

SECURING THE BUREAU OF RECLAMATION'S WATER AND POWER INFRASTRUCTURE: A CONSUMER'S PERSPECTIVE

OVERSIGHT HEARING

BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
OF THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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**OVERSIGHT HEARING ON “SECURING THE
BUREAU OF RECLAMATION’S WATER AND
POWER INFRASTRUCTURE: A CONSUMER’S
PERSPECTIVE”**

**Thursday, June 22, 2006
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building. Hon. George Radanovich [Chairman of the Subcommittee] presiding.

Present: Representatives Radanovich, Napolitano, Grijalva, Costa, Hayworth, and Cardoza.

**STATEMENT OF THE HONORABLE GEORGE RADANOVICH, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
CALIFORNIA**

Mr. RADANOVICH. Good morning. Good morning, everybody, and welcome to the Subcommittee on Water and Power. Today’s meeting is to hear testimony on securing the Bureau of Reclamation’s water and power infrastructure from a consumer’s perspective.

Today’s hearing is about protecting our water and power infrastructure from modern-day terrorists. As we all know, September 11, 2001, changed everything in our society. Within just a span of a few hours Americans realized that we were no longer safe within our own borders. The impossible became a reality, and it was a wake up call for all Americans.

The Bureau of Reclamation, the nation’s largest wholesale water supplier, and second largest hydropower provider, rightly responded by creating the site security program aimed at protecting its facilities from a terrorist attack. Within months, the concrete barriers were put in place, roads were closed, and the guards appeared out of nowhere.

No one disagreed with the need for an enhanced security program, but there were questions over who would immediately pay for these costs. Water and power consumers cited Reclamation’s response after Pearl Harbor as a precedent for the American public to pay for the added security.

For years, for a few years the agency agreed, but later changed its mind, probably because OMB changed their minds for them.

Five years later everybody still agrees on the need to protect our critical infrastructure, but the fissure over who pays has grown deeper. Customers are being required to pay for guards and patrols and other items. These costs are then passed on to the end consumer, many of which are farming families and with limited incomes.

Some customers are willing to pay for a portion of these costs as long as there is transparency and certainty in the program. After all, they don't want their hard-earned dollars going toward something like the repaving of the Hoover Dam parking garage. They have a right to know where their money is being spent and why.

Reclamation is finally working to meet its customers' needs for transparency and certainty, but neither party has agreed on how best to do this. This hearing is a way to help foster an agreement to perform oversight and see what legislation may be necessary. Above all, it is about working together as Americans to protect our critical infrastructure and the people who depend on these facilities.

The Subcommittee is fortunate to have witnesses who know first-hand about this issue and about the value of our infrastructure, and I welcome you and commend you for your leadership. I now recognize and turn to the Ranking Member, Mrs. Napolitano, for her opening statement.

Grace.

[The prepared statement of Mr. Radanovich follows:]

**Statement of The Honorable George Radanovich, Chairman,
Subcommittee on Water and Power**

Today's hearing is about protecting our water and power infrastructure from modern-day terrorists.

As we all know, September 11, 2001 changed everything in our society. Within the span of just a few hours, Americans realized that we were no longer safe within our own borders. The impossible became possible. It was a wake-up call for all of America.

The Bureau of Reclamation, the Nation's largest wholesale water supplier and second largest hydropower provider, rightly responded by creating a site security program aimed at protecting its facilities from a terrorist attack. Within months, concrete barriers were put in place, roads were closed and guards appeared out of nowhere.

No one disagreed with the need for an enhanced security program, but there were questions over who would ultimately pay for these costs. Water and power consumers cited Reclamation's response after Pearl Harbor as a precedent for the American public to pay for the added security. For a few years, the agency agreed but later changed its mind—probably because OMB changed it for them.

Five years later, everyone still agrees on the need to protect our critical infrastructure. But, the fissure over who pays has grown deeper. Customers are being required to pay for guards and patrols and other items. These costs are then passed on to the end-use consumer, many of which are farming families with limited incomes.

Some wholesale customers are willing to pay for a portion of these costs, as long as there's transparency and certainty in the program. After all, they don't want their hard-earned dollars going towards something like the re-paving of the Hoover Dam parking garage—they have a right to know where their money is being spent and why.

Reclamation is finally working to meet its customers' needs for transparency and certainty, but neither party has agreed on how best to do this. This hearing is a way to help foster an agreement, to perform oversight and to see what legislation may be necessary. Above all, it's about working together as Americans to protect our critical infrastructure and the people who depend on those facilities.

The subcommittee is fortunate to have witnesses who know firsthand about this issue and about the value of our infrastructure. I welcome them and commend them for their leadership.

STATEMENT OF THE HONORABLE GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. NAPOLITANO. Thank you, Mr. Chair, and I concur with your statement. I also want to point out the hearing demonstrates the widespread and long-term effects of September 11 attacks, and I doubt that very many people at the time thought about how their new security concerns might affect their water or electric bills.

I have always, as you very well know, favor the beneficiary pay policy and the justifiable cost sharing for recovering construction not only the costs but also the maintenance of the water projects, and I think that the project beneficiary should pay the annual operating and maintenance costs of these projects, but who really benefits from these projects?

Is there any flexibility in the Reclamation law to recognize that some benefits of these projects are truly nationwide in scope?

The Bureau says their hands are tied, and we hear that quite often. In their regulations and existing law require them to charge the water and power users for the post-9/11 costs of the added securities in guards and patrols.

I do hope the testimony this morning will help us eventually to achieve a resolution of the question, or at least begin to air some of the issues of how should pay for these costs.

I want to thank the witnesses who have come to Washington for the hearing and look forward to the testimony. Thank you, Mr. Chair.

Mr. RADANOVICH. Thank you, Mrs. Napolitano.

I would now like to introduce our first panel of witnesses. Joining us today are Mr. Richard Erickson who is the Secretary-Manager of the East Columbia Basin Irrigation District in the National Water Resources Association; Mr. Thomas Graves, Executive Director of the Mideast—excuse me—Mid-West Electric Consumers Association; Mr. Russ Harrington, Financial Director of the Central Valley Project Water Association in Sacramento; Mr. Will Lutgen, the Executive Director of the Northwest Public Power Association in Vancouver, Washington; Mr. Jay Moyes, Attorney at Law, representing the Arizona Westside Irrigation and Electrical Districts from Phoenix, Arizona. Now I know why Mr. J.D. Hayworth is here. Mr. Moyes is accompanied by Ms. Leslie James, Executive Director of the Colorado River Energy Distributors Association; Mr. James Feider, the Director of the Redding Electric Utility and representing the Northern California Power Agency from Redding, California; Mr. John Lambeck is the Manager of Operations and Planning of the Metropolitan Water District of Southern California—I say Southern California—Los Angeles, California.

Gentlemen, welcome to the Subcommittee. What we are going to do is hear from all of your, and your testimony, if you would limit it to about five minutes. We are going to use the stop clocks here. This works just like a traffic light. Green is go; yellow, speed up; and red is stop.

[Laughter.]

Mr. RADANOVICH. And yours is down there. But what I would suggest is, since all of your written testimony is submitted in full for the record, feel free to be extemporaneous in your remarks, and if you could hold it to five minutes, we will hear from all of you starting to my left and then open up the panel for questions from the dais here.

So we will start with Mr. Erickson. Welcome to the Subcommittee, and you may begin your testimony.

**STATEMENT OF RICHARD ERICKSON, SECRETARY-MANAGER,
EAST COLUMBIA BASIN IRRIGATION DISTRICT, OTHELLO,
WASHINGTON, [REPRESENTING THE NATIONAL WATER
RESOURCES ASSOCIATION]**

Mr. ERICKSON. Mr. Chairman and Members of the Subcommittee, thank you for the invitation to participate in this oversight hearing.

My name is Richard Erickson, and I am the Secretary-Manager of the East Columbia Basin Irrigation District. Along with the Quincy and South Columbia Basin Irrigation Districts, we operate the transferred works of the Bureau of Reclamation's Columbia Basin project. All three districts are active members of the National Water Resources Association.

The three districts and Reclamation are currently providing irrigation water to approximately 670,000 acres. The source of water and pumping energy for the Columbia Basin project is Grand Coulee Dam, which is operated and maintained by Reclamation.

The three Columbia Basin Districts advanced to Reclamation the annual O&M cost for Grand Coulee to pump water from Lake Roosevelt to Banks Lake, and to convey it through other reserved works into the major canal systems that have been transferred to the districts.

That advance this year just for the Grand Coulee Dam/Lake Roosevelt/Bank Lakes components is \$3,566,000. About 43 percent of that amount is for electricity to lift water from Lake Roosevelt to Banks Lake. This payment is termed the diversion rate.

All three districts pay this diversion rate and it is to the power component of this rate that Reclamation began adding a guarded patrol security surcharge this year. All three districts share a common view regarding the reimbursability of these costs.

Columbia Basin Districts do not dispute the need to defend important hydroelectric facilities like Grand Coulee. The attacks of September 11 confirmed that foreign terrorists will go to great lengths to destroy targets that are national icons.

The Federal government is to be commended for taking these defensive measures. However, we believe national defense is a Federal role, not a local role. These defense and security costs should be a Federal responsibility paid for by all Americans, and not be the responsibility of irrigation and power ratepayers associated with specific Federal projects that happen to have a high target value.

Beginning in 2006, Reclamation and Congress determined that guarded patrol costs should become reimbursable. For 2006, this

reimbursability was capped at \$10 million. Full reimbursement is set to begin in 2007.

The Columbia Basin Districts respectfully recognize that Congress is the final decisionmaker in this matter and we also realize there are many competing pressures on the Federal budget, but we ask that Congress give further consideration to this decision.

One point we believe needs further consideration is the equity of reimbursability of guard and patrol costs. Columbia Basin is the only project in the Pacific Northwest region that will be subject to reimbursable security costs. Similar situations exist in Reclamation's other regions. Grand Coulee and a few other Reclamation's larger hydroelectric projects have the most security needs. That creates a disparity for irrigators farming on Reclamation projects that depend on these larger dams. These farmers will pay extra charges for water compared to other farmers on the rest of the 10 million acres using Reclamation water.

Another point about this reimbursability that we believe Congress should consider is the ability to audit Reclamation's guard and patrol costs. The Columbia Basin Districts believe we have a positive relationship with Reclamation regarding our payment of the irrigation diversion rate at Grand Coulee.

One source of this good relationship has been Reclamation's willingness to allow the districts to view the documentation relevant to the diversion rate. These reviews often lead to frank discussions, but in the end result in a good relationship and adequately funded operation, maintenance and replacement budgets for the irrigation function at Grand Coulee.

The districts firmly believe that without this interaction too many inappropriate costs would be charged against Grand Coulee's irrigation diversion rate.

This type of review and interaction by the districts is probably not possible for post-9/11 security costs. Those costs result from Federal decisions based on classified intelligence information related to national security. Irrigation districts are not qualified or authorized to audit or interact in that type of budgeting and accounting. These are Federal, not local matters.

As mentioned earlier, power charges are about 43 percent of our diversion rate. Irrigation pumping uses about 10 percent of Grand Coulee's generation. Reclamation is telling us that our share of the reimbursable guard and patrol costs will be about that same proportion. They have also told us that for security and clearance reasons they can't tell us exactly how these costs are being allocated, so we really don't know.

Columbia Basin Districts believe the best way for Congress to address this is to place a limit on the amount of guard and patrol costs that are reimbursable and that Congress itself exercise vigorous oversight of Reclamation spending for guard and patrol functions. Such oversight should tend to keep the future escalation of these costs within reasonable bounds.

If guard and patrol costs are to be permanently reimbursable, the \$10 million cap used for 2006 would be a reasonable precedent. That cap could then be indexed for inflation.

Thank you for your consideration.

[The prepared statement of Mr. Erickson follows:]

**Statement of Richard L. Erickson, Secretary-Manager,
East Columbia Basin Irrigation District**

Mr. Chairman and Members of the Subcommittee:

Thank you for the invitation to participate in this oversight hearing on "Securing the Bureau of Reclamation's Water and Power Infrastructure".

My name is Richard L. Erickson and I am the Secretary-Manager of the East Columbia Basin Irrigation District. The East District along with the Quincy and South Columbia Basin Irrigation Districts operate the transferred works of the Bureau of Reclamation's Columbia Basin Project. The three Districts and Reclamation are currently providing irrigation water to approximately 670,000 acres in eastern Washington.

The source of water and pumping energy for the Columbia Basin Project is Grand Coulee Dam on the Columbia River. Grand Coulee is a CBP reserved works and, as such, is operated and maintained by Reclamation. The three CBP Irrigation Districts advance to Reclamation the annual O&M costs for Grand Coulee to pump water from Lake Roosevelt to Banks Lake and to convey it through other reserved works into the major canal systems that have been transferred to the Districts.

By way of illustration that advance this year, just for the Grand Coulee Dam, Lake Roosevelt, Banks Lake components is \$3,566,900. About 43% of that amount is for electricity to lift water from Lake Roosevelt to Banks Lake. The budgeting and accounting procedures that determine this payment are termed the "diversion rate". This diversion rate is set by Reclamation's Regional Director after involving the three CBP Irrigation Districts in the budgeting and accounting reviews.

All three Districts pay this diversion rate and it is to the power component of this rate that Reclamation began adding a guard and patrol security cost surcharge this year. The Boards of Directors of all three Districts share a common view regarding the reimbursability of these costs. I believe the comments I will present reflect that common view.

There has always been a small security component associated with this diversion rate. However, until 9/11 these costs were for things like fire protection and night watchmen. 9/11 obviously changed all that.

The CBP Irrigation Districts do not dispute the need to defend important hydroelectric facilities like Grand Coulee Dam. The attacks of September 11th confirmed that foreign terrorists will go to great lengths to destroy targets that are national cultural and economic icons. The federal government is to be commended for taking these defensive measures.

However, we believe national defense is a federal role, not a local role. As was done after Pearl Harbor, and was done after September 11th, through 2005, these defense and security costs should be a federal responsibility, paid for by all Americans. They should not be the responsibility of irrigation rate payers and power rate payers associated with specific federal projects that happen to have a high target value for enemies of this country.

Beginning in 2006, Reclamation and Congress determined that guard and patrol costs should become reimbursable. For 2006 this reimbursability was capped at \$10 million, Reclamation-wide. Our understanding is that the 2006 decision contemplated the cap for 2006 only, full reimbursement would begin in 2007. The CBP Irrigation Districts respectfully recognize that Congress is the final decision maker in this matter and we realize there are many competing pressures on the federal budget but we ask that Congress give further consideration to this decision.

One point we believe needs further consideration is the equity of the reimbursability of guard and patrol costs. The Columbia Basin is the only project in the Pacific Northwest Region that will be subject to reimbursable security costs. Similar situations exist in Reclamation's other regions. That is because Grand Coulee Dam, Shasta Dam and Hoover Dam and a few other of Reclamation's larger hydroelectric projects have the most security needs. That creates a disparity for irrigators farming on Reclamation's projects that depend on these larger dams for their water supply if security costs are to be reimbursable. Because of the large hydroelectric facility, these farmers will pay extra charges for water compared to other farmers on the rest of the 10 million acres using Reclamation water that don't have these security concerns.

Another point about this reimbursability that we believe Congress should consider is the ability to audit Reclamation's guard and patrol costs. The CBP Irrigation District's believe we have a positive relationship with Reclamation regarding our payment of the irrigation diversion rate at Grand Coulee Dam. We believe one source of this good relationship has been Reclamation's willingness to allow the District's to review the documentation of the budgeting and accounting procedures relevant to the diversion rate. These reviews often lead to frank discussions and correspond-

ence between the Districts and Reclamation about some of the diversion rate decisions but, in the end, result in a good relationship and adequately funded operation, maintenance and replacement budgets for the irrigation function at Grand Coulee. However, the Districts firmly believe that without this interaction too many inappropriate costs would be charged against Grand Coulee's irrigation diversion rate.

This type of review and interaction by the Districts is probably not possible or appropriate for post-9/11 security costs at Grand Coulee. Those costs, at least in part, result from federal decisions based on classified intelligence information related to national security. Irrigation District Boards of Directors and management are probably not qualified or authorized to audit or interact in that type of budgeting and accounting. These are federal, not local, matters.

Reclamation has decided to recover the Grand Coulee guard and patrol costs by adding those costs to the cost of power production. As mentioned earlier, power charges are about 43% of our diversion rate. Irrigation pumping uses about 10% of Grand Coulee's generation. Reclamation is telling us that our share of the reimbursable guard and patrol costs will be about that same proportion. However, they have also told us that for security and clearance reasons they can't tell us exactly how these costs are being allocated. So we really don't know.

The CBP Irrigation Districts believe the best way for Congress to address this is to place a limit on the amount of guard and patrol costs that are to be reimbursable and that Congress itself exercise vigorous oversight of Reclamation's spending for guard and patrol functions. Such oversight should tend to keep the future escalation of these costs within reasonable bounds.

If Congress decides that these guard and patrol costs are to be permanently reimbursable, the \$10 million cap used for FY 2006 would be a reasonable precedent. That cap could then be indexed to somehow adjust for inflation.

Thank you for your consideration.

Mr. RADANOVICH. Thank you, Mr. Erickson. Appreciate your testimony.

Next is Mr. Thomas Graves. Mr. Graves, welcome to the Subcommittee, and you may begin your testimony.

**STATEMENT OF THOMAS GRAVES, EXECUTIVE DIRECTOR,
MID-WEST ELECTRIC CONSUMERS ASSOCIATION, WHEAT
RIDGE, COLORADO**

Mr. GRAVES. Thank you, Mr. Chairman and Members of the Committee.

I am Thomas Graves, Executive Director of the Mid-West Electric Consumers Association headquartered in Wheat Ridge, Colorado.

Mid-West was founded in 1958, as the regional coalition of consumer-owned electric utilities, Rural Electric Cooperatives, municipal electric utilities, and public power districts that purchase hydropower generated at Federal multi-purpose projects operated by the United States Army Corps of Engineers and the Bureau of Reclamation.

Since September 11, 2001, the Bureau has stepped up its security at its multi-purpose projects throughout the West. The security of Reclamation's national critical infrastructure facilities is important to us as Federal power users as well as to the entire country.

In April 2002, the Commissioner of Reclamation, following historical precedent, deemed that the increased security costs to be a Federal obligation. Subsequently the Bureau has engaged in a back and forth policy over how these increased costs should be treated.

In Fiscal 2003, Congress directed that only \$10 million of a \$40 million budget be deemed the responsibility of project beneficiaries.

Currently, the Bureau's report to Congress on security costs indicates that the Bureau expects all of its 2007 costs to be allocated amongst project purposes, with no cap on reimbursable obligations.

To determine the obligation of each project purpose, the Bureau has relied upon its operation and maintenance allocations. It is an easy way to address the cost allocation issue, but the methodology does not properly account for the assessment of risk or the impact of threats.

The loss of a power house at a Bureau multi-purpose facility in Pick-Sloan, while certainly not a wonderful event, would be dwarfed by the loss of the dam itself. Yet hydropower generation at Bureau facilities is looking at picking up almost 70 percent of the total reimbursable costs for security in Pick-Sloan.

Municipal and industrial water, on the other hand, is only expected to pick up \$78,000 of costs. The loss of a dam and the water supply for a community, the impact is immediate and catastrophic. The loss of a power house can be replaced in the short and mid-term on the market.

We are looking for something that has some rationality in it. Right now in Pick-Sloan for 2007, in the non-reimbursable costs, Fish and Wildlife is going to be paying 40 percent or it will have 40 percent of the costs allocated to it. It is a non-reimbursable function. Recreation will only have \$43,000 allocated to it.

I would suggest we need to develop a sensible method for figuring out how we are going to allocate security costs, and that has not been done yet. It seems to me there are two components: one is the risk of the loss of the asset or loss of life in the case of the destruction of the dam; the other is to what extent does this project purpose potentially bring risk to a dam.

In that regard, I doubt that Fish and Wildlife are much of a threat to national security. I doubt that Recreation could be much of a threat, but I would point out that Recreation brings lots and lots of people to many facilities for recreational purposes, which also increases the potential for some kind of adverse action at the dam.

We would certainly support the concept of non-reimbursability and note that many state and local governments have received grants from the Federal government to cover much of their security costs. Recently the Congress just enacted or is considering—excuse me—some legislation having to do with state and local wastewater treatment plants, and I think it was about a \$700 million program.

Congress needs to step in and establish some parameters for the Bureau's security program. The lack of transparency makes it absolutely impossible for the customers to make any kind of rational assessment over what is appropriate, what is not appropriate. Congress should require that the Bureau develop cost allocations that better balance the risks among project purposes, and the extent of security needed needs to be reevaluated periodically.

In the region that I work for, the best security we have are the people of that region. It is very difficult in the upper Great Plains for a stranger to come into town and remain a stranger. We do believe in security costs. We do believe in the importance of the program, and we do not believe that those costs are being accounted for properly at this time.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Graves follows:]

**Statement of Thomas P. Graves, Executive Director,
Mid-West Electric Consumers Association, Wheat Ridge, Colorado**

Good morning, Mr. Chairman. I am Thomas Graves, Executive Director of the Mid-West Electric Consumers Association, headquartered in Wheat Ridge, Colorado. Mid-West was founded in 1958 as the regional coalition of consumer-owned electric utilities—rural electric cooperatives, municipal electric utilities, and public power districts—that purchase hydropower generated at federal multi-purpose projects operation by the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation.

Mid-West members utilize federal hydropower marketed by the Western Area Power Administration (Western) under the Pick-Sloan Missouri Basin Program in nine states—Montana, Wyoming, Colorado, North Dakota, South Dakota, Nebraska, Kansas, Minnesota, and Iowa.

Since September 11, 2001, the Bureau of Reclamation has stepped up its security at its multi-purpose projects throughout the West. The security of Reclamation's National Critical Infrastructure (NCI) facilities is important to us as federal power users as well as to the entire country.

In April, 2002, the Commissioner of Reclamation, following historical precedent deemed the increased security costs to be a federal obligation. Subsequently, the Bureau has been engaged in a back-and-forth policy over how these increased security costs should be treated. In Fiscal Year 2006, Congress directed that only \$10 million of a \$40 million security budget be deemed the responsibility of project beneficiaries.

Currently, the Bureau's report to Congress on security costs indicates that the Bureau of Reclamation expects all of its 2007 security costs to be allocated amongst project purposes with no cap on reimbursable obligations.

To determine the obligation of each project purpose, the Bureau has relied upon its Operations and Maintenance allocations. While an easy way to address the cost allocation issue, this methodology does not properly account for assessment of risk or impact of threats. The loss of a power house at a Bureau multi-purpose facility, while certainly not a happy event, would be dwarfed by the loss of the dam. Hydro-power generation at a Bureau facility can be offset in the short and mid-term. Loss of drinking water for a community is immediately catastrophic; yet, in Pick-Sloan only \$78, 647 has been allocated to municipal and industrial water.

In the Pick-Sloan Missouri Basin Program, federal power customers will be responsible for repaying 50% of the \$1.87 million in total projected costs for 2007. Power's share of the \$1.4 million allocated to reimbursable project purposes is \$936,000—just over 67%.

Understandably, the Bureau moved aggressively to protect national assets when the terrorist threat emerged. But now is the time to address a more equitable allocation of costs of this new security. That consideration must be open and transparent. The Bureau has claimed security concerns in protecting some data. No one is interested in compromising the security of these sites but as the project beneficiaries responsible for the lion's share of these costs; we do feel a right to have a proper cost accounting.

Congress needs to step in and establish some parameters for the Bureau's security program. The Bureau should be required to report annually to Congress on its security activities and costs. Congress should require the Bureau to develop cost allocations that better balance risks among project purposes. The extent of security need should be reevaluated periodically.

Mr. RADANOVICH. Thank you, Mr. Graves.

Mr. Harrington, representing the great Central Valley of California.

**STATEMENT OF RUSS HARRINGTON, FINANCIAL DIRECTOR,
CENTRAL VALLEY PROJECT WATER ASSOCIATION,
SACRAMENTO, CALIFORNIA**

Mr. HARRINGTON. Mr. Chairman and Members of the Subcommittee, I appreciate this opportunity to appear before you to discuss the issues concerning site security for the Bureau of Reclamation's water and power infrastructure.

My name is Russ Harrington. I am the Finance Director of the Central Valley Project Water Association. The Central Valley Project Water Association represents the interests of approximately 300 agricultural and municipal and industrial water contractors. These contractors serve numerous agencies and communities that are located in and near the Central Valley of California.

Our water contractors are very concerned about the current trend pertaining to the reimbursability of these site security costs. From program inception in 2002 through last year, these costs remain non-reimbursable. This year Congress determined that 10 million should be subject to reimbursability. The Administration is requesting that the guards and patrols portion of these security costs be fully reimbursable in 2007.

If the 2007 guards and patrols budget does not change from the 2006 level of 20.9 million, this would represent an annual cost increase of slightly more than 100 percent.

In addition, Reclamation has announced plans to declare the O&M and replacement aspects of the capital hardening cost to be reimbursable costs as well. For all practical purposes, this means that the capital items become reimbursable as originally purchased equipment becomes worn or obsolete and is replaced.

The writing on the wall is clear. Through these proposed year-over-year increases in O&M reversibility and proposed reimbursability designation for the replacement of capital items, Reclamation has shown an intent to make the majority of the site security costs reimbursable.

Contractors feel that this is inappropriate. We still believe that historical precedent and Federal government responsibility support a fully non-reimbursable cost allocation.

The activities and programs funded by these costs are a direct response to the threat of foreign terrorism. National defense is the explicit constitutionally required obligation of the Federal government. We feel that the Federal government should bear funding responsibility for specific constitutional obligations.

Additionally, Reclamation law has traditionally allocated costs for the benefit of the general public is non-reimbursable. Flood control, navigation, and recreation expenditures are clearly defined as costs incurred for the benefit of the general public, and these costs are not charged to Reclamation's contractors.

Security costs are yet another expenditure for the benefit of the general public. The established precedent should dictate that these costs be allocated as non-reimbursable public safety benefits.

If Congress is unable to make these costs completely non-reimbursable, then we feel that there are much more appropriate alternatives to the reimbursability allocation proposal by Reclamation.

One alternative would be to the proposal first put forth by the Colorado River Energy Distributors Association, on which I would defer to them to discuss further. Another alternative method will be to use another of Reclamation safety programs as the baseline for determining the reimbursability of these security costs.

We believe that there are compelling reasons to use preexisting legislation and Reclamation's safety of dams program as such a benchmark. Both the safety of dams and security activities are for the explicit purpose of protecting the structural integrity of

Reclamation facilities. Both programs are explicitly prohibited from creating additional project benefits, and are intended only to preserve the existing project features. Thus the sole purpose of both programs is safety.

Congress recognized the primary purpose of safety when the reimbursability criteria of 15 percent was determined for the safety of dams programs. Because the site security costs are also for the purpose of safety, we believe that the same reimbursability of 15 percent is a reasonable determination.

The other issue I would like to mention is the inability of contractors to get information regarding the activities which they are being asked to fund. Contractors have been given no information regarding the equipment and activities that have been implemented through either the reimbursable or non-reimbursable components of this budget. At the same time contractors understand the need to refrain from divulging this information to the general public.

For this reason, contractors would appreciate the Subcommittee's assistance in directing Reclamation to examine methods for providing security cost information to contractors without sacrificing necessary security protocols.

We believe that the inability to disclose the nature of these costs is yet another reason that the majority of these costs should not be subject to reimbursability.

Thank you for providing the CVP Water Association with the opportunity to testify. I will be happy to answer any questions that you might have, to the best of my ability.

[The prepared statement of Mr. Harrington follows:]

**Statement of Russell P. Harrington, Finance Director,
Central Valley Project Water Association**

Chairman Radanovich and Members of the Subcommittee:

My name is Russ Harrington, and I am the finance director for the Central Valley Project Water Association. The Central Valley Project (CVP) Water Association represents the interest of approximately 300 agricultural and municipal and industrial districts that have water service contracts with the CVP in California.

The CVP is the nation's largest Bureau of Reclamation project. Our membership covers a geographic region of 450 miles from Redding in the north to Bakersfield in the south, and includes several municipalities to the east and south of the San Francisco Bay. Each year, these districts utilize CVP water supplies to meet the needs of 3 million acres of farm land (comprising 1/3 of the total agricultural land in California) and 1 million households. The CVP Water Association works to preserve and protect CVP water supplies and ensure that these water supplies are dependable and affordable.

On behalf of the CVP Water Association, I would like to thank the committee for the opportunity to present our viewpoint. Because my knowledge and background regarding this issue are concentrated in the financial aspects of the CVP and Reclamation, I will confine my comments to the financial implications of the Site Security costs. Ultimately, it is our hope that an equitable solution to the site security issue can be reached that will not excessively burden any stakeholder group.

Observations and Concerns

The purpose of the proposed incremental Site Security cost measures is the protection of the general public, which includes numerous other entities beyond the Water and Power Contractors (Contractors) of the Bureau of Reclamation. No additional capacity for water supply, power generation, flood control, or any other authorized Reclamation project purpose is created by any of these measures. Protecting against foreign (or domestic) attack is one of the primary obligations of the Federal Government, and national defense is the specific responsibility of the Federal Government. As such, we believe that the Federal Government should accept

its constitutionally-mandated obligation and bear the primary cost burden for its responsibility.

The various authorizing legislations for different components of the CVP and other Reclamation facilities clearly distinguishes between expenditures that are for the purposes of Water Supply or Power Generation and expenditures that are for general public benefits such as Flood Control and Navigation. It is long recognized within Reclamation Law that expenditures for which the general public is the beneficiary should be assessed to the general public and not to Contractors. As an expenditure on behalf of the general public, it is reasonable that Site Security costs should be accredited similar non-reimbursability status. Moreover, Contractors already pay a share of national defense costs through their personal and business income taxes. Billing these Contractors a specific share of these costs again through the water and power rates forces them to pay twice for these costs.

The CVP Contractors are concerned about the recent trend in proposed changes to the reimbursability criteria for the security cost budget. As the Subcommittee is aware, the current year marks the first instance in which a portion of the security costs are specifically allocated for repayment by Contractors. From 2002 through 2004, all of the incremental security costs were non-reimbursable. In 2005, the Administration requested that the guards and patrols portion of the Site Security costs be made fully reimbursable. However, Congress declined this request pending the completion of a report pertaining to these costs by the Bureau of Reclamation. For 2006, Congress agreed to the Administration's request to make a portion of these costs reimbursable. However, Congress limited the reimbursability of these guards and patrol costs by providing a \$10 million ceiling on the costs that would be subject to reimbursability.

While \$10 million has been allocated among the Reclamation projects in the current year, the Administration has again requested that the full costs of the guards and patrols component of these costs be subject to Contractor reimbursability in 2007. Reclamation's Security Cost report issued in May 2006 projected the guards and patrols portion of the Site Security costs at \$20.9 million in 2006. Unless the guards and patrols costs budget will decline from 2006 to 2007, allocating all guards and patrol costs to Contractors would create a year-over-year cost increase to Contractors of slightly more than 100%.

Contractors have additional concerns regarding the Facility Fortification, or "capital hardening" costs, which were outlined in this report. Reclamation indicated that there are no current plans to charge Contractors for the original Facility Fortification costs. However, Reclamation has also taken the position that the operations, maintenance, and replacement costs for these Facility Fortifications will be reimbursable. On a de facto basis, the impact of this decision would be to convert the capital hardening costs from non-reimbursable to reimbursable status as the original equipment and facilities are used and eventually replaced.

Reclamation has also raised the possibility that additional Site Security costs may be needed in the future, and that these incremental costs may be added to the Contractors' repayment responsibility. Contractors have been informed that Reclamation may increase the level of security requirements and expenditures due to unforeseen circumstances. Specific details were not provided, but no limits on the potential increases were defined. The possibility of limitless security cost increases is a significant concern to Contractors. While Contractors may be required to pay an increasing share of these costs, it is worth noting again that Contractors are given very little information regarding the activities that these expenditures are funding. Contractors readily acknowledge that there are legitimate national security concerns that prevent release of classified security information to the general public. At the same time, we believe that it is reasonable for Contractors to be given an indication of the security measures that they are financing.

Recommendations for Consideration

For the reasons that have been noted in this document, the CVP Water Association maintains that a decision to declare the majority of the security costs reimbursable would not be equitable. We recommend that the following alternatives be considered:

1. It is appropriate for the Federal Government to finance in full its obligation for National Defense. It is not any more appropriate to charge Contractors for this Federal Government responsibility than it is to charge the cities of New York or Washington DC for the security enhancements accorded these areas. Throughout the history of Reclamation, the authorizing legislations have repeatedly and clearly established the precedent that costs benefiting the general public should be non-reimbursable. We do not see any justification for

deviating from that precedent here, and believe that full non-reimbursability is warranted.

2. The reimbursability criteria offered through a Position Statement from the Colorado River Energy Distributors Association (CREDA) regarding Security Costs represents another viable alternative. This alternative would permanently establish the \$10 million reimbursability level that was determined by Congress to be appropriate during the 2006 Fiscal Year. The CVP Water Association supports the principles regarding the Site Security costs that have been assembled by CREDA.
3. As another alternative for determining reimbursability, Contractors suggest that the reimbursability allocations that have been legislated for the Bureau of Reclamation's Safety of Dams program can also be used as the basis for allocating these Site Security Costs. There are several significant parallels in both scope and purpose between the Site Security and Safety of Dams programs. As is the case with the security costs, the Safety of Dams program exists for the sole purpose of public safety. The Safety of Dams program is prohibited from creating new benefits such as water supply, power generation, or flood control, which is also the case with the incremental security measures. The Safety of Dams program authorizes activities to prevent seismic, hydrologic, and structural damage to Reclamation dams. The security costs have also been incurred for the purpose of preventing structural damage to Reclamation Dams as well as selected other facilities. Within the Safety of Dams program, the cost share that is subject to reimbursability by Contractors is 15%. This 15% reimbursability level represents a Congressionally established, pre-existing standard for other public safety costs such as Site Security. We believe that the reimbursability guidelines of the Safety of Dams program offer a reasonable precedent for determining the reimbursable level for Site Security costs.

Contractors should also be given the opportunity to obtain more detailed information on the activities that are being funded with these Site Security expenditures. We understand that these activities cannot be divulged to the general public. At the same time, we believe that Contractors have a right to a reasonable description and justification of the activities that they are asked to help fund. We don't want to propose specific suggestions for providing Contractors with information prior to a review of the need to maintain the confidentiality of specific security measures. We would appreciate the support of this committee in asking Reclamation and other appropriate Federal Agencies to determine appropriate methods for providing more comprehensive activity/cost information regarding these Site Security costs to Contractors.

Conclusion

In closing, I would like to reassert that it is inequitable to assess Contractors for a disproportionate share of a national security activity, which is undertaken for the benefit of general public safety. We do not believe that it is appropriate to bill Contractors a predominant share of the cost for an activity that does not increase the amount or quality of water or power deliveries, and which Contractors already pay through their business and personal federal income taxes. This is particularly true in circumstances where Contractors are not given a detailed accounting of the activities and facilities that are supported with this funding. If Contractors are to be allocated a portion of these Site Security costs, then Contractors should be given better information regarding the activities toward which they are contributing their payments.

In the event that Congress is unwilling to make these costs fully non-reimbursable, the CVP Water Association proposes that the reimbursability for the Site Security costs be determined along either the guidelines established by CREDA or the same guidelines as that utilized in the Safety of Dams program. The CREDA proposal is based on an extension of the reimbursability standard that Congress determined to be appropriate for the current year. As an alternative to the CREDA proposal, pre-established and equitable cost share standards for public safety costs—such as the Site Security costs—already exist within the Safety of Dams program.

Again, thank you for providing the CVP Water Association with the opportunity to testify today. I would be more than happy to answer any questions that you may have.

Mr. RADANOVICH. Thank you, Mr. Harrington.
Next, Mr. Lutgen, welcome to the Subcommittee.

**STATEMENT OF WILL LUTGEN, EXECUTIVE DIRECTOR,
NORTHWEST PUBLIC POWER ASSOCIATION, VANCOUVER,
WASHINGTON**

Mr. LUTGEN. Good morning, Mr. Chairman and Members of the Committee.

My name is Will Lutgen, and I serve as the Executive Director of the Northwest Public Power Association. We appreciate this opportunity on behalf of our members to comment on the Bureau of Reclamation's security measures on national critical infrastructure facilities.

NWPPA is a nonprofit association serving approximately 150 cooperatives, municipalities, public utility, peoples' utility districts in western states. Our name has become somewhat of a misnomer as we now have members in Alaska, Arizona, California, Idaho, Montana, Nevada, South Dakota, Oregon, Washington, and Wyoming. We even have a couple of members in Canada. Our members serve some 5 million consumers in the western United States and employ some 20,000 individuals.

I have submitted my full testimony for the record, so I will just make a few comments on some key points.

The Pacific Northwest is still recovering from the energy crisis of 2000-2001, and we have been working very hard to contain costs with the Bonneville Power Administration. Bonneville's rates are affected by many factors, including a drought with the exception of this past year, fish and wildlife obligations and contracts with our direct service industries.

As stewards of the public trust, we would like to make sure that the cost of the Bureau's enhanced security measures at Grand Coulee Dam, which also affect our rates, receive congressional security and are fair to all ratepayers. I would like to make four key points with regard to increased security costs.

As some of the other speakers have indicated, given the national security interests at stake we think there is good reason for Congress to decide that funding of post-9/11 reclamation security measures remain a non-reimbursable Federal obligation and be subject to congressional oversight.

Under the current situation, NWPPA is concerned that there are no cost controls, authorized ceiling, sunset data, or congressionally approved parameters to limit or control the amount of money Reclamation can spend on increased security. We believe Congress should authorize and appropriate spending parameters for this program.

Third, project beneficiaries have no meaningful input into the discussions about Reclamation security cost programs. We understand that even some congressional staffers have been denied crucial information regarding these costs.

Fourth, the Reclamation facilities provide for flood control, water supply, recreation, and other benefits. If a portion of the cost controls are made reimbursable, they should be allocated fairly among all beneficiaries and capped to ensure accountability.

For example, on the subject of allocating costs fairly, in May of 2005, Reclamation reports that the Columbia River Basin customers paid \$2.34 million of \$2.42 million for guards and controls,

or approximately 92 percent of reimbursable cost, despite the fact that this multi-purpose facility serves many functions.

More recently, in a 2006 report to Congress, Reclamation stated its policy that the cost of guards and patrols should be reimbursed by consumers, and added language that would also make the cost of maintaining and replacing the newly fortified facilities as reimbursable. Thus Reclamation's definition of reimbursable O&M is expanding in its scope.

Further concerns have been repeatedly expressed to Reclamation about the program's lack of information and transparency, lack of objective criteria, and lack of spending controls and an inequitable allocation of cost. NWPPA now believes that Congress should expressly authorize Reclamation's site security program and ensure accountability to Congress and provide cost certainty to funding stakeholders throughout an equitable and durable allocation of cost.

For that reason we are watching with interest as alternatives such as those that are being described today or proposed and pursued.

In conclusion, NWPPA members believe in being responsible stewards of facilities and paying for their fair share of costs. We are not seeking to circumvent our responsibilities. However, we firmly believe that the burden our power customers are being asked to shoulder for these counter-terrorism measures is above and beyond normal O&M costs.

Thank you again for the opportunity to testify today. I look forward to answering any questions you might have.

[The prepared statement of Mr. Lutgen follows:]

**Statement of Will Lutgen, Executive Director,
Northwest Public Power Association (NWPPA)**

Good morning Mr. Chairman and Members of the Committee. My name is Will Lutgen, Jr. and I am the Executive Director of the Northwest Public Power Association (NWPPA). I appreciate this opportunity to testify on behalf of NWPPA on the Bureau of Reclamation's (Reclamation) security measures at National Critical Infrastructure facilities.

NWPPA is a non-profit association of approximately 150 public/people's utility districts, electric cooperatives, municipalities and crown corporations in the Western states—including Alaska, Arizona, California, Idaho, Montana, Nevada, South Dakota, Oregon, Utah, Washington and Wyoming—and in Alberta and British Columbia, Canada. NWPPA also serves the sales and networking needs of over 200 Associate Members across the U.S. and Canada who are allied with the electric utility industry.

Our utility members serve some five million consumers in the Western U.S. and employ some 20,000 individuals. The association was formed in 1940, when public power municipal utilities, public power utility districts and rural electric cooperatives decided they needed one regional organization to represent their interests. Since those early days, NWPPA has been an advocate for public power in the Pacific Northwest region and has provided services tailored specifically to member needs. NWPPA exists to enhance the success of its members through education, training, public information, governmental relations and value added services.

In the Northwest, we are still recovering from the energy crisis of 2000-2001 and we have been working hard to control Bonneville Power Administration's (BPA's) costs. Bonneville's rates are affected by many factors, including drought, fish and wildlife obligations and contracts with the direct service industries. As stewards of the public trust, we are trying hard to make sure these security costs, which also affect our rates, receive the needed scrutiny and are fair to our ratepayers.

I would like to make four key points today:

1. Given the national security interests at stake, funding of post-9/11 Reclamation security measures should remain a non-reimbursable federal obligation and be subject to congressional oversight.
2. NWPPA is concerned that there are no cost controls, authorization ceiling, sunset date, or Congressionally-approved parameters to limit or control the amount of money Reclamation can spend for increased security. To date, Congress has appropriated more than \$158 million for Reclamation's increased security activities, and Reclamation is asking for nearly \$40 million more in the President's FY 2007 budget. Congress should authorize appropriate spending parameters for this program.
3. Project beneficiaries have no meaningful input into discussions about Reclamation's security cost program. Even Congressional staff have been denied critical information regarding these costs for national security concerns.
4. Reclamation facilities provide people with flood control, water supply, recreation and other benefits. If a portion of the security costs are made reimbursable, they should be allocated among all beneficiaries and capped to ensure accountability.

Let me briefly describe the history of this program and how NWPPA has come to arrive at the conclusion that Congressional intervention is necessary to end this ongoing battle between the Bureau and its power customers.

As you may recall, immediately after September 11, 2001, the Bureau of Reclamation (Reclamation) aggressively increased security and anti-terrorism measures at federal multi-purpose dams. Consistent with federal policies adopted during World War II, the Commissioner of Reclamation in April 2002 determined that these increased security measures were a matter of national security and, therefore, the costs should be paid by the federal government.

In the Administration's FY 2005 budget request, Reclamation changed position and sought to recover a significant part of increased security costs from project beneficiaries. Specifically, Reclamation sought to make costs of increased guards and patrols reimbursable by customers. In response, Congress in FY 2005, directed Reclamation: 1) to submit a report detailing its new proposal, on a region-by-region and project-by-project basis; and 2) not to implement its new reimbursability policy until directed by Congress to do so. Therefore, all of the FY 2005 costs for increased security remained a federal expense.

A Reclamation report in May 2005 indicated that for the Columbia River Basin, power customers would pay \$2.34 million of the \$2.42 million in costs for guards and patrols—approximately 92% of reimbursable security costs, despite the fact that this multi-purpose facility serves many functions and provides benefits to many user groups. Reclamation's rationale for this allocation is that this is how the agency allocates all operation & maintenance (O&M) costs for its Columbia River projects, and it regards costs for increased guards and patrols as an O&M expense.

In FY 2006, Congress allowed \$10 million of the \$19.6 million in costs of guards and patrols at all Reclamation dams to be recovered from project beneficiaries. However, Congress recognized that "all project beneficiaries that benefit from an enhanced security posture at the Bureau's facilities should pay a share of the security costs" and directed Reclamation to submit "a delineation of planned reimbursable security costs by project, pro-rated by all project purposes."

In the Administration's FY 2007 budget, Reclamation requested a total of \$18.9 million in reimbursable security costs from customers to cover costs of guards and patrols. Reclamation plans to recover \$11.6 million from power customers and approximately \$7.3 million from other project beneficiaries, such as irrigation, municipal and industrial water users etc. Again, power is being asked to pay a disproportionate share. No project by project breakdown of the FY 2007 reimbursable costs is available at this time. However, in a February 2006 report to Congress, Reclamation restated its policy that costs of guards and patrols should be reimbursed by customers and added language that would also make all the costs of maintaining (O&M) the newly fortified facilities reimbursable. Thus, Reclamation's definition of reimbursable O&M is expanding.

Currently, the Bureau is spending about \$50 million per year on enhanced security costs West-wide and is trying to recover about half of that from water and power customers, mostly from power. For example, in FY 2006 the Bureau sought to recover almost \$5 million from BPA customers for enhanced security at Grand Coulee. It is seeking a similar amount in FY 2007 and there is no authorization cap on the program.

We, as preference customers, have been fighting unsuccessfully with the Bureau to have these security costs be fully non-reimbursable, that is remain a federal obligation. Despite some initial positive signals, a number of organizations representing Bureau water and power customers, including NWPPA, no longer believe that it is

possible to reach a workable solution in dealing with the agency alone. For that reason we are watching with interest as alternatives, such as those being described here today, are proposed by others in the industry.

Further, concerns have been repeatedly expressed to Reclamation about the security cost program's lack of information and transparency, lack of objective criteria, lack of spending controls and inequitable allocation of costs, and lack of Congressional authorization. We understand that the nature of security costs does not allow for a full review and comment by customers; however, allowing a limited review by signing non-disclosure agreements or obtaining security clearances is no substitute for the certainty that can be provided through a cost cap.

Specifically, NWPPA now believes that Congress should expressly authorize Reclamation's site security program to ensure accountability to Congress and to provide cost certainty to funding stakeholders through an equitable, durable allocation of costs.

Such legislation should:

1. Direct Reclamation to report annually to the House and Senate Committees on Homeland Security, Resources and Energy and Natural Resources, and Appropriations on security actions and activities undertaken in the prior fiscal year and proposed for the upcoming fiscal year and the sources and expected sources of reimbursable and non-reimbursable funding for each action;
2. Provide that funding stakeholders will reimburse costs of guards and patrols at National Critical Infrastructure (NCI) facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million, indexed for inflation;
3. Specify that such reimbursable funds be spent only on guards and patrols at NCI facilities and allocated among NCI facilities in the same manner as they were allocated by Reclamation in FY 2006;
4. Provide that, in the event of a change in the level of a national security threat, Reclamation will immediately notify Congress and, with funding customers, seek approval of Congress to adjust the reimbursable costs for guards and patrols until such time as the threat level changes; and
5. Require the Bureau to allow stakeholder review and input on work program elements of the entire security cost program on at least a five-year planning horizon, detailed by pre- and post-9/11 and by category (e.g., fortification, guards and patrols, etc.).

In conclusion, NWPPA members believe in being responsible stewards of the facilities and for paying their fair share of the costs. We are not seeking to circumvent our responsibilities. However, we firmly believe that the burden our power customers are being asked to shoulder for these counter-terrorism measures are above and beyond normal O&M functions. Moreover, protection of these multi-purpose facilities, which provide important flood control, water storage for irrigation, municipal and industrial users, recreation and environmental mitigation benefits and power generation is in the national interest and, therefore, should remain a federal obligation. The post-911 security costs appear to be intended to mainly protect the multi-purpose facilities, and failure of these facilities would have the greatest impact to the public at large.

Mr. RADANOVICH. Mr. Lutgen, thank you for your testimony. I appreciate that.

Next is Mr. Jay Moyes. Mr. Moyes, welcome to the Subcommittee.

STATEMENT OF JAY MOYES, ATTORNEY AT LAW, MOYES STOREY, PHOENIX, ARIZONA [REPRESENTING ARIZONA WESTSIDE IRRIGATION AND ELECTRICAL DISTRICTS], ACCOMPANIED BY LESLIE JAMES, EXECUTIVE DIRECTOR, COLORADO RIVER ENERGY DISTRIBUTORS ASSOCIATION, TEMPE, ARIZONA

Mr. MOYES. Good morning, Mr. Chairman, Members of the Committee.

Our Westside Irrigation and Electrical Districts group includes nine farming districts in West-Central Arizona, but we believe our

positions are representative of the numerous hydropower customers in Arizona.

These districts have small allocations of Hoover and Glen Canyon hydropower to meet only a portion of the farmers total electric needs. In some cases, our districts' farms and dairies provide the only economic base for outlying rural communities that have not urbanized like other once-farmed portions of Arizona. Their survival depends heavily upon the affordability of Federal hydropower.

Mr. Chairman, we share Reclamation's concern for protecting our country's national critical infrastructure, or NCI facilities as they have been referred to, and we support prudent security measures and increases at key multi-purpose dams.

After 9/11, the Commissioner of Reclamation recognized that enhanced security at NCI facilities was vital to the national interests. Accordingly, in 2002, he appropriately designated the costs of new anti-terrorist measures to be a national obligation. However, as has been mentioned, the Administration's Fiscal 2005 budget directed him to charge project beneficiaries for the new guards and patrols, some \$21 million in that year, of which power customers were to pay about 94 percent.

The customers objected citing precedent from Pearl Harbor days that such expenditures in the national interest should remain a Federal responsibility. We also challenged the inequitable allocation of cost to power customers compared to other beneficiaries.

As has been mentioned and you know, benefits from Reclamation dams are wide and they support many good purposes, the least of which may be power generation and statutory priorities.

Obviously, the new security measures protect all features of the dams, not just the generators. If, for example, Hoover Dam were to be breached, the power generators would in fact and power customers would be the least catastrophically impacted. Reclamation's allocation to power consumers of these costs was not based on risk of loss analysis, but simply administrative convenience. They just used the normal O&M formula which charges power users the lion's share.

The policy behind that formula has existed for decades, but I don't think it ever contemplated defending dams from terrorists.

Reclamation follows its standard O&M allocation simply because there is a ready mechanism for easy pass-through of these costs in the power rate-setting process, but ease of administration should not be the reason that the bulk of these ever-increasing security costs are dumped on power consumers.

We also voice concern about the program's lack of transparency and lack of spending controls, as others have mentioned. In response, Reclamation has offered to consider security clearances, allowing a few customers, myself included, to see sensitive details under nondisclosure restrictions. This appreciated and well-intentioned offer, however, is insufficient because it precludes such data from the rate proceedings where these costs are imposed on us, and would not allow customers a meaningful role in determining the costs they are to bear.

There is no congressional authorization for and no limit on Reclamation's future spending. As of April 30 this year they have spent over \$158 million on this new program, for Fiscal 2007, they

seek nearly \$40 million; and finally, there are no boundaries on which costs they can unilaterally designate as reimbursable.

Despite concerns expressed by Congress in 2005, Reclamation submitted a February 2006 report expanding the scope of reimbursable costs beyond guards and patrols, to add what they call OM&R on upgrades to fortifications. The R being replacement.

There has been no discussion of what might yet be fitting into that definition, and we are, frankly, hard-pressed to think of any expense of this program that couldn't arguably be included in the phrase "OM&R of dam fortifications." This kind of blank check expansion is a material policy shift from Reclamation's May 2005 report to Congress.

In closing, we believe Congress should vigorously oversee this program and that funding stakeholders deserve a meaningful role. To this end, we recommend that Congress legislatively authorize the program to ensure oversight, allocation equity, and some cost certainty for the stakeholders.

In brief, we think such legislation should require annual reporting to Congress of both past and future expenditures, it should limit stakeholder reimbursement to only costs of guards and patrols at NCI facilities, not to exceed \$10 million, a level that could be adjusted only by Congress in the event of changes in the threat level, and that it ought to be allocated equally among beneficiaries, and finally, it should require a measure of stakeholder input on some kind of a multi-year planning horizon.

We recognize the difficulty in achieving these objectives and are willing to work with the Bureau to accomplish them.

Mr. Chairman, the Westside Districts appreciate your interest in this issue. We recognize these uncertain times require increased security at these facilities, and we are willing to bear our equitable share of this national cost responsibility.

Thank you for your attention. I would be happy to answer questions at the appropriate time.

[The prepared statement of Mr. Moyes follows:]

**Statement of Jay Moyes, Esq., on Behalf of the
Arizona Westside Irrigation and Electrical Districts**

Good morning, Mr. Chairman and Members of the Committee. My name is Jay Moyes. I am here representing the Arizona Westside Irrigation and Electrical Districts, on whose behalf I thank you for holding this important hearing on the Bureau of Reclamation's (Reclamation) Building and Site Security program.

The Westside Districts are an informal coalition of nine agricultural districts located in Arizona's Maricopa, La Paz and Yuma Counties. They contract for federal hydropower generated primarily at the Hoover and Glen Canyon Dams, and use that power predominantly to pump irrigation water. The Westside Districts are also members of, and/or work in coordination with, other Arizona and regional organizations such as the Colorado River Energy Distributors Association (CREDA), the Irrigation and Electrical Districts of Arizona (IEDA), and the Arizona Agri-Business Council (ABC) to address water and power policy issues.

As you know, Mr. Chairman, immediately after the September 11, 2001 attacks, Reclamation instituted an aggressive program to step-up site security and anti-terrorist measures at federal multi-purpose dams, including Hoover and Glen Canyon. We share Reclamation's concern for the security of our country's "National Critical Infrastructure" (NCI) facilities, and we applaud the agency for taking steps to lower the risk of attacks at these dams.

Consistent with federal policy adopted following the attack on Pearl Harbor, the Commissioner of Reclamation recognized that enhanced security measures to protect Reclamation's key water and power projects were vital to the national interest.

Accordingly, in April 2002, he administratively determined that the costs of these new security measures were appropriately a federal obligation.

However, the Administration's FY 2005 budget directed Reclamation to shift course and, instead, charge the project beneficiaries for the costs of additional guards and patrols. In FY 2005, the cost of those services was \$20,923,000 million, of which power customers were to pay approximately 94 percent. Federal power customers objected, citing legislative precedent establishing that such expenditures were in the broader national interest and should remain a federal responsibility. They also challenged the inequitable allocation of the increased costs to power users.

It is a fundamental fact that Reclamation's security measures are intended to protect all features of the projects, not just power generation. Actually, if a terrorist attack were to successfully breach Hoover Dam, for example, the power users would, in relative terms, likely be the least catastrophically impacted among all beneficiaries of the dam. Yet power customers are being burdened with nearly all of the reimbursable costs of the new security measures.

Reclamation's disproportionate allocation of the reimbursable security costs to power customers was not based on any objective risk analysis. Instead, Reclamation simply decided that the costs of beefed up guards and patrols should be allocated according to the formula it uses to allocate normal Operation and Maintenance (O&M) costs at each project. That formula, which prescribes that power users pay the lion's share of the reimbursable O&M, was established many years ago and certainly did not take into account the need to protect these facilities from terrorist attack.

Reclamation defaulted to the standard O&M allocation formula for the simple reason of administrative convenience. Although benefits from Reclamation dams are widely distributed among flood control, recreation, water supply, and fish & wildlife purposes—in addition to power generation—there is generally no existing statutory authorization or contractual mechanism that readily facilitates Reclamation's equitable assessment of security costs to the other project beneficiaries. Nevertheless, merely because there is a contractual rate-setting mechanism for easy pass-through of increased security costs to only power customers does not make such a disproportionate pass-through either legally or equitably appropriate.

In addition to the inequitable cost allocations, we are also concerned about the program's lack of transparency and the absence of spending controls.

In response to expressed concerns about lack of transparency, Reclamation has informed customers that it would consider providing security clearances for a limited number of project customer representatives to access sensitive program data, subject to non-disclosure restrictions. We appreciate this well-intentioned offer; but it does not suffice, because it would preclude the use of such data in the rate-making proceedings, where the costs are imposed on power customers, and it would not otherwise provide customers any substantive role in determining the magnitude of security costs they are to bear.

With regard to lack of spending controls, the customers have several additional concerns. First, there is no Congressional authorization for the program, and no limit on Reclamation's future spending. As of April 30, Reclamation has spent more than \$158 million on its post-9/11 Building and Site Security program. For FY 2007, Reclamation has requested \$39,600,000—\$18.9 million of which Reclamation intends to impose upon customers.

Second, and potentially most troubling to us, is the lack of any boundaries on what Reclamation can unilaterally designate as "reimbursable" costs to be repaid by power customers. Despite numerous expressions of Congressional and customer concern, Reclamation submitted a February 2006 report to Congress highlighting its plan to expand the scope of reimbursable costs beyond simply guards and patrols to also include future OM&R on program "upgrades to dam fortifications." There has been no discussion of this expansion with customers and no further definition of what might ultimately be included in "OM&R" on dam fortifications. Does it include replacement of security cameras that fail? Or a second layer of dam hardening? Or integration of future equipment technology advances? In fact, power customers are hard-pressed to think of any expense that might not arguably be categorized as OM&R of dam fortifications. Such a "blank check" approach to open-ended reimbursable costs constitutes a material shift in policy from that articulated in the report Reclamation provided to Congress in May 2005, and from a briefing Reclamation provided to some customers in December 2005.

The Westside Districts believe that Congress should exercise vigorous oversight of this important program, and that funding stakeholders should have a meaningful opportunity to participate in program planning and implementation. To this end, we recommend that Congress legislatively authorize Reclamation's Building and Site

Security program to ensure effective Congressional oversight and to provide cost certainty to funding stakeholders through an equitable allocation of costs.

Such legislation should:

- Direct Reclamation to report annually to Congress on security actions undertaken in the prior fiscal year and proposed for the upcoming year, and the sources of reimbursable and non-reimbursable funding for each action;
- Provide that stakeholders will reimburse costs of guards and patrols at NCI facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million, indexed for inflation;
- Specify that such reimbursable funds are to be spent only on guards and patrols at NCI facilities, and are to be allocated in the same manner as they were in 2006;
- Provide that, should the threat level change, Reclamation will immediately notify Congress and, with the funding customers, seek approval to adjust the reimbursable costs for guards and patrols until the threat level changes;
- Require Reclamation to allow stakeholder review and input on all elements of the entire security cost program on at least a five-year planning horizon.

Mr. Chairman, the Westside Districts appreciate your attention to this critical security program. We recognize that our Nation has entered a new era in which increased security measures and costs will be the norm. We support prudently increased security at these NCI facilities, and are willing to bear our equitable share of the national responsibility for the necessary costs. As Reclamation's program moves forward, we believe additional Congressional oversight and stakeholder involvement are needed and appropriate.

Thank you for the opportunity to submit this testimony. I will be happy to answer any questions regarding my testimony or Westside Districts' positions regarding Reclamation's Building and Site Security program at the Committee's convenience.

Mr. RADANOVICH. Thank you, Mr. Moyes. Appreciate your testimony.

Next is Mr. James Feider. Mr. Feider, welcome to the Subcommittee. You may begin your testimony.

STATEMENT OF JAMES FEIDER, DIRECTOR, REDDING ELECTRIC UTILITY, REDDING, CALIFORNIA, REPRESENTING NORTHERN CALIFORNIA POWER AGENCY

Mr. FEIDER. Thank you, Mr. Chairman and Members of the Subcommittee.

I am James Feider. I am testifying today both as the electric utility director of Redding, California, and on behalf of the Northern California Power Agency.

Collectively, NCPA members purchase approximately 40 percent of the power generated at the Federal Central Valley Project, a series of 11 Federal multi-purpose projects and combined generating capacity of about 2,000 megawatts, like Redding and Lodi and special districts like the Bay Area Rapid Transit in the Turlock Irrigation District, along with other 14 members in Northern California Power Agency.

I commend the Subcommittee for holding this important hearing today regarding the Bureau of Reclamation's post-September 11 security program.

NCPA shares the desire of this Subcommittee and Reclamation, and all the citizens of our country to protect critical Federal infrastructure. No one questions the need for sharing the appropriate share of the resulting cost. Rather, our objective is to promote the site security program that is effective, accountable, and with properly and fairly allocated costs.

Other witnesses today have made a strong argument that the additional security is a public benefit and should be paid entirely

by the Federal government. Unfortunately, when Reclamation published its May 2005 report on security costs, it indicated that about two-thirds of the security costs for the CVP were proposed to be allocated to the CVP power customers.

While the subsequent 2006 Reclamation report changed the allocation to more generally conform to the CVP multi-purpose cost allocation, it is clear that a disproportionate amount of the costs are still being proposed as reimbursable. Others have expressed other slippery-slope expansion in the 2007 program. This is compelling evidence that Congress action, congressional action is needed.

If the power customers are required to pay some portion of these costs, these new security costs, we believe that the existing law regarding Reclamation safety of dam expenditures provides a solid and rational approach to allocate these costs. The Reclamation Safety of Dams Act of 1978 authorized Reclamation to construct, restore, operate and maintain features that preserve the structural safety of Reclamation dams and facilities.

There is a simple and logical correlation between the measures taken to preserve a catastrophic failure of the dam, such as work done a few years ago on Folsom Dam to protect it in the light of seismic events, and measures taken to prevent a terrorist attack intended to cause catastrophic failure. Under the Safety of Dams Act, 15 percent of the costs incurred are allocated to the authorized purposes of Reclamation projects.

We believe it is appropriate to assign security costs on the same basis. Treatment of site security cost as safety of dams expenditures would provide a needed and durable solution with reasonable cost accountability, and the approach provides a simple solution. It provides for a fair share of costs to be borne by the customers while protecting them against open-ended cost. It is a durable solution that will spare Congress the need to wrangle each year over the issue of what the annual cost allocation percentage should be.

Moreover, this solution would easily be accomplished legislatively. The Safety of Dams Act that was passed in 1978 was most recently amended in 2004. If the safety of dams proposal is ultimately not adopted, we will need the protection against sudden and sharp increases in security costs and assurance that the following specific issues are addressed.

First, Congress should stipulate that only security costs associated with projects on the national critical infrastructure list can be assigned for repayment by water and power users.

Second, only O&M and not capital costs should be eligible for reimbursement.

And third, cost accountability and oversight should be provided by use of a flexible cost cap as described by previous witnesses, coordination of the security planning with the Federal Western Area Power Administration, and consultation with funding stakeholders similar to what we do now in providing advanced customer funding for power O&M activities.

Then last, annual reports to Congress.

In conclusion, NCPA's view is the best way and most durable approach to solve this issue would be for Congress to amend the Reclamation Safety of Dams Act of 1978 to include these costs.

Mr. Chairman, thank you for your attention to this matter. We look forward to fostering the oversight of this program.
[The prepared statement of Mr. Feider follows:]

**Statement of James C. Feider, on Behalf of
The Northern California Power Agency**

Introduction

Mr. Chairman and members of the Subcommittee, I am James C. Feider. I am testifying today both as the electric utility director of Redding, California, and on behalf of the Northern California Power Agency (NCPA). Collectively, NCPA members purchase approximately 40 percent of the power generated at the federal Central Valley Project (CVP), a series of 11 federal multipurpose projects with a combined generating capacity of about 2,000 MW.

NCPA, a joint powers agency, is engaged in the generation and transmission of electric power and energy on behalf of its members. NCPA members are committed to the well-being of the constituents they serve, and provide low-cost electricity in an environmentally and socially responsible manner. NCPA members serve approximately 400,000 customers with a peak load of 1,182 megawatts.

The cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah; as well as the Bay Area Rapid Transit District, Port of Oakland, the Turlock Irrigation District, and the Truckee Donner Public Utility District are members of NCPA. The Lassen Municipal Utility District, Placer County Water Agency and Plumas-Sierra Rural Electric Cooperative are associate members of the agency.

The CVP is a multipurpose system, providing:

- Water supply for agricultural users, municipalities and industrial users.
- flood protection for the Sacramento and San Joaquin Valleys
- water for wildlife refuges to facilitate fish migration and spawning and other environmental purposes
- flat water and white water recreational opportunities
- power generation.

I commend the Subcommittee for holding this important hearing today regarding the Bureau of Reclamation's (Reclamation's) post-September 11 site security program. NCPA shares the desire of this Subcommittee and Reclamation—and all of the citizens of California and our country—to protect critical Federal infrastructure. No one questions the need for strong and effective security measures. Nor does NCPA or its members object to paying an appropriate share of the resulting costs. Rather, our objective is to promote a site security program that is effective, accountable, with properly and fairly allocated costs.

It is my hope that this Subcommittee—and Reclamation—shares these goals, and that together we can design a program that establishes a durable policy approach, wisely spends finite resources, allocates costs appropriately, provides needed oversight and accountability, and engenders confidence from project users, the public, and Congress.

Allocating Reclamation Site Security Costs

Following the terrorists attacks of September 11, 2001, expenditures for security costs for Reclamation facilities increased dramatically. Reclamation initially decided that those additional security costs would be non-reimbursable. Beginning in FY 2006, Reclamation proposed to make the post-September 11 guards and patrol costs reimbursable, while costs associated with facility fortification and anti-terrorism management remained non-reimbursable.

Reclamation has facilities designated as national critical infrastructure because of their importance to the economy, and the need for the Federal Government to ensure general public health and safety. While a strong argument could be made that the additional security is a public benefit, and should thus be entirely paid by the Federal Government, NCPA is willing to pay our share of these costs to secure national critical infrastructure within the CVP. The challenge will be how to ensure these costs are prudent and predictable.

When Reclamation published its May 1, 2005, report on site security costs, it was indicated that two-thirds of the security costs for the CVP were proposed to be allocated to CVP power customers. While the subsequent May 15, 2006 Reclamation report changed the allocation to more generally conform to the CVP multipurpose cost allocation, it is clear that a disproportional amount of the costs are being proposed as reimbursable.

There are also serious problems related to the durability of the existing allocation. Simply put, an annual debate and disagreement over the scope and allocation of security costs is not a sound approach to federal policy. It prevents Reclamation, and water and power customers from having the predictability and consistency needed to perform their respective responsibilities.

NCPA Supports Safety of Dams Proposal

We believe that existing law regarding Reclamation's Safety of Dams expenditures provides a solid and rational approach to allocate costs for these additional new security costs. The Reclamation Safety of Dams Act of 1978 authorized Reclamation to construct, restore, operate, and maintain features that preserve the structural safety of Reclamation dams and facilities.

There is a simple and logical correlation between measures taken to prevent a catastrophic failure of the dam—such as the work done a few years ago to stabilize the Mormon Island Auxiliary Dam at Folsom in light of seismic event concerns—and measures taken to prevent a terrorist attack intended to cause catastrophic failure.

Under the Safety of Dams Act, fifteen percent of the costs incurred are allocated to the authorized purposes of the Reclamation Safety of Dams Act. We believe it is appropriate to assign security costs on the same basis. Treatment of site security costs as Safety of Dams expenditures would provide a needed durable solution with reasonable cost accountability.

This approach provides a simple solution. It provides for a fair share of costs to be borne by CVP customers, while protecting them against open-ended costs. It is a durable solution that will spare Congress the need to wrangle each year over the issue of what the annual cost allocation percentages should be. Moreover, this solution would be easily accomplished legislatively; the Safety of Dams Act has been amended four times since its enactment in 1978—most recently in 2004. While this program structure can be best accomplished through legislation, but we are open to other mechanisms that accomplish the needed objective.

Amending the Safety of Dams Act to include site security costs within the statutory definition of "Safety of Dams" activities is the most direct and workable solution to provide much-needed consistency in this area—while providing a long-term solution to an issue that, despite long-standing debate, is yet to be resolved for Reclamation and its stakeholders. NCPA encourages the committee to review and take action to advance this policy solution.

Key Security Cost Issues and Objectives

If a Safety of Dams proposal is ultimately not adopted, we will need protection against sudden and sharp increases in security costs, and assurance that the following specific issues are addressed through other legislative and/or administrative mechanisms:

- **National Critical Infrastructure**

At all levels of government, homeland security funds are targeted at projects that are both the most significant and most vulnerable. Reclamation should allocate for reimbursement only those project costs associated with facilities on the National Critical Infrastructure (NCI) list. Use of the NCI is an appropriate metric for delineating which projects warrant added security measures and which costs should be assigned for reimbursement. We are concerned that Reclamation's security program is being expanded beyond those designated NCI facilities. In order to focus security efforts at the most important facilities, Congress should stipulate that only security costs associated with projects on the NCI list can be assigned for repayment by water and power users.

- **O&M—Not Capital Costs—Should be Eligible for Reimbursement**

NCPA commends Reclamation for its initial decision to seek reimbursement of only those security costs associated with guards and patrols—not the capital costs to harden the facilities (barriers, security cameras, etc.). Reclamation has appropriately concluded that these costs were of national benefit, and should be 100 percent non-reimbursable. However, Reclamation's commitment is eroded in its March, 2006 report, which states that replacements of the physical facilities will be allocated for reimbursement. The distinction between capital costs and annual expenses was clearly made at the initiation of this program. A change in that fundamental rationale and logic only serves to further demonstrate the lack of consistency and predictability that has plagued this program.

- **Cost Accountability and Oversight**

We all share a desire to protect these important projects and prevent any future terrorist attack. Yet, clearly, no public program should be beyond accountability and oversight. Let me be clear, we are not looking to know the types of weapons the

guards carry, the placement of cameras or other classified details that are appropriately shielded from general public review. As public officials, we have a responsibility to the constituents and customers we serve to ensure that our dollars are being well spent. Toward that end, a number of steps can be taken to provide such accountability while preserving the classified nature of this program:

1. Establish a Flexible Cost Cap

In the FY 2006 Energy and Water Appropriations bill, Congress wisely limited the security costs that Reclamation could assign for reimbursement to water and power customers. Establishing such a cap ensures needed cost discipline. Allowing unlimited funds to be assigned for reimbursement could lead to inappropriate cost shifting and misguided spending. A cost cap on reimbursable security expenses also provides power and water customers the ability to do rational budgeting, and provides rate stability for our consumers. We are not suggesting that Reclamation's total site security expenditures be capped—only that portion that can be recovered from power and water customers.

2. Coordinate Security Planning with Western

As a sister federal agency, the Western Area Power Administration (Western)—which markets the power generated at the Reclamation dams—should be consulted with in planning and budgeting for guards and patrols. This can be accomplished without compromising security, since employees of both agencies have the requisite security clearances.

3. Consultation with Funding Stakeholders

NCPA has had a positive and collaborative relationship with Reclamation in creating and implementing a funding agreement for power-related operation and maintenance activities. This constructive arrangement has provided both power customers and Reclamation with long-term planning and funding certainty, facilitated project prioritization, improved the operations of the facilities, and created a strong working relationship. Again, I do not expect Reclamation to provide funding stakeholders with detailed information that could compromise national security. However, utilization of the general model of stakeholder oversight as is applied with Operations and Maintenance functions should be considered.

In addition, NCPA would be open to execution of bilateral contracts with Reclamation that allows Reclamation to receive advance customer funding for the percentage of site security costs assignable to the power function for repayment. Yet, such a relationship presumes a cooperative partnership in addressing the issue.

4. Reports to Congress

This Committee and others in Congress deserve, at a minimum, an annual briefing on Reclamation's site security program. Authorizing the program in the first instance—with the "sideboards" I have outlined in my testimony—provides Congress with both the responsibility and benchmark to perform adequate oversight.

Conclusion

NCPA joins with other federal power customers in asking you to take the steps necessary to ensure that Reclamation's site security program meets its objective to protect federal facilities—an objective we all share—in a responsible manner. In NCPA's view, the best and most durable approach in this area would be for Congress to amend the Reclamation Safety of Dams Act of 1978 to include these costs—and thus ensure a proper allocation, establish accountability, ensure predictability for stakeholders, and most importantly, provide the Bureau of Reclamation with a consistent level of funding needed to perform this vital security function.

Should such legislative action not occur, it is clear that other specific legislative and/or administrative steps are needed to address the issues raised in my testimony today.

Mr. Chairman, thank you for your review and consideration of this important policy matter—and for the invitation to share our perspective and recommendations. I look forward to working closely with you as your examination of this important issue proceeds.

Mr. RADANOVICH. Thank you, Mr. Feider, for your testimony. Appreciate that.

Next is Mr. Jon Lambeck with Metropolitan Water of Southern California. Mr. Lambeck, welcome to the Subcommittee.

**STATEMENT OF JON LAMBECK, MANAGER OF OPERATIONS
PLANNING, METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA, LOS ANGELES, CALIFORNIA**

Mr. LAMBECK. Thank you. Good morning, Mr. Chairman, Ranking Member Napolitano, and Members of the Subcommittee.

My name is Jon Lambeck, and I am the Operations Planning Manager for the Metropolitan Water District of Southern California.

I would like to thank you for holding this hearing and providing the opportunity to explain Metropolitan's position on security costs at the Bureau of Reclamation's facilities. I appreciate the Subcommittee's willingness to accept Metropolitan's written comments for the record, and I am happy to take this opportunity to verbally summarize our comments, and I will primarily focus on Reclamation's Hoover and Parker projects located on the Colorado River.

Simply stated, Metropolitan's position remains that the extraordinary security actions instituted after September 11, 2001, at Hoover and Parker were taken in response to national security concerns. Therefore, these actions, which were taken to defend against acts of war or terrorist threats, should be appropriately funded at the national level.

Metropolitan recognizes there are many demands for national funding to pay for the increased security costs across the country. However, we believe the Hoover and Parker security costs legitimately should be paid for from Federal money.

The new defensive actions go far beyond the normal operational and maintenance activities the power contractors have paid for over the past 60 years. Metropolitan was one of the original power contractors at Hoover and Parker. Today, it receives 28 percent of the power generated at Hoover, and 50 percent of Parker's power. This power is used to pump water from the Colorado River and transport it to Southern California. There it is distributed at cost to Metropolitan's 26 member agencies who will then provide it to their customers.

Metropolitan provides one-half of the water used by the 18 million residents in our service territory. The power from Hoover and Parker is critical in moving this water to Southern California.

For the power Metropolitan receives, it pays 21 percent of the operation and maintenance cost at Hoover and 50 percent of these costs at Parker. Given these percentages and the large payments that result from them, Metropolitan has growing concerns with the movement toward treating the post-September 11th security cost as reimbursable.

As I stated earlier, Metropolitan's position is that the new defensive security cost at Hoover and Parker should be considered non-reimbursable and appropriately funded.

However, if funding is not made available, and some or all of these new costs are to be reimbursable, then Metropolitan proposes three changes:

First, paying for the security cost should be expanded to include all beneficiaries. These multi-purpose facilities benefit a large number of people. The security costs should be proportionately allocated to all who benefit.

Second, decisions on security matters need to have transparency and oversight. We understand the sensitive nature of these decisions. However, Metropolitan believes a mechanism should be found to keep the power contractors involved as full partners in security decisions, or some other method of effective oversight needs to be established.

And last, again, assuming funding is not made available, some limit or cap should be set on security expenditures. A reasonable limit would provide the foundation for fiscal discipline and restraint.

Thank you again for the opportunity to speak with you today. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Lambeck follows:]

**Statement of Jon C. Lambeck, Manager of Operations Planning,
The Metropolitan Water District of Southern California**

Good morning Mr. Chairman and members of the subcommittee. My name is Jon Lambeck and I am the Operations Planning Manager for The Metropolitan Water District of Southern California (Metropolitan). I would like to thank you for the opportunity to testify before your subcommittee today and explain Metropolitan's position on the issue of security costs at the Bureau of Reclamation's (Reclamation) facilities. Simply stated, Metropolitan supports continued federal power customer payment for the standard type of security activities for which they were responsible prior to September 11, 2001. However, the additional security costs incurred to address post-September 11th concerns are a matter of national security, just as they were during World War II, and should be appropriately funded.

Metropolitan is a quasi-municipal corporation, created in 1928 by vote of the electorates of several southern California cities. Its primary purpose is to provide supplemental water to its 26 member agencies in southern California. Metropolitan is the largest wholesale water supplier in southern California, ultimately providing water to approximately 18 million consumers within the six county region of southern California (Los Angeles, Orange, Riverside, Ventura, San Diego, and San Bernardino counties), an intensely populated area covering nearly 5,200 square miles. Approximately one-half of the water used within the region is supplied by Metropolitan.

One of Metropolitan's two major sources of water is the Colorado River. Metropolitan pumps water out of Lake Havasu on the Colorado River and transports it through its Colorado River Aqueduct (CRA) to southern California. Metropolitan's other source is the Bay-Delta in northern California, which water is delivered through the California State Water Project. Moving the water through both of these systems requires over 5,000,000 megawatt-hours of energy annually, representing 2-3% of the State of California's total energy requirement. The pumping necessary to bring this water to Metropolitan's service territory is the single largest use of energy in California.

To obtain the power needed to meet its pumping requirements, Metropolitan has established long-term contractual and operational ties to two of the three power facilities operated by Reclamation on the Lower Colorado River. For example, Metropolitan was one of the original power contractors at Hoover Power Plant and currently receives 28 percent of the facility's energy production. At Parker, Metropolitan paid for the entire cost of dam construction and for 50 percent of the power plant cost. In consideration of its funding, Metropolitan receives 50 percent of the power produced at Parker. The federal hydropower from Hoover and Parker is critical to moving Metropolitan's water 242 miles through the CRA to the 18 million inhabitants of southern California.

Today, Metropolitan pays nearly 21 percent of the operation, maintenance and replacement costs at Hoover and 50 percent of these costs at Parker. Given the magnitude of these percentages and the payments that result, Metropolitan has viewed with concern the evolution of the treatment of the extraordinary security costs at both of these Reclamation facilities since the events of September 11, 2001. New security costs, which were originally determined to be a matter of national security and declared as non-reimbursable, as they were during World War II, are now being at least partially classified as reimbursable, and therefore paid by the power contractors. Additionally, Metropolitan has observed "definition creep," as more and more costs are identified as falling under the security umbrella. It appears

reimbursable "security" costs could become a magnet for all manner of costs that could be tenuously linked to security.

Metropolitan believes that normal security costs at the Hoover and Parker Dams, as existed prior to September 11th, should continue to be paid for by the power contractors. However, the new, defensive measures taken to protect these facilities from acts of war and terrorist attack should be treated as non-reimbursable. Furthermore, these measures go far beyond the normal reimbursable operation, maintenance and replacement activities that were contemplated under the power contracts. Since the additional security costs stem from national security concerns, they should be so funded. If such federal funding is unavailable, and some or all of the post-September 11th security costs are treated as reimbursable, then the security costs should be charged to all beneficiaries of these multi-purpose facilities in proportion to the benefits received.

Another area of concern to Metropolitan is the lack of transparency and oversight of security decisions. Metropolitan and the other power contractors have worked very hard with Reclamation to develop a cooperative and collaborative partnership in the management of its Lower Colorado Region facilities. All parties recognize their collective interest in maintaining reliable and efficient operations. However, Reclamation is now making decisions on security issues with little or no input from the power contractors who ultimately have to pay the bills. This is the same type of management practice that resulted in the cost of the Hoover Dam Visitor Center going from an initial \$32 million estimate in 1984 to the \$124 million it ultimately cost at completion in 1994, for which the power contractors were obliged to pay. A mechanism must be found to keep the power contractors involved as a true partner in security decisions if federal funding is not provided or alternatively, some other method of appropriate oversight should be established.

Finally, Metropolitan believes there must be some form of cap or limit on the new security costs. Recent stories have highlighted the difficult choices that must be made in allocating limited Homeland Security funds to cities and towns across the country. These are tough decisions, and everyone recognizes that there will never be enough money to fund all the activities proposed. Under such circumstances, it is critical an evaluation process be implemented to review each proposal and assure that limited funds are spent in ways to achieve the maximum benefit. Unfortunately, there appears to be no recognition of the need for such a disciplined approach at Reclamation facilities where the power contractors are expected to fund whatever security activities are implemented. With no cap or limit on the amount of security costs that could be imposed, and no restraint that would normally come from having to pay for those costs from budgeted funds, Reclamation faces no incentive to hold down costs. Metropolitan believes some form of cap or limit on security expenditures must be imposed in conjunction with the oversight function described above.

In conclusion, Metropolitan believes the new post-September 11th security costs at the Bureau's facilities should continue to be treated as non-reimbursable. If funding is not made available and some or all of these new costs are determined reimbursable, then all beneficiaries of the facilities operated by Reclamation should pay their appropriate share of the costs. Additionally, decisions on security measures should continue to include the power contractors as is done in other operational areas, or a new method of oversight must be established. Finally, some limit or cap must be placed on security expenditures deemed to be reimbursable to assure fiscal discipline and restraint.

Thank you again for opportunity to testify before your committee. I would be happy to answer any questions you may have.

Mr. RADANOVICH. Thank you for your testimony, Mr. Lambeck. That concludes the testimony from all the witnesses.

I wanted to kind of get everybody on record if everybody would respond to this. Everybody does believe that the Bureau of Reclamation responded sufficiently to the nation's site security needs after 9/11, and you do believe in the need for a site security program, don't you?

Everybody on the panel, can I assume for the record that everybody is shaking their head yes, and saying yes?

The Bureau of Reclamation's solution for transparency is to give customers access to documents if they receive a security clearance. Would this resolve your concerns over transparency?

Mr. GRAVES. Mr. Chairman, it might resolve my concerns, but it might not resolve my customers' concerns. It is like the joke if I tell you what I do, I am going to have to kill you.

There is no way to get the information down to the ultimate consumer or to the local co-op boards, and I am not an expert in security matters. So giving me the information, while it might not pose a security risk, isn't going to solve the problem.

Mr. RADANOVICH. With regard to the cost transparencies though, you do believe that—well, if you had security clearance, that may take care of your concerns, making sure that the price was right, the costs—you know, the money is going to where it should to on-site security programs, but you are saying you are not able to convey that to your consumers?

Mr. GRAVES. Yes, sir.

Mr. RADANOVICH. OK.

Mr. ERICKSON. Mr. Chairman, I would add to that. Similar to Mr. Graves, in our relationship I work for a board of directors of the district. We have a contractual arrangement with Reclamation whereby we pay for these O&M costs. I represent the board of directors in that rate relationship.

It would put me in a difficult position if I had the clearance and the Bureau of Reclamation convinced me that the costs were equitable, but I couldn't explain to my board that these are just and they should be paid. I would just have to say "Trust me."

And like other local governments, irrigation districts are somewhat political. I would see that to be a fairly untenable position for the manager.

Mr. LAMBECK. Mr. Chairman, for Metropolitan, just seeing what the costs are or how the money is being spent is not the type of collaborative and corroborative relationship we have established with Reclamation on other operational matters.

In partnership with Reclamation, we view the needs for the projects, and collectively decide on the best and most effective way to move forward. Only being shown what the cost would be for a particular expenditure is not in keeping with that type of partnership that we have developed.

Mr. RADANOVICH. What kind of information are your consumers looking for?

Mr. LAMBECK. Well, the information that the consumers are looking for is that the costs are appropriate, and effectively being managed.

What we look for is reviewing the needs and priorities for expenditures at the projects.

Mr. FEIDER. Mr. Chairman, on behalf of NCPA, my perspective on this is it is a tough issue for the Bureau of Reclamation trying to maintain the secure nature of what they are trying to do, but having been a former Federal manager I think it is a bit troubling that the tendency in a Federal agency might be to oversecure or not spend the money in the most practicable way possible.

So we don't want to get into a situation of second guessing the need for the security or the amount of security guards, but if some-

one tends to go way over the top because their career is on the line and they want to be ultraconservative, we are looking for some way of checks and balances to make sure that isn't happening, especially if repayment of those costs is coming from our customers.

Mr. RADANOVICH. Are you able to right now spot before it happens the use of the money to pave a parking lot as was in Hoover Dam? Are they easy things to pick up right now with the security clearance that you would have? They still don't—you know, does the opposite of conveying trust to the consumer, I am sure, but are those easily picked up?

Mr. FEIDER. If they are related to security, they are not. If they are related to just routine operation and maintenance expense of the power facilities, we have a very good working relationship with the Bureau to monitor and to provide oversight to that type of a program.

Mr. MOYES. Mr. Chairman, if I might add. The Arizona interests would second these recent comments that the nature of the historical relationship has been a very good one for identifying costs and budgeted programs and working together to determine appropriate expenditure levels, and we recognize that.

At a certain level of detail it goes beyond what is appropriate to divulge in order to maintain the protection and the security. But we have, frankly, some bad experience with a visitor center once that was identified that cost \$30 million, and just sort of crept up to over \$130 million, and the oversight wasn't there.

Part of the problem here is that the process for customers to participate in this is the public rate-setting process, and that is where the money comes home to roost on us, and there are some legal requirements for the nature of the explanation that the Bureau and Western have to give in order to impose those rates.

We think there is a balance to be found there that can achieve both interests and consistent with this historical rapport that we enjoy and appreciate from the Bureau of being participants in some of the judgment calls that need to be made that will allow us to preclude another debacle like the visitor center, frankly.

Mr. RADANOVICH. Thank you. Mrs. Napolitano.

Ms. NAPOLITANO. Thank you, Mr. Chair.

I would like to ask Jon Lambeck, you refer in your testimony to definition creep, and your concern that more and more costs are being defined under the security umbrella. Was anybody consulted on this, and Metropolitan, were you consulted?

Mr. LAMBECK. No, we were not. The concern that we have, as has been testified before, it was to be guards and patrols, and now we are hearing that it is going to be the repair or replacement of hardening that was done at the facilities. Our concern is that this is just the first series of a number of redefinitions or reclassifications of expenditures that will fall under security, and will be treated as this collective cost.

Ms. NAPOLITANO. Were any of you consulted before the report was—

Mr. HARRINGTON. No. The way we found out about it, myself and one of the power people at Sacramento Municipal Utility just through a conference call with the Denver office Bureau of Reclamation. They let us know, at that point I believe it was toward

the end of March, in addition to the guards and patrols they were looking at—not the initial capital costs for the hardening, but both the O&M for running that stuff, plus replacement items.

They were very vague as to what replacement meant, but the way I took it was to mean that the initial first unit wouldn't be reimbursable but when they needed to replace that then it probably would be.

Ms. NAPOLITANO. At that time did they indicate any reasoning for their adding this particular new items?

Mr. HARRINGTON. No. I would suspect that it may have to do with—they have the Office of Management and Budget that reviews, and I think the Inspector General's Office, and they have a bias toward trying to collect as much on behalf of the Federal taxpayer as they can from us, and that may have something to do with it.

Ms. NAPOLITANO. Well, I agree they want to collect more, but I don't think it goes back to the taxpayer. It is going to Iraq.

Mr. HARRINGTON. Right, or away from the taxpayers I should say.

Ms. NAPOLITANO. Personal comment.

Anybody else heard anything, have any comment?

Mr. MOYES. Ms. Napolitano, I might just add that in contrast there was in fact, my understanding, a customer briefing in December of 2005, in which the former concept of guards and patrols was reiterated, and then in the February 2006 report this additional language simply showed up. And at least from the interest that I am familiar with, there was no prior discussion or advance notice of contemplating that change.

Ms. NAPOLITANO. OK. Mr. Harrington, how did the Bureau of Reclamation consult with you or your organization's members prior to imposing these security costs? Were you asked for the input—again the same question—or were you simply told that this is the way it is going to be?

Mr. HARRINGTON. We were given the understanding that that was just the way it would be. We weren't consulted before the fact and asked what we thought that the appropriate reimbursable amount would be, if that is what you are asking.

Ms. NAPOLITANO. OK. And Mr. Moyes, how much impact does the cost of power have on your crop production, and on the districts you represent, and what impact does uncertainty about future security costs have on your irrigators?

Mr. MOYES. Ms. Napolitano, as I indicated, the Federal power component is just a small piece of the total electric requirement. As you know, with fossil fuel prices doing what they are, the rest of the power we buy in the marketplace has become extraordinarily expensive.

Federal hydropower has also doubled or more in the last 2 years due in large part to environmental issues, administrative inflation, and other soft costs for the dams that then get tacked onto the power rates.

But the margins of the farming operations in much of these areas in Arizona are very thin, and in fact much of this land was not farmed years ago. And until, in the west side particularly, we achieved a small piece of Federal preference power, it wasn't

farmed. We were able to bring that back into production with this power.

But there is a great deal of sensitivity to even small increases because we are incurring so many other increases in the total farming budget without commensurate commodity price increases.

Is that responsive? I appreciate the question.

Ms. NAPOLITANO. No, that answers most of the question that I had on that. Thank you, Mr. Chair.

Mr. RADANOVICH. Thank you, Mrs. Napolitano.

The gentleman from Arizona, Mr. Hayworth.

Mr. HAYWORTH. Mr. Chairman, thank you very much, and thanks also for your parenthetical editorial comment earlier today.

[Laughter.]

Mr. HAYWORTH. For purposes of full disclosure, indeed I am very pleased to have an Arizonan on the panel. We welcome all the panelists and those who joined them, doing hardship duty this morning in the nation's capitol, but surprise, surprise, especially Mr. Moyes.

Mr. MOYES. Thank you.

Mr. HAYWORTH. And for the record, Jay, I would like to have you expound a bit on the written testimony you provided. In that testimony, you state that the way in which the Bureau currently allocates reimbursable security costs is inequitable.

Please describe how you believe this can be done more fairly.

Mr. MOYES. Thank you, Congressman Hayworth, and again I appreciate your being here and also Congressman Grijalva I should have mentioned specifically. I hope the record will reflect that. I will take the opportunity later.

I don't have all of the answers but I do have some examples. I boat on Lake Powell. Some of my colleagues may boat on Lake Mead. When I pay a substantial fee to the National Park Service to go into that lake, not a dollar of that fee goes toward security for these dams.

When I buy an airline ticket, I pay a \$5 security surcharge, and a few other costs are being added with specific identification for this purpose.

I believe, for example, when people recreate on Lake Powell or Lake Mead they would not be unhappy, I would not be, to see an additional security charge added to that fee which is then forwarded through to the Bureau to address these costs on a more equitable basis.

The power generators would buy power tomorrow on the open market if Hoover Dam disappeared. The rest of the beneficiaries would be catastrophically damaged permanently for decades, if ever recovered, and there are ways. I think that the most difficult one for me is the flood plain and how you might recover from the property owners.

I do know that the Bureau has analyzed the damage that would occur from such a catastrophic breach, and they know what lands would be wiped out. How one achieves collection of funds from those landowners is a daunting challenge. I am not sure it is impossible, however, and I think we need to be creative about ways to find solutions to that problem so that it is more equitably spread.

The power users have been the cash register for these dams historically. They were set up that way. But this is extraordinary. It is not what was contemplated when those arrangements were made, and we don't think it ought to just be the standard practice to pass everything through to the power because that is the way it has always been done.

Mr. HAYWORTH. Mr. Moyes, I think a word of commendation is appropriate to direct toward the water and power customers who have been willing to become a partner in the government's efforts to secure sites sensitive to our national security.

How can Congress provide the utility customers with an assurance that this good faith effort to assist the Federal government will not lead to an unfair level of cost increases in the future?

Mr. MOYES. I think the two things that we have asked for here would achieve that objection, and that is, first detailed security and oversight from Congress through the authorizing committee, and appropriate legislation.

The second way that would give us cost certainty would be to make a certain cap on the component of these costs that we must bear, and then as part of that scrutiny and oversight an opportunity for some measure of customer input to the judgment calls that have to be made when determining the level of these expenditures.

We see them growing rapidly from their inception. I have heard talk. I don't want to attribute it to anyone, it may just be rumor, but we have heard the number 100 million thrown around in some circles for what the anticipated ultimate annual costs of this program could be.

Caps on our components and allocation to others and oversight I think will address those concerns and keep this under a reasonable level of control.

Mr. HAYWORTH. Again I thank you very much, Mr. Moyes, and to all the panelists, and Mr. Chairman, I yield back the balance of my time.

Mr. RADANOVICH. Thank you, Mr. Hayworth.

I guess one question that did come up was, this is a cost, of course, that was borne out of 9/11. Is there a sense that this is a cost that goes clear into the future? Is this a forever additional cost to the water users and your facilities, or do you suspect at some time there will be a need to drop off?

I am not sure that any of you can answer that, but give it a shot if you want to.

Mr. HARRINGTON. I mean, as far as we can tell, it is going to go on for the foreseeable future. I mean, we don't see any end point to it in sight, so that is another concern that we have.

Mr. MOYES. Without casting aspersions, it is pretty atypical for a bureaucratic component that once gets underway with good reason that it may well need to continue to some degree for good reason to ever stop, or in fact to ever shrink or be reduced. I mean, that is just the fact of life from our perspective.

Mr. RADANOVICH. Right.

Ms. NAPOLITANO. Mr. Chair, will you yield?

Mr. RADANOVICH. Yes.

Ms. NAPOLITANO. Well, there may be in an proposal that might require legislative action, there should be a review of its validity within 10 years, 15 years or some set time of frame that you feel might be adequate to go back and say, OK, cut down; not necessarily strike it all out, but begin to down-face, whatever, because if you are going to continue to have those costs, then you need to factor them in in whatever else budgetarily that you do. Am I correct?

Mr. MOYES. Yes. Some sunset measures. We would concede, I believe, that the decision as to the need to continue the program is something that would entail national input from Homeland Security, and other agencies, perhaps the military, et cetera. That is not within our expertise, but again some vice and some role in the concept of sunseting and reduction would certainly be appreciated.

Mr. RADANOVICH. Very good. I want to thank the gentlemen for your input this hearing, and let the record reflect too that Mr. Grijalva has submitted some questions into the record, that will be delivered to you for response within a certain amount of time. I think you only have about 20 days to respond to questions.

Thank you very much for your input, and I will dismiss the first panel and call up the second panel, and again, thank you very much.

The second panel is Mr. Larry Todd, Deputy Commissioner of the Bureau of Reclamation in Washington, D.C.

Mr. Todd, welcome to the Subcommittee, of course, welcome back I should say. You have been a regular customer these days, and please feel free to begin your testimony.

**STATEMENT OF LARRY TODD, DEPUTY COMMISSIONER,
BUREAU OF RECLAMATION, WASHINGTON, D.C.**

Mr. TODD. Thank you, Mr. Chairman and Members of the Subcommittee.

I am Larry Todd, Deputy Commissioner of the Bureau of Reclamation. It is a pleasure to appear before you today to discuss how Reclamation is securing its water and power infrastructure. I would like to summarize my remarks and ask that the full statement be submitted for the record.

Mr. RADANOVICH. No objection, so ordered.

Mr. TODD. The Reclamation security program was formed after the 1995 Oklahoma City bombing to protect the public, its employees, and the facilities that support our mission. As you know, the crippling of these facilities could bring tremendous consequences for the delivery of water, power, generation, food control, and the environmental obligations. The seriousness of these responsibilities has guided our security efforts to date.

In 2000 and 2001, the pre-9/11 security program was sufficiently established and certain physical security measures were in place. Historically, Reclamation employed law enforcement personnel only at Hoover Dam and guards on an as-needed basis at other facilities. It is very important to note that, consistent with Reclamation's longstanding practice of treating annual costs to care for the facilities as project operating and maintenance, or O&M costs, the expenses for guards and patrols at these facilities before 9/11 were

considered to be O&M costs, subject to reimbursement by project beneficiaries.

Following the attacks of 9/11, addressing or vulnerabilities took on an even greater urgency. Guards and patrols were immediately increased at Reclamation's five critical infrastructure facilities as well as at other critical installations.

The escalated posture after 9/11 obviously brought with it an escalation of security expenses. After 9/11, Reclamation instituted interim guidance that these expenses, including for guards and patrols at facilities where they were not previously, be treated as non-reimbursable until further notice.

One of the main reasons for this action was concern about the hardship to customers that would result from previously unexpected and significant escalation in expenses for guards and patrol costs.

Emergency appropriations provided by Congress immediately after 9/11 did not address whether that funding should be reimbursed by project beneficiaries. However, Reclamation continued to view its pre-9/11 guards and patrol program funded at roughly \$3.2 million per year as reimbursable.

So while pre-9/11 levels of security expenditures continue to be reimbursable, the much larger post-9/11 security cost increases were treated as non-reimbursable through Fiscal Year 2005.

Reclamation has a longstanding practice of treating annual costs to care for the facilities as a project O&M reimbursable cost, but did not apply this policy in the immediate years after 9/11.

Today, the security guard and patrol program has moved from a period of dramatic escalation to more stable course, and project beneficiaries have had several years to adjust their budgets and planning to current guard and patrol levels.

During this time Reclamation has also had the opportunity to track and quantify these costs. In Fiscal Year 2007, Reclamation's budget request proposes to treat 20.9 million guards and patrol costs as project O&M, subject to allocation and reimbursement from project beneficiaries.

We understand that it is important to communicate with our customers about this issue, and since 2004, Reclamation has had a thorough effort to communicate with our customers to explain the reimbursability of security guard and patrol costs.

There have been numerous presentations to stakeholder organizations in 2005 and early in 2006. Briefings have been held with numerous groups, including the National Water Resource Association, Family Farm Alliance, Sacramento Municipal Utility District, Central Valley Project Water Association, and the Colorado River Energy Distributors Association. Reclamation's regional and area offices have also provided the relevant information to numerous other water and power customers at local level on that subject.

At the same time Reclamation understand the water and power users' need for accountability with respect to O&M expenditures. Moving forward, Reclamation will work with Congress regarding security cost allocations and how to maintain coherent, consistent policies for our customers. We believe increased investment in security measures will continue to be a normal part of the way we operate in the future. We believe it is fair and reasonable for the costs

of guards and patrols to be allocated to the beneficiaries of the projects being protected.

Mr. Chairman, thank you for the opportunity to present this testimony today. I am pleased to answer any questions.

[The prepared statement of Mr. Todd follows:]

**Statement of Larry Todd, Deputy Commissioner,
Bureau of Reclamation, U.S. Department of the Interior**

Mr. Chairman and Members of the Subcommittee, I am Larry Todd, Deputy Commissioner of the Bureau of Reclamation. It is a pleasure to appear before you today to discuss how the Bureau of Reclamation is securing its water and power infrastructure.

Reclamation's Security Program was originally formed in response to the 1995 bombing of the Alfred P. Murrah building in Oklahoma City. Reclamation initiated the program to protect the public, its employees, and the assets required to support Reclamation's mission. Reclamation facilities provide resources that serve the American society and economy. The crippling of these facilities could cause significant destruction with tremendous consequences related to the delivery of water, generation of power, the provision of flood control, and environmental benefits. The seriousness of these responsibilities is clear to Reclamation as we continue to maintain the security posture necessary to deal with potential criminal threats to Federal dams, powerplants, and water supplies.

Reclamation Security Costs Prior to September 11th

Historically, Reclamation employed law enforcement personnel at Hoover Dam and guards at other facilities. These costs were treated as reimbursable project Operation and Maintenance (O&M) expenses. After the 1995 Oklahoma bombing, Reclamation began a Site Security Program and for 3 years (1997 through 1999) funded the start-up program at \$5 million each year. These funds were considered non-reimbursable. In 2000 and 2001, after the Site Security Program had been sufficiently established and certain initial physical security measures had been implemented, funding for the program continued at approximately \$2 million per year. These non-reimbursable funds provided a very basic physical security program. Costs for law enforcement personnel and guards continued to be treated as reimbursable project Operation and Maintenance (O&M) expenses.

Reclamation Response to September 11th

Following the terrorist attacks of September 11, 2001, addressing vulnerabilities to terrorism and other criminal activity became a higher priority. Although Reclamation had a security program at that time, guards and patrols were immediately increased at Reclamation's five National Critical Infrastructure facilities (Hoover, Shasta, Grand Coulee, Glen Canyon and Folsom Dams and Powerplants) as well as at other crucial facilities. The events of September 11th caused Reclamation to review the policies and activities of the security program due to the need for dramatically increased security measures. This review and analysis was not unique to Reclamation, of course. All across government and throughout society, life has changed and we are investing in security measures in order to protect life and property.

In an October 12, 2001 memorandum, then-Commissioner John Keys took additional steps to expand Reclamation's security program, including designation of a Reclamation Security Coordinator to lead a comprehensive plan to reevaluate the entire program, and establishment of an executive Steering Committee to provide support to the Security Coordinator. Additionally, the Commissioner outlined a number of initiatives to enhance Reclamation's security posture and ordered an independent review of the security program and facility security by experts from the Sandia National Laboratories and the Interagency Forum for Infrastructure Protection. The result of this review was the "Top-Down Security Program Review" which has served as a road map for implementing long-term policies and strategies that provide a dramatically heightened level of security at Reclamation facilities.

Increased Guard and Patrol Costs Initially Non-reimbursable

The emergency appropriations provided by the Congress (P.L. 107-117) as an immediate response to the September 11th attacks did not address the question of whether that funding should be considered reimbursable by project beneficiaries. The initial view from Reclamation, first outlined in the October 12, 2001 memorandum, was that these emergency measures aimed at the physical fortification of facilities should not be considered normal O&M expenditures. At the time, Reclamation did not know the extent of emergency and security measures that would be

required and believed that initial costs to acquire the knowledge and establish protection should be treated as non-reimbursable. Reclamation also issued an interim policy that these costs should be considered non-reimbursable until further notice.

Part of the rationale for the initial determination to make guard and patrol cost increases non-reimbursable was that it would have been a significant hardship for the project beneficiaries to bear the entire burden of the urgent, dramatic, and unplanned cost escalation. Therefore, while pre-September 11th levels of security expenditures continued to be reimbursable, post-September 11th security cost increases were treated as non-reimbursable through FY 2005.

Reclamation Discretion Concerning Determination of O&M Costs

The Reclamation Project Act of 1939 establishes the Secretary of the Interior's authority to exercise judgment in establishing rates that will cover an appropriate share of annual O&M costs. In its May 2000 audit of O&M cost allocations, the General Accounting Office recognized this authority by stating "...the Bureau has broad discretion in defining which of the activities it undertakes constitute O&M that can be charged to customers." Costs that are considered to be project O&M are allocated to authorized purposes in accordance with original project cost allocations and existing contracts. This process establishes the portion of O&M funding that is reimbursable by project beneficiaries, and the portion borne by the United States. Reclamation has a long-standing practice of treating annual costs to care for the facility as project O&M reimbursable costs.

Movement Toward Reimbursement of Post-September 11th Guard and Patrol Cost Increases

The security guard and patrol program has now moved from a period of dramatic escalation to a course of sustained effort and stability, and project beneficiaries have had several years to adjust their expectations, as well as their budgets and planning, to current guard and patrol levels. During this time, Reclamation has also had an opportunity to track and quantify these costs.

Reclamation's FY 2005 budget request was based on our conclusion that the \$20.9 million in post-September 11th guard and patrol costs increases should be considered project O&M expenses and allocated among all project purposes, some of which would be reimbursable. However, in its FY 2005 appropriations report language, the Congress stated that Reclamation should not initiate the collection of those costs, and that Reclamation should provide a report to the Congress concerning the reimbursement of security guard and patrol costs on Reclamation facilities.

Reclamation's FY 2006 budget request again proposed reimbursable guard and patrol costs. For FY 2006, Congress responded by providing for the reimbursement of \$10 million out of the \$20.9 million in post-September 11th guard and patrol costs, and again asked Reclamation to provide additional information on that subject. In FY 2007, Reclamation's budget request proposes to treat approximately \$18.9 of the \$20.9 million post-September 11th guard and patrol cost as project O&M subject to allocation and reimbursement from project beneficiaries. The \$2 million in security guard and patrol costs for which Reclamation does not propose to seek reimbursement represent expenses incurred for the security of project functions related to flood control, fish and wildlife, recreation, or other non-reimbursable project functions. While the Senate has not yet taken action on the FY 2007 Energy and Water Development Appropriations Act, the House version supports the Reclamation proposal regarding reimbursement of security guard and patrol costs based on project cost allocations.

We believe it is fair and reasonable for the costs of guards and patrols to be allocated to the beneficiaries of the projects being protected.

Reports to the Congress

At the request of Congress, Reclamation provided reports in May 2005 and March 2006 concerning the reimbursement of security guard and patrol costs on Reclamation facilities. The March 2006 report was modified to provide information requested by Representatives Richard W. Pombo and John T. Doolittle in their letter of December 13, 2005 to then-Commissioner Keys. We believe these reports thoroughly addressed Reclamation's plan to make most FY 2006 security guard and patrol costs reimbursable, and the reports have been shared widely with water users, power users, and other concerned parties.

Outreach

Reclamation has made a thorough effort to communicate with water and power user entities to explain the reimbursability of certain security guard and patrol costs. These efforts include numerous presentations to water and power stakeholder organizations during the fall of 2005 and early 2006. Briefings and discussions were

held with representatives of the National Water Resources Association and Family Farm Alliance in December 2005, as well as with representatives of the Sacramento Municipal Utility District and the Central Valley Project Water Association in March 2006. Meetings were also held with the Colorado River Energy Distributors Association, including most recently in May 2006. Reclamation regional and area offices have also provided information as requested to water and power users on this subject.

Transparency

Transparency is one of the key elements in assuring Reclamation project water and power users that the reimbursable costs of project O&M are reasonable and not excessive. However, under Reclamation policy, much of the data on security-related activities falls into the category of "For Official Use Only" (FOUO) information and is only available on a need-to-know basis. At the same time, Reclamation understands water and power users' need for accountability with respect to O&M expenditures. Therefore, we have communicated to water and power user organizations our willingness to provide an appropriate level of detail concerning security-related expenditures consistent with our security and policies.

In order to have access to such information, water and power user organization representatives may need to consent to protect the FOUO information via non-disclosure agreements. If the appropriate clearances are obtained, they may also be permitted to review relevant classified information.

Accountability

Reclamation has utilized the security funds provided by the Congress for the activities identified by formal security evaluations. Audits on two occasions by the Office of the Inspector General have confirmed Reclamation's appropriate use of security-related funding.

The way our government functions and indeed the way our society functions was changed on September 11, 2001. Responding to legitimate public concern about the security of critical Federal infrastructure, we have devoted significant human and financial resources to improve our security posture at thousands of facilities.

Increased investment in comprehensive security measures to protect Reclamation's assets will continue to be a normal part of the way we operate in the future.

Moving forward, Reclamation will work with the Congress regarding security cost allocations, and how to maintain coherent, consistent policies affecting our customers. Reclamation is committed to working with stakeholders and this subcommittee on additional suggestions in this area.

Mr. Chairman, thank you for the opportunity to present testimony today. I am pleased to answer any questions.

Mr. RADANOVICH. Thank you, Mr. Todd.

Just to kind of get this in the record, Mr. Todd, have you received any negative feedback about the actual need for site security program after 9/11?

Mr. TODD. With regard to reimbursability?

Mr. RADANOVICH. Or just the need for the programs.

Mr. TODD. No, I have not.

Mr. RADANOVICH. OK. One of your goals in your managing for excellence effort is to improve communication between the agency and its customers, and yet it sounds like there is a real communication problem going on with the security program.

How do you plan to improve this communication problem to fit your overall communications goals?

Mr. TODD. I believe that there is several things that we can do and we have invited the customers in for, but certainly they have a need to know, and we have several ways for them to get this kind of information and several different levels of information that we could provide them.

There are levels of information of guards and patrols that are for official use only. It is not for public consumption, but certainly we

can provide that to them, and we have a process by where they can get that information, and we definitely are willing to do that.

Then there is the national security information which, of course, is classified, and there is a process for us to go through with them if they want to get to the vulnerabilities of these projects, and see how that information ties into the costs, and we are willing to do that as well.

Mr. RADANOVICH. And yet the testimony from the panel the time before it is rather difficult, I think, in the security clearance program you can give confidence to the person who has seen it, but the difficulty that they have is going back to their boards, effectively convincing them or clear down to the consumer level.

Have you got any ideas on how to—

Mr. TODD. Well, there is some truth to that. The information isn't for public consumption, and so there is some controls on it. However, we are willing to work with them to get the appropriate people in the room and they have some discussion about who they would like to have there or how many, and we would definitely work with them to get the right folks there.

Mr. RADANOVICH. Right now site security construction costs are borne by the American taxpayer. Can you commit that such costs will continue to be paid for in this way for the next five years?

Mr. TODD. That is the capital costs you are talking about?

Mr. RADANOVICH. Yes.

Mr. TODD. Yes. I believe that we have no intention of changing that policy right now. I can assure you of that. And I believe that it would be maintained as non-reimbursable, and we have said that to you in the report to Congress here in the 2006 report we sent to you.

Mr. RADANOVICH. And we are made aware of the problem that we had with using the money for paving parking lots and such. Can you guarantee that kind of thing won't happen again in the future?

Mr. TODD. Well, I am not familiar with that particular issue, using security costs to pay for paving. As we have installed facilities and maybe there was some paving around the facilities that we installed, but to pave a mere parking lot, I am not familiar with that. As a matter of fact, the Inspector General's Office has just finished an audit this past year on our costs. They raised no inconsistencies with us spending dollars on funds specifically for security of the facilities.

Mr. RADANOVICH. You indicated that you want to work with Congress on security costs. Are you willing to work with Congress on legislative authorization to this program?

Mr. TODD. Certainly we would work with you.

Mr. RADANOVICH. Thank you very much.

Mrs. Napolitano.

Ms. NAPOLITANO. Mr. Todd, you said you would work with the committee. Do you think there is a need for one?

Mr. TODD. Not in my estimation right now. I think we have the particular policies and procedures in place. We have a mature and stable program right now, and we can certainly brief you on not only what that is, but if you would like, we will even give you a

classified briefing as to what the vulnerabilities are and why it is stable and why it is mature.

But certainly we will work with you in any way that you would like us to.

Ms. NAPOLITANO. Well, do you actually believe the legislation may be needed though to clarify how the security program should be funded?

In other words, because there seems to be a question as to Reclamation setting standards in December and changing them in March. Would there be a need to be able to solidify so they know where their budgets are going to have to be going to rather than change in the middle of the stream?

Mr. TODD. Well, certainly. We definitely need to communicate with the customers, and we believe that we have given a lot of time to allow these kind of costs to get into their budgets, and if we were talking about changing our practice legislatively, it would be a change from our pre-9/11 practice as well. This is really not change.

We took a break in the middle here to give some flexibility here to the customer so that they wouldn't have to pay reimbursability costs immediately until we figure out what this security program was like.

Ms. NAPOLITANO. Was that the way it was posed to them?

Mr. TODD. Was that the way what?

Ms. NAPOLITANO. It was posed to them. Was this the way they were notified that it was just going to be an interim thing until you decided what to do with it?

Mr. TODD. Well, we believe that our policy did state that to future costs.

Ms. NAPOLITANO. No, did you talk to these individual groups?

Mr. TODD. I believe we did. There is the numerous speeches that the Commissioner gave and other—

Ms. NAPOLITANO. But speeches are different than a directive or a notification, or as you have heard, none of them were aware that there was a change coming until the change came through a phone call.

Mr. TODD. Well, I heard that. I believe though that we have worked with them and notified them in meetings, in numerous meetings.

Now, it is possible we missed, you know.

Ms. NAPOLITANO. Would you then believe that you might want to establish a format to where whenever you have a definite change of procedure that you can notify them all individually or collectively, or however at the same time so then you can get the feedback, or then they are aware rather than having to find out from somebody else?

Mr. TODD. Certainly, we would consider that. We have done this though through our normal O&M meetings with them that are frequently had out in the field. And so that is what we are relying on as those processes to convey this information.

Ms. NAPOLITANO. Going back to the legislation, has your agency drafted anything yet?

Mr. TODD. Excuse me. I didn't quite catch that.

Ms. NAPOLITANO. Has your agency drafted any legislation to be able to work on this? No?

Mr. TODD. No, we have not.

Ms. NAPOLITANO. OK. What do you think about the proposal to amend the Safety of Dams Act to include site security costs within the statutory definition of safety of dams, and also as you heard, provide possibly a sunset date?

Mr. TODD. Using the Safety of Dams Act to give more credence to security, you know, I don't know that we would have a problem with that. Using that as a model might cause some problems because the Safety of Dams Act, the 15 percent is on the capital side whereas on the security right now that is zero percent, and so there is a better break, if you will, on the security in our policies right now than what the Safety of Dams gives. Both programs is the operation and maintenance, and that is 100 percent.

Ms. NAPOLITANO. Right, and that could be included in the act itself, however. When you amend or when you upgrade an act, you want to include new innovative ways of getting things done, or—well, 9/11, who knew.

Mr. TODD. Well, one point of confusion about the word “upgrade” is in the report that we sent you there is a table and at the bottom of the table under the OM&R, it says “Upgrades”. We recognize that there is confusion in that word, and we have promised our water users that we will come out with a memo that clarifies that.

What that means is that under regular replacement of equipment and when you replace equipment sometimes you got to upgrade it just because the equipment upgrades itself through technology, but that would be OM&R and reimbursable.

The upgrades though for a security level, in fact, if we had a security level that we needed to have quite substantial additional equipment to take care of or a different methodology we had to address or a different vulnerability, that would be on the capital side and that would be non-reimbursable.

So we will definitely clarify that word “upgrade” under the OM&R piece.

Ms. NAPOLITANO. OK, I will wait for the second round, Mr. Chair. You have Mr. Costa.

Mr. RADANOVICH. Mr. Costa, did you have any questions?

Mr. COSTA. Yes. Thank you very much, Mr. Chairman.

When it comes to these kind of discussions, Mr. Todd, I am always one who likes to go back to the basics, and that is to try to assess risk management versus risk assessment. In looking at your testimony here, while you talk about your top-down security program review, and you cite the incidences going back to the initial bombing in Oklahoma City in 1995, I am wondering has there been any new detailed analysis, first of all, in terms of the risk assessment for the Bureau projects that we are looking at that you cite here in the West?

Obviously, they cover a number of states. But what is the current criteria that you are using for risk assessment?

Mr. TODD. The process that we went through after 9/11 we had the facilities that we had designated that we were going to do a security risk assessment on, a security assessment. Those came out of our safety of dams list of high and significant hazard facilities.

Mr. COSTA. Time significant hazards facility?

Mr. TODD. High and significant hazard facilities. That is a public designation of the safety of dams and how they might fail and who and what that that would impact, and so there is a designation that we have. But not all of our facilities have that designation, but many, many do, about 250 do.

We did security assessments on each and everyone of those after 9/11 for the next three years. And in that security assessment we used three different methodologies. There is the RAM-D methodology that was established through the Sandia National Labs. We had other risk methodologies that we used for lower priority facilities. We used the Defense Department for the national critical infrastructures.

Mr. COSTA. Yes, OK.

Mr. TODD. So those we finished, and then that is what we based our vulnerabilities on, and what needed to be upgraded and mitigated.

Mr. COSTA. But I mean, are there vulnerabilities based upon in terms of if these sites were to be predetermined as vulnerable from a terrorist attack or some sort of attack, and where they would cause, obviously, significant damage?

I mean, this gets to homeland security, but the fact is that a small earthen-filled dam in a remote area is going to have a lot less attractiveness vis-à-vis vulnerabilities versus Folsom Dam, for example, in Sacramento, or Shasta where you could have a lot more havoc and chaos and economic and lives that would be lost.

Mr. TODD. Absolutely. The formula that we used in there considered three factors. It was intelligence information, the vulnerabilities themselves, and then, of course, the consequences, and those consequences were very significant in our decisions about what kind of security need was necessary.

Mr. COSTA. I am not as familiar with some of the other states but I am familiar with California in the case of Folsom and Shasta. The Central Valley Project, as the earlier witness alluded to, we have a circumstance where we have our state water project in which the last decade or so we have tried to, to the degree possible, run the projects in a harmonious fashion.

So how does that feed out when you are looking at cost sharing on security issues with regards to the projects?

Mr. TODD. The way Reclamation—

Mr. COSTA. I mean, we were spending a lot of money I know post-9/11 to guard the aqueduct, to provide additional security within the Delta and some of the other key water facilities in the state.

Mr. TODD. Yes, and most of those costs are on the national critical structure, both Folsom and Shasta, and those—

Mr. COSTA. They fall under the category of reimbursable or non-reimbursable?

Mr. TODD. The capital costs that went into fortifying those facilities were non-reimbursable, so all of the barriers, cameras, any other kind of equipment like that was non-reimbursable.

The guards and patrols were non-reimbursable, and in 2006, this year, they have become reimbursable, and those guards and patrols or the determination for them was based on these assessments and

what was necessary there with the kinds of fortifications that we had put in place.

Mr. COSTA. And so how would you define the cost-sharing arrangement between the state and the feds?

Mr. TODD. The cost sharing is the annual cost, which is really the guards and patrols, and any operation and maintenance after the capital costs have been put in or after the capital improvements have been put in.

So the cost-sharing distribution then is based on a regular O&M allocation for the CVP, and that is how that cost then would be shipped out to the customers.

Mr. COSTA. OK. I see my time is up. Thank you very much, Mr. Chairman.

Mr. RADANOVICH. Thank you, Mr. Costa.

Mrs. NAPOLITANO.

Ms. NAPOLITANO. Thank you, Mr. Chair.

Mr. Todd, how many Reclamation projects have security needs that require guards and patrols that were not contemplated prior to 9/11? And when these projects were originally authorized for construction, were they in part justified because of any benefits that were considered national in scope?

Mr. TODD. Well, for the first part of your question is pre-9/11 we did not have a lot of guards and surveillance.

Ms. NAPOLITANO. But you did have some.

Mr. TODD. We had some. Of course, that expanded. So far as whether security was a part of the original authorization, it was not. In other words, security, I don't believe, is in any particular authorization for any project.

Ms. NAPOLITANO. But I don't think that is what I have asked. How many of these projects have security needs that require guards and patrols?

Mr. TODD. Let me see, I don't have the information with me about the numbers of guards and patrols.

Ms. NAPOLITANO. Give me a ballpark figure.

Mr. TODD. You know, I guess I could go through the report we sent you, and look at that, but I don't know. Maybe 50.

Ms. NAPOLITANO. OK. But when they were authorized for construction were they, in part, justified because any of those benefits were considered national in scope?

Mr. TODD. I really don't—I don't know the answer. I don't believe that any authorization ever said that they were a national security in scope.

Now, national benefits, yes. National benefits, yes, because any of these projects based on the economics had to meet the national benefits criteria.

Ms. NAPOLITANO. That is the answer I was looking for. OK.

Is there any way under current law to consider benefits when operation, maintenance and repair charges are calculated?

Mr. TODD. I am sorry. I am not understanding what you are asking.

Ms. NAPOLITANO. Well, the current law considers it, as you say, national in scope, because they have to meet a certain criteria. When that law is set up, does it also consider the operation, maintenance and repair charges to be calculated into that?

Mr. TODD. Well, in general, the O&M charges, yes, and we have direction from Congress on the care of the facilities and how that process works and how the O&M reimbursability piece works, and the beneficiaries of certain functions, power, municipal and industrial irrigation would reimburse the United States for the benefits and the costs of that project.

Ms. NAPOLITANO. OK. That means you do have some flexibility then?

Mr. TODD. Yes, the Secretary does have discretion to determine exactly how that works, yes.

Ms. NAPOLITANO. OK. It kind of brought something over when there was a discussion earlier, and I wanted to ask to bring it forth because it goes in one ear and out the other if I don't ask it when I am thinking about it.

But it has to do with the actual replacement of say cameras, very simple thing. That was pre-9/11, you have had those installed for protection of any nut who comes and wants to do damage to a dam, am I correct?

Mr. TODD. Yes.

Ms. NAPOLITANO. In some of them, maybe not all of them, but you have the major ones, right? You have some oversight capability?

Mr. TODD. Yes. Pre-9/11, yes, and it was reimbursable at that time.

Ms. NAPOLITANO. And post-9/11, but the idea then would be if these cameras which get dated, they get old.

Mr. TODD. Right.

Ms. NAPOLITANO. You break down, you have to replace them, who bears the cost? And if you are going to replace them with a newer, more, a better operating camera that is going to naturally have an additional cost, who is going to bear that?

Mr. TODD. Using the camera as an example, that would fall into operation and maintenance. That would be allocated out and there would be a reimbursability factor to the replacement of that camera.

If in fact the camera was upgraded, or you couldn't buy the same exact camera but had to buy something new in order to replace it and it comes with additional cost, that may be classified as an upgrade—but just specific to that particular piece of equipment.

It is not necessarily an upgrade to the security risk. Once we move into us determining that a upgrade to a security risk, which involves a lot of cameras and a lot of equipment, a lot of processes on that facility, then that would be non-reimbursable for the installation.

Ms. NAPOLITANO. OK. But you may not find the same equipment.

Mr. TODD. That is right. It might be completely different, right.

Ms. NAPOLITANO. What does the Bureau project for spending on security over the next five years, and will that differ if the national threat level changes?

Mr. TODD. Well, our projection is roughly that 50 million figure that we have submitted to you in our budget documents.

Ms. NAPOLITANO. I am sorry. Is that going to be enough?

Mr. TODD. Pardon?

Ms. NAPOLITANO. Is that going to be enough?

Mr. TODD. I believe so, yes. I believe so. We have been functioning on that. We have our priorities set.

Ms. NAPOLITANO. That is true, Mr. Todd, but cost of everything has gone up. The cost of replacement, the labor, everything else has gone up. And if you are using the same amount, that means you are going to have less to be able to do replacement.

Mr. TODD. Well, barring inflation and some of those minor increases—

Ms. NAPOLITANO. Inflation is a fact of life.

Mr. TODD.—I still think it is going to be about that figure. I think our program is stable now. I really don't believe that we have any large increases coming up in the future.

Ms. NAPOLITANO. What about if the threat level changes and you are going to have to add to that security process?

Mr. TODD. If the threat level changes, certainly that adds—

Ms. NAPOLITANO. Then we have to come back and ask for more?

Mr. TODD. That adds costs, and if we can't adjust our programs to take care of it internally and transfer some money around to take care of it, then definitely we would have to ask for more.

Ms. NAPOLITANO. Thank you, Mr. Chair.

Mr. RADANOVICH. There being no other questions of the panel, I want to thank the witness, Mr. Todd, for being here, and it concludes the testimony.

I will say in closing that I think we need to work together on possible legislation to protect our facilities, bring certainty and transparency for our consumers, and allow Congress to have more oversight, and with that again thank you, and this does conclude this hearing.

Mr. TODD. Thank you.

[Whereupon, at 11:35 a.m. the Subcommittee was adjourned.]

[Information submitted for the record is listed below and follows:]

- American Public Power Association, Letter submitted for the record
- Colorado River Commission of Nevada, Letter submitted for the record
- Colorado River Energy Distributors Association (CREDA), Letter submitted for the record
- Lynch, Robert S., Counsel and Assistant Secretary/Treasurer, Irrigation and Electrical Districts of Arizona, Letter submitted for the record
- National Water Resources Association, Letter submitted for the record
- Northern Colorado Water Conservancy District, Statement submitted for the record
- Sacramento Municipal Utility District (SMUD), Statement submitted for the record
- Washington Public Utility Districts Association (WPUDA), Letter submitted for the record

AMERICAN PUBLIC POWER ASSOCIATION (APPA)

2301 M STREET, N.W.
WASHINGTON, D.C. 20037
JULY 5, 2006

The Honorable George Radanovich
Chairman
House Water & Power Subcommittee
1522 Longworth House Office Building
Washington, D.C. 20515

The Honorable Grace Napolitano
Ranking Member
House Water & Power Subcommittee
1522 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Radanovich and Ranking Member Napolitano:

I am writing regarding the Subcommittee hearing held on June 22, 2006, on the Bureau of Reclamation's site security program. I respectfully request that this letter and the accompanying attachments be included in the Subcommittee's record for that hearing.

APPA is the service organization for the nation's more than 2,000 community-owned (public power) electric utilities that collectively serve over 43 million Americans. Public power utilities include state public power agencies, municipal electric utilities, and special utility districts that provide electricity and other services to some of the nation's largest cities such as Los Angeles, Phoenix, Seattle, and San Antonio, as well as some of its smallest towns. Indeed, the vast majority of public power systems serve communities of less than 10,000 people in 49 states (all but Hawaii).

Many of these communities purchase all or a portion of their wholesale power from the federal Power Marketing Administrations (PMAs). The PMAs provide millions of Americans served by public power systems and rural electric cooperatives with low-cost hydroelectric power produced at dams operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation (Bureau). These federal multi-purpose dams were authorized by Congress to provide a wide range of significant benefits to millions of citizens in the United States and elsewhere, including: flood control; irrigation; municipal water supply; interstate and international compact water deliveries; lake and stream recreation; blue ribbon trout fisheries; river regulation; economic development; fish and wildlife propagation and mitigation; and power generation and transmission.

Ensuring the security of these federal dams and related facilities is of utmost importance to all citizens of the United States, not just to the direct beneficiaries of these resources. Since World War II, the Bureau has agreed with the premise that security costs for these facilities is in the broader public interest and has not required the power customers to pay for these costs (although it should be noted that consumer-owned electric utilities have traditionally paid the majority of the total reimbursable costs of the dams, including subsidizing the costs of irrigation features and environmental programs—thereby ensuring repayment of the federal debt plus interest).

After the terrorist attacks of September 11, 2001, the Bureau increased security measures at federal dams, but in the spring of 2002 determined that these expenditures served the public interest, and should be paid for by the federal government. In 2005, however, the Bureau reversed this decision and determined that expenditures for guards and patrols should be considered Operation & Maintenance (O&M) costs and reimbursed by "project beneficiaries." This effectively means that power customers pay the majority of the costs.

Despite numerous expressions of congressional and customer concern, the Bureau is proceeding to expand and implement its reimbursable site security cost plan. In a report submitted to Congress in February of 2006, the Bureau expanded the scope of reimbursable costs beyond guards and patrols, to include operation, maintenance and repair (OM&R) on upgrades to fortifications done at the dams. This scope has expanded from the report the Bureau provided to Congress in May of 2005, and from a briefing the Bureau provided to customers in mid-December of 2005.

The level of concern by APA's members about the Bureau's actions is expressed in the attached policy resolution that APA's members adopted at our recent annual conference in June. As is stated in the resolution, APPA continues to believe that the appropriate allocation of these additional security cost measures should be

through annual non-reimbursable appropriations. However, APPA recognizes that this approach may not be viable, at least in the near-term. Therefore, should the Bureau proceed to charge power customers for any portion of their site security costs, we ask that Congress take steps to limit these costs as well as to allocate the costs equitably. We have also endorsed the attached draft principles that delineate in more detail the legislative actions that we would support to address this issue.

We greatly appreciate the Subcommittee's interest in this issue, and look forward to working with you to address this situation in a manner that maintains the appropriate balance between a rational site security policy and equitable allocation of costs.

SINCERELY,

ALAN H. RICHARDSON
PRESIDENT AND CEO

[NOTE: Attachments to Mr. Richardson's statement have been retained in the Committee's official files.]

COLUMBIA RIVER COMMISSION
OF NEVADA
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JULY 6, 2006

The Honorable George Radanovich
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House Water & Power Subcommittee
1522 Longworth House Office Building
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The Honorable Grace Napolitano
Ranking Member
House Water & Power Subcommittee
1522 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Radanovich and Ranking Member Napolitano:

I am writing in regard to the subcommittee hearing held on June 22, 2006, on the Bureau of Reclamation's site security program. I respectfully request that this letter and the accompanying attachment be included in the subcommittee's record of that hearing.

The Colorado River Commission of Nevada ("CRC") is the state agency that represents Nevada in negotiations regarding Colorado River resource issues. CRC works closely with Reclamation and the other basin states on a range of issues related to river operations, water delivery, endangered species and power production. Nevada purchases approximately 460 megawatts of hydroelectric energy generated for the most part at Hoover, Parker, and Davis Dams on the Colorado River. In its unique role as steward of this power, CRC, in turn, markets the power within Nevada under long-term contracts. We write this letter in support of the testimony provided to the subcommittee regarding the concern over post-9/11 security cost allocations to project beneficiaries. We also support the principles outlined in the attachment to this letter.

Like other federal multi-purpose dams, Hoover, Parker, and Davis Dams were authorized by Congress to provide a wide range of significant benefits including: flood control; irrigation; municipal water supply; interstate and international compact water deliveries; lake and stream recreation; blue ribbon trout fisheries; river regulation; economic development; fish and wildlife propagation and mitigation; and power generation and transmission to millions of people in the United States and elsewhere. Ensuring the security of these federal dams and related facilities is of utmost importance to all citizens of the United States, not just to the direct beneficiaries of these resources.

After the terrorist attacks of September 11, 2001, the Bureau increased security measures at federal dams, and in the spring of 2002 determined that these measures served the wider public interest and their costs should be borne by the federal government. However, in 2005, the Bureau reversed this decision and determined that expenditures for additional guards and patrols should be considered operation

and maintenance ("O&M") costs reimbursable by "project beneficiaries." This effectively means that power customers alone pay the majority of these costs.

Despite numerous expressions of congressional and customer concern, the Bureau is proceeding to expand and implement its reimbursable site security cost plan. In a report submitted to Congress in February of 2006, the Bureau expanded the scope of reimbursable costs beyond guards and patrols to include operation, maintenance and repair ("OM&R") on upgrades to fortifications done at the dams. This represents a substantial expansion from the report the Bureau provided to Congress in May of 2005, and from a briefing the Bureau provided to customers in mid-December of that year.

We greatly appreciate the subcommittee's interest in this issue, and look forward to working with you to address this situation in a manner that maintains the appropriate balance between a rational site security policy and an equitable allocation of costs.

SINCERELY,

GEORGE M. CAAN
EXECUTIVE DIRECTOR

Enclosure

*Bureau of Reclamation Building and Site Security Program
July 4, 2006 DRAFT*

Position Statement

The Colorado River Energy Distributors Association (CREDA), the Northern California Power Agency (NCPA), the Sacramento Municipal Utility District (SMUD), the Washington Public Utility District Association (WPUDA), the Mid-West Electric Consumers Association (Mid-West), the Northwest Public Power Association (NWPPA), the National Water Resources Association (NWRA), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA), the Family Farm Alliance (FFA), the CVP Water Association, the Upper Colorado River Commission and the four Upper Colorado River Basin States (collectively "Parties") believe that Congress should expressly authorize oversight of the Bureau of Reclamation's (BOR) Building and Site Security program to ensure accountability to Congress and provide cost certainty to funding stakeholders through an equitable, durable allocation of reimbursable costs.

BACKGROUND

The Parties believe that security measures instituted at Bureau of Reclamation Facilities as a response to the attacks of 9/11 should be the cost responsibility of the United States Government and should be funded through appropriated, non-reimbursable dollars. The Parties have worked diligently with Congress, the Administration, and other stakeholders over the past five years on this issue.

The protection of these facilities benefits all project beneficiaries, as well as the public. If power facilities were not part of the project there would still be substantial security cost investments. If a portion of security costs is to be a repayment responsibility of the power and water customers it should be based on a fair share of the costs with some level of certainty that these costs will remain reasonable, stable and appropriate.

In its proposed FY 2006 budget as well as discussions with the Parties, the Bureau of Reclamation (BOR) indicated that only the costs of guards and patrols would be reimbursable, and that the costs of facility fortification would remain non-reimbursable. However, in its 2006 Report to Congress (issued in March), the costs of "facility fortification upgrades"¹ are also listed as reimbursable. The practical effect of this approach is that ALL costs at some point are reimbursable. Not only is this inconsistent with stated BOR direction, it is inconsistent as well with the title of the report ("Reimbursement of Security Guard and Patrol Costs on Bureau of Reclamation Facilities").

The Parties believe that authorizing legislation is necessary to ensure appropriate Congressional oversight and to provide some certainty to the funding stakeholders in terms of a fair, durable and equitable allocation of costs.

¹Report to Congress "Reimbursement of Security Guard and Patrol Costs on Bureau of Reclamation Facilities", February 2006, page 5.

The Parties take no position as to the mechanism used to generate funds that are not funded through reimbursable revenues.

LEGISLATIVE PRINCIPLES

Authorizing legislation should include the following essential features:

1. BOR will report annually to the House and Senate Committees on Homeland Security, Resources and Appropriations on security actions/activities taken in the prior fiscal year and proposed for the upcoming fiscal year and the sources and expected sources of reimbursable and nonreimbursable funding for each type of action.
2. The capital cost of security enhancements or fortifications (“hardening”), including the operation, maintenance and replacement of such enhancements or fortifications, shall continue to remain non-reimbursable.
3. Funding stakeholders to reimburse costs of Guards and Patrols at National Critical Infrastructure (NCI) Facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million², indexed for inflation.
4. Such reimbursable funds to be spent only on Guards and Patrols at NCI facilities and allocated among NCI Facilities in the same delineation as allocated in FY 2006.³
5. BOR is authorized to enter into bilateral contractual arrangements with funding stakeholders, if stakeholders are willing to do so, in lieu of seeking appropriated funds for Guards and Patrols.
6. In the event of a change in the level of national security threat, BOR will immediately notify Congress and with the funding stakeholders seek approval of Congress to adjust the reimbursable costs for Guards and Patrols until such time as the threat level changes.
7. BOR must facilitate appropriate actions to allow funding stakeholder review, input on and management of work program elements, including security enhancements, on at least a five-year planning horizon, detailed by pre- and post-9/11 and by category (fortification, guards and patrols).

Statement submitted for the record by the Colorado River Energy Distributors Association (CREDA)

CREDA appreciates the opportunity provided to its Executive Director, Leslie James, to accompany Mr. Jay Moyes as a witness in the above-referenced hearing. Following are our comments for the record of that hearing. In addition, attached hereto is a set of principles related to Reclamation’s site security program, which have been endorsed by several organizations. The principles continue to be noted as “draft” as we welcome the opportunity to continue to work with the Agency and Congress to address the concerns associated with this program, its oversight and funding.

By way of background, CREDA is a non-profit, regional organization representing 155 consumer-owned, non-profit municipal and rural electric cooperative utilities, political subdivisions, irrigation and electrical districts and tribal utility authorities that purchase hydropower resources from the Colorado River Storage Project (CRSP). CRSP is a multi-purpose federal project that provides flood control; water storage for irrigation, municipal and industrial purposes; recreation and environmental mitigation, in addition to the generation of electricity. CREDA was established in 1978 and serves as the “voice” of CRSP contractor members in dealing with Reclamation regarding its programs, including resource availability and affordability issues.

CREDA members serve over four million electric consumers in six western states: Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming. CREDA’s member utilities purchase more than 85 percent of the power produced by the CRSP.

Following the September 11, 2001 terrorist attacks, Reclamation initiated an aggressive program to enhance the security of the federal dams it owns and operates to protect against possible attacks. Based on World War II Congressional precedent and internal analysis by the Department of the Interior, the Commissioner of Reclamation issued an administrative decision in 2002 that the costs of increased security measures should be a federal obligation, non-reimbursable by project beneficiaries.

Congress approved \$28.4 million in funding for security costs in the FY 2003 Energy and Water Development Appropriations and another \$25 million in

²Id, page 1.

³Id, page 11.

supplemental appropriations. In FY 2004, Congress approved another \$28.5 million for increased security. Although CREDA expressed concerns at the time about the increasing level of these costs, its members and other federal power customers were shielded by the Commissioner's administrative determination.

The following year, however, the Office of Management and Budget directed Reclamation to change its position and to recover a portion of the increased security costs from customers. Thus, in FY 2005, the Administration's budget directed Reclamation to recover \$12 million from entities that benefit from the multi-purpose projects. Of that amount, Reclamation determined that 94 percent would be recovered from power customers alone.

Because OMB's directive was in conflict with previous legislative precedent, and because we did not think it was fair for power users to bear 94% of the reimbursable costs, CREDA and other federal power customers objected. Further, power users noted that Bureau's decision to allocate a majority of the reimbursable costs to power users was not based on any objective or risk analysis of the benefits of the security upgrades.

In response to these objections, Congress, in the report accompanying the FY 2005 Energy and Water Development Appropriations Act, noted the dramatic increase in security needs and corresponding costs at Reclamation facilities post 9/11 and found that Reclamation's security posture "will not likely approach pre-September 11, 2001 levels for many years, if ever." The Conferees then underscored their concern about the reimbursability of security costs by directing Reclamation report to Congress no later than May 1, 2005, with a breakout of planned reimbursable and non-reimbursable security costs by project, by region.

In addition to the report, the conferees directed Reclamation "not to begin the reimbursement process until Congress provides direct instruction to do so." Even though Reclamation was given this specific direction, then-Commissioner John Keys, in his July 19, 2005 testimony before this Subcommittee, stated Reclamation's intention to make FY 2006 guards and surveillance costs reimbursable and that "New legislation is not needed to implement this policy." In effect, Commissioner Keys was informing Congress that Reclamation did not intend to abide by the FY 2005 report language.

Reclamation's May 2005 Report indicated its intent, in the future, to collect the costs of all guards and patrols from project beneficiaries, based on the existing project cost allocations for operation and maintenance (O&M). In the CRSP, this would require about 95% of the costs to be borne by the power customers. Again, CREDA and others objected, citing in particular the inequity of allocating such a large share of the costs to power alone.

In the FY 2006 Energy and Water Development Appropriations Act, Congress directed that \$10 million of the \$18 million Reclamation requested for guards and patrols be provided by reimbursable funding. In the accompanying report, Congress stated that it agreed that ALL project beneficiaries that benefit from an enhanced security posture at Reclamation facilities should pay a share of the costs and directed that another report be provided to Congress within 60 days, delineating "planned security costs by project prorated by all project purposes."

CREDA believes that this direction means that Reclamation must allocate reimbursable costs among all project purposes. Unfortunately, Reclamation does not agree with this interpretation and, in its March 2006 report to Congress, it proposed an allocation of reimbursable costs according to the O&M formula for each project, NOT according to all project purposes, as Congress directed.

In addition, the March 2006 report indicates that Reclamation now proposes to include "facility fortification upgrades" as a reimbursable cost. This additional obligation, in essence, makes everything reimbursable at some point. The March 2006 report is an expansion of the scope of reimbursable costs that differs from what Reclamation told Congress in May 2005, and from what it told CREDA in mid-December 2005.

CREDA believes that the historic rationale established in the 1942 and 1943 Interior Department Appropriation Acts for treating costs of increased security at multi-purpose federal projects as non-reimbursable obligations of the federal government is still valid. Further, we have repeatedly expressed concerns to Reclamation about the security cost program's lack of information and transparency, lack of objective criteria, lack of spending controls and inequitable allocation of costs, and lack of Congressional authorization. Despite some initial positive signals, CREDA no longer believes that it is possible to reach an equitable workable solution without further direction from Congress.

For that reason, CREDA believes that Congress should expressly authorize Reclamation's site security program to ensure accountability to Congress and to provide

cost certainty to funding stakeholders through an equitable, durable allocation of costs.

Such legislation should:

1. Direct Reclamation to report annually to the House and Senate Committees on Homeland Security, Resources and Energy and Natural Resources, and Appropriations on security actions and activities undertaken in the prior fiscal year and proposed for the upcoming fiscal year and the sources and expected sources of reimbursable and non-reimbursable funding for each action;
2. Provide that funding stakeholders will reimburse costs of guards and patrols at National Critical Infrastructure (NCI) facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million, indexed for inflation;
3. Specify that such reimbursable funds be spent only on guards and patrols at NCI facilities and allocated among NCI facilities in the same manner as they were allocated by Reclamation in FY 2006;
4. Provide that, in the event of a change in the level of national security threat, Reclamation will immediately notify Congress and, with funding customers, seek approval of Congress to adjust the reimbursable costs for guards and patrols until such time as the threat level changes;
5. Require the Bureau to allow stakeholder review and input on work program elements of the entire security cost program on at least a five-year planning horizon, detailed by pre- and post-9/11 and by category (e.g., fortification, guards and patrols, etc.)

We note that CREDA, Reclamation and the Western Area Power Administration that markets CRSP power, have a long history of collaborative, cooperative decision making on a range of operational and cost issues. We regret that we have been unable to resolve our concerns about the site security program with Reclamation with the same level of success. Perhaps this is due to the "national security" nature of the issues, which may prevent Reclamation from working as openly as it usually does with its water and power customers.

CREDA shares Reclamation's concerns about the security of its multi-purpose facilities. However, the power users also need certainty and stability with regard to the cost of those security enhancements. We have been unable to achieve that certainty and stability to date; for that reason, we are requesting that Congress formally authorize the program, with specific oversight and cost safeguards for project users. We are confident and secure in the level of action that the Bureau has taken to protect taxpayer assets from attack. However, since we have partnered with the Bureau to provide funding for these priorities, we deserve some cost certainty, a seat at the table and a real ability to impact the decision-making process as this indispensable program goes forward.

Thank you for including these comments in the formal record.

Leslie James
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BUREAU OF RECLAMATION BUILDING AND SITE SECURITY PROGRAM

June 15, 2006 DRAFT

POSITION STATEMENT

The Colorado River Energy Distributors Association (CREDA), the Northern California Power Agency (NCPA), the Sacramento Municipal Utility District (SMUD), the Washington Public Utility District Association (WPUDA), the Mid-West Electric Consumers Association (Mid-West), the Northwest Public Power Association (NWPPA), the National Water Resources Association (NWRA), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA), and the Family Farm Alliance (FFA), (collectively "Parties") believe that Congress should expressly authorize oversight of the Bureau of Reclamation's (BOR) Building and Site Security program to ensure accountability to Congress and provide cost certainty to funding stakeholders through an equitable, durable allocation of reimbursable costs.

BACKGROUND

The Parties believe that security measures instituted at Bureau of Reclamation Facilities as a response to the attacks of 9/11 should be the cost responsibility of the United States Government and should be funded through appropriated, non-reimbursable dollars. The Parties have worked diligently with Congress, the Administration, and other stakeholders over the past five years on this issue.

The protection of these facilities benefits all project beneficiaries, as well as the public. If power facilities were not part of the project there would still be substantial security cost investments. If a portion of security costs is to be a repayment responsibility of the power and water customers it should be based on a fair share of the costs with some level of certainty that these costs will remain reasonable, stable and appropriate.

In its proposed FY 2006 budget as well as discussions with the Parties, the Bureau of Reclamation (BOR) indicated that only the costs of guards and patrols would be reimbursable, and that the costs of facility fortification would remain non-reimbursable. However, in its 2006 Report to Congress (issued in March), the costs of "facility fortification upgrades"¹ are also listed as reimbursable. The practical effect of this approach is that ALL costs at some point are reimbursable. Not only is this inconsistent with stated BOR direction, it is inconsistent as well with the title of the report ("Reimbursement of Security Guard and Patrol Costs on Bureau of Reclamation Facilities").

The Parties believe that authorizing legislation is necessary to ensure appropriate Congressional oversight and to provide some certainty to the funding stakeholders in terms of a fair, durable and equitable allocation of costs.

The Parties take no position as to the mechanism used to generate funds that are not funded through reimbursable revenues.

LEGISLATIVE PRINCIPLES

Authorizing legislation should include the following essential features:

1. BOR will report annually to the House and Senate Committees on Homeland Security, Resources and Appropriations on security actions/activities taken in the prior fiscal year and proposed for the upcoming fiscal year and the sources and expected sources of reimbursable and nonreimbursable funding for each type of action.
2. The capital cost of security enhancements or fortifications ("hardening"), including the operation, maintenance and replacement of such enhancements or fortifications, shall continue to remain non-reimbursable.
3. Funding stakeholders to reimburse costs of Guards and Patrols at National Critical Infrastructure (NCI) Facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million², indexed for inflation.
4. Such reimbursable funds to be spent only on Guards and Patrols at NCI facilities and allocated among NCI Facilities in the same delineation as allocated in FY 2006.³
5. BOR is authorized to enter into bilateral contractual arrangements with funding stakeholders, if stakeholders are willing to do so, in lieu of seeking appropriated funds for Guards and Patrols.
6. In the event of a change in the level of national security threat, BOR will immediately notify Congress and with the funding stakeholders seek approval of Congress to adjust the reimbursable costs for Guards and Patrols until such time as the threat level changes.
7. BOR must facilitate appropriate actions to allow funding stakeholder review, input on and management of work program elements, including security enhancements, on at least a five-year planning horizon, detailed by pre- and post-9/11 and by category (fortification, guards and patrols).

¹ Report to Congress "Reimbursement of Security Guard and Patrol Costs on Bureau of Reclamation Facilities", February 2006, page 5.

² Id, page 1.

³ Id, page 11.

IRRIGATION & ELECTRICAL DISTRICTS
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E-MAILED AND MAILED

MAY 31, 2006

Mr. J. Tyler Carlson
Regional Manager
Desert Southwest Customer Service Region
Western Area Power Administration
P.O. Box 6457
Phoenix, Arizona 85005-6457

Re: Proposed rate increase for the Boulder Canyon Project (Hoover Dam) electric service base charge and rates, 71 Fed.Reg. 10664-6 (March 2, 2006); Denial of post-9/11 increased security costs supporting information

Dear Mr. Carlson:

We are writing today to supplement our prior letters and oral testimony in this rate case. The above-cited Federal Register notice proposes a composite rate increase beginning October 1 of this year of 15% in the cost of power generated at Hoover Dam. The notice also promised customers a detailed rate package that identifies the reasons for this large rate increase, which was to be available that same month, i.e., March 2006.

At the March 8 Informal Customer Meeting conducted by your agency, a certain amount of data was distributed to those of us who attended or sent representatives. Included in that data were summary numbers concerning increased post-9/11 security costs. No detail nor supporting information were provided with regard to these increased costs.

At the April 4 Public Information Forum, I had hand delivered to you and to Reclamation's representative letters requesting detailed information about these costs, which comprise a significant portion of the proposed rate increase. I note also that the information provided at the Public Information Forum concerning security costs was even more limited than that provided at the prior Informal Customer Meeting.

On May 2, 2006, the day before the Public Comment Forum at which I needed to testify on behalf of IEDA members about this rate proposal, I received a letter from Reclamation Regional Director Bob Johnson denying me the answers to the questions I had posed in my earlier letter. In that letter, he informed me that I could only find out additional information by signing a nondisclosure agreement, which, of course, would make the information useless for purposes of the rate case and the IEDA members' due process rights. You indicated at the Public Comment Forum that his response was intended also to be a response to my parallel request to you for the information.

At the Public Comment Forum, the transcript of which I have reviewed and is part of the record, I again reiterated the lack of information we had received on security costs, submitted Bob Johnson's letter denying us the information as part of the record and, once again, noted the lack of due process that we had suffered on this important element in this rate process.

I take pains to outline this process for several reasons. First, it is obvious that both Western and Reclamation had ample time during this process to supply the supporting information if either agency chose to do so. That did not happen. Second, the refusal to supply the information works as substantial prejudice on IEDA members and other users of Hoover power because the information the agencies have, but refuse to disclose, is being used to support a significant part of the rate action proposed to be finalized and put in place by October 1. Third, designating the information as "for official use only" and describing it as "sensitive", as those labels are used in Bob Johnson's letter denying us the information, are not grounds for overcoming the due process rights of those paying for Hoover power.

Fundamental rights to due process are denied when a decision is made "upon the strength of evidential facts not spread upon the record". *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U.S. 292, 300 (1937). "This is not the

fair hearing essential to due process. It is condemnation without trial." Ibid. "From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts...on which [the decision maker] rested its conclusion. Not only are the facts unknown; there is no way to find them out." Id. at 302.

The failure to provide the information we requested is also a violation of the requirement of the Administrative Procedure Act that we be allowed to show contrary information or dispute the basis for the calculations of these costs. *Union Electric Company v. Federal Energy Regulatory Commission*, 890 F.2d 1193, 1203 (App. D.C. 1989).

Nor can the agencies hide behind the putative designation "for official use only". The prejudice to the purchasers of Hoover power here is not minimal and there is and has been no need to expedite this process that would make it difficult or impossible for the agencies to provide the information. *Robbins v. United States Railroad Retirement Board*, 594 F.2d 448, 451-2 (5th Cir. 1979), and cases cited therein.

In sum, there is no valid reason for Western and Reclamation not to provide supporting documentation for the numbers being used for increased post-9/11 security costs and the projected Hoover rate beginning October 1. Having failed to do so, the agencies have fatally flawed this process. The record needs to be reopened, the information supplied, and IEDA, its members and other Hoover power users given a reasonable opportunity to comment on these proposed expenditures.

SINCERELY,

ROBERT S. LYNCH
COUNSEL AND ASSISTANT
SECRETARY/TREASURER

cc: William Rinne, Acting Commissioner, Bureau of Reclamation
Robert W. Johnson, Regional Director, USBR
Mike Hacskaylo, Administrator, Western Area Power Administration
IEDA Members

NATIONAL WATER RESOURCES ASSOCIATION
3800 NORTH FAIRFAX DRIVE, SUITE #4
ARLINGTON, VIRGINIA 22203
JULY 6, 2006

The Honorable George Radanovich
Chairman
House Water & Power Subcommittee
1522 Longworth House Office Building
Washington, D.C. 20515

The Honorable Grace Napolitano
Ranking Member
House Water & Power Subcommittee
1522 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Radanovich and Ranking Member Napolitano:

The National Water Resources Association (NWRA), appreciates the opportunity to submit the following comments for the record of the June 22, 2006 Water and Power Subcommittee hearing on the Bureau of Reclamation's site security program.

NWRA is a nonprofit federation of associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource—WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

NWRA's views were represented at the hearing by Mr. Richard Erickson, Secretary-Manager of the East Columbia Basin Irrigation District, Othello Washington. NWRA fully agrees with Mr. Erickson's remarks. As summarized by Mr. Erickson, we do not dispute the need to defend important Bureau of Reclamation facilities. However, we believe the protection of national critical infrastructure facilities should be a federal role, not a local role.

NWRA believes that the historic rationale established after the attacks on Pearl Harbor for treating the costs of increased security at multi-purpose federal projects as non-reimbursable obligations of the federal government is still valid. NWRA is concerned with the policy change that occurred in Fiscal Year 2005 appropriations where the Bureau sought for the first time to make the enhanced guards and patrols costs a reimbursable expense.

Bureau of Reclamation facilities are multi-purpose projects throughout the West that serve critical roles in water supply, flood control, electric power development, fish and wildlife protection, and recreation. An attack on Bureau facilities could cause catastrophic damage to surrounding and downstream areas, jeopardize lives, cause wide-spread power outages, and cripple the economy. Water and power would only be a fraction of the loss in the event of an attack on one of these facilities, yet the Bureau is requesting that water and power customers pick up the entire tab for securing these facilities.

NWRA is troubled by the Bureau's shifting site security policy which included for the first time this year, a charge to water and power customers for "facility fortification upgrades". NWRA believes that it is time for Congress to officially authorize the Bureau's site security program. Without such authorization, there will remain uncertainty and instability for water users throughout the West. NWRA believes that officially authorizing the program will strike the correct balance between defending our nation's critical infrastructure and ensuring that stakeholder interests are appropriately addressed.

NWRA has endorsed the following set of principles for legislation as drafted by our member association, the Colorado River Energy Distributors Association. The principles call for the following to be included in federal legislation:

1. BOR will report annually to the House and Senate Committees on Homeland Security, Resources and Appropriations on security actions/activities taken in the prior fiscal year and proposed for the upcoming fiscal year and the sources and expected sources of reimbursable and nonreimbursable funding for each type of action.
2. The capital cost of security enhancements or fortifications ("hardening"), including the operation, maintenance and replacement of such enhancements or fortifications, shall continue to remain non-reimbursable.
3. Funding stakeholders to reimburse costs of Guards and Patrols at National Critical Infrastructure (NCI) Facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million, indexed for inflation.
4. Such reimbursable funds to be spent only on Guards and Patrols at NCI facilities and allocated among NCI Facilities in the same delineation as allocated in FY 2006.
5. BOR is authorized to enter into bilateral contractual arrangements with funding stakeholders, if stakeholders are willing to do so, in lieu of seeking appropriated funds for Guards and Patrols.
6. In the event of a change in the level of national security threat, BOR will immediately notify Congress and with the funding stakeholders seek approval of Congress to adjust the reimbursable costs for Guards and Patrols until such time as the threat level changes.
7. BOR must facilitate appropriate actions to allow funding stakeholder review, input on and management of work program elements, including security enhancements, on at least a five-year planning horizon, detailed by pre- and post-9/11 and by category (fortification, guards and patrols).

We greatly appreciate the Subcommittee's interest in this very important issue and look forward to working with you to draft legislation which would provide more transparency and certainty for water users throughout the West, while ensuring that the nation's critical infrastructure is safe and secure for all beneficiaries. Thank you for time on this issue.

SINCERELY,

THOMAS F. DONNELLY
EXECUTIVE DIRECTOR

**Statement of The Honorable Cathy McMorris, a Representative in Congress
from the State of Washington**

Thank you, Mr. Chairman.

The terrorist attacks of 9/11 reminded everyone that we must make Homeland Security a priority in order to keep the Nation and our communities safe. This includes protecting the dams and power plants throughout the West that are critical to our economy and culture.

I know firsthand about the importance of protecting facilities like Grand Coulee Dam. This multipurpose dam is a tremendous asset to the Pacific Northwest. Just as FDR envisioned, Grand Coulee has provided flood control, water, power and recreation to help win World War II and fuel the economy in modern times.

No one will disagree that we need to manage and protect assets like Grand Coulee Dam from future terrorist attacks. I am concerned, however, about how the Bureau of Reclamation is balancing the protection of this National Treasure on the backs of our water and power consumers.

Power rates in the Pacific Northwest have increased substantially since 2001, yet Reclamation wants to add more costs to our power customers by imposing site security costs despite the fact that Grand Coulee benefits the general public. To make matters worse, the agency lacks transparency in these costs and there is no certainty on whether these costs will spiral out of control.

I am concerned that the uncertain costs and additional expenses from Reclamation's security program will translate to increased rates that will further hurt farmers, business owners and families who are already paying 30% of their electric bills to protect endangered salmon. Everyone wants to do their part for homeland security, but Reclamation is imposing a "pay, pay, patriotism" policy on certain folks, and that's not right.

I look forward to working with Reclamation and its water and power customers to find a win-win solution that will protect our water and power infrastructure and continue to provide reliable and affordable water and electricity.

Thank you.

**Statement submitted for the record by the
Northern Colorado Water Conservancy District**

INTRODUCTION

The Northern Colorado Water Conservancy District (NCWCD) was created by decree of the Weld County District Court in September 1937 as the first water conservancy district in the State of Colorado. As can be seen on the accompanying map, the NCWCD is located along the northern front range of Colorado, extending from the City and County of Broomfield and Fort Lupton on the south, to north of Fort Collins and Greeley on the north, and then extending northeastward along the South Platte River to the Colorado/Nebraska state line. The NCWCD encompasses parts of eight counties and includes approximately 1.6 million acres within its boundaries, including about 720,000 acres of farmland. The constituency population of the NCWCD is approximately 585,000 people.

The area within NCWCD boundaries has historically been water-short because of the region's semi-arid climate and the significant demands for water in the region for agricultural, domestic, municipal, and industrial uses. Settlers moved into this area in the mid-1800s with the area's water resources being first placed to beneficial use for irrigation purposes in 1859. The water resources provided by the South Platte River and its tributaries became over-appropriated as early as the turn of the 20th century. Continued growth and development in this region over the past 100 years has exacerbated this water-short situation to a point where water supply planning and management of available water supplies is critical to continued economic health and sustainability.

The impetus for the creation of the NCWCD was to serve as the sponsoring agency to contract with the United States, through the Bureau of Reclamation (Reclamation), for the design, construction, operation, and maintenance of the Colorado-Big Thompson Project (C-BT Project or "Project"). The C-BT Project provides an extremely valuable and essential supplemental water supply for the constituents of the NCWCD. A brief explanation of the background and history related to the development and operation of the C-BT Project is contained in an attachment to this testimony entitled "Background and History of the Northern Colorado Water Conservancy District and the Colorado-Big Thompson Project."

EVOLUTION OF DEMANDS

The area included within the boundaries of the NCWCD in 1937 contained a constituency population of approximately 125,000, compared to the current population of 585,000. Growth experienced within NCWCD boundaries has impacted the demand for, and use of, C-BT Project water. In 1957, 85 percent of the C-BT Project water allotment contracts issued by the NCWCD were owned by agricultural interests. Today, 62 percent of the Project's allotment contracts are owned by municipal, domestic, and industrial interests. NCWCD's free-market ownership transfer and rental systems have allowed the project to adapt to changing needs over its nearly 50 years of successful operations. Transfers of Project water from agricultural use to municipal or domestic use has proven to be the "water of choice" to supply the growth experienced within NCWCD's boundaries—a trend that will continue until there is no water left that has not already been transferred. At that time, there will be a significant increase in the need to develop additional water supply projects and in the conversion of native water rights used for agricultural purposes to municipal and domestic uses.

Studies conducted by the Colorado Water Conservation Board indicate that future additional domestic, municipal, and industrial demands within the South Platte River Basin in Colorado could cause the dry-up of an estimated 250,000 acres of irrigated farmland within the South Platte River Basin in Colorado downstream of the Denver metropolitan area to provide supplies to meet these future demands. Most of the lands which would be dried-up are within the boundaries of the NCWCD.

EVOLUTION OF OPERATION AND MAINTENANCE REQUIREMENTS

The facilities of the C-BT Project were initially divided into three categories, namely, single-purpose water conveyance facilities, single-purpose power facilities, and multi-purpose facilities. The facilities of the C-BT Project are displayed on the attached map.

The single-purpose water conveyance facilities are those facilities used only to move water from the east slope distribution facilities of the C-BT Project, primarily Carter Lake Reservoir and Horsetooth Reservoir, to the C-BT Project allottees. Since 1957 when the C-BT Project went into full operation, the NCWCD has funded and performed the operations and maintenance activities of the single-purpose water conveyance facilities. In 2000, title to the single-purpose water conveyance facilities north of Horsetooth Reservoir were transferred from Reclamation ownership to the NCWCD. House Bill H.R. 3443, currently under consideration by the House of Representatives and the Senate, contemplates the transfer of title for the single-purpose water conveyance facilities south of Carter Lake Reservoir from Reclamation ownership to the NCWCD. Once title to the single-purpose water conveyance facilities south of Carter Lake Reservoir are transferred, NCWCD will have title to all single-purpose water conveyance facilities and will continue to have sole responsibility for the funding and execution of operations and maintenance (O&M) activities for those facilities.

Single-purpose power facilities are the power plants and the ancillary facilities of the C-BT Project needed for the generation of hydro-electric energy. Reclamation has always operated and maintained the single-purpose power facilities, with all the resulting capacity and energy being marketed by the Federal Government. Since 1977, The Western Area Power Administration (WAPA) has been responsible for the marketing of the hydro-electric energy generated by the C-BT Project. All power generation revenues remain with the Federal Treasury.

Any facility of the C-BT Project that is not classified as a single-purpose water conveyance facility or a single-purpose power facility is classified as a multi-purpose facility, i.e. facilitating both the delivery of water and the generation of power. Costs for the multi-purpose facilities are shared evenly by NCWCD and the Federal Government through the auspices of either Reclamation or WAPA. From the time that the C-BT Project was put into operation in the mid-1950's until 1986, Reclamation employees manned the majority of the multi-purpose facilities. In 1986, 1987, and 1989, O&M responsibilities for the majority of the multi-purpose works were transferred to NCWCD under contract between Reclamation and the NCWCD. Before 1986, the majority of the O&M expenses for the multi-purpose works were incurred by Reclamation and WAPA. After 1987, the majority of the O&M expenses for the multi-purpose facilities were incurred by NCWCD. In either case, when it came time to reconcile the charges, Reclamation, WAPA and the NCWCD were given credit for the expenses that each entity incurred while operating or maintaining the multi-purpose facilities during the fiscal year under consideration.

In Fiscal Year (FY) 2005, NCWCD's total expenses associated with the O&M activities of the multi-purpose works were \$2,734,200. Reclamation's total expenses in FY 2005 associated with O&M of the multi-purpose facilities were \$3,863,700. The

NCWCD is obligated to pay, in advance of the fiscal year, one-half of Reclamation's anticipated expenses for O&M of the multi-purpose facilities for the coming fiscal year. On the other hand, NCWCD must wait until the end of the fiscal year to collect from Reclamation one-half its expenses associated with NCWCD's O&M of the multi-purpose works.

SECURITY ACTIVITIES AND COSTS

The two elements of Reclamation's security activities with respect to the C-BT Project are guards and patrols, and site security. Site security is the structural and procedural changes that Reclamation is implementing at its facilities to increase the level of security.

GUARDS AND PATROLS

Following September 11, 2001, Reclamation increased the security levels at all C-BT Project facilities. For a period of time following September 11, 2001, Reclamation and NCWCD employees provided 24-hour security patrols at all facilities of the C-BT Project. As the situation calmed, 24-hour patrols at all facilities were suspended, particularly on the single-purpose water conveyance facilities. Later, Reclamation lowered its patrol requirements and determined that NCWCD staff could satisfy Reclamation's patrolling requirements during normal, daylight working hours by NCWCD employees passing by the facilities while performing routine O&M assignments. Reclamation then contracted with the County Sheriff's Offices in Larimer and Grand Counties to provide for security patrols during those times when NCWCD staff are not passing by C-BT Project facilities, i.e., nights and weekends. In Grand County, NCWCD initially provided the Grand County Sheriff with a vehicle to be used for security patrolling until such time as the County could acquire an additional vehicle for use by the officer assigned to patrol C-BT Project facilities. The NCWCD was not reimbursed for the use of this vehicle. Since the time, NCWCD's vehicle needed to be replaced, and Grand County has provided its own vehicle. The rate charged to Reclamation by Grand County was increased when the County stopped using the District vehicle and began using its own vehicle. In the Granby area, Grand County Sheriff's Office personnel communicate via radio directly with NCWCD's control room, which is manned 24/7. Larimer County Sheriff's officers, while on patrol, communicate via radio with Reclamation's Joint Operations Center, which is also manned 24/7.

It is NCWCD understands that Reclamation costs for guards and patrols totaled \$879,000 for FY 2006 for the C-BT Project. Reclamation's projected costs for FY 2007 for guards and patrols at C-BT Project facilities will be lowered to \$687,000. In FY 2006, Reclamation's assessment to irrigation, i.e., NCWCD, will be \$101,825. In FY 2007 the allocation to irrigation/NCWCD will be \$192,000. Under a worst-case scenario, NCWCD's allocation could be treated as all other multi-purpose facilities and the NCWCD's allocation could rise to one-half of the total, or approximately \$345,000. NCWCD will need to add this additional cost allocation into its FY 2006 budget. NCWCD would also have to include such costs in its FY 2007 budget. Reclamation has provided NCWCD with a copy of Reclamation's Security Response Principle, which spells out how NCWCD employees are to react if they encounter questionable activities at any of the C-BT Project facilities. The NCWCD employees are currently complying with Reclamation's Principle.

SITE SECURITY

In addition to security patrols, Reclamation has conducted a series of Vulnerability Assessments at each facility of the C-BT Project, including the multi-purpose facilities. Following the completion of a background check, Reclamation allowed NCWCD's General Manager, Chief Engineer, or Assistant Manager to participate in the Vulnerability Assessments studies and analysis. Reclamation has provided NCWCD with a list of security measures that NCWCD must take at each of the multi-purpose facilities for which the NCWCD has O&M responsibility.

The list of requirements from Reclamation to the NCWCD is a classified document that is 18 pages in length. Reclamation is continuing to refine its Site Security Plans, so the total scope of the required structural and procedural changes is not known at this time. NCWCD has implemented the changes that have been identified by Reclamation. With the exception of installing a security gate at Shadow Mountain Dam and fully implementing a lock control program, the security changes dictated by Reclamation have been completed by NCWCD's O&M staff. The security requirements implemented to date have been accomplished as part of NCWCD's routine operational expenses. The measures already implemented have included such items as securing the operating mechanisms at control structures, and more secure storage of Standard Operating Procedures (SOPs), etc. The new gate at Shadow

Mountain is estimated to cost approximately \$10,000. A lock control program could cost in the range of \$2,000 to \$3,000 per system each year.

NCWCD anticipates that the security measures needed to be implemented when Reclamation completes its Site Security Plans will have more of an operational and financial impact than the measures implemented to date. NCWCD must wait until it has been provided with the Site Security Plan requirements before determining the financial and operational impacts of the additional security requirements.

IMPACT TO NCWCD'S ABILITY TO ABSORB ADDITIONAL C-BT O&M COSTS

Over time, the changes in demands on the C-BT Project have required some facilities to be modified to allow operations on a year-round basis to meet changing demand patterns. As more and more of the C-BT Project yield is being utilized for municipal, domestic, and industrial purposes, the demands for year-round water deliveries have increased and the reliability and security of those deliveries has become increasingly important. This changing demand dictates that the original Project facilities must be modified and modernized to meet current and envisioned needs. Further, as the population along the Front Range of Colorado continues to grow, the extent and density of the population and development also increases. Consequently, to assure that C-BT Project facilities do not pose a threat to public safety, the levels of operation and maintenance associated with Project facilities must meet ever-higher standards—standards that are commensurate to the higher consequences that might be suffered should a Project feature not perform satisfactorily or, in the extreme, fail. An example of this is the need for higher maintenance levels and structural standards on canals to assure the canals do not pose any threat to development that has grown into areas adjacent to, and downstream of, those canals. The same is true for dams associated with C-BT Project reservoirs. The increased population in the vicinity of the C-BT Project facilities has put pressure on the safety and security of single-purpose water conveyance facilities. There is constant pressure to utilize the canal rights-of-way for recreational purposes. The NCWCD and Reclamation have so far prevented public use of canal rights-of-ways; however, that may change in the near future. Maintaining water quality in canals that are open, and protecting the quality of the water in the canal from a vandal or terrorism attack, continues to be an issue and an issue that gets more and more difficult and expensive as each year goes by and population near the canals continue to increase.

NCWCD POSITIONS AND CONCERNS

The NCWCD supports Reclamation's objective of increasing the security of Reclamation-owned water infrastructure. The NCWCD does, however, urge Reclamation to return to the position that the protection of the water infrastructure is a national concern and therefore should be a non-reimbursable cost. NCWCD, as does the National Water Resource Association (NWRA), believes that the historic rational established in the 1942 and 1943 Interior Department Appropriations Acts for treating costs of increased security at multi-purpose federal projects as non-reimbursable obligations of the federal government is still valid.

This is particularly important if project beneficiaries are paying in excess of 50 percent of the project costs. Any increase in costs for security or other reasons associated with the O&M of the C-BT Project are passed along to the NCWCD by Reclamation and must in turn be absorbed by NCWCD, which in most cases, is then passed along to NCWCD allottees. This increased cost for water supplies in turn increases the cost for farmers to produce their products, and the revenues that purveyors of residential and commercial water must collect from their customers. Because of the unknown costs of the implementation of Site Security Plans, it is not possible at this time to accurately predict the magnitude of the impact for increased costs that will be passed along to the water user community. Suffice it to say, at this time, any increased costs will be met with a reluctance to pay. This is especially true when purveyors of residential and commercial water have already had to make investments in additional security measures at their water treatment and distribution facilities to make them more secure. Increased costs will also make it more difficult for the agriculture community to survive economically.

The NCWCD highly values its continuing relationship, indeed its partnership, with Reclamation on the C-BT Project. In fact, NCWCD would be willing to compare the quality of its relationship with Reclamation to the quality of any other district/Reclamation relationship in the western United States. Since entering into the initial Repayment Contract for the C-BT Project with Reclamation in July 1938, the NCWCD's relationship with Reclamation has been, in NCWCD's opinion, mutually beneficial and extremely productive. Without question, it is NCWCD's intent to continue to maintain and improve that relationship.

It is imperative that Reclamation continue to consider the needs of its contractors and those contractors' beneficiaries and constituents. Further, it is imperative that Reclamation implement policies to make the structural and policy changes necessary to ensure the facilities for which they are responsible are more secure, but do so in a manner that respects the impacts that any additional costs will have on the beneficiaries and constituents of Reclamation's water projects.

RECOMMENDATIONS

The C-BT Project and the NCWCD are real-world examples of the evolution taking place west-wide regarding the security of our nation's water infrastructure. The need to modernize existing infrastructure and to develop new water management projects to meet rapidly changing, growing, and evolving needs is very real. The federal government has a significant role in that evolution. This role includes responsibilities associated with federal reclamation projects, as well as realistic interpretation and administration of environmental and other applicable laws, and the implementation of sound site security plans.

It is imperative that the federal government cooperate with local entities to ensure the continuing safety and efficient operation of federal projects to maximize the benefits that can be realized from those projects in the management of available water resources. Actions the federal government should take in cooperation with local entities should include making the costs of providing security at Reclamation projects throughout the 17 western States a non-reimbursable expense, and includes the following:

- Facilitating the modernization of existing infrastructure to meet the changing needs placed on project facilities, and providing the necessary flexibility through modified or new statutes, policies, or regulations that will allow existing infrastructure to be modified and used to meet changing needs, including making them more secure.
- Continued funding of the National Dam Safety Act at adequate levels. This program is essential to ensure dams associated with federal projects meet current dam safety criteria and that those reservoirs can continue to operate through their full operating range, while continuing to provide the benefits the project beneficiaries and the region have historically relied upon.
- Continued federal funding of the increasing security costs being incurred that are associated with required, enhanced security measures being placed on federal water project facilities. These security programs should continue on a non-reimbursable basis.

CONCLUSION

Demands on federal water projects west-wide are changing, as are the demands being placed on existing infrastructure. It is becoming increasingly important that the security of this infrastructure be increased and adequately maintained. Continued security at Reclamation sponsored water project infrastructure is essential if the public is to continue to realize the benefits these projects were intended to provide.

Thank you very much for giving us this opportunity to present NCWCD's experiences and point of view.

Statement submitted for the record by the Sacramento Municipal Utility District

The Sacramento Municipal Utility District (SMUD) presents this testimony to urge Congress to ensure that costs of increased counter-terrorism and site security at hydropower facilities owned and operated by the Bureau of Reclamation (Reclamation) remain an obligation of the federal government and are treated as a non-reimbursable expense. In the event that it is not possible to maintain these security costs as an obligation of the federal government, SMUD urges the adoption of legislation that will provide: 1) effective Congressional oversight of the security cost program; and 2) fair allocation of security costs among water and power interests that are asked to bear a share of reimbursable costs of the program, and downstream beneficiaries of the project flood control benefits that are non-reimbursable.

In FY 2005 and 2006, the President's budget recommended that a significant portion of the costs requested for increased security measures at federal dams be recovered from project water and power customers, not from downstream flood control beneficiaries. Most of the costs proposed to be reimbursed by project beneficiaries are attributable to increased guards and surveillance. Further, the Bureau proposed that the lion's share of those costs be recouped from power customers, even though the primary risk posed by security threats to Reclamation dams is to residents and

developments located downstream of these dams within the inundation areas in the event of a dam failure or severe flood event.

SMUD strongly believes that these counter-terrorism measures are not normal operation & maintenance (O&M) functions and that protection of these multi-purpose facilities, which provide important flood control, water storage for irrigation, municipal and industrial users, recreation and environmental mitigation benefits and power generation, "is in the national interest and, therefore, should remain a federal obligation. The post-911 security costs appear to be intended to mainly protect the multi-purpose facilities, and failure of these facilities would have the greatest impact to the public at large. It is this fact that causes SMUD to question the logic and equity of assigning such a large share of the post-911 security costs to the water and power users.

In its proposed FY 2006 budget as well as discussions with the Parties, Reclamation indicated that only the costs of guards and patrols would be reimbursable, and that the costs of facility fortification would remain nonreimbursable. However, in its March 2006 Report to Congress, Reclamation stated that the costs of "facility fortification upgrades" are also to be listed as reimbursable. The practical effect of this change is that ALL costs at some point will become reimbursable. This is inconsistent with the Reclamation's stated direction, and is a clear expansion of the definition of reimbursable costs.

For FY 2006 only, Congress provided that the costs that stakeholders would be required to reimburse for Guards and Patrols at National Critical Infrastructure (NCI) Facilities cannot exceed the FY 2006 Congressionally-approved level of \$10 million, indexed for inflation. The table below shows a breakdown in FY 2006 security costs and how these costs will be allocated for the Mid-Pacific Region:

FY 2006 ALLOCATION OF SECURITY GUARDS AND PATROL COSTS
-- DAMS and POWERPLANTS FOR THE MID-PACIFIC REGION (in dollars)

	Irrigation	M&I	Commercial Power	Total Reimbursable	Non-Reimbursable	Grand Total
Folsom	656,560	103,074	504,888	1,264,522	1,735,478	3,000,000
Shasta	529,441	83,221	434,276	1,046,939	1,353,061	2,400,000
Keswick	65,402	9,783	241,088	316,273	283,727	600,000
B. F. Sisk	85,636	13,637	1,091	100,364	99,636	200,000
Tracy Pump Plant	43,400	3,976	614	47,990	52,010	100,000
Total	1,380,439	213,692	1,181,957	2,776,088	3,523,912	6,300,000

It is SMUD's understanding that in FY 2006 the funding stakeholders should only have to reimburse costs of Guards and Patrols at the NCI Facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million¹, indexed for inflation, Reclamation wide.

In FY 2006, Reclamation's planned security program totaled \$50.0 million. This total included \$29.1 million for facility fortification and anti-terrorism management and \$20.9 million for guards and patrols. Facility fortification and anti-terrorism management are non-reimbursable activities.

Reclamation has stated that \$18.9 million represented the original reimbursable component of the total \$20.9 million allocated for security in FY 2006. The reimbursable amounts were pro-rated down to the \$10 million limit as required by Congressional legislation.

In the future, if it is not feasible for Congress to declare that all of the post-911 increased security costs are a non-reimbursable federal obligation, SMUD recommends that Congress expressly authorize Reclamation's security program to reflect the following principles, which are supported by a number of federal water and power customers:

1. Reclamation should report annually to the House and Senate Committees on Homeland Security, Resources and Appropriations on security actions/activities taken in the prior fiscal year and proposed for the upcoming fiscal year and the sources and expected sources of reimbursable and nonreimbursable funding for each type of action.

¹Report to Congress "Reimbursement of Security Guard and Patrol Costs on Bureau of Reclamation Facilities", February 2006, page 1.

2. The capital cost of security enhancements or fortifications ("hardening"), including the operation, maintenance and replacement of such enhancements or fortifications, shall continue to be non-reimbursable.
3. Funding stakeholders to reimburse costs of Guards and Patrols at National Critical Infrastructure (NCI) Facilities up to a level that does not exceed the FY 2006 Congressionally-approved level of \$10 million, indexed for inflation.
4. Such reimbursable funds are to be spent only on Guards and Patrols at NCI facilities and allocated among NCI Facilities in the same delineation as allocated in FY 2006.
5. Reclamation is authorized to enter into bilateral contractual arrangements with funding stakeholders, if stakeholders are willing to do so, in lieu of seeking appropriated funds for Guards and Patrols.
6. In the event of a change in the level of national security threat, Reclamation will immediately notify Congress and with the funding stakeholders seek approval of Congress to adjust the reimbursable costs for Guards and Patrols until such time as the threat level changes.
7. Reclamation must facilitate appropriate actions to allow funding stakeholder review and input on and management of work program elements, including security enhancements, on at least a five-year planning horizon, detailed by pre- and post-9/11 and by category (fortification, guards and patrols).

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JULY 5, 2006

The Honorable George Radanovich, Chairman
House Subcommittee on Water and Power
1522 Longworth House Office Building
Washington, DC 20515

The Honorable Grace F. Napolitano, Ranking Member
House Subcommittee on Water and Power
1522 Longworth House Office Building
Washington, DC 20515

Dear Chairman Radanovich and Ranking Member Napolitano:

On behalf of the Washington Public Utility Districts Association (WPUDA), I would like to request that this letter be submitted for the record of the oversight hearing the Subcommittee conducted entitled, "Securing the Bureau of Reclamation's Water and Power Infrastructure: A Consumer's Perspective" on Thursday, June 22, 2006.

WPUDA represents 28 nonprofit, community-owned utilities that provide utility services including electricity, water, sewer and wholesale telecommunications to over 1.7 million people in the State of Washington. Our members serve a total of 831,660 (730,127 residential) electricity customers and provide electricity service to 28 percent of Washington's population. Publicly-owned PUDs and municipal utilities combined serve 49 percent of the state's population, with co-ops and mutuals serving an additional 5 percent.

I would like to endorse the statement of Will Lutgen, Executive Director of the Northwest Public Power Association (NWPPA), who testified at the June 22 hearing. Like the members of NWPPA, the PUDs and the customers we serve are still recovering from the Western energy crisis of 2000-2001. We have been working hard to control Bonneville Power Administration's (BPA's) costs, which are affected by many factors, including drought, fish and wildlife obligations and contracts with the direct service industries as well as enhanced security measures at the Bureau's Grand Coulee Dam.

The PUDs are trying hard to make sure that the cost of the Bureau's security program receives congressional scrutiny and is fair to our ratepayers. Therefore, WPUDA also believes that:

1. Given the national security interests at stake, there is good reason for Congress to decide that funding of post-9/11 Reclamation security measures remain a non-reimbursable federal obligation and be subject to congressional oversight.
2. Congress should authorize appropriate spending parameters for this program. We are concerned that there are no cost controls, authorization ceiling, sunset date, or congressionally-approved parameters to limit or control the amount of money Reclamation can spend for increased security. To date, Congress has appropriated more than \$158 million for Reclamation's increased security activities, and Reclamation is asking for nearly \$40 million more in the President's FY 2007 budget.
3. Project beneficiaries have no meaningful input into discussions about Reclamation's security cost program. We understand that even congressional staff have been denied critical information regarding these costs for national security concerns.
4. Reclamation facilities provide people with flood control, water supply, recreation and other benefits. Therefore, if a portion of the security costs are made reimbursable, they should be allocated fairly among all beneficiaries and capped to ensure accountability.

We, as preference power customers, have been fighting unsuccessfully with the Bureau to have these security costs be fully non-reimbursable that is, remain a federal obligation. Power customers continue to be asked to pay a disproportionate share of the costs, despite the fact that Congress continues to include report language in appropriations bills recognizing that all project beneficiaries benefit and stating that it wants more transparency in what the Bureau is spending its money on.

Further, concerns have been repeatedly expressed to Reclamation about the security cost program's lack of information and transparency, lack of objective criteria, lack of spending controls and inequitable allocation of costs, and lack of Congressional authorization.

Because we no longer believe that it is possible to reach a workable solution in dealing with the agency alone, WPUDA now believes that Congress should expressly authorize Reclamation's site security program to ensure accountability to Congress and to provide cost certainty to funding stakeholders through an equitable, durable allocation of costs.

WPUDA members believe in being responsible stewards and for paying their fair share of the security costs. However, we firmly believe that the burden our power customers are being asked to shoulder for these counter-terrorism measures are disproportionate and above and beyond normal O&M functions.

We greatly appreciate the Subcommittee's interest in this issue, and look forward to working with you to address this situation in a manner that maintains the appropriate balance between a sensible security policy and a fair allocation of costs. Please do not hesitate to contact me with any further questions.

SINCERELY,

STEVE JOHNSON
EXECUTIVE DIRECTOR

