovation investments (\$2,964,478.78) to this point, and any hereafter, would then be given the quality operation and maintenance such sizeable investments warrant.

In closing, the Oglala Sioux Tribe would again like to thank you for introducing the bill and affording us the opportunity to submit testimony for the record.

Respectfully,


John Yellow Bird Steele
President
Oglala Sioux Tribe



**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION**

P. O. Box 278
Pablo, Montana 59855
(406) 675-2700
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Joseph E. Dupuis - Executive Secretary
Vern L. Clamont - Executive Treasurer
Bernice Hawankorn - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
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Elmer "Sonny" Morigeau, Jr. - Secretary
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Patrick Leithand
Henry "Hank" Baylor
John "Chris" Lozeau
D. Fred Matt

**TESTIMONY OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION**

ON HR 1426, THE INDIAN DAMS SAFETY ACT OF 1993

**SUBMITTED TO THE NATURAL RESOURCES SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS**

UNITED STATES HOUSE OF REPRESENTATIVES

July 16, 1993

**TESTIMONY OF THE
CONFEDERATED SALISH AND KOOTENAI TRIBES
ON HR 1426, THE INDIAN DAMS SAFETY ACT OF 1993**

The Confederated Salish and Kootenai Tribes currently contract under the Indian Self-Determination Act with the Bureau of Indian Affairs for a Safety of Dams (SOD) Program at dams associated with the Flathead Agency Irrigation Division (FAID) on the Flathead Indian Reservation. The Flathead SOD Program was initiated in 1989 to eliminate or ameliorate the identified Safety of Dams "Recommendations/Concerns" which have been determined to exist at the FAID's seventeen dams.

In its most recent evaluation of our dams, the Bureau of Reclamation has determined that 15 of our 17 dams are in the SIGNIFICANT or HIGH HAZARD category and the remaining two are considered low hazard. As such, the Flathead Reservation has the somewhat dubious distinction of having the largest number of significant or high hazard dams of any reservation in the country. Since our program began, numerous studies and designs have been completed, SOD modifications at Black Lake Dam have successfully been completed, and SOD modifications at Pablo Dam are scheduled to commence this month (July, 1993). Over the next ten to fifteen years, this ongoing SOD program will correct SOD deficiencies at all of the dams in the Program. We are pleased to report that the BIA considers the Flathead SOD program to be an excellent model and has referred other tribes to us and recommended that they emulate what we have established. Our SOD Program Director has even visited other reservations to help them set up SOD programs. We are also proud to report that on our first major construction project at the Black Lake Dam, we came in under budget and ahead of schedule.

The existing Bureau of Indian Affairs and Flathead SOD Programs do not address the problems which have been identified as Safety of Dams Operations and Maintenance (O & M) Items at dams on the FAID. Prior to being contracted by the Tribes, the Bureau's program failed to address these items over the years in an effort to keep O & M costs low. Our contract with the BIA specifically excludes O & M items. The inadequate attention in the past to regular maintenance requirements for the BIA dams has resulted in unsafe dams which pose an imminent threat to people and property downstream. Currently, there are 223 identified SOD O & M Items which have not been corrected at the fifteen HIGH or SIGNIFICANT hazard FAID dams.

The Confederated Salish and Kootenai Tribes support HR 1426, since this legislation will provide for the correction of operation and maintenance deficiencies at dams that pose an imminent threat to people and property downstream on the Flathead Indian

Reservation. These deficiencies must be corrected to avoid future threats to human life and property. We may have to amend our contract with the BIA to get into O & M but we will also be required to add these costs to our irrigation project's debt of construction because under the particular statutes that authorized the construction of the (formerly named; Flathead Indian Irrigation Project (now "FAID"), O & M costs are deemed reimbursable. At Flathead these costs are distinguishable from SOD work needed to repair design flaws; work that is not reimbursable.

The Confederated Salish and Kootenai Tribes offer the following comments and proposed modifications to HR 1426 to clarify or improve the intent of this legislation:

1. The bill provides for the Operation and Maintenance Program to remain the responsibility of, and funded within, the Bureau of Indian Affairs. The Confederated Salish and Kootenai Tribes supports placing the responsibility of the program within the Bureau of Indian Affairs. We are glad to see this provision as we recall the attempts by the Bureau of Reclamation to have this program transferred to their agency. For the past three years, the Congress has wisely prohibited this proposed transfer. There is certainly a place in Indian country for the BOR's technical expertise but that must remain in a subcontractual manner and not in a managerial or policy making role.

2. The bill provides for "638" contracting the SOD program to Tribes. The Confederated Salish and Kootenai Tribes strongly support the right of the Tribes to contract this program.

3. Mr. Patrick Hayes, Director of Trust and Economic Development for the Bureau of Indian Affairs, testified at the Committee on Indian Affairs' hearing on August 4, 1992. The Administration's primary objection to the bill is that they believe it duplicates what is already being done in the Safety of Dams Program at the Department of Interior. This is not true; the BIA SOD Program does not address the correction of operation and maintenance deficiencies as the program is used for design deficiencies, not for deficiencies that have resulted from the absence of O & M. Additionally, there is no specific authorization statute in place for the BIA's SOD program.

4. The long-term Operation and Maintenance Program should include periodic inspection of dams [Sections 2(5) and 3(a)]. Language to add dam inspection should be added to the bill.

5. Operation and Maintenance rehabilitation work should be completed on all High and Significant Hazard Dams before rehabilitation work commences on Low Hazard Dams. Thus, those dams posing a threat to the most people and property should be rehabilitated first [Section 3(b)]. The bill should be amended to clarify that Hazard classification of dams shall be from the

Department of Interior Dam Safety Task Force Priority Ranking and Hazard Classification [Section 3(c)(2)]. Those classification standards should be made public. The same ranking system should be used to prioritize correction deficiencies that have resulted from the lack of operation and maintenance.

6. The list of dams should include all operation and maintenance deficiencies that exist at the dams [Section 3(c)(1)]. The list of O & M deficiencies should be for all dams located on Indian lands, regardless of Hazard Classification.

7. While it may be unique to Flathead, there likely needs to be bill or report language referring to the O & M Program and the Rehabilitation Program for dams within the Flathead Agency Irrigation Division. Said language should direct that these programs should remain subject to the existing applicable FAID statutes and contracts and that under no circumstances shall such activities be subsidized or paid for by net power revenues from the Flathead Agency Power Division.

The proposed changes in language to the bill, which are described above, are attached.

[recommended redrafted version of]
HR 1426

IN THE HOUSE OF REPRESENTATIVES
March 18, 1993

MR. RICHARDSON introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To provide for the maintenance of dams located on Indian lands by the Bureau of Indian Affairs or through contracts with Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Indian Dams Safety Operation and Maintenance Act of 1993".

SECTION 2. FINDINGS

The Congress finds that -

- 1) the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") has presently identified at least 53 dams on Indian lands that present a high hazard to human life in the event of a failure;
- 2) inadequate past attention to regular operation and maintenance requirements together with structural deficiencies for dams operated by the Bureau of Indian Affairs (hereinafter in this Act referred to as the "Bureau"), have resulted in unsafe Bureau dams which pose an imminent threat to people and property;
- 3) many Bureau dams have operation and maintenance deficiencies regardless of their current safety condition classification and the deficiencies must be corrected to avoid future threats to human life and property;
- 4) safe working dams on Indian lands are necessary to supply irrigation water, to provide flood control, to provide water for municipal, industrial, domestic, livestock, and recreation uses, and for fish and wildlife habitats; and
- 5) it is necessary to institute a regular dam operation and maintenance program, including dam inspection, utilizing the expertise in the Bureau, Indian tribes, and other Federal agencies.

SECTION 3. DAM SAFETY OPERATION AND MAINTENANCE PROGRAM.

(a) **ESTABLISHMENT** - The Secretary shall establish a dam safety operation and maintenance program within the Bureau to ensure maintenance, inspection, and monitoring of the condition of each dam identified pursuant to subsection (c) necessary to maintain the dam in a satisfactory condition on a long-term basis.

(b) **REHABILITATION** - The Secretary shall perform such rehabilitation work as is necessary to correct and eliminate all design as well as operation and maintenance deficiencies at dams identified pursuant to subsection (c). Rehabilitation work shall be completed on all High and Significant Hazard Dams before any rehabilitation work commences on Low Hazard Dams. Upon the completion of rehabilitation on each dam, the dam shall be placed under the dam safety operation and maintenance program established pursuant to subsection (a) and shall be regularly maintained under the guidelines of such program.

(c) **IDENTIFICATION OF DAMS -**

DEVELOPMENT OF LIST - The Secretary shall develop a comprehensive list of dams located on Indian lands that describes the operation and maintenance deficiencies of each dam, and the DAM SAFETY HAZARD CLASSIFICATIONS of each dam. The dam safety hazard classification referred to in subsection (b) shall be from the Department of Interior Dam Safety Task Force Priority Ranking and Hazard Classification.

(d) **LIMITATION ON PROGRAM AUTHORIZATION** - Work authorized by this Act shall be for the primary purposes of dam safety operation and maintenance and rehabilitation but nothing in this Act is intended to restrict the Secretary of the Interior or his designee from using funds authorized by this Act for the purposes of providing additional conservation storage capacity provided that the affected tribe consents to the additional storage capacity.

(e) **TECHNICAL ASSISTANCE** - To carry out the purposes of this Act, the Secretary may obtain technical assistance free from other departments and agencies. Notwithstanding any such technical assistance, the dam safety program (established by the Secretary by order dated February 28, 1980, to prevent dam failure and the resulting loss of life or serious property damage) and the dam safety operation and maintenance program established under subsection (a) shall be under the direction and control of the Bureau of Indian Affairs.

(f) **CONTRACT AUTHORITY** - In addition to any other authority established by law, the Secretary is authorized to contract with appropriate Indian tribes (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))) to carry out the dam safety operation and maintenance program established under subsection (a).

SECTION 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.¹

¹The situation at the Flathead Reservation may necessitate special bill and/or report language to be added at this point in the bill along the following lines:

Operation and maintenance and rehabilitation work on dams within the Flathead Agency Irrigation Division shall remain subject to existing statutes and repayment contracts applicable to the FAID; provided, however, that under no circumstances shall such activities be subsidized or reimbursed from net power revenues from the Flathead Agency Power Division.

SPARKS & SILER, P.C.

ATTORNEYS

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 KEVIN T. TEHAN
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July 23, 1993

Mr. Bill Richardson, Chairman
 Subcommittee on Native American Affairs
 U.S. House of Representatives
 Committee on Natural Resources
 Washington, DC 20515-6201

RE: Comments of San Carlos Apache Tribe on H.R. 1426, Indian Dam
 Safety Act of 1993

Dear Chairman Richardson:

We represent the San Carlos Apache Tribe. Your letter to Chairman Harrison Talgo of the San Carlos Apache Tribal Council inviting comments on behalf of the Tribe to the proposed Indian Dam Safety Act of 1993 (H.R. 1426) has been referred to this office for response.

On Friday, July 16, 1993 Kevin Tehan of our firm spoke with June Lorenzo of the Subcommittee staff and advised that we had only received on that day a letter from the Tribe instructing us to forward comments. We requested, on behalf of the Tribe, an extension through July 23, 1993 to submit comments and this request was granted by Ms. Lorenzo.

The comments of the San Carlos Apache Tribe and requests for modification and clarification regarding the proposed legislation are as follows:

1. Clarification of Scope of Legislation.

The proposed act should be clarified at a number of points with respect to what dams are covered by what provisions of the Bill. Sections 2(1), 2(4) and 3(c)(1) refer to "dams on Indian lands". Section 2(2) refers to "dams operated by the Bureau of Indian Affairs" and "Bureau dams"; and Section 2(3) again refers to "Bureau dams". Sections 3(a) and 3(b) refer to "dam identified pursuant to subsection (c)". The proposed language of the legislation thus seems to imply that there are "at least" 53 dams located on Indian lands and that all these dams are "Bureau dams" or "dams operated by the Bureau of Indian Affairs".

Mr. Bill Richardson, Chairman
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Consideration should be given to addressing situations where private dams may be located within the exterior boundaries of Federal Indian Reservations as well as dams owned by other agencies of the Federal Government, or at least where private entities or other federal agencies "claim" ownership of dams located within Federal Indian Reservations. The Bill should be amended to require Federal inspection of these dams and, with respect to any dams that are found to be unsafe, to mandate their rehabilitation by the appropriate agency or private party.

Consideration should also be given to inclusion of dams located in watersheds above Federal Indian Reservations where the conditions of such dams, either as a result of failure of one, or the cumulative impact of the failure of one, or the simultaneous or successful failure of several upstream dams present a danger to Indian life and property in the event of a failure.

In Arizona, the Havasupai Indian Tribe sustained significant damage to their village located in Cataract Canyon, within the Grand Canyon, due to the failure of at least one and possibly several privately owned dam outside the Reservation but on the watershed feeding into Cataract Canyon.

2. Classification of Dams on San Carlos Apache Reservation.

The Tribe does not wish to have any dams located on the Reservation which it owns to appear on the list to be established pursuant to Section 3(c) to be classified as "Bureau dams" or "dams operated by the Bureau of Indian Affairs". Accordingly, the legislation should be amended to refer, as appropriate, to "Tribal dams" or "dams operated by Indian tribes".

3. Potential Interference with Tribal Operations by BIA.

Use of the term "operation" as it appears in Section 2(3), 3(a), 3(b), and 3(d) in conjunction with the term "maintenance" raises potential problems from the Tribe's perspective. Such language could be used as the grounds for unjustified BIA interference in the legitimate exercise of water rights by Indian Tribes in the name of safety of Tribal or BIA dams. Accordingly, the legislation should be amended to expressly provide for Tribal consultation and consent and, if necessary, Federal judicial review of any proposed action to impose unwanted operational regimens on dams serving Indian lands and communities. The legislation should expressly provide that the Secretary shall assure that the Secretary shall not unreasonably interfere with the property rights and claims of Indian Tribes where dams are located upstream from, or within, or partially within the Tribe's Reservation.

Mr. Bill Richardson, Chairman
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4. Liability of Tribes.

The proposed legislation should be amended to address the matter of the liability of Indian Tribes that contract for the Safety of Dams Program.

5. Tribal Autonomy.

The legislation should be amended to provide that no Indian Tribe may contract for the Safety of Dams Program for dams located with another Tribe's Reservation without the consent of that Tribe.

6. Election of Bureau of Reclamation.

The Bill should be amended to grant Indian Tribes the right to elect to have the rehabilitation work authorized under the legislation to be performed by the Bureau of Reclamation or Corp of Engineers.

The San Carlos Apache Tribe greatly appreciates the opportunity to present its views regarding the proposed legislation to the Subcommittee on Native American Affairs. The Tribe will be happy to expand any of the comments made if so requested by the Subcommittee or its staff.

Very truly yours,

SPARKS & SILER, P.C.



Joe P. Sparks

cc: Harrison Talgo, Sr., Chairman
San Carlos Apache Tribe

SCT-100254



Charles W. Murphy
 Chairman
 Standing Rock Sioux Tribe
 Fort Tules, North Dakota 58538

July 14, 1993

The Honorable Bill Richardson, Chairman
 Sub-Committee on Native American Affairs
 House Natural Resources Committee
 1522 Longworth House Office Building
 Washington, D.C. 20515-6201

ATTN: Ms. Barbara Robles

Dear Chairman Richardson;

Thank you for offering the Standing Rock Sioux Tribe the opportunity to submit for the record our testimony and views on H.R. 1426, the Indian Dams Safety Act of 1993.

Of the 69 dams which were classified as hazardous nationally in Indian Country, there had been one identified on the Standing Rock Indian Reservation which has been completed with the exception of the fencing and the development of the access road to the site. The members of the Standing Rock Sioux Tribal Council are not satisfied with the Bullhead Dam #1 as the only hazardous dam on the Standing Rock Indian Reservation.

H.R. 1426, we believe, would be an excellent beginning in operation and maintaining dams on the Reservation as well as correcting the deficiencies identified; however, the legislation limits dam works to rehabilitation and O&M only. We believe that there should be anti-flood measures built into the legislation which would assist in developing dams on creeks and streams on the Reservation, which are potentially dangerous for flooding of Indian communities. On the Standing Rock Sioux Indian Reservation, there exists one dangerous creek which had been identified and the Army Corps of Engineers did prepare a Design Report on this particular creek.

Mr. Chairman, I am submitting a copy of the Design of Oak Creek Flooding at Walpala, South Dakota to the Committee for your review to address as a possible Demonstration Site to develop a dangerous creek into a flood control measure by damming the creek.

On the Standing Rock Indian Reservation again on the South Dakota side, we find that the Shadehill Reservoir which is located just off the Reservation is potentially available for administrative transfer to the Tribe for management and would request the Committees' attention to this. If this occurs, would

Office Phone 854-7231

Honorable Bill Richardson
 July 14, 1994
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the Shadehill Reservoir be classified as a "Bureau dam"? We would think so. There should not be any provisions within this legislation to limit the adding of dams/reservoirs which are transferred to the Indian Tribes for management purposes from other Federal agencies.

Mr. Chairman, we strongly urge your Committee to include language in this legislation that would address the possible accumulation by the respective Indian Tribes of dams/reservoirs on tributaries/creeks/streams which flow through Reservations and dams/reservoirs are built on those same riverine areas right off the Reservation. The Bureau of Indian Affairs should be authorized to provide necessary O&M funds on those dams/reservoirs received by the respective Indian Tribes for management purposes.

In the 1930's and 40's, the Federal government with Congressional support built CCC constructed dams for stock water and some recreational sites. However, there were never any funds set up on these Federally-sponsored dams. We strongly urge the Committee to include language for funding of the identification, maintenance & operation of these dams on the Indian Reservations. The Civilian Conservation Corps (CCC) was a labor interview project.

Lastly, Mr. Chairman, the Standing Rock Sioux Tribe has requested the management of the Army Corps of Engineers over the Missouri River in the Preliminary Draft Environmental Statement. There is no consideration given to Indian water rights nor for the preservation and survival of Indian people along the Missouri River. The Standing Rock Sioux Tribe requests the Committee to consider the use of Public Law 93-638, as amended, for contracting of the management of the Missouri River from the Army Corps of Engineers of the 100 miles of Missouri River water bordering the Reservation, which funds originating from the Department of Defense budget.

Thank you for allowing us to submit information for the record and our views regarding the Shadehill Reservoir, Oak Creek flooding, and the Missouri River management.

Sincerely,


 Charles W. Murphy, Chairman - V/CC
 Standing Rock Sioux Tribe

cc: file



Walker River Paiute Tribe

Walker River Indian Reservation
P.O. Box 220 • Schurz, Nevada 89427
Phone: (702) 773-2306

July 15, 1993

Statement of Anita M. Collins, Chairman of the Walker River Paiute Tribe of Nevada, to the House Natural Resources Subcommittee on Native American Affairs on HR 1426, the Indian Dams Safety Act of 1993.

Chairman Richardson and Members of the Subcommittee:

The Walker River Paiute Tribe is pleased to submit written testimony on HR 1426. The funding of a dams rehabilitation and maintenance program within the BIA is extremely important, especially on Indian reservations where dams built in the nineteen- thirties and nineteen-forties have been allowed to deteriorate to a point of disrepair. These actions have culminated in a multitude of dams which are now rated from low to high hazard.

Weber Dam Status

On our reservation, located in west-central Nevada, we have one storage dam, Weber Dam, which is classified as a high hazard dam. Weber Dam is located approximately seven miles northwest of Schurz, our central residential and administrative community. This Dam is an earth-filled dam constructed in 1934 with a storage capacity of 10,720 acre feet that provides irrigation water for individual Indian and non-Indian ranchers downstream. It also serves us in a flood control capacity.

The dam is located on a fault line and is now leaking badly. Geological surveys also show unsteady soil around the dam. If Weber Dam were to collapse, a 25 foot wall of water would hit the first house in 15 minutes. 30 minutes after that downtown Schurz would be wiped out including the day care center, the school (with over 125 children and ten staff), the health clinic, the Tribal Administration building, senior citizens center, tribal court and post office plus homes. Of statewide and even national concern, the flood would take out I-95, the major highway in Nevada and the railroad. The railroad has many uses including the almost daily transport of ammunition to the Hawthorne Army Ammunition Plant.

The Tribe has contracted with the BIA under the Indian Self-Determination Act to manage our Safety of Dams Program, and we are now completing the Conceptual Design stage. Some of that work has been subcontracted to the Bureau of Reclamation. Our Deficiency Verification Analysis (DVA) concludes that modifications are necessary to correct hydrologic, hydraulic, structural, and mechanical dam safety deficiencies. These include the following:

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(1) inadequacy of spillways to safely pass floods greater than 7% of a probable maximum flood (PMF) without overtopping or collapsing the walls of the dam, and (2) deteriorated condition of the service spillway, radial gates, and operators as well as the seismic and flash flood potential. Our next stage is Final Design and actual construction, the costs of which are tentatively estimated to be approximately \$10 million.

Tribal Perspective of HR 1426

It is of great importance that a Safety of Dams Maintenance Program – and not just a repair program – be established and funded as soon as possible because so many dams have been allowed to deteriorate for some sixty years without proper maintenance and operation. Most dams were constructed prior to any regulation or building standards. Weber Dam, for example, has had seepage problems from day one. The work at Weber Dam to be done includes back filling and riprapping, replacement of outlet works and slide gates, cracked and spilled concrete in the spillway and outlet, works structures needing repair, gate control house needing replacement, and security from vandalism. This is repair or maintenance only, but day-to-day operations activities and costs also needs to be addressed in the legislation, including needs arising under the irrigation season, spring floods, flash floods during inclement weather, or earthquake activity.

We are very much concerned about the ranking factors for safety conditions of dams. There are no technical guidelines that have been shared with us for ranking high hazard, high value-low hazard, etc., dams. Of course, since Weber Dam is upstream from our community, we have a high potential for loss of life. How does each BIA Area Office define the safety factors for dams, and how can we be assured that one standard is used throughout Indian Country? The bill (HR 1426) indicates that dams will be brought up to Satisfactory Condition. We wonder how this will be gauged and by whom?

We also believe that there are many low hazard dams that may soon become high hazard dams without proper maintenance. It should be made clear that the 53 dams referred to in HR 1426 are not the only dams the BIA has responsibility for but rather, are only those that have been presently identified in the significant and high hazard categories. We wonder if our dam and others should also be recognized as a high value dam due to loss of community facilities and private property if they were to fail. Weber Dam is also a popular fishery and recreation area in Nevada, with several species of trout and bass, including an ESA Threatened Species: the Lahonton Cut-Throat Trout. We note that we need to include fish ladders for spawning of the trout, since they were not included in the thirties nor any time since. It is not clear that such structures would fit into the confines of the legislation in its

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present form. Provisions may need to be added to the legislation allowing for structural changes such as fish ladders to assure that the dams are not damaging to fish and wildlife.

This brings us to enhancement and enlargement of dams under the SOD Program. The Phoenix Area Office stipulates that SOD funds cannot be used as such (even though there is no statutory or regulatory document that we have ever seen to this effect); but rather, Phoenix insists that funds to enlarge a dam must come from Irrigation Rehabilitation & Betterment (R & B). However, the BIA never requests any Irrigation R & B funds, so this alternative is meaningless. We have called for oversight hearings in this regard in the past and again reiterate the need for hearings to examine the status of the Bureau's Irrigation R & B program, or more accurately the lack of any such program from a funding perspective. In some instances, enlargement designs are very much needed for safety purposes; for instance to prevent overtopping. By means of example, if Weber Dam were raised 15 or 30 feet, it would certainly lessen the danger of an overtopping that could result in a high loss of life downstream. Additionally, it is going to be much more costs effective, and could save the government millions of dollars, to rehabilitate a dam for both repair and expansion, than it would be to undertake two separate design and construction projects. We would urge that the language of section 3(d) be stricken and replaced with language making it clear that the Department does have the authority to use SOD funds for expansion or to provide benefits beyond those originally intended. It may even be a good idea to amend section 3(c)(1) which requires that a list of dams be developed to include a separate provision for the development of a list of tribes on whose reservations dams are located that would benefit by expansion.

We hope that the Committee will clarify HR 1426 to make it clear that the operation and maintenance program referenced in section 3 is intended to truly include a program for daily and annual Operations of these dams in addition to the referenced provisions for Maintenance. Perhaps if the BIA had funding for O & M during previous years, the current problem would not be so great.

We would also like to address reimbursement issues involving water users in construction/maintenance of dams programs. Tribal people are not able to afford the costs of reimbursing the U.S. Government for the costs of multi-million dollar federal dam projects which, if left unrepaired, could lead to the potential loss of lives and property and a resultant federal liability. HR 1426 should clarify that SOD work is non-reimbursable. This would be consistent with ongoing practice as well as an important colloquy that took place on the floor of the House of Representatives a couple of years ago during consideration of the Interior (BIA) Appropriations bill. That colloquy was between Congressman Pat Williams and Congressman Sid Yates, in his capacity as Chairman of the Interior Appropriations

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Subcommittee. In that colloquy, Chairman Yates made it clear that SOD funds were not considered reimbursable.

We again want to reiterate our strong feelings that the Bureau of Indian Affairs has been remiss over the years in not requesting adequate funds to maintain and operate federal dams which the Interior Department has built on various Indian reservations. These dams are worth millions of dollars with both important safety as well as economic considerations for the self-sufficiency of our communities. There needs to be enough money in the SOD program for Tribes to contract for routine O & M activities as well as construction repair, to hire their own on-site technical staff, and to cover indirect costs on an on-going basis. It is noteworthy that the Bureau of Indian Affairs' request for a Safety of Dams program continues to be far below the requests submitted to the House and Senate Appropriations Committees by the Bureau of Reclamation when it proposed to take over the BIA's program. Why would the Department not allow the BIA to submit a request for funding for dam repairs that was as high as the BOR's request for the same repairs?

We are also concerned that the BIA does not now have the adequate technical staff to oversee the SOD program and the Congress needs to examine whether there are sufficient FTEs to manage this program and ensure that they are properly trained in this particular field. It is also important to ensure that tribes who chose to contract for SOD work have the critically needed on-site technical expertise. We recommend that HR 1426 be expanded to cover the above issues and concerns and we propose that the Bureau of Indian Affairs establish regulations on the Safety of Dams program so that all Areas will have standards to clarify ranking, and other procedures and priorities of the SOD programs. It is important to include the affected tribes in the drafting of such rules and to ensure that both the existing program and those programs which are authorized by this Act be allowed to continue while such rules are being promulgated.

Thank you very much for this opportunity to submit our testimony and we look forward to some positive changes in the Bureau of Indian Affairs Safety of Dams Program.

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