

PENDING LEGISLATION

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

SECOND SESSION

ON

S. 1142/H.R. 2457	S. 2166
S. 1556	H.R. 2786
S. 2074	

FEBRUARY 28, 2018



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The text for each of the bills which were addressed in this hearing can be found on the committee's website at: <https://www.energy.senate.gov/public/index.cfm/2018/2/subcommittee-on-water-and-power022818>

PENDING LEGISLATION

WEDNESDAY, FEBRUARY 28, 2018

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

The Subcommittee met, pursuant to notice, at 10:00 a.m. in Room SD-366, Dirksen Senate Office Building, Hon. Jeff Flake, presiding.

OPENING STATEMENT OF HON. JEFF FLAKE, U.S. SENATOR FROM ARIZONA

Senator FLAKE [presiding]. This hearing of the Senate Energy and Natural Resources Subcommittee on Water and Power will come to order.

The purpose of today's hearing is to receive testimony on a number of important water and power related bills pending before the Subcommittee.

Let me begin by welcoming Senator Cortez Masto as the new Ranking Member of the Subcommittee. It is sure nice to have someone who is also from the Lower Basin. Thank you for being here.

Today, we will hear testimony from the Department of the Interior on five water and power related bills. These bills affect a range of issues including the expiring hydropower licenses, rural power projects, sale of excess Reclamation lands and endangered fish recovery programs.

In addition to testimony from Mr. Mikkelsen, we have received a written statement from FERC on S. 1142 and H.R. 2786 which, without objection, will be placed as part of the record.

[Written statement from FERC on S. 1142 and H.R. 2786 follows:]

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, DC 20426

February 26, 2018

OFFICE OF THE CHAIRMAN

The Honorable Lisa Murkowski
Chairman
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

RE: S.1142, H.R. 2457 and H.R. 2786

Dear Chairman Murkowski:

This letter is in response to a request by the Senate Committee on Energy and Natural Resources for my views on S.1142 and H. R. 2457, two bills to authorize the extension of the time to begin construction of the original licenses for the Red River Lock and Dam No. 3. (FERC Project No. 12756), Red River Lock and Dam No. 4 (FERC Project No. 12757), and Red River Lock and Dam No. 5 (FERC Project No. 12758), and H.R. 2786, a bill to amend the Federal Power Act (FPA) with respect to criteria and process for a proposed project to qualify as qualifying conduit hydropower facility.

S. 1142 and H.R. 2457

On April 14, 2014, the Commission issued an original license authorizing BOST3 Hydroelectric LLC to construct and operate the Red River Lock and Dam No. 3 Project on the Red River in Catahoula Parish, Louisiana. The Commission issued an original license to BOST4 Hydroelectric LLC on February 17, 2017, to construct and operate the Red River Lock and Dam No. 4 Project also to be located on the Red River in Catahoula Parish, Louisiana. On March 8, 2017, the Commission issued an original license authorizing BOST5 Hydroelectric LLC to construct and operate the Red River Lock and Dam No. 5 Project to be located on the Red River in Bossier Parish, Louisiana.

Pursuant to section 31(a) of the FPA, licensees are required to begin construction of the projects within 2 years of the license issuance date. They may be granted one two-year extension of time. The licensee for the Red River Lock and Dam No. 3 has been granted the one two-year extension.

S.1142 and H.R. 2457 would extend the time period during which the licensees for Project Nos. 12756, 12757, and 12758 are required to commence the construction of their applicable project for up to 3 consecutive 2-year periods from the date of the expiration of any extension issued by the Commission for such project.

The last several Commission Chairmen have taken the position of not opposing

legislation that would extend a project's commencement of construction deadline where the extension does not exceed 10 years past the date that the license in question was issued. Where proposed extensions would run beyond that time, there has been a sense that the public interest is better served by releasing the site at issue for other public uses. Because S.1142 and H.R.2457 provide for commencement of construction deadlines that do not exceed 10 years from the date on which the project license was issued, I do not have concerns with the suggested approach.

H.R. 2786

Section 30(a) of the FPA exempts certain conduit hydropower facilities from the licensing requirements of the FPA. The provision requires an entity proposing to construct a qualifying conduit hydropower facility to file with the Commission a notice of intent to construct the facility, including sufficient information to demonstrate the facility meets the qualifying criteria. Once the notice of intent is filed with the Commission, section 30(a)(2)(B) requires the Commission to make an initial determination as to whether the facility meets the qualifying criteria within 15 days of receiving the notice of intent. The qualifying criteria, as defined in Hydropower Regulatory Efficiency Act (HREA) of 2013, include:

- i. the facility is constructed, operated, or maintained for generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit;
- ii. the facility has an installed capacity that does not exceed 5 megawatts (MW);
- iii. on or before the date of the enactment of HREA of 2013 (August 9, 2013), the facility is not licensed under, or exempted from the license requirements.

If the Commission makes an initial determination that the facility meets the qualifying criteria, section 30(a)(2)(B) requires the Commission to publish a public notice of the notice of intent to construct a qualifying conduit facility, giving the public the opportunity to comment on whether the facility meets the qualifying criteria. The FPA further states that if, not later than 45 days after the date of the publication of public notice, no entity contests whether the facility meets the qualifying criteria, the facility shall be deemed to meet the criteria. Although an uncontested facility is automatically deemed to qualify at the end of the notice period, as a matter of general practice the Commission issues a letter confirming that the facility qualifies. If an entity contests whether the facility meets the qualifying criteria, section 30(a)(2)(C) requires the Commission to promptly issue a determination as to whether the facility meets the criteria.

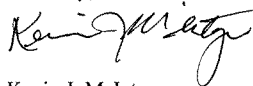
H.R. 2786 would modify the qualifying conduit hydropower facility process in two ways. First, the proposed bill would shorten the comment period for the public, including state and federal resource agencies, from 45 to 30 days. For your information, FERC staff, on average, completes review of qualifying conduit facility applications shortly after the 45-day notice period closes. In fiscal year 2017, Staff processed 22 notices of intent to construct qualifying conduits in an average of 58 days, and has processed four such notices, in an average of 56 days, thus far in fiscal year 2018. The shortened public notice period established by H.R. 2786 could slightly reduce the processing time.

The second modification to section 30 of the FPA would eliminate the existing 5-MW limit on qualifying facilities, thus allowing projects of unlimited capacity to meet the criteria for a qualifying conduit facility. This change could potentially establish a larger subset of hydropower projects that would not be required to be licensed or exempted by the Commission. Section 30, giving the Commission the authority to exempt certain small hydroelectric facilities from the requirements of Part I of the FPA, was added to the FPA in 1978, and since that time, the Commission has issued only a handful of conduit exemptions over 5 MW. Accordingly, I am uncertain how many projects will be affected by this revision.

Should Congress choose to remove the 5-MW ceiling on qualifying conduit hydropower facilities, such that these projects could be of any size, it might also consider removing the ceiling for conduit exemptions. Currently the maximum size of projects for which the Commission may issue conduit exemptions under its existing authority is 40 MW. It is not clear why there should be no limit on the size of qualifying conduit hydropower facilities and yet a 40-MW limit on conduit exemptions.

If I can be of further assistance to you on this or any other Commission matter, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. McIntyre", written in a cursive style.

Kevin J. McIntyre
Chairman

Senator FLAKE. I look forward to hearing testimony on these bills and will turn to Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Good morning and thank you, Chairman Flake, for calling this hearing. I am pleased to be joining the Water and Power Subcommittee as the Ranking Member.

Nevada, like Arizona, as you well know, is home to one of the first Reclamation projects in the West. The Reclamation Act of 1902 established what we now know as the Bureau of Reclamation and subsequently authorized the Truckee-Carson project. One hundred sixteen years later, Nevada is home to the largest reservoir in the nation, Lake Mead, and one of the largest hydroelectric power facilities in the United States, Hoover Dam.

Today's hearing covers a variety of issues facing the Bureau of Reclamation and FERC. For Reclamation, S. 1556, sponsored by Senator Tester, looks to find a path forward for funding completing much needed water supply projects for tribal and rural communities. Senator Gardner's legislation, S. 2166, extends a program that helps to recover four endangered fish species while providing regulatory certainty for water projects in the Upper Colorado and San Juan River Basins. S. 2074 creates a process in which cabin owners can purchase the land around Yorktown Reservoir in North Dakota. We have two other bills that extend Commerce construction deadlines, S. 1142 for hydro projects in Louisiana, similar to several other bills pending in Congress and reduce transaction costs for hydro projects located in conduits with little environmental impact, H.R. 2786.

Mr. Mikkelsen, I look forward to hearing your testimony today. I also look forward to working with you and Senator Flake on the water and power issues that are of great importance to our home states and this nation.

Thank you.

Senator FLAKE. Thank you, Senator Cortez Masto.

Our sole witness today is Mr. Alan Mikkelsen, Senior Advisor to the Secretary for the Interior for Water and Western Resource Issues. Thank you for the testimony you will give to us, and please plan to limit your testimony to five minutes. We have a function that starts on the Senate Floor involving all the Senators at about 10:25, so I think we could probably wrap this up by that time.

Thank you for your attendance here today and with that, we will recognize you for your testimony.

Mr. MIKKELSEN. Thank you, Senator and Ranking Member Cortez Masto, I—

Senator FLAKE. Hold for a second.

I see we have been joined by Senator Wyden. Do you have an opening statement or want to say anything?

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Mr. Chairman, thank you so much. I want to thank you and our Ranking Minority Member, if I could just be very brief.

Mr. Mikkelsen, we want to thank you for being here. As you know, we are pushing very hard to get a workable solution in the Klamath Basin. For folks at home and in rural Oregon, this has been the longest running battle since the Trojan War, and we have got to get it resolved.

Senator Merkley and I have worked very closely together with the Governors of Oregon and California, the tribes, irrigators throughout the Basin, Secretaries of Interior and your agency to find a comprehensive agreement.

So we have gotten close in the past. I thought we were there when I put together a working group that involved folks from your agency, but we have to come up with a truly lasting agreement to resolve those concerns. If we don't, the farmers get hurt, ranchers get hurt, the tribes get hurt and, of course, we set back the effort to protect wildlife in the Basin as well.

This is going to be a very difficult water year. I think all my colleagues in the West know that we are looking at maybe one of the most challenging years since the early 2000s. With low snowpack and a warm winter, irrigators, literally and figuratively, feel the heat.

We have appreciated the fact that you, in particular, have had a great presence in the region. We want to thank you for being on the ground.

I gather my colleagues are going to ask the questions and when they are done, I have a question for you.

But I want to thank the Chairman and the Ranking Minority Member for scheduling a very important hearing for folks in Oregon, who know Mr. Mikkelsen as an individual who really wants to step up and have us finally find a path to a real solution in the Klamath Basin that would be important to Oregonians, but I think would be a model for the country, in terms of bringing Westerners together.

My colleagues, we are all Westerners, and we see this day in and day out and the watch word is "collaboration." That is what our constituents say when we go home in Arizona and Nevada and Oregon, but often it is easier said than done.

I thank the Chairman for the chance to make those remarks, and I will wait for questions.

Senator FLAKE. Thank you, Senator Wyden.

Please proceed.

**STATEMENT OF ALAN MIKKELSEN, SENIOR ADVISOR TO THE
SECRETARY FOR WATER AND WESTERN RESOURCE ISSUES,
U.S. DEPARTMENT OF THE INTERIOR**

Mr. MIKKELSEN. Thank you, Chairman Flake.

I am Alan Mikkelsen, Senior Advisor to the Secretary of the Interior for Water and Western Resource Issues and formerly, Deputy Commissioner at the Bureau of Reclamation. And I am pleased, today, to testify on behalf of the Department of the Interior on three of the bills pending before the Subcommittee today.

First, S. 1556, authorizes the use of designated funds to pay for the construction of authorized rural water projects and for the resolution of claims against the United States related to the use of Indian Tribal land by the United States for the generation of hydro-

power and to underwrite the implementation of Indian Water Rights Settlements. The bill creates a Reclamation Rural Water Construction and Settlement Implementation Fund which includes two separate accounts, both funded with the deposits that would otherwise go into the Reclamation Fund. The total funding would be \$115 million annually for 20 years. The Department supports the goals of encouraging vibrant, rural economies and ensuring safe, reliable sources for drinking water for rural and tribal residents. Rural water projects help to build strong, secure rural communities and are important to our non-federal sponsors. The Administration also continues to strongly support Indian Water Rights Settlements in order to increase opportunities for Indian tribes to develop, manage and protect their water and related resources.

Next, Senate bill 2074 establishes a procedure for the conveyance of Reclamation-owned property around the Jamestown Reservoir to the Stutsman County Park Board. Reclamation has technical modifications to provide additional clarity and protections. This includes recommendations that will ensure that the parcels in question are managed consistently with the Secretary's commitment to protect public lands and increase public access. We look forward to working with the sponsor and the Committee to ensure proposals of this nature preserve access and recreation for future generations to come.

Finally, the Endangered Fish Recovery Program Extension Act, S. 2166, like its House counterpart, would extend both the Upper Colorado River and the San Juan River Basin Recovery Programs. These programs share the dual goals of recovering populations of endangered fish while development continues to meet current and future human needs for water. The programs provide ESA compliance for more than 2,400 federal, tribal and non-federal water projects, consuming 3.7 million acre-feet of water to support municipal, industrial and agricultural water use and related economic development. The Department supports both efforts and does not object to S. 2166's enactment.

Mr. Chairman, these distinct pieces of legislation, significant as they are, are fragments of a larger tapestry of legislative reforms necessary to allow the Bureau of Reclamation to meet its principle goal of delivering reliable water supplies of water and developing a dependable supply of hydropower. Among the many other reforms that are needed, include substantive streamlining of the NEPA process and implementing regulatory reforms. The Department and the Bureau look forward to engaging with this Committee on these important issues.

Mr. Chairman, that concludes my remarks. I'm happy to answer any questions on any of the matters pending before the Subcommittee today.

[The prepared statements of Mr. Mikkelsen follow:]

Statement of Alan Mikkelsen
Senior Advisor to the Secretary for Water and Western Resource Issues
U.S. Department of the Interior
Before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
on S. 1556, a Bill to authorize the Secretary of the interior to use designated funding to pay
for Construction of authorized rural water projects, and for other purposes
February 28, 2018

Chairman Flake, Ranking Member King, and Members of the Subcommittee, I am Alan Mikkelsen, Senior Advisor to the Secretary of Interior for Water and Western Resource Issues, and former Deputy Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 1556, a bill to designate funding to pay for construction of authorized rural water projects and for implementation of Indian water rights settlements.

The Department supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural and tribal residents, but believes federal support for Reclamation rural water projects and for future Indian Water rights settlements should come through discretionary appropriations. Rural water projects help to build strong, secure rural communities and are important to our non-federal sponsors, which is why the President's FY 2019 Budget includes \$34 million for Reclamation's rural water projects. As the bill sponsors and this Committee know, the Congress has, in recent years increased appropriations for the construction of authorized projects. Since 2012, approximately \$181.6 million in additional appropriations have been included for rural water construction projects. The Administration also continues to strongly support Indian water rights settlements in order to increase opportunities for Indian Tribes to develop, manage and protect their water and related resources.

Still, as important as the rural water program is, it must compete with a long list of other priorities within the Budget, including aging infrastructure, environmental compliance and restoration actions, dam safety, and other activities needed to address future water- and energy-related needs. Notwithstanding the importance of rural water projects, current budgetary constraints have limited the ability to make federal investments that match on-the-ground capabilities.

S. 1556 would create the Reclamation Rural Water Construction Fund and a separate Settlement Implementation Fund; two separate accounts with revenues that would otherwise be deposited into the Reclamation fund totaling \$115 million annually for 20 years.

The legislation directs that the first account designate a constant level of mandatory funding for the construction of authorized rural water projects to deliver water to smaller, isolated communities. Similarly, the second account would be structured to designate a constant level of mandatory funds for compensation to resolve Indian tribe claims against the United States related to the use of Indian tribe land by the United States for the generation of hydropower and

to underwrite implementation of authorized Indian water rights settlements, including planning, design and construction of water projects.

It is the Department's belief that federal investments in such projects must recognize ongoing fiscal constraints and the need to make tough choices in prioritizing those investments. The Administration supports the goals embodied by S. 1556 of advancing the economic security of Americans living in rural areas and on tribal lands. Constructing basic water infrastructure projects will not only help to provide the economic and health benefits associated with clean, reliable, drinking water systems that many Americans take for granted, but it would also assist in creating jobs in the short-term through ongoing construction.

Since the 1980s, Congress has authorized Reclamation to undertake the design and construction of specific projects intended to deliver potable water supplies to rural communities located in North Dakota, South Dakota, Montana, New Mexico and the non-Reclamation states of Minnesota and Iowa. These authorized projects exist in communities that have experienced needs for water due to poor quality of the existing supply or the lack of a secure, reliable supply. For example, in rural Montana, some communities have, from time-to-time, been subject to "boil water" orders due to the unsafe conditions of the existing drinking water supplies. In Eastern New Mexico, the communities currently rely on the diminishing Ogallala Aquifer and the current drinking water systems are projected to be depleted within 35 to 40 years. The rural water supply projects authorized for Reclamation's involvement provide a resource to these rural communities, and Congress has authorized federal assistance to these communities.

Across the country, state, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the federal government would have in the past. Constrained federal budgets do not preclude the ability of non-federal parties to move forward with important investments in water resources infrastructure and the Department stands ready to support that effort.

We believe the author's intent is for the funding provided by S. 1556 to be used to achieve earlier completion of authorized water projects and to enable the payment of compensation associated with authorized Indian water rights settlements. Section 103(c) of the bill restricts the availability of designated funds with the intent of not increasing the deficit. The Department supports this commitment to fiscal responsibility. Designated funds could become available in conjunction with an equivalent offset. However, even if an equivalent and acceptable offset is identified, use of those funds must be weighed against other priorities across the federal government, including deficit reduction. As indicated above, the Department believes funding for rural water projects and Indian Water rights settlements should come through discretionary appropriations to enable appropriate annual review and oversight.

Section 103 of S. 1556 provides that, for each fiscal year from 2018 through 2038, \$115,000,000 per year will be deposited into the Fund in addition to interest earned on invested money that is available in the Fund but not utilized for the current withdrawal. Section 104 of S. 1556 limits expenditures from fiscal year 2018 through 2038 from the Fund to not more than \$115,000,000 in addition to interest accrued in that same fiscal year, with an allowance for the use of funds carried over from prior years. The bill further divides the total figure of \$115 million between

the two accounts – \$80 million for the Rural Water Project Account, and \$35 million for the Reclamation Infrastructure and Settlement Implementation Account.

Specific to the Rural Water Project Account, S. 1556 provides that if a feasibility study has been submitted to the Secretary by February 27, 2015, and those rural water projects are subsequently authorized by Congress, they may be eligible to receive funding through the Reclamation Rural Water Project Account.

With respect to its rural water program, Reclamation's first goal is to advance the construction of rural water projects that meet the most urgent water supply needs in the shortest amount of time, given our current budget constraints. The second goal is to give priority to rural water projects that address Tribal water supply needs.

Within the context of the above goals, Reclamation recognizes that current and projected funding levels may not be sufficient to expeditiously complete the federal funding portion of every project and that it must prioritize the allocation of available funding. Reclamation applies funding criteria to guide decision-making and maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities in as short a period as possible, and to reflect the diverse needs and circumstances facing each individual project. The water construction prioritization criteria identified by Reclamation, and reflected in Section 202(b)(2) of S. 1556, take into account the following:

- Is there an urgent and compelling need for potable water supplies in the affected communities?
- How close is the Project to being completed?
- What are the financial needs of the affected communities?
- What are the potential economic benefits of the expenditures on job creation and general economic development in the affected communities?
- What is the ability of the Project to address regional and watershed level water supply needs?
- Does the project minimize water and energy consumption and encourage the development of renewable energy resources such as wind, solar, hydropower elements?
- Does the project address the needs of tribal communities, tribal members, and the other community needs or interests?

The criteria would also take into account "such other factors as the Secretary determines to be appropriate to prioritize the use of available funds."

Regarding the second account, for Indian water rights settlements, Title III of S. 1556 further defines the Reclamation Infrastructure and Settlement Implementation Account, stipulating that no less than \$35 million, plus accrued interest, be expended to provide compensation to resolve congressionally authorized Indian water rights settlements and to complete planning, design and construction of authorized water projects associated with those settlements. The Department assesses these needs annually, through the budget process.

The Department continues to strongly support Indian water rights settlements grounded in the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements have the potential to resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users with a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve environmental health conditions on reservations.

To date, Congress has enacted 30 Indian water settlements, a good start in addressing the need for reliable water supplies in Indian country. There are over 280 federally recognized tribes in the West alone (excluding Alaska), and we are seeing increased interest in Indian water rights settlements east of the 100th Meridian. Many of these tribes need: clean, reliable drinking water; repairs to dilapidated irrigation projects; and the development of other water infrastructure necessary to bring economic development to reservations.

Once a settlement is enacted by Congress, and appropriations are authorized to implement it, primary implementation responsibilities fall to Reclamation, the Bureau of Indian Affairs (BIA), the relevant tribe or tribes, and other agencies based on the terms of the settlement enacted by Congress. To support these efforts, the President's FY 2019 Budget for the Bureau of Reclamation requests \$133.7 million for Indian water rights settlements (\$6.4 million for negotiation and legal support and \$127.3 million for implementation).

With some notable recent exceptions, such as the \$180.0 million in mandatory funding authorized by P.L. 111-291 and directed to the Navajo-Gallup Water Supply Project between the fiscal years of 2012-2014 and mandatory funding authorized to partially fund several settlements authorized in the Claims Resolution Act of 2010, water rights settlements generally have been funded through the Department's discretionary appropriations. Work to be performed under the settlements by Reclamation has been funded within Reclamation's budget, and trust funds and other settlement costs generally have been funded within the BIA's budget, but all Departmental agencies have been asked from time to time to expend discretionary funds from their budgets on implementation of these water settlements. In these cases, the Administration has worked successfully with Congress to secure funds to continue to implement and complete signed settlements. The Administration will continue to work with Congress on these issues.

In conclusion, I want to underscore the importance of these settlements to the Department. Indian water rights settlements can resolve uncertainty, produce critical benefits for tribes and bring together communities to improve water management practices in some of the most stressed water basins in the country. The Department believes that we must be cognizant of and responsive to the many competing needs for limited budgetary resources, particularly given widespread drought throughout much of the West.

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

Statement of Alan Mikkelsen
Senior Advisor to the Secretary for Water and Western Resource Issues
U.S. Department of the Interior
Before the
Committee on Energy and Natural Resources
Water and Power Subcommittee
U.S. Senate
on S. 2074, A bill to establish a procedure for the conveyance of certain Federal property
around the Jamestown Reservoir in the State of North Dakota.
February 28, 2018

Chairman Flake, Ranking Member King, and Members of the Subcommittee, I am Alan Mikkelsen, Senior Advisor to the Secretary of Interior for Water and Western Resource Issues, and former Deputy Commissioner of the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 2074, a bill to establish a procedure for the conveyance of certain Federal property around the Jamestown Reservoir in the State of North Dakota. The intent of the legislation is to provide a path for current permitted cabin owners and the Stutsman County Park Board to take ownership of certain Federal lands, allowing flexible management of the lands to meet local needs and alleviate the Department's administrative oversight and management of the land.

Before I discuss the Department's views on S. 2074, I wanted to reiterate that during the Secretary Zinke's confirmation hearing, he stated to this Committee that he does not support the wide-scale sale or transfer of Federal lands. Reclamation has technical modifications to recommend to provide additional clarity and protections. We look forward to working with the sponsor and the Committee to ensure proposals of this nature preserve access and recreation for future generations to come.

The Flood Control Act of 1944 authorized construction of Jamestown Dam and Reservoir (Project) as part of the Garrison Diversion Unit, Missouri-Souris Division, Pick-Sloan Missouri Basin Program. Federal lands were acquired for Project purposes which include municipal water supply, irrigation with flood control, and recreation benefits. The Project provided extensive flood control benefits for Jamestown and downstream areas. There are currently two water service contracts associated with the project, one with an individual and one with an irrigation district downstream of the reservoir.

The current management agreement between Reclamation and Stutsman County Park Board for operation and maintenance of the majority of lands around the reservoir includes the area for 71 permitted exclusive use cabins -- 30 occupied year-round, and 41 occupied seasonally (approximately 73 acres), as well as additional lands dedicated to recreation and wildlife management (approximately 4,421 acres). In addition to lands managed by Stutsman County Park Board, Reclamation leases a 6-acre parcel to the North Dakota Game and Fish Department (NDG&F) for their Regional Headquarters. In 2013, Reclamation's Dakotas Area Office (DKAO) requested a fair market appraisal of the rates for the exclusive use cabins be conducted pursuant to the Code of Federal Regulations related to Use of Bureau of Reclamation Land,

Facilities, and Waterbodies (43 CFR 429). As required by Department policy, the appraisals were conducted by the Department of the Interior's Office of Valuation Services for all reservoirs with exclusive use under the administration of DKAO, resulting in the need to raise rates at all areas to recover fair market value. The results of the appraisal were presented to the respective managing partners in 2016.

Title transfer can be an important tool to ensure that management of lands and other real property is carried out by the entities that are best equipped to most effectively manage such property. The Administration recently submitted a legislative proposal which would address this issue more comprehensively which would facilitate title transfer of certain Reclamation facilities to non-Federal entities when such transfers are beneficial.

Section 1(b)(2)(A) of S. 2074 provides for the fair market value of a property to be determined by a local, third party appraiser, valuing the property as unimproved residential property, excluding all improvements. The Department believes that the property should be valued as-is, inclusive of improvements. The Department also recommends clarification of this language to ensure the cost for the third-party appraisal shall be the responsibility of the permittee(s). The permittees should also be made aware that a third-party appraisal would have to comply with federal appraisal standards and procedures as determined by the Office of Valuation Services.

Section 1(c)(3) provides conveyance subject to reversion to the United States of non-recreation lands managed by the Board if no longer used for public access or recreation. As worded in S. 2074, this language warrants clarification to ensure the Department's interpretation is consistent with the author's intent. We suggest simply revising this language to state that the lands conveyed (other than those in the cabin permit area and the North Dakota State Game and Fish Department headquarters area) are to remain available for public use in the future, and if it is determined that these areas are no longer needed for public access or recreation, then the land is subject to reversion to the United States. Given the Secretary's commitment to protecting public lands, the Department encourages what we believe is a shared intention for Stutsman County Park Board to continue to manage the parcels with recreational and public interests in mind.

Section 1(f) of S. 2074 provides that any revenues from a sale of Federal land pursuant to this section shall be made available to the Secretary, without further appropriation, for the costs to the Secretary of carrying out this section, and to conduct deferred maintenance activities relating to the dam in the Jamestown Reservoir. The Department believes that any such revenues should be remitted to the Reclamation fund. In addition, because revenues would not be generated until the properties are transferred to the permittee, as proposed in the bill, Reclamation would need appropriations to complete the surveys and appraisals and other pre-sale activities. In previous legislation to transfer cabin properties, as well as Reclamation's process for Use Authorization requests, it is the responsibility of the permittees/requestor to pay for the required pre-sale work, including all administrative costs to convey Federal property to private individuals/beneficiaries rather than placing this burden on the United States. As written it appears the United States is responsible for the administrative costs and therefore in "net" it receives less than market value for the land. In accord with our prior recommendation to clarify that permittees/requestor pay

for required pre-sale work, we recommend revising this section to clarify that revenues shall be remitted to the Reclamation fund.

Section 1(d)(1) provides liability protection for flood damage to the property of a permittee, the Board, or the State arising out of any act, omission, or occurrence relating to a lot to which a permit applies. As worded, this language does not cover the liability for all property, depending on whether or not it is related to a lot. We suggest replacing the language “a lot to which a permit applies” with “the property of a permittee, the Board, or the State” in order to more clearly cover the liability to the United States.

The Department would be happy to work with the sponsor and the Committee to revise the language based on these recommendations. In addition, we would urge enactment of the Department’s title transfer legislative proposal to address Reclamation title transfer. Our title transfer legislative proposal will streamline the title transfer process, potentially allowing appropriate transfers to take place without subsequent legislation. This concludes my written statement. I am pleased to answer questions at the appropriate time.

Statement of Alan Mikkelsen
Senior Advisor to the Secretary for Water and Western Resource Issues
U.S. Department of the Interior
Before the
Energy and Natural Resources Committee
Subcommittee on Water and Power
U.S. Senate
on S. 2166, the Endangered Fish Recovery Programs Extension Act of 2017
February 28, 2017

Chairman Flake, Ranking Member King, and Members of the Subcommittee, I am Alan Mikkelsen, Senior Advisor to the Secretary of Interior for Water and Western Resource Issues, and former Deputy Commissioner of the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 2166, the Endangered Fish Recovery Programs Extension Act of 2017. The Department provided testimony the House-companion to this bill, H.R. 4465, and our testimony here reflects the same conclusions.

As described below, the Department supports the efforts of both the Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program (Programs) and as such does not object to HR 4465 or S. 2166.

The Programs share the dual goals of recovering populations of endangered fish while water development continues to meet current and future human needs. The Programs' actions provide Endangered Species Act (ESA) compliance for more than 2,400 federal, tribal, and non-federal water projects consuming 3.7 million acre-feet of water to support municipal, industrial and agricultural water use and related economic development. The Programs, initially authorized by Public Law (PL) 106-392, were established under cooperative agreements in 1988 (Upper Colorado) and 1992 (San Juan). The Programs' partners include the states of Colorado, New Mexico, Utah, and Wyoming; the Bureau of Reclamation, Western Area Power Administration, U.S. Fish and Wildlife Service, Bureau of Land Management, National Park Service, and Bureau of Indian Affairs; Native American tribes; environmental organizations; water users; and power customers.

PL 106-392 expressly authorized the use of a maximum of \$6 million per year (indexed for inflation) of Colorado River Storage Project (CRSP) hydropower revenues from Glen Canyon Dam and other CRSP facilities to support the base funding needs of the Programs through 2011. Subsequent legislation extended this authority through 2019. Base funding is used for program management, scientific research, fish population monitoring, fish stocking, control of non-native fish, and operation and maintenance of capital projects.

Section 2 as introduced would extend the authorization to utilize CRSP hydropower revenues at the current level (up to \$6 million per year adjusted for inflation, or approximately \$8.48 million in 2017 dollars) through 2023 to support the base funding needs of the Programs. Section 3 of HR 4465 would also require the Secretary to submit a report to Congress in 2021 that includes a

description of Program accomplishments, expenditures, and status of the four endangered fish species. The report will also project listing status of the fish at the end of fiscal year 2023, identify management activities beyond 2023, and estimate costs of the post-2023 activities.

The Programs are nationally recognized for their cooperative approach to recovering native fish species, avoiding litigation, and providing ESA compliance to federal and non-federal water users. The continued use of CRSP hydropower revenues is critical to ensuring these Programs accomplish their goals. Both Programs have developed strong grassroots support and the bill is unanimously supported by the Programs diverse non-federal partners.

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

Senator FLAKE. Thank you, we appreciate the testimony.

You mentioned in your testimony that the Jamestown Dam and Reservoir were authorized for irrigation, flood control and recreation. Would transferring the cabin lots and other federal land surrounding the reservoir interfere with any of the authorized project purposes, additional benefits like wildlife habitat or current management of the project?

Mr. MIKKELSEN. Mr. Chairman, the proposed legislation would not interfere with any of the current authorized uses, nor the recreational uses that you're referring to.

Senator FLAKE. Okay, thank you.

In Arizona, we have seen firsthand the value of resolving Indian water settlements or disputes through settlements and how this certainty often leads to innovative water management and infrastructure investment. Do you think that the lack of a more certain mechanism to fund Indian water settlements factors into the willingness of the tribes to enter settlement negotiations and the overall success of negotiating these settlement agreements?

Mr. MIKKELSEN. Mr. Chairman, this is a conundrum, frankly, for all of us that are involved in these issues from both the legislative and the administrative positions. We've got a number of Indian water right settlements across the West that have been implemented that we are trying to fund. And I guess, I would just simply point out an example that I'm very familiar with in Montana, the Blackfeet settlement that was just recently enacted.

Senator FLAKE. Yes.

Mr. MIKKELSEN. That settlement provides for a total of about \$600 million that's necessary for implementation. That's supposed to be in place by 2026. Four hundred million of that comes from Bureau of Reclamation and at this point we are appropriating \$10 million a year. And so, if you do the math on that, in 2025 there's going to be a substantial balloon payment that we're going to have to figure out what we're going to do with, how we're going to deal with that.

Senator FLAKE. Alright. Thank you.

It is my understanding that the Upper Colorado River Fish Recovery Program has allowed for continued water and power operations without a single ESA lawsuit being filed in the decade since its development. Can you speak to the success of avoiding litigation and what it means in terms of management on the Upper Colorado for water and power supply and species recovery and the cost savings from avoiding litigation and litigation risk?

Mr. MIKKELSEN. Excuse me. Thank you.

Mr. Chairman, the program has made successful, or I should say, substantial progress and has been successful in restoring and stabilizing the populations of the endangered fish. And we believe the program is much preferable and has been much more successful than what litigation would entail.

As I travel the West doing conflict resolution within litigation, we have winners and losers and, at the end of the day, it's not necessarily the best thing for the resource, even if people win.

And so, I would point to this particular issue as being a real success story. We've been able to recover, or we're substantially on the way to recovering, the Colorado Pike Minnow, the Humpback Chub

and the Razorback Sucker. And we've got the Bony Tail showing great strides in the most recent surveys that we've conducted. And so, you know, from that perspective we believe that the program has been very successful and would like to see it continued.

Senator FLAKE. Alright. Thank you.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you.

Let me just follow up on that.

Can you talk a little bit, Mr. Mikkelsen, about why these programs are important for Reclamation projects?

Mr. MIKKELSEN. This program and other programs like this are important because they are, in essence, negotiated settlements and in these types of settlements we have the opportunity and the ability to protect existing uses to the maximum extent possible. And that provides for much more surety and certainty for all water users as we're going forward with that and with these types of activities.

Senator CORTEZ MASTO. Thank you.

And then Mr. Mikkelsen, let me jump back also to the conversation on the Blackfeet settlement in Montana. I appreciate your comments. I do have concerns about a balloon payment in 2025. How do we solve this problem? Are you working now on a strategy with us or recommendations on how we address this issue for this funding problem because let me just say, as you mentioned in your statement, Congress has authorized 30 negotiated Indian water right settlements, including the Shoshone-Paiute Duck Valley settlement and the Pyramid Lake settlement in my home State of Nevada. So I am curious if you have any ideas on how we solve the problem, the funding problem.

Mr. MIKKELSEN. To define the scope of what we're talking about, as you know, we've got about 30 settlements underway, in negotiation right now. There's been, I think, 32 that have been approved by Congress. There are approximately 225 left to go. And so, just the sheer scope of what we're talking about—

Senator CORTEZ MASTO. Right.

Mr. MIKKELSEN. —means that we should probably be having a serious discussion with policymakers, with the legislature, in trying to resolve and come up with realistic solutions for this.

I don't have any specific proposals to make today, other than to encourage all of us to sit at the table and do the best we can to address the situation in a proactive manner.

Senator CORTEZ MASTO. Thank you.

Let me jump back now to some budget cuts that I am concerned about.

There is a recent Reclamation report that found that based on 2016 funding levels, the six remaining Congressionally-authorized rural water projects would not be completed until well after 2065. It also estimates that by 2065 there will still be a \$1.8 billion balance to complete these projects despite a \$4 billion federal investment, and the President's Fiscal Year 2019 budget also requests \$35 million, down from \$84 million in 2017. This is a 65 percent cut to the rural water programs.

I understand we are in a tough fiscal environment and it is important that we carefully consider what projects are funded, but

how do you reconcile the issue of funding levels being so inadequate that these projects will not be completed until 50 years from now, yet, also proposed cutting funding for rural water projects in your budget?

Mr. MIKKELSEN. You know, I think this is a source of frustration for all of us that work in this arena, but we also have to face the fiscal realities that are before Congress and the Administration at this time. And you know, we will do everything that we can to support these settlements, these rural water programs, as we go forward, but we need to figure out some long-term solutions.

Senator CORTEZ MASTO. Yes.

And isn't it true that the longer we delay these projects, the more expensive they are and they become?

Mr. MIKKELSEN. Certainly.

Senator CORTEZ MASTO. Yes.

Mr. MIKKELSEN. I cannot deny that at all.

Senator CORTEZ MASTO. Alright.

Thank you, Mr. Mikkelsen, I appreciate you being here today.

Senator FLAKE. Thank you.

Senator Hoeven.

Senator HOEVEN. Thank you, Mr. Chairman, for holding this hearing today and also for consideration of my bill, S. 2074.

I know we are tight on time, so I will be brief both in my statement and in my question.

S. 2074 is a result of hard work and constructive meetings among state, local and federal entities. The legislation grew out of meetings between myself and my staff that we have held with homeowners and local officials over the past several years and is modeled after legislation that I introduced last year concerning Lake Patterson in Dickinson, North Dakota. This bill is a result of the stakeholders looking at all aspects of this land conveyance and coming to a workable solution for all of the stakeholders involved.

Construction of North Dakota's Jamestown Dam and Reservoir was authorized under the Flood Control Act of 1944 as part of the Garrison diversion unit, Missouri division Pick-Sloan, Missouri Basin program. The purposes of the project include irrigation and flood control, and provide a municipal water supply as well as recreation benefits.

The Stutsman County Park Board currently has a management agreement with the Bureau of Reclamation for operation and maintenance of the majority of lands around the reservoir. This includes the area for 71 permitted, exclusive use, cabins. Thirty of those cabins are full-time, 41 are occupied part-time.

Additional lands are dedicated to recreation and wildlife management, and there is a parcel of land that is leased to the North Dakota Game and Fish Department.

For almost 70 years cabin owners have worked and invested in enhancing the land and improving the quality of life, not just for themselves and their families but for the public there as well. Over the decades, Stutsman County Park Board has also tried to increase and enhance recreational opportunities and support public accessibility.

Mr. Chairman, I would ask permission and unanimous consent to submit for the record letters of support for S. 2074. The letters

are from the Stutsman County Park Board and the President of the Jamestown Reservoir Cabin Owners Association.

Senator FLAKE. Without objection.

[Letters of support for S. 2074 follow:]

Darin Peterson
300 2nd Avenue NE Suite 207
Jamestown, ND 58401

February 9, 2018

Honorable Ryan Zinke
Secretary of Interior
US Department of Interior
1849 C Street NW
Washington, DC 20240

Re: Jamestown (ND) Reservoir Legislation

Dear Secretary Zinke:

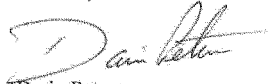
On behalf of the Jamestown (ND) Reservoir Cabin Owners Association Members, I am submitting this letter of support for Senate Bill S2074. We whole heartily support Senator Hoeven's legislation to allow the cabin owners to purchase the lots under their cabins. We support the transfer of land managed by the Stutsman County Park Board to them as well as the transfer of land to the North Dakota Game and Fish Department.

The Jamestown Reservoir Cabin Owners Association represents the 71 cabin owners at the Jamestown, ND reservoir. At our various meetings over this past year, the cabin owners have continually expressed unanimous support of Senator's Hoeven's legislation.

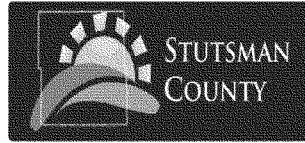
For almost 70 years, the cabin owners have worked to improve the quality of life at the reservoir, not only for their families, but for the general public's enjoyment as well. Such investment work will certainly continue.

The Jamestown Reservoir and the surrounding recreation areas are enjoyed by all ages in our community. The local ownership of these lands can only strengthen the drive to further invest in this area and expand the use and enjoyment.

Sincerely,



Darin Peterson
President
Jamestown Reservoir Cabin Owners Association



Stutsman County Auditor

511 2nd Ave. S.E., Suite 102
Jamestown, ND 58401
Phone: 701-252-9035

November 17, 2017

Honorable Ryan Zinke
Secretary of Interior
US Department of Interior
1849 C Street NW
Washington, DC 20240

Secretary Zinke:

At the Stutsman County Park Board meeting held on October 3, 2017, the Board voted to unanimously support the bill sponsored by Senator John Hoeven in Senate Bill S.2074.

The passage of the bill will provide cabin owners the opportunity to purchase the land they reside on and give them more flexibility on improvements to the property and obtaining financing. The additional transfer of lands to the Stutsman County Park Board will allow more flexibility in providing recreational services to the citizens of Stutsman County and surrounding regions.

Respectfully,

Nicole Meland
Interim Auditor / COO

CO. COMMISSIONERS

MARK T. KLOSE, Jamestown
CRAIG NEYS, Jamestown
DENNIS OVA, Cleveland
DAVID SCHWARTZ, Jamestown
DALE MARKS, Ypsilanti

COUNTY OFFICIALS

NICOLE MELAND, Int. Auditor/COO
JESSICA ALONGE, Int. Recorder
JESSICA MOSER, Int. Treasurer
FRITZ FREMIGEN, States Attorney
CHAD KAISER, Sheriff

TYLER PERLEBERG, Tax Director
EMELINE BURKETT, Dir. of Social Services
JERRY BERGQUIST, 911/Emergency Mgr.
MARLYN BERTSCH, Park Superintendent
DAVID BRATTON, Veterans Service Officer

MICKEY NENOW, Highway Superintendent
JOSH SMAAGE, Dir. of Information Technology
CHRISTINA RITTENBACH, Extension Agent
ALICIA HARSTAD, Extension Agent

Senator HOEVEN. I look forward to working with this Subcommittee, the full Energy and Natural Resources Committee and the Department of Interior on this legislation.

Again, I thank you, Mr. Chairman.

Mr. Secretary, first I want to thank you for being here today. I want to thank you for your testimony. I appreciate the feedback that you have given.

My question is simply, will the Department commit to working with me on this issue and help provide technical assistance on the legislation?

Mr. MIKKELSEN. The short answer to that, Senator Hoeven, is absolutely, we will commit to that.

I don't see any reason why we can't reach a resolution that will be acceptable to everybody here. The Secretary's only concern is making sure that his concerns regarding the transfer of public land and particularly recreational land are addressed and I don't see any reason that we can't, with the support that we have from the local Park Board from the local county and from your office.

Senator HOEVEN. And State Game and Fish.

We have everybody on board so we will work with you a little bit on the language, but we want your commitment that you will help us get it done.

Mr. MIKKELSEN. And we will definitely work with you on that.

Senator HOEVEN. Okay. Thank you, I appreciate it very much.

Thank you, Mr. Chairman.

Senator FLAKE. Thank you. Thank you.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Mikkelsen, you have heard everyone here, Democrats and Republicans, really zero in on one word which is "collaboration" which is the key to resolving so many of these natural resource questions.

I want to zero in on the Klamath Basin because that is, obviously, important to my constituents. I also think if we can get it resolved it is going to be a national model for dealing with contentious water issues.

As you know, when I was Chairman of this Committee we had a working group and I thought we were on the cusp of being able to finally resolve this. We had basically almost all the stakeholders together, the Administration, the Governors, I thought we were there. As you know, it, kind of, fell apart at the last minute.

You have built some goodwill out there. I think I told you that when you came to visit. And I think folks in Klamath Falls are paying attention to this hearing because they know you are here, and they know there is going to be a discussion of this.

I think it would be very helpful if you could outline what you are going to do going forward to build greater support in the Basin based on your trips and the studying you have done for collaborations, so that you can be the one to actually thread the needle. I mean, that is what this is really all about is how do we unlock this kind of challenge so that we can thread the needle, bring the stakeholders together and produce the kind of collaboration all the Senators have been talking about?

I would like to see us buying that place. It has been a long time. You have heard me characterize it. It is the longest running battle since the Trojan War.

So, if you would, just describe, I mean, outline, how you think you can move forward and get more folks in the Basin together on a collaboration that will resolve this.

Mr. MIKKELSEN. Thank you, Senator Wyden.

Let me preface my remarks by saying that I have been engaged in collaborative, consensus-based, conflict resolution processes for almost three decades. And I just completed one in New Mexico that I liken to perhaps climbing Mt. Rainier or, if I wanted to exaggerate, like perhaps climbing Denali.

I would liken what we're going to be doing in the Klamath Basin to climbing Everest and probably without oxygen. So, it is definitely a challenge.

I do believe that there is room in the Basin for all the parties to come together in an effort to secure, bargain for benefits that they will not, that none of the parties would be able to get unilaterally through litigation or any other method. And so, we're doing everything we can to encourage people to start looking in that direction.

In the meantime, as you noted earlier in your statement, this is an extremely difficult year. And so, we're doing everything that we can to also help the parties get through this year.

We are engaged—

Senator WYDEN. What do you have in mind, excuse me for interrupting. What do you have in mind to help the parties get through this year because I think that is welcome that you sense it, as I heard this weekend in rural Oregon at town meetings? What do you have in mind to help them to get through this year?

Mr. MIKKELSEN. From the agricultural side, we are doing everything that we can to secure enough water to make the injunctive flows that we have to in the Basin and we're discussing with the parties the possibility of, perhaps, adjusting the dilution flow in particular because we do believe that we will be able to make the flushing flow that's required by the court.

But at the same time, we are reaching out to all of the federal agencies and the Fish and Wildlife Service has been a great partner here in trying to secure enough water to make those flows and still be able to make agricultural deliveries.

We believe that we are close to that, and we had a call with parties on Monday night. We're going to have another call with parties late this afternoon on that.

With respect to the fisheries, the fishery in the lake, we have a trust responsibility and an ESA responsibility to make sure that the two species of endangered suckers do not go extinct and we are doing everything we can, again, working with Fish and Wildlife Service, to make sure that that doesn't happen.

Fish and Wildlife Service have a hatchery program going at this time. We're, in 2018, we will be releasing the first two-year-old fish from that program, and we're hoping that we will be able to judge how successful that is with this first release and we intend to accelerate those efforts with Fish and Wildlife Service.

And so, we're also then engaged with all of the parties, just simply asking them to start thinking about what their desires for long-term solutions are and it's not going to be an easy—I have no illusions about how this is going to go. We are going to have starts and stops. I would submit and I have told all of the parties that we do not have to start from square zero here because of the work that you've referred to that's been done in the Basin earlier.

We've got a tremendous amount, a tremendous body of work, I think, that we can build on as we go forward here.

So, I think and hope that we would be able to accelerate these efforts in the next year or so.

Senator WYDEN. Thank you.

Mr. Chairman, I am well over my time.

Just one last thought, Mr. Mikkelsen.

What we said for purposes of the working group that we had when I was Chairman of this Committee, I hope you'll look at as something of your watch word, which is on these tough collaborations nobody gets everything they want. Nobody gets everything they believe they ought to have. The question is whether everybody can get something significant that they feel strongly about so they can be part of the collaboration. If you will keep that in mind, I would appreciate it.

Thank you, Mr. Chairman.

Mr. MIKKELSEN. Thank you.

Senator FLAKE. Thank you.

Senator Smith.

Senator SMITH. Thank you very much, Chair Flake and Ranking Member Cortez Masto. I know that we are on a short timetable.

I would like to just quickly say that I requested this hearing on Senator Tester's bill, the Authorized Rural Water Projects Completion Act because in my state the Lewis and Clark Regional Water System is still awaiting federal funding to complete a project that was authorized nearly 18 years ago. This project is critically necessary for water. It is a critically necessary water project serving Minnesota, South Dakota and Iowa. Senator Tester's bill, of which I am a co-sponsor along with Senator Klobuchar and others, would ensure that this previously authorized water project gets the funding that it needs to be completed.

So thank you so much for this hearing.

Thank you, Senator Cortez Masto, for drawing attention to the cost of delay for these projects.

I look forward to working with the Committee to getting this done.

Senator FLAKE. Thank you, Senator Smith.

With that, I mentioned that we have an event over on the Floor to go over to the Rotunda.

Thank you for your testimony. Thank you and the hearing record will remain open for two weeks. We urge you to get any responses back quickly for inclusion in the official hearing record.

With the thanks of the Committee, this Committee stands adjourned.

Thank you.

[Whereupon, at 10:30 a.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

**U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power
February 28, 2018 Hearing: *Pending Legislation*
Questions for the Record Submitted to Mr. Alan Mikkelsen**

Question from Ranking Member Maria Cantwell

(S. 2074) Question: As part of your written testimony for this legislation, you state that “Title transfer can be an important tool to ensure that management of lands and other real property is carried out by the entities that are best equipped to most effectively manage such property. The Administration recently submitted a legislative proposal which would address this issue more comprehensively which would facilitate title transfer of certain Reclamation facilities to non-Federal entities when such transfers are beneficial.”

Specifically, would the legislative proposal provide Reclamation with the authority to administratively transfer the lands described in S. 2074?

Response: The Department’s legislative proposal is designed to allow local water managers to make their own decisions to improve water management at the local level, while allowing the Bureau of Reclamation to focus management efforts on projects with a greater federal nexus. Under the proposal, the conveyance of Reclamation facilities under this authority would be contingent upon the utilization of eligibility criteria set forth in Section 4, along with any additional criteria the Secretary of the Interior finds is in the public interest. Eligible facilities include Reclamation projects or facilities, or portions of Reclamation project or facilities, which include dams and appurtenant works, infrastructure, recreational facilities, buildings, distribution and drainage works. The legislative proposal also allows for the conveyance of “associated land or interest in land or water”. Absent the development of criteria as required under Section 4(a), the Department cannot determine with certainty whether the lands described in S. 2074 would be subject to this new authority. However, as a general matter, Reclamation believes that Congress should retain the ability to approve complicated transfers.

Questions from Senator John Barrasso

Question 1: If S.2166 is signed into law, the cooperative agreement, capitol construction authorization, and the funding authorization will expire at the same time. Do you anticipate the program needing to go beyond 2023?

Response: Yes, although it may assume a different programmatic format. Efforts are currently underway to assess what type of program or actions will be necessary after fiscal year (FY) 2023 to address continued threats to endangered fish and to provide Endangered Species Act (ESA) coverage to current water users and future water development. Even if all four species of fish are delisted by 2023, there would be a need to continue activities that address threats faced by the fish, including continued operation, maintenance, and rehabilitation of fish screens on diversion structures to prevent entrainment of fish, fish passages that expand habitat, flooded bottomlands that support reproduction and hatcheries. The greatest threat to endangered fish at this point is the presence of predatory nonnative fish in endangered fish riverine habitat, some of which have

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power
February 28, 2018 Hearing: *Pending Legislation*
Questions for the Record Submitted to Mr. Alan Mikkelsen

been illegally introduced. Efforts to control nonnative fish in river habitat may have to be continued for the foreseeable future.

Federal and nonfederal participants in The Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program (Recovery Programs) have initiated discussions to identify activities needed to benefit the endangered fish after 2023 and to maintain ESA compliance for approximately 2,500 water projects, including every Reclamation project upstream of Lake Powell. The discussions will include recommendations for the institutional and cost-sharing arrangements that will be needed to support these activities. The proposed funding legislation (S. 2166) requires the Secretary of the Interior, in collaboration with participants in the two programs, to provide a Report to Congress in FY 2021 identifying the status of the fish in 2023 and recommending continuing institutional and financial needs/arrangements beyond 2023.

Reclamation and the other Program partners see the need for continuation of activities to benefit the species beyond 2023 in order to assure that the species are recovered and delisted, and are not in need of protection of the ESA in the future. Any activities beyond 2023 – and cost sharing/institutional arrangements - will be subject to review and approval of Congress. If enacted, a joint report to Congress will be required by the Recovery Programs, through the Secretary of Interior, in FY 2021 which will provide a detailed prognosis and recommendation for the future activities that will be necessary to avoid jeopardy of the endangered fish.

Question 2: When does the Bureau of Reclamation anticipate the endangered fish in the Upper Colorado River will be recovered?

Response: Reclamation and the Recovery Program partners do not anticipate that all four species will be delisted by 2023. The ongoing discussions referenced in the response to Question 1 include identifying the manner in which species will be maintained and protected beyond 2023. A range of legal and institutional alternatives are being reviewed that will ensure the species are protected in the future and that ESA compliance is maintained for water projects in the Upper Colorado and San Juan river basins.

In 2002, the U.S. Fish and Wildlife Service (Service) amended the Colorado River fish recovery plans with objective and measurable recovery goals (endangered species population demographics and threat removal) to define what recovery means. Those recovery goals estimated that the fish would be recovered by 2023. Five-year status reviews were completed for each of the endangered species in 2011 and 2012, which determined that each of the species remained endangered.

Ongoing recovery actions are continuously evaluated to determine their effectiveness in contributing to recovery. Species Status Assessments for three of the four endangered fish are underway and the next round of 5-year status reviews will be completed by the end of FY 2018. On March 22, the U.S. Fish and Wildlife Service announced its completion of a Species Status

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power
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Assessment and 5-Year Review, which proposes downlisting the humpback chub from the status of "endangered" to the status of "threatened". The humpback chub is still classified as endangered and, at this time, is only proposed for downlisting. If the classification of the species is officially changed to threatened, as the 5-Year Review recommends, it will remain fully protected under the ESA. The Recovery Programs are recognized as key contributors in the recovery of this native fish. Reclamation's modification of flow regimes from large dams, provision of flows to support native fish, and participation in and funding of the conservation and recovery programs is a central reason this species is able to be considered for downlisting. Collaborative partnerships and management of resources have protected the species from extinction.

The remaining 5-year reviews may recommend that one or more of the endangered Colorado River fish be downlisted from endangered to threatened, and that the objective and measurable criteria in the recovery plans be updated to incorporate new information gathered since 2002. The report to Congress referenced in the proposed legislation, requires the Secretary of Interior to describe projected timelines to recovery based on the revised recovery plans. Reclamation and Program partners anticipate that the species recovery plans will be revised consistent with the recommendations coming from the discussions referenced in Question 1 and the Secretary's report to Congress.

Question 3: What would happen to the communities in the Colorado River Basin if the Upper Colorado River Endangered Species Recovery Act program goes away without the fish being delisted?

Response: The Recovery Programs provide ESA compliance for approximately 2,500 existing water projects and future development in the Upper Colorado River Basin above Glen Canyon Dam. Since the first Colorado River Recovery Program was established in 1988, all existing and proposed water development and hydropower projects associated with the Recovery Programs have proceeded in compliance with the ESA, Reclamation project authorizations, interstate water compacts, and state water law without ESA litigation. These projects provide approximately 3.8 million acre-feet of water to municipal, industrial, and agricultural water users. The cost-shared Recovery Programs have shifted the burden of ESA compliance from individual projects to the Recovery Programs. If the Recovery Programs go away before the fish are delisted, the vehicle for ESA compliance disappears, and the cooperative programs that are working and have the broad support of water users, federal agencies, states, tribes, environmental organizations, and power customers would be replaced with legal and regulatory chaos that would create tremendous uncertainty for water suppliers that would likely go on for years. This may require the Service to re-initiate ESA consultations on existing water projects. Each individual project would then be responsible compliance with the ESA. This would result in uncertainty on the ability of municipal, industrial, and agricultural water suppliers to meet current and future demands and the cost of meeting those demands.

U.S. Senate Committee on Energy and Natural Resources
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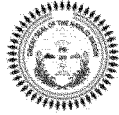
The Recovery Programs have greatly streamlined administration of the ESA for the Service, federal agencies, and water users. The Service conducted four ESA consultations on approximately 700 water projects on National Forest lands using the Recovery Programs as the means of compliance. Programmatic biological opinions on depletions in the Colorado, Gunnison, and Yampa river basin provide ESA compliance using recovery Program actions for literally hundreds of water projects. These efficiencies would be lost if the Recovery Programs were to cease.

Question 4: Is there anything else that should be done to ensure the fish are on the correct pathway to recovery?

Response: The Recovery Programs must continue to adaptively manage 1) instream flows and floodplain habitats, 2) control and reduce nonnative predatory fish, 3) operate fish passage and irrigation canal screens, 4) manage the endangered fish stocking program and 5) monitor endangered fish populations. When the Recovery Programs were initiated, relatively little was known about the endangered fish. The Recovery Programs have put substantial effort into research and monitoring to fill in the information gaps. Reclamation and our partners are confident that the efforts of the Recovery Programs to recover the endangered fish are science based and represent the most effective and efficient means of recovering the fish. The Recovery Programs will continue to evaluate the response of the species to recovery actions and to adaptively adjust those measures based on scientific evidence.

Question 5: Does the Bureau of Reclamation have other species recovery programs that use revenue generated from hydropower production to pay for the program costs?

Response: Yes, but use of power revenues for ESA purposes in Reclamation is not a widespread practice. Congress sets forth the purposes for which power revenues collected from the operation of Reclamation hydropower projects may be used. If authorized by Congress, then Reclamation policies (Reclamation Manual, Policy ENV P04 and PEC P07, "Allocation of Operation, Maintenance, and Replacement Costs") specify that Regional Directors determine whether and how costs of compliance with the ESA) will be allocated among project purposes.



THE NAVAJO NATION

 RUSSELL BEGAYE PRESIDENT
 JONATHAN NEZ VICE PRESIDENT

February 22, 2018

The Honorable Jeff Flake, Chairman
 The Honorable Catherine Cortez Masto, Ranking Member
 Subcommittee on Water and Power
 U. S. Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support S. 2166, the "Endangered Fish Recovery Programs Extension Act of 2017." This bipartisan bill amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project (CRSP) for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

The objective of these programs is to recover four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress. The Navajo Nation is a participant in the San Juan River Basin Recovery Implementation Program, and much of the recovery efforts are occurring within the Navajo Nation

The recovery programs for endangered fish species provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. The San Juan program provides ESA compliance for several Navajo water development projects that provide critical water resources for the benefit of the Nation and its members. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs also have streamlined administration of the ESA for federal agencies, tribes and water users.

The CRSP revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

I appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Respectfully,

THE NAVAJO NATION

Russell Begaye, *President*



**STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER**

CONCHA ORTIZ Y PINO BUILDING, 130 SOUTH CAPITOL, SANTA FE, NM 87501
TELEPHONE: (505) 827-6091 FAX: (505) 827-3806

**TOM BLAINE, P.E.
STATE ENGINEER**

Mailing Address:
P.O. Box 25102
Santa Fe, NM 87504-5102

February 13, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
February 13, 2018
Page 2

I appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Blaine". The signature is fluid and cursive, with a large initial "T" and a stylized "B".

Tom Blaine, PE
State Engineer

TB/kme

cc: John Longworth, Director of the Interstate Stream Commission (ISC)
Rolf Schmidt Petersen, Bureau Chief, Colorado River Bureau , ISC



City of Aurora

Water Administration
15151 E. Alameda Parkway, Suite 3600
Aurora, Colorado 80012
303.739.7370

Wash Discovering • aurora.gov

February 13, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

I appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

Marshall P. Brown
Director, Aurora Water

San Juan Water Commission

7450 East Main Street, Suite B • Farmington • New Mexico • 87402
Ph: 505-564-8969 • Fax: 505-564-3322 • Email: sjwcoffice@sjwc.org

MEMBERS:

City of Aztec
City of Bloomfield
City of Farmington
San Juan County

S.J. County Rural Water Users Association

February 14, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support the San Juan River Basin Recovery Implementation Program and the recovery of the endangered fish species. The Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA), while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.


The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River Basin upstream of Lake Powell. There have been no lawsuits on ESA compliance because of these two Recovery Programs. The programs have streamlined administration of the ESA for federal agencies and water users.

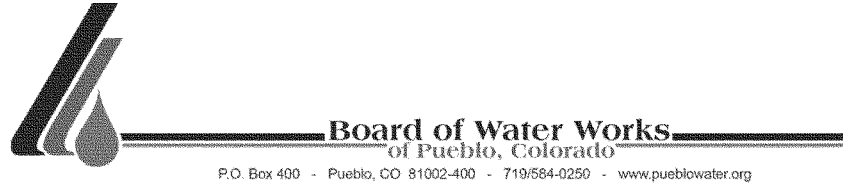
Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017" amends P.L. 106-392, the authorizing legislation for the programs to provide for continued use of Colorado River Storage Project revenues for annual funding of Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023, at currently authorized levels. The Colorado River Storage Project revenues provide critical funding in recovering the listed endangered fish in each program. In addition, cost sharing for the programs is provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, and CRSP power customers.

I am requesting your support for S. 2166. Please do not hesitate to call me if you need further information or if I can assist you in any other way.

Sincerely,


Aaron Chavez
Executive Director
San Juan Water Commission



February 23, 2018

The Honorable Jeff Flake, Chairman
 The Honorable Catherine Cortez Masto, Ranking Member
 Water and Power Subcommittee
 U. S. Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell, including water projects that are critical for the Board of Water Works of Pueblo's mission to provide reliable water service to the citizens of Pueblo. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

I appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

Seth J. Clayton
 Executive Director
 (719) 584-0214



February 21, 2018

The Honorable Jeff Flake, Chairman
 The Honorable Catherine Cortez Masto, Ranking Member
 Water and Power Subcommittee
 U.S. Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, D.C. 20510

Dear Chairman Flake and Ranking Member Cortez Masto:

On behalf of Colorado Springs Utilities, I am writing to express our support for several provisions of the draft Water Supply Infrastructure and Drought Resilience Act of 2018. Colorado Springs Utilities is a municipal utility that provides water, wastewater, gas, and electric utility services to approximately 450,000 residents in the Pikes Peak Region. As a community owned utility, we focus on maintaining safe, reliable and competitively priced utilities, providing exceptional service, and responsible environmental practices.

There are three provisions of the draft Water Supply Infrastructure and Drought Resilience Act that we want to address in our comments. First, I want to express Colorado Springs Utilities strong support for Title III, Subtitle C of the draft legislation to reauthorize the Upper Colorado Fish Recovery Program through 2023 (S.2166/H.R.4465). Extending this program allows for our continued water diversions from the Upper Colorado River and ongoing purchase of reliable Colorado River Storage Project hydropower – both critical to our continued success as a community owned utility.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress. The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the Recovery Programs. The programs have streamlined administration of and compliance with the ESA for federal agencies and water users.

Colorado River Storage Project power revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species (including fish screens, fish passages, bottomland habitat, and hatcheries) research and monitoring, and program management.

Second, I want to express our strong support for Title III, Subtitle B – Permits for Water Transfers. Water transfers play an important role in Colorado Springs Utilities ability to deliver clean and reliable water supplies to the citizens of Colorado Springs. Currently, between 60 and 70 percent of our water supply originates from the first use and subsequent reuse of water obtained from the Colorado River

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 Colorado Springs, CO 80947-0950
 719-668-8005

headwaters through four transbasin diversions. Requiring a discharge permit would be prohibitively expensive and burdensome, cause regulatory uncertainty, and alter the cooperative state-federal relationship envisioned. The passage of this legislation would ease regulatory uncertainty, and secure the cooperative state-federal relationship envisioned by Congress. It represents a well-reasoned approach to water delivery while ensuring that the quality of the nation's waters will not be diminished.

Lastly, I want to express our support for Title III, Subtitle A – Water Rights Protection Act (S.1230/H.R.2939) which prohibits the Department of the Interior and the Department of Agriculture from conditioning any permit, lease or other use agreement on the transfer of a right to the U.S. In recent years, we have seen attempts by the Forest Service to force ski areas to relinquish their water rights simply to make administrative modifications to special use permits. The ability to have secure water rights is imperative to keeping our rates as low as possible for our citizen-owners and ensures that our infrastructure investments are protected.

On behalf of Colorado Springs Utilities and the community we serve, we respectfully urge passage the draft Water Supply Infrastructure and Drought Resilience Act of 2018.

Sincerely,



Andrew J. Colosimo
Government Affairs Manager

Cc Senator Cory Gardner



February 23, 2018

The Honorable Cory Gardner
The Honorable Michael Bennet
United States Senate
Washington, D.C. 20510

Subject: S.2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Senators Gardner and Bennet:

I am writing on behalf of Colorado Springs Utilities to thank you for introducing S. 2166 the "Endangered Fish Recovery Programs Extension Act of 2017."

Colorado Springs Utilities is a municipal utility that provides water, wastewater, gas and electric utility services to approximately 450,000 residents in the Pikes Peak Region. Extending this program allows for our continued water diversions from the Upper Colorado River and ongoing purchase of reliable Colorado River Storage Project hydropower – both critical to our continued success as a community owned utility.

S.2166 amends P.L. 106-392, the authorizing legislation for the programs to provide for continued use of CRSP power revenues for annual funding of Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Cost sharing for the programs is also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, and CRSP power customers through the Western Area Power Administration.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the Recovery Programs. The programs have streamlined administration of and compliance with the ESA for federal agencies and water users.

Colorado River Storage Project power revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species (including fish screens, fish passages, bottomland habitat, and hatcheries) research and monitoring, and program management.

We appreciate your leadership on this important issue and urge prompt passage of S.2166.

Sincerely,

Eric Tharp
Chief Energy Services Officer



Colorado Water Congress EST. 1958
THE LEADING VOICE OF COLORADO'S WATER COMMUNITY

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017"

Dear Chairman Flake and Ranking Member Cortez Masto:

On behalf of the Colorado Water Congress, we are writing to express our support for S. 2166, "Endangered Fish Recovery Programs Extension Act of 2017." The Colorado Water Congress is the principal voice of Colorado's water community.

The Colorado Water Congress supports the intent of the legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at the current authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organizations, and CRSP power customers.

These programs intend to recover four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming, and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes, and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

We appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

Doug Kemper
Executive Director



Colorado Water Congress EST 1998
THE LEADING VOICE OF COLORADO'S WATER COMMUNITY

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510

Re: Codify Water Supply Infrastructure and Drought Resilience Act

Dear Chairman Flake and Ranking Member Cortez Masto:

On behalf of the Colorado Water Congress, we are writing to express our support for the codification of the Water Supply Infrastructure and Drought Resilience Act. The Colorado Water Congress is the principal voice of Colorado's water community.

The Colorado Water Congress supports the codification of the legislation on three points of Title III: (1) Water Rights Protection Act, (2) treatment of water rights, and (3) the extension of authorization to use Upper Colorado River Basin Fund Revenues for Annual Base Funding of Fish Recovery Programs and removal of certain reporting requirements.

(1) Water Rights Protection Act

The Colorado Water Congress recognizes the supremacy of state water law. No water user should be required to acquire a water right in the name of the United States under state law. Neither should the United States place limits on a water user's right or ability to acquire or use any land use or occupancy agreement.

(2) Treatment of Water Rights

We wish to express our long-standing support for the Environmental Protection Agency's (EPA's) Water Transfers Rule (Rule), and request that this well-reasoned protection of water management by states be enacted into federal legislation as part of infrastructure legislation. The Rule clarifies the EPA's historic exclusion of water transfers from the requirements of the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act (CWA). The Rule represents a well-reasoned approach to water delivery while ensuring that the quality of the nation's waters will not be diminished. The effective management of our water is critical to the infrastructure needs of our nation and securing the future of these operations should be included in any infrastructure efforts of Congress. We ask that Congress protect our existing regulatory structure for the future by cementing the existing Rule into federal law.

The Colorado Water Congress also supports section 122.3(i) of Title 40 as it requires no water permit transfers on water rights. Requiring the issuance of NPDES permits for water transfers would severely interfere with water management across the nation, on the states' well-established authority over their water resources, and on private property rights in the use of water granted by the states.

(3) Upper Colorado River Basin Fund Revenues

We support Subtitle C – Endangered Fish Recovery Programs (S. 2166) to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at the

current authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organizations, and CRSP power customers.

These programs intend to recover four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming, and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes, and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

We appreciate the Subcommittee's past support for the programs and request your support for the codification of the Water Supply and Infrastructure Resilience Act.

Sincerely,



Doug Kemper
Executive Director



Andy Colosimo
Federal Affairs Committee Chair
Vice Chair



Chris Freese
Federal Affairs Committee



COLORADO

Colorado Water
Conservation Board

Department of Natural Resources
1313 Sherman Street, Room 718
Denver, CO 80203

February 23, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

On behalf of the Colorado Water Conservation Board I write in support of S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392. The proposed legislation authorizes the continued use of Colorado River Storage Project power revenues for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized funding levels. S. 2166 also requires a status report to Congress by 2021. Cost sharing and in-kind contributions for the Recovery Programs are provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organizations, and Colorado River Storage Project ("CRSP") power customers through the Western Area Power Administration.

The objective of the Recovery Programs is to recover four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with federal and state law and regulations and interstate compacts.

The Recovery Programs take actions to recover these endangered fish species. Those actions also provide ESA compliance for approximately 2,500 water projects in Colorado, Wyoming, New Mexico and Utah in the Upper Colorado River basin upstream of Lake Powell. The Recovery Programs have streamlined the administration of the ESA for federal agencies, states and water users. Moreover, the ESA compliance provided has successfully avoided costly and de-stabilizing litigation.

The Colorado River Storage Project power revenues provide critical annual funding for the Recovery Programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries. These revenues also support research and monitoring, and management of the Recovery Programs.

We appreciate your leadership on this important issue and urge the passage of S. 2166.

Sincerely,

Rebecca Mitchell, Director





1600 West 12th Ave
 Denver, CO 80204-3412
 303.628.6000
denverwater.org

The Honorable Jeff Flake, Chairman
 The Honorable Catherine Cortez Masto, Ranking Member
 Water and Power Subcommittee
 U. S. Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to you on behalf of the Denver Board of Water Commissioners to express our support of S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

We appreciate the Subcommittee's past support for the programs and Denver Board of Water Commissioners sincerely request your support for S. 2166.

Sincerely,

/s/Jim S. Lochhead
 CEO/Manager
 303-628-6500/303-628-6199 fax
Jim.Lochhead@denverwater.org

Tom Fallgren
Vice President, PNM Generation
Public Service Company of New Mexico
2401 Aztec Road NE
Building A - Z120
Albuquerque, NM 87107



February 19, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support the passage of S. 2166. The bill is entitled "Endangered Fish Recovery Programs Extension Act of 2017" and is vital to our ability to divert water from the San Juan River in support of electric generation for New Mexico and the West.

S. 2166 amends P.L. 106-392 to extend the use of Colorado River Storage Project (CRSP) revenues for annual funding, through 2023 for the San Juan River Basin Recovery Implementation Program and the Upper Colorado River Endangered Fish Recovery Program.

These CRSP revenues provide funding for operation and maintenance of critical facilities to recover the species, including fish screens, fish passages, bottomland habitat and hatcheries, research and monitoring and program management.

The actions taken by these programs to recover endangered fish provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. Under these programs there have been no lawsuits on ESA compliance and no water projects have lost any water.

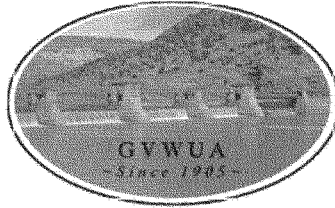
There will be no change in authorized Federal funding levels and cost sharing for the programs continues by Colorado, Wyoming, New Mexico, Utah, water users, tribes, environmental organizations and CRSP power customers.

I appreciate the Subcommittee's past support for the programs and urge your support for S. 2166 to keep this valuable Federal, State, Tribal and private collaboration working for sustainable environmental and economic development.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Fallgren", written over a horizontal line.

Tom Fallgren
Vice President, PNM Generation



**Grand Valley Water Users Association
Grand Valley Project
1147 24 Road, Grand Junction, CO 81505
Phone: 970-242-5065 Fax: 970-243-4871
www.GrandValleyWaterUsers.com**

February 14, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

I appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

A handwritten signature in cursive script, reading "Mark Harris".

Mark Harris
General Manager

MATTHEW H. MEAD
GOVERNOR



2323 Carey Avenue
CHEYENNE, WY 82002

Office of the Governor

February 20, 2018

The Honorable Jeff Flake
Chairman
Water and Power Subcommittee
U. S. Senate Committee on E&NR
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Catherine Cortez Masto
Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on E&NR
304 Dirksen Senate Building
Washington, DC 20510

Re: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto,

I am writing to support S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 authorizes continued use of Colorado River Storage Project (CRSP) power revenues for annual funding (at currently authorized levels) by the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023. Cost sharing for the programs is also provided by the States of Colorado, New Mexico, Utah and Wyoming, water users, and CRSP power customers through the Western Area Power Administration.

The goal of these programs is to recover four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.


Approximately 2,500 water projects in the four states of the Upper Colorado River basin upstream of Lake Powell have been provided ESA compliance through these programs. In addition, there have been no lawsuits on ESA compliance provided by the Recovery Programs. The programs have streamlined administration of and compliance with the ESA for federal agencies and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species (including fish screens, fish passages, bottomland habitat, and hatcheries), research and monitoring, and program management.

Chairman Flake and Ranking Member Cortez Masto
February 20, 2018
RE: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."
Page 2

I request your support for S. 2166.

Sincerely,



Matthew H. Mead
Governor

MHM:dp

cc: The Honorable Mike Enzi, U.S. Senate
The Honorable John Barrasso, U.S. Senate
Patrick T. Tyrrell, Wyoming State Engineer
Steve Wolff, Wyoming Representative, Upper Colorado River Endangered Fish
Recovery Program (Wyoming State Engineer's Office)



February 13, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Re: Support for S.2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I write to respectfully request your support for S.2166, "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 would amend P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project (CRSP) revenues for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost-sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These two programs have twin goals of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs initiate and oversee actions to recover the endangered fish. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. These programs have streamlined administration of the ESA for federal agencies, tribes and water users in all four states.

CRSP revenues provide critical annual funding to the programs for operation and maintenance of programs and facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

I appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew A. Mueller".

Andrew A. Mueller, General Manager

201 Centennial Street / PO Box 1120 • Glenwood Springs, CO 81602
(970) 945-8522 • (970) 945-8799 Fax
www.ColoradoRiverDistrict.org



February 13, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing on behalf of the Municipal Subdistrict, Northern Colorado Water Conservancy District to support S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project revenues to annually fund the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the: states of Colorado, Wyoming, New Mexico, and Utah; water users; tribes; environmental organizations; and CRSP power customers.

These recovery programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water management and water development efforts proceed in accordance with state water law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. The recovery programs are providing an efficient and effective means of addressing ESA challenges and assuring ESA compliance for federal agencies, water users, and tribes.

Colorado River Storage Project revenues provide critically needed funding for the recovery programs costs, including costs associated with: operation and maintenance of facilities to recover the species; installment and operation of fish screens, fish passages, and hatcheries; improvement of habitat; research and monitoring; and program management.

The Municipal Subdistrict, Northern Colorado Water Conservancy District sincerely appreciates the Subcommittee's past support for the recovery programs and request your support for S. 2166.

Sincerely,

Eric W. Wilkinson, P.E.
General Manager

Orchard Mesa Irrigation District



668 38 Road
Palisade, CO 81526

970-464-7885
FAX 970-464-5928

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing to support S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

I appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

Max Schmidt
General Manager Orchard Mesa Irrigation District



SOUTHERN UTE INDIAN TRIBE

OFFICE OF THE CHAIRMAN

February 20, 2018

The Honorable Jeff Flake, Chairman
 The Honorable Catherine Cortez Masto, Ranking Member
 Water and Power Subcommittee
 U. S. Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

Re: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

On behalf of the Southern Ute Indian Tribe, I am writing to request your support of S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation, to provide for continued use of Colorado River Storage Project (CRSP) for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program ("Recovery Programs") through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Jicarilla Apache Nation and Navajo Nation, The Nature Conservancy, water users, and CRSP power customers.

These Recovery Programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, interstate compacts approved by Congress, Supreme Court decrees and federal trust responsibilities to the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Jicarilla Apache Nation and Navajo Nation.

The Recovery Programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the Recovery Programs. The Programs have streamlined administration of the ESA for federal agencies, tribes and water users.

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
February 20, 2018
Page 2

CRSP revenues provide critical annual funding for the Recovery Programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

The Southern Ute Indian Tribe requests your support for S. 2166. The Tribe appreciates the past support and assistance of your Subcommittee for these ongoing efforts.

Sincerely,

A handwritten signature in black ink, reading "Christine Sage". The signature is written in a cursive, flowing style.

Christine Sage, Chairman
Southern Ute Indian Tribe



THE SOUTHWESTERN WATER CONSERVATION DISTRICT

Developing and Conserving the Waters of the
 SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
 IN SOUTHWESTERN COLORADO
 West Building – 841 East Second Avenue
 DURANGO, COLORADO 81301
 (970) 247-1302

February 13, 2018

The Honorable Jeff Flake, Chairman
 The Honorable Catherine Cortez Masto, Ranking Member
 Water and Power Subcommittee
 U. S. Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

Subject: S. 2166 “Endangered Fish Recovery Programs Extension Act of 2017”

Dear Chairman Flake and Ranking Member Cortez Masto:

The Southwestern Water Conservation District was formed to protect, conserve, use and develop the waters of the Dolores and San Juan river basins in southwestern Colorado. Following this mandate, the District board strongly supports S. 2166 “Endangered Fish Recovery Programs Extension Act of 2017.” S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish

Page 2
SW Water Conservation District
Support for S. 2166
February 13, 2018

passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

Considering all the aforementioned benefits of the legislation, our District board and staff request your support for S. 2166.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce Whitehead". The signature is fluid and cursive, with the first name "Bruce" written in a larger, more prominent script than the last name "Whitehead".

Bruce Whitehead
Executive Director
(970) 247-1302

February 13, 2018

The Honorable Jeff Flake, Chairman
 The Honorable Catherine Cortez Masto, Ranking Member
 Water and Power Subcommittee
 U. S. Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510



Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

The Tri-County Water Conservancy District is writing to request your support of S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

We appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,

Mike Berry
 General Manager

970.249.3369
 TRICOUNTYWATER.ORG

**WATERS
 GENERATION**
 POWERING THE FUTURE

647 N. 7TH STREET
 MONTROSE, CO 81401



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

February 22, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Subject: S. 2166 "Endangered Fish Recovery Programs Extension Act of 2017."

Dear Chairman Flake and Ranking Member Cortez Masto:

On behalf of the Upper Colorado River Commission, an interstate water administrative agency representing the interests of the states of Colorado, New Mexico, Utah and Wyoming on Colorado River matters, as established pursuant to the Upper Colorado River Basin Compact of 1948, 63 Stat. 31, I write in support of S. 2166, "Endangered Fish Recovery Programs Extension Act of 2017." S. 2166 amends P.L. 106-392, the authorizing legislation for the recovery programs, to provide for continued use of Colorado River Storage Project (CRSP) hydropower revenues for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the states of Colorado, Wyoming, New Mexico, and Utah, water users, tribes, environmental organization, and CRSP power customers.

These recovery programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been

no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

CRSP revenues provide critical annual funding for the recovery programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

The Upper Colorado River Commission appreciates the Subcommittee's past support for the recovery programs and requests your support for S. 2166.

Sincerely,

A handwritten signature in black ink, appearing to read "Don A. Ostler", with a stylized flourish at the end.

Don A. Ostler



Upper Gunnison River Water Conservancy District

210 West Spencer Avenue, Suite B • Gunnison, Colorado 81230
Telephone (970) 641-6065 • Facsimile (970) 641-1162 • www.ugrwd.org

February 22, 2018

The Honorable Jeff Flake, Chairman
The Honorable Catherine Cortez Masto, Ranking Member
Water and Power Subcommittee
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Re: Support for S. 2166 *Endangered Fish Recovery Programs Extension Act of 2017*

Dear Chairman Flake and Ranking Member Cortez Masto:

I am writing on behalf of the Board of Directors of the Upper Gunnison River Water Conservancy District to support enactment of S. 2166 *Endangered Fish Recovery Programs Extension Act of 2017*. S. 2166 amends P.L. 106-392, the authorizing legislation to provide for continued use of Colorado River Storage Project revenue for annual funding of the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program through 2023 at currently authorized levels. Substantial cost sharing and in-kind contributions are also provided by the States of Colorado, Wyoming, New Mexico, and Utah, water users (including the Upper Gunnison District), tribes, environmental organization, and CRSP power customers.

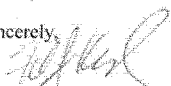
These programs have the objective of recovering four fish species listed as endangered under the federal Endangered Species Act (ESA) while water development proceeds in accordance with state water and wildlife law, U.S. Bureau of Reclamation water project authorizations, and interstate compacts approved by Congress.

The recovery programs take actions to recover the endangered fish species. Those actions provide ESA compliance for approximately 2,500 water projects in Utah, Colorado, Wyoming and New Mexico in the Upper Colorado River basin upstream of Lake Powell. There have been no lawsuits on ESA compliance provided by the recovery programs. The programs have streamlined administration of the ESA for federal agencies, tribes and water users.

Colorado River Storage Project revenues provide critical annual funding for the programs for operation and maintenance of facilities to recover the species, including fish screens, fish passages, bottomland habitat, and hatcheries, research and monitoring, and program management.

We appreciate the Subcommittee's past support for the programs and request your support for S. 2166.

Sincerely,


Frank J. Kugel, General Manager