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SABINE RIVER AUTHORITY EXEMPTION

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HEARING BEFORE THE SUBCOMMITTEE ON FORESTS OF THE COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 1126

OCTOBER 7, 1975

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SABINE RIVER AUTHORITY EXEMPTION

TUESDAY, OCTOBER 7, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FORESTS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10:20 a.m., pursuant to call, in room 1301, Longworth House Office Building, Hon. Jerry Litton (chairman of the subcommittee) presiding.

Present: Representatives Litton, Vigorito, Mathis, Weaver, Krebs, and Symms.

Also present: Hyde H. Murray, counsel and John E. Hogan, associate counsel.

Mr. LITTON. The subcommittee will come to order.

We will now move into the hearing on H.R. 1126.

[The bill H.R. 1126, the reports from the U.S. Department of Agriculture, the Department of the Army, and the Federal Power Commission follow:]

[H.R. 1126, 94th Cong. 1st sess.]

A BILL To recognize benefits to the United States from the construction of the Toledo Bend Dam and Reservoir project and exempt Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas, from charges for the use, occupancy, and enjoyment of certain lands of the United States within the Sabine National Forest, Texas

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in consideration of the benefits accruing to the United States of America from the Toledo Bend Dam and Reservoir project, a multipurpose water reserve project financed, constructed, and operated by the States of Texas and Louisiana, the Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas, shall, and notwithstanding any other provision of law, be exempt from the payment of any annual charges imposed for the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands within the Sabine National Forest, Texas, which are necessary for the construction and operation of the Toledo Bend Dam and Reservoir as such project shall be finally defined in accordance with the provisions of license numbered 2305, issued by the Federal Power Commission. The benefits accruing to the United States as a result of the construction of the Toledo Bend Dam and Reservoir by such authorities include, but are not limited to, decreased annual maintenance costs on the Sabine-Neches Waterway as a result of siltation control, improved navigation potential for the Sabine River Basin, improved conditions for the propagation of fish and wildlife, and recreational benefits induced by the construction of such reservoir.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., October 1, 1975.

HON. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, House of Representatives

DEAR MR. CHAIRMAN: As you requested, here is our report on H.R. 1126, a bill "To recognize benefits to the United States from the construction of the Toledo Bend Dam and Reservoir project and exempt Sabine River Authority, State of

Louisiana, and Sabine River Authority of Texas, from charges for the use, occupancy, and enjoyment of certain lands of the United States within the Sabine National Forest, Texas."

The Department of Agriculture recommends that H.R. 1126 not be enacted and that the application by the Sabine River Authorities for an exemption from such charges be decided on its merits under the Federal Power Act by the Federal Power Commission.

H.R. 1126 would exempt the Sabine River Authority, State of Louisiana, and the Sabine River Authority of Texas from the payment of any annual charges imposed for the use, occupancy, and enjoyment of lands within the Sabine National Forest, Texas, which are used in connection with the Toledo Bend Dam and Reservoir project. This exemption would be in consideration of the benefits accruing to the United States as a result of the project. The bill states that these benefits include, but are not limited to, decreased annual maintenance costs of the Sabine-Neches Waterway as a result of siltation control, improved navigation potential for the Sabine River Basin, improved conditions for the propagation of fish and wildlife, and recreational benefits induced by the construction of Toledo Bend Dam and Reservoir.

Our rationale for opposing the enactment H.R. 1126 and our estimate of the direct cost of enacting H.R. 1126 are presented in the enclosed supplemental statement.

The Office of Management and Budget advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Acting Secretary.

Enclosure.

USDA SUPPLEMENTAL STATEMENT REGARDING H.R. 1126, A BILL TO EXEMPT THE SABINE RIVER AUTHORITIES FROM CHARGES FOR THE USE OF NATIONAL FOREST LAND IN TEXAS

The Toledo Bend Dam and Reservoir project, licensed by the Federal Power Commission as Project No. 2305 effective October 1, 1963, occupies about 35,000 acres of the Sabine National Forest in Texas. Under article 45(ii) of their 50-year license, the Sabine River Authorities agreed to pay an annual charge of \$84,000 to the United States for the use of this Federal land. It is our understanding that the Federal Power Commission did not bill the Authorities until the project became operational and that the Authorities have been billed for the years 1970 through 1974, inclusive.

The Sabine River Authorities of Louisiana and Texas are agencies of those States, and as such, they have applied to the Federal Power Commission under section 10(e) of the Federal Power Act (16 U.S.C. 803(e)) for an exemption from annual charges to the extent the power they produce is sold to the public without profit. A hearing on their application was opened on May 12, 1975. Final reply briefs were to be filed by August 14, 1975.

We believe the request for an exemption by the Sabine River Authorities should be decided on its merits under the Federal Power Act by the Federal Power Commission, rather than through enactment of special legislation such as H.R. 1126.

As to the benefits cited in H.R. 1126, we defer to the Corps of Engineers regarding the effects of the Toledo Bend project on siltation and navigation within the Sabine River Basin. The benefits cited in H.R. 1126 regarding fish, wildlife, and recreation are not distinguishable from similar benefits which have resulted from the construction of other large dams and reservoirs. Section 10(a) of the Federal Power Act, as amended (16 U.S.C. 803(a)) recognizes "recreational purposes" as one of the "beneficial public uses" set forth as a condition to granting all licenses under the Act. This is amplified in 18 CFR 2.7 which states that the Commission expects all licensees "to develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters."

Toledo Bend is only one of about 200 hydroelectric projects licensed by the Federal Power Commission which involve National Forest land. Enactment of H.R. 1126 could set an undesirable precedent in that many other projects licensed by the Federal Power Commission involving Federal lands might also seek similar

individual legislative exemptions. If the Congress should decide to enact H.R. 1126, we urge that the bill be amended so as to state specifically why the Sabine River Authorities, in comparison to all other licensees, are uniquely entitled to an exemption from charges for the use of Federal land. As mentioned above, we do not believe that the benefits regarding fish, wildlife, and recreation now cited in H.R. 1126 are unique to the Toledo Bend project.

Enactment of H.R. 1126 could be inequitable to hundreds of special-use permittees throughout the National Forest System who pay annual fees based on the value of the land and the type of use. Furthermore, enactment of H.R. 1126 might be inconsistent with the provisions of title V of the Act of August 31, 1951 (65 Stat. 290, 31 U.S.C. 483a), in which the sense of Congress was expressed that fees and charges should be made for licenses and other authorizations for use of Federal property and services.

If H.R. 1126 is enacted, the direct cost to the United States would be the loss of the \$84,000 annual charge owed by the Sabine River Authorities, less \$31,500 which would otherwise be returned annually to the State of Texas, pursuant to section 17 of the Federal Power Act (16 U.S.C. 810(a)). This section provides that 37.5 percent of the charges collected for the occupancy and use of National Forest lands shall be paid to the State in which the lands are located. Enactment of H.R. 1126 would exempt the Authorities from the payment of \$420,000 now owed for the years 1970 through 1974, inclusive, as well as subsequent annual charges. Thus, the total loss to the United States and the State of Texas would be about \$3.6 million from 1970 until the end of the license period.

DEPARTMENT OF THE ARMY,
Washington, D.C., October 20, 1975.

HON. THOMAS S. FOLEY,
Chairman, Committee on Agriculture,
House of Representatives

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Department of the Army on H.R. 1126, 94th Congress, a bill "To recognize benefits to the United States from the construction of the Toledo Bend Dam and Reservoir project and exempt Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas, from charges for the use, occupancy, and enjoyment of certain lands of the United States within the Sabine National Forest, Texas."

The purpose of the bill is stated in its title. It would exempt the two Sabine River Authorities from payment of any annual charges imposed by the United States Forest Service of the Department of Agriculture under the authority of Section 501 of the Act of August 31, 1951 (65 Stat. 290; 31 U.S.C. 483a) for the use, occupancy, and enjoyment of the lands within the Sabine National Forest, Texas, in connection with the Toledo Bend Dam and Reservoir project, a non-Federal project licensed by the Federal Power Commission. The bill would grant the exemption in consideration of the benefits accruing to the United States as a result of the construction of the project. These benefits are described by the bill as, including but not limited to, (1) decreased annual maintenance costs on the Sabine-Neches Waterway as a result of siltation control, (2) improved navigation within the Sabine River Basin, (3) improved conditions for the propagation of fish and wildlife, and (4) recreational benefits induced by the construction of the dam and reservoir.

The Department of the Army is not aware of any justification for exempting the Sabine River Authorities from the requirement of payment of annual charges for their use of lands within the Sabine National Forest based upon their claim that the United States is receiving benefits from the construction of the Toledo Bend Dam. The Corps of Engineers has not conducted any study to determine if in fact the benefits as enunciated in the bill are accruing and are sufficiently widespread to warrant the claim of a direct Federal interest. Such benefits are only incidental to the construction of the project, do not represent primary benefits, and would be physically difficult to identify and quantify on a monetary basis. Consequently, the Department of the Army cannot confirm Federal benefits of decreased annual navigation costs on improved navigation potential. Accordingly, no estimate of the cost of enacting the proposed legislation for the current and next five fiscal years can be determined at this time.

Enactment of H.R. 1126 would establish a precedent whereby the responsibility for paying for the use of National Forest lands would be waived if any water resource benefits resulting from the construction of a non-Federal project would accrue to the United States. The type of relief being sought under the provisions of H.R. 1126 is not consistent with the policies, currently being followed by the Department of the Army in connection with its responsibilities for the development of the Nation's water resources, and if enacted it may result in the Federal Government crediting non-Federal interests with economically unjustified benefits.

The Department of the Army believes that the exemption of the Sabine River Authorities from payment for the use of Federal lands is inequitable since other non-Federal interests are making payments for the use of similar lands at other, non-Federal reservoir projects. However, since the National Forest lands are under the control and management of the Department of Agriculture, the Department of the Army defers to their views concerning payment for the use of National Forest lands.

The Office of Management and Budget advises that, from the standpoint of the Administration's program there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

MARTIN R. HOFFMANN,
Secretary of the Army.

FEDERAL POWER COMMISSION,
Washington, D.C., October 3, 1975.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Please consider the attached Commission report on S. 1819, a bill identical to H.R. 1126, transmitted to Chairman Talmadge of the Senate Agriculture and Forestry Committee on September 4, 1975, as our report on H.R. 1126.

With respect to the Commission's report on S. 1819, you will note that the Office of Management and Budget has advised that there is no objection to the report from the standpoint of the Administration's program.

Sincerely,

JOHN N. NASSIKAS,
Chairman.

Attachment: FPC Report on S. 1819 (to be adopted as FPC report on H.R. 1126).

FEDERAL POWER COMMISSION REPORT ON S. 1819—94TH CONGRESS

S. 1819, A BILL "To recognize benefits to the United States from the construction of the Toledo Bend Dam and Reservoir project and exempt Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas, from charges for the use, occupancy, and enjoyment of certain lands of the United States within the Sabine National Forest, Texas."

The bill would exempt the Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas from charges for the use, occupancy, and enjoyment of certain lands of the United States within Sabine National Forest, Texas. The bill's rationale for exemption in this case is based on benefits accruing to the United States in terms of decreased annual maintenance costs on the Sabine-Neches Waterway, improved navigation on the Sabine River Basin, improved conditions for the propagation of fish and wildlife, and recreational benefits produced by the construction of the project reservoir. This exemption from Section 10(e) of the Federal Power Act, 16 USC 803(e), would be both prospective and retroactive. S. 1819 does not contain an exemption from payment of annual charges for the purpose of recompensing the United States for the cost of administering Part I of the Federal Power Act. The Sabine River Authorities of Texas and Louisiana have not yet made any annual charge payments.

We do note that Senator Long's comments in introducing S. 1819 (*see* 121 *Cong. Rec.*—S8961 (daily ed. May 22, 1975)) mention annual user charges of \$350,000 to \$500,000 assessed on the Authorities. The actual figure currently is approximately \$88,000 per annum, of which amount \$84,000 represents a charge

for the use of Federal lands. Senator Long may have had in mind a figure that might result if certain proposals contained in a notice of proposed rulemaking, Docket No. RM75-11, are adopted by the Commission. This rulemaking is now pending.

The Commission's Bureau of Power has provided the following figures indicating the approximate cost of foreclosing the collection of land use charges as proposed by S. 1819:

Cost for one year	\$84, 000
Cost for the 1975 fiscal year plus each of the 5 preceding fiscal years ((\$84,000 times 6 years)	504, 000
Cost over the life of the license (84,000 times 43 years ((1970-2013, as the project was totally exempt from annual charges from 1963 through 1969 under 18 C.F.R. § 11.24(g))	3, 612, 000

The distribution of these moneys, if collected, would be as follows:

	United States	State of Texas	Total
Yearly	\$52, 500	\$31, 500	\$84, 000
6 years	315, 000	189, 000	504, 000
Life of license	2, 257, 500	1, 354, 500	3, 612, 000

On October 14, 1963, the Federal Power Commission issued a license to Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas, joint licensees, authorizing the construction of a dam, reservoir, and powerhouse on the Sabine River: a boundary stream between Louisiana and Texas. Among other things the license authorized the joint licensees to utilize for the project 35,000 acres of federal land within the Sabine National Forest. The parcel of land utilized by the joint licensees is the largest parcel authorized under any license ever issued by this Commission.

The joint licensees have filed for exemption from all annual charges for years 1970-1973 assessed under Section 10(e) of the Federal Power Act. In pertinent part Section 10(e) exempts licensees from such annual charges "Provided . . . That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes . . ." The joint licensees are municipalities within the meaning of that term as defined by Section 3(7) of the Federal Power Act. However, under Section 11.24(e) of the Commission's Regulations under the Federal Power Act the burden rests upon the licensee to prove that the electric power generated, transmitted or distributed by the project is sold to the ultimate consumer without profit.

On October 8, 1974, the Commission issued an order setting for prehearing conference the applications of the joint licensees for exemption from annual charges for the years 1970-1973. Prehearing conferences pursuant to the Commission's order were held October 29, 1974 and November 18, 1974. The hearing in the matter, for the purpose of considering the Authorities' requests for exemptions from all annual charges, was held May 12, 1975. A briefing schedule has been set in the matter by the presiding Administrative Law Judge, with initial briefs due by July 14, 1975 and reply briefs due by August 4, 1975.

Since the joint licensees' application for exemption from annual charges is pending before this Commission and the exemption involves complex issues of fact and law, to be determined by the Commission in its judicial capacity, it would not be proper for this Commission to comment on the merits of this bill.

The Office of Management and Budget advises that there is no objection to presentation of this report from the standpoint of the Administration's program.

JOHN N. NASSIKAS,
Chairman.

Mr. LITTON. The bill was designed to exempt the Sabine River Authority of the State of Louisiana and the State of Texas from payment-of-user fees to the Federal Power Commission.

The subcommittee was notified by the Sabine National Forest, Tex., as a result of the construction in the States of Louisiana and Texas of the Toledo Bend Dam and Reservoir project.

Total acreage involved is approximately 35,550 acres with a land value of approximately \$84,000.

The legislation addressed to this issue was originally introduced in the 91st Congress by our former colleague, the Honorable Speedy Long. He introduced the legislation in the 92d Congress. However, no action was taken until this subcommittee held hearings on H.R. 15320 by Mr. Waggonner in the 93d Congress.

That bill was approved by the subcommittee and the full Committee on Agriculture and was present on the suspension calendar. However, action was not taken by House because of the press of business on the floor.

The subcommittee was very much aware of the hearings on this issue and the fact that H.R. 1126 reflects certain suggested changes made by the U.S. Forest Service.

Of course, we are interested in exploring the present circumstances surrounding this issue and take steps, if any, to provide administrative relief. Further, the subcommittee will be interested in learning more about the situation facing Louisiana and Texas as it compares to the situation existing in other States.

I mentioned that our first witness is the distinguished sponsor of the legislation, Mr. Waggonner. Mr. Waggonner, it is a pleasure to have you before this committee and we are happy to hear your testimony this morning.

STATEMENT OF HON. JOE D. WAGGONNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

MR. WAGGONNER. I want to personally thank you for scheduling this hearing and giving us an opportunity to briefly comment on H.R. 1126, a bill to recognize benefits to the United States from the construction of the Toledo Bend Dam and Reservoir project and exempt Sabine River Authority, State of Louisiana, and Sabine River Authority of Texas, from charges for the use, occupancy, and enjoyment of certain lands of the United States within the Sabine National Forest, Tex. Inasmuch as Ways and Means is meeting in markup on tax reform this morning, I will make my comments brief, although Mr. Morgan and Mr. Collins will cover the subject in more depth.

Identical legislation was—as has been earlier said—reported out of the full committee last year and was scheduled for floor action during the last week of the last Congress, but we did not get to it before adjournment.

By way of background, the Toledo Bend Dam and Reservoir project is a multipurpose facility which includes a water conservation reservoir and a hydroelectric plant. It is located on the Sabine River between the State of Louisiana and the State of Texas. The project was constructed and paid for by the Sabine River Authority, State of Louisiana, and the Sabine River Authority of Texas. Both of these authorities are government agencies of their respective States. The cost of the project was \$70 million; and I think it is significant to note here that the entire cost was borne by the State of Louisiana and the State of Texas in equal amounts without any Federal assistance whatsoever, either by grant or loan.

Since the dam and reservoir were constructed on a navigable waterway to be used in part for providing hydroelectric power and because Federal lands were involved, it was determined at the outset that the Federal Power Commission would have jurisdiction. A license was issued by the Federal Power Commission authorizing the construction of the project. As a part of the conditions of the license, there was stipulated that an annual charge would be paid by the Sabine River Authority in the amount of approximately \$84,000 annually to recompense the United States for the use and enjoyment of some 35,000 acres of land, which are inundated by the reservoir. These lands comprise a part of the Sabine National Forest, located in Texas, which are administered by the U.S. Forest Service under the Department of Agriculture. The Federal Power Commission under a proposed rule change would increase the annual usage fee formula, which means the Sabine River Authority could be charged as much as \$525,000 annually if the proposed rule change is adopted; and this is our concern.

The authority for imposing such a fee is 16 U.S.C. 803(e). That section provides,

That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this subchapter; for recompensing it for the use, occupancy, and enjoyment of its lands or other property.

Section 17 of the Federal Power Act specifies that the annual charges received pursuant to order of the Commission shall be paid and distributed as follows: 12½ percent to the General Treasury of the Federal Government, 50 percent to the Reclamation fund which was established by Congress in 1902, and 37½ percent to the State within whose boundaries any of the lands are located. This in itself creates a real problem particularly for Louisiana since the forest lands in question are in Texas, and the Texas constitution prohibits the granting of any of its funds to any other State. In other words, Louisiana could not receive one-half of the 37½ percent even though both States shared the initial construction costs of the project and both States share in operating and maintaining it.

But my purpose for being here today, Mr. Chairman, is not to show the problem involved regarding the 37½ percent, but rather to briefly outline why, in my personal view, the Sabine River Authority—Louisiana and Texas—should be exempt from having to pay the annual usage fee at all.

At the outset, I think it important to note that the Sabine River Authorities have filed annually since 1969 with the Federal Power Commission an application requesting an exemption from payment of the annual fee since the hydroelectric power was not being sold for profit and because of the great benefits received by the Federal Government as a result of the project. The Federal Power Commission has not as yet ruled on any of these applications. The fact that there has been no administrative relief afforded has necessitated the legislation at hand.

I do not believe that it was the intent of Congress when the Federal Power Act was passed initially to require a nonprofit State agency to pay an annual usage fee when such project benefited the general public and the U.S. Government to the extent that this one has. In fact,

section 803 (e) further provides: "That licenses for the development, transmission or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes." The sale of hydroelectric power by the Sabine River Authority is not done for profit. Proceeds from the sale of the hydroelectric power generated at the facility are necessary to finance the operation of the reservoir and for debt retirement.

Mr. Chairman, the benefits derived by the United States from the Toledo Bend project are enormous. Foremost, it has substantially increased the value of the Federal lands in the Sabine National Forest adjoining the reservoir from \$40 an acre in 1967 to approximately \$2,000 an acre at present. Taking the 8,200 shoreline acres, the value of which was estimated to be \$328,000 in 1967, the value of that property is now \$16,400,000. This in itself has been a substantial windfall to the Federal Government.

In addition, the project has reduced siltation of the Sabine-Neches Waterway located south of the project, which has resulted in decreased annual maintenance costs for the Army Corps of Engineers. Silt above the reservoir which was normally carried by the Sabine River and deposited in the waterway is now being retained behind the Sabine River Dam. The Corps of Engineers has estimated that prior to the completion of the project, some 330,000 cubic yards of silt, which had originated above the reservoir, had to be removed from the waterway. At 25 cents a cubic yard, which is a Corps of Engineers cost estimate for silt removal of this type, the savings to the Corps of Engineers and the Federal Government would come to approximately \$82,500 annually. The figure is approximately the yearly charge for usage of the forest lands in the Sabine National Forest.

The project has also enhanced the potential for navigation of the Sabine River at a potential savings to the Corps of \$5 million in navigation construction costs. The work done in the construction of the project has reduced the amount of work needed to be done for navigation purposes in the future.

Additionally, the reservoir itself has amounted to a fantastic conservation program of water resources which we have noticed this summer are in increasingly shorter supply. It is estimated that 2 billion gallons of good quality water are conserved daily. The Federal Government is normally only too willing to share in the cost of water conservation programs, but keep in mind that no Federal funds were used in this instance.

The hydroelectric power produced by the facility provides for pollution-free energy which is helping to conserve fossil fuels, which we know to be in short supply.

Finally, the project has expanded recreational opportunities, and it is estimated that the recreation expenditures induced by the project are in the neighborhood of \$12,500,000 a year. These recreational expenditures have provided a significant amount of tax dollars to the U.S. Treasury. Under existing law, the Federal Government can and has shared in the costs of providing similar recreational opportunities. A project totally funded by the Federal Government, providing for this extent of fish and wildlife recreation, would cost anywhere between \$7 million to \$10 million. Again, I point out that no Federal funds were expended on this project.

These facts alone would seem to justify an exemption of any fees for the use and enjoyment of the Federal park lands that are inundated.

Mr. Chairman, the Department of Agriculture last Congress reported unfavorably on this legislation. It was suggested that this be handled with the Federal Power Commission administratively rather than through legislation, that the passage of legislation would begin an unwise precedent for other Federal Power Commission projects, and that inequities would be created for other licensees. But nearly all other projects of this magnitude are financed in part by the Federal Government. This is a different situation involving no Federal funds. I would think, in fact, that the Federal Government would want to encourage other projects of this nature which are done at a State and local government level at no expense to the Federal Government. I would think that because we have a national policy calling for energy self-sufficiency that we would want to encourage, rather than discourage, similar projects which provide for a clean source of energy. Our environmental considerations should likewise lead us to promoting other projects like this one. This is a conservation project which protects our national resources.

Mr. Chairman, for the reasons I have given, I respectfully urge that the subcommittee take favorable action with regard to this bill and that it be reported to the full committee without unnecessary delay because relief has not been coming from the Federal Power Commission.

Mr. LITTON. I appreciate the gentleman's testimony and I realize his press for time to get back to the Ways and Means Committee.

I have a couple of questions. You mentioned that nearly all other projects of this magnitude are financed in part by the Federal Government. Do you know of any projects of this magnitude that are financed by the States?

Mr. WAGGONER. Mr. Chairman, I know of no other project of this magnitude financed entirely by local units of government or State governments.

Mr. LITTON. My second question: You mentioned something about having the Federal Power Commission handle it through an administrative fashion instead of legislatively. Why has this not been handled administratively?

Mr. WAGGONER. Mr. Chairman, I would presume we are involved with a bureaucracy—to some extent. They could handle it. If all circumstances were ideal, it might even conceivably be better that they do it administratively. In our opinion, they have the authority to do it, but they are not going to do it.

If this proposed rule change of theirs is placed in effect, the costs are going to be prohibitive to the Sabine River Authority. We must have some relief.

Mr. LITTON. Mr. Symms?

Mr. SYMMS. Thank you, Mr. Chairman.

I appreciate our very valued member in the Congress, Mr. Waggoner, being here this morning. I appreciate your testimony.

Mr. Waggoner, I supported your bill last year and intend to support it again this year, so I will not belabor your time here.

Mr. LITTON. Mr. Weaver?

Mr. WEAVER. Mr. Chairman, thank you.

Mr. Waggoner, you make a very persuasive case here. I can see this is not the rape of the Sabine, but an excellent project.

How many megawatts of power are in the dam?

Mr. WAGGONNER. I will have to rely upon others from the State of Louisiana to supply that answer, Mr. Weaver.

I would want to call to your attention that again and reiterate something that I put emphasis on in my earlier statement; that is, none of this power is sold for profit.

Mr. WEAVER. Who gets the power; who distributes it?

Mr. WAGGONNER. The generating systems in the area put it in a wheeling system, as I understand it.

Mr. WEAVER. Pump coops, fuel coops?

Mr. WAGGONNER. The State authority, Mr. Morgan, will answer those questions in detail. He can tell you the details of the contract.

Mr. WEAVER. You have done a very good job, and I will wait until I hear the other people.

Thank you Mr. Waggonner.

Mr. LITTON. Mr. Vigorito?

Mr. VIGORITO. No questions.

Mr. LITTON. Mr. Krebs?

Mr. KREBS. Mr. Waggonner, thank you for being here this morning and giving your testimony.

The thing that concerns me about this particular bill—and I don't wish to prejudice it—is the establishment of precedent. I am sure you have been questioned on this matter before. I am concerned about similar requests from other entities, even though they may not be totally State financed. Nevertheless, what would our position be, in view of the precedent that this may set?

Mr. WAGGONNER. I think the possibility of follow-on cases—utilizing this as a precedent—have been exaggerated because there are no similar cases.

I think this is made absolutely necessary by virtue of the fact that the Federal Power Commission has refused to grant the exemption, which they really could grant under existing law. As a result of this, I just do not see that there are any similar cases.

It is my opinion that the Federal Power Commission is not utilizing the authority—which is theirs—to grant an exemption. In fact, they are thinking about doing something far more drastic than was provided in the original agreement.

Mr. KREBS. Thank you very much, sir.

Mr. LITTON. Mr. Mathis?

Mr. MATHIS. Thank you, Mr. Chairman.

Mr. Waggonner, I appreciate your testimony and your position on this bill. I understand a lot more about it now than I did when I learned we had hearings on this bill.

You mentioned in your testimony that all the proceeds from the sale of electricity are going to the operation of maintenance of the dam, the reservoir, the facilities there, and debt retirement. Do you have any idea when this debt will be retired? I assume that both of these authorities are bonding authorities and issued bonds for the purpose of construction. Do you know when that debt will be retired?

Mr. WAGGONNER. No, Mr. Mathis. I will have to leave that answer to the State authorities who are here—they can answer that in detail.

Mr. MATHIS. I think the one thing that concerns me about the bill—and I certainly intend to support it—is that at some point you

are obviously going to retire this debt. The bonds will be paid from the sale of electricity. I assume that this is the plan that both authorities in both States have.

I wonder—at that time—whether the authorities would be willing to provide some type of compensation back to the Federal Government for the usage of that land?

Mr. WAGGONNER. I cannot answer that question. The authority itself is a duly constituted authority jointly between the States of Louisiana and Texas. This is something to which they will have to address themselves.

Mr. MATHIS. Do they, in fact, have a joint authority, or is two separate authorities working—

Mr. WAGGONNER. There is a joint authority, but they share and share alike.

Mr. MATHIS. That is all, Mr. Chairman.

Thank you, Mr. Waggonner.

Mr. LITTON. I appreciate your testimony, Mr. Waggonner. If we have further questions, we will be back to you.

Mr. WAGGONNER. Thank you, Mr. Chairman and gentlemen of the committee.

Now my task is even more unpleasant. I have to go listen to Mr. Simon about taxes.

Mr. LITTON. Thank you very much.

Next we would like to call Mr. R. Max Peterson, the Deputy Chief for Program and Legislation of the Forest Service, the U.S. Department of Agriculture.

Mr. Peterson, we are happy to have you with us today, and we are looking forward to your testimony.

Mr. PETERSON. Thank you very much, Mr. Chairman.

STATEMENT OF R. MAX PETERSON, DEPUTY CHIEF, PROGRAMS AND LEGISLATION, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. PETERSON. We appreciate this opportunity to express the views of the Department of Agriculture on H.R. 1126. This bill would exempt the Sabine River authorities of Louisiana and Texas from charges for the use, occupancy, and enjoyment of about 35,000 acres of the Sabine National Forest in Texas. This land is part of the Toledo Bend Dam and Reservoir project which is operated by the authorities under a 50-year license from the Federal Power Commission.

The license for the Toledo Bend project became effective October 1, 1963. The authorities agreed, under the terms of their license, to pay an annual charge of \$84,000 to the United States for the use of the Sabine National Forest land. It is our understanding that the Federal Power Commission did not bill the authorities until the project became operational and that the authorities have been billed for the years 1970 through 1974, inclusive.

The Sabine River authorities of Louisiana and Texas are agencies of those States, and as such, they have applied to the Federal Power Commission under section 10(e) of the Federal Power Act for an exemption from annual charges to the extent the power they produce is sold to the public without profit. We understand that a hearing on

their application was held on May 12, 1975, but a decision has not yet been made by the Federal Power Commission. We believe that requests for exemptions from annual charges should be decided on their merits under the Federal Power Act by the Federal Power Commission, rather than through enactment of special legislation such as H.R. 1126.

As to the benefits cited in H.R. 1126, we defer to the Corps of Engineers regarding the effects of the Toledo Bend project on siltation and navigation within the Sabine River basin. The benefits cited regarding fish, wildlife, and recreation—in our view—are not distinguishable from similar benefits which have resulted from the construction of other large dams and reservoirs.

For example, section 10(a) of the Federal Power Act, as amended, recognizes "recreational purposes" as one of the "beneficial public uses" set forth as a condition to granting all licenses under the act. This is amplified in 18 CFR 2.7 which states that the Federal Power Commission expects all licensees "to develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters." The development of recreational facilities at Toledo Bend is covered by a memorandum of understanding between the Forest Service and the Sabine River authorities.

Toledo Bend is only one of about 200 hydroelectric projects licensed by the Federal Power Commission which involve national forest land. Enactment of H.R. 1126 could set an undesirable precedent in that many other projects licensed by the Federal Power Commission involving Federal lands might also seek similar individual legislative exemptions. However, if the Congress should decide to enact H.R. 1126, we urge that the bill be amended so as to state specifically why the Sabine River authorities, in comparison to all other licensees, are uniquely entitled to an exemption from charges for the use of Federal land. As mentioned earlier, we do not believe that the benefits regarding fish, wildlife, and recreation now cited in H.R. 1126 are unique to the Toledo Bend project.

Enactment of H.R. 1126 could be inequitable to hundreds of special-use permittees throughout the National Forest System who pay annual fees based on the value of the land and the type of use. Furthermore, enactment of H.R. 1126 might be inconsistent with the provisions of title V of the Act of August 31, 1951, in which the sense of Congress was expressed that fees and charges should be made for licenses and other authorizations of the use of Federal property and services.

In summary, then, Mr. Chairman, the Department of Agriculture recommends that H.R. 1126 not be enacted. We believe the request for an exemption by the Sabine River Authorities should be decided on its merits under the Federal Power Act by the Federal Power Commission, rather than through special legislation such as H.R. 1126.

This concludes my prepared testimony. I will be happy to respond to any questions that you may have.

Mr. LITTON. Thank you, Mr. Peterson.

Mr. Weaver?

Mr. WEAVER. Yes, Mr. Chairman.

Is the entire reservoir surrounded by Forest Service land?

Mr. PETERSON. No, sir. Just a portion of the Texas side of the reservoir.

Mr. WEAVER. The other is private?

Mr. PETERSON. The other is private land. The other land that is underlying the reservoir was purchased, I believe, at the time that the reservoir was constructed.

Mr. WEAVER. Excuse me?

Mr. PETERSON. The other land—the private land—that underlies the reservoir was purchased at the time that the reservoir——

Mr. WEAVER. By the States?

Mr. PETERSON. By the States; yes, sir.

Mr. WEAVER. Do you know the land, yourself?

Mr. PETERSON. Yes, sir.

Mr. WEAVER. Is it timberland; is it agriculture land?

Mr. PETERSON. It is a variety. Some of it is river bottom land along the Sabine River; some of it is in oak and other hardwood; some of it is in southern pine. It is quite fertile.

Mr. WEAVER. The area is agriculture?

Mr. PETERSON. Agriculture and forestry; mostly forestry.

Mr. WEAVER. Row crops?

Mr. PETERSON. No, sir. Not many row crops.

Mr. WEAVER. The water is used for irrigation purposes?

Mr. PETERSON. I do not believe so.

Mr. WEAVER. Thank you.

Mr. LITTON. Mr. Vigorito?

Mr. VIGORITO. No questions.

Mr. LITTON. Mr. Krebs?

Mr. KREBS. No questions.

Mr. LITTON. I noticed you said that you thought the Sabine River Authority should be decided on its merits under the Federal Power Act through the Federal Power Commission, rather than special legislation. How long has this matter been pending before the Federal Power Commission?

Mr. PETERSON. I believe an application was submitted some time ago, but I believe additional supporting information was only provided within the last year or so.

Mr. LITTON. You say some time ago. How long ago?

Mr. PETERSON. Several years ago when it was first——

Mr. LITTON. So the Authority has been waiting several years to get a decision from the Federal Power Commission?

Mr. PETERSON. I believe that may not entirely be the Federal Power Commission's fault. I believe there are some problems with supporting information. You might want to hear from the Federal Power Commission on that subject because I am not familiar with that detail.

Mr. LITTON. Would you be willing to stay with us so that perhaps we could ask you to come back for some questions later?

Mr. PETERSON. Yes, sir, I would be glad to stay.

Mr. LITTON. At this time I would like to call on Mr. Daniel Goldstein, the Assistant General Counsel for Legislation of the Federal Power Commission.

I think we may wish to have Mr. Peterson return for some questions later as those questions come up.

Mr. GOLDSTEIN, we are happy to have you with us today and we are looking forward to your testimony.

Mr. GOLDSTEIN. Thank you, Mr. Chairman.

STATEMENT OF DANIEL GOLDSTEIN, ASSISTANT GENERAL COUNSEL, FEDERAL POWER COMMISSION, ACCOMPANIED BY RONALD CORSO, HEAD, SECTION OF APPLICATIONS, DIVISION OF LICENSED PROJECTS, BUREAU OF POWER, FEDERAL POWER COMMISSION

Mr. GOLDSTEIN. Mr. Chairman, it is a pleasure to appear again before this subcommittee.

One year ago I appeared before you in connection with your hearings on H.R. 15320 [93d Congress], a bill to exempt the joint licensees of FPC project No. 2305 from the payment of any annual charges imposed for use, occupancy, and enjoyment of Federal lands within the Sabine National Forest, Tex., in connection with operation of the Toledo Bend Dam and Reservoir on the Sabine River, a boundary stream between the States of Texas and Louisiana. Today I appear before you on H.R. 1126, a bill designed to achieve the same purpose.

I believe a brief description of the Toledo Bend Dam and Reservoir might be of interest to the subcommittee. The project is located on the Sabine River in Newton, Sabine, Panola, and Shelby Counties Tex., and Sabine, Vernon, and De Soto Parishes, La., some 156 miles upstream from the mouth of the Sabine River where it meets the Gulf of Mexico at Sabine Lake.

The project consists of: a rolled earth-fill dam about 8,600 feet long with a maximum height of 110 feet, at normal pool elevation of 172 feet, a water surface area of 181,600 acres, a total storage of 4,477,000 acre-feet of which 1,554,200 acre-feet will be active storage for power generation, and a powerhouse containing two 40,375 kilowatt generators. The Toledo Bend project affects and utilizes between 35,000 and 36,000 acres in the Sabine National Forest for which the Commission has assessed annual charges of \$84,000, or approximately \$2.40 per acre. This project uses more Federal land than is utilized for any other water power project licensed by the Federal Power Commission.

Substantially all the power produced at the project is sold to the Gulf States Utilities Co., Central Louisiana Electric Co., Inc., and Louisiana Power & Light Co. The power sale contract terminates on the 50th anniversary of the beginning of production of full power or on April 30, 1918, whichever is first.

To put the matter in proper perspective I should like to mention in brief the chronology of the joint licensees' petition for exemption from annual charges and how it has been processed by the Federal Power Commission. Each year, commencing in 1970, the licensees have petitioned for exemption from annual charges for occupancy and use of Federal lands. By order of October 8, 1974, the petition was set for hearing and a prehearing conference was scheduled for October 29, 1971. A hearing on the application was held before Presiding Administrative Law Judge Kane on May 12, 1975. The matter has been before the law judge for decision since August 4, 1975. Under the Commission's Rules of Practice the law judge will initially decide whether the licensees qualify for the claimed exemption. Then the

staff and the applicants may appeal to the Commission, which will ultimately decide the matter.

This committee has received the report of the Federal Power Commission on H.R. 1126 (copy attached) which concludes that: Since the joint licensees' application for exemption from annual charges is pending before this Commission and the exemption involves complex issues of fact and law, to be determined by the Commission in its judicial capacity, it would not be proper for this Commission to comment on the merits of this bill.

On October 9, 1974, my former associate, Donald A. Sander, also appeared before this committee and described in considerable detail the legal standards and precedents applicable in a proceeding where the licensee claims exemption from annual charges. He pointed out, at that time, that the joint licensees for Project No. 2305 were basing their claim on the ground that the power generated was sold to the public—the ultimate consumers—without profit. Since this matter is now before a law judge for decision I believe it would be inappropriate for me to discuss with you the litigated questions of law and fact on which testimony was received at the hearing and the legal arguments of the licensees and of staff counsel made in their respective briefs to the presiding administrative law judge.

Mr. WEAVER. Thank you, Mr. Goldstein.

The power is sold to two private utilities?

Mr. GOLDSTEIN. It is sold to three private utilities.

Mr. WEAVER. Three private utilities who in turn sell it to their retail customers?

Mr. GOLDSTEIN. Yes. It goes into their grid and it goes all over. As a physical matter, electricity moves with the speed of light and all companies east of the Rocky Mountains are electrically tied together. You cannot tell at any one moment where power from a source is going, but it is all in one gigantic network.

Mr. WEAVER. I understand that. But the wheeling credit is given to these three private utilities and put on their books as——

Mr. GOLDSTEIN. The private utilities purchase the power and then resell it to their customers.

Mr. WEAVER. They resell it at a profit?

Mr. GOLDSTEIN. I assume so.

Mr. WEAVER. I mean, they attempt to make a profit.

Mr. GOLDSTEIN. Yes, sir.

Mr. WEAVER. How about the uses of the water? Perhaps you are not an authority on the use of the water.

Mr. GOLDSTEIN. No; I am not. I have with me, at my left, Ronald Corso who is the Head, Section of Applications of our Division of Licensed Projects.

I am advised that the water is not used for irrigation or in any significant way for municipal storage for consumptive uses. It is used for recreation and navigation.

Mr. WEAVER. It is not used for municipal uses. I am not quite sure I see the purpose for this dam—its fundamental purpose.

Mr. GOLDSTEIN. I think the fundamental purpose was to create a vast recreation area and took——

Mr. WEAVER. Recreation was its primary purpose?

Mr. GOLDSTEIN. I would think so.

Mr. WEAVER. I see.

Mr. GOLDSTEIN. But apparently, like a lot of irrigation projects in California, the power revenues over time, in effect, assured financing of the whole project.

Mr. WEAVER. Right. So you do not know what they sell these 80 megawatts for—what the rate is on that?

Mr. GOLDSTEIN. No; I do not have it. It is a 50-year contract, which actually extends beyond the life of the license.

Mr. WEAVER. Do you know the charge per kilowatt-hour?

Mr. GOLDSTEIN. We could supply it for the record, Mr. Chairman, if you wish.

Mr. WEAVER. I think other witnesses may know that.

Mr. Symms?

Mr. SYMMS. No questions, Mr. Chairman.

Mr. WEAVER. Mr. Krebs.

Mr. KREBS. No questions.

Mr. WEAVER. Thank you very much, Mr. Goldstein. Perhaps if you could stay here for a while—we would appreciate it.

The next witness to appear before us will be Mr. Sam Collins, assistant general manager, Sabine River Authority, Orange, Tex.

Would you like to be accompanied by Mr. R. D. Morgan, chief engineer? Would you both like to come before us? We appreciate that very much.

We appreciate your traveling here back to Washington.

Do you have a statement to make, Mr. Collins?

STATEMENT OF SAM F. COLLINS, ASSISTANT GENERAL MANAGER, SABINE RIVER AUTHORITY OF TEXAS

Mr. COLLINS. Members of the committee, I am Sam F. Collins, assistant general manager of the Sabine River Authority of Texas. I appear before you today on behalf of our State agency to offer our full support on H.R. 1126 and H.R. 6748.

These bills seek to exempt the Sabine River Authority, State of Louisiana and the Sabine River Authority of Texas from further charges and waive any previous obligations for the use of lands necessary for the Toledo Bend Dam and Reservoir Project.

The Federal Government in recent years has encouraged the States and local governments to assume a larger role in the conservation of the Nation's resources and continues to urge that the costs of such projects be borne primarily by those receiving the benefits.

The Toledo Bend Dam and Reservoir Project is a major conservation project undertaken solely by the States of Texas and Louisiana through their agencies, the Sabine River Authorities. One of the major beneficiaries of this project, as is clearly evident, is the Federal Government.

The use of approximately 34,000 acres [note exhibit "A"] of U.S. forest lands was necessary for the reservoir project. Of the 34,000 acres, a portion is now flooded and is used by people for boating, fishing and skiing; the remaining acreage is flooded only occasionally and is used for growing timber and providing food crops for waterfowl; as well as by many thousands of Americans for camping, picnicking and other outdoor recreation purposes along over 260 miles of scenic shoreline created by the reservoir on national forest lands [Note exhibit "B"].

The U.S. Forest Service has, for several years, sought to implement on national forest lands the multiple-use concept. We feel that the lands used for the reservoir are a part of that concept. We feel that No. 1; the lands were not "taken" for the project but were enhanced along with the adjoining lands and No. 2; the assessment of a charge for the use of the lands originally was improper and contrary to the urging of the Federal Government for those receiving the benefits of the project to participate in its cost.

Further, in assessing the charges, the total value of the land "as if taken" in fee was considered and no value was placed on the special and direct benefits accruing to the U.S. Government and national forest lands used in the project and to the adjoining lands comprising many thousands of acres along over 260 miles of shoreline. Since the project was constructed the land values have skyrocketed from \$40 to \$60 per acre to \$2,000 to \$3,000 per acre [note exhibit "C"] along the shoreline. The Federal Government acknowledges this enhancement and has acquired, since the reservoir was built, additional lands along the shoreline at these prices. With no monetary compensations, the Federal Government has been made whole many times over in direct benefits and in addition will continue to be compensated in all ages to come with indirect as well as direct benefits including scenic enhancement, increased fish and wildlife propagation, broadened recreational uses, water conservation, et cetera, et cetera.

In addition to the direct and indirect benefits accruing to the lands involved in the project, many other benefits to the Federal Government and the general public are evident. These include the following:

1. Decreased annual maintenance costs on the Sabine-Neches waterway as a result of siltation control of the project.
2. Water conservation and improved water quality.
3. Low cost hydroelectric power.
4. Water storage necessary for future electrical generating plants.
5. Benefits to the economy in western Louisiana and East Texas which has changed from [note exhibit "D"], a severely depressed and declining sawmill economy to a growing economy based on recreation, tourism and industry attracted by the project.

The financing of a project of the magnitude of the Toledo Bend project would have been a major task with Federal assistance. Without any Federal funding it was an even greater undertaking. Only \$300,000 annually is available for operation and maintenance of this project. This fixed amount is insufficient for the desired level of maintenance and our being required to pay the \$84,000 to the U.S. Government general fund would further deplete O. & M. funds. This would cause the maintenance and operation to be seriously inadequate and would curtail any further betterment of the project.

One might ask why the authorities would agree to such a stipulation for payment in the first place if only to object at a later date. When this stipulation was included in the Federal Power Commission permit, serious objection was voiced in 1963 and many [note exhibit "E"] appeals have been made to have it excluded. The urgency of the project and time necessary to resolve the matter dictated that the project would begin, but with the stipulation for payment and with the understanding that further appeal would be made on this issue. Moreover the policy which prevailed at the time was applicable

to private development. We were a "first" as a Government entity to build a project of this magnitude. We point out, again, we too are public and Government. The issue has been appealed repeatedly since that time to the Federal Power Commission and, as recent as 4 months ago, but without relief. We therefore seek this relief by legislation.

In summary, we believe that Congress should enact H.R. 1126 or H.R. 6748 for the following reasons:

1. The States acting through their respective agencies are carrying out a Federal goal for such conservation projects as Toledo Bend to be accomplished at State levels, a goal that will not be reached without reasonable and active cooperation on behalf of the Federal Government.

2. The Federal Government, as shown, is a major beneficiary of the project and has made no monetary contribution which is seemingly inconsistent with the policy now urged by many in the Federal establishment.

3. The national forest lands for which an annual fee is being required were not taken but are still federally owned, and used by the public in accordance with the multiple use concept; and the adjoining national forest lands have been increased in value so that the Federal Government has been made more than whole for any use of lands for the project.

4. Numerous other indirect benefits have accrued to the Federal Government in the form of a better economy in what was a depressed area, before the reservoir was built, improved water quality and siltation conditions, et cetera.

5. The annual payment creates a hardship on agencies of Louisiana and Texas who have built and are now operating a major water conservation project without any Federal funding, and the continued imposition of such fees will seriously affect future operation and maintenance of this project and might possibly affect the plans of other States in providing water resources development through real and practical State/Federal partnership relations.

For the above reasons, we urge your favorable consideration of this bill, and we are attaching for your further study of this matter several letters, statements and maps as evidence of our efforts in this matter.

Thank you.

[The exhibits A through E are held in the committee file.]

Mr. LITTON. We appreciate the gentleman's testimony.

Mr. Symms, do you have any questions?

Mr. SYMMS. No questions, Mr. Chairman.

Mr. LITTON. Mr. Weaver?

Mr. WEAVER. You say, Mr. Collins, that the power companies pay roughly \$2 million a year for the 80-megawatt capacity of the dam?

Mr. COLLINS. That is correct. This is a peaking plant, as I said, sir. We do not have that much water for power generation, so the peaking possibilities is what it is used for.

Mr. WEAVER. That comes out to roughly \$2 a megawatt hour, according to my calculations. That would be comparable to a penny a

gallon for gasoline—1 to 2 cents a gallon for gasoline. That is a pretty cheap price.

Mr. COLLINS. For the power, yes, sir.

Mr. WEAVER. When did this dam start producing power?

Mr. COLLINS. We started producing power on a testing basis in 1969. We really got into production in 1970.

Mr. WEAVER. Since that time, has the dam been putting out full power?

Mr. COLLINS. Yes, sir. We have been producing as much as the capacity.

Mr. WEAVER. Mr. Collins, you said that the Forest Service owns roughly 250 miles of the shoreline—the 1,200-mile shoreline. Who owns the other thousand miles of the shoreline?

Mr. COLLINS. Private individuals and chemical companies.

Mr. WEAVER. The people who own the land—their land value has obviously gone up quite a bit?

Mr. COLLINS. Yes. It has been enhanced, too, sir.

Mr. WEAVER. A great deal. Is the water sold by the authority?

Mr. COLLINS. As yet we have sold very little of the water.

Mr. WEAVER. You said it is taken out down river?

Mr. COLLINS. Yes, sir, that is right.

Mr. WEAVER. And \$30 million of the \$70 million were covered by your bonding? It is a \$70 million project?

Mr. COLLINS. That is correct, yes, sir. The power bonds initially were \$30 million and then we had to sell an additional \$4 million. The power companies backed about \$34 million through the power bonds.

Mr. WEAVER. Are those tax-exempt bonds?

Mr. COLLINS. The initial ones? Yes, sir.

Mr. WEAVER. And the balance of the money—roughly \$35 million—was put up by the States of Louisiana and Texas?

Mr. COLLINS. Yes, sir. The financing of this project is very complicated, but I will try to be—

Mr. WEAVER. I do not want to belabor it, Mr. Collins.

Mr. COLLINS. Generally the two States put up the funds.

Mr. WEAVER. That concludes my questions, Mr. Chairman.

Mr. LITTON. Mr. Krebs?

Mr. KREBS. As I understand your testimony, the authority has a contract for close to \$2 million with the power companies. Is that correct?

Mr. COLLINS. Yes, sir. That is correct.

Mr. KREBS. And that contract runs for how many years?

Mr. COLLINS. That contract was for 50 years, I believe.

Mr. KREBS. It has roughly 45 years to go?

Mr. COLLINS. I believe they started payments in 1968, so that would be about right. Yes, sir.

Mr. KREBS. Let me ask you this—if the Congress should not grant the relief that you are seeking, where would this money come from?

Mr. COLLINS. That is a good question, sir. The Texas Authority has no taxing powers and we do not get any appropriations from the State. We act almost like private enterprise—we are a State agency as such—it is quite unique in the State of Texas—but I do not know

where we would get the money from. I do not know what happens when you do not pay off on something like this.

We get about \$400,000 a year for the M. & O. of the project—\$100,000 of that goes to operate the powerplant, so we have about \$300,000 to try to take care of the maintenance and operation of the reservoir. To date, that is not even doing the job.

I really do not know where we would get the money.

Mr. KREBS. I believe you said you have no taxing authority?

Mr. COLLINS. No, sir. We do not have any taxing powers in the State.

Mr. WEAVER. Will the gentleman yield?

Mr. KREBS. I will be glad to yield.

Mr. WEAVER. You have an income of \$1.9 million from the sale of power. You have expenditures of \$500,000 for M. & O.—

Mr. COLLINS. About \$400,000.

Mr. WEAVER. \$400,000.

Mr. COLLINS. About \$1.5 million go to pay off the bonds, sir.

Mr. WEAVER. And \$1.5 million to pay off the bonds.

Mr. COLLINS. Yes, sir.

Mr. WEAVER. I thank the gentleman for yielding.

Mr. KREBS. And when will these bonds be paid off?

Mr. COLLINS. The initial ones will be paid off in about 40 years—2008, I believe it is, sir.

Then, there were some additional bonds that were sold—we call them project completion bonds. I imagine we may have it fully paid in 2015.

I would say about that date. It was so far down the line, I was not really too concerned about it—when you are looking way down the line like that.

The power companies pay the payments every year whether they get even 1 watt of power out of it.

Mr. KREBS. Thank you very much, Mr. Collins.

Mr. LITTON. I noticed you said in your testimony that without any Federal funding you might be in trouble. You said that the \$300,000 available annually is for the O. & M.; that is, operation and maintenance of this project.

Do you pay the \$84,000 a year out of that \$300,000?

Mr. COLLINS. We have not yet paid it, sir. We have not paid any of it.

Mr. LITTON. It has not yet been paid?

Mr. COLLINS. No, sir. We have been asking for the exemptions every year, and as a consequence, every time we get a bill, we turn around and ask for an exemption. We ask to be heard on our request for an exemption—we have just been holding off. They have allowed us to wait until the subject has been decided.

Mr. LITTON. How long has this been going on?

Mr. COLLINS. Since 1969, but since we were in a testing period we are not going to pay that year. So I guess we have been going on since 1970.

Mr. LITTON. Which means that you may owe them five times—

Mr. COLLINS. Yes, sir. I would imagine that is what our bill is, something like that.

Mr. LITTON. I notice in testimony from our colleague, Mr. Waggoner, he said that:

The Federal Power Commission under a proposed rule change would increase the annual usage fee formula, which means the Sabine River Authority could be charged as much as \$525,000 annually if the proposed rule change is adopted.

Mr. COLLINS. Yes, sir.

Mr. LITTON. You have indicated in your testimony that you have about \$309,000 available annually for the operation and maintenance of this project. Obviously, if you had to come up with a half million a year for the Federal Government, you would not have enough in the operation and maintenance budget. Where would you get the additional revenue?

Mr. COLLINS. I do not know, sir. Honestly, I just do not have the slightest idea because we have no taxing powers. I guess we could break the contract with the power companies—that would take a pretty good lawsuit. I do not know where we would get it, sir.

Mr. LITTON. What would happen if the \$84,000 that supposedly is due to the Government each year for the last 5 years—if it is decided that that is due to be paid to the Federal Government, where would those funds come from?

Mr. COLLINS. I do not know, sir. I guess the Federal Power Commission could repossess the project. I do not know whether they would like to come take it over—sometimes I would be happy for them to take it over.

I guess somewhere down the line if we ever sold enough water, we might be able to come up with the funds. Right now I do not have any water sales in mind—I do not have any contracts.

I do not know where we would get the money, to be honest with you, Mr. Chairman.

Mr. LITTON. I notice the testimony from Mr. Peterson—the Deputy Chief of the Forest Service of the USDA—that he suggested that this “should be decided on its merits under the Federal Power Act by the Federal Power Commission, rather than through special legislation such as H.R. 1126” that is, before the subcommittee.

How long has this been pending—since 1969?

Mr. COLLINS. 1969–70, yes, sir.

Mr. LITTON. If we continue to—continue to permit this to stay in the hands of the Federal Power Act and wait for the Federal Power Commission to make a decision, would you have any idea how long we might have to continue to wait?

Mr. COLLINS. All I can go by is the past action, Mr. Chairman. It has not been taken care of too quickly in the past.

I can understand that administrative agencies have other problems. Of course, I am sure that the Federal Power Commission has greater problems than this before it. But to us, we feel that it is very important.

I would hate to anticipate what action they might take.

The hearing the subcommittee gave us last year on the bill—it might be coincidence—but almost immediately we had a notice that we were going to have a hearing before the Federal Power Commission. I do not know whether that helped to bring it about faster; I am sure it was just a coincidence.

Mr. LITTON. I am sure it was.

The testimony from Mr. Peterson suggests that it is not the fault of the Federal Power Commission as to why it is taking so long. Would you care to comment on that? Would you like to suggest that perhaps it was the fault of the authority as opposed to the Federal Power Commission?

Mr. COLLINS. We tried to provide them with all the information that was requested—going into the money details—how much was taken in and what was involved. In fact, in 1972, I believe, they sent a team down to Texas and Louisiana and went through the books of the power companies and the authorities to determine what funds were available—to see whether a profit was being made.

I do not know if this was what Mr. Peterson was talking about. We tried to provide them with all the information; we tried to provide them with detailed figures showing there was no profit made. During the hearing they kept telling us that we still had not made our case. They never would say what we had to have except that we were not making a case.

This might be what Mr. Peterson is referring to.

Mr. LITTON. If time permits, would you be willing to stay a little longer and perhaps we could have both you and Mr. Peterson respond to questions?

Mr. COLLINS. Yes, sir. I would be happy to stay.

Mr. LITTON. Our next witness is Mr. R. D. Morgan, the chief engineer for the authority.

Mr. Morgan, we are happy to have you before the subcommittee and we are looking forward to your testimony.

Mr. MORGAN. Thank you, Mr. Chairman.

STATEMENT OF R. D. MORGAN, CHIEF ENGINEER, SABINE RIVER AUTHORITY, BATON ROUGE, LA.

Mr. MORGAN. I am R. D. Morgan, chief engineer of the Sabine River Authority, State of Louisiana. The authority, an agency of the State government, is responsible for the development and management of the natural resources of the portion of the Sabine River and its watershed that adjoins or lies within the State. The authority has cooperated together with the Sabine River Authority of Texas to jointly construct a water supply and hydroelectric project on a portion of the stateline reach of the Sabine River. This facility, known as the Toledo Bend project, was constructed at a cost of \$70 million, all of which was funded by the two States by a combination of revenue bonds and allocations of other funds from the States' own resources. No Federal funds were used in the construction of the project.

A license was granted by the Federal Power Commission for project 2305. Among its conditions is a requirement that the authorities pay \$84,000 annually to recompense the United States for the use of the national forest lands inundated by the waters of the reservoir. The legislative source of authority for the imposition of this fee is in section 10, paragraph E, of the Federal Power Act, codified as 16 U.S.C. 803. At the time the license was granted it was the practice of the Federal Power Commission to establish the annual charge for use of Government lands computed at 4 percent per annum with a land value of \$60 per acre. Accordingly, the annual charge was set by the Commission at

\$2.40 per acre, \$84,000 for an estimated 35,000 acres. Section 17 of the Federal Power Act specifies that the annual charges thus received shall be distributed as follows: 12½ percent thereof is appropriated to be paid into the Treasury of the United States and credited to miscellaneous receipts, 50 percent of the charges arising from the licenses for the occupancy and use of public lands and national forests shall be paid into reserve and appropriated as a part of the reclamation fund created by the act of Congress known as the Reclamation Act approved June 17, 1902, and 37½ percent of the charges arising from such licenses and fees shall be paid by the Secretary of the Treasury to the State within whose boundaries any of such lands are located. The effect of the foregoing is a perplexing dilemma wherein the State of Louisiana and State of Texas equally will have to pay the fee whereas 37½ percent of the total fees thus paid will be returned solely to the State of Texas for use as may be determined by the Texas Legislature with no return possible to the State of Louisiana.

The authorities have made application to the Federal Power Commission for relief under section 11.24 of the regulations under the Federal Power Act which purportedly provides for an exemption from payment of fees by a licensee if the power is being sold at no profit. While it is felt that the fact that the authorities do not make a profit from the sale of power has been established, the Commission has not reached a decision on the request. Applications have been submitted for each of the calendar years 1970, 1971, 1972, 1973, and 1974. A hearing on the application for 1970-73 was conducted by the Federal Power Commission before an administrative law judge on May 12, 1975. No decision has been rendered as of the date of this writing.

REASONS THE AUTHORITIES SHOULD BE EXEMPT FROM ANNUAL CHARGES

1. We believed that Congress, when it enacted the Federal Water Power Act, intended to encourage the development of hydroelectric power by the states and municipalities. We also feel that the exemption provided for in section 10(e) of the act were adopted to this end. Correctly interpreted the act provides for exemption from annual charges to States or municipalities who sell power at no profit and in this manner encourages such development.

The Federal Power Commission adopted a regulation, 18 CFR 11.24(e), which effectively amended the law to include the requirement that the State or municipality show that power purchased for resale generated no profit for the purchaser. This is patently in conflict with the intent of Congress. It places an unacceptable burden on the licensee and will serve to deter this type of enterprise. The authorities have applied for relief every year since the project went operational in 1970 and have yet to receive a final decision from the Commission. We believe that the only solution to the apparent impasse between the authorities and the Federal Power Commission is for the Congress to enact H.R. 1126 which will clarify the intent of the law.

It has been suggested that the proposed legislation would create inequities in relation to other licensees and that an undesirable precedent would be set. We believe that a desirable precedent has

already been set where the two States working through their agencies, the Sabine River Authorities, have cooperated together to construct, at a cost of \$70 million, a project of great national significance and value. We know of no other project in the Nation of the scope and cost of the Toledo Bend project that has been undertaken without at least partial Federal assistance. Accordingly, we believe that the proposed legislation establishes no undesired precedent that has any relation to other licensees of the Federal Power Commission.

2. We find it difficult to see any justice in the working of the act as interpreted by the staff of the Federal Power Commission wherein the liability of the authorities for the payment of substantial annual charges is contingent upon the possibility that one of the three regulated public utility companies to whom the power is sold have realized a profit on the resale of even 1 kilowatt-hour of the output of the project. The authorities have adequately established that they make no profit on the sale of electricity. Actually we have shown that, through the authorities, the project costs the taxpayers of the two States more than \$1.5 million annually in excess of all revenues. Staff counsel, in his brief submitted in connection with the hearing of May 12, 1975, admits that we have effectively demonstrated that authorities do not make a profit from the sale of the power.

3. In their arguments at the hearing, staff counsel emphasizes that in order to qualify for the exemption the authorities must prove that there was no profit earned by any one from the sale of project power. This power, a very small part of the total load of the companies, is introduced into their systems and is thereafter physically indistinguishable from all other electricity in the systems, including that produced by their own plants and purchases from other sources. It is not possible to determine the final destination of any of the power that our project puts into the system. To prove whether or not the companies made a profit on the part of our power sold to their wholesale, industrial, commercial, or residential customers is difficult enough, but the further requirement that we show that the companies' wholesale customers who buy for resale do not make a profit on the power which may or may not come from Toledo Bend appears, to us, impossible.

We do not believe the Congress intends to impose such an exercise in futility upon the State and municipalities. This sort of bureaucratic nonsense can only serve to further thwart the efforts of the Congress to encourage the kind of enterprise and initiative on the part of States and municipalities as is represented by the Toledo Bend project. According to the staff, the burden of proof rests with the licensee and we submit that to effectively establish such proof is practically impossible.

4. The authorities do not have funds available from which to make these payments. As stated above, the project costs the two States in interest, amortization, operating and maintenance costs more than \$1.5 million annually in excess of revenues. Currently this excess cost is being borne by the taxpayers of the two States through the two authorities. If the annual charge remains in effect, the authorities will have four alternatives:

(a) Ask the States' taxpayers to bear the additional costs through appropriations from the States' treasuries.

(b) Attempt to renegotiate their contracts with the power companies, seeking to increase payments to the authorities for power which additional costs will undoubtedly be borne by their customers—ultimately the taxpaying consumers.

(c) Either of the first two alternatives stated above will be so difficult to accomplish that the more likely course will be to take the money from less than adequate operation and maintenance funds. This will result in the reduction of vital maintenance work. Without proper maintenance the project will deteriorate rapidly and in a short while constitute a serious hazard, jeopardizing the lives and property over a large area.

Presently available for the maintenance and operation of the project is \$400,000 per year from the power payments from which \$100,000 per year is paid to the power companies to operate the powerplant. This leaves \$300,000 for all the maintenance and upkeep. The fund has, so far, proven scarcely adequate. The deduction of an additional \$84,000 to pay rental on publicly owned lands reduces the maintenance fund to an unacceptable level.

On October 30, 1974, the Federal Power Commission issued a "Notice of Proposed Rulemaking" wherein increases of annual charges will be considered. The least of the proposed new rates will increase our annual charge to \$315,000 per year (alternatives A, D, and E of the Notice of Proposed Rulemaking).

(d) The fourth alternative is to default in this obligation and accept whatever consequence that may derive from a failure to make the payment.

5. The Toledo Bend project has created a tremendous recreation benefit to the United States of a type and nature that would be classified as a nonreimbursable expense of up to 15 percent of the cost of the project had the project been constructed by the Corps of Engineers or other Federal agency. The project is located in an area of great natural beauty and has a shoreline of about 1,250 miles, much of which is deeply indented and heavily wooded. Drawdown of the reservoir for power generation will not exceed 10 feet and a drawdown in excess of 9 feet will not prevail for more than 5 percent of the time. The reservoir is readily accessible and has a population within a 70-mile radius of approximately 1,200,000. It is conservatively estimated that the annual attendance for recreation will be 3 million visitor-days. It is estimated that recreation expenditures induced by the project will be about \$12,500,000 per annum. It is believed that the benefits accrued from the project for fish and wildlife and recreation on a similar Federal project would be sufficiently large to justify a minimum of \$7 to \$10 million of the project cost on a nonreimbursable basis. In effect, then, the States of Texas and Louisiana, through their respective agencies, are providing a national benefit in the magnitude of \$10 million without cost to the Federal Government or, in turn, its taxpayers. It should also be noted that Public Law 89-72 permits the U.S. Government's participation in the recreation, and fish and wildlife enhancement up to 50 percent of the cost of separable cost of recreational development and all of the joint cost allocated to recreation. At the present time 32 sites are planned for recreational development in the Toledo Bend Reservoir. Seven of the Texas sites are proposed for development by the Federal Government through

the U.S. Forest Service. Area proposed for development by Sabine River Authority of Louisiana is 2,734 acres; by the Sabine River Authority of Texas, 760 acres; and by the U.S. Government Forest Service, 1,939 acres.

6. The U.S. Forest Service has remaining in the Sabine National Forest after the inundation of the lands affected by Toledo Bend approximately 250,000 acres of land. The shoreline created by the Toledo Bend Reservoir adjacent to the Sabine National Forest lands is approximately 260 miles in length. Viewed from the point of view of the individual landowner, the U.S. Government has enjoyed and will enjoy as a result of the reservoir a tremendous gain in value of its land holdings by reason of the construction of the reservoir. For example, the lands bordering the lake which prior to the construction of the reservoir were valued at approximately \$40 per acre now have an indicated market value of approximately \$1,088 and up per acre to an average 2-acre depth. A rough computation based on shoreline mileage to a 2-acre depth indicates that 13,150 acres thus made into lakeshore acreage would now be valued at \$14,300,000, as opposed to their original value of \$526,000. The estimated value of the lands to be inundated in the amount of approximately 35,000 acres based upon an average value of \$40 per acre would be \$1,400,000. These facts alone would seem to justify an exemption of any fees for the use and enjoyment of the lands that are inundated. Certainly a private owner would view the matter in such fashion.

7. Hydroelectric power makes use of a recurring source of energy rather than consuming our rapidly dwindling supply of fossil fuel. Its generation is not accompanied by pollution of atmosphere or water supply and is a small step forward in solving the problem of protecting the environment as well as alleviating the present critical shortage of energy.

8. It has been suggested that the act might be inconsistent with title V of the act of August 31, 1951 (65 Stat. 290) in which the sense of Congress was expressed that fees and charges for the use of Federal property and services be assessed the users. No fees or charges are assessed the U.S. Corps of Engineers for the use of national forest lands in a multiple-purpose project such as the Sam Rayburn Dam a few miles to the west of Toledo Bend, obviously because the corps is a Federal agency. The Sabine River Authorities are agencies of the two States as the Corps of Engineers is an agency of the Federal Government. The States derive their powers and existence from the constitution and legislative acts. As such, these States are governmental agencies as is the Corps of Engineers and should be so considered by the Congress. The two Sabine River Authorities are agencies and instrumentalities of the States and, consequently, are governmental agencies, and since the Corps of Engineers does not pay user fees, these authorities should not be required to pay them.

The one question really germane to the proposed exemption of the authorities from annual charges for use of Government lands is "Does the Federal Government want to encourage States at their own expense to develop water conservation projects by making available its necessary forest lands at no cost, the same as would be the case if the Federal Government through a Federal agency constructed the project at the expense of the taxpayers of the Nation?"

9. The feasibility study of the Toledo Bend Dam and Reservoir project prepared by Forrest & Cotton, consulting engineers of Dallas,

Tex., and reviewed by the Corps of Engineers, Galveston office, establishes the fact that the construction of the dam will result in a direct financial benefit to the United States by reason of the fact that silt normally carried by the river and deposited in the Sabine-Neches Waterway in the vicinity of Port Arthur and Orange will be retained behind the Toledo Bend Dam. This aspect of the Toledo Bend Dam and Reservoir project is discussed in volume I of the feasibility report under navigation benefits. A reproduction of the four pertinent pages is attached as exhibit No. 4. On page XII-4, you will note that the annual benefit was indicated as \$66,000. This is based on a cost of 20 cents per cubic yard for maintenance dredging annually of about 330,000 cubic yards of silt from dredged channels. Construction costs have taken a sharp rise since the above mentioned report was made and the value of the reduced dredging will be in excess of \$100,000 at present day prices.

10. The impounded waters of the reservoir provide an inland lake with navigable waters for a distance of about 60 miles. The report on the Comprehensive Basin Study Sabine River and Tributaries, Tex. and La., completed in December 1967 indicates that the construction of a barge channel from the mouth of the river to Longview, Tex., will become economically justifiable in the year 2000 at which time the lake created by this project will constitute an important segment in the navigation system.

From the foregoing brief analysis of the impact of the Toledo Bend Dam and Reservoir project upon the Nation, it will be seen that very substantial and very real benefits do flow to the Federal Government and to the Nation at large as a result of its construction, the cost of which is being borne solely by the States of Texas and Louisiana through their respective agencies.

We believe Congress expected that the language it used in section 10(e)¹ was more than sufficient to allow these authorities an exemption from annual charges under the situation here presented: they operate at a considerable loss; they market power in the only way feasible through the systems of three regulated public utilities; those utilities by regulatory design are not to make a profit on such purchased power and are unanimous in their view that they in fact have not made a profit; there is no information readily available concerning the 58 resale customers of these three public utilities. However, the Federal Power Commission staff counsel persists in the interpretation herein discussed and we have no assurance that the Commission will not also adopt this view. Accordingly, we respectfully petition the Congress to adopt H.R. 1126 exempting the authorities from all annual charges.

EXHIBITS

In support of certain statements included in the above, we submit the following list of exhibits:

1. Extract from "Initial Brief of Commission Staff Counsel" in connection with hearing on application for exemption before the

¹ In pertinent part, sec. 10(e) provides: "That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; for recompensing it for the use, occupancy and enjoyment of its lands or other property: . . . provided further, that licenses for the development, transmission or distribution of power by States and municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit."

Federal Power Commission, showing on page 5 that counsel expects detailed proof that utilities purchasing the power could not make a profit and on page 6 that "staff does not dispute the contention that authorities themselves showed no profit * * *".

2. A copy of "Application for Exemption" for calendar year 1974 showing on page 8 that authorities operated at an annual cost of \$1,516,739.70 in excess of revenues.

3. Economic indicators showing effects of project on economy of Louisiana portion of the area affected by the project.

4. Copy of pages XII-1 through XII-4 of feasibility report for project showing the benefits to navigation in the estuaries of the Sabine River. Construction costs have risen sharply since the report was prepared in 1958 and it is now estimated that the total value of the reduction in dredging is approximately \$100,000.

5. A copy of the testimony of Mr. Norman D. Head, manager of rates for Gulf States Utilities Co., in the Federal Power Commission hearing which indicates that due to Government regulation of their rates, the power companies could not have realized a profit on the resale of project power. All they are entitled to is to recover their cost.

[The exhibits 1 through 5 are held in the committee file.]

Mr. LITTON. We appreciate your testimony, Mr. Morgan.

Mr. Morgan, would you remain? I would like to have Mr. Collins, Mr. Goldstein, and Mr. Peterson step forward.

Very briefly, there are a couple of questions I would like to get settled and then, we can move into markup.

There is some question with regard to where the funds would come with an operation and maintenance budget of \$300,000. Mr. Peterson, if the authority were to come up with the \$420,000 for the last 4 years at \$84,000 a year, and if the proposed rule change would come forward and they would have to come up with an additional half a million dollars a year, where would you suggest that the authority go for these funds?

Mr. PETERSON. I am not really too familiar with their financing. I understand that they do not have taxing authority but they are creatures of the two States. The two States would have to determine where the money would come from—whatever source the State wanted it to come from, I presume.

Mr. LITTON. It is my understanding though that you have suggested that the Federal Power Commission should have the authority in the normal administrative pattern.

Mr. PETERSON. Yes, sir. It is not unusual for States to be licensees of Federal power projects. There are a number of them throughout the country. Each State, of course, has a different way of handling the financing of the projects. Some issue bonds, some use other ways.

I would not presume to tell the States of Texas and Louisiana how they would do this, but it is usual for State agencies to pay a land use fee for Federal land involved in a Federal power project.

Mr. LITTON. Any other gentleman care to comment on that?

Mr. GOLDSTEIN. Mr. Chairman, there has been some talk this morning about this project being unique in that no Federal funds were used—there are quite a large number of publicly owned licensees that use Federal lands—PUD's, irrigation districts, State power authorities like the State Power Authority of New York or Santee Cooper project,

which are also self-financed. I do not understand—just factually, getting away from what is before the law judge—how this project is unique in that it is financed by the State.

Mr. LITTON. Do you know of any other project of this magnitude that is totally financed by the State?

Mr. GOLDSTEIN. I think that the Oroville project, the State of California, which is part of the aqueduct is many times larger than this project.

Mr. LITTON. Mr. Collins, would you care to comment?

Mr. COLLINS. The Oroville project is a specific act where the Federal Government put quite a bit of money into it.

I am familiar with the Oroville project in California because I studied their approach for the State of Texas. I know that particular one has quite a bit of funds. In fact, there is a specific act allowing the Federal Government to put the money in. The State built it out there, but the Federal Government helped.

If there are two States who have done this jointly and done this on their own—I am willing to hear from them.

Mr. LITTON. Mr. Goldstein?

Mr. GOLDSTEIN. Mr. Chairman, Mr. Corso advised me that with the Oroville project that the reservoir and powerhouse were financed by the State of California—some of the canals downstream from the project did involve some Federal moneys.

Mr. LITTON. Are you aware of any other project of this size, which was totally financed by the State government?

Mr. GOLDSTEIN. There is the Santee Cooper project in the State of South Carolina; there are the very large projects that the State of New York built—wholly financed by State funds. There are public utility districts, which are local entities that derive their legal status from States. In the State of California there are irrigation districts.

I cannot think of any project which is a joint venture of two States—this project involves a boundary stream.

Mr. LITTON. I have one other comment I would like to make. Then, perhaps Mr. Weaver and Mr. Symms would have some questions.

I am still trying to determine in my own mind why it has taken 5 or 6 years and we still have not been able to resolve the matter? Whenever I have a payment that I need to make to Uncle Sam, he does not give me 6 years' time in which to make that payment.

It was indicated by Mr. Peterson that it was not necessarily the fault of the Federal Power Commission that it was delayed for that period of time. It was suggested by Mr. Collins that it was not their fault that it took that long. Someone surely is to blame for it taking 6 years for this to be resolved.

Mr. Morgan?

Mr. MORGAN. When we first submitted our application for exemption it was accepted by the Federal Power Commission and we received no response. This went on until—I think—the year 1973. We felt that perhaps the Federal Power Commission would never force us to make the payments. We did not have the money to pay, so it was not paid.

We felt that we were getting along all right—that we did not have to pay.

In the past 2 or 3 years they sent us their dun for the money—which they did not actually force us to pay—but we submitted the information we thought was called for in the application. Then, we were told we did not have enough information. Then, we got the dun and then, we started trying to get the act passed because we felt we would never be able to pay it.

Then, came the hearing last year in May. That was the sequence of events.

Mr. LITTON. Mr. Goldstein, would you care to comment?

Mr. GOLDSTEIN. Mr. Chairman, I do not know exactly what has transpired. I am not familiar with all the events that took place in the 4 or 5 years.

However, we are a small agency and we have a great many matters before us. We have about 611 projects under license. As we all know, the gas supply problems of the agency have been acute and if there had been delay, I assume that—in part, at least—it was due to lack of personnel and funds.

Then, we have another problem where legally someone is asking for an exemption. The statute provides for annual charges with a proviso that there may be an exemption. So in lawyer-talk we have a burden of proof problem and I take it that the Commission staff's position has been that the burden is on the licensee to make their case.

Mr. LITTON. It would be your testimony, then, that the delay is because the authority has not made their case?

Mr. GOLDSTEIN. That is a possible explanation. I cannot give you a definitive explanation, Mr. Chairman, because I do not have enough information.

Mr. LITTON. But you were sent here to testify on behalf of the Federal Power Commission? Who in this room can respond to that question?

Mr. GOLDSTEIN. I do not think there is anybody who can give you a definitive answer, Mr. Chairman.

Mr. LITTON. We are trying to find out whether we should take the legislative route or leave it in the hands of the Federal Power Commission. It has been testified to by Mr. Peterson and others that we should leave it in the hands of the Federal Power Commission.

On the other hand, Mr. Collins and others would suggest that we pursue the legislative route.

If it is going to take another 6 or 7 years for the Federal Power Commission to make a decision, then, quite obviously we need to pursue another route.

Mr. GOLDSTEIN. Mr. Chairman, the hearing has been concluded, the last brief was filed August 4th. I would assume that in a time frame of a matter of months the law judge will decide the matter and then, there could be further appeal to the agency. We are talking probably about a year to wind up the whole matter.

Mr. LITTON. You are suggesting that it will take the Commission another year—

Mr. GOLDSTEIN. It might. I do not know. I cannot tell the Commission how to schedule their dockets.

Mr. LITTON. But it would be your opinion that a decision could be made within the next 12 months?

Mr. GOLDSTEIN. That is correct, sir.

Mr. LITTON. Would any of the other witnesses care to testify or comment on that?

Mr. PETERSON. Maybe I ought to clarify my earlier statement about the delay. I suggest that you might want to ask the Commission itself that question.

Last year Mr. Sander testified on behalf of the Federal Power Commission. He talked about the burden-of-proof requirement and about how they had not gotten adequate information. I was merely trying to reflect what I understood to be the situation.

It has been pointed out that this is not a simple case because it takes a lot of information—it is a complicated case.

Mr. LITTON. Any other members of the subcommittee have questions?

Mr. Weaver?

Mr. WEAVER. Thank you, Mr. Chairman.

Mr. Collins or Mr. Morgan: There is a hydroelectric capacity to stand about 750,000 megawatt-hours per year, but you stipulated that was peak power which leads me to believe that it does not operate in that capacity all year long. How frequently does the dam operate—2 hours a day?

Mr. MORGAN. Mr. Weaver, during the peaking power season—which is a 5-month period from May through September—it will operate about 6 to 12 hours a day depending on the load and so on. That is the season of the peak.

Mr. WEAVER. And during the other 7 months?

Mr. MORGAN. During the other 7 months, depending on the flow of the water, the amount of rainfall we have, then, it becomes a dump situation—where they have power in lieu of burning fuel.

We do not get 750,000 megawatts—

Mr. WEAVER. I am trying to establish that you do not—it appears that you do not. I am trying to establish how much power you do get.

Mr. MORGAN. I think the average—

Mr. WEAVER. During the 7 months, how many hours a day are you running it?

Mr. MORGAN. For instance, in October we probably will not run it at all. As November and December come along more water will become available, but somewhere around January it gets to run 24 hours a day.

Mr. WEAVER. Would you say it is running 50 percent of the year? Do you have the figures—

Mr. MORGAN. Here we have a list that Mr. Collins just handed me of the number of kilowatt-hours generated since 1969 when we started.

Mr. WEAVER. Could you give me the figures for 1 year? Do you have the figures for 1 year?

Mr. MORGAN. The biggest year was 411,000 megawatt-hours.

Mr. WEAVER. You are operating at about 60 percent.

Mr. MORGAN. Now that was the biggest year.

Mr. WEAVER. You are selling this power for about 5 mills per kilowatt-hour?

Mr. MORGAN. That is right.

Mr. WEAVER. Is there any way we can go back to the utilities and get them to increase their contributions? That is pretty cheap power.

Mr. MORGAN. Well, if you consider the year 1971 when they got

only 71,000 megawatt-hours it is not. The biggest year was 411,000; we had 121,000 one year. It will average about 214,000; something like that.

We have considered trying to renegotiate our contract with the power companies. This is one of the things that would have to be considered. If we renegotiate—the power companies are a regulated utility—the cost of this power is recoverable only as cost; they can only recover the cost.

Mr. WEAVER. What does the authority own? It owns the dam, does it not?

Mr. MORGAN. Yes, sir. We own the dam and the powerhouse.

Mr. WEAVER. How do you hold the reservoir land from the Forest Service? Is it on a lease basis?

Mr. MORGAN. No. The license gives us the right to flood—

Mr. WEAVER. You have a license to flood.

Do you hold any property in fee?

Mr. MORGAN. We own all the rest of it. We bought it.

Mr. WEAVER. You bought it?

Mr. MORGAN. All the rest of the reservoir area.

Mr. WEAVER. You do not own any shoreline?

Mr. MORGAN. No. No shoreline, except in Louisiana we own some recreational areas which we bought on the shoreline in addition to the other lands.

Mr. WEAVER. And those are what—parks now?

Mr. MORGAN. Parks, yes, sir.

Mr. WEAVER. Thank you, Mr. Chairman.

Mr. LITTON. Any other questions?

We need to move into markup on three other bills, so in the interest of time I would like to thank the witnesses for testifying. We appreciate your testimony.

[Whereupon, at 11:40 a.m., the hearing adjourned.]

[The following statement was submitted:]

STATEMENT OF HON. CHARLES WILSON, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF TEXAS

Thank you, Mr. Chairman, for the opportunity to come before your Subcommittee today to testify in support of legislation to exempt the Sabine River Authorities of Texas and Louisiana from charges for use of certain lands of the United States within the Sabine National Forest of Texas.

On November 5, 1963, the River Authorities accepted the terms of the license issued by the Federal Power Commission for the Toledo Bend project, but expressed concern regarding the stipulation requiring an annual charge of \$84,000.00. The Authorities stated at that time that their understanding was that they could petition for the adjustment of the charges at some later date. The matter of annual payment remained unsettled and in October 1979, the Authorities requested exemption from the payment on the basis that the power generated is distributed to the final consumer without profit.

The Toledo Bend Dam and Reservoir was constructed through the cooperation of the State of Texas and the State of Louisiana through their respective agencies, the Sabine River Authorities. The cost was approximately \$70,000,000 and was financed with no Federal assistance. I believe that we should encourage rather than discourage undertakings of this type which are accomplished without Federal funding.

The benefits of this project are significant to the nation as a whole as well as to the two States involved. The value of the Federal lands in the Sabine National Forest adjoining the reservoir are substantially increased by the reservoir. The construction of the dam reduces the annual cost to the Corps of Engineers in removal of

silt which normally would be carried by the river and deposited in the Sabine-Neches Waterway in the vicinity of Port Arthur and Orange, but is retained by the dam. The impoundment of the water for approximately seventy miles enhances the navigation potential of the river. This project has expanded the recreational opportunities for the area, and most significant at this time of energy shortages, electric power is provided for the area thereby reducing the requirement for fossil fuel.

In their action with the Federal Power Commission to seek relief, the Sabine River Authorities have indicated that with the revenues available for operation and maintenance under the Power Sales Agreement, they would not have sufficient funds to maintain and operate the project in a safe and orderly manner and to make the payments required under the license.

I believe that the total benefits to the nation are of such significance that every effort should be made to provide relief of the annual charges which are in question.

This matter has been pending far too long, and I do not believe early resolution is likely through the Federal Power Commission. Even the Administrative Law Judge for the Commission indicated at one of the hearings that legislation might be the proper means to resolve this problem. I agree that legislation is needed. I ask that your Subcommittee approve the proposed legislation and bring it before the full Committee as soon as possible.



