

**PENDING LEGISLATION**

---

---

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

SECOND SESSION

ON

<b>S. 2927</b>	<b>S. 4576</b>	<b>S. 5011</b>
<b>S. 4016</b>	<b>S. 4996</b>	<b>S. 5012</b>
<b>S. 4242/H.R. 4385</b>	<b>S. 4999</b>	<b>S. 5013</b>
<b>S. 4245/H.R. 5770</b>	<b>S. 5000</b>	<b>S. 5014</b>
<b>S. 4347</b>	<b>S. 5005</b>	<b>H.R. 6062</b>
<b>S. 4458</b>		

---

SEPTEMBER 11, 2024

---



Printed for the use of the  
Committee on Energy and Natural Resources

Available via the World Wide Web: <http://www.govinfo.gov>

---

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JOE MANCHIN III, West Virginia, *Chairman*

RON WYDEN, Oregon	JOHN BARRASSO, Wyoming
MARIA CANTWELL, Washington	JAMES E. RISCH, Idaho
BERNARD SANDERS, Vermont	MIKE LEE, Utah
MARTIN HEINRICH, New Mexico	STEVE DAINES, Montana
MAZIE K. HIRONO, Hawaii	LISA MURKOWSKI, Alaska
ANGUS S. KING, JR., Maine	JOHN HOEVEN, North Dakota
CATHERINE CORTEZ MASTO, Nevada	BILL CASSIDY, Louisiana
JOHN W. HICKENLOOPER, Colorado	CINDY HYDE-SMITH, Mississippi
ALEX PADILLA, California	JOSH HAWLEY, Missouri

---

SUBCOMMITTEE ON WATER AND POWER

RON WYDEN, *Chair*

BERNARD SANDERS	JAMES E. RISCH
CATHERINE CORTEZ MASTO	MIKE LEE
JOHN W. HICKENLOOPER	JOHN HOEVEN
ALEX PADILLA	BILL CASSIDY

RENAE BLACK, *Staff Director*

SAM E. FOWLER, *Chief Counsel*

MELANIE THORNTON, *Professional Staff Member*

JUSTIN J. MEMMOTT, *Republican Staff Director*

PATRICK J. MCCORMICK III, *Republican Chief Counsel*

JACK HOLT, *Republican Junior Counsel*

JOHN TANNER, *Republican Deputy Staff Director for Lands*

# CONTENTS

## OPENING STATEMENTS

	Page
Wyden, Hon. Ron, Subcommittee Chair and a U.S. Senator from Oregon .....	1
Risch, Hon. James E., Subcommittee Ranking Member and a U.S. Senator from Idaho .....	17
Hickenlooper, Hon. John W., a U.S. Senator from Colorado .....	17
Padilla, Hon. Alex, a U.S. Senator from California .....	18

## WITNESSES

### *Panel I*

Bennet, Hon. Michael F., a U.S. Senator from Colorado .....	19
Fischer, Hon. Deb, a U.S. Senator from Nebraska .....	26

### *Panel II*

Touton, Hon. Camille C., Commissioner, Bureau of Reclamation, U.S. Department of the Interior .....	27
---	----

## ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Arizona Department of Water Resources:	
Letter for the Record .....	78
Arizona Power Authority:	
Letter for the Record .....	79
Bennet, Hon. Michael F.:	
Opening Statement .....	19
Colorado Department of Natural Resources:	
Letter for the Record .....	22
Colorado River Commission of Nevada et al.:	
Letter for the Record .....	106
Delta Waterfowl et al.:	
Letter for the Record .....	61
Douglas County (CO) Board of Commissioners:	
Letter for the Record re S. 4576 .....	83
Letter for the Record re S. 5014 .....	84
Family Farm Alliance:	
Statement for the Record .....	85
Fischer, Hon. Deb:	
Opening Statement .....	26
Hickenlooper, Hon. John W.:	
Opening Statement .....	17
Idaho Water Resource Board:	
Letter for the Record .....	115
Jennings, Su'a Alexander Eli:	
Statement for the Record .....	94
Mandan, Hidatsa, and Arikara Nation:	
Letter for the Record .....	63
Mauga, Hon. Lemanu P.S.:	
Statement for the Record with attachment .....	3
Metropolitan Water District of Southern California:	
Letter for the Record re S. 4016 .....	100
Letter for the Record re S. 5012 .....	101

IV

	Page
Mohave County (AZ) Water Authority:	
Letter for the Record .....	102
Mohave Valley Irrigation and Drainage District:	
Letter for the Record .....	104
National Audubon Society et al.:	
Letter for the Record .....	80
North Dakota Department of Water Resources et al.:	
Letter for the Record .....	65
Padilla, Hon. Alex:	
Opening Statement .....	18
Photograph of toy bird: “Yazmin, the Yellow-billed Cuckoo” .....	58
Radewagen, Hon. Aumua Amata:	
Statement for the Record .....	108
White paper entitled “H.R. 6062, American Samoa Constitutional Reform Bill” .....	110
Risch, Hon. James E.:	
Opening Statement .....	17
Sisseton-Wahpeton Oyate, Lake Traverse Reservation:	
Letter for the Record .....	69
Southeastern Colorado Water Conservancy District:	
Statement for the Record .....	24
Spirit Lake Tribe:	
Letter for the Record .....	71
Standing Rock Sioux Tribe:	
Letter for the Record .....	72
Touton, Hon. Camille C.:	
Opening Statement .....	27
Written Testimony .....	30
Turtle Mountain Band of Chippewa Indians:	
Letter for the Record .....	74
U.S. Department of the Interior:	
Statement for the Record on H.R. 6062 .....	118
U.S. Department of the Interior, Bureau of Land Management:	
Statement of the Record on S. 4999 .....	119
U.S. Department of the Interior, U.S. Geological Survey:	
Statement for the Record on S. 4245 .....	121
Wyden, Hon. Ron:	
Opening Statement .....	1

---

The text for each of the bills addressed in this hearing can be found on the Committee’s website at: <https://www.energy.senate.gov/hearings/2024/9/subcommittee-on-water-and-power-hearing-to-receive-testimony-on-pending-legislation>

## **PENDING LEGISLATION**

---

**WEDNESDAY, SEPTEMBER 11, 2024**

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

The Subcommittee met, pursuant to notice, at 2:30 p.m. in Room SD-366, Dirksen Senate Office Building, Hon. Ron Wyden, Chair of the Subcommittee, presiding.

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

Senator WYDEN. The Subcommittee will come to order.

Our Subcommittee meets today to receive testimony on western water legislation relating to the current climate-driven drought, as well as an important bill regarding American Samoa. Before we get to today's business, I want to repeat that the delay in securing clean drinking water for many rural and tribal communities is unacceptable. A year ago, this Subcommittee held a hearing in coordination with several other committees about the desperate need to address the drinking water access crisis. Reclamation is under the Committee's jurisdiction and has a key role in fixing this serious and ongoing problem. The Bureau of Reclamation, along with the rest of the Federal Government, is not moving fast enough to seek critical resources needed to get to the hard-hit communities. These communities have enough to worry about with the current situation without having to use their limited capacity to jump through a wave of hoops for drinking water that shouldn't be one of them.

The Committee is not alone in recognizing this problem. The bipartisan Streamlining Federal Grants Act, authored by Senators Peters and Cornyn, could help, but it's time to use existing water resources to help communities now. So, the point of this is, we may need the benefits of additional legislation, but all the foot dragging on using existing authorities is unacceptable. And I will come back to the issue of improving water access later in the hearing when we get to questions for our Reclamation witness, Commissioner Touton, about the progress the agency has made in addressing these challenges to date and what can be done to accelerate these efforts.

Let me wrap up my comments with respect to drought and several pieces of legislation on the calendar today. We are going to look at a number of issues facing the Bureau of Reclamation. Some of the bills on today's agenda promote drought resiliency. The bills on today's agenda also aim to improve infrastructure and manage-

ment to improve the safety, reliability, efficiency, and conservation of surface, groundwater, and natural storage. The hearing provides an opportunity to look at 15 bills as proposed solutions of the climate-driven drought crisis that plagues the West.

In addition, the Committee will consider H.R. 6062, legislation to restore the ability of the people of American Samoa to quickly approve and implement amendments to their territorial constitution. This is, in my view, a common-sense bill that is going to eliminate federal red tape for a territory to do what any state can already do on its own. We have Representative Radewagen in the house today, the House delegate from American Samoa, who authored this legislation, in attendance to emphasize its importance, and I want to commend the Representative for her good work. Furthermore, I have written testimony from Governor Mauga in support of the legislation that I would ask be entered into the record. I ask unanimous consent for it to be entered into the record at this point.

[Letter of support from Governor Mauga of American Samoa in support of H.R. 6062 follows:]

**STATEMENT  
OF  
HON. LEMANU P. S. MAUGA  
GOVERNOR OF AMERICAN SAMOA**

**BEFORE THE  
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
REGARDING H.R. 6062**

**SEPTEMBER 11, 2024**

Honorable Chair and distinguished members of the Committee, thank you for the opportunity to submit this testimony.

As the Governor of American Samoa, through this testimony, I represent the American Samoa Government and the people of American Samoa in expressing support for H.R. 6062. Along with Honorable Lt. Governor La'apui Talauega E. V. Ale, our Senate, and our House of Representatives, we are united in support of this legislation authored by our Congresswoman, Uifa'atali Aumua Amata Coleman Radewagen.

Current law, as codified in 48 United States Code Section 1662a, provides that amendments or modifications to the constitution of American Samoa, as approved by the Secretary of the Interior under Executive Order 10264, may be made only by Act of Congress. Prior to enactment of Section 1662a in 1983, the only federal approval required to amend or modify our constitution was that of the Secretary of the Interior.

American Samoa is the only U.S. territory that has to come to Congress and ask permission whenever our people want to amend our constitution. We recognize that each territory's legal relationship with the U.S. is unique, but American Samoa's right of self-determination should not be uniquely burdened with this requirement for Congressional approval.

This is particularly true because American Samoa has a very special relationship with the United States. We joined the U.S. not because we were conquered or purchased, but because of an agreement we voluntarily entered into. We were induced to cede our islands to the U.S. by the promise made to our forefathers, embodied in the Deeds of Cession, that our ability to preserve our culture would always be respected and protected. We have always cherished our right to self-determination within the American system.

For well over a century, we have been a proud part of the American family while still practicing the culture that defines us as a people. The promise made to our forefathers has largely been kept, and we have more than held up our end of the bargain by demonstrating extraordinary loyalty to this country. American Samoa has the highest rate of military enlistment of any state or territory in the U.S., and we have sacrificed much more than our share of our best men and women in America's conflicts. I am proud to say that I retired as a major after serving more than two decades, including in the Gulf War and the wars in Iraq and Afghanistan. After retirement I returned home to American Samoa where I have been honored to serve in the Legislature, as Lt. Governor, and now as Governor. But my story is not unique. Generations of American Samoa's sons and daughters sustained this legacy of patriotism by exemplifying our ethic of military service. They too have returned home to continue to serve our community.

The people of American Samoa have always been first in line to fight for America's freedom, and we hope Congress will support us in our quest for local self-determination unencumbered and undisrupted by the unintended effects of 48 U.S.C. 1662a.

Our people demonstrated their commitment to self-determination and participatory democracy in 2022. Consistent with the applicable provisions of the American Samoa Constitution and local law, I called a Constitutional Convention. Lt. Governor La'apui was appointed chair of the Constitutional Review Committee, which recommended proposed amendments to be considered at the convention. Local councils from each county in American Samoa selected a total of 129 delegates to the convention to discuss various proposed constitutional amendments. The result of the convention was that 11 proposed amendments were put on the ballot for the entire electorate to vote on. In November 2022, five of those amendments were approved by our people.

The amendments that were ultimately approved are an assortment of measures to enhance our self-governance. One measure would establish an impeachment procedure for the Governor and Lieutenant Governor. Another would give the delegate from Swains Island – an atoll in a remote part of our territory – the right to vote in our House of Representatives. Other amendments might appear less significant, such as changing the names or spellings of some of our counties.

These amendments may vary in their perceived significance, but what they have in common is that they are all matters that our people are quite capable of deciding for ourselves without being micromanaged by Congress. Do we really need to take up Congress's valuable time to decide whether "Ma'oputasi," a county in our Eastern District, should be spelled with an "o" or a "u"?

H.R. 6062 would restore a status quo that worked very well for decades prior to 1983: Amendments and modifications to the American Samoa Constitution would have to be approved by the Secretary of the Interior but not by Congress. That procedure was much more efficient, because the Department of the Interior is the federal government's repository of institutional knowledge on American Samoa and its relationship with the

United States. Interior has staff able to engage with our issues without having to get up to speed, subject to both Secretarial supervision and Congressional oversight.

Under the old arrangement, where Congressional approval was not required, American Samoa was able to make significant, steady progress along the path of self-governance. With the approval of the Secretary of the Interior, American Samoa adopted its first constitution in 1960. Working with the Department of the Interior, we adopted a revised constitution after a Constitutional Convention in 1967. In 1977, pursuant to a Secretary's order, our constitution was amended again to empower our people to elect our Governor and Lieutenant Governor. Later that year, the Secretary granted our Senate's request to amend our constitution so that, among other things, the Attorney General of American Samoa would be appointed by the Secretary and confirmed by our local legislature. The following year, the Secretary approved our Senate's request to have the Governor rather than the Secretary appoint the Attorney General.

The old system served us well. The relationship between American Samoa and the United States was characterized by cooperation and mutual respect. We were allowed to develop politically at our own pace, progressing steadily along the path of self-determination and self-governance. The promise of the Deeds of Cession was being fulfilled. H.R. 6062 would restore the arrangement that worked so well for American Samoa and the federal government alike.

The Congressional approval requirement makes it infinitely more difficult for the people of American Samoa to amend their constitution when they see fit. Congress's calendar is subject to partisan machinations that can make it difficult to pass even essential legislation in a timely fashion. The ability to pass legislation, even seemingly noncontroversial legislation, is always subject to external factors that have nothing to do with us and are beyond our control. We are a small, remote territory. It is hard for us to compete for attention with powerful interests when so many important things are going on. Congress already has so much on its plate, and we don't want to add to it every time our people want to amend our constitution.

If we submit constitutional amendments to Congress under the current law under 48 U.S.C. 1662a, Congress has no obligation to act within a reasonable time. In fact, it has no obligation to act at all, or to even respond to us. I'm not suggesting that Congress would ignore us. But it's easier for us to inadvertently get lost in the shuffle with Congress than with the Interior Department, which has good reason and opportunity to deal with us every day.

Under the Territorial Clause, Congress will, of course, still retain full authority over American Samoa. While H.R. 6062 would eliminate the need for us to get Congress's *prior* approval before amending our constitution, Congress would still have full authority to take any appropriate action if American Samoa were ever to do anything that Congress deemed contrary to federal authority or policy. Passing H.R. 6062 would thus not diminish Congress's oversight authority over American Samoa; it would simply excuse Congress from the obligation to micromanage American Samoa in a way that it micromanages no

other territory—and in a way that inappropriately impedes our ability to exercise self-determination.

I respectfully request that the attached memorandum on 48 U.S.C. 1662a be included in the record. Additional supporting material may be submitted after this hearing pursuant to Committee rules. The memorandum provides detailed historical perspective on how Section 1662a inadvertently upset a very well calibrated mechanism for allowing American Samoa to progress toward self-determination under Congress's ultimate supervision. That well calibrated mechanism would be restored with H.R. 6062.

I am reminded today of an ancient Samoan proverbial expression: "Ia o gatasi le futia ma le umele," meaning "May both sides be unified in equal strength." H.R. 6062 represents the inestimable value we place on our unity with the United States but also the equal importance we place on our Constitution and the protection of the Samoan way of life.

For American Samoa, self-determination is an ongoing journey. Congress has of course been an essential part of that journey. We appreciate that and will continue to call on Congress to request what we need to keep making progress. What we need from Congress now is the same flexibility that Congress allows to all of the other territories to shape their own future.

Thank you.

**Attachment 1****MEMO: Political and Legal History of 48 U.S.C. 1662a****CONCLUSIONS AND RECOMMENDATIONS:**

1. 48 U.S.C. 1662a does not in any respect or by any degree define, implement or enhance the Territorial Clause power of Congress to approve or disapprove, modify, or declare null and void any amendment to the local constitution approved by the Secretary of the Interior pursuant to Executive Order 10264, as authorized by Congress under 48 U.S.C. 1661. Accordingly, Congressional power would not be diminished, restrained or relinquished by repeal of 48 U.S.C. 1662a.
2. The sole effect of 48 U.S.C. 1662a is to make approval by an act of Congress a condition precedent for any amendment approved by the Secretary under Executive Order 10264 to enter into force, including amendments ratified by a majority vote in a referendum conducted by the American Samoan Government in accordance with local laws.
3. The historical role of the Congress, President, Secretary of the Interior and American Samoan Government in lawful governance of American Samoa, including adoption of the local constitution and amendments thereto pursuant to local law sustains self-government in a manner compatible with the 1900 and 1904 Deeds of Cession, 48 U.S.C. 1661, Executive Order 10264, the 1967 Revised Constitution of American Samoa and local law promulgated thereunder, subject to and consistent with federal law made applicable to American Samoa by Congress.
4. Because Congress has the absolute power to act any time it chooses before, during or after amendment of the local constitution, and determine disposition of any proposed or approved amendment, there is no compelling juridical justification or prudential reason to make amendments contingent on action by Congress before amendments are promulgated and take effect as otherwise authorized by federal and local law.
5. Accordingly, in the interests of local democratic self-determination and preservation of the American Samoa way of life consistent with 48 U.S.C. 1661, the extraneous mandate of 48 U.S.C. 1662a should be repealed.

**Part One: Framework for self-determination to preserve or change current status**

The framework for local self-government that preserves American Samoa's cultural, political and legal order, but allows for change through local self-determination, begins with the 1900 and 1904 Deeds of Cession. The 1929 Ratification Act (48 U.S.C. 1661) confirmed the Deeds of Cession, including U.S. obligation to respect local self-

determination in local cultural affairs. That 1929 act of Congress delegated to the President of the United States responsibility for conducting federal affairs in the territory consistent with U.S. obligations under the Deeds of Cession.

Pursuant to 48 U.S.C. 1661, in 1951 the President signed Executive Order 10264, which delegated to the Secretary of the Interior responsibility to conduct federal affairs in American Samoa on behalf of the President consistent with the Deeds of Cession. Finally, acting under Executive Order 10264, the Secretary approved the 1967 Revised Constitution of American Samoa, after its approval by the voters of the territory in 1966.

Those instruments provide the framework for self-determination in all local affairs not otherwise governed by applicable federal law. The local constitution provides for local self-government under the current status, and it can be amended by local initiative under the constitution, or otherwise proposed and approved under local law, with approval of the Secretary under Executive order 10264.

That framework remains unchanged since adoption of the local constitution in 1967, except that in 1983 a statute that has never been implemented or applied would require Congress to approve amendments after approval by the voters and the Secretary.

Now for the first time since 1983 amendments have been approved by the voters, and the Secretary as well as Congress are considering whether seeking approval of Congress under the 1983 statute is consistent with purposes of the framework for self-determination already previously established by Congress.

As explained in detail below, in 1983 the Member of Congress from American Samoa proposed and Congress adopted a one sentence statutory provision requiring Congress to approve any amendment to the local constitution adopted under E.O. 10264 (See, U.S. Public Law 98-213, Sec. 12; 48 U.S.C. 1662a).

That provision applies to any amendment approved by the Secretary, including amendments proposed through the amendment process prescribed in the 1967 local constitution at Article V, Section 3 and Section 4, or otherwise lawfully conducted under local authorities within the framework of self-government in all matters not otherwise governed by applicable federal law.

48 U.S.C. 1662a lay dormant from 1983 to 2022, simply because no amendment to the local constitution was ratified by voters in a local referendum or otherwise approved by the Secretary of the Interior during that period. There were multiple constitutional conventions called by past Governors under the local constitution and/or local law, and referendums were conducted on proposed amendments, but none were approved until five of 11 amendments were approved by voters in 2022.

Accordingly, the efficacy and operation of 48 U.S.C. 1662a was never put to the test until the 2022-2023 period American Samoa transmitted the approved amendments to the Department of the Interior, which has had the question of approval under advisement

while consulting with the American Samoa Government and Congress about the proposal by the Member of Congress from American Samoa and local leaders that 48 U.S.C. 1662a be repealed before a precedent for its application is created.

The role of the Secretary was approved by the voters in ratifying the local constitution in 1967, and derives in turn from the authorities and responsibilities of the Secretary Executive Order 10264. Accordingly, that role for the Secretary is not in itself a reason much less justification for 48. U.S.C. 1662a.

As noted, on November 8, 2022, the voters of American Samoa approved 5 of 11 amendments to the 1967 Revised Constitution of American Samoa. Three of the voter-approved amendments were technical changes conforming terms used in constitution to local language per custom, one enabled impeachment and removal of the Governor by the Legislature, and one gave the non-voting member of the Legislature from Swain's Island a vote in that body.

The amendments were proposed in 2022 by a convention called under the authority of the Governor, under local authorities and measures consistent with procedures for proposing and approving amendments pursuant to Article V, Section 4 of the 1967 Revised Constitution. The Department of the Interior provided a \$150,000 grant for the convention and referendum as called by the Governor.

Amendments proposed and ratified by voters, including under Article V, Section 3 or Section 4 of the constitution, must be approved by the Secretary of the Interior in the same manner as the constitution was adopted in 1967. Accordingly, the Secretary has the authority under Executive Order 10264 to approve amendments proposed by a convention called under authority of the Governor and approved by majority vote in a referendum conducted under local law.

After the 2022 vote in American Samoa, back in Washington It was determined by Interior Department legal and policy staff that the U.S. need not determine the local protocols for proposing and approving local amendments. Since the local process was determined lawful under both federal and local law, it was confirmed by the Department of the Interior that the Secretary had the authority and responsibility to either approve or disapprove any amendments proposed and approved locally.

In addition, it was determined by the American Samoa Government and the Department of the Interior that unless 48 U.S.C. 1662a were repealed, the amendments approved in 2022 could not take effect without the act of Congress in 1983.

In the past, multiple constitutional conventions have been called in the same manner as the 2022 convention, but voters have rejected all proposed amendments. In 2022, as noted, one of 6 amendments rejected by voters would have reduced the Secretary of the Interior's role in governance of the territory, including approval of constitutional amendments.

In all previous constitutional amendment votes the vast majority of Americans in American Samoa rejected all amendments that would change the role of the Secretary of the Interior under Executive Order 10264. In 2022, the amendment that would have reduced the DOI Secretary's role under the local constitution was also rejected.

The record of majority rule in past votes expressing trust in and reliance on the governing arrangements under 48 U.S.C. 1661 and Executive Order 10264 are understood in American Samoa as a record of self-determination in favor of the current status defined by the Deeds of Cession and the local constitution.

### **Part Two: Why repeal is best option**

The 1967 Revised Constitution of American Samoa adopted by majority rule in the 1966 ratification vote, including its amendment process, was approved by the Secretary and thereby entered into force in 1967. However, approval of the Secretary at least for now is no longer the last step in the constitutional amendment process.

That is because in 1983 staff acting on behalf of the Congress member from American Samoa, Fofu Sunia, requested House managers of a territorial spending bill to insert a one sentence amendment in that legislation that became 48 U.S.C. 1662a.

Whatever the purposes and intentions for that 1983 bill at the time, the long-term effect that became apparent was that a local democratic act of self-determination to amend the local constitution approved by the Secretary can no longer be given effect in the same manner by which the territorial constitution was itself approved by the Secretary and given effect in 1967.

Specifically, 48 U.S.C. 1662a makes Congressional action necessary, but does not require Congress to act. The result is Congress in effect can knowingly or unknowingly nullify the vote of the people and Secretarial approval of an amendment under Executive Order 10264 by simply doing nothing. By act or omission of either the Senate or the House the vote of the people can be ignored, nullified and vitiated.

Congress already has plenary power under the Territorial Clause of the U.S. Constitution to approve or disapprove of any amendment to the constitution before or after it is approved by the voters, the local government or the Secretary. The 1983 amendment is in that sense a hollow act by mere statute that does not and cannot give Congress power it has under the Constitution.

What the 1983 statutory requirement of Congressional approval does is empower either chamber of Congress to suspend operation of the local constitution and democratic self-determination on a local self-government and home rule issue by taking no action. It allows nullification of democratic process by Congress acting passively, without exercising its constitutional power over territories authoritatively and affirmatively.

Subsequently, after 48 U.S.C. 1662a became law, Congress was advised in 1984 testimony by the Department of Justice that the 1983 amendment might have unintended consequences relating to the territory's status and federal relations as described below. See, U.S. Senate Energy and Natural Resources Committee, Hearing Report, "Revised Constitution of American Samoa," May 8, 1984.

Thereafter, recognition increased that the 1983 amendment was not warranted or needed. Accordingly, Congressman Sunia's successor, Eni Faleomavaega, proposed legislation in 2005 to repeal 48 U.S.C. 1662a.

However, there was confusion in Congress about whether repeal of the act would relinquish powers of Congress, which is not the case given the plenary powers of Congress over all matters of territorial governance, including amendments to the local constitution.

Now, decades later, it might seem like a logical solution to this anomaly going forward to amend the 1983 statute by requiring Congress to act on a proposed amendment within a specified period time. That, of course, would not be binding or enforceable, unless perhaps the statute provided the amendment would take effect if Congress does not act by a specified date.

That option of Congressional approval by default if Congress does not act by a date certain is consistent with the automaticity of an effective date for locally ratified constitutions submitted to Congress by Guam or the U.S. Virgin Islands territory under a 1978 federal statute (P.L. 94-584). But that 60 rule does not apply to amendments (and no constitution has ever been adopted by those two territories).

Another option might be to limit the application of 48 U.S.C. 1662a to amendments proposed and initiated by the Secretary under Executive Order 10264 but not jointly with the Government of American Samoa, and/or proposed and ratified according to local law. That would change and limit the role of the Secretary in a way rejected by voters in every referendum since 1967, including the 2022 vote.

That latter option also would not fully democratize the process (if that were the goal), as long as the Secretary can control what amendments would ever reach Congress after approval by the voters, through the power to approve or disapprove. So, unless the role of the Secretary is either radically altered or ended, the current law will remain.

### **Part Three: Political risk of clouding American Samoa's status**

In the 1984 hearing before the Senate Committee on Energy and Natural Resources cited above, a Deputy Assistant Attorney General from the Office of Legal Counsel in the U.S. Department of Justice suggested implementation of 48 U.S.C. 1662a could raise questions and concerns about whether that might alter political status, rights or equities of American Samoa in the federal-territorial relationship.

While the ultimate effect or impact of those questions and concerns may be more speculative than determinative, the fact that DOJ would give such testimony is extraordinary and cannot be dismissed by countervailing legal or political speculation. Indeed, even if only seen as an expression in 1984 of DOJ disapproval of the adoption of 48 U.S.C. 1662a without regular order and DOJ review, the 1984 DOJ testimony demands attention and consideration.

Alone the DOJ position in 1983 about the 1983 one sentence add-on to P.L. 98-213 may not be legally dispositive, but it augments and provides a political risk context for the preceding discussion of the legal anomalies emanating from 48 U.S.C. 1662a.

Specifically, DOJ indicated “federalization” of the local constitution under 48 U.S.C. 1662a could open not only the constitution but even the Deeds of Cession to amendment or revision the same as a generic territorial organic act, rather than an historical legacy of stable relations under 48 U.S.C. 1661.

The result predicted by DOJ was risk that American Samoa’s unique status could be modified. If so, the territory as well as its people who are U.S. nationals could be reclassified for the first time since 1900, as a territory and population indistinguishable from other four unincorporated by statutorily organized territories.

Once articulated by DOJ in 1984, even if temporized with the passage of time this concern cannot simply or lightly be explained away or ignored. DOJ cannot “take it back” or give reassurances that mitigate the effects of the questions DOJ raised.

Those concerns are now part of the political culture of American Samoa, and contribute to the steadfastness of its people to preserve a unique tradition of patriotism and allegiance combined with autonomy and customary way of life, which the U.S. promised to help preserve in the 1900 and 1904 Deeds of Cession. That is what self-determination means to American Samoa.

In this regard, it must be recalled and understood emphatically that American Samoa is not an “organized” territory, that is, not subject to an organic act of Congress establishing local self-government and defining federal-territorial relations under federal law on the basis of conquest or purchase of the islands by the U.S. federal government.

Rather, American Samoa was not taken as a prize of war or purchased by the highest bidder. Instead, the high chiefs ceded their sovereignty and islands to the U.S. by deeds in 1900 and 1904. In accepting and enacting the terms of those deeds Congress affirmed that American Samoa was recognizing the U.S. as sovereign and that the people now owed allegiance to the United States.

At the same time, as noted, the U.S. accepted the obligation to protect and preserve the customs and traditions of American Samoa and its way of life, including the traditional land ownership system. As a result, the federal footprint in American Samoa is very small compared to other territories.

Given this degree of both legal and de facto autonomy, far fewer federal statutes apply, and American Samoa proudly and patriotically has statutory U.S. nationality but not statutory citizenship unless individually acquired. There is no federal court in American Samoa and its High Court has been appointed by the Secretary of the Interior.

If the status of American Samoa and its U.S. national population is to change, its leaders reportedly believe that best would be initiated in the people before being proposed to Congress or imposed by a court. That is the position local government leaders successfully argued in the federal courts during *Fitisemamu* case, seeking to federalize constitutionally imposed birthright citizenship in the territory by court ruling without democratic consent of the governed.

And that is why the Governor, both Houses of the local Legislature and senior local and federal officials directly responsible for leadership on this matter have proposed that the 1983 amendment taking away home rule under the people's constitution be repealed. That is because in its historical context the 1983 amendment requiring Congress to approve any amendments to the constitution is not consistent with self-determination.

As noted above, in the 2022 vote, the amendment conferring voting rights on the representative from Swain's Island is the only amendment passed that ushers in a change in local political affairs. That and the other approved amendments need to undergo Interior Department legal review. Frustration over delay in federal approval of the 2022 vote on several amendments to the local constitution is understandable.

However, there is now valid concern and hesitation about action by the Secretary of the interior that could trigger Congressional inaction, on one hand, and Congressional hearings in which approval or disapproval of an amendment such as the Swain's Island vote decided by the voters back home could become the focus of a debate over election law in Congress.

Thus, the decision in Washington not to act without further deliberation is prudent given flaws in the hastily adopted 1983 federal law creating a local constitutional political conundrum under 48 U.S.C. 1662a that now only Congress can correct.

To understand the legislation introduced to repeal that errant 1983 statute requiring Congressional ratification-action on amendments, and to define the real options for resolution of this dilemma, it is important understand American Samoa's political ethos.

#### **Part Five: America's Most Self-Governing Overseas Territorial Possession:**

American Samoa is the only U.S. territory that is not seeking changes to its political status and relations with the federal government. The traditional and elected leaders of American Samoa and the voters consistently demonstrate a preference to remain America's outpost in the South Pacific under current law.

Although grateful for the federal programs, services and benefits of U.S. territorial status, the American Samoa body politic consistently has affirmed through local self-government that any change in political status or federal-territorial relations preferably should be initiated locally not in distant Washington.

American Samoa is home to deeply patriotic Americans whose allegiance and loyalty to America is confirmed by the highest per capita rate of U.S. military service of any state or territory. Yet, when a territorial policy advocate from Guam filed a lawsuit asking a federal court in Washington DC to end the current statutory “national but not citizen” status of Americans born in the territory, and replace it not by statutory citizenship applicable on the other territories, – but by federal judicial order with the same citizenship status conferred in states, the local government opposed that lawsuit.

American Samoa’s Congresswoman, Governor and Legislature intervened as parties in the case and opposed any change to the historical American nationality and autonomous political status that has served the people of the territory and our nation so well for over 120 years. The U.S. Supreme Court rejected petition to review federal appellate court ruling in favor of the current status of American Samoa and persons born there.

That local initiative to preserve the autonomous status of the territory confirmed that U.S. nationality in American Samoa confers rights to Americans equal to that of nationals residing in the four other unincorporated territories who are classified as “citizens” by federal territorial statutes.

To understand this political culture, it is important to note that American Samoa was never disposed to European colonial or American imperial initiatives. Instead, the powerful Chiefs of the Eastern islands of Samoa requested and voluntarily agreed in 1900 and 1904 to Deeds of Cession conferring U.S. sovereignty over the islands of the territory, in exchange for the U.S. promise to preserve the local traditional land ownership system and way of life.

It is because the U.S. has kept its promises that American Samoa prefers its current political status to any other relationship with the U.S. federal government or model of self-government. The U.N. may classify American Samoa as non-self-governing territory for its own purposes, but most locals believe the current status is the result of and consistent with local self-determination.

It is recommended to support repeal of 48 U.S.C. 1662a. If that statute is not repealed, approval of the amendments ratified by the people in 2022 will trigger the perverse and anomalous 1983 law suspending the amendment process to which the people have consented, unless and until Congress acts. In turn, action by Congress under that 1983 statute could have consequences for self-determination for American Samoa to which its people have not consented.

In that context, it is important to note that the Secretary’s role not only in the amendment process but more broadly under Executive Order 10264 derives from a consent based

mutually beneficial federal-territorial relationship created by Congress in 1929 under 48 U.S.C. 1661. In that historic Act, Congress authorized the President to adopt measures to establish local government in the territory, and since 1951 that has included authorization of the Secretary of the Interior to execute and implement responsibilities for federal relations with the territory pursuant to Executive Order 10264.

The legal meaning, political implications and intergovernmental viability of Section 1662a is being fully revealed and understood for the first time since it was adopted. Obviously, that is due to approval of five constitutional amendments in the referendum of Nov. 8, 2022, now awaiting final review and action by the Secretary of the Interior under Executive Order 10264, pending Congressional review at this time of H.R. 6062.

In that context, while not seeking uniformity or “one size fits all” political status features for all territories, it has not been agreed American Samoa should be the only U.S. territory with a local constitution that has to come to Congress after the people have voted to amend the constitution. Like the local constitutions of all unincorporated territories, American Samoa’s constitution applies only to local affairs to the extent consistent with federal law, so local amendment is limited to local matters in all territories.

That is why American Samoa has not agreed the historical role Secretary of the Interior in approval of amendments justifies singling American Samoa out for the requirement of Congressional action after an act of local self-determination and Secretarial approval. While each of the other four territories has been authorized by Congress to adopt a constitution, only American Samoa’s constitution was authorized by the President and Secretary as enabled and authorized by Congress.

Thus, just as each territory’s legal relationship with the U.S. is unique, American Samoa’s right of self-determination should not be uniquely burdened because of the unique features of its organic law grounded in the Deeds of Cession. Section 1662a was an ad hoc and never reviewed revision of what was in 1983 a 54-year federal-territorial relations success story under 48 U.S.C. 1661

The mandate of Section 1662a is for what amounts to a secondary after-the-fact Congressional approval. The effect is to hold acts of local self-determination in abeyance indefinitely, until Congress acts, or even to nullify amendments by omission or silence.

Perhaps most fundamentally, Congress does not need 1662a to exercise its plenary and supreme power under the Territorial Clause to approve or disapprove any amendment approved by the Secretary under Executive Order 10264. Whether an amendment is proposed in a local convention and ratified in a referendum or any other lawful procedure under local law, approval by the Secretary does not bind the Congress before or after the Secretary acts.

The U.S. DOJ position is that there is no vested right under local or federal law to a local constitution or any amendment to it, whether or not adopted under authorization by Congress in 48 U.S.C. 1661. Thus, there is no gain of Congressional authority by requiring

a second authorization by Congress under 1662a, and no loss of Congressional power if the 1983 statute is repealed. Indeed, Congress can disapprove amendments approved by the Secretary, approve amendments that have been disapproved by the Secretary, or simply amend the local territorial constitution as Congress chooses.

Because the local constitution was adopted by the people and approved by the Secretary on behalf of the President as authorized by Congress, the real effect of Section 1662a is to prevent the local constitution from being amended in the same manner it was adopted. As such, Section 1662a is a condition precedent and/or condition subsequent that either way leaves an act of self-determination and/or Secretarial act promulgated under Congressional authorization in limbo unless and until Congress acts yet again.

In contrast, the power of Congress to approve or disapprove of any amendment or act of the Secretary in American Samoa or other territory is sovereign, supreme and of constitutional magnitude, not created by or dependent on a mere federal statute like 1662a.

Senator WYDEN. In a moment, other members of this Committee are going to have an opportunity to make opening remarks. The legislation on the agenda today joins other important legislation, including three of my bills—the Water for Conservation and Farming Act, the Watershed Results Act, and the Klamath Power and Facilities Agreement Support Act that the Committee considered earlier this Congress. So, I look forward to continuing our work here.

Senator Risch and I have worked in a bipartisan way on these sorts of natural resources issues for many years, and I appreciate his cooperation, and we are going to work to advance the legislation that demonstrates how serious we are about tackling these issues.

Senator Risch.

**OPENING STATEMENT OF HON. JAMES E. RISCH,  
U.S. SENATOR FROM IDAHO**

Senator RISCH. Thank you, Mr. Chairman. Thank you for holding this hearing today. Obviously, water is an incredibly important issue in the western states. Our friends east of the Mississippi don't have a really good grasp of how important water is to us out west. And as a result of that, we do spend an inordinate amount of time on it, but it is very important to do that. Western water issues are localized, and they are nuanced, and one-size-fits-all models really don't work. The precious time and resources going to water supply and management efforts, solutions to problems, need to be tailored by the people who truly understand the needs on the ground with support from federal partners, if and only if their involvement is appropriate.

Idaho is a good example of state leadership in water management. I have one bill on this agenda that is very nuanced in a particular area, and I am glad you have that on. I am also glad to see the attention spent to American Samoa. On the Foreign Relations Committee, we know that what happens in the Pacific is important to America. We are trying to spend more and more time focusing on the Pacific because it is an important region, and China has already spent a lot of time and a lot of focus there. So I am glad we are spending this time there.

Thank you, Mr. Chairman.

Senator WYDEN. Well said, colleague.

And at this point, we are going to recognize those on the dais, and then we will go to our colleagues in the house.

Let's see, Senator Hickenlooper.

**OPENING STATEMENT OF HON. JOHN W. HICKENLOOPER,  
U.S. SENATOR FROM COLORADO**

Senator HICKENLOOPER. Thank you, Mr. Chair, and thank you for today's hearing and for including several bills that we are proud to champion. I also appreciate Commissioner Touton for joining us today and for her unwavering commitment to making Colorado and the entire West—to help us make the most of water supplies in the shortages we face as a result of this long-term drought. Her commitment to work with all parties to use our experience and science to deal with this uncertain future in the best possible way is re-

markable. And that's what the bills we have on the docket today would do. I mean, in the West, water really is life, and we have no crystal ball, but we have to be ready for whatever comes.

We have one bill to reauthorize the Upper Colorado River Basin System Conservation Pilot Program, which I am proud to co-lead with Senator Barrasso. And this bill helps the Upper Basin states like Colorado and Wyoming to continue to investigate the best ways to take on voluntary water conservation measures between now and 2026. As the Commissioner knows, in 2026, that is when our current plans for managing the Colorado River expire. Understanding now what works best for water conservation in the Upper Basin can help us handle a drier future.

I am also proud to join my colleague, Senator Michael Bennet, on a bill to help ensure the affordability of the Arkansas Valley Conduit, a critical infrastructure project in southeastern Colorado that he has been working on for more than a decade. These communities have been working on—they have been waiting 60 years to get clean, reliable water. We are committed to getting that done.

I have also worked with Senator Lummis and with you, Senator Wyden, on legislation that would continue the good work that the Department of the Interior is already doing on water. Our bill reauthorizes the Bureau's authorities under the Reclamation States Emergency Drought Relief Act, as well as key DOI programs for streamgauge and groundwater monitoring.

And then lastly, we are also really looking forward to diving in on the Water Project Navigators Act that Senator Moran and I just introduced. And this would create a new Reclamation program to help communities—rural communities, especially—and tribes build up on their own internal capacity to develop projects that can benefit both water supply and the environment. We will dig deeper on each of these during my time with questions, but for now, thank you again for the hearing.

Senator WYDEN. Let us recognize that 100 percent of Colorado Senators are in the house.

[Laughter.]

Senator WYDEN. Senator Padilla, welcome.

**OPENING STATEMENT OF HON. ALEX PADILLA,  
U.S. SENATOR FROM CALIFORNIA**

Senator PADILLA. Thank you, Mr. Chair. Thank you, Ranking Member Risch for convening this important Subcommittee hearing on water legislation. Also, I want to extend my personal gratitude to Commissioner Touton, not just for her testimony today, but for all of the work that she has done to help manage the complex water issues facing California and the West. I am happy to discuss the three water related bills of mine that are on the agenda, but as the West continues to adapt to the climate crisis and historic drought, it is more important than ever to ensure that the Federal Government is meeting these challenges with more thoughtful, innovative, and comprehensive strategies. So, my bills are intended to assist the Department and the Bureau to do just that.

The first of my bills, the Sacramento River Act, would authorize Interior to set up federal leadership committees to improve federal coordination of ecosystem restoration projects. This increased co-

ordination would particularly help in the Sacramento Valley, where a coalition known as the Floodplain Forward Coalition is working to develop and implement nature-based solutions to provide benefits for the environment, migratory birds, and fish in our farms, towns, and cities. Another provision of the bill would allow the Bureau of Reclamation water users to retain revenues from the sale of surplus water that happens from time to time—surplus water. These proceeds would go to fund drought resiliency and dam safety activities. This change would also serve to incentivize water utilities to generate surplus water that they can to drink in times of drought that would relieve the water shortages and improve water drought resiliency and dam safety.

The second bill will simply increase the authorization of funding for the San Joaquin River Restoration Program, which supports one of the most productive agricultural regions in the country while also creating a healthy living river for Chinook salmon. Increasing the cap of the program will enable the Bureau and the State of California and other key partners to advance projects necessary to the continued success of the program. And in particular, I want to thank Senator Hoeven for co-sponsoring this bill with me.

The third and final bill would establish an interest-bearing account for the non-federal contributions to the Lower Colorado River Multi-Species Conservation Program. This program is an underrated success story that has been hugely beneficial in stocking thousands of beta fish and increasing the numbers of breeding migratory birds. However, a lack of reinvestment due to the fact that the account is not able to collect interest diminishes the value of the program. This bill would correct that.

I believe these three straightforward bills would provide the Federal Government with additional tools to bolster drought resiliency, improve water supply reliability, and help restore our imperiled ecosystems across California and the West, and I want to thank you, Mr. Chair, for your generous consideration of these items.

Senator WYDEN. Thank you, Senator Padilla.

Here is what we will do at this point. We will recognize Senator Bennet. Then, we will recognize Senator Fischer, and we will give you the opportunity to be excused after your remarks. Then, we will have Commissioner Touton come on up.

Senator Bennet, welcome.

**OPENING STATEMENT OF HON. MICHAEL F. BENNET,  
U.S. SENATOR FROM COLORADO**

Senator BENNET. Thank you, Chairman Wyden. It's great to be here with my neighbor, Senator Fischer, and good to be with you and Ranking Member Risch. Thank you very much for holding this hearing, the members of the Subcommittee and especially my colleague, John Hickenlooper from Colorado, to talk in part about a bill we introduced yesterday called the Finish the Arkansas Valley Conduit Act. And I am hopeful that the influence that the Senator from Colorado has on this Committee will translate into broad bipartisan support—

Senator WYDEN. It always translates.

Senator BENNET [continuing]. For this bill. Thank you.

And I also would like to recognize and thank the Honorable Camille Touton, the Commissioner of the Bureau of Reclamation, who is here today, also as a witness. As both Senator Padilla and Senator Hickenlooper have said, she has been a champion—champion—in our shared fight between the Upper Basin and the Lower Basin to deliver clean water throughout the region, and I am grateful for her steadfast leadership on that issue and for being able to put up with all of us.

I want to just spend a minute on why this bill matters so much to farmers and ranchers in southeastern Colorado. By the way, I share Senator Risch's views about how we should think about the water projects that we have got and why this deserves the Committee's bipartisan support.

Over 60 years ago, President Kennedy came to Pueblo and promised to build the Arkansas Valley Conduit. The Arkansas Valley Conduit is the last component of the Fryingpan-Arkansas Project, a federal water diversion and storage project in the Lower Arkansas Valley, which Congress approved in 1962. When finally constructed, after all these decades later, the conduit will deliver, for the first time, clean drinking water from the Pueblo Reservoir to farmers and ranchers and rural communities in the Arkansas River Valley. Because of federal investment and the strong support of Commissioner Touton, the Arkansas Valley Conduit finally broke ground after 60 years, just in the last year or so. These rural communities currently rely upon groundwater, and many of them are facing water contamination from naturally occurring radioactive elements. The conduit will deliver water for some communities that have fewer than a thousand residents, who primarily use the water for their farms and ranches.

Since 2019, the total project cost estimates have nearly doubled. As labor and material costs go up, the project slips further and further behind on completion. These rural communities are already on the hook, as they should be, for a significant cost share, and will struggle to repay the Federal Government as costs continue to rise. It is important to relieve the burden of interest payments so these underserved communities can make good on their part of the cost-sharing agreement that is part of this proposal.

Since I came to the Senate, as Senator Hickenlooper said, I have fought for the federal funding that rural Colorado needs to complete this project, alongside with both Senator Gardner before him, and Senator Hickenlooper since he arrived in the Senate. It has been a bipartisan effort all the way along that included Representatives Buck and Tipton from the House of Representatives. To finish the Arkansas Valley Conduit Act will eliminate interest payments on all non-federal cost-share funds that extend the repayment period from 50 to 100 years to ensure that these rural communities can finish this project once and for all and pay back the Federal Government. Farmers and ranchers in southeastern Colorado need Congress's help to get this project across the finish line and access, for the first time, clean, safe water for their families, for their crops, and for their livestock.

I have come with letters and testimony from the State of Colorado and the Southeastern Colorado Water Conservancy District,

all supporting the bill. Mr. Chairman, I would ask unanimous consent that these letters be entered into the hearing record.

Senator WYDEN. Without objection, so ordered.

[Letters of support for Finish the Arkansas Valley Conduit Act follow:]



September 10, 2024

The Honorable Joe Manchin  
 Chairman  
 U.S. Senate Committee on Energy and  
 Natural Resources  
 304 Dirksen Senate Office Building  
 Washington, D.C. 20510

The Honorable John Barrasso  
 Ranking Member  
 U.S. Senate Committee on Energy and  
 Natural Resources  
 304 Dirksen Senate Office Building  
 Washington, D.C. 20510

Dear Chairman Manchin and Ranking Member Barrasso,

The Colorado Department of Natural Resources encourages you to support Federal legislation to extend the repayment period for the Arkansas Valley Conduit (AVC), to reduce or eliminate the interest required to be paid on the AVC construction costs, and to limit the repayment obligation to the Fryingspan-Arkansas Project. The AVC is a priority project for the State of Colorado and we have applauded federal investment in the project to date. Further, the Colorado Water Conservation Board, a Division of the Department of Natural Resources, has supported the project with \$100 million in grants and loans. In the face of recent cost increases, we are optimistic that federal action will ensure the project's continued success.

The AVC is an original feature of the Fryingspan-Arkansas Project signed into law by President John F. Kennedy in 1962. Revived by the Southeastern Colorado Water Conservancy District in 2000, the District's Water Activity Enterprise has been steadily working on AVC since that time. Public Law 111-11, passed in 2009, provides that miscellaneous revenues generated by the Fryingspan-Arkansas Project will be used to pay for development and construction costs of the AVC. In 2020, increased federal funding of the AVC was secured and a new Project Management Plan was approved that requires the Bureau of Reclamation to construct the Trunk Line and associated features (the Reclamation Sub-Project) and the Enterprise to construct spurs and delivery lines (the Southeastern Sub-Project).

There are 39 participating water systems in the AVC project, with a total service population of approximately 50,000. Median household income in the AVC service area is only \$47,000, while the Colorado median household income is \$89,000. All of the AVC water systems rely on groundwater, which is of poor quality, with 18 systems failing to meet federally mandated safe drinking water standards due to radionuclides from naturally occurring sources and other systems failing to meet standards due to other constituents. When this groundwater is cleaned to drinking water standards, in many cases it produces a reject stream which violates EPA

discharge standards. In addition to the 18 systems currently facing enforcement orders from the Colorado Department of Public Health and Environment for radionuclides, many of the water systems have been forced to install expensive water and wastewater treatment systems or have even lost water sources they formerly relied on. The poor quality of water was recognized prior to the passage of the Fryingpan-Arkansas Act in 1962. Radionuclides became a major problem in 2000. Emerging contaminants such as PFAS are being discovered in Southeastern Colorado water sources today.

In May 2024, Reclamation and the District updated the cost estimates for their respective subprojects. Reclamation's updated cost estimate for the Reclamation Sub-Project is \$1.31 billion. This is an increase of about \$840 million over the previous estimate (2016 price levels indexed to 2019). When the updated cost of the Southeastern Sub-Project is added in, the total updated estimated cost of the Project is \$1.39 billion. These estimates are at October 2023 price levels. Since construction will take several years, the actual total cost of the Project will likely exceed \$1.39 billion. In turn, the amount to be repaid to Reclamation will be a function of the final actual total project cost. Under current legislation, the AVC Project cost is to be repaid with interest (3.046% per annum) within 50 years using miscellaneous revenues from the Fry-Ark Project. At the current estimated cost, miscellaneous revenues are almost certainly insufficient to pay for construction costs and interest within 50 years.

In 2009, when Public Law 111-11 was passed, miscellaneous revenues from the Fryingpan-Arkansas Project were estimated to be sufficient to pay off the participants' 35 percent share of AVC construction costs. With Reclamation's 2024 Updated Cost Estimate, this is no longer true. Given the poor water quality of groundwater sources, the severe public health impacts that has, and the depressed economy of the Lower Arkansas Valley, the Colorado Department of Natural Resources believes that amending the AVC authorizing legislation to eliminate the requirements to repay costs with interest and within 50 years is fully justified.

Thank you for your attention to this important public health issue in Southeastern Colorado.

Sincerely,



Dan Gibbs  
Executive Director, Colorado Department of Natural Resources

**Statement on S. 5013, the Finish the Arkansas Valley Conduit Act  
To make certain modifications to the repayment for the  
Arkansas Valley Conduit in the State of Colorado**

**Submitted by the  
Southeastern Colorado Water Conservancy District  
Pueblo, Colorado  
September 11, 2024**

The Southeastern Colorado Water Conservancy District (District) urges the passage of S. 5013. The bill would do three things regarding the Arkansas Valley Conduit (AVC), which is a feature of the Fryingpan-Arkansas Project:

1. Affirm that repayment of 35 percent of the cost of the AVC is to be accomplished by applying revenues arising from excess capacity or exchange contracts using Fryingpan-Arkansas Project facilities.
2. Change the repayment period from the current 50 years to 100 years and eliminate the current requirement that costs to be repaid to the United States bear interest.
3. Require that funding provided during construction from any person (i.e., the District) other than the Secretary of the Interior will count as payment toward the 35 percent of project costs which must be paid to the United States per the current statute.

Given the poor quality of groundwater sources, the resulting inability to meet safe drinking water standards, the severe public health impacts that has, the depressed economy of the Lower Arkansas River Valley, and the very substantial increase in the estimated construction cost of the AVC resulting from a May, 2024, updated cost estimate, the District believes that the amendments which S. 5103 will make are fully justified.

Background

The AVC is an original feature of the Fryingpan-Arkansas Project. The authorizing legislation for the Project was signed into law in 1962. The District is the repayment entity for the Project.

Public Law 111-11, passed in 2009, amended the original legislation to provide that 35 percent, rather than 100 percent, of project costs was to be repaid with interest. That law also provided that revenues arising from excess capacity or exchange contracts using Fryingpan-Arkansas Project facilities (typically referred to as miscellaneous revenues) will be used to pay for 35 percent of the AVC construction costs. These contracts are for the storage or conveyance of non-project water in Project facilities such as Pueblo Reservoir.

Per the original 1962 legislation, the costs of annual AVC operation and maintenance will be borne by the District. Public Law 111-11 did not change this requirement. Likewise, S. 5013 would not change it.

#### Need for the AVC

The AVC service area encompasses the Lower Arkansas River Valley east of Pueblo, Colorado. There are 39 participating water systems in the AVC project with a total service population of approximately 50,000. In this entirely rural service area, the median household income is only \$47,000 as compared to the Colorado median household income of \$89,000.

All of the AVC water systems currently rely on groundwater, which is of poor quality, with 18 systems failing to meet federally mandated safe drinking water standards due to naturally occurring radionuclides. Other systems fail to meet standards due to other constituents. When this groundwater is cleaned to drinking water standards, in many cases it produces a reject stream which violates EPA discharge standards. In addition to the systems currently facing enforcement orders from the Colorado Department of Public Health and Environment for radionuclides, many of the water systems have been forced to install expensive water and wastewater treatment systems or have even lost water sources they formerly relied on. Finally, emerging contaminants such as PFAS are being discovered in southeastern Colorado water sources today.

In summary, the rural communities in the AVC service area have low household incomes, very limited ability to bear additional costs, and are unable in many instances to meet safe drinking water standards. The AVC will provide a new surface water source of high quality so that safe drinking water standards can be achieved within the financial ability of the local communities.

#### District Financing of Certain AVC Features

When Public Law 111-11 was enacted, it was anticipated that the Bureau of Reclamation (Reclamation) would fund and construct the entire AVC. In early 2020, however, the District agreed to eliminate some features of the originally planned AVC and to finance and construct others in order to reduce the need for federal appropriations.

Reclamation and the District memorialized this agreement in a formally executed Project Management Plan (PMP). The PMP provides that Reclamation will fund and construct the main trunk line and associated features (the Reclamation Sub-Project) while the District, acting through its Water Activity Enterprise, will finance and construct the AVC's spurs and delivery lines (the Southeastern Sub-Project) with funding from sources other than Reclamation (e.g., loans and grants from the Colorado Water Conservation Board, loans from the state revolving fund, etc.).

#### Need for the Amendments S. 5013 Would Make

In May 2024, the cost estimate for the AVC was updated from the estimate last prepared in 2019. The updated cost estimate more than doubled from the 2019 estimate.

When Public Law 111-11 was enacted, miscellaneous revenues were expected to be more than sufficient to repay 35 percent the AVC's cost with interest and within 50 years. With the May, 2024, updated cost estimate, this is no longer true. Repayment can now be accomplished only if there is no interest and the repayment period is longer than 50 years. This is what prompts the need for the amendments which S. 5013 would make.

Senator BENNET. Thank you, Mr. Chairman.

I hope this common-sense bill will earn a strong bipartisan vote in this Committee at the end of the day and find its way to the floor. Thank you very much for your time and thank you, Senator Fischer for your indulgence.

Senator WYDEN. Thank you, Senator Bennet.

Senator Fischer, welcome.

**OPENING STATEMENT OF HON. DEB FISCHER,  
U.S. SENATOR FROM NEBRASKA**

Senator FISCHER. Thank you, Mr. Chairman, and thank you, Ranking Member Risch for holding this hearing today and including my legislation, S. 4347, the Swanson and Hugh Butler Reservoirs Land Conveyances Act, on the agenda. I, too, would like to thank the Commissioner for working so well with my office on this legislation and also with my local stakeholders in these affected counties.

I have worked alongside Hitchcock and Frontier County Commissioners, the concessionaires, impacted community members, and the Bureau of Reclamation on this legislation to allow 77.2 acres of land around the Swanson and Hugh Butler Reservoirs to be conveyed at fair market value to the counties. Transferring this land to the local counties will chart a better path for the local community and also to the Federal Government. This will allow community members to continue to enjoy the reservoirs and preserve numerous small businesses that operate in that area. Since introducing the legislation, I have heard from over 1,000 constituents and have received numerous letters of support from local businesses. Action on this legislation is urgent, as the Bureau of Reclamation's extended concession contracts expire in February 2025 and some community members face being displaced due to the Bureau's plan to end private, exclusive use at the reservoir. Hitchcock and Frontier counties are committed to ensuring continued public access to the reservoirs and providing effective management that is responsive to our local communities.

A number of the county commissioners, community members, and concessionaires traveled from Nebraska to be here today, a testament to the importance of getting this legislation signed into law and their commitment to providing effective management of the land. I am also glad the entire Nebraska Congressional delegation, as well as Members of Congress from Kansas, have joined me on this legislation. Just yesterday, the House Natural Resources Committee also held a hearing on companion legislation. I strongly support the full Committee taking up and passing S. 4347, the Swanson and Hugh Butler Reservoir Conveyance Act, swiftly so that this legislation can become law this year. I look forward to working with my colleagues to get this legislation signed into law.

Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Fischer. We will be working with you, and I like your underlying optimism that it should be done this year.

Senator FISCHER. I know you can do it, sir. Thank you.

Senator WYDEN. There's no question that the people up here want to do it this year.

Okay, we will excuse you at this time.

We welcome you, Commissioner Touton. Thank you for your patience. And Commissioner, I believe what we decided that made sense all around is, we will recognize you for your opening remarks and then we will have some questions at that point, okay?

Welcome.

Thank you also for being responsive to us.

Ms. TOUTON. Absolutely.

Senator WYDEN. Please go ahead.

**OPENING STATEMENT OF HON. CAMILLE C. TOUTON, COMMISSIONER, U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION**

Ms. TOUTON. Good afternoon, Chair Wyden, Ranking Member Risch, and members of the Subcommittee. I am Camille Calimlim Touton, the Commissioner for the Bureau of Reclamation. Thank you for the opportunity to update you on activities and provide the Administration's views on the legislation before you today.

Reclamation's mission is rooted in delivering water and producing hydropower. The legislation today helps to provide us with tools that allow us to meet our mission, serve the American West, and ensure that communities have sustainable water supplies today and into the future. Key to that mission is our ongoing work to address the drought in the Colorado River Basin. To assist Reclamation in those efforts, the Administration has invested more than \$4.2 billion through President Biden's Investing in America Agenda across 566 projects in seven Colorado River Basin states that increase water storage, increase water recycling and desalination, improve system efficiency, and repair aging infrastructure. Several of the bills provide us with additional tools to be successful on the Colorado River.

Senator Sinema's Help Hoover Dam Act and Senator Padilla's Multi-Species Conservation Program bill offer practical solutions to better use existing resources. The Help Hoover Act allows Reclamation to access unused funds, totaling approximately \$48 million collected since 2000, to support ongoing operations and maintenance of critical infrastructure. Over the next five years, current estimates are that Hoover Dam will require \$110 million in major plant investment over and above routine operation and maintenance. S. 4016 allows funding that has already been collected to be used to stabilize future hydropower rates without deferring the important major plant investments. The MSCP Amendment Act authorizes the establishment of an interest-bearing account for over \$70 million of already received funds and will reduce the need for future federal appropriations to support balancing the needs of water and power users and the ecosystem. The habitat created by this program is showing great success for this species.

Senator Lee's bill addresses the implementation of Reclamation's action to protect the humpback chub and other native species through the Grand Canyon. This will require the Western Area Power Administration to use funds from the Basin Fund to replace power that would have otherwise been generated. We appreciate Senator Lee's commitment to this issue and look forward to continuing to work together on a sustainable path.

We also want to highlight that the initial results of this year's long-term experimental management plan operations have been successful. Senator Hickenlooper's System Conservation Extension Act provides Reclamation with two additional years to our efforts that have demonstrated that voluntary compensated water conservation projects can conserve water for the Colorado River system to mitigate the impacts of drought. Since 2015, we have conserved more than 148,000 acre-feet, and this legislation provides the Upper Basin with the authority to continue these activities. The Department supports system conservation program activities in the Colorado River Basin and recommends that such activities should be continued.

In California, in the Central Valley Project, Senator Padilla's San Joaquin River Restoration Program Reauthorization Act would increase the authorization of appropriations from \$250 million to \$750 million for this important program. The San Joaquin River Restoration Program is an illustration on how we can continue to manage water resources throughout the state in an environmentally sound manner while maintaining a water supply. Reclamation supports the goals of this legislation, as additional funding, along with continued matching funding from the State of California, is necessary to meet the goals of the program. The legislation also allows us to continue our work in the Valley and implementing a south-of-delta drought plan.

Senator Padilla's Sacramento River Act has two separate and broad-ranging goals that would be applicable to Reclamation projects across the West. Given the complexity of the projects, Reclamation would like to better understand the impacts of this legislation west-wide and work to ensure the authorities are implementable, effective, and would achieve intended goals.

Access to clean drinking water is critically important to sustaining life and livelihoods. Reclamation is improving access to drinking water through more than \$800 million allocated to the Rural Water Program, \$290 million for the Arkansas Valley Conduit through the Bipartisan Infrastructure Law, and \$82 million for domestic water supply projects for the WaterSMART program over the past few years. And to further this work, Senator Hoeven's Dakota Water Resources Act Amendments of 2024 Senator Bennet's Arkansas Valley Conduit legislation, and Senator Rounds's Rural Water Supply Program Reauthorization, all demonstrate a commitment to providing safe, reliable resources of drinking water to all Americans. We are pleased to support the goals of these three bills.

Senator Luján's WaterSMART Access for Tribes Act responds to tribes, state, and local stakeholders to reduce the barriers and provide assistance for communities to better access Reclamation's programs. These programs are proven and successful, with 958 projects, with over \$1.4 billion in WaterSMART funding since January 2021. Senator Hickenlooper and Senator Lummis's Drought Preparedness Act would extend the authorities set to expire at the end of 2024. We are happy to support these bills.

Senator Fischer's Swanson and Hugh Butler Reservoir Land Conveyance bills respond to local partners' interests in managing public lands for recreation purposes, and Senator Hickenlooper's

Water Project Navigator Act seeks to expand the pool of potential applicants to successful Reclamation programs that work diligently to support tribal and disadvantaged communities.

Mr. Chairman, Ranking Member, Members of the Committee, and professional staff, thank you for the opportunity to be here today and for the trust that you have placed in the Bureau of Reclamation. We do not take that trust for granted. We recognize that it is earned and we are proud of our ability to have met our mission in a challenging time in this organization and more. It is a privilege to serve as the Commissioner of Reclamation. I am happy to answer your questions.

[The prepared statement of Ms. Touton follows.]

Statement of Camille Calimlim Touton,  
 Commissioner,  
 U.S. Bureau of Reclamation  
 Before the  
 U.S. Senate Committee on Energy and Natural Resources,  
 Subcommittee on Water and Power  
 On

S. 2927, to amend the Omnibus Public Land Management Act of 2009 to increase Tribal access to water conservation and efficiency grants, and for other purposes (Lujan); S. 4016, to amend the Boulder Canyon Project Act to authorize the Secretary of the Interior to expend amounts in the Colorado River Dam fund, and for other purposes (Sinema); S. 4242, to extend the authorization of the Reclamation States Emergency Drought Relief Act of 1991, and for other purposes (Hickenlooper/Lummis); S. 4245, to amend the Omnibus Public Land Management Act of 2009 to reauthorize certain United States Geological Survey water data enhancement programs, and for other purposes (Lummis/Hickenlooper); S. 4347, to provide for the conveyance of certain Federal land at Swanson Reservoir and Hugh Butler Reservoir in the State of Nebraska, and for other purposes (Fisher/Ricketts); S. 4458, to reauthorize the Reclamation Rural Water Supply Act of 2006, and for other purposes (Rounds/Klobuchar); S. 4576, to amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System conservation pilot program (Hickenlooper/Barrasso); S. \_\_\_\_, to establish a new Reclamation program to support collaborative positions at eligible partner organizations to help develop, fund, and implement water projects with benefits for water management and the environment (Hickenlooper); S. \_\_\_\_, to amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes (Risch); S. \_\_\_\_, to authorize additional funding for the San Joaquin River Restoration Settlement Program (Padilla); S. \_\_\_\_, to establish an interest-bearing account for the non-Federal contributions to the Lower Colorado River Multi-Species Conservation Program (Padilla); S. \_\_\_\_, to establish the Integrated Water Management Federal Leadership Committee and to provide for improved drought resilience and dam safety (Padilla); S. \_\_\_\_, to amend Public Law 89–108 to modify the authorization of appropriations for State and Tribal, municipal, rural, and industrial water supplies (Hoeven); S. \_\_\_\_, to make certain modifications to the repayment period and payment of interest for the Fryingpan-Arkansas project in the State of Colorado (Bennet); and S. \_\_\_\_, to prohibit the use of amounts from the Upper Colorado River Basin Fund to implement a certain record of decision (Lee).

September 11, 2024

Chair Wyden, Ranking Member Risch, and members of the Subcommittee, I am Camille Calimlim Touton, Commissioner for the Bureau of Reclamation (Reclamation) within the Department of the Interior (Interior). Thank you for the opportunity to provide the Subcommittee an update on Reclamation's activities and provide Interior's views on these bills.

**S. 2927, to amend the Omnibus Public Land Management Act of 2009 to increase Tribal access to water conservation and efficiency grants, and for other purposes, or the “WaterSMART Access for Tribes Act”;**

The American West faces serious water challenges. Widespread drought, increased populations, aging infrastructure, and environmental requirements all strain existing water and hydropower resources. Adequate and safe water supplies are fundamental to the health, economy, and security of the country.

Through WaterSMART, Reclamation seeks to address the water challenges of the West by investing in activities that expand and stretch limited water supplies to reduce conflict, facilitate solutions to complex water issues, and meet the growing needs of expanding municipalities, domestic energy development, the environment, and agriculture.

The WaterSMART Program includes funding for cost-shared grants for water management improvement projects; efforts within the Basin Study Program to evaluate and address imbalances between supply and demand in river basins throughout the West; Title XVI Water Reclamation and Reuse projects; collaborative watershed groups and watershed management projects through the Cooperative Watershed Management Program; Project Planning and Design grants for site specific construction and restoration activities; Water Conservation Field Services for recipients of Reclamation project water; and a comprehensive approach to drought planning and implementation to proactively address water shortages. Together, these programs form an important part of Reclamation’s implementation of the Science and Engineering to Comprehensively Understand and Responsibly Enhance (SECURE) Water Act (Subtitle F of Title IX of P.L. 111-11, the Omnibus Public Land Management Act of 2009).

The programs included in WaterSMART are collaborative in nature, and work is done in partnership and cooperation with non-Federal entities and other Federal agencies. For example, WaterSMART supports investments in existing infrastructure to increase water and energy sustainability by leveraging Federal and non-Federal funding. Funding provided through WaterSMART grants is used for projects such as installing automation and water measurement technologies and lining and piping canals. Drought Response Program funding is used for infrastructure and water management improvements that increase flexibility during times of drought, such as lowering intakes and installing inerties to connect water distribution systems. WaterSMART also supports collaboration with multiple partners to reduce conflict and address complex water issues. For example, the Basin Study Program and the Cooperative Watershed Management Program incorporate a regional or watershed approach to address water management on a larger scale, and both programs require participation by diverse parties. Reclamation also makes funding available for water management improvements that are focused on ecological benefits, consistent with amendments to the SECURE Water Act.

Since January 2021, Reclamation has selected 958 projects to be funded with more than \$1.4 billion in WaterSMART funding, in conjunction with more than \$3.4 billion in non-Federal funding, across the western states.

The WaterSMART Access for Tribes Act, S. 2927, would amend the SECURE Water Act of 2009 and increase Tribal access to water conservation and efficiency grants. The WaterSMART Access for Tribes Act would give the Secretary of the Interior authority to waive or reduce the cost-share requirements under the categories of Reclamation's WaterSMART program that rely on the SECURE Water Act, in instances where a Tribe does not have sufficient funds to pay the cost share. Reclamation has provided technical assistance on this legislation, and we support the updated bill and the goal of improving Tribal water conservation and efficiency efforts.

**S. 4016, to amend the Boulder Canyon Project Act to authorize the Secretary of the Interior to expend amounts in the Colorado River Dam fund, and for other purposes, or the "Help Hoover Dam Act":**

Hoover Dam is one of the iconic landmarks in the American West and a testament to our country's ability to construct monolithic projects in the midst of adverse economic conditions. In order for that facility to continue delivering benefits, the operations and maintenance needs of critical aging infrastructure like Hoover are significant.

S. 4016 authorizes the Secretary of the Interior to expend funds that have been or will be recovered into the Colorado River Dam Fund on a non-reimbursable basis.

Since 2000, funds have been collected from Boulder Canyon Project (BCP) Contractors as part of the hydropower rate of the facility for the unfunded costs of employee retirement benefits and consist of Health Insurance Benefits (FEHB), Life Insurance Benefits (FEGLI), and Civil Service Retirement System (CSRS)/Federal Employee Retirement System (FERS) pensions. However, due to an unintended gap in Reclamation's authorities, these Post-retirement Benefit (PRB) funds are unable to and not needed to be used for their intended purpose, and have been collecting within a unique account, separate from the BCP operating funds. Federal employees receive their defined retirement benefits under FERS or CSRS.

At present, Reclamation does not have the authority to spend these funds. Reclamation currently holds approximately \$48 million of this funding as available budget, with approximately \$2 million collected additionally per year, in a non-interest-bearing account. S. 4016 would grant the Secretary of the Interior the flexibility to utilize these funds recovered from the Boulder Canyon Project for various essential purposes without the requirement for reimbursement. These funds can support ongoing operations, maintenance, and necessary upgrades within the Boulder Canyon Project at Hoover Dam, ensuring the continued functionality and efficiency of the infrastructure. Additionally, they can be allocated towards investigative and cleanup actions, addressing any environmental concerns or remediation efforts necessary to preserve the surrounding ecosystem and community well-being.

Over the next five years, current estimates are that Hoover Dam will require \$110 million in major plant investment over and above routine operation and maintenance, and another \$117 million over the subsequent six years. These costs are the responsibility of BCP Contractors and will be included within future hydropower rates. However, the \$48 million in funding that has already been collected by BCP Contractors could be used to stabilize future hydropower rates

that are already facing increased pressure due to drought conditions on the Colorado River without deferring important major plant investments.

As stated above, Federal employees receive their defined retirement benefits under the FERS or the CSRS. Employer and employee contributions deposited in the Civil Service Retirement and Disability Fund finance future retirement benefits. These benefits are administered by the Office of Personnel Management. If enacted, Reclamation would utilize the approximately \$48 million in funding already collected from the BCP Contractors to address operations, maintenance, and necessary upgrades within the BCP. Reclamation would use this funding over time, in coordination with the BCP Contractors, to avoid the deferral of important plant investments and consequent additions to the backlog of maintenance and repair, and to help stabilize hydropower rates at the BCP.

Reclamation supports the intent of this legislation because it addresses the gap in authority, will help maintain critical infrastructure, help stabilize hydropower rates, and allow for the use of funding that currently cannot be accessed.

**S. 4242, to extend the authorization of the Reclamation States Emergency Drought Relief Act of 1991, and for other purposes, or the “Drought Preparedness Act”**

The West faces severe water reliability challenges due to climate change, persistent drought, and increasing water scarcity. The changing climate in the West highlights the need for thoughtful planning and work to ensure our infrastructure is more resilient and that planning for changes in land use are considered over the long-term. Reclamation’s Drought Response Program is an important program by which Reclamation provides assistance for drought planning and mitigation. The Drought Response Program’s authority is derived primarily through the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2211), as well as Title IX, Subtitle F of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(a), SECURE Water Act).

The Reclamation States Emergency Drought Relief Act of 1991 (Act) is set to expire at the end of Fiscal Year 2024. If enacted, S. 4242 would extend the authorities provided by the Act through 2028. With the Drought Response Program, Reclamation relies on the authorities provided by the Act for drought contingency planning and emergency actions. Reclamation is expected to reach the current cost ceiling \$130 million within the next year. If enacted, in order to implement the program through 2028, Reclamation would need an increase in the cost ceiling.

Through the Act, Reclamation provides financial assistance on a competitive basis for applicants to develop drought contingency plans or to update existing plans. In general, the planning process is structured to help planners answer key questions on recognizing, understanding the impacts of, and determining how to protect themselves from drought. It also encourages an open and inclusive planning effort that employs a proactive approach to build long-term drought resiliency.

The Act also allows for Reclamation to undertake emergency response actions under the Drought Response Program to minimize losses and damages resulting from drought, relying on the authorities in Title I of the Act. Emergency response actions are crisis driven actions in response to unanticipated circumstances. As defined within the Act, eligible emergency response actions are limited to temporary construction activities such as storage and conveyance, and temporary water purchases through contracts not to exceed 2 years. The construction of permanent facilities is not eligible under the Act, with the limited exception of certain wells.

The Reclamation States Emergency Drought Relief Act of 1991 is an important authority for Reclamation to continue to respond to and mitigate the impacts of drought. Assuming the cost ceiling is increased in line with the extension, the Department fully supports the extension of the authorities provided in the Act through 2028 as outlined in S. 4242 for drought contingency planning and emergency actions.

**S. 4347, to provide for the conveyance of certain Federal land at Swanson Reservoir and Hugh Butler Reservoir in the State of Nebraska, and for other purposes, or the “Swanson and Hugh Butler Reservoirs Land Conveyances Act”;**

Reclamation plays an important role in meeting the increasing public demand for water-based outdoor recreation facilities and opportunities. The recreation areas developed as a result of Reclamation water projects provide approximately 6.5 million acres of land and water that is largely available for public outdoor recreation. Among these expansive public resources are several facilities in Nebraska where Reclamation has worked to improve the use of and access to recreation for the benefit of the public. In 2023, this included efforts to begin implementing improvement plans for the Swanson and Red Willow Reservoir concession areas. The proposed improvements are intended to support a blend of dispersed camping and developed facilities such as camper hookups, tiny house cabin sites, shower houses and trails that add to the diversity of recreation opportunities and experiences at the two sites.

The redevelopment plans have been in the making for more than 23 years and are intended to address several hazards concerning life safety and utility compliance with federal, state, and local regulations at the concession areas. Reclamation’s proposed improvements to the sites were intended to increase public access to the requested recreation facilities.

However, these proposed changes resulted in some concerns from the local communities that currently make use of some existing private exclusive use legacy cabin facilities and who wish to continue to do so under the present arrangement, despite the age and condition of several of these facilities. In response to these concerns, the Nebraska delegation requested time to work with Reclamation and local parties to find a different long-term solution that accommodates the current residents’ desires. That effort has resulted in S.4347, the Swanson and Hugh Butler Reservoirs Land Conveyances Act. Absent enactment of this legislation, Reclamation intends to continue with its original redevelopment plans in 2025.

The facilities to be conveyed under S. 4347 are counted among the numerous dams, canals, and hydropower plants constructed by Reclamation that provide water and power across the 17 western states. For most of these project facilities, Reclamation has transferred all or part of the

responsibility for operation, maintenance, and replacement to a project beneficiary. Title, or ownership, to Reclamation facilities, however, remains with the United States Government unless Congress passes legislation directing otherwise.

The transfer of title divests Reclamation of responsibility for the operation, maintenance, replacement, management, regulation of, and most of the liability for Federal interests in lands and project facilities, while providing non-Federal entities with greater autonomy and flexibility to manage the facilities.

In 2019 the John D. Dingell, Jr. Conservation, Management, and Recreation Act (P.L. 116-9) was signed into law. Title VIII of this Act provides Reclamation with authority to transfer title to certain eligible facilities to qualifying entities without separate and individual acts of Congress. However, P.L. 116-9 outlined provisions that excluded title transfer authority for certain facilities. Reclamation has determined that this exclusion applies to the transfer of the recreational land at Swanson Reservoir and Hugh Butler Reservoir in the State of Nebraska in lieu of site-specific legislation. S. 4347 would then provide Reclamation with the necessary authority to convey title to land at both reservoirs, subject to its various conditions.

In general, the intent of S. 4347 is to provide a path for Frontier and Hitchcock Counties in Nebraska to take ownership of certain Federal lands that would otherwise be redeveloped for public recreation use. S. 4347 enables local management of the recreational lands and alleviates Reclamation's administrative oversight and management responsibilities of the land. Section 3 of S. 4347 would provide for the transfer of requested lands at Swanson Reservoir to Hitchcock County. This includes a 20-acre public concession, a 21.5-acre private concession, and 11 private cabin lots totaling approximately 6-acres. Section 4 of S. 4347 would similarly provide for the transfer of lands at Red Willow Reservoir to Frontier County. This includes a 23-acre public concession and 8 private cabin lots totaling approximately 6.5-acres.

The sequence for transfer under S. 4347 largely follows Reclamation's standard process for title transfer as included within Reclamation Manual Directives and Standards, CMP 11-01. For each potential transfer, S. 4347 includes several stipulations. These include: that the transfer for each requested site proceeds in whole and is not subdivided; that each area continues to be managed for substantially the same current purpose; that the final transfer contains the necessary leases, permits, rights-of-way, easements, and terms necessary to ensure the title transfer would not result in an adverse impact on existing water or power delivery obligations; and that the transfer complies with all applicable federal and state laws.

For each transfer, S. 4347 directs Reclamation to make an offer of conveyance and enter into a memorandum of agreement to effectuate the transfer, resulting in a title transfer agreement finalized within three years after enactment. As part of the memorandum of agreement, the Counties must demonstrate their capability to operate and maintain the land, satisfy financial obligations, and to address any issues of non-compliance with applicable State fire, safety, and health codes and standards not later than 2 years after the date of the conveyance.

Additionally, S. 4347 would require that the counties provide, as compensation for the transfer, the fair market value of the lands, to ensure that conveyance of this land does not convey

unauthorized benefits and is in the financial interest of the United States. The determination of fair market value must be completed in accordance with the Uniform Standards of Professional Appraisal Practice. Further, consistent with Reclamation's standard policy, S. 4347 would require that each county provide funding, in advance, for the estimated costs to be incurred by Reclamation to process the conveyance request. Finally, S. 4347 would ensure that any subsequent transfer would be at no cost, with the same terms as this proposed transfer, and would be conveyed to another State or public entity to ensure that the lands would remain in the public domain.

Reclamation is committed to ensuring that the recreation facilities at both Red Willow and Swanson Reservoirs are available for public enjoyment and are compliant with all relevant federal, state, and local regulations. S. 4347 will legislatively preserve the status-quo of private exclusive use of the requested lands, subject to each County's discretion moving forward, and discontinues Reclamation's redevelopment plans.

If enacted, we encourage each County to look for opportunities to improve public access to these recreational facilities. Reclamation is hopeful that the local authorities, to whom S. 4347 transfers title, will ensure that the requested lands be used to meet the outdoor recreation needs of the public and is supportive of their efforts to do so, whether accomplished through S. 4347 or through Reclamation's redevelopment plans.

**S. 4458, to reauthorize the Reclamation Rural Water Supply Act of 2006, and for other purposes, or the "Rural Water Supply Program Reauthorization Act";**

Reclamation has, over its more than 100 years in existence, designed and constructed some of the largest and most important water supply projects in the western United States including Hoover Dam, Grand Coulee Dam, and the Central Valley Project. Because of that expertise, rural communities have often sought Reclamation's assistance in addressing their need for potable water supplies. Prior to 1980, Reclamation's participation was generally limited to providing technical assistance in the scoping and development of water projects intended to solely provide potable water supplies for rural communities.

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, Minnesota, and Iowa. These projects exist in communities that are experiencing urgent needs for water due to poor quality of the existing supply or the lack of a secure, reliable supply. Each of these projects, while intended to meet a common need, were authorized under various circumstances and under project specific authorizations with varying criteria. In some cases, the projects did not go through the level of analysis and review that is consistent with Reclamation's other projects at the time of authorization, and did not meet the economic, environmental and design standards that are required to determine the feasibility of other Federal water resources development projects. As a result, with the specific authority to design and construct a project in place, Reclamation was required to both complete the analysis that was necessary and adhere to the project configuration and designs that were specified by the authorizing statutes.

In recognition of the continued needs of rural communities throughout the west as well as a need for a consistent program and criteria to evaluate future projects, the Rural Water Supply Act of 2006 (P.L. 109-451) authorized Reclamation to establish a program to work with rural communities, including Tribes, in the 17 Western States to assess rural water supply needs and conduct appraisal and feasibility studies without individual acts of Congress. Pursuant to the Rural Water Supply Act, Reclamation created a rural water program to enable coordinated examination of the various options to address rural communities' water supply needs through a cost effective, priority-based process. Before the Rural Water Supply Program expired in 2016, Reclamation conducted 22 appraisal investigations, with nine recommendations for a feasibility study. Of these, Reclamation finalized and approved two feasibility reports: the Musselshell-Judith Rural Water System Feasibility Report in Montana and the Payson-Cragin Reservoir Water Supply Project Feasibility Report in Arizona. Following the report, the Musselshell-Judith Rural Water System was authorized for construction through P.L. 116-260 along with the authorization for further study of the Dry Redwater Rural Water System in Montana.

S. 4458 would reauthorize the Rural Water Supply Act of 2006 through 2032. Since its expiration, Reclamation continues to receive requests from rural communities for federal support. However, since expiration of the law, Reclamation has limited ability to assist these communities or provide a pathway for receiving such assistance.

The Department supports efforts to improve access to reliable, clean drinking water as an essential human need that is critical to the public health, well-being, educational attainment, and economic development of all communities in the United States. Through the Bipartisan Infrastructure Law, the Department has prioritized water infrastructure for rural communities and Reclamation has made significant progress towards completion of these projects, with more than \$800 million allocated over the past four years. Through the remaining funding from the BIL, Reclamation hopes to finally bring some of these projects to completion. Notwithstanding the importance of rural water projects, and funding from the Bipartisan Infrastructure Law investments that has advanced them toward completion, challenges remain for those projects that are recommended for construction under any reauthorization of the RWSP.

The Department supports S. 4458 and the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural residents.

**S. 4576. to amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System conservation pilot program, or the “Colorado River Basin System Conservation Extension Act”**

The Colorado River and its tributaries are one of the most important natural resources in the United States. Approximately 1,400 miles long, flowing through the seven western states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the United Mexican States (Mexico), the Colorado River System provides immeasurable economic and ecological values. The Colorado River provides drinking water to tens of millions of people, irrigates millions of acres of crops, produces billions of kilowatt-hours of hydroelectricity annually, flows through national parks and recreation areas visited by millions of people annually, and provides habitat for fish and wildlife.

In 2013, in response to a Colorado River System drought that has been ongoing since 2000, the Secretary of the Interior encouraged the Colorado River Basin States to develop drought contingency plans. In 2014, Reclamation, the Colorado River Basin States, and Colorado River water users explored ideas that could mitigate the impacts of the ongoing drought in the Colorado River Basin, including projects to test a wide range of measures to reduce consumptive use and/or losses and conserve water in Lake Powell or Lake Mead as Colorado River System water for the benefit of all users to help offset declining reservoir elevations. Lessons learned from testing new water conservation measures could be incorporated into long-term drought contingency planning and programs that reduce consumptive use or losses of Colorado River water, often referred to as demand management programs.

On July 30, 2014, Reclamation executed an agreement with the Central Arizona Water Conservation District (CAWCD), the Southern Nevada Water Authority (SNWA), The Metropolitan Water District of Southern California (MWD), and Denver Water which are collectively referred to as the Local Funding Agencies, for a pilot program. The Funding Agreement is historic because water agencies from both the upper and lower Colorado River Basins and Reclamation agreed to jointly fund voluntary water conservation projects in the Colorado River Basin to benefit the Colorado River System.

The Pilot Program tested new approaches that reduce historic water use or losses and helped to determine if compensated, voluntary, and measurable reductions in consumptive use of Colorado River System water constitute a sufficiently cost-effective, robust, and feasible approach to partially mitigate the impacts of ongoing drought on the Colorado River System. Colorado River System water conserved through Pilot Program projects is for the sole purpose of increasing storage levels in Lakes Powell and Mead and will not accrue to the benefit or use of any individual user. From calendar year 2015 through 2018, 64 projects were implemented in the Upper Basin resulting in an estimated 47,280 acre-feet of Colorado River System water conserved in the Upper Basin at a cost of \$8.5 million or \$180.23 per acre-foot on average. The Upper Basin Pilot Program was resumed in Fiscal Year 2023, using funds from the Inflation Reduction Act. In FY 2023, 65 project agreements were executed for an estimated 37,260 acre-feet of Colorado River System water conserved at a cost of \$15.6 million or \$419.15 per acre-foot on average. In FY 2024, 110 project agreements were executed for an estimated 63,370 acre-feet of Colorado River System water conserved at a cost of \$28.8 million or \$454.94 per acre-foot on average. The Pilot Program successfully demonstrated that voluntary, compensated water conservation projects can conserve water for Colorado River System storage to help mitigate the impacts of drought.

The pilot program made clear that any system conservation programs in the Upper and Lower Basins must be implemented and administered independently due to significant differences in the legal framework governing water use and rights and the hydrology of the two basins. System conservation programs in the two basins may have common goals, objectives, funding mechanisms, project selection requirements and performance criteria, but a system conservation program must incorporate sufficient flexibility to enable states and agencies in the two basins to implement and administer the projects independently in accordance with each basin's legal framework, river operations, and hydrology. For a system conservation program to significantly

increase water surface elevations at Lake Powell and Lake Mead, significant investment is necessary.

Since the initial authorization in 2015, the Lower Colorado River Basin sought and received authorization from Congress to continue to fund system conservation through the 2019 Lower Basin DCP Agreement. As such, S. 4576 is not needed to continue system conservation activities in the Lower Basin, however, the Upper Basin would need the authority to be extended to continue these activities. The Department of the Interior supports system conservation program activities in the Colorado River Basin and recommends that such activities should be continued.

**S. 4995, to establish a new Reclamation program to support collaborative positions at eligible partner organizations to help develop, fund, and implement water projects with benefits for water management and the environment, or the “Water Project Navigators Act”;**

The American West faces serious water challenges. Widespread drought, increased populations, aging infrastructure, and environmental requirements all strain existing water and hydropower resources. Through WaterSMART, Reclamation seeks to address the water challenges of the West by investing in activities that expand and stretch limited water supplies to reduce conflict, facilitate solutions to complex water issues, and meet the growing needs of expanding municipalities, domestic energy development, the environment, and agriculture.

As highlighted to our testimony for S. 2927, the WaterSMART program includes funding for a number of individual programs, each of which includes their own program goals and criteria, as directed by Congress. This includes recently created new programs that provide funding to eligible entities, including in the Bipartisan Infrastructure Law – Section 40901 Aquatic Ecosystem Restoration and Protection projects and Section 40907 for Multi-benefit projects to improve watershed health. For each of these programs, Reclamation works diligently to make sure its funding opportunities are announced to as broad and diverse a group of potentially interested parties as possible and makes a concerted effort to reach out to potential applicants for funding under our umbrella of programs. We work with interested parties before, during, and after the application period to help them understand key information including eligibility and cost share requirements. Reclamation works diligently to provide assistance to entities that may not regularly work with us in order to ensure funding opportunities are available to all parties that are interested and not just the groups who work with us most frequently.

The Water Navigators Act directs the Secretary to establish a program that funds “navigator” positions at partner non-federal organizations including state and local governments, Tribes, special districts, and non-governmental organizations to help develop and implement multi-benefit water projects. The bill authorizes five years of funding for staffing these positions placed at partner organizations but does not specify in great detail the terms for employment of the navigator positions. Multi-benefit projects are defined as proposals to enhance the overall resilience of water supplies to climate-related impacts and to provide benefits to communities and ecosystems including conserving or enhancing fish and wildlife habitat and promoting rural economic development.

Section 3 establishes the Water Project Navigators Program and grants the Secretary authority to award grants or cooperative agreements for not more than three years (two-year extensions can be issued by the Secretary) to eligible entities described in Section 2 to support the creation or continuation of multi-benefit water project navigator positions. The language prioritizes applications from eligible entities that would provide benefits for Indian Tribes, disadvantaged communities, and other eligible entities with limited project development resources and capacity; receive support from other specific stakeholders; provide support for local job creation and retention; incorporate improvements to the condition of a natural feature or nature-based feature; benefit areas experiencing severe long-term drought; and work in coordination with other specific DOI programs and projects. However, Reclamation would recommend that the prioritizing criteria included within the Water Project Navigators Act provide flexibility for Reclamation to work with Tribes and stakeholders and adjust the criteria to meet their needs, including further adjustments over time as the program evolves.

This section also lists the duties of navigators including grant writing, project management, technical assistance, and any other necessary activities. The program is designed to require that Reclamation make funding opportunities available multiple times per year on a regular basis. Regarding cost share, the bill states that the Federal cost share shall not exceed 75 percent. For the non-Federal portion, the bill details that it can be in the form of cash, in-kind contributions, or funds provided to the eligible entities under the American Rescue Plan Act of 2021. The Secretary is also given the authority to waive or reduce the non-Federal cost share if the proposed activity would further a compelling Federal interest. However, no further direction is provided to make that determination, which would be challenging for Reclamation to implement. Reclamation has existing analogous cost-share waiver processes focused on “financial hardship” and would recommend that be used instead. Finally, the section includes a reporting requirement that not later than five years after the enactment date, the Secretary shall submit to Congress a report that describes how the program reduces basin-wide water supply-demand imbalances, enhances drought and ecosystem resilience, and a quantitative analysis of the multiple benefits advanced under the program.

Section 4 of the bill authorizes \$15 million in funding annually between fiscal year 2024 and fiscal year 2029.

Reclamation supports the intent of the bill to provide assistance for entities, particularly for disadvantaged communities, to develop and implement multi-benefit water projects, however we would like to work with the committee on technical edits. Over the past decade, Congress has continued to add new programs within the WaterSMART program – which has expanded the benefits of the program while also creating criteria that can be complicated to understand. For many potential applicants, navigating these programs and submitting the necessary forms can be a challenge. While Reclamation continually works to improve and streamline this process, there are likely many potential sponsors that could use additional assistance both in applying for and implementing projects funded under WaterSMART. Reclamation is committed to improving the effectiveness of our programs and expanding the potential applicant pool and recognize how this legislation could provide new opportunities to do so.

**S. \_\_\_\_\_, to authorize additional funding for the San Joaquin River Restoration Settlement Act:**

The San Joaquin River Restoration Program (SJRRP) is a comprehensive, long-term effort to restore flows to the San Joaquin River from Friant Dam to the confluence of the Merced River and reestablish naturally-reproducing and self-sustaining Chinook salmon populations in the river while reducing or avoiding adverse water supply impacts from increased flows for salmon. The Bureau of Reclamation, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Water Resources, and California Department of Fish and Wildlife, are the five agencies charged with implementing the 2006 Settlement and 2009 Settlement Act (PL 111-11). Key components of the Settlement's Restoration Goal include returning biologically significant flows to the San Joaquin River, reintroducing an extirpated population of spring-run Chinook salmon, and construction of channel and structural improvements to allow for salmon migration to the ocean and their return to the river to complete their lifecycle.

In 2024, the SJRRP will continue to implement Phase 1 Improvements according to the 2006 Settlement and the SJRRP's Framework for Implementation. Restoration activities include designs for the Reach 2B Mendota Pool Bypass features including river control and fish passage structures, and the South Levee and Canal, and Siphon. The related Arroyo Canal Fish Screen and Sack Dam Fish Passage project is now at 100% design and the SJRRP is completing the environmental compliance before awarding a construction contract in 2025.

Reintroduction of spring-run Chinook salmon into the San Joaquin River is continuing, and monitoring activities to measure success and identify challenges are ongoing. The use of trap and haul passage within the Restoration Area for adult fish to reach spawning areas below Friant Dam will continue until fish passage projects are completed. These fishery efforts, along with direct release of spring-run into the river from the SJRRP's Conservation Facility, will continue to bolster the emerging population.

This Act would increase the authorization of appropriations from \$250,000,000 to \$750,000,000 for the SJRRP. The Act retains provisions in the existing 2009 Settlement Act setting forth a one-for-one match from non-federal sources for any federal appropriated dollars. This additional federal and non-federal funding is necessary to reestablish a fully connected San Joaquin River at flows up to 2500 cubic feet per second and substantially advance the Restoration Goal of the San Joaquin Settlement.

This Act would also increase the authorization of appropriations to help restore canal capacity for the Friant-Kern and Madera Canals within the Omnibus Public Land Management Act of 2009 (P.L. 111-11; 123 Stat. 1367) from \$50,000,000 to \$75,000,000. The Department has been working to address reductions in conveyance capacity due to subsidence and other factors which have impacted facilities of the CVP in California. Earlier this summer, Reclamation, the Friant Water Authority, and the California Department of Water Resources were able to celebrate completion of Phase I of the Friant-Kern Canal Middle Reach Capacity Correction Project to restore capacity to 33 miles of the existing Friant-Kern Canal damaged from subsidence. Reclamation remains committed to improving water supply reliability and looks forward to continuing to work to address subsidence in the San Joaquin Valley.

Reclamation supports this Act to authorize additional funding for the San Joaquin River Restoration Settlement Act. Completion of the San Joaquin River Restoration Program remains important to restore and maintain fish populations in “good condition” pursuant to the Settlement, as well as to reduce or avoid adverse water supply impacts to all the Friant Division long-term contractors that may result from the flows provided for in the Settlement. Success for the SJRRP means benefits for the environment as well as well as benefit for the farming communities. The SJRRP is an illustration of how we can continue to manage water resources throughout the State in an environmentally sound manner while maintaining a reliable water supply.

**S. \_\_\_\_\_, to establish an interest-bearing account for the non-Federal contributions to the Lower Colorado River Multi-Species Conservation Program, or the “Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024”;**

The Lower Colorado River Multi-Species Conservation Program (LCR MSCP) was established in 2005 by the Department of the Interior along with representatives from agencies within Arizona, California, and Nevada. The LCR MSCP is a 50-year, multi-stakeholder, Federal and non-Federal partnership that seeks to balance the use of lower Colorado River water resources with the conservation of 26 native species and their habitats in compliance with the Endangered Species Act.

The LCR MSCP was developed through a collaborative partnership with State leaders, local stakeholders and the Department. This innovative program addresses the needs of threatened and endangered fish and wildlife on the lower Colorado River while assuring greater reliability of water deliveries and hydropower production. By meeting the needs of fish and wildlife listed under the Endangered Species Act, as well as preventing the need to list additional species, the MSCP provides greater certainty of continued water and power supplies from the river for Nevada, California and Arizona now and into the future.

In 2009, under P.L. 111-11, the LCR MSCP was congressionally authorized in accordance with the existing program documents, with the Secretary charged with implementing the program. Implementing the LCR MSCP will help create at least 8,132 acres of new habitat (5,940 acres of cottonwood-willow, 1,320 acres of honey mesquite, 512 acres of marsh, and 360 acres of backwater) and produce 660,000 subadult razorback suckers and 620,000 bonytail to augment the existing populations of these fishes in the LCR. In addition, a robust research and monitoring program has been developed and implemented for LCR MSCP-covered species and their habitats.

The Bureau of Reclamation is the implementing agency and funds 50 percent of the program. The other 50 percent is funded by partners in Arizona, California, and Nevada. At present, the LCR MSCP has received contributed funds from the non-federal Partners in excess of \$70 million. However, these funds will not be needed or used for several years while additional quarterly contributions will continue to be contributed for another 31 years. These funds are currently maintained by Reclamation in a non-interest-bearing account. Reclamation does not

have the authority, absent further congressional direction, to place this funding in an interest-bearing account.

The Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024 would adjust the LCR MSCP's authorization under P.L. 111-11 to authorize the establishment of an interest-bearing account for the non-federal contributions to the program. Specifically, it directs the Secretary of the Treasury to establish and deposit existing and future non-Federal contributions into a fund titled "Non-Federal Funding Account for the Lower Colorado River Multi-Species Conservation Program" (Fund). Further this act would allow the Secretary of the Interior to invest any portion of the Fund that is not required to meet the current needs of the Fund into a public debt security, while granting access to make use of the amounts within the Fund without further appropriation.

Reclamation supports the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024. The Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024 would help to offset inflation for the non-federal contributions to the program that have been and will be collected. Over the remaining 31 years of the Program, the interest will help offset the effect of inflation without any additional funding needed from either Federal or Non-Federal partners. This increase in funding will allow the LCR MSCP to be more successful while reducing the need for future Federal appropriations to support the Program goals.

**S. \_\_\_\_\_, to establish the Integrated Water Management Federal Leadership Committee and to provide for improved drought resilience and dam safety, or the "Sacramento RIVER Act of 2024":**

The Sacramento River Improvement and Vitality for Ecosystem Restoration Act of 2024'' or the "Sacramento RIVER Act of 2024" has two separate and broad-ranging goals that would be applicable to Reclamation projects across the West.

Under Section 2 of the Sacramento RIVER Act of 2024, the Secretary is authorized to establish Integrated Water Management Federal Leadership Committees comprised of federal water and natural resources agencies, including the Bureau of Reclamation, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the Corps of Engineers, the Environmental Protection Agency, and the Department of Agriculture. The Assistant Secretary for Water and Science of the Department of the Interior would chair each Committee and would coordinate activities.

These committees would be limited to projects in a watershed in which a Bureau of Reclamation project is located and where the entity or qualified partner sponsoring a habitat restoration project receives financial assistance from the Secretary and makes a request for its establishment.

The committees would be tasked to focus on communication, coordination, and recommendations among Federal agencies to support, accelerate, and advance the implementation of habitat restoration projects within the watershed. The committees would be asked to provide a biannual report to the Committee on Energy and Natural Resources of the

Senate and the Committee on Natural Resources of the House of Representatives on these activities.

Reclamation understands that these committees are intended to be modeled after the Yakima River Basin Water Enhancement Program, as authorized under the John Dingell Jr. Conservation Management and Recreation Act (P.L. 116-9). However, the framework for the Yakima River Basin Water Enhancement Program was preceded by years of 'ground-up' work and collaboration from federal, Tribal, state, county, and local governments—along with agricultural and environmental interests, water users, and other partners. Today, the work within the Yakima Basin is recognized as a national model of collaborative governance and a commonsense approach that has successfully provided water security for farms, fish, and families in the Basin. It is widely acknowledged throughout the region and the world as a successful example of integrated water resource management. With that said, the Yakima model may not be appropriate in all situations, and Reclamation would need to evaluate each request and engage with parties to determine where it would make sense and what changes might be appropriate given unique conditions across Reclamation's portfolio of projects. As such, Reclamation would like to better understand and engage further on this section.

Section 3 of the Sacramento RIVER Act of 2024 would allow for revenue generated at Reclamation projects or facilities from the temporary and voluntary selling, leasing, or exchanging of water or water rights among individuals or agencies to be used for Dam Safety Investments, Extraordinary Maintenance Activities, or Drought Resiliency Investments.

The Sacramento RIVER Act of 2024 would not grant any new authority for temporary and voluntary selling, leasing, or exchanging of water or water rights, but would rely on Reclamation existing authorities, namely the Act of February 25, 1920 (41 Stat. 451, chapter 86; 43 U.S.C. 521) and subsection J of section 4 of the Act of December 5, 1924 (43 Stat. 703, chapter 4; 43 U.S.C. 526). As presently written, Reclamation would interpret this legislation to apply to revenues generated under the cited authorities, and not to revenues generated under any other authorities, such as the Central Valley Project Improvement Act (CPVIA, Title XXXIV, P.L. 102-575) and Section 14 of the Reclamation Project Act of 1939 (P.L. 76-260, section 14; 43 U.S.C. 389). At present, absent project specific authority, any such revenues collected for these activities are first applied to any outstanding repayment obligations at the Project. If no repayment obligations exist for the Project, any further revenue is collected and deposited within the Reclamation Fund and credited to any future repayment obligations, whether for Dam Safety Projects or Extraordinary Maintenance Activities.

The Sacramento RIVER Act of 2024 would adjust Reclamation's current authority in a couple ways. First, instead of being deposited in the Reclamation Fund for later appropriation by Congress, such revenue would be retained within a reserve account by the Transferor. By allowing for the funding to be retained by the Transferor, the Transferor is expected to be able to access the funding more easily and would receive any financial benefit immediately, rather than as a credit to the Project or a benefit available only after Congress has appropriated the funds. As the authorities and circumstances involved in transfers can vary significantly across the agency, Reclamation would recommend this be adjusted to authorize the Secretary to enter agreements with the transferors permitting them to retain revenues, rather than directly authorizing

transferors to retain revenues, to ensure that the Secretary can consider case-specific consequences of changes from standing practices and execute the instruments necessary to protect all affected interests and ensure compliance with all applicable law.

The Sacramento RIVER Act of 2024 would further allow the revenues to be used for drought resiliency, dam safety, and extraordinary maintenance activities, following completion of the repayment of capital. In the case of dam safety, eligible projects would include not only those pursued under the Federal dam safety laws and programs, but also projects required under state dam safety laws. For dam safety and drought resilience activities, the Act would allow revenues to be used for work on non-Federal facilities delivering water to or from a Reclamation project facility. The transferor would be required to report to Reclamation on the use of such funds. Any revenue not used within ten years would be required to be returned to the Reclamation fund.

Reclamation understands that the intent of this section is to incentivize such transfers. At present, once repayment is complete, the credit that the Project receives for any such transfers is provided starting with the final payment. As such, the benefit may not be realized for 50 years after the revenue is collected. The Sacramento RIVER Act of 2024 would instead allow for the benefit to be received immediately. In addition, the Act is intended to incentivize water conservation investments within the Project which could result in more opportunities for excess water and water transfers in future years.

Reclamation appreciates the work of the sponsor to improve collaboration and incentivize further utilization of our existing water infrastructure across the West. Western water issues are complex and multifaceted, and diversity of creative programs will be necessary to meet current water needs within a changing climate. However, given the complexity of the several hundred project-specific authorizations, the Department would like to better understand the impacts that the legislation would have across the West.

For these and other reasons, the Department would like to continue working with the sponsor and the Committee on technical assistance to ensure that authorities within this bill are implementable, effective, and would achieve intended goals.

**S. 4996, to amend Public Law 89–108 to modify the authorization of appropriations for State and Tribal, municipal, rural, and industrial water supplies, or the “Dakota Water Resources Act Amendments of 2024”;**

The Garrison Diversion Unit was originally authorized in 1965, amended in 1986 by the Garrison Reformulation Act, and again in 2000 by the Dakotas Water Resource Act (DWRA) and is associated with the U.S. Army Corps of Engineers’ Garrison Dam of the Pick-Sloan Missouri Basin Program. The Garrison Project was originally focused primarily on irrigation development as part of compensation to the State of North Dakota for the loss of 550,000 acres of Missouri River bottom land due to the construction of Garrison Dam and Oahe Dam. This includes the inundation of a significant amount of land within the Fort Berthold and the Standing Rock Indian Reservations, forcing several Tribal communities to move.

The Garrison Diversion Unit initially was envisioned as a vast project with over 1,800 miles of canals and laterals, four regulating reservoirs, many pumping plants, and an extensive drainage system. However, numerous issues and challenges related to the project created substantial opposition to the Project, resulting in repeated modification of the project to meet the needs of North Dakota in an environmentally sound manner. The DWRA deauthorized all but approximately 75,000 acres of the irrigation originally included in the project and increased construction ceilings for Indian and non-Indian MR&I water supplies by about \$600 million (\$200 million for the State MR&I program, \$200 million for the Indian MR&I program, and \$200 million for a Red River Valley Feature). As such, the Garrison project, as currently authorized, is a multipurpose project principally providing Tribal and non-Tribal MR&I water along with fish and wildlife, recreation, and flood control benefits in the State of North Dakota.

Since 2000, Reclamation has made significant efforts to provide for the construction of the State and Indian MR&I programs. Through 2023, Reclamation has provided \$873,448,376 to these programs and has made substantial progress to improve drinking water access throughout the state, with only \$46,772,000 remaining within various cost ceilings.

The Dakota Water Resources Act Amendments of 2024 would authorize additional appropriations for several sections of the Garrison Diversion Unit, primarily to support drinking water systems within the State. This Act authorizes an additional \$687 million (indexed) for the State Municipal, Rural and Industrial (MR&I) system, as well as \$743 million (indexed) for Tribal rural water system construction. The State MR&I program funding consists of funding for the Northwest Area Water Supply (NAWS) Project, the Eastern North Dakota Alternate Water Supply (ENDAWS) Project, the Southwest Pipeline Project, as well as \$63 million for various other North Dakota rural water districts throughout the state. The Tribal program provides funding for the water systems within the Fort Totten Indian Reservation, the Fort Berthold Indian Reservation, the Standing Rock Indian Reservation, the Turtle Mountain Indian Reservation, and the Lake Traverse Indian Reservation. Finally, this Act would further authorize an additional \$50 million for the Natural Resources Trust fund.

As a threshold matter, the Department supports efforts to improve access to reliable, clean drinking water as an essential human need that is critical to the public health, well-being, educational attainment, and economic development of all communities in the United States. Through the Bipartisan Infrastructure Law, the Department has prioritized the development of water infrastructure for rural communities and Reclamation has made significant progress towards completion of these projects, providing more than \$100 million for the Garrison Diversion Unit MR&I project. Reclamation remains focused on completing the existing authorized projects within Reclamation's Rural Water Supply Program.

As a policy matter, before authorization of construction by Congress, Reclamation typically requests that projects complete an appropriate level of analysis to ensure that Congress' consideration of the proposed project can be informed by a defined scope, that it meets the economic, environmental, and design standards to determine feasibility, and that Reclamation and Congress have an understanding that the associated cost estimates are at level-of-study to ensure project completion. However, the original authorization for MR&I features within the Garrison Diversion Unit were fund based and did not provide funding to match the actual

construction and operations needs of the various projects. While \$200 million was provided for Tribal MR&I projects, the needs for those systems at the time of authorization were found to be substantially higher than the funding provided. As a result, following authorization, Reclamation was required to complete the analysis that was necessary to determine project configuration and designs, but with little ability to ensure the projects would be completed.

For the State MR&I program, this Act provides direction that the funding is intended to ensure completion of the Northwest Area Water Supply Biota Water Treatment Plant and Pump Station Project and the Eastern North Dakota Alternate Water Supply Project based on Reclamation's 2015 and 2021 Records of Decision for each of these projects. Reclamation is comfortable that utilizing these documents will provide a project scope and associated cost estimate to ensure project completion. However, the remaining funding for the State MR&I program features are, similar to the original authorization, fund-based rather than project based. Section 2 further allows that funding within the State MR&I can be transferred among the projects, allowing any remaining authorized funding for an individual project to be utilized by another. Reclamation would recommend that such authorization include a clear scope as to what project features are being authorized.

Similarly, for the Tribal MR&I program, this Act provides direction that the funding provided is intended to ensure completion of the Spirit Lake Rural Water System, the Three Affiliated Tribes Rural Water System, the Standing Rock Rural Water System, and the Turtle Mountain Rural Water System. For more than two decades Reclamation has worked with each Tribe to build these tribal systems and we remain committed to their completion. Reclamation understands that the cost estimates included within this Act have been developed based upon cost estimates established by each of the Tribes to allow for completion of each reservation-wide system. However, the level of analysis for these cost estimates may not meet standards for project authorization. To address this concern, this Act requires that Reclamation complete feasibility studies for each Tribal MR&I system in order to determine the scope of each project within the funding provided.

The Dakota Water Resources Act Amendments of 2024 would also authorize \$12 million in appropriations for completion of the Lake Traverse Rural Water System, which is not currently authorized for funding within the Garrison Diversion Unit. In keeping with standard Reclamation policy, for this project as well as any similarly positioned new State MR&I project, Reclamation would recommend that Congress instead authorize and fund a feasibility study to better understand the needs with the Reservation and provide the final feasibility report to Congress with a recommendation for construction funding, as appropriate.

Reclamation supports the Dakota Water Resources Act Amendments of 2024 with the requested technical amendments as noted. Reclamation recognizes and supports the goals of furthering clean water access for rural communities. Reclamation would emphasize support for completion of the already authorized and ongoing projects – many of which have been underway for more than two decades – and understands their importance to the State of North Dakota.

**S. \_\_\_\_\_, To make certain modifications to the repayment period and payment of interest for the Fryingpan-Arkansas project in the State of Colorado**

The Arkansas Valley Conduit (AVC) was originally authorized in 1962 as part of the Fryingpan-Arkansas Project (P.L. 87-590). However, the AVC was not constructed with the original project, primarily because AVC beneficiaries were unable to repay all construction costs as required in the original authorizing legislation. In 2009, Congress amended the original authorization for the Arkansas Valley Conduit under P.L. 111-11, recognizing the increased need to address water quality concerns within the Arkansas Valley. Surface and groundwater in Southeastern Colorado contain naturally occurring radium and uranium, as well as high salinity, selenium, sulfate, hardness, and manganese that exceeds water quality standards year-round. Currently, twelve water providers have concentrations of these elements in the water supplies that exceed federal Safe Drinking Water Act mandatory standards. As a result, the State has issued enforcement actions requiring these water providers to remove the contaminants or find a better-quality water source. In addition, water providers in the lower Arkansas River Basin generally have difficulty meeting non-mandatory secondary drinking water standards for salts, sulfate, and iron.

In order to address these issues, P.L. 111-11 authorized appropriations for construction of the AVC; allowing miscellaneous revenues to be used to construct AVC; and, upon completion, provided for miscellaneous revenues to be credited to the actual costs of AVC. P.L. 111-11 also provided a cost sharing plan of 100% percent federal construction financing, and 35 percent non-federal repayment over a period of 50 years, starting after project completion.

For the first decade after passage of P.L. 111-11, progress towards construction of the AVC was limited by a variety of factors, increasing the cost of the proposed project. In 2019, Reclamation staff and the project's non-federal repayment entity, the Southeastern Colorado Water Conservancy District (SECWCD), made significant progress and identified a number of modifications to the proposed project that would reduce costs by as much as \$200 million from the prior 2014 configuration of the project. Following that work, Reclamation sought, and Congress provided, significant funding to get the construction of the project started. Since then, thanks to passage of the Bipartisan Infrastructure Law, Reclamation has provided more than \$280 million for the project, and construction of the first two segments of the project is well underway.

Earlier this year, Reclamation updated the estimated cost for the project and found it had significantly increased over estimates used in 2019. This increase in costs is not unique to the Arkansas Valley Conduit and is consistent with broad trends for heavy civil works projects across the West. Given this increase, the project beneficiaries are again faced with challenges to repay their share of construction of the project, as directed under P.L. 111-11.

To address this concern, this Act would adjust the repayment obligation for the Arkansas Valley Conduit by removing interest payments and extending the timeline for repayment from 50 to 100 years. These changes are intended to address dynamic economic conditions and seek to find a more appropriate financing arrangement, in view of the updated understanding of the costs associated with the project.

P.L. 111-11 explicitly requires that interest should be applied for M&I allocations within the legislation, removing any discretion from the Secretary. For most Reclamation projects, M&I is a relatively small portion of the use within an overall multipurpose project and the amount of repayment allocated to M&I purposes is low. In this way, the Arkansas Valley Conduit is unique within Reclamation's authorized projects – keeping many of the traditional aspects of a federally constructed Reclamation Project, including a requirement for repayment of the significant upfront cost, while only serving M&I purposes rather than the irrigation function more typical of legacy Reclamation projects.

Reclamation continues to support completion of the AVC and supports the modifications proposed under this Act. Without the AVC, prior analysis by Reclamation has indicated that these communities could see the cost of drinking water triple to meet water quality standards. Given that the AVC-area communities are already in economically disadvantaged counties, this increased cost would likely have significant negative effect. By completing the AVC project, Reclamation not only helps these communities implement a solution they have long worked together to achieve, but also fulfills a commitment the federal government made decades ago. Simply put, families and communities across the Lower Arkansas Valley face rising water treatment costs in a declining local economy. Without a realistic option for coming decades, these same communities would be unlikely to achieve sustainable water treatment.

As highlighted for S. 4458 and the Dakota Water Resources Act Amendments of 2024, the Department supports efforts to improve access to reliable, clean drinking water as an essential human need that is critical to the public health, well-being, educational attainment, and economic development of all communities in the United States. The modifications proposed under this Act are within that commitment and necessary to ensure that the costs of the AVC remain reasonable and affordable for the rural communities that will depend on it.

**S. \_\_\_\_\_, To prohibit the use of amounts from the Upper Colorado River Basin Fund to implement a certain record of decision, and for other purposes**

Glen Canyon Dam is the key water storage unit of the Colorado River Storage Project, one of the most complex and extensive river resource developments in the world. Without it, development of the Upper Colorado River Basin states' portion of the Colorado River would not have been possible. Hydroelectric power produced by the dam's eight generators helps meet the electrical needs of the West's rapidly growing population. With a total capacity of 1,320 megawatts, Glen Canyon Powerplant produces around four billion kilowatt-hours of hydroelectric power annually which is distributed by the Western Area Power Administration (WAPA) to Wyoming, Utah, Colorado, New Mexico, Arizona, Nevada, and Nebraska.

The Upper Colorado River Basin Fund (Basin Fund) was established under Section 5 of the 1956 Colorado River Basin Project Act. The legislation authorized a separate fund in the U.S. Treasury where appropriations for construction of Colorado River Storage Project (CRSP) facilities, except recreation and fish and wildlife facilities constructed under Section 8, are transferred to the Basin Fund from the General Fund of the Treasury. Revenues derived from operation of the CRSP and participating projects are deposited in the Basin Fund. Most of the revenues come from sales of hydroelectric power and transmission services. The Basin Fund also

receives revenues from M&I water service sales, rents, and miscellaneous revenues collected in connection with the operation of the CRSP and participating projects.

In 2016 the Department published a final Environmental Impact Statement (EIS) and Record of Decision (ROD) for the Glen Canyon Dam Long Term Experimental and Management Plan (LTEMP) in order to implement a structured, long-term experimental and management plan for operations of Glen Canyon Dam. The LTEMP has provided a framework for adaptively managing Glen Canyon Dam operations and other management and experimental actions consistent with the Grand Canyon Protection Act and other provisions of applicable Federal Law. This includes, among other items, the need to meet statutory responsibilities for conserving species listed under the Endangered Species Act. The LTEMP does not change the volume of annual releases from Glen Canyon Dam or the amount of water available to each Colorado River Basin State; it only affects the timing of Glen Canyon Dam releases within a water year.

As Lake Powell's elevation has declined and water released from Glen Canyon Dam has warmed in recent years, warmwater invasive fish such as smallmouth bass residing in the upper layer of Lake Powell have been able to pass through the dam and successfully spawn downstream in the Grand Canyon. These warmwater predatory fish can prey on native fish species, including the federally protected humpback chub in the Grand Canyon. Over the past two years, Reclamation has analyzed various flow options from Glen Canyon Dam to help disrupt the establishment of nonnative fish, primarily smallmouth bass, below the dam in the Colorado River through the Glen Canyon Dam LTEMP SEIS. An important aspect of the analysis within the SEIS was an evaluation of the impacts to the production of hydropower under the various alternatives. The SEIS indicated that the impacts to hydropower would range from \$0 to over \$200M, with the high end estimate only applicable under very dry scenarios with repeated use of flows. The anticipated impacts in 2024 are estimated between \$15 and \$20M.

Reclamation implemented Smallmouth Bass flows beginning on July 9. To date, preliminary results show that the flows are having the intended cooling effect, and smallmouth bass spawning has not been detected as of August 22, 2024, even with increased sampling. The cost of the smallmouth bass flows through August 2024 is estimated at approximately \$13 million, within the estimated range. Moreover, the Bureau of Reclamation has worked with the Western Area Power Administration to mitigate hydropower impacts by timing smallmouth bass flows around energy loads, which have mitigated the costs by an estimated \$300,000 to \$400,000 per week than what was expected under the SEIS. Reclamation is collecting data on the efficacy and cost of smallmouth bass flows in 2024 to assess whether future flows in 2025-2026, if triggered, will be warranted.

This Act would prohibit the use of amounts from the Basin Fund from being used to implement the December 2016 Record of Decision for the Glen Canyon Dam LTEMP SEIS. The bill also directs that any Federal funds made available for the LTEMP SEIS ROD shall be non-reimbursable.

Reclamation understands that the intent of the bill is to address concerns that implementation of the SEIS ROD will require the Western Area Power Administration (WAPA) to use funds from the Basin Fund to replace the power that would have otherwise been generated. Limiting use of

funding from the Basin Fund for activities described in the SEIS ROD would not limit or prohibit Reclamation from continuing to implement the SEIS ROD. However, the legislation would appear to limit WAPA's ability to purchase replacement power as they have no other funding means outside of the Basin Fund. As such, we expect that the impact of this Act would be to shift the costs from the Basin Fund to individual non-federal power users. Absent additional appropriations to offset these costs, the impact to these power users, in many cases on small and disadvantaged communities, is likely to be significant.

Reclamation understands the intent of the bill to address the impact that implementation of the LTEMP SEIS ROD will have on the Basin Fund and we share the sponsor's desire to avoid any negative unintended consequences. As such, we look forward to working with the sponsor on technical corrections that will satisfy the sponsor's intent while avoiding unintended effects.

Senator WYDEN. Thank you, Commissioner, and as I say, thank you for always being willing to sit with us and go through this.

As you have heard me say, not just today, but in the past, what I hear from tribes and rural communities is, they just feel that they are engulfed in red tape and bureaucracy, and there are all these processes in terms of deciding who is this and who is that, and I get all that because there has to be accountability and transparency. I get all that. But tell me what can be done to fast-track the remaining money, in effect, from the IRA to these communities, because they just come to me, and I will let my colleagues speak for themselves. And I know that nobody gets up in the morning in Washington, DC, at your agency—especially not you—and says, hey, I want to be rotten to all these little communities in the West. Quite the opposite. I know you are very dedicated to them. We still have the reality that they just feel like they are just engulfed almost in all this red tape and delay and the hoops to try to get considered.

I mean, is it possible, for example, to get the remaining money out in 90 days? I mean, what can be done to actually make sure this is sped up?

Ms. TOUTON. Senator, I agree with you that process should not stand in the way of access to clean water. There are several things that we have done since we last spoke. First, we created a notice of funding opportunity under WaterSMART specifically designated for disadvantaged communities and tribes. That was \$88 million. As part of this process, too, what we have allowed is the ability that if you aren't successful, to reach out to us to do a hotwash so we can tell you where in your application you can improve, and so that when we see people do that with us, they have better success rates moving forward.

I also hear you in saying we need to work with our partners in other agencies. One thing we did is sign an MOU with the Indian Health Service to partner with them on their domestic water supply for tribes and bring our engineering technical capabilities and use our funds that you all gave us as effectively as possible. We are also working with USDA on our ability to partner on more—water-thrifty crops is what we are calling it. We can always do more, but part of it is the ability for these constituents and our partners to know what we are doing. So, tomorrow we will be holding our 13th Bipartisan Infrastructure Law stakeholder meeting. That is virtual, but we have also offered to go state by state, water district by water district, so we can walk through these programs. The people that work for us are in the communities we serve, and we will always be willing to do more, Senator, and we are happy to learn how we can do that.

Senator WYDEN. It sounds plenty constructive to me, and I appreciate that. Can we look at a target date in getting this money out in 90 days?

Ms. TOUTON. I will work with you on that.

Senator WYDEN. Okay.

Ms. TOUTON. I will say that—

Senator WYDEN. Fair enough.

Ms. TOUTON. Thank you.

Senator WYDEN. Fair enough. I will quit while I am ahead.

[Laughter.]

Senator WYDEN. Commissioner, one last question. I know my colleagues have questions as well. We have asked you some questions about the Klamath Basin, which, as you know, has a lot of history, particularly in terms of droughts. And you provided testimony on our Klamath Power and Facilities Agreement Support Act. As you know, Senator Merkley and I feel very strongly about that, and we have been working closely with you on it. Can you update us on your efforts to try to talk about the projects for the Klamath Basin that are coming out?

Ms. TOUTON. Thank you for that, Senator. There is not a week that we don't talk about the Klamath project in our office.

Senator WYDEN. Good.

Ms. TOUTON. So, when we started this water year, we had a pretty decent allocation—a little over a quarter million acre-feet for the project. It got hot in July. We are working through those deliveries for the rest of the year. But as part of that, we were able to provide \$8.5 million to the Drought Relief Assistance Act legislation that you helped for us to have, as well as \$5 million for technical assistance to tribes. But what we need to be able to talk about is not year-by-year. How do we talk about longer into the future? And so, with the resources that you provided us that we will expeditiously allocate, part of that conversation is how we deploy those in the Klamath Basin for longer-term solutions.

Senator WYDEN. Good.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chair.

Commissioner, it's great to see you.

Ms. TOUTON. It's nice to see you too, Senator.

Senator CORTEZ MASTO. And I have to say thank you for all the great work that you are doing, particularly in Nevada around the water issues. I also support three of the bills that are before us—the WaterSMART Access, the Help Hoover Dam Act, and the Lower Colorado River Multi-Species Conservation Program. Thank you for supporting those bills.

My question is going to be similar to what is happening along the Colorado River, and will focus on a little bit of that. As you well know, the Colorado River operating guidelines expire at the end of 2026. So, a couple of things: one, can you provide us with an update on the status of the negotiations around those guidelines? And then also, if you would follow that with next steps will you take if the states don't find some sort of consensus around this time frame?

Ms. TOUTON. Thank you for that question, Senator.

First, I need to remind us where we were two years ago. Lake Mead hit the lowest level since filling in 1937. Today, because of the leadership of this Committee and our ability to deploy resources, we are 20 feet higher at Lake Mead, 40 feet higher at Glen Canyon Dam, and we have used less water. Southern Nevada, especially Las Vegas, is an example of that, where they have used 187,000 acre-feet in 2023 of consumptive use of their 300,000 acre-foot allocation. So, in the two-years, we have shown a proof-of-concept that we can save a rainy day, we can conserve water, and we can still have vibrant communities.

Moving forward, we need an operating plan in place in less than two years. I am confident in the conversations that we are having with the Basin states and the tribes. We have a federal tribes meeting on Friday. And they are all very motivated about the timeline, knowing that we need an operating plan by August 2026 to be in place by January 2027. So people are at the table. We are moving forward. And I will keep moving them forward with your support.

Senator CORTEZ MASTO. And you have it.

So, let me just say this, because I know this is an ongoing negotiation and I appreciate that. And I appreciate everybody that's at the table and I think for purposes of several of the Senators that continue to monitor this and what is happening, we are hopeful that that continues as well. And I have to give credit to my colleague, Senator Hickenlooper. He really has been the one to kind of bring all of the Senators together in the Basin states to continue to focus on this issue. So, I thank you, because it's so important.

One final thing—let me ask you, in the Bipartisan Infrastructure bill, Susie Lee and I fought for additional funding to support a large-scale water recycling program. Susie Lee is the Congresswoman from Nevada. And this really was focused on how we can get California and Nevada to do some large-scale recycling. Can you give us an update on where we are with that project?

Ms. TOUTON. Thank you for that authorization. We put it to work. We were able to announce \$189 million for five projects—four in California and one in Utah—earlier this spring. One being the Pure Water project in Southern California, which is a partnership with the Metropolitan Water District of California, the Southern Nevada Water Authority, and the Central Arizona Project. And we look forward to obligating the remainder of that funding.

Senator CORTEZ MASTO. Thank you.

And the importance of those projects can't be underestimated. It really is bringing essential water and keeping water in the Colorado Basin, and it is bringing essential water to households in Nevada and California and other areas. Conservation is part of the—is the key to some of addressing the drought—

Ms. TOUTON. Absolutely.

Senator CORTEZ MASTO [continuing]. That we need in the water uses for the future.

Ms. TOUTON. That Pure Water project is enough water for half a million homes annually.

Senator CORTEZ MASTO. Yes, thank you.

Commissioner, thank you for being here.

Ms. TOUTON. Thank you.

Senator WYDEN. The praise is flowing fast and furious for Senator Hickenlooper, so please proceed. Senator Hoeven, to his undying thoughtfulness, said you and Senator Padilla will go next and then he will come.

Senator HICKENLOOPER. Is there no limit to grace?

Senator HOEVEN. I owe Hickenlooper anyway.

[Laughter.]

Senator HOEVEN. This doesn't even come close.

[Laughter.]

Senator HICKENLOOPER. You are going to start rumors.

Senator WYDEN. Now, if we start, I will go collecting on several things over the years too.

Senator HICKENLOOPER.

Senator HICKENLOOPER. Thank you, Mr. Chair, and thank you, Camille—Commissioner Touton.

Your commitment and dedication to all these issues with so much going on in such a time of incredible change really is remarkable, and don't think for a moment that we don't all appreciate it. We have seen more than two decades of pretty continuous drought on the Colorado River. And you have already—the several bills I am going to mention here, you have already enthusiastically embraced. So I won't be too prying or demanding. We worked with Senator Barrasso and then Senators Lummis and Romney and Bennet on the System Conservation Pilot, to extend that. Obviously, we have learned lessons from the past couple of years on that. Can you talk a little bit about those lessons, or steps you want to make sure we see?

Ms. TOUTON. Absolutely. First, I want to commend my partners with the Upper Colorado River Commission—the four commissioners in the Upper Basin—for the leadership in implementing this program. Over the past two years, we have been able to show a proof of concept of what is possible today so that it could be a practice that we can continue into the future. And so, just being able to show what can be and is possible is value enough to be able to say we can do this into the future—

Senator HICKENLOOPER. Yes, absolutely.

Ms. TOUTON [continuing]. And in a voluntary way, is what is important.

Senator HICKENLOOPER. Scary thought.

Senator Bennet already talked at some length about the Arkansas Valley Conduit, the AVC program that President Kennedy first promised. People in the Arkansas Valley have been waiting for over 60 years to get clean water. And it's 50,000 people spread over about 35 miles of length of the Arkansas where they are, once we get this done, who are going to have fresh water for the first time, really, in their lives, for many of them. The wells have been polluted for a long time, so many of them are trucking water in. You and your team have been great working on this and I guess I just want to make sure to reiterate on the record your commitment to keep working with us on this, to make sure that we can continue to make the progress we have made.

Ms. TOUTON. I was so happy to join you and Senator Bennet at the groundbreaking. Since then, we are nearing completion on Boone Reach 1. We have started Boone Reach 2. I know we like shovel events, but I am committed to a ribbon-cutting when we complete this.

[Laughter.]

Senator HICKENLOOPER. That's the spirit.

You know, Senator Moran and I worked on this Water Project Navigators Act, and I wasn't crazy about the name because it makes it sound like we're going to dredge, you know, going to have navigable Platte River and Colorado River for great lengths. It's really about making sure that communities can navigate through the bureaucracy, make their applications to WaterSMART. Many of

the smaller communities and tribes—the rural communities—haven't had that access. And I think Senator Moran and I are both very excited about being able to provide on-the-ground capacity for benefits for water in the communities, for the economy, and for the environment. And you obviously supported that. Do you see any problems coming down the road for that?

Ms. TOUTON. I think what we need to work through in the conversation with the Chairman and others is, first, let us show you what we can do, and I think those tools are there. And then, have the conversation with you on the Navigators Act on how we can use these additional tools—

Senator HICKENLOOPER. Right.

Ms. TOUTON [continuing]. To complement each other. The ability to have more people access these resources is a good one.

Senator HICKENLOOPER. Right.

Ms. TOUTON. And I look forward to working with you on that.

Senator HICKENLOOPER. So you are suggesting that we work together. That's kind of a strange concept. Just kidding. Thank you. I appreciate that.

And then last, the work that Senator Lummis and Senator Wyden have done to reauthorize their Reclamation States Emergency Drought Relief Act, as well as the programs at U.S. Geological Survey, and you know, stream flow, groundwater monitoring. And I realize that your agency isn't in control of these networks. So, can you speak to the value of making sure we get consistent water data for your reservoirs and your programs?

Ms. TOUTON. Real-time data and data allows for better-informed decisions. My favorite gauge is the Lees Ferry gauge, since you are asking.

[Laughter.]

Senator HICKENLOOPER. I won't go any further.

Thank you, Commissioner. Thank you, Mr. Chair.

Ms. TOUTON. Good to see you, Senator. Thank you.

Senator WYDEN. Thank you, Senator.

Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair.

Continuing the chorus of praise for Commissioner Touton and her leadership with all the Colorado River states—much, much appreciated. Keep us posted, as you do so well, and however we can continue to support your efforts and events, that collaboration and thoughtfulness.

Speaking of the Colorado River, one specific item relative to the legislation I previewed earlier in my remarks—just asking if you can spend a minute talking about the importance of the Lower Colorado River Multi-Species Conservation Program, and specifically, how the ability to collect interest on these funds for the program would increase the money available to do more of the good work?

Ms. TOUTON. Thank you, Senator. The Multi-Species Habitat Conservation Plan is important in that it allows us compliance for our water power deliveries, and it helps us to enhance the ecosystem. That money is already sitting there, so we should put it to work. And our ability to put that money to work means more yellow-billed cuckoos, like the one you have there, and you know, we announced—it makes a sound, Senator, just warning you—and

we announced \$25 million for those efforts at MSCP at Topock Marsh and Yuma East Wetlands. This year we saw, for the first time in a long time, nesting for the willow flycatcher. So it's a success. And we are proud of it.

Senator PADILLA. Thank you, and a without objection to submit for the record?

[Bird call plays.]

Senator WYDEN. I was just going to say, there we are.

[Photograph of toy bird, "Yazmin, the Yellow-billed Cuckoo" follows:]



Senator PADILLA. Turning now, thank you.

Senator WYDEN. Senator Hoeven is going to bring out his woodpeckers, apparently.

[Laughter.]

Senator PADILLA. Commissioner, thank you for the souvenir.

Ms. TOUTON. Thank you for the legislation.

Senator PADILLA. Let me ask you for your comments on a different bill that I previewed as well, on the San Joaquin River, and specifically, the River Restoration Program. I appreciate your support on it. I wanted to, just for the record, ask you to discuss what Reclamation would be able to do with additional funds to implement the program.

Ms. TOUTON. The San Joaquin Restoration Program is a critically important program that we implement. It allows for the restoration of habitat for anadromous species. That is where the priority of the money will go, is for specifically the Mendota Pool and Reach 2B. It allows us, again, to restore an ecosystem and help with water reliability.

Senator PADILLA. And I know you have shared, not just with me, but all the stakeholders, how this program is a great example of how we can both manage water resources in California in an environmentally friendly manner while maintaining a reliable water supply. They are not at odds. These are co-equal goals. How would increasing the authorization of appropriations on the program help increase the reliability of water operations, particularly in the Friant division of the Central Valley Project?

Ms. TOUTON. Being able to build this project now will have immediate benefits to the species, and allowing us to do that then will allow for reliability efforts for deliveries for the Friant Water Authority. I am pleased to be joined here by the General Manager of the Friant Water Authority, and we are really excited about this support, including from the State of California, in cost sharing.

Senator PADILLA. And on that note, I was going to ask how unique and important is a partnership with the states—

Ms. TOUTON. It is.

Senator PADILLA [continuing]. And particularly the one-to-one, non-federal match for this?

Ms. TOUTON. Yes, Senator, thank you.

Senator PADILLA. That's a big thumbs up then.

Then lastly, the third of my bills, the Sacramento River Act, specifically Section 2 of the bill. During your time as Commissioner, I have seen firsthand how your efforts have been successful to bring stakeholders together, even when it seems like they have opposing interests, from agriculture to water contractors, NGOs, tribes, communities, and others, not to mention the seven Colorado River Basin States, 30 Basin tribes, and Mexico, when it comes to those negotiations. I have to tell you, one of the highlights, particularly on water, for me in my time in the Senate has been to join you at the historic water agreement signing earlier this year impacting Central Valley water users. You have also supported the Floodplain Forward collaborative efforts that I mentioned among landowners, growers, water suppliers, conservation organizations, and government entities to protect the ecology of the area. Can you just share with us what your approach is, because it's the same ap-

proach I have seen in the Central Valley, that I have seen with the Colorado River states, and I imagine you are deploying elsewhere. What is Commissioner Touton's secret sauce here?

Ms. TOUTON. The solutions are roots-up. Massively organic and roots-up, and wherever the Federal Government can partner, especially with resources, is where we find success. You mentioned the south-of-delta drought plan. It allows for operational flexibility, it allows for upgrading infrastructure, and it allows for saving a little bit of that water when we absolutely need it. And it supports the San Joaquin Restoration Program. So wherever we can do that, whether it's in the Sacramento Valley, the Deschutes Basin, or other places, we will do that every time.

Senator PADILLA. What else do you need from us?

Ms. TOUTON. Thank you for your support, Senator.

Senator PADILLA. Thank you, Mr. Chair.

Senator WYDEN. It doesn't get better than that. Thank you for your support.

Senator Hoeven.

Senator HOEVEN. Thank you, Mr. Chairman. Thanks for holding this hearing today and for including Senate bill 4996, which is my bill regarding the Dakota Water Resources Act, and also, of course, thank you to Commissioner Touton. Thanks for being out in North Dakota and for your incredibly important work on this bill. As you know, it's a big deal for us, and having come out several times to our state and helping us craft it. Also, it's bipartisan, and I want to thank Senator Padilla for your support of this legislation, and I am pleased to work with you on this and on your legislation as well. So, thank you for that bipartisan support.

I have, Mr. Chairman, letters here from the State of North Dakota, from the Garrison Diversion, from the Lake Agassiz Water Authority, from North Dakota Rural Water, as well as letters of support from the tribal nations in our state, including the Three Affiliated Tribes, which is Mandan, Hidatsa, and Arikara Nation, the Standing Rock Sioux Tribe, the Turtle Mountain Band of Chippewa, as well as the Spirit Lake Tribe and the Sisseton-Wahpeton Oyate Tribe. And I would ask that these letters of support for this legislation be included in the record.

Senator WYDEN. Without objection, so ordered.

[Letters of support for S. 4996 follow:]

May 30, 2024

The Honorable Senator John Hoeven  
338 Russell Senate Office Building  
Washington, DC 20510

Dear Sen. Hoeven,

As North Dakota's agriculture and conservation partners, we write to address the pending update to the Dakota Water Resources Act (DWRA). We are aware that this legislation, so critical to North Dakota's future, addresses both state and tribal municipal, rural and industrial (MR & I) water needs. The DWRA also includes funding for the North Dakota Natural Resources Trust to support farmers, ranchers and landowners in adopting voluntary conservation practices. We support the Trust's request for an additional \$50 million authorization to support that stewardship on private lands.

The conservation compromise embodied in the 1986 Garrison Reformulation Act was integral to the future of the Garrison Project. The Act included the creation of what is now the North Dakota Natural Resources Trust. The Trust is a North Dakota focused conservation entity whose governance and leadership reflect North Dakota perspectives and values (one-half of the six-person board is appointed by the Governor).

The Trust has proven themselves to be a strong conservation partner for agricultural producers. They are a source of trusted advice, simple conservation solutions and efficient delivery. The Trust works hand-in-hand with agricultural producers to make their farming and ranching operations more profitable and sustainable for the benefit of farm families, rural communities and the North Dakota economy. In fact, the Trust has helped over 1,000 landowners with a variety of conservation practices on over 400,000 acres of land since 2010.

The Trust has been a strong steward of DWRA funds to the benefit of North Dakota's farmers and ranchers. It is our understanding that roughly \$7 million of DWRA funds

authorized for the Trust have yet to be released to the Trust. We support providing the remaining DWRA funds to the Trust and increasing the Trust's federal funding authorization by \$50 million over and above past funding authorizations. With additional fiscal resources, the Trust's positive impact will only increase, to the benefit of the agricultural industry and the state overall.

Thank you for your support of North Dakota agriculture and conservation. We appreciate your consideration of this request.

Sincerely,

Delta Waterfowl	North Dakota Chapter of the Wildlife Society
Ducks Unlimited	North Dakota Corn Growers Association
Independent Beef Association of North Dakota	North Dakota Farmers Union
Midwest Dry Bean Coalition	North Dakota Grain Growers Association
National Audubon Society	North Dakota Grazing Lands Coalition
National Wildlife Federation	North Dakota Oilseed Council
Northern Canola Growers Association	North Dakota Soybean Growers Association
Northarvest Bean Growers Association	North Dakota Wildlife Federation
North Dakota Agricultural Aviation Association	Pheasants Forever
North Dakota Association of Soil Conservation Districts	

CC: Aaron Weber  
Eric Gustafson  
Tom Brusegaard



**MANDAN, HIDATSA & ARIKARA NATION**

Three Affiliated Tribes \* Fort Berthold Indian Reservation  
307 5<sup>th</sup> Avenue New Town, ND 58763  
Tribal Business Council

Office of the Chairman  
Mark N. Fox

The Honorable Deb Haaland  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

The Honorable M. Camille Calimlim Touton  
Commissioner of the Bureau of  
Reclamation  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Secretary Haaland and Commissioner Touton,

I am writing to you on behalf of the Three Affiliated Tribes (TAT) of the Fort Berthold Indian Reservation in North Dakota, also known as the Mandan, Hidatsa and Arikara Nation, to urge the U.S. Department of Interior and the U.S. Bureau of Reclamation (USBR) to support the enactment of the Dakota Water Resources Act Amendments of 2024 (DWRAA), as part of the Fiscal Year 2025 appropriations process. Among other matters, the DWRAA would provide \$275 million in appropriations authority to complete the construction of the Fort Berthold Rural Water System (FBRWS) in line with Executive Order (EO) 14112 – Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination.

As you know, the FBRWS is a vital project that TAT has been working on with the USBR for 24 years to provide safe and reliable water to meet the municipal, rural, and industrial needs of our tribal members and residents across our Reservation. The project was first authorized by Congress in 1986 and additional funds were provided in 2000 after the USBR and TAT worked collaboratively to identify significant unmet needs. Unfortunately, the funding authority provided by Congress in response to these collaborative studies has been insufficient, leaving us unable to complete the FBRWS and serve our full Reservation population and economy. This not only impedes the well-being of our Tribal members and residents today but also their well-being well into the future.

The FBRWS is not only essential for the health and well-being of our people. It also promotes the economic development and growth of our region. The Reservation has experienced a significant increase in population and water demand due to the development of our energy and trust resources of oil and gas in the Bakken Shale Formation. The

increase in population and water demand brings both opportunities and challenges to our community. Without being able to complete the FBRWS, we will be unable to adequately address the environmental and social impacts of the energy sector, as well as diversify our economy and create jobs in other sectors, such as agriculture, tourism, and manufacturing.

We appreciate your leadership and commitment to advancing the infrastructure and water security of Indian Country. We urge you to support the authorization of \$275 million to TAT for the FBRWS. This will fulfill the federal trust responsibility to our tribes and honor the promises made by the United States government when it flooded our ancestral lands to create Lake Sakakawea.

Thank you for your continued support of this critical issue. We look forward to working with Interior and the USBR to secure the necessary resources to complete the FBRWS and meet the needs of our growing community.

Sincerely,



Mark N. Fox  
Chairman, Three Affiliated Tribes



September 4, 2024

Senator Joe Manchin, Chairman  
 Senator John Barrasso, Ranking Member  
 US Senate Committee on Energy & Natural Resources  
 304 Dirksen Senate Building  
 Washington, DC 20510

Chairman Manchin, Ranking Member Barrasso, and members of the United States Senate Committee on Energy and Natural Resources:

We thank you for your leadership and ask for your support of Dakota Water Resources Act (DWRA) reauthorization legislation. On behalf of the North Dakota Department of Water Resources, Garrison Diversion Conservancy District, Lake Agassiz Water Authority, and North Dakota Rural Water Systems Association, we appreciate your consideration of this request. More specifically, and as outlined in this letter, we are respectfully requesting \$687 million for state water supply needs, and \$743 million for Tribal water supply needs (see attached) be included in DWRA reauthorization legislation. This letter provides background on DWRA, detailed information on the projects included in the state's \$687 million request, and support for Tribal water supply needs.

To understand the critical importance of DWRA reauthorization to North Dakota, it is first necessary to understand the purpose and background of previous legislation, as well as the continued challenges in providing reliable and high-quality water for our citizens. From a historical perspective, the Rivers and Harbors Act of 1935 and the Flood Control Act of 1944 authorized construction of six mainstem dams on the Missouri River, leading to the completion of the Garrison Dam in North Dakota in 1953. For the more than 560,000 acres in North Dakota flooded by Garrison and Oahe Dams (Lake Sakakawea and Lake Oahe), Congress passed legislation as partial compensation and to mitigate long term impacts to the state and Tribal Nations located in the state.

With regard to compensatory legislation, in 1986, the Garrison Reformulation Act (GRA) authorized a federal Municipal, Rural, and Industrial (MR&I) water supply grant program to assist North Dakota with the development of critical water infrastructure. Fourteen years later, Congress passed the Dakota Water Resources Act of 2000, amending the 1986 GRA. Included in the DWRA of 2000 was a \$200 million increase in MR&I program funding and \$200 million for Tribal water supplies (both indexed for inflation), as well as \$200 million through loans to develop a project that would meet water supply needs in North Dakota's Red River Valley, which

never materialized. In FY 2024, North Dakota received its final allocation as part of the original DWRA – two dozen years after the original authorization.

Two progressing regional water supply systems relying on MR&I funding are the Northwest Area Water Supply (NAWS) project and the Eastern North Dakota Alternate Water Supply (ENDAWS) project, a component of the Red River Valley Water Supply Project. Both projects are currently under construction, and when completed, will provide high quality, drought resilient water supplies to approximately 60% of North Dakota's water users in northern, central, and eastern regions of our state. Another regional water supply system that has been in place for decades, but has also utilized MR&I funding is the Southwest Pipeline Project (SWPP). SWPP currently serves 58,000 water users, or just over 7% of North Dakota's population in the southwest region of our state. With continued growth and requirements for additional water comes additional financial need through the MR&I program for the SWPP as well.

To address long-standing water quality and quantity problems experienced by residents of northern North Dakota, the NAWS project was authorized by the GRA of 1986 and the DWRA of 2000 under the MR&I grant program. The general purpose of NAWS is to transport abundant Missouri River system water from Lake Sakakawea to a biota water treatment plant (BWTP) before it is piped across the continental divide to Minot, where it will then be treated again before distribution. Construction of NAWS began in 2002, with the main transmission line and associated features built between the city of Minot and Lake Sakakawea. Later in 2002, lawsuits were initiated, delaying the project for years. The District Court ruled in favor of the project in 2017, and that decision was upheld by the Appellate Court in 2019 - ending 17 years of litigation. Since 2019, construction on the NAWS project is back underway with the construction of pipelines, storage reservoirs, pump stations, and water treatment plants.

When completed, it is estimated the total cost of the NAWS project will be about \$440 million. To date, over \$350 million has already been invested, with approximately \$176 million of that total in federal funds. It is important to note, because of Boundary Waters Treaty of 1909 requirements, NAWS has been required to construct the BWTP, which is the first and only one of its kind in the country. This has added additional project costs that were not envisioned when NAWS, and ENDAWS for that matter, were originally planned. As such, BWTP costs are 100 percent the responsibility of the federal government. However, because no federal authorization has been directed specifically for that purpose, North Dakota and the federal government have been forced to use MR&I program funds for Phase I BWTP efforts with about \$59 million in federal funding reimbursements to date, which could have been used for other critical water supply needs. Phase II/III expansion of the BWTP are anticipated to cost approximately \$50 million.

For this reason, we are requesting \$120 million be included in DWRA reauthorization legislation to account for BWTP-related costs, as well as MR&I program funding utilized for study and administrative costs incurred by the US Bureau of Reclamation as necessitated by Boundary Waters Treaty requirements.

The drought-prone Red River in North Dakota is the primary water source for North Dakota's most populated region. Studies show a severe drought, similar to that of the 1930s, will likely repeat by the year 2050. In this event, water supplies in the Red River Valley would be insufficient, and would result in an economic impact of over \$33 billion.

The Red River Valley Water Supply Project (RRVWSP) is needed to mitigate against drought conditions that would cause costly shortages, foster economic development by meeting municipal, rural, and industrial water demands, and promote environmental sustainability with continued growth and industrial development in the region.

ENDAWS, a component providing a bulk water supply to the RRVWSP, is the solution to providing central and eastern North Dakota with a reliable supply of quality water. This component will include the construction of infrastructure to provide up to 165 cubic feet per second (cfs) of water from the McClusky Canal. Water will be delivered through a buried pipeline along a northern route and connected with the main transmission pipeline of the originally-planned RRVWSP. The supplemental and emergency water supply will benefit approximately 50% of ND's population, and is also able to serve communities in western Minnesota if needed.

The \$454 million request for ENDAWS will enable the development of 32 miles of 72-inch main transmission pipeline, an intake on the federal Garrison Diversion Unit McClusky Canal, a biota water treatment plant meeting the Boundary Waters Treaty Act of 1909 regulations, a main pump station, and hydraulic break tanks for the ENDAWS project.

For the SWPP, \$50 million is requested to support the advancement of several projects. The first being the new Southwest Water Treatment Plant (SWTP) expansion project in Dickinson, North Dakota. This project includes the expansion of the 6 million gallon/day (MGD) SWTP to its ultimate capacity of 18 MGD and will allow the retirement of the existing 60-70 year-old City of Dickinson 12 MGD water treatment plant. In addition, main transmission line improvements, strategic hydraulic improvements in multiple service areas, and rural distribution system improvements are planned to support growing water needs in southwest North Dakota.

Additionally, \$63 million is requested to expand rural water systems. North Dakota's rural water systems provide a safe, reliable, high-quality, and affordable water supply to residents, farms, industries, subdivisions, and small communities within the state. Further developing rural water projects across North Dakota is vital in maintaining rural economies by keeping individuals, families, and businesses in rural communities which are the backbone of our state. To meet the growing statewide rural water needs, additional funding is needed to solve water quality and quantity issues. A 2022 study indicated that nearly \$460 million will be needed to meet the 10-year funding need of state rural water projects with an additional \$1 billion needed over the next 20 years. Without significant federal assistance, many systems could not reasonably afford to bring water to people in desperate need and could not comply with the myriad of complex water quality rules and regulations in place.

In addition to the aforementioned financial needs of the State of North Dakota, we also believe the critical water supply needs of Tribal Nations with which we share geography and history should also be realized. As such, we support the \$743 million request from Tribal Nations to be included in DWRA reauthorization legislation.

As part of the \$743 million request for Tribal water supplies, there are critical water infrastructure needs in all of the reservations for which North Dakota shares geography. Project needs are related to water treatment, storage, and distribution – including to areas that today, in 2024, are still hauling water to residents that don't have clean and safe drinking water supplies.

Therefore, as identified by each of the Tribal Nations, we support \$275 million for the Mandan, Hidatsa and Arikara Tribe; \$240 million for the Standing Rock Sioux Tribe; \$118 million for the Spirit Lake Sioux Tribe; \$98 million for the Turtle Mountain Band of Chippewa; and \$12 million for the Sisseton-Wahpeton Oyate Tribe.

We appreciate your consideration of this request to provide funding for crucial water infrastructure that supports advancement of reliable, clean, and sustainable water supplies for the people of North Dakota.

Sincerely,



Andrea Travnicek, Ph.D.  
Director  
ND Department of Water Resources



Duane Dekrey  
General Manager  
Garrison Diversion Conservancy Dist.



Mayor Tim Mahoney  
Chairman  
Lake Agassiz Water Authority



Eric Volk  
Executive Director  
ND Rural Water Systems Assoc.

Attachment: ND MR&I Program Proposal



# Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION  
Office of the Tribal Chairman

12554 BIA HWY 711. BOX 509  
AGENCY VILLAGE, SOUTH DAKOTA 57262-0509  
PHONE: (605)698-3911

September 9, 2024

The Honorable Joe Manchin  
Chairman Senate Committee  
Energy and Natural Resources  
Washington, DC 20510

The Honorable John Barrasso  
Ranking Member Senate Committee  
Energy and Natural Resources  
Washington, DC 20510

Re: Dakota Water Resources Act Amendments of 2024

Dear Chairman Manchin and Ranking Member Barrasso:  
On behalf of the Sisseton Wahpeton Oyate (SWO) of the Lake Traverse Reservation in North Dakota and South Dakota, I write in support of the Dakota Water Resources Act Amendments of 2024, which authorizes funding for the development of our tribal water resources and infrastructure.

SWO is an original Native sovereign nation and federally recognized Indian tribe of Minnesota, North Dakota and South Dakota. Under our 1867 Sisseton-Wahpeton Sioux Tribe Treaty with the United States of America, SWO and our Dakota people reserved our Lake Traverse Reservation as our "permanent home" in North Dakota and South Dakota. As an aspect of our permanent home on the the Lake Traverse Reservation, SWO reserved tribal water rights for drinking water, domestic uses, housing, education, health care, agriculture and tribal economic development per our 1867 Treaty.

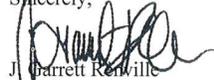
Sisseton-Wahpeton seeks to develop our tribal water resources to provide for drinking water, domestic housing, education, health care, agriculture and tribal economic development uses per our 1867 Treaty. The reservation spans 7 counties between North Dakota and South Dakota. We have over 14,500 tribal members throughout the United States and abroad with the armed forces. Many tribal members would like to move back home and the Tribe plans to build 500 houses on the North Dakota side and 1,000 new homes on the South Dakota side of the Lake Traverse reservation to accommodate the growth. Between both areas numerous economic development endeavors such as renewable energy and manufacturing plant. In South Dakota, SWO plans on building a new school, community justice and rehabilitation center and expand the current grocery store to address the food desert that our people currently face. The Tribe has begun laying the groundwork to have these systems engineered in the most efficient way that addresses some of the most pressing needs. Some of these include but are limited to:



- The Installation of water treatment systems, water tower and water wells;
- The extension of water distribution systems to critical community water needs and housing needs not addressed by IHS funding;
- The upgrades of existing water distribution systems;

We respectfully urge the Committee to favorably report this important legislation. Thank you for your thoughtful consideration.

Sincerely,



J. Barrett Renwill  
Chairman Sisseton Wahpeton Oyate





# SPIRIT LAKE TRIBE

P.O. BOX 359 • FORT TOTTEN, ND 58335 • PHONE 701-766-4221 • FAX 701-766-4126

September 10, 2024

The Honorable Joe Manchin  
Chairman Senate Committee  
Energy and Natural Resources  
Washington, DC 20510

The Honorable John Barrasso  
Ranking Member Senate Committee  
Energy and Natural Resources  
Washington, DC 20510

**Re: Dakota Water Resources Act Amendments of 2024**

Dear Chairman Manchin and Ranking Member Barrasso:

On behalf of the Spirit Lake Nation (SLN) of the Spirit Lake Reservation in North Dakota, I write in support of the Dakota Water Resources Act Amendments of 2024, which authorizes funding for the development of our North Dakota Spirit Lake Nation tribal water resources and infrastructure.

SLN is an original Native sovereign nation and federally recognized Indian tribe of North Dakota. Together with our sister Dakota Nation, the Sisseton-Wahpeton Oyate, our Spirit Lake Nation entered the 1867 Sisseton-Wahpeton Sioux Treaty with the United States of America, and SLN and our Dakota people reserved our Spirit Lake Nation (Fort Totten) Reservation as our "permanent home" in North Dakota. As an aspect of our permanent home on our Spirit Lake Nation Reservation, SLN reserved tribal water rights for drinking water, domestic uses, housing, education, health care, agriculture and tribal economic development per our 1867 Treaty.

Spirit Lake Nation seeks to develop our tribal water resources to provide for drinking water, domestic housing, education, health care, agriculture and tribal economic development uses per our 1867 Treaty. The Dakota Water Resources Act Amendments of 2024 will provide funding to complete the Spirit Lake Rural Water System within our Fort Totten Reservation, providing essential water resources to our Dakota People. The Spirit Lake Nation must act to complete our Spirit Lake Rural Water System to make our Reservation a livable permanent home for our Dakota People as promised in our 1867 Treaty.

The Spirit Lake Nation respectfully urges the Committee to favorably report this important legislation. Thank you for your thoughtful consideration.

Sincerely,

A handwritten signature in black ink that reads "Lonna J. Street".

Lonna J. Street  
Chairwoman  
Spirit Lake Tribal Council

TRIBAL COUNCIL  
(ATTACHED)

Nona Laken Akice

Charles Walker

Cyril Archambault

Stephanie Yellow Hammer

Alice Bird Heise

Richard Long Feather

Janet Akice  
*Chairwoman*

Frank Emerson  
*Vice Chairman*



Susan Agard  
*Secretary*

John Prefly Bear  
*Chairman*

Sid Bailey, Jr.  
*Chair*

Jeff Cadotte, Sr.  
*Chair*

Debra Demery  
*Chair*

Joe White Mountain  
*Chair*

Paul Archambault  
*Chair*

Jessica R. Porras  
*Chair*

Wilberta Red  
*Chair*

Truth  Compassion  
Remember Who We Are

August 28, 2024

The Honorable John Hoeven  
338 Russell Senate Office Building  
Washington DC 20510

Re: Dakota Water Resources Act Amendments of 2024

Dear Senator Hoeven;

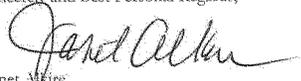
Please accept this letter as our expression of appreciation and gratitude for the efforts to amend the Dakota Water Resources Act of 2000 (DWRA) to include additional funding necessary to complete both Tribal and non-tribal water development projects in North and South Dakota.

Your efforts in securing funding for DWRA projects has allowed the Standing Rock Reservation to make significant progress in our construction efforts for a Reservation-wide water supply and delivery system which will ultimately serve all citizens of the Standing Rock Reservation.

We have completed construction on our Core Facility Contracts which include the Indian Memorial Intake and Pump Station, the Raw Water Pipeline, the Ralph Walker Water Treatment Plant, Main Storage Reservoir, Edward Black Cloud Pump Station, and the Main Transmission Pipeline that connects these facilities to the cities of Fort Yates, Solen, Selfridge, Kenel, McLaughlin, and all of the existing water infrastructure on the Standing Rock Reservation. We are currently able to provide safe, clean, dependable drinking water to a large majority of the Reservation's population; however, there is still a tremendous need for water in the rural western portion of the reservation.

Your support in reauthorizing the DWRA to include the additional funding necessary to complete our system, as well as the other Tribal and non-tribal systems included, will improve the quality of life for future generations. Thank you again for the personal interest and efforts you have extended to us in this issue. We look forward to continued funding successes in meeting our water needs.

Sincerely and Best Personal Regards,

A handwritten signature in black ink, appearing to read "Janet White". The signature is written in a cursive style with a large initial "J".

Janet White  
Chairwoman, Standing Rock Sioux Tribe



**TURTLE MOUNTAIN  
BAND OF CHIPPEWA INDIANS**

4180 HIGHWAY 281  
P.O. BOX 900  
BELCOURT, NORTH DAKOTA 58316

**(701) 477-2600**  
**FAX: (701) 477-0916**

September 9, 2024

Hon. John Hoeven  
United States Senate  
Washington, DC 20005

Re: Dakota Water Resources Act (DWRA)

Dear Senator Hoeven,

Please accept this letter of support to amend the Dakota Water Resources Act of 2000 (DWRA) to include additional funding necessary to complete both Tribal and non-tribal water development projects in North Dakota and specifically on the Turtle Mountain Band of Chippewa Reservation.

Your legislative efforts will allow the Turtle Mountain Band of Chippewa Tribe to make significant progress in our construction efforts for a Reservation-wide water supply and delivery system which will ultimately serve all citizens of the Turtle Mountains.

As you are keenly aware that providing safe, clean, dependable drinking water to a large majority of the Reservation's population is essential to not only our people but for our agriculture and livestock efforts.

Your support in reauthorizing the DWRA is essential to our continued success.

Thank you again,

Chairman

A handwritten signature in blue ink, appearing to read "J. Azure", is written over a large, faint watermark of the Turtle Mountain Band of Chippewa Indians logo.

Hon. Jamie Azure  
Turtle Mountain Band of Chippewa Indians

Senator HOEVEN. Thank you, Mr. Chair.

Commissioner Touton, again, having been out to our state on multiple occasions, and I do commend you for that, and obviously you are getting to these other states as well, and I think that says a lot about your commitment to do this job and do it well and do it from a position of knowing what you are working on, and getting out there, and actually seeing these projects makes such an incredible difference. And so, when we talk to you about the Northwest Area Water Supply (NAWS) and how we have been working on that for, you know, for more than 20 years, and we are getting very close to fruition, but you have actually been out to Garrison Dam on Lake Sakakawea and seen what we are doing in terms of utilizing existing resources that we have and that Reclamation has. And that's a win for the Federal Government as well as for our state.

And of course, when we talk to you about it, it's one thing you having actually been there and been down inside that amazing construction project, not only the dam, but the pumping plant and all these different things, is incredibly important as well as when we talk about ENDAWS and you know, bringing water to Eastern North Dakota and utilizing the federal resources that have been constructed over the years, which are not now being utilized, like the McClusky Canal, for example, not only creates a revenue opportunity combining the dam and these canals—not only provides a revenue opportunity for the Federal Government, which is incredibly important, but it saves our state a lot of money and benefits the tribes as well in terms of these water projects. You get it. You have been there. You have seen it. And you have been on both ends. You have been out in western North Dakota. You have been in eastern North Dakota and understand that it affects our entire state as well as western Minnesota, too. So, your support for this project is incredibly important.

I guess the only question, again, just to put it on the record, is will you continue to work with me, our state, and the tribes to do all we can to pass this legislation and to pass it by the end of the year so we can ensure the authorizations are in place for Fiscal Year 2025 funding?

Ms. TOUTON. Yes, and Senator, we didn't summer in North Dakota this summer.

Senator HOEVEN. I know.

Ms. TOUTON. So, just first, the ability to be able to see the source and then to go to the people we will serve with this project has always stayed with me to understand what this means. So, yes, I look forward to working to continue this project with you.

Senator HOEVEN. And we still need to get you back when it works because, as you know, we have another trip planned for you, and to make some stops, including getting you out on some of the lakes there, like we talked about.

Ms. TOUTON. Thank you, Senator. I look forward to it.

Senator HOEVEN. Thank you.

Senator WYDEN. Okay. My colleagues say they are done with questions. I want to leave you with one thought. Listening to you and my colleagues, it's clear that you are making very strong efforts to carve out resources for these important projects. That has

never been the question, nor has your sincerity and your professionalism ever been a question, you know, for me. What I have been concerned about is fast-tracking this and making it happen more quickly. So, let's do this—apropos of my request to get the money out in 90 days—why don't we say let's have you give us a report on where we are in the next 90 days, and if you have any suggestions or ideas for fast-tracking this, I would really like to see that. That would be a legacy for this Committee. Having done this for a while, very often the challenge is to get beyond some of the traditional ways of doing business and speed things up. I find, once in a while, somebody gets up in Washington, DC, and basically says, I don't want to do this, period, I don't care for them. That's not usually the case. But I think they do get up and find they are almost muscle-bound by these kinds of rules. And there's a lot of money left in that IRA program. And these are rural communities and tribal communities and they are hard-hit, and water is not an abstract issue. This is life and death and community well-being.

So, why don't we assume that after a passionate argument about this whole thing—kidding aside—we would like to see if we can speed this up. Let's have a report in 90 days with respect to where we are and any ideas, some of which may require legislation, which I would be happy to work with you on. And consider that the next step.

So, I thank my colleagues for their cooperation. For the record, members will have until the close of business tomorrow to submit additional questions for the record.

And Ms. Touton, let me repeat, again, you have always cooperated with us. It has been a pleasure to work with you.

And with that, the Committee is adjourned.

[Whereupon, at 3:33 p.m., the hearing was adjourned.]

**APPENDIX MATERIAL SUBMITTED**

---

KATIE M. HOBBS  
Governor



THOMAS BUSCHATZKE  
Director

ARIZONA DEPARTMENT OF WATER RESOURCES  
1110 West Washington Street, Suite 310  
Phoenix, Arizona 85007  
602.771.8500  
azwater.gov

SEP 17 2024

The Honorable Ron Wyden, Chair  
The Honorable James E. Risch, Ranking Member  
Senate Energy and Natural Resources Committee  
Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

**Re: Support for The Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024**

Dear Chairman Wyden and Ranking Member Risch:

The Arizona Department of Water Resources (ADWR) supports The Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024, which was introduced on September 11, 2024.

The Multi-Species Conservation Program (MSCP) is an important joint program under Section 7 and Section 10 of the Endangered Species Act that provides continued compliance for water users in the Lower Colorado River Basin. Section 10 non-federal permittees to the MSCP provide annual contributions that have been set aside for future habitat creation and maintenance for the 50-year program. ADWR represents and collects fees from permittees in Arizona who do not receive water through the Central Arizona Project. Collected funds from the three Lower Basin states are currently held in a federal non-interest-bearing account and are, therefore, losing value due to increased inflation. The fund's value is currently approximately \$68 million. Without the ability to place those funds and future program fees into a federal interest-bearing account, there may not be sufficient funds for the remaining life of the program, and permittees may be asked to contribute additional funds than were previously anticipated.

The authority for Reclamation to establish an interest-bearing account for the non-federal program funding contributions will significantly mitigate the rising costs of inflation. ADWR urges the Subcommittee's support for The Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Buschatzke", is written over a horizontal line.

Tom Buschatzke  
Director

## COMMISSION

PHILIP C. BASHAW – CHAIRMAN  
 JIM SWEENEY – VICE CHAIRMAN  
 RUSSELL L. JONES – COMMISSIONER  
 KIM OWENS – COMMISSIONER  
 JOHN F. SULLIVAN – COMMISSIONER

## STAFF

JORDY FUENTES – EXECUTIVE DIRECTOR  
 HEATHER COLE – EXECUTIVE SECRETARY



## ARIZONA POWER AUTHORITY

1810 W. ADAMS STREET  
 PHOENIX, AZ 85007-2697  
 (602) 368-4265

WWW.POWERAUTHORITY.ORG

September 13, 2024

The Honorable Ron Wyden, Chair  
 The Honorable James E. Risch, Ranking Member  
 Senate Energy and Natural Resources Subcommittee on Water and Power  
 304 Dirksen Senate Office Building  
 Washington, D.C. 20510  
*via e-mail only: melanie\_thornton@energy.senate.gov & jack\_holt@energy.senate.gov*

**Re: Support for the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024**

Dear Chairman Wyden and Ranking Member Risch:

The Arizona Power Authority supports the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024, which was introduced on September 11, 2024. This Act would provide the Bureau of Reclamation (Reclamation) the authority to establish an interest-bearing account in the United States treasury for state contributions collected for the Lower Colorado River Multi-Species Conservation Program (MSCP).

The MSCP is an important joint program under Section 7 and Section 10 of the Endangered Species Act that provides continued compliance for water users in the Lower Colorado River Basin. As a Section 10 non-federal permittee to the MSCP, the Arizona Power Authority provides annual contributions that have been set aside for future habitat creation and maintenance for the 50-year program. Collected contributions from the three Lower Basin states are currently held in a federal non-interest-bearing account and are, therefore, losing value due to increased inflation. The previously collected contribution total is approximately \$68 million. Without the ability to place those contributions, and future program contributions into a federal interest-bearing account, there may not be sufficient funds for the remaining life of the program. Permittees, like the Arizona Power Authority, may be asked to contribute more funds than were previously anticipated.

The authority for Reclamation to establish an interest-bearing account for the non-federal program funding contributions will significantly mitigate the rising costs of inflation. The Arizona Power Authority strongly urges the Subcommittee support the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024.

Sincerely,

*Jordy Fuentes*

Arizona Section 10 Permittee to the MSCP



Senator Joe Manchin  
Chair  
Senate Committee on Energy and Natural Resources

Senator John Barrasso  
Ranking Member  
Senate Committee on Energy and Natural Resources

Senator Ron Wyden  
Chair  
Senate Subcommittee on Water and Power

Senator James Risch  
Ranking Member  
Senate Subcommittee on Water and Power

September 10, 2024

**RE: Support for six bills on September 11, 2024 hearing agenda for the Water and Power Subcommittee**

Dear Chair Manchin, Ranking Member Barrasso, Chair Wyden, and Ranking Member Risch,

On behalf of our organizations' millions of members and supporters, we thank you, and your hard-working staff, for holding a legislative hearing on a variety of western water bills. We appreciate the inclusion of provisions in many of the bills that together present a portfolio of strategies to advance water security in the Colorado River Basin and throughout the West, and in particular, support the following bills before the Subcommittee:

- S. 2927: increasing Tribal access to WaterSMART grants (Senator Lujan)
- S. 4245: reauthorizing certain U.S. Geological Survey water research activities (Senators Lummis/Hickenlooper)
- S.4576: reauthorizing the Colorado River System Conservation Pilot Program (Senators Hickenlooper/Barrasso)
- S. 4242: extending the authorization of the Reclamation States Emergency Drought Relief Act of 1991 (Senators Hickenlooper/Lummis)
- S. \_\_\_\_: establishing an interest bearing account for non-federal contributions to the Lower Colorado River Multi-Species Conservation Program (Senator Padilla)
- S. \_\_\_\_: supporting collaborative positions at eligible partner organizations to help develop, fund, and implement water projects with environmental and water management benefits (Senators Hickenlooper/Moran)

Our organizations have a long history of supporting Colorado River restoration, habitat conservation for birds, fish, and other wildlife, and diverse stakeholder engagement. The Colorado River is one of the American West's national treasures. It is a foundation for the West's economy, supporting five million acres of irrigated farmland that deliver produce nationwide, and providing drinking water for over 40 million people, including under-served Tribal and rural communities. The Colorado River is also an essential part of the cultural fabric for 30 federally recognized Tribal Nations that call the Basin home. The river, though, is in crisis. Extended drought and resulting diminished stream flows pose increasingly serious challenges for cities, farms, wildlife, and recreation. Last year's wet winter and critical funding from the Inflation Reduction Act brought a short reprieve but did not address the long-term aridification of the region. We applaud your Committee's continued focus on much-needed solutions for this crisis.

While recognizing state and Tribal authorities to manage water resources within their boundaries, the scale of challenges facing the Colorado River Basin requires the leadership, guidance, science, and accelerated funding support provided by federal agencies to implement a meaningful response to water scarcity in the Basin.

Senator Lujan's S. 2927 takes this approach by addressing a significant barrier Tribes must navigate in terms of accessing federal funding for much needed water conservation and efficiency projects. Senators Hickenlooper's and Moran's S. \_\_\_\_ supports capacity building at partner organizations for planning and implementing multi-benefit water projects, ensuring federal resources get to the ground in the Colorado River Basin and the western states. S. 4576, led by Senators Hickenlooper and Barrasso, extends the Colorado River System Conservation Pilot Program to allow for continued progress through this pilot program for identifying and funding water conservation measures that can provide benefits in the Upper Basin and the Colorado River system as a whole. Senator Padilla's S. \_\_\_\_ identifies an innovative opportunity to bring additional resources to the Lower Colorado River Multi-Species Conservation Program, which works to restore and maintain habitats important for native species. And two bipartisan bills led by Senators Lummis and Hickenlooper will be critical to tracking water availability and responding to drought impacts throughout the Basin: S. 4245, to reauthorize U.S. Geological Survey water monitoring and research programs; and S. 4242, to reauthorize the Reclamation States Emergency Drought Relief Act. The solutions advanced by all of these bills will support communities and agriculture as well as fish, birds, and wildlife.

Finally, we urge the Committee to oppose legislation that undermines existing collaborative solutions in the Colorado River Basin, and welcome the opportunity to speak with your staff about the benefits of the Glen Canyon Dam Long-Term Experimental and Management Plan.

We are eager to continue working with you and your staff on finding solutions to the current drought crisis, as well as long-term solutions to restore our ecosystems, protect fish and wildlife, and build community resilience throughout the West. Please contact Alex Funk ([afunk@trcp.org](mailto:afunk@trcp.org)) or Caitlin Wall ([caitlin.wall@audubon.org](mailto:caitlin.wall@audubon.org)) with any questions. Thank you again for your leadership.

Sincerely,

National Audubon Society  
Trout Unlimited  
Theodore Roosevelt Conservation Partnership



Office of the County Commissioners  
www.douglas.co.us

September 10, 2024

The Honorable Joe Manchin  
Chairman  
Energy & Natural Resources Committee  
United States Senate  
Washington, D.C. 20510

The Honorable John Barrasso  
Ranking Member  
Energy & Natural Resources Committee  
United States Senate  
Washington, D.C. 20510

Dear Chairman Manchin and Ranking Member Barrasso:

On behalf of Douglas County, we are writing to express our strong support for S. 4576, a bill to amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System Conservation Pilot Program. As a county that relies on sustainable water management practices, we recognize the critical role this program plays in ensuring the long-term viability of the Colorado River system.

The Colorado River is a vital resource for millions of people across several western states, including Colorado. In Douglas County, we have seen firsthand how essential water conservation efforts are to maintaining a resilient water supply and supporting our agricultural, municipal, and environmental needs. The reauthorization of the Conservation Pilot Program will allow for the continuation of innovative projects that have already proven effective in conserving water and protecting the Colorado River's critical ecosystems.

S. 4576 represents a crucial investment in water conservation that will help mitigate the impacts of climate change, drought, and population growth on our region's water resources. The program's collaborative approach, which brings together federal, state, and local stakeholders, has proven to be an effective model for addressing the complex challenges facing the Colorado River Basin. Reauthorizing and expanding this program will ensure that we can continue to build on these successes and protect the river system for future generations.

We strongly urge you and your colleagues to prioritize the passage of S. 4576 to support the continued conservation and sustainability of the Colorado River. Thank you for your leadership on this important issue, and please feel free to reach out to our office if we can provide any additional information or assistance.

Sincerely,

BOARD OF DOUGLAS COUNTY COMMISSIONERS

Abe Laydon  
Commissioner District I

George Teal  
Commissioner District II

Lora L. Thomas  
Commissioner District III



September 10, 2024

The Honorable Joe Manchin  
Chairman  
Energy & Natural Resources Committee  
United States Senate  
Washington, D.C. 20510

The Honorable John Barrasso  
Ranking Member  
Energy & Natural Resources Committee  
United States Senate  
Washington, D.C. 20510

Dear Chairman Manchin and Ranking Member Barrasso:

On behalf of Douglas County, we are writing to express our full support for legislation sponsored by Senator John Hickenlooper, which establishes a new Reclamation program aimed at creating collaborative positions within eligible partner organizations to develop, fund, and implement water projects. These initiatives would deliver significant benefits for both water management and the environment, a priority issue for Douglas County and our broader region.

Water scarcity and management challenges continue to pose significant threats to Colorado and the western United States. In Douglas County, we have long been committed to the sustainable use and conservation of our water resources. A program that fosters collaboration between federal agencies, local governments, and community organizations would be a pivotal step in addressing the complex issues we face in managing water resources while protecting environmental values.

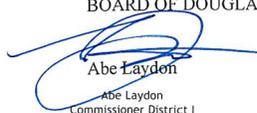
By supporting collaborative positions within partner organizations, this program would bring together the expertise needed to design and execute innovative water projects that meet regional water demands, enhance conservation efforts, and ensure ecosystem protection. These initiatives are vital as they not only address immediate water needs but also contribute to long-term sustainability and resilience in the face of ongoing drought and Colorado's ever-changing climate.

We strongly urge your support for this new Reclamation program and look forward to working with the Committee on initiatives that will benefit our community, the state, and the environment. Douglas County is eager to collaborate with stakeholders and partners to ensure the success of such a program and the future of our water resources.

Thank you for your leadership and continued commitment to advancing sustainable water solutions for Colorado and beyond.

Sincerely,

BOARD OF DOUGLAS COUNTY COMMISSIONERS

  
Abe Laydon  
Commissioner District I

  
George Teal  
Commissioner District II

  
Lora L. Thomas  
Commissioner District III



P.O. Box 216 Klamath Falls, Oregon 97601  
[www.familyfarmalliance.org](http://www.familyfarmalliance.org)

**Testimony of Dan Keppen, P.E.  
Executive Director  
Family Farm Alliance**

**U.S. Senate  
Committee on Energy and Natural Resources  
Subcommittee on Water and Power**

**Hearing to Receive Testimony on Pending Legislation  
September 11, 2023**

Chairman Wyden, Ranking Member Risch, and Members of the Subcommittee:

My name is Dan Keppen, and I am executive director of the Family Farm Alliance (Alliance). I thank you for the opportunity to share this testimony for the hearing record on the important bills being considered by the Subcommittee. The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers.

We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons – many of which are often overlooked in the context of other national policy decisions. The American food consumer nationwide has access to safe and affordable fruits, vegetables, nuts, grains, beef, lamb and poultry throughout the year largely because of Western irrigated agriculture and the projects that provide water to these farmers and ranchers.

#### **LEGISLATION PENDING BEFORE THE SUBCOMMITTEE**

The federal government has begun to make historic investments in new and existing water infrastructure projects which can help mitigate the impacts of climate-driven hydrologic changes on the environment. At the same time, these investments support Western farms, ranches, and rural communities. Several of the bills discussed at your hearing focus on federal water infrastructure,

and six of them are related to the Colorado River, which supports some 40 million residents across seven Western states.

The Alliance has members in each of the seven Colorado River Basin states, where individual perspectives clearly demonstrate the amazing diversity in views on Colorado River policy matters. Within the Basin, all of the various water users' perspectives are shaped by where they are in the system: whether they are in the Upper or Lower Basin, within or outside of the natural hydrologic basin boundaries, in which state, and the priority of their use within their state.

We have actively advocated for and contributed to the development of several of the West-wide bills on the hearing docket today. Some of the bills before you today contain provisions that work well for both producers and the NGO community. Others, in our view, appear to put the needs of fish, wildlife and ecosystems above the interests of our farmer-rancher membership.

#### **Help Hoover Dam Act (S. 4016)**

The Alliance supports [S. 4016](#) (Sinema) to amend the Boulder Canyon Project Act to authorize the Secretary of the Interior to expend amounts in the Colorado River Dam fund, as those amounts were held for expenditures arising from benefits to federal workers that were already covered by appropriations. This bill will allow the Bureau of Reclamation (Reclamation) to use previously collected customer funding for its intended purposes, operation, maintenance, and repair of the dam. These funds have been collected for over two decades by fiat, but they have been stranded and inaccessible to Reclamation. Hoover Dam generation is down nearly 40% during this time, due to the worst drought in modern history. This bill will allow Reclamation to maintain Hoover Dam while protecting power customers from rate shock in the near future.

#### **Drought Preparedness Act (S. 4242)**

The Alliance supports [S. 4242](#) (Hickenlooper / Lummis), which would extend the authorization of the Reclamation States Emergency Drought Relief Act of 1991 (Drought Act). The Drought Act provides Reclamation with the tools it needs to help states plan for and mitigate the impacts of droughts in the West. Many of our members have benefited from the Drought Act in the past to help drill wells, install temporary pipelines and haul water during drought periods.

Drought has become more prevalent in the West over the past several decades, and Reclamation should have the authority to expend funds to mitigate the impacts of drought. We would recommend that the bill authorize Reclamation expenditures for pipelines and other drought mitigation measures under the Drought Act for both temporary and permanent projects due to the extended and recurring drought conditions impacting Reclamation projects in the West. The law currently only allows financial assistance for temporary projects (other than wells, which can be permanent).

**Rural Water Supply Program Reauthorization Act (S. 4458)**

The Alliance supports the reauthorization of the Reclamation Rural Water Supply Act of 2006 ([S. 4458](#)), sponsored by Senators Rounds and Klobuchar, as we were instrumental in supporting the original passage of the Act. Prior to Congressional approval of the Act in 2006, the Alliance supported the federal loan guarantee provisions contained in the bill, which we believed could significantly improve the ability of local agencies to finance extraordinary operations and maintenance costs at Reclamation facilities. However, we were concerned that the 2006 legislation (S. 895) would create a program that could compete with the core functions of the agency for limited resources. Those concerns prevented the Alliance from giving its full support to S. 895.

Working with the original bill's sponsors, amendments were included in the final bill that addressed our concerns. In addition to providing for close congressional oversight of the new rural water program, the amendments allowed the loan guarantee program to be used to improve the efficiency of local irrigation systems that are connected to Reclamation projects. The amendments also helped Congress identify the impediments to the timely transfer of Reclamation projects to the ownership of qualified local agencies.

With the adoption of the proposed amendments, the Alliance gave its full support to S. 895. We continue to strongly support rural water supply development, which is an important part of the rural West and is the foundation for both tribal and non-tribal communities in arid areas of the West and Midwest.

**Colorado River Basin System Conservation Extension Act (S. 4576)**

The Alliance supports [S. 4576](#) (Hickenlooper / Barrasso) which would reauthorize the Colorado River System Conservation Pilot Program in the Upper Basin of the Colorado River. However, our long-stated concerns remain regarding the emphasis some people place on "demand management" as a solution to the supply challenges of the Colorado River.

Predicted near-term Colorado River water supply scenarios are already dire enough that drought contingency planning has been initiated in the Colorado River Basin. These efforts seek to emphasize demand reduction as one of the primary tools to stave off critical water shortages. If dry conditions continue, diminishing reservoir levels in Lakes Powell and Mead will have extremely negative consequences for water and power users throughout the watershed, including urban areas outside of the Basin that rely on Colorado River trans-basin diversions.

The Alliance in 2015 crafted a white paper articulating our principles for smart, effective management of water resources in the Colorado River Basin. This was designed to help decision-makers in the Basin deal with the harsh realities of current and future water shortages due to drought and over-allocation of water to growing, predominantly municipal, demands. The driver

behind the development of this paper was growing concern expressed by some of our members regarding the then-emerging System Conservation Pilot Program.

We understand that some water will inevitably move from agricultural use in the Basin as long-term transitional strategies are developed. This is regrettable, since numerous studies and forecasts suggest that we will need to double our food and fiber output in the next 40 years to keep up with global hunger. Agriculture is also a strong foundation for many rural communities in the Western U.S. and is vital to the economic, social and environmental health of those communities. Our members share a desire to keep irrigation water in its traditional “place of use” in the rural West to the maximum extent practicable to ensure long-term agricultural sustainability.

The direct net benefits provided by irrigated agriculture represent the opportunity costs of economic tradeoffs made in water resource allocation decisions. Opportunity costs are the values (benefits) of what you give up to pursue some other alternative. But there are other potential costs for decision makers to consider when taking into account broader economic implications from Western irrigated agriculture. These could be termed externality benefits or, if foregone, the “silent lost opportunity costs” inherent to changes to Western irrigated agriculture indirectly tied to the consumer spending economy. A low-cost food supply provides large blocks of disposable income to the consumer spending economy, as well as the availability of high-quality food sources provided by Western irrigated agriculture.

These types of policy considerations are driving many of the questions some have regarding the System Conservation Program. The Program is utilized in different ways in the Upper Basin vs. the Lower Basin, which policy makers should be aware of. We have members in the Upper Basin who view this program simply as a means of paying West Slope farmers not to farm, with absolutely no assurances that the saved water will find its way downstream into Lake Powell. We need the federal government to continue work with states and stakeholders on looking at the proper mix of conservation of water use and storage up and down the River.

#### **Water Project Navigators Act**

The Water Project Navigators Act [S. 5014](#) (Hickenlooper) would establish a new Reclamation program to support collaborative positions at eligible partner organizations to help develop, fund, and implement water projects with benefits for water management and the environment. We appreciate Senator Hickenlooper’s continued leadership and successful track record in support of solutions to Colorado and Western water resources challenges, and value our relationship with the Senator and his office. While we understand the need to develop multi-benefit water management and environmental restoration and conservation projects in the West, we believe that the bill might create “winners and losers” as to which organizations and projects receive the benefit of federally funded coordinator positions.

The Family Farm Alliance helped lead nation-wide coalitions in support of Congressional action to advance funding for water infrastructure in the Infrastructure Investment and Jobs Act of 2021

(IIJA) and the Inflation Reduction Act of 2022 (IRA). The IIJA includes \$8.3 billion for Reclamation, as part of a proposal advanced by over 230 water, ag and urban organizations. That coalition was led by a steering committee that included the Alliance, Association of California Water Agencies, California Farm Bureau Federation, National Water Resources Association and Western Growers. The IIJA investment will repair aging water delivery systems, secure dams, complete rural water projects, and protect aquatic ecosystems.

For the past two years, the Alliance has worked with a subset of Reclamation leadership, led by the Commissioner's office, to find ways to make implementation of the IIJA - particularly the WaterSMART program - more efficient and responsive to water user concerns. We remain focused on - and are still concerned with - Reclamation's progress in getting IIJA and IRA funding on the ground. Thus, we have questions about whether it is time for a new program with a new role for Reclamation in project development on top of our more pressing priority of agency project implementation. There are also many of our members who are pursuing important projects that would likely not be considered "multi-purpose" under this legislation.

Further - our longstanding policy on NGO eligibility is that NGOs need to partner with water conveyors (irrigation districts, water districts, etc.) to secure said eligibility. Our members worry that adding non-profit conservation organizations as eligible recipients in WaterSMART will increase the competition for program grants. Senators Wyden and Merkley addressed this concern in legislation they introduced in the 117<sup>th</sup> Congress (S. 4189). They included a requirement in their bill that NGOs partner with a traditional eligible water delivery entity for potential WaterSMART projects.

We would like to see most if not all funding provided for WaterSMART grants be awarded to actual construction projects and not used to create new federal facilitator positions within the government. We fear these positions might evolve into "middle management" bureaucrats, creating even more red tape for actual on the ground projects.

The WaterSMART program is accomplishing what it was intended to do. It modernizes infrastructure and helps local water users respond better to future water conflicts. The only consistent complaint we have heard about WaterSMART is that it is underfunded and oversubscribed. So, we appreciate efforts to provide more funding for WaterSMART. We are concerned, however, that adding more conditions could actually harm a program that really works. It could increase the number of future applicants and diminish the benefits that we currently see. We need to stick with the original intent of the program and try not to add new conditions, priorities, and processes.

#### **Amendments to the Aquifer Recharge Flexibility Act**

The Alliance supports [S. 4999](#), sponsored by Senator Risch. This bill would further clarify provisions in the Aquifer Recharge Flexibility Act that allow for the use of existing canals with federal easements and rights of way across federal lands administered by the Bureau of Land

Management (BLM) without requiring further authorization or permission. Using existing canals to move water to recharge facilities and to infiltrate water into groundwater basins from earthen lined canals only makes sense and can be an important part of a successful conjunctive groundwater management plan.

**Authorization for additional funding for the San Joaquin River Restoration Settlement Act**

The San Joaquin River settlement, finalized in 2006, settled longstanding legal claims brought by a NRDC-led coalition of environmental and fishing groups. It provided for substantial river channel improvements and sufficient water flow to sustain a salmon fishery upstream from the confluence of the Merced River tributary. It also provided water supply certainty to Friant Division water contractors. The settlement has two equal goals:

- A restored river with continuous flows to the Sacramento-San Joaquin River Delta and naturally reproducing populations of Chinook salmon in 153 miles of river downstream from Friant Dam.
- A water management program to minimize water supply impacts to the Friant Division farm families who are dependent upon San Joaquin River water supplies by providing a flexible combination of recirculation, recapture, reuse, exchange and/or transfer programs, and groundwater banking.

NRDC, Friant and the government agreed to work together on projects to improve the river channel between Friant Dam and the Merced River. Flow restoration is coordinated with these channel improvements, with spring and fall run Chinook salmon populations reintroduced in approximately six years. At the same time, the settlement limits water supply and cost impacts to Friant Division long-term water contractors. The settlement was viewed as a solution that would improve water supply and quantity uncertainty that had previously existed for nearly two decades and threatened to become significant permanent reductions because of a probable adverse court decision. The Settlement continues to be an important source of certainty for Friant Division Water Users.

The Alliance supports [S. 5005](#) from Senator Padilla, which increases federal budget authorities to continue to implement the San Joaquin River Restoration Settlement Program. It is our understanding that many projects and activities necessary to implement the Settlement were much more expensive than originally budgeted. Thus, additional funding is needed to construct facilities necessary to effectively implement efficient water management infrastructure, including improvements to the Friant Kern Canal. The Alliance supports reauthorizing all provisions in the Settlement, including existing Endangered Species Act (ESA) protections for tributaries in the San Joaquin River Basin.

**Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024**

In both the Upper and Lower Basins, Colorado River water users have established successful, proactive programs to respond to ESA issues and environmental concerns. The Lower Colorado River Multi-Species Conservation Program (MSCP) was created to balance the use of the Colorado River water resources with the conservation of native species and their habitats. The program works toward the recovery of species currently listed under the ESA. It also reduces the likelihood of additional species listings. Implemented over a 50-year period, the program accommodates current water diversions and power production and will optimize opportunities for future water and power development. It does so by providing ESA compliance through the implementation of a Habitat Conservation Plan.

The Alliance supports [S. 5012](#), Senator Padilla's legislation to create an interest-bearing account for non-federal contributions to the Lower Colorado River MSCP. This will further support an important, well-conceived, long-term program that allows the Lower Basin states to achieve compliance with federal environmental laws and regulations in the management and use of Colorado River water.

**Sacramento RIVER Act of 2024**

California's rivers provide essential water resources for municipal, agricultural, and environmental use, but long-term drought, historic flooding, and rising project costs are threatening important watersheds. Science has been telling us for some time that fish need more than water to survive – water conservation, habitat restoration and improvement, predator control and food supply are also critically important. In California's Sacramento Valley, a myriad of collaborative, on-the-ground projects have generated results to prove this approach works.

The Alliance supports Senator Padilla's legislation, [S. 5011](#) that would create an Integrated Water Management Federal Leadership Committee for the Sacramento River Basin. This program would be similar to the implementation of the Yakima River Basin Integrated Plan (YBIP) in Washington State.

The YBIP is a collaboratively developed 30-year plan created and implemented by YBIP partners such as the Yakama Nation, irrigation districts, cities and counties, conservation groups, the federal government and the State of Washington, among others. The YBIP has provided opportunities in the Yakima River Basin for local, state, and federal partnerships to allow our member irrigation districts, including the Sunnyside Valley Irrigation District, the Roza Irrigation District, the Yakima Tieton Irrigation District, the Kittitas Reclamation District, Naches-Selah Irrigation District, and others to work aggressively on a drought resiliency strategy. Implementation of this plan will modernize their water delivery systems to conserve water to the benefit of both fish and farmers. Modernization of these important irrigation water delivery systems is providing the means to ensure reliable and consistent irrigation water delivery to basin farmers. The YBIP has also embraced a new drought emergency water storage project at Kachess Reservoir. Other projects

address new fish passage, habitat, water and groundwater supply, and headwaters restoration in the Yakima River Basin. Completion of the plan will collectively benefit and promote healthy fish, farms and communities.

The Sacramento River Basin – like the Yakima Basin – is a watershed we point to as a template for success that others can follow towards true multi-purpose management of water resources that yields benefits to agriculture and the environment. The *Sacramento RIVER Act* will lead to further improvements to support drought resiliency and water conservation in the Sacramento watershed.

Senator Padilla’s bill also contains provisions that would allow irrigation districts to use revenues from water transfers that currently are required to be deposited in the Treasury to meet dam safety and other obligations more effectively. This provision will serve as an incentive for water users to improve their systems to increase efficiency of water delivery and make water available to respond to drought.

#### **Finish the AVC Act**

Colorado U.S. Senators Michael Bennet and John Hickenlooper introduced [S. 5013](#) the *Finish the AVC Act*, to ensure the affordability and completion of the Arkansas Valley Conduit (AVC). Bipartisan companion legislation in the House of Representatives was introduced by Colorado U.S. Representative Lauren Boebert. The legislation would remove interest payments on all non-federal cost share funds and extend the repayment period from 50 to 100 years. This bill helps make sure that underserved communities of Southeastern Colorado can access clean drinking water and repay the federal government. The project cost estimate more than doubled from the 2019 estimate of \$640 million to \$1.3 billion due to increased inflation and labor costs. The Alliance supports the provisions in this bill that would make the AVC more affordable to local residents.

#### **To prohibit the use of amounts from the Upper Colorado River Basin Fund to implement a certain record of decision**

The Alliance supports [S. 5000](#) (Senator Lee) which would prohibit using the Upper Colorado River Basin Fund to implement actions under Reclamation’s recent Record of Decision to protect the humpback chub from extirpation by small mouth bass below Glen Canyon Dam. The Alliance was disappointed with the selected alternative to address small mouth bass that would rely solely on water releases that bypass power generators, significantly impacting power generation at Glen Canyon Dam. This is happening at a time when drought is already impacting federal hydropower customers across the Colorado River Basin. While we would have preferred that other non-flow alternatives be utilized to deal with the small mouth bass issue – an issue that was not created by water or power users – at a minimum it is critical that power customers and the Upper Colorado River Basin Fund be protected. All costs associated with this remediation regime should be budgeted for and appropriated with non-reimbursable funding. Additionally, we encourage the

Committee to look at other actions, like those included in Sen. Kelly's HYDRO Act, to help mitigate drought impacts on federal hydropower customers.

**Additional Bills**

In addition to the regional and West-wide bills above, we appreciate that the Committee included a number of other bills that address specific water issues and needs in Arizona, Colorado, Nebraska, North Dakota, South Dakota, Utah and Wyoming. We have members in all of these states and are supportive of solutions that come from ground-level collaboration and help improve operations and infrastructure. We stand ready to work with the Subcommittee on these bills.

**CONCLUSION**

The Alliance believes we must modernize and rehabilitate water supply and delivery infrastructure in the West to enhance water conservation and management. We must maximize the benefits from the water we have available to meet multiple needs for Western irrigated agriculture to exist into the future. Farmers and ranchers across the West are stepping up, at their own expense and in partnership with federal funding programs, to provide viable and practical solutions to vexing water issues for the viability of their river basins and the rural communities those basins serve. In many cases, that means senior water rights holders are voluntarily making water supplies available to junior water users, preventing cuts otherwise required. There are other collaborative efforts underway to fund on-farm conservation projects that are helping reduce demand. Urban, agricultural, and environmental water users would all benefit from such efforts in the short and long term.

Agricultural production in the West is an irreplaceable, strategic national resource that is vital to U.S. food security. Fallowing Western farmland means increased reliance on food production in other countries with lower or non-existent production, labor, and food safety standards.

The role of the federal government in the 21<sup>st</sup> Century should be to protect and enhance our food supply by doing whatever it can to ensure that water remains on farms in the West. At a time of unprecedented change, one certainty holds firm and true: one of our nation's most valuable resources – Western irrigated agriculture – must be preserved and protected.

The Alliance looks forward to working with this Subcommittee to address the issues we have identified in this testimony and some that we have not.

Thank you for this opportunity to present this testimony for the hearing record. We would be happy to answer any questions the Subcommittee may have.



**38<sup>th</sup> LEGISLATURE OF AMERICAN SAMOA  
HOUSE OF REPRESENTATIVES**

P.O. Box 485, Pago Pago, American Samoa 96799  
Phone: (684) 633-1781 | Mobile: (684) 272-8090  
e-mail: rep.alexanderjennings@gmail.com

Hon. Savali Talavou Ale  
Speaker

Su'a Alexander Eli Jennings  
Swains Island Delegate

COMMITTEES

Vice-Chairman  
Transportation

Member  
Agriculture, Forestry,  
Marine & Wildlife

- Date:** September 23, 2024
- To:** Honorable members of the Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power
- From:** Su'a Alexander Eli Jennings, Swains Island Delegate-American Samoa Legislature
- Re:** Statement for the Record – Sept. 11, 2024 Hearing to Receive Testimony on Pending Legislation: Opposition to **H.R. 6062**, Amendments to the American Samoa Constitution

**H.R. 6062 SUMMARY**

**H.R. 6062** repeals 48 U.S.C. § 1662a and removes the requirement that Congress approve amendments to the American Samoa Constitution, giving the Secretary of the Interior sole authority to amend the American Samoa Constitution.

**H.R. 6062** will repeal congressional recognition of the Revised Constitution of American Samoa.

There are currently 5 amendments to the American Samoa Constitution pending approval from the 2022 American Samoa Constitutional Referendum. **H.R. 6062** retroactively changes the procedure for amending the American Samoa Constitution and deprives the voters the benefit of congressional review under 48 U.S.C. § 1662a, which they knew was in place when they voted in 2022.

If **H.R. 6062** is passed, American Samoa will lose its only statutory check on DOI's authority to change the American Samoa Constitution. **H.R. 6062** will revert American Samoa to the old system, where DOI wielded immense political power over American Samoa's internal affairs and threatened to unilaterally appoint a new Attorney General of *their* choosing against the wishes of the local government, which was the reason 48 U.S.C § 1662a was passed by Congress in the first place.

This bill further puts control of the Territory in the hands of a small few.

**OPPOSITION TO H.R. 6062**

Amendments to the American Samoa Constitution must be reviewed and approved by the Secretary of the Interior. Since 1983, following DOI's review, 48 U.S.C. § 1662a has required amendments to the American Samoa Constitution to be approved by Congress prior to becoming effective.

In November 2022, five changes to the American Samoa Constitution were approved in a referendum. The most salient amendment is the Swains Island amendment, which give the Swains Island Delegate to the American Samoa Legislature the ability to vote on legislation for the first time.

In October 2023, 11 months following the Referendum, Rep. Radewagen introduced **H.R. 6062** which repeals 48 U.S.C. § 1662a and reverts the final authority over amending the American Samoa Constitution back to the Secretary of the Interior.

**H.R. 6062's** introduction and underlying policy rationale does not reflect local self-determination. **H.R. 6062** was never voted on and approved by the voters of American Samoa. No joint resolutions from the American Samoa Legislature have been passed in support of this legislation. Worst of all, its introduction has resulted in an indefinite pause on the implementation of the constitutional amendments passed in 2022, which is now running on 21 months and counting.

The 2022 amendments must be reviewed by Congress under the laws in place when they were passed. Congressional review is necessary for Swains Island, and is the only way to resolve the ambiguity of Swains' status as a part of American Samoa and its entitlement to the same protections of land and culture as the rest of American Samoa. Instead of focusing on retroactively changing the amendment procedure after amendments have already been voted on, the focus of the conversation before Congress should be:

1. Why has Swains Island been deprived the ability to vote in the Legislature under DOI's civil administration of American Samoa for the past 63 years?
2. Does the "one person, one vote" principle grounded in the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution apply in American Samoa and Swains Island?

**H.R. 6062** punts these questions to DOI, who has refused to give answers, neglected the people of Swains Island, and treated them as second-class citizens' since assuming civil jurisdiction over American Samoa 63 years ago in 1951.<sup>2</sup>

The questions above were never raised by Swains Islanders or by the American Samoa voters, but rather, by Rep. Radewagen herself. Following **H.R. 6062's** passage by the full House in Congress, Rep.

---

<sup>1</sup> While all individuals born in American Samoa are non-citizen nationals by default, the proprietors of Swains Island all qualify for U.S. Citizenship as descendants of Eli Jennings, Sr. of Southampton, NY.

<sup>2</sup> Under DOI's administration of American Samoa, Swains Island has been not been provided access to federal funding, reliable transportation, communications, fresh water, electricity, or basic infrastructure. The combination of which led to the forced depopulation of Swains Island in 2013 after 150 years of continuous habitation. Swains Islanders are now dispersed throughout American Samoa and the rest of the United States.

Radewagen speculated publicly the Swains Island Amendment is facially unconstitutional. Rep. Radewagen has said:

- “If the amendment had been considered by Congress, an early test would have been the provision granting a vote to the Swain’s Island delegate.”<sup>3</sup>
- “There is no question that in hearings over the amendments, American Samoa government witnesses would have been asked how many people lived on Swain’s and, once the answer given would have been ‘none,’ that amendment would not have been approved, although other amendments might have been. Instead, we had a successful legislative hearing over my bill, not the specific amendments, and passage of this bill successfully prevents that concern.”<sup>4</sup>

**H.R. 6062** does not prevent such a concern. As there are no guarantees DOI will approve the Swains Island Amendment other than verbal promises.<sup>56</sup> If **H.R. 6062** becomes law, DOI could veto the Swains Island amendment under the same “unconstitutional” one-person one-vote rationale as Rep. Radewagen claims Congress would veto the provision under a congressional inquiry. As I stated in a July 23, 2024 op-ed:

Swains Island does not want to be a part of any violations of the U.S. Constitution. If a congressional review of the American Samoa Constitution finds the Swains Island amendment violates the U.S. Constitution, then that is a risk I am willing to take.<sup>7</sup>

I have spent the past 14 years trying to get DOI to recognize the plight of Swains with little to no response. I have also exhausted all resources to resolve the constitutional inconsistencies and disparate funding treatment as they relate to Swains at the local level, only to be ignored.<sup>8</sup> These attempts are outlined in detail in my written testimony opposing **H.R. 6062** before the U.S. House of Representatives.<sup>9</sup>

100 years ago, my family petitioned Congress to formally recognize American Sovereignty over Swains Island. Congress listened then, and in turn we’ve asked Congress for nothing, until now. Without

<sup>3</sup> See *Am Samoa’s right to self-determination reaffirmed with unanimous consent*, THE SAMOA NEWS, July 10, 2024, available at <https://www.samoanews.com/local-news/am-samoas-right-self-determination-reaffirmed-unanimous-consent>.

<sup>4</sup> *Id.* (Emphasis added).

<sup>5</sup> See January 18, 2024 written testimony of Keone Nakoa, Deputy Assistant Secretary, Insular and International Affairs U.S. Department of the Interior, before The Subcommittee on Indian and Insular Affairs Committee on Natural Resources, U.S. House Of Representatives, available at [https://naturalresources.house.gov/uploadedfiles/testimony\\_nakoa.pdf](https://naturalresources.house.gov/uploadedfiles/testimony_nakoa.pdf).

<sup>6</sup> September 11, 2024 written testimony of the Department of the Interior before the U.S. Senate Committee on Natural Resources, Subcommittee on Water and Power, available at <https://www.energy.senate.gov/services/files/E40B2D63-CB99-4CA8-83C0-D0AABC4589F2>.

<sup>7</sup> Jennings, Alexander Eli, *Op-Ed: A Constitutional Crisis For Swains Island*, THE SAMOA NEWS, Jul. 23, 2024, available at <https://samoanews.com/opinion/op-ed-constitutional-crisis-swains-island>.

<sup>8</sup> Out of \$733.6 Million in the FY 2025 budget, no funding was provided specifically from Swains Island. As a non-voting member, I recommended rejection of the budget and highlighted the fact that nearly two years have passed since the voters approved the Swains Delegate’s ability to vote in the Legislature which has never gone into effect since the introduction of **H.R. 6062**. The budget passed. *House approves FY2025 budget bill with amendments*, TALANEI NEWS NOW!, Sept. 10, 2024, available at <https://www.talanei.com/2024/09/10/house-approves-fy2025-budget-bill-with-amendments/>;

<sup>9</sup> See written testimony of Su’a Alexander Eli Jennings, January 18, 2024 Legislative Hearing on H.R. 6062 and H.R. 6273 | Indian and Insular Affairs Subcommittee, Written Testimony in Opposition to H.R. 6062, available at [https://naturalresources.house.gov/uploadedfiles/testimony\\_jennings.pdf](https://naturalresources.house.gov/uploadedfiles/testimony_jennings.pdf).

congressional review of the 2022 amendments, it may be another 100 years before Swains Island gets another opportunity to bring its concerns before Congress. Plainly, **H.R. 6062** does not provide ensure the land and culture of Swains Island will be protected in the same manner as the rest of American Samoa's land and culture is protected, and history is replete with examples of how Swains has received disparate treatment under DOI's watch.

#### **SWAINS ISLAND'S COMPLEX RELATIONSHIP WITH AMERICAN SAMOA**

The roots of Swains Island's current predicament lie in (1) the federal statutes establishing American sovereignty over Swains, and (2) the executive branch regulations dealing with the civil administration of American Samoa.

Swains being a part of the United States is beyond question. However, federal executive authority over Swains Island only exists through deductive reasoning: DOI interprets that their civil authority over the "Islands of Eastern Samoa" results in DOI's civil authority over Swains Island. However, no federal statutes or regulations give DOI explicit authority over the civil administration of Swains Island other than the 1967 American Samoa Constitution, ratified by DOI itself.<sup>10</sup> If **H.R. 6062** is becomes law, it will remove Congressional recognition of the entire American Samoa Constitution.

The Revised Constitution of American Samoa in 1983 was recognized though not approved by Congress under 48 U.S.C. § 1662a, the very statute **H.R. 6062** seeks to repeal. Thus, repealing 48 U.S.C. § 1662a will leave Swains in a state of limbo with DOI lacking any explicit civil authority, other than unilateral authority over Swains Island by virtue of a non-congressionally approved or recognized Revised Constitution of American Samoa.

Unlike all other populated U.S. Territories, the territory included under the name "American Samoa" has never been defined by Congress or by regulation. Under common understanding, "American Samoa" is comprised of Swains Island and "the Islands of Eastern Samoa." However, an often overlooked and nuanced distinction exists between Swains Island and the Islands of Eastern Samoa due to the fact that they each became part of the United States under separate Congressional Acts with Swains explicitly being made part of American Samoa in 1925, but the Islands of Eastern Samoa never explicitly being made a part of "American Samoa" four years later in 1929.

- Swains Island was first claimed as a U.S. Territory in 1856. In 1925, Congress formally recognized American sovereignty over Swains Island and "made a part of American Samoa and placed under the jurisdiction of the administrative and judicial authorities of the government established therein."<sup>11</sup>
- The Islands of Eastern Samoa were ceded to the United States in 1900 and 1904 and were formally recognized by Congress as a U.S. Territory in 1929 when administration was transferred to the President of the United States. Congress only gave the President authority over the "Islands of

<sup>10</sup> [Presidential EO 10264](#) (1951) and [DOI Secretary's Ords. 2657](#) (1951) and [3009](#) (1977) only reference the 1929 Act of Congress ([48 U.S.C. § 1661](#)), which gave the President of the United States civil authority over the Islands of Eastern Samoa, omitting any references to the 1925 Act of Congress that confirmed American Sovereignty over Swains Island ([48 U.S.C. § 1662](#)).

<sup>11</sup> [48 U.S.C. § 1662](#).

Eastern Samoa.<sup>12</sup> Presidential authority over the “Islands of Eastern Samoa” was first delegated to the Department of the Navy from 1900-1951, and the Department of the Interior from 1951-date.<sup>13</sup>

In sum, since Congress granted the President civil authority over the “Islands of Eastern Samoa,” DOI maintaining civil authority over Swains Island can only be accomplished by considering the “Islands of Eastern Samoa” as the undefined term “American Samoa” exclusive of Swains Island. This was accomplished with the passage of 48 U.S.C. § 1662a, when Congress recognized the Revised Constitution of American Samoa in effect in 1983. Repealing 48 U.S.C. § 1662a with **H.R. 6062** will raise the uncomfortable question of whether DOI has any authority over Swains Island at all.

While this distinction may seem purely academic or overly-technical or at first glance, it has resulted in disastrous real-world consequences for Swains Island when it comes to access and qualification for federal funding and programs administered by DOI, and has resulted in the federal government using the phrase “American Samoa and Swains Island” in technical and legal settings to refer to what is commonly just called American Samoa.<sup>14</sup>

**SWAINS ISLAND HAS THE SAME LAND AND CULTURAL PROTECTIONS AS THE REST OF AMERICAN SAMOA**

Doubts about Swains’ status as part of American Samoa touch on perhaps the most sensitive topic in all of American Samoan political and cultural discourse: American Samoan Natives’ constitutionally protected right to protections of land and culture.<sup>15</sup> The federal government’s contribution of Swains Island to American Samoa in 1925 extended the unique protections against alienation of communal land under the *fa’asamoa* (the Samoan way of life)<sup>16</sup> to Swains Island while local law explicitly states that Swains “is not under the *matai* system.”<sup>17</sup>

<sup>12</sup> [48 U.S.C. § 1661](#).

<sup>13</sup> See *supra* at n. 10.

<sup>14</sup> See U.S. State Dept. Foreign Affairs Manual [8 FAM 308.2-1](#) (“American Samoa and Swains Island are not incorporated territories...”); see also [7 FAM 1125.2](#) Page 23 (“Native inhabitants of Swains Island of a race indigenous to that island who were not already U.S. citizens or nationals became non-citizen U.S. nationals if residing in Swains Island on March 4, 1925.”); see also [8 U.S.C. § 1101\(a\)\(29\)](#) (“The term “outlying possessions of the United States” means American Samoa and Swains Island.”).

<sup>15</sup> **Art. I, Sec. 3, Rev. Const. Am. Samoa** (“It shall be the policy of the Government of American Samoa to protect persons of Samoan ancestry against alienation of their lands and the destruction of the Samoan way of life and language, contrary to their best interests. Such legislation as may be necessary may be enacted to protect the lands, customs, culture, and traditional Samoan family organization of persons of Samoan ancestry, and to encourage business enterprises by such persons. No change in the law respecting the alienation or transfer of land or any interest therein shall be effective unless the same be approved by two successive legislatures by a two-thirds vote of the entire membership of each house and by the Governor.”).

<sup>16</sup> Protections of land and culture of American Samoans was an executive branch policy from 1900 until the ratification of the 1960 and 1967 American Samoa Constitutions. See *supra* at n. 14. Pursuant to DOI’s commitment to protecting the land and culture of American Samoans in the American Samoa Constitution, local legislation has subsequently instituted strict protections on the alienation of private family-owned communal lands under the *matai* system and individually-owned lands to people with less than 50% American Samoan blood.<sup>16</sup> See [A.S.C.A. § 37.0204](#).

<sup>17</sup> *Id.* The *matai* system, or *fa’amatai*, is Samoa’s traditional system of chiefly titles. While the *fa’amatai* is complex and contains many nuances, at a basic level, the holder of a senior *matai* titleholder acts as a family spokesperson in traditional affairs and acts as a trustee, maintaining chiefly authority, or *pule*, over lands owned communally by extended families.

The result of the 1925 Act of Congress extended protections of land and culture meant specifically for Samoans to an island (Swains Island) that was not culturally and traditionally part of historical Samoa.<sup>18</sup> The U.S. Navy saw the private ownership of Swains by the Jennings family as a perfect fit into the private system of communal land ownership in American Samoa. Tutuila, Manu'a and Swains all maintain rich customs and cultural traditions; under the American flag all islands in American Samoa are afforded the same protections of land and culture regardless of their history.

Adding sensitive cultural considerations to the complexity of Swains' relationship with American Samoa has unfortunately caused confusion about Swains' standing in American Samoa. Many wrongly consider Swains Island's status as part of American Samoa as transitory or illegitimate, resulting in what I have described as Swains Island feeling "bullied" over the years,<sup>19</sup> the lack of a vote in the Legislature being just the tip of the iceberg.<sup>20</sup>

How does all this relate to **H.R. 6062**? Simply, not being able to vote in the Legislature has left the Swains Island Delegate unable to effect protection of the valuable right to protections of land and culture on Swains, resulting in Swains' ultimate depopulation in 2013 and the scattering of Swains Islanders into different parts of American Samoa and throughout the United States.<sup>21</sup>

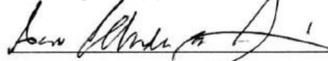
#### CONCLUSION

The Swains Island vote is a step in the right direction. But delaying its implementation and retroactively changing the amendment procedure for our constitution during the middle of the process with **H.R. 6062** only perpetuates the disparate treatment Swains has received by DOI since it was made a part of American Samoa by Congress 99 years ago.

Congress can provide a far more comprehensive review of the American Samoa Constitution than a singular administrative agency of the federal government. Congress must resolve the ambiguity of who will have civil authority over Swains Island if 48 U.S.C. § 1662a is repealed. Any changes to the American Samoa Constitution affecting Swains Island's treatment as an appendage to American Samoa remain within the sole discretion of Congress, not DOI. Even if **H.R. 6062** becomes law, it should only apply to future amendments to the American Samoa Constitution, not amendments that have already been approved by the voters. For all these reasons, **H.R. 6062** should be rejected in its entirety.

Dated: September 23, 2024

Very Respectfully yours,



Su'a Alexander Eli Jennings

<sup>18</sup> See [A.S.C.A. § 37.0201\(c\)](#) ("Native" means a full-blooded Samoan person of Tutuila, Manu'a, Aunu'u, or Swains Island.').

See also [A.S.C.A. § 41.0202\(d\)](#) ("American Samoan ancestry" means lineal descendants of the inhabitants of Tutuila and Swains Islands whose permanent place of residence was American Samoa on 17 April 1900, and the inhabitants of Manu'a Islands whose permanent place of residence was American Samoa on 16 July 1904.'). (Emphasis added).

<sup>19</sup> *Take a look at Swains, it needs a fair chance, says its non-voting faipule*, Joyetter Feagaimaalii, THE SAMOA NEWS, Oct. 11, 2022, available at <https://www.samoanews.com/local-news/take-look-swains-it-needs-fair-chance-says-its-non-voting-faipule>.

<sup>20</sup> Under the American Samoa Constitution, Swains Island was never made part of a county nor one of the three internal Districts of American Samoa under the American Samoa Constitution, and thus lacks representatives in the Department of Local Government (the Office of Samoan Affairs headed by the Secretary of Samoan Affairs).

<sup>21</sup> See *supra* at n. 2 and 9.



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Office of the Interim General Manager

September 16, 2024

The Honorable Senator Ron Wyden, Chair  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Senator James E. Risch, Ranking Member  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Support for Help Hoover Dam Act, S. 4016

Dear Chair Wyden and Ranking Member Risch:

The Metropolitan Water District of Southern California supports the Help Hoover Dam Act, S. 4016, and appreciates you holding a hearing on the bill. Metropolitan is the largest wholesale drinking water provider in the nation. Our 26 member agencies, either directly or through their sub-agencies, provide water to the nearly 19 million people living in Southern California. Metropolitan holds power contracts with the Bureau of Reclamation based upon California's allocation of power from Hoover Dam. Hydropower from Hoover Dam helps power our operations as we deliver water throughout Southern California.

The Help Hoover Dam Act will allow the Bureau of Reclamation to access and utilize funds that are currently stranded in the Colorado River Dam Fund for operation, maintenance, investment, cleanup actions, and capital improvements within the Boulder Canyon Project at Hoover Dam. Reclamation estimates the Hoover Dam requires \$110 million in repair and upgrade work over the next five years. This legislation will free up approximately \$48 million in stranded funds to help off-set this cost or make other investments that Reclamation, in coordination with Hoover Dam power contractors, determines are needed.

Thank you for holding a hearing on this bill. Metropolitan supports S. 4016 and encourages Congress to enact this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Deven Upadhyay".

Deven Upadhyay  
Interim General Manager

cc: Senator Alex Padilla  
Senator Laphonza Butler



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Office of the Interim General Manager

September 16, 2024

The Honorable Senator Ron Wyden, Chair  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Senator James E. Risch, Ranking Member  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

RE: Support for the Lower Colorado River Multispecies Conservation Program Amendment Act of 2024, S. 5012

Dear Chair Wyden and Ranking Member Risch:

The Metropolitan Water District of Southern California supports the Lower Colorado River Multispecies Conservation Program Amendment Act of 2024, S. 5012, and appreciates you holding a hearing on the bill. Metropolitan is the largest wholesale drinking water provider in the nation. Our 26 member agencies, either directly or through their sub-agencies, provide water to the nearly 19 million people living in Southern California.

Metropolitan is a proud participant in the Lower Colorado River Multispecies Conservation Program (LCR MSCP), an incredibly successful collaboration between the federal government, states, and other stakeholders to create habitat for 28 native species. This innovative program addresses the needs of threatened and endangered species and provides reliability for water deliveries and hydropower production. The Lower Colorado River Multispecies Conservation Program Amendment Act of 2024, S. 5012, will allow the Bureau of Reclamation to hold the non-federal funds for the LCR MSCP in an interest-bearing account. The interest collected will be reinvested in LCR MSCP projects, contributing to the continued success of this program and helping offset the impact of inflation.

Thank you for holding a hearing on this bill. Metropolitan supports S.5012 and encourages Congress to enact this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Deven Upadhyay".

Deven Upadhyay  
Interim General Manager

cc: Senator Alex Padilla  
Senator Laphonza Butler

## **MOHAVE COUNTY WATER AUTHORITY**

1355 Ramar Road, Suite 6, Bullhead City, AZ 86442  
Telephone No. (480) 415-5283

---

September 20, 2024

The Honorable Ron Wyden, Chair  
The Honorable James E. Risch, Ranking Member  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Support for the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024

Dear Chairman Wyden and Ranking Member Risch:

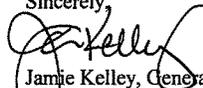
Mohave County Water Authority, and its members Mohave Water Conservation District, Bullhead City, and Lake Havasu City support the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024, which was introduced in September 11, 2024. This Act would provide the Bureau of Reclamation (Reclamation) the authority to establish an interest-bearing account in the United States treasury for state contributions collected for the Lower Colorado River Multi-Species Conservation Program (MSCP).

The MSCP is an important joint program under Section 7 and Section 10 of the Endangered Species Act that provides continued compliance for water users in the Lower Colorado River Basin. As Section 10 non-federal permittees to the MSCP, Mohave County Water Authority, Mohave Water Conservation District, and the Cities of Bullhead City and Lake Havasu City provide annual contributions that have been set aside for future habitat creation and maintenance for the 50-year program. Collected contributions from the three Lower Basin states are currently held in a federal non-interest-bearing account and are, therefore, losing value due to increased inflation. The previously collected contribution total is approximately \$68 million. Without the ability to place those contributions, and future program contributions into a federal interest-bearing account, there may not be sufficient funds for the remaining life of the program. Permittees, like Mohave County Water Authority, Mohave Water Conservation District, and the Cities of Bullhead City and Lake Havasu City may be asked to contribute additional funds than were previously anticipated.

Letter in Support for the Lower Colorado River Multi-Species  
Conservation Program Amendment Act of 2024  
September 20, 2024  
Page 2 of 2

The authority for Reclamation to establish an interest-bearing account for the non-federal program funding contributions will significantly mitigate the rising costs of inflation. Mohave County Water Authority, Mohave Water Conservation District, and the Cities of Bullhead City and Lake Havasu City strongly urges the Subcommittee support the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024.

Sincerely,



Jamie Kelley, General Counsel  
Mohave County Water Authority on behalf of  
Arizona Section 10 Permittees to the MSCP  
Mohave County Water Authority  
Mohave Water Conservation District  
City of Bullhead City  
City of Lake Havasu City

## **MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT**

1460 East Commercial Street  
Mohave Valley, Arizona 86440  
Phone: (928) 768-3325 • Fax: (928) 768-5239  
Email: [office@mvidd.net](mailto:office@mvidd.net) • Website: [MVIDD.net](http://MVIDD.net)

---

September 17, 2024

The Honorable Ron Wyden, Chair  
The Honorable James E. Risch, Ranking Member  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

**Re: Support for the Lower Colorado River Multi-Species Conservation Program  
Amendment Act of 2024**

Dear Chairman Wyden and Ranking Member Risch:

Mohave Valley Irrigation & Drainage District supports the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024, which was introduced on September 11, 2024. This Act would provide the Bureau of Reclamation (Reclamation) the authority to establish an interest-bearing account in the United States treasury for state contributions collected for the Lower Colorado River Multi-Species Conservation Program (MSCP).

The MSCP is an important joint program under Section 7 and Section 10 of the Endangered Species Act that provides continued compliance for water users in the Lower Colorado River Basin. As a Section 10 non-federal permittee to the MSCP, Mohave Valley Irrigation & Drainage District provides annual contributions that have been set aside for future habitat creation and maintenance for the 50-year program. Collected contributions from the three Lower Basin states are currently held in a federal non-interest-bearing account and are, therefore, losing value due to increased inflation. The previously collected contribution total is approximately \$68 million. Without the ability to place those contributions, and future program contributions into a federal interest-bearing account, there may not be sufficient funds for the remaining life of the program. Permittees, like Mohave Valley Irrigation & Drainage District, may be asked to contribute additional funds than were previously anticipated.

Support LCRMSCP Amendment Act of 2024.  
September 17, 2024  
Page 2 of 2

The authority for Reclamation to establish an interest-bearing account for the non-federal program funding contributions will significantly mitigate the rising costs of inflation. Mohave Valley Irrigation & Drainage District strongly urges the Subcommittee to support the Lower Colorado River Multi-Species Conservation Program Amendment Act of 2024.

Sincerely,



Charles B. Sherrill, Jr.  
Chairman  
Arizona Section 10 Permittee to the MSCP



September 6, 2024

The Honorable Senator Ron Wyden, Chair  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Senator James E. Risch, Ranking Member  
Senate Energy and Natural Resources Subcommittee on Water and Power  
304 Dirksen Senate Office Building  
Washington, D.C. 20510

*RE: Support for Help Hoover Dam Act (S. 4016)*

Dear Chair Wyden and Ranking Member Risch,

We write in support of the Help Hoover Dam Act (S. 4016). This legislation is key to unlocking necessary funding for Hoover Dam, a cornerstone in our hydropower infrastructure. By freeing up stranded funds in the Colorado River Dam Fund for critical project upgrades, this legislation ensures Hoover Dam will continue to play an essential role in hydropower production for Nevada.

While Hoover Dam attracts many visitors to our region, its capacity to support Nevada's shift towards renewable energy sources is indispensable. Nevada's power allocation from Hoover Dam provides important energy resources to communities and stakeholders throughout Southern Nevada. Constructed over 80 years ago for flood control and irrigation, the strategic importance of Hoover Dam has only increased since its inception. Hoover Dam provides its Nevada customers with essential and affordable clean energy. This legislation will allow the Bureau of Reclamation to access stranded funds that will be used to augment investments at Hoover Dam, which are necessary for the ongoing operation and maintenance of this important energy infrastructure.

We encourage the Senate Energy and Natural Resources Committee to pass S. 4016 as soon as possible. The Help Hoover Dam Act will ensure Hoover Dam can meet the challenges and opportunities of the twenty-first century.

Sincerely,



Eric Witkoski  
Executive Director  
Colorado River Commission of Nevada



John J. Entsminger  
General Manager  
Southern Nevada Water Authority



Dane Bradfield  
General Manager  
Lincoln County Power District No. 1



Joe Stubit  
Utilities Director  
City of Boulder City



Mark Stallons  
Chief Executive Officer  
Valley Electric Association, Inc.



Mendis Cooper  
General Manager/Chief Executive Officer  
Overton Power District No. 5

CC: The Honorable Senator Catherine Cortez Masto  
The Honorable Senator Jacky Rosen

**Statement of Rep. Aumua Amata Radewagen**  
*Senate Committee on Energy and Natural Resources*  
*Subcommittee on Water and Power*  
*Hearing to Receive Testimony on Pending Legislation*  
*September 11, 2024*

Thank you, Chairman Manchin, Ranking Member Barrasso, and the rest of the Energy and Natural Resources committee for taking the time to consider my bill, H.R. 6062, and for recognizing the importance of promoting local self-government for the U.S. territories. I also want to thank Chairs Westerman & Hageman and the rest of House Leadership for their role in moving the bill through the House, and to Ranking Members Grijalva and Leger-Fernandez for making this a bipartisan effort. I would also like to extend my sincere gratitude to my fellow territorial reps, Rep. Moylan and Rep. Sablan for their cosponsorship and support.

H.R. 6062 repeals the outdated statute requiring amendments to American Samoa's constitution be ratified by Congress. The original piece of legislation that HR 6062 repeals, was moved through without regular order, and over the past several decades multiple attempts were made to walk back the original bill and allow the necessary hearings and oversight on the efficacy of 48 U.S.C. 1662a to occur. The Governor, Lieutenant Governor, and our local Legislature leaders support repeal as the best way to prevent unforeseen and unintended consequences, as we seek approval of amendments to the local constitution ratified by the people in 2022. We are pleased to see this issue is finally making real progress through today's hearing.

H.R. 6062 provides parity among the US territories, as no other territory has a similar restriction on editing their local laws. It is a critical piece of legislation for American Samoa, allowing us to enact constitutional changes as approved by our people without the burden of duplicative efforts in Washington for what should be purely local matters. This bill is designed to restore the essential structure of our government to what it was intended to be, providing a much-needed adjustment to the previous 1983 law. The 1983 law, as it stands, is inconsistent with the principles of local self-government over local affairs—an area where Congress has rightly delegated local authority to us with oversight by the Secretary of the Interior to ensure coordination and cooperation in our federal-territorial relations. The current law imposes restrictions that are outdated and counterproductive, hindering our ability to govern ourselves effectively.

I also want to reiterate that this legislation does not limit congressional powers or otherwise cede additional control to the administration. Congress maintains plenary authority over the territories and can step in to stop any changes to the constitution that it deems misaligned with federal law/intent. Oversight of

Department of Interior (DOI) and the administration has progressed significantly and any alleged concerns of unilateral changes to territorial law by DOI or the administration are unfounded and do not reflect the current relationship between American Samoa and the Secretary of Interior and the Office of Insular Affairs (OIA).

For over a century, American Samoa's relationship with the United States government has been predicated, not on military conquest or colonialism, but on a mutual agreement between the island's indigenous people and a country that values freedom above all else, as shown through our signing of the Deeds of Cession. This bill is about more than just procedural changes; it reaffirms the territory's desire to maintain that relationship with the United States through DOI and OIA, and it shows the federal government's commitment to self-governance and democratic values. An in-depth white paper on H.R. 6062 is attached.

Thank you again to everyone involved in moving this forward, and I encourage my Senate colleagues to support the bill.

## White Paper

### H.R. 6062, American Samoa Constitutional Reform Bill

#### SUMMARY:

- The Governor and Legislature of American Samoa support H.R. 6062, as communicated in January 2024, during hearing before the House Natural Resources Committee, and in a meeting with majority and minority senior staff for the Senate Energy and Natural Resources Committee.
- This legislation is a simple one-sentence repeal of the 1983 statute, codified at 48 USC 1662a, and adopted without regular order to address a temporary personnel issue.
- The 1983 act purports to enable Congress to approve or disapprove amendments to the American Samoa constitution made by the Secretary of the Interior under 48 USC 1661 (1929) and Executive Order 10264 (1951).
- Congress has power of disposition, under the Territorial Clause of the U.S. Constitution, regarding all such amendments made by the Secretary, including amendments initiated and approved by the Secretary, or proposed for approval of the Secretary by local initiative under the territorial constitution.
- Consequently, the effect of the 1983 statute - if complied with - is to limit the statutory scope for exercise of otherwise unlimited federal power under the Territorial Clause, to include only amendments that are approved by the Secretary of Interior under the 1951 Executive Order.
- The 1983 statute does not enable Congressional review of amendments disapproved by the Secretary, even if approved under the local constitution in a referendum.
- Compliance with the 1983 statute would increase the discretionary power of the Secretary to act without Congressional oversight to veto amendments.
- Congress has authorized all other territories, that adopt local constitutions, to amend without Congressional action, for the very reason that Congress does not need a statute to exercise its power to alter local law, which is nullified, if inconsistent, with applicable federal law.
- The amendments approved by voters in 2022, are still on the Secretary of the Interior's desk for approval.
- The delayed Secretarial decision is awaiting Congressional action on H.R.6062, and is also due to concern about what now would be the first implementation of the 1983 statute, and the possible unintended legal and or political precedents that might create.

**FULL BRIEF:**

## America Samoa Constitutional Amendment Process Requires Congressional Action

In succession to the 1960 Constitution of American Samoa, the 1967 Revised Constitution of American Samoa was approved by the voters of the territory in 1966, and took effect in 1967 by approval the Secretary of the Interior acting by authority of Executive Order of the President 10264 (1951).

On November 8, 2022, the voters of American Samoa approved 5 of 11 amendments to the 1967 Revised Constitution of American Samoa. The voter-approved amendments were technical changes conforming terms including place names in constitution to local language and custom, enabling removal of the Governor by the Legislature, and gave the non-voting member of the Legislature from Swain's Island a vote in that body.

The amendments were proposed by a convention conducted under authority of the Governor pursuant to local law, modeled on procedural protocols for proposing amendments under Article V, Section 3 or Section 4 of the 1967 Revised Constitution of American Samoa. The Department of the Interior provided a grant to facilitate the convention and referendum called by the Governor and administered under local law.

Consistent with provisions of Article V, Section 3 or Section 4 of the local constitution requiring approval of amendments by the Secretary of the Interior, the Secretary also has the authority under Executive Order 10264 to approve amendments initiated by the Secretary or proposed by the American Samoa Government, including amendments adopted by a convention called under authority of the Governor and approved by majority vote in a referendum.

In the past, constitutional conventions have been called but voters have rejected all proposed amendments. In 2022, among the 6 amendments rejected by voters, were those that would have reduced the Secretary of the Interior's role in governance of the territory.

## Statement of Problem

The approval process adopted by the people in 1966 is no longer the last step in the constitutional amendment process. In 1983, a one sentence amendment inserted in an omnibus territories bill required Congress to approve any amendment ratified by the people and an approved by the Secretary. (See, 48 U.S.C. 1662a; P.L. 98-213, Sec. 12)

Whatever the intent of that 1983 bill, the effect is that since 1983 a local democratic act of self-determination to amend the local constitution certified and approved by the Secretary can no longer be given effect in the same manner by which the territorial constitution itself approved and given effect in in 1960 and revised in 1967.

However, the last minute one sentence add-on to an annual omnibus bill for all territories does not require Congress to act, much less do so by a date certain. As a result, Congress knowingly can in effect nullify the vote of the people and Secretarial approval of an amendment by an omission to act by either the Senate or the House.

This is a redundant process because Congress already has plenary power under the Territorial Clause of the U.S. Constitution to approve or disapprove of any amendment to the constitution before or after it is approved by the voters and the local government.

What the 1983 statutory requirement of Congressional approval does is empower either chamber of Congress to disempower by legislative "pocket veto" the democratic self-determination on a local self/government and home rule issue. It allows suspension of democracy by Congress acting passively, if it chooses to do so, without exercising its constitutional power over territories authoritatively and affirmatively.

Repeal of 1983 Statute is Best Solution:

One might suggest that the solution is to amend the 1983 statute by requiring Congress to act on a proposed amendment within a specified period time. That, of course, arguably would not be binding or enforceable. Even if the statute provided the amendment would take effect if Congress does not act by a specified date, it creates uncertainty and political risk that Congress intended to preclude under 48 U.S.C. 1661, as successfully implemented for the last 73 years under Executive Order 10264.

Even more pronouncedly, revision of the 1983 statute to require Congressional action would not mitigate the undemocratic and discriminatory requirement that American Samoa is the only territory required to get affirmative Congressional approval of local amendments already subject to supremacy of federal law Congress has the power to enact at any time.

That is why, in 1984, the Deputy Assistant Attorney General of the United States in the Office of Legal Counsel, U.S. Department of Justice, testified before Congress that approval of an amendment to the local constitution could "federalize" American Samoa. That concern relates to possible legal revision of political status features defined under unique terms of the Deeds of Cession as to federal relations for the territory, which for the first time since 1900 would be indistinguishable from other territories. See, Robert Shanks, U.S. Senate Committee Energy and Natural Resources, Subcommittee on Energy Conservation and Supply, May 8, 1984, pp. 6-7.

In this regard, it must be recalled and understood emphatically that American Samoa is not an "organized" territory, that is, not subject to an organic act of Congress establishing local self-government and defining federal-territorial relations under federal law in the same manner as the other unincorporated territories.

Rather, American Samoa was not taken as a prize of war or purchased by the highest bidder. Instead, the high chiefs ceded sovereignty to the U.S. in the islands of American Samoa under Deeds of Cession in 1900 and 1904. In accepting and enacting the terms of those deeds Congress confirmed that American Samoa was recognizing the U.S. as sovereign, and that the U.S. nationals of the territory owe the same allegiance to the United States as citizens in the other U.S. territories and states.

At the same time, the U.S. accepted the obligation to protect and preserve the customs and traditions of American Samoa and its way of life, including the traditional land ownership system. As a result, the federal footprint in American Samoa is more circumscribed than in the organic act territories.

Accordingly, the authority of the Secretary to approve or disapprove amendments derives from a 1929 act of Congress authorizing the President to provide for governance of the territory. In 1951, the

President delegated that power to Secretary of the Interior, who in 1967 signed a declaration approving the American Samoa Constitution.

As a result of this de facto autonomy, far fewer federal statutes apply, the people of American Samoa proudly and patriotically prefer to retain U.S. nationality but not citizenship. There is no federal court in American Samoa because our high court has been appointed by the Secretary of the Interior. If the status of American Samoa is to change, the people of the territory have made it clear they want that to be initiated by the people before being proposed to Congress, as we successfully argued in the Fitiseanu case seeking to federalize and impose birthright statutory but still less than equal citizenship in the states.

And that is why the Governor and Member of Congress from the territory, the senior local and federal officials directly responsible for leadership on this matter, have proposed that the 1983 amendment taking away home rule under our people's constitution be repealed. That is because in its historical context the 1983 amendment requiring Congress to approve any amendments to the constitution is highly problematical.

Fixing what 1983 rogue one-sentence law broke

For example, the U.S. Department of Justice cannot ensure that Congressional approval of amendment to the constitution would not make it a federal organic act ending or altering the political status defined by the historic deeds and acts of Congress authorizing the President to establish civil government by Executive Order.

As noted above, in the 2022 vote, the amendment conferring voting rights on the representative from Swain's Island is the only amendment passed that ushers in a major change in local political affairs. Frustration over delay in federal approval of the 2022 vote on several amendments to the local constitution is understandable.

The decision in Washington not to act in a more-timely way is a symptom of flaws in the hastily adopted federal law creating a local constitutional anomaly and political conundrum that now only Congress can correct. Specifically, by approving it in 1983 Congress adopted an ill-advised federal statute that requires Congress to approve any amendments to the local constitution approved by the Secretary.

As discussed, that enables Congress to approve or reject amendments after being approved by the people, and by the Secretary of the Interior, acting on behalf of the President, as originally authorized by Congress.

To understand the legislation introduced to repeal that errant 1983 statute requiring Congressional ratification-action on amendments, and to define the real options for resolution of this dilemma, it is important to understand American Samoa's political ethos.

America's Contented Island Possession

American Samoa is the only U.S. territory that is not seeking changes to its political status and relations with the federal government. The traditional and elected leaders of American Samoa and the voters consistently demonstrate a preference to remain America's outpost in the South Pacific. Although grateful for the federal programs, services and benefits of U.S. territorial status, the American Samoa

body politic consistently has affirmed through local self-government that any change in political status or federal-territorial relations preferably should be initiated locally not in distant Washington.

American Samoa is home to deeply patriotic Americans whose allegiance and loyalty to America is confirmed by the highest per capita rate of U.S. military service of any state or territory. Yet, perhaps misunderstanding of local self-determination rights, some outside civil rights advocates filed not one but two lawsuits asking a federal court in Washington DC to end the historical "national but not citizen" status of Americans born in the territory.

That litigation sought to replace the current status of American Samoa by federal judicial order with the same constitutionally mandated citizenship status conferred in states of the union, without local self-determination on the issue. As a result, American Samoa's Congresswoman, Governor and Legislature intervened as parties in the case and opposed any court mandated change to the historical American nationality and autonomous political status that has served the people of the territory and our nation so well for 120 years.

In both lawsuits, the U.S. Supreme Court ruled in favor of the current status as requested through the system and process for home rule under the 1967 territorial constitution. That local initiative to preserve the autonomous status of the territory confirmed a spirit autonomous interdependence for American Samoa as the center of American interests in the South Pacific.

It is because the U.S. has kept its promises in the Deeds of Cession that American Samoa prefers its current political status to any other relationship with the U.S. federal government or model of self-government. The U.N. may classify American Samoa as a "non-self-governing territory" for its own purposes, but most locals believe the current status is the result of and consistent with local self-determination.

The Insular Cases and unincorporated territory status have not prevented the U.S. from honoring the local self-determination promises in the Deeds of Cession. That is why American Samoa petitioned the U.N. to remove it from that international body's list of non-self-governing colonial possessions.



## IDAHO WATER RESOURCE BOARD

**Brad Little**  
Governor

**Jeff Raybould**  
Chairman  
St. Anthony  
At Large

**Jo Ann Cole-Hansen**  
Vice Chair  
Lewiston  
At Large

**Dean Stevenson**  
Secretary  
Paul  
District 3

**Dale Van Stone**  
Hope  
District 1

**Albert Barker**  
Boise  
District 2

**Brian Olmstead**  
Twin Falls  
At Large

**Marcus Gibbs**  
Grace  
District 4

**Patrick McMahon**  
Sun Valley  
At Large

Testimony of Mr. Jeff Raybould  
Chairman

Idaho Water Resource Board  
Before the United States Senate Energy & Natural Resources Committee  
Water & Power Subcommittee  
Testimony for the Hearing Record  
*Legislative Hearing on Amendments to the Aquifer Recharge Flexibility Act*  
September 11, 2024

My name is Jeff Raybould, and I am the Chairman of the Idaho Water Resource Board (the Board). The Board consists of eight governor-appointed members, knowledgeable in the field of water resources from across the State of Idaho and is required by law to be politically balanced. The Board was established by Idaho Constitution Article 15, Section 7, and is charged with formulating a comprehensive state water plan for conservation, development, management, and optimum use of Idaho's water resources, and undertaking and financing projects and programs to help meet those needs.

Idaho is a headwaters state with significant water resources, but also includes vast semi-arid and arid regions. Like all arid Western states, Idaho depends on snowpack for its water supplies, which varies from year to year. Water resource administration and management is therefore of critical interest to the State of Idaho and its residents.

As with other Western states, water supply shortages and water use conflicts occur across the various regions of the state. Idaho has an exceptional program to adjudicate water rights within the state, including the Snake River Basin Adjudication which was completed in 2014. The Northern Idaho Adjudications and the Bear River Basin Adjudication are currently underway. These adjudications, when completed, will allow the Idaho Department of Water Resources to administer water rights on a priority basis in times of shortage.

About one-third of Idaho's population resides on the Eastern Snake River Plain. The Eastern Snake River Plain is underlain by the Eastern Snake Plain Aquifer ("ESPA"), which is roughly the size of Lake Erie. The ESPA is a 10,000 square-mile aquifer that underlies much of southern and eastern Idaho, supports about 1 million acres of irrigated land, municipal water supplies for 18 cities, and thousands of individual domestic wells for drinking water. The aquifer discharges spring flows to the Snake River, supplying water to an additional 600,000 acres of downstream irrigated land, many municipalities,

and flows for hydropower generation. The ESPA is the sole source of drinking water for both cities and most rural residents in eastern Idaho. The value of goods and services produced by the ESPA region exceeds \$10 billion annually.

Idaho has been very proactive in its responses to drought and water supply shortages for all water uses, including drinking water, irrigation, hydropower, fish, wildlife, environmental needs, and others. With the strong support of Governor Brad Little and the Idaho Legislature, Idaho has made significant investments in water management, building drought resiliency, expanding water supplies, and repairing and improving critical water resource infrastructure to benefit water availability into the future. Since 2019, more than \$500 million has been appropriated by the legislature to the Board for these water management improvement purposes.

The water levels in the ESPA are declining at an unsustainable rate. Because of its importance for the citizens of Idaho, the Idaho Legislature tasked the Idaho Water Resource Board with developing a plan to stabilize and recover the ESPA. In response, the Board developed the Eastern Snake Plain Comprehensive Aquifer Management Plan (ESPA CAMP) which was adopted as part of the State Water Plan in 2009. The ESPA CAMP sets forth a suite of measures, the most prominent of which is the development of a state-sponsored aquifer recharge program. The aquifer recharge program diverts excess surface water (including flood flows) in wet years to stabilize and recover the declining aquifer.

Development of the managed aquifer recharge program includes the use of existing irrigation canals and ditches as the mechanism for seeping and percolating water into the aquifer. A significant number of the existing irrigation canals and ditches cross lands owned by the U.S. Bureau of Land Management (BLM). The irrigation canal owners already have existing rights of way with the BLM for their irrigation canals. Using existing irrigation infrastructure to divert, seep, and deliver managed aquifer recharge water is hugely beneficial in reaching Idaho's aquifer recharge goals. The program also includes other measures undertaken by water users, municipalities, and other partners in the effort. To date, Idaho has invested approximately \$60 million on aquifer recharge infrastructure in addition to program operations and maintenance costs, not including the expenditures made by private parties.

To ensure flexibility in managing aquifer recharge over federal lands, the 116<sup>th</sup> Congress enacted Section 1105 of P.L. 116-260, the *Aquifer Recharge Flexibility Act* (introduced as S.1570/H.R. 2871 in the 116<sup>th</sup> Congress). Section 1105 facilitates the use of existing irrigation canals for aquifer recharge purposes by allowing the canals to be used for the conveyance of aquifer recharge water without the need to seek additional authorizations from the federal government. In part, the Act states:

***Conveyance for Aquifer Recharge Purposes***— *The holder of a right-of-way, easement, permit, or other authorization to transport water across public land administered by the Bureau of Land Management may transport water for aquifer recharge purposes without requiring additional authorization from the Secretary where the use does not expand or modify the operation of the right-of-way, easement, permit or other authorization across public land.*

The Act was intended to allow the Board to move and infiltrate managed recharge water through existing irrigation canals that cross BLM lands without having to obtain additional rights of way from the BLM. Despite the plain wording of the Act, the BLM has taken the position that the Act does not apply to third parties, only to the right of way owners of record. This interpretation has led the BLM to deny the Board's use of those existing irrigation canals without first obtaining a new right of way. The BLM right of way process can be onerous and will add significant time to the development of recharge projects. Utilizing the right of way process may severely delay the Board's ability to reach its goal of recovering and stabilizing the ESPA.

The BLM's insistence that the Board obtain new rights of way to run aquifer recharge water through existing irrigation canals is in contravention of the plain language of the Act and we believe is contrary to the intent of Congress in passing the Act. The amendments to the Act being sought in the draft legislation would address the BLM's erroneous interpretation that the Act does not apply to third parties. The amendment will enable the Board to more efficiently implement its managed aquifer recharge activities and reach its goal of recovering the ESPA for the benefit of the citizens of the State of Idaho.

In conclusion, I want to thank this subcommittee for considering this amendment to the Aquifer Recharge Flexibility Act and for this opportunity to provide testimony for the hearing record. I would be happy to answer any questions the Subcommittee may have.

**Statement for the Record  
U.S. Department of the Interior**

**Senate Committee on Energy and Natural Resources  
Subcommittee on Water and Power**

**H.R. 6062, Amendments to the Constitution of American Samoa**

**September 11, 2024**

Thank you for the opportunity to provide the views of the Department of the Interior (Interior) on H.R. 6062, a bill relating to Congressional approval of amendments to the American Samoa Constitution, introduced by Representative Radewagen.

The Department supports H.R. 6062, which would repeal a statutory requirement that amendments or modifications to the Constitution of American Samoa may be made only by Act of Congress. Enactment of H.R. 6062 would restore the ability of the people of American Samoa to approve amendments to the territorial constitution without further Congressional action.

In 2022, American Samoa held a Constitutional Convention that consisted of members selected from each county in the Territory and Swains Island. The Convention recommended eleven amendments to the Revised Constitution of 1967, and on November 8, 2022, a majority of voters approved five of the eleven proposed constitutional amendments. It was the first time since enactment of 48 U.S.C. 1662a that a majority of voters in American Samoa approved proposed amendments to the Revised Constitution of 1967.

In his December 14, 2022, letter transmitting the five approved amendments to Secretary of the Interior Deb Haaland, Governor of American Samoa Lemanu P.S. Mauga's first sentence was simply, "The people of American Samoa have spoken." Since receiving the letter, we at the Department have had several discussions with Governor Lemanu, Representative Radewagen, and members of their respective staffs about the process and the next steps for adoption of the amendments to the revised constitution of 1967. It has been their determination and our consensus decision that passage of H.R. 6062 is the best next step in the process to formally adopt the constitutional amendments and to honor the people's vote on November 8, 2022.

The people of American Samoa have spoken, and we encourage this Committee to take swift action to approve H.R. 6062 and Congress to pass the legislation. We also acknowledge the honorable representative from American Samoa in her consistent efforts to protect, enhance, and advance American Samoa's political development.

**Statement for the Record  
Bureau of Land Management  
U.S. Department of the Interior  
Senate Committee on Energy and Natural Resources  
Subcommittee on Water and Power  
S. 4999, to Amend the Aquifer Recharge Flexibility Act  
September 11, 2024**

Thank you for the opportunity to provide this Statement for the Record on S. 4999, to amend the Aquifer Recharge Flexibility Act (Public Law 116-260; signed into law in 2020) to clarify a provision relating to conveyances for aquifer recharge purposes. While the Bureau of Land Management (BLM) supports managed aquifer recharge, and the goal of the bill to simplify authorizations for aquifer recharge, we have concerns with the bill as drafted and would like to work with the Sponsors on various modifications.

**Background**

Water resources on public lands managed by the BLM are diverse and among the most important and productive in the Nation. They produce sustained value to the American public; provide habitat for myriad species of plants, fish, and wildlife; offer ecosystem services such as drinking water, pollination, and nutrient cycling; attenuate effects of wildfires, floods, and drought; and are key to the vitality of local economies and communities. Water resources also support permitted activities on public lands, such as livestock grazing, energy and mineral development, timber production, and countless recreational opportunities. The BLM manages authorized uses on the public lands to ensure that water of sufficient quality and quantity is physically and legally available in a manner consistent with the Federal Land Policy and Management Act of 1976 (FLPMA), as well as the Clean Water Act (CWA) and other Federal, State, Tribal, and local laws and regulations.

**S. 4999, to Amend the Aquifer Recharge Flexibility Act**

S. 4999 amends the Aquifer Recharge Flexibility Act to allow the holder of a right-of-way (ROW) grant approved by the BLM, acting on behalf of themselves or a third party, to use the existing ROW for the purposes of aquifer recharge without further authorization from the Secretary. The bill further clarifies that this use shall not be considered an expansion or modification.

Under the current provisions of the Aquifer Recharge Flexibility Act, the BLM reviews water permit applications issued under state law to determine whether a ROW grant holder can engage in aquifer recharge activities without additional authorization to expand or modify the operation of the ROW. As currently written, S. 4999 would allow a third party to “use” an existing ROW across BLM-managed lands for purposes of aquifer recharge without additional authorization. The BLM notes that the bill would effectively amend the terms of an existing FLPMA ROW grant to permit use by a third party that the BLM has not had an opportunity to assess for qualification to conduct aquifer recharge activities, such as their technical and financial capability, or to appropriately define the liability and management responsibilities among multiple users to ensure that the public does not incur liabilities and that public land resources are protected. The BLM recommends the bill be amended to require that any use of an existing

ROW grant by a third party must first include notification and authorization from the BLM, including adjudicating compliance with the statute, and providing notification to adjacent land users that may be impacted by the new use.

The BLM is further concerned that, as currently written, the bill conflicts with FLPMA's requirement to include terms and conditions on public land use authorizations to minimize damage to natural, scenic, and cultural resources. The BLM's participation in authorizing aquifer recharge on public lands allows the Bureau to manage aquatic habitat vital to a variety of multiple uses and cooperatively mitigate impacts to sensitive water resources. The BLM would like to work with the Sponsor to address these issues, as well as circumstances warranting additional analysis to ensure compliance with State and Tribal water quality standards consistent with the CWA and the Wild and Scenic Rivers Act. Lastly, the BLM would like to work with the sponsor on additional technical modifications, including those concerning the appropriate aquifer recharge infrastructure, the conveyance of new water rights for recharge purposes, and potential liability of the ROW grant holder and third parties.

**Conclusion**

Thank you again for the opportunity to provide this statement for the record on S. 4999.

**Statement for the Record**  
**U.S. Geological Survey**  
**Department of the Interior**  
**before the**  
**Senate Committee on Energy Natural Resources**  
**on S. 4245 the Water Data Improvement Act**

**September 11, 2024**

Chairman Manchin and Ranking Member Barrasso, thank you for the opportunity to provide this statement on S. 4245 the Water Data Improvement Act, a bill to reauthorize certain U.S. Geological Survey (USGS) water research activities through the SECURE Water Act (P.L. 111-11, Title IX, Subtitle F of the Omnibus Public Land Management Act of 2009).

**Background**

Floods, droughts, and other extreme weather events present hazards for human lives and property. In the past six years, there have been 34 floods, tropical cyclones, and droughts each causing more than \$1 billion in damages and altogether accounting for more than \$415 billion in damages and over one thousand deaths. Climate change, growing populations in the drought-impacted western U.S., sea-level rise, and aging water infrastructure add to the pressures on limited water resources. For more than a century, USGS national water-monitoring networks have formed the backbone of observations on current conditions and trends in surface water and groundwater. These observations inform real-time decision making and long-term planning. USGS water data are fundamental to national and local economies, protection of life and property, and effective management of the Nation's water resources.

The Federal Priority Streamgauge (FPS) Network, previously known as the National Streamflow Information Program, was established in 1999 in response to Congressional concern about the decline in long-term streamflow monitoring across the Nation. The FPS Network is a core, federally funded network of streamgages that are designated to meet the priorities of the Nation. In 2009, FPS (as the National Streamflow Information Program) was included in Section 9507 of the SECURE Water Act (42 U.S.C. 10367). The current network design includes 4,760 eligible sites that are strategically positioned across the country to address long-term Federal information needs. These needs include informing flood and drought forecasts, implementing interstate, international, and Tribal water compacts and decrees, and tracking trends in undisturbed watersheds. There are approximately 3,500 active FPS sites. About one quarter of these sites are fully funded through USGS appropriations, the remainder through a combination of funding from the USGS and from partners such as the U.S. Army Corps of Engineers and the Bureau of Reclamation. USGS is in the process of updating the design of the FPS Network, using feedback from Federal agency partners, which will likely result in an increase in the number of eligible sites. This increase will likely be driven by an expanded list of flood-forecast locations identified by the National Oceanic and Atmospheric Administration (NOAA) National Weather Service since 1999 and increasing demands

for water information associated with population growth and extreme weather events and climate change.

The National Groundwater Monitoring Network (NGWMN) was designed in 2009 in response to passage of the SECURE Water Act. It is authorized as a collaborative groundwater network among intergovernmental agency data providers. Since initial appropriations were provided in 2015, the NGWMN provides access to water-level and/or water-quality data from nearly 20,000 groundwater wells that are supported by more than 45 Federal, State, local, and Tribal agencies. As part of the NGWMN, the USGS supports 630 Climate Response Network groundwater monitoring wells which represent 226 of the 370 NOAA climate divisions in the continental U.S. These monitoring wells are supported by a combination of USGS and partner funding. The NGWMN serves as a critical measure of current and long-term groundwater conditions and provides groundwater-level data that are beneficial to Federal, State, and local agencies and other stakeholders who use the data to monitor for drought and drought recovery, issue permits for groundwater withdrawals, and establish triggers for water conservation and/or pumping reductions. The data from the NGWMN are also foundational for decisions regarding the sustainable management of groundwater supplies, which are the source of drinking water for more than 130 million Americans each day and provide more than 40% of the Nation's irrigation water.

**S. 4245 the Water Data Improvement Act**

S. 4245 reauthorizes Section 9507 of the SECURE Water Act through Fiscal Year 2028. This includes authorities for the FPS Network, as well as the NGWMN. The USGS fully supports S. 4245.

The USGS appreciates Congressional interest in reauthorization of Section 9507 of the SECURE Water Act. The USGS notes that other USGS water-research activities are authorized at Section 9508 and should also be considered, as well as important authorities, throughout the SECURE Water Act, undertaken by the Bureau of Reclamation.