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VERMEJO RECLAMATION PROJECT

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HEARING
BEFORE THE
SUBCOMMITTEE ON
PUBLIC LANDS AND RESOURCES
OF THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 876

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO AMEND THE CONTRACT FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE VERMEJO RECLAMATION PROJECT BETWEEN THE VERMEJO CONSERVANCY DISTRICT, LOCATED IN THE STATE OF NEW MEXICO, AND THE UNITED STATES

SEPTEMBER 8, 1978

Publication No. 95-141



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STATUTES

of the State of New York
enacted at the Session of the Legislature held at Albany
in the year of our Lord one thousand nine hundred and
thirty and one, and of our Independence the hundred and
thirty and sixth.

VERMEJO RECLAMATION PROJECT

FRIDAY, SEPTEMBER 8, 1978

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES,
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:25 a.m., in room 3110, Dirksen Office Building, Hon. Pete V. Domenici, presiding.

Present: Senator Domenici.

Also present: Russell R. Brown, professional staff member.

OPENING STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. The Public Lands and Resources Subcommittee hearing will commence this morning.

First, I apologize to the witnesses and those here for being late.

The purpose of this hearing before the Public Lands Subcommittee this morning is to take testimony on Senate bill 876, a bill to authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States.

The purpose of the bill is to absolve any remaining debts owed to the United States by the Vermejo Conservancy District near Maxwell, N. Mex., for irrigation facilities constructed under the Bureau of Reclamation, completed in 1955.

Due not only to climatic conditions in recent years but also to the establishment of small ponds and other retention devices upstream, the project has never functioned properly and the amount of water provided is nowhere near the actual amount needed for irrigation.

The deposit of silt in the two canals is also extremely high, necessitating constant and unaffordable maintenance. The project was designed to serve 7,379 irrigable acres, but with a steady decrease of water, less than 15 percent—that is a 1974 statistic—was serviceable by the canals.

The conservancy district is unable to meet the required payments and is already delinquent on payments due.

Our first witness is Mr. Clifford I. Barrett, Assistant Commissioner, Bureau of Reclamation, Department of the Interior. Without objection, a copy of Senate bill 876 and a pertinent legislative report when received will be placed in the record at this point.

[The bill and report follow:]

95TH CONGRESS
1ST SESSION

S. 876

IN THE SENATE OF THE UNITED STATES

MARCH 3 (legislative day, FEBRUARY 21), 1977

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, notwithstanding any other provision of law, the Sec-
4 retary of the Interior is authorized with and subject to the
5 written consent of the Vermejo Conservancy District, to
6 amend contract numbered 178r-458, dated August 7, 1952,
7 as amended, between the Vermejo Conservancy District,
8 located in the State of New Mexico, and the United States

II

1 for the construction, operation, and maintenance of the Ver-
2 mejo reclamation project, to relieve the Vermejo Conser-
3 vancy District of its remaining repayment obligation under
4 such contract and such other penalties or other assessments
5 or costs including interest under such contract which may
6 become due or owing before the date of enactment of this
7 Act, and to transfer all right, title, and interest in or to the
8 project facilities to the Vermejo Conservancy District; ex-
9 cept that the Vermejo Conservancy District, to the extent
10 practicable, shall continue to operate and maintain the facili-
11 ties of the Vermejo reclamation project for the benefit of
12 all authorized project users and in accordance with the
13 authorized project purposes.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 26, 1978.

Hon. HENRY M. JACKSON,
Chairman, *Committee on Energy and Natural Resources*,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department with respect to a bill, S. 876, "To authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States."

The Department recommends the bill be enacted with certain modifications proposed herein.

The bill would authorize the Secretary to amend contract No. 178r-458 dated August 7, 1952, as amended, to relieve the Vermejo Conservancy District of its remaining repayment obligation of \$2,065,099 plus delinquency and penalty charges of about \$30,000. The proposed bill would also transfer to the Vermejo Conservancy District all rights, title, and interest in or to the project facilities. The bill further provides that the District, to the extent practicable, shall continue to operate and maintain the facilities of the Vermejo Project for the benefit of all authorized project beneficiaries in accordance with authorized project purposes. S. 876 would amend the authorizing legislation for the Vermejo Project of September 27, 1950, as amended.

The Department does not ordinarily favor the course of action proposed in S. 876 and has not often done so. Where a significant sum of the Federal taxpayers' money has been spent for the benefit of a specific group of beneficiaries, and where the law calls for repayment from those beneficiaries, we strongly believe that a fair repayment should be obtained. There are special circumstances in this case, however, which we believe justify some legislative relief, similar to that proposed in S. 876 but with the modifications suggested in this report and the attached amendment. There are strongly competing considerations in this case.

Since 1955 when the Vermejo Project was declared to be complete the district and its water users have had the use and benefit of some \$2 million of Federal money expended by the Bureau. The water users paid only operation, maintenance and replacement costs (OM&R) during the 10-year development period through 1965. Reduced payments and relief from capital payments were granted during the first 7 years of capital payments. From 1966 through 1975, the water users have repaid only about \$43,000 towards amortizing the debt. This represents an average assessment of less than \$0.60 per irrigable acre or less than \$0.10 per acre for the total conservancy district which includes 49,000 acres.

On the other hand, water deliveries to irrigators, the principal benefit of the project, have consistently fallen far short of original estimates and plans, particularly in the recent dry years, and in 5 of the past 7 years water available to irrigators has been less than 10 percent of the targeted 20,000 acre-feet per year. In fact, in 1977, there were no project water deliveries. The total acreage under irrigation has declined from 4,940 acres in 1974 to 1,845 acres in 1976, and we believe to 0 last year. Total gross crop income has declined from a high of \$291,700 in 1973 (or \$67 per harvested acre, \$39 per irrigable acre) to \$12,960 (or \$7.02 per harvested acre and \$1.76 per irrigable acre) in 1976; no cash crop at all has been reported for 1977. Water deliveries have totaled 3,689 acre-feet so far this year, indicating some improvement.

Our proposal represents a fair balance, we believe, of these considerations. We recommend that the proposed bill be modified to provide the Secretary discretionary authority to negotiate an amendatory contract with the Vermejo Conservancy District that would permit deferral of payments on the district's current repayment obligation for an indefinite period but would not eliminate the obligation, and would require repayments be made toward the capital cost in those years when water supply and crop returns are favorable and repayment is determined to be feasible by the Secretary. The obligation would continue until repaid, or for the useful life of the facilities, while recognizing the financial difficulties of the District. Delinquency assessments and other special charges on the debt under the existing contract would be relieved.

Because of unanswered questions that still exist with respect to the repayment ability of the District, and because of the prospect of possible favorable years in the future, we believe that the District's contract obligation should not be termi-

nated but merely deferred. In order to avoid unreasonable uncertainty in future dealings of the District, the amended contract could be negotiated with a specific ceiling that would limit the maximum payment that could be required of the District in a given year.

On the other hand, we strongly recommend that title to the project works, except fish and wildlife lands and any attendant water rights, revert to the District and that the United States should be relieved of all responsibility and liability for ownership, upkeep, rehabilitation, or all types of failures in the system. Continued upkeep of project facilities must be the sole responsibility of the District. Additional Federal expenditures on this project should be avoided or kept to a minimum as it is unlikely that any repayment would ever be obtained.

The Vermejo Project is situated in northeastern New Mexico, in the Canadian River Basin, and lies approximately in the center of Colfax County. The Vermejo Conservancy District includes a total of some 49,000 acres of land, of which 7,379 acres are irrigable, lying in a general northwesterly direction from the village of Maxwell, New Mexico. Maxwell is located 27 miles south of Raton, the county seat.

The Vermejo Project works include Vermejo Diversion Dam, Vermejo Canal with appurtenant structures, Eagle Tail Canal Headworks, Eagle Tail Canal with appurtenant structures, Stubblefield Dam and Reservoir, Dam and Reservoirs Nos. 2, 12, and 13, and a lateral distribution system serving 7,379 acres.

The project is located in an open basin, bounded on the northeast by high mesas and on the west and northwest by high mountains. The elevation is about 6,000 feet above sea level; and the terrain is gently rolling interspersed by a large number of depressions, some of which receive the discharge of small water courses and form natural lakes. Chico Rico Creek and Vermejo River, tributaries of the Canadian River, comprise the two main sources of the project water supply.

The first irrigation development on the project area was in 1888 by the Maxwell Land Grant Company, which diverted water from the Vermejo River. In 1903, the Vermejo Ditch Company, owned by the Maxwell Land Grant Company, took over and did some development work. In 1908, the Maxwell Irrigated Land Company took over the system and developed a source of water from Chico Rico Creek.

In 1912, the water users organized the Maxwell Ditch and Reservoir Company and operated until 1935 when the organization went into bankruptcy, and the Maxwell Irrigation Company was organized. In 1952, the Vermejo Conservancy District took over the project system, which was in a very deteriorated condition.

The Bureau of Reclamation first became involved in the affairs of the Vermejo Project when it made a reconnaissance investigation in 1944 at the request of the Maxwell Irrigation Company. This investigation was completed early in 1945, and work was started on a feasibility report. The project was authorized by Public Law 848 dated September 27, 1950.

Construction work was started in the spring of 1953 and was essentially completed early in 1955. This work consisted of the enlargement and rehabilitation of three offstream, on-project reservoirs, and the rehabilitation and construction of new headworks for the diversion dam on the Vermejo River. New structures along the Vermejo Canal were constructed and the first mile of the Vermejo Canal was rebuilt. New structures and headworks were constructed on the Eagle Tail Canal, which brings water from the old Hebron Dam on the Chico Rico Creek. On the project, the main distribution system was rehabilitated by constructing many new structures and minor surface drains. In accordance with the terms of the repayment contract, the district cleaned the Vermejo and Eagle Tail Canals, the lateral system, and rehabilitated operating roads.

Repayment Contract No. 178r-458 provided for a maximum repayment to the United States of \$2,010,080. This contract was amended August 31, 1954, to increase the obligation of the district by \$97,863.33, the amount of principal and interest due on Reconstruction Finance Corporation bonds, making a total obligation of \$2,107,943.33. Repayment has been troublesome from the start. The contract was amended on November 13, 1962, to extend the development period from 7 to 10 years. An amendment to the contract dated November 18, 1964, provided for annual construction installments of \$2,213.70 for 1966, 1967, and 1968. In 1968, the contract was further amended to defer part of the construction installments and fixed the obligation at \$3,690, or 50 cents an acre, for the years 1969 through 1973. After that time, payments were to be made using a variable formula taking into account parity concepts and current gross crop values produced on the

project. The 1974 payment of \$12,688 computed under that formula was made on time and the district paid \$5,000 of its 1975 billing which totaled \$16,842. The remaining 1975, 1976, 1977, and 1978 payments totaling \$26,634 are delinquent. Annual operation and maintenance assessments, which have averaged about \$6 to \$8 per acre of irrigated land, have been regularly paid by the water users.

S. 876 would relieve the Vermejo Conservancy District of its contract responsibilities to repay costs owed to the United States Government for construction and rehabilitation of the Vermejo Project works. The principal cause for the district's difficulties in meeting its annual payments appears to have been inadequate water supplies, which have in turn resulted in very low crop production. The only available long-term streamflow records for the Vermejo watershed taken at Dawson, New Mexico, indicate a declining trend in total runoff. The average water supply for the project has been far short of what was originally expected at the time of project authorization, as is demonstrated in the table below:

| Year | Irrigated acreage | Acre feet | |
|--------------|-------------------|------------------|----------|
| | | Total deliveries | Per acre |
| Planned..... | 7,379 | 120,000 | ----- |
| 1972..... | 4,912 | 1,800 | 0.37 |
| 1973..... | 5,083 | 7,700 | 1.51 |
| 1974..... | 6,262 | 1,770 | .28 |
| 1975..... | 5,422 | 1,200 | .22 |
| 1976..... | 2,748 | 1,845 | .67 |
| 1977..... | 0 | 0 | 0 |

¹ Includes rainfall and natural runoff in addition to deliveries through project works.

Because of the drought, no water was available for delivery in 1977. Silt has also hampered project operations. Stream diversions include an extremely large quantity of silt, which adds to the maintenance problems of canals, laterals and other main supply works and results in rapid sedimentation of the storage reservoirs.

One indicator of the disappointing economic situation in the project is that gross crop income figures have fallen below the feasibility estimates done in 1957 and 1964. The gross crop income reported for the project from 1955 through 1976—a period of 22 years—has averaged \$176,195. The harvested areas have averaged about 4,100 acres during this period. The best income year was in 1970, when \$341,271 was reported for 4,687 acres. In 1976, a meager \$12,960 was earned on 1,845 harvested acres in that low water year. The worst year was 1977, when no irrigation water was delivered and no irrigated cropland was harvested. There is obviously a high correlation between water deliveries and crop production.

Low reservoir storage during the early part of the growing seasons has consistently deterred project farmers from fertilizing and planting crops and proceeding with other improvements. Runoff continues to be unpredictable. It may occur in significant quantities, well spaced throughout the year. Or it may come in one high intensity storm lasting only a few days.

The area of the Vermejo Conservancy District is substantially a range livestock growing area. The project contains about 7,300 acres of irrigable land of the total 49,000-acre area within the district. While we fully recognize the difficulties the project has incurred since its inception, and we believe this should be recognized in legislation, we do not at this time have a satisfactory understanding of the possible relationship between the livestock operations on non-project district lands and the agricultural operations on the irrigated lands in the project, nor of possible land ownership and management relationships between project lands and non-project lands within the district.

We believe that the project has also suffered from inconsistent objectives and activities under the soil bank program and through development of upstream impoundments through Soil Conservation Service assistance. It appears that these impoundments may have retarded runoff into the project area, and some may be on District lands. Participation in soil bank programs by land owners in the district, both on and off the irrigated lands, has in some instances impeded the development of efficient land ownership and cropping patterns and land development needed for irrigation.

In determining possible repayment capabilities of the district in future years under a modified contract, these issues, as well as the more immediate factors of water availability and delivery, agricultural output and other factors in a given year, will have to receive further consideration.

The sad story of the Vermejo Project is a good example of the need for an adequate understanding of the economic and environmental ramifications of a reclamation project before it is authorized and funded. Based on our current understanding of the hydrology and soil characteristics of the area and the potential of the area for economic production of crops, this project probably should not have been authorized. The fact that we find ourselves faced with a decision to defer and possibly write-off costs owed the United States because a project has not lived up to its expectations is evidence of the need for a more sound approach to evaluating and authorizing projects.

We believe that our proposed amendment to the bill would allow the Secretary sufficient flexibility to obtain repayment, when possible, up to the ability of the water users to pay or to defer payments. We intend to work with the water users to secure such an arrangement. Such a contract could be completed in less than 1 year. Delinquency assessments and other associated penalties will be cancelled. Only the remaining outstanding repayment obligation after the enactment of this bill will be considered for future repayment.

Attached to this report is our suggested markup of the bill. We recommend S. 876 be modified accordingly and enacted.

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

Sincerely,

DANIEL BEARD,
Acting Assistant Secretary.

Enclosure.

AMENDMENT TO S. 876

We recommend that the bill be amended by deleting all on the second page after the word "project" on line 2, and by substituting the following language: "to defer payments on the remaining repayment obligation of the Vermejo Conservancy District under such contract, until such time or times as the Secretary determines additional repayment to be reasonably feasible, to relieve the District of such other penalties, assessments, or costs, including interest, which have accrued or may become due under the existing contract prior to enactment of this Act, and to transfer all right, title, and interest in or to the project works facilities serving the Vermejo Conservancy District: *Provide*, That the Vermejo Conservancy District shall, to the extent practicable, continue to operate and maintain the facilities of the Vermejo project for the benefit of all authorized project beneficiaries and in accordance with the authorized project purposes: *Provide* further, That the Federal Government shall incur no further expense on behalf of the Vermejo project or the Vermejo Conservancy District for the operation and maintenance or rehabilitation of existing facilities or for the development of any new facilities related to the delivery or impoundment of water, and further Federal expenditures related to the Vermejo Federal Reclamation project shall be limited to administration of such amended contract for the purpose of determining and obtaining such reasonable repayment as may be feasible, and to necessary expenses for fish and wildlife purposes. Transfer of project facilities to the District shall be without any additional consideration in excess of the existing repayment obligation of the District, and shall include any related lands or interests in lands acquired by the Federal Government for the project, except that any lands or interests in land, or interests in water, or other contractual arrangements which may be held by the Bureau of Reclamation or the United States Fish and Wildlife Service for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements. Any amended contract which provides for deferral of the District's repayment obligation shall provide that the obligation shall continue in effect until repaid or for the useful life of the existing facilities, and the Secretary shall provide for a flexible plan of repayment of the remaining obligation of the District according to the District's ability to repay as determined by the Secretary. Determinations of ability to repay shall include water deliveries

achieved in a given year, as well as such other factors as the Secretary considers to be pertinent."

Secondarily, we recommend on page 1, placing a comma after the word "authorized" on line 4, and deleting the words "with and".

Senator DOMENICI. Now we will call the first witness. Mr. Barrett, we are delighted to have you.

**STATEMENT OF CLIFFORD I. BARRETT, ASSISTANT COMMISSIONER,
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. BARRETT. Thank you, Senator, it is a pleasure for us to be here this morning to testify for the Department on S. 876. I have a rather lengthy and detailed statement which I would like to submit for the record and then I will summarize it very briefly.

Senator DOMENICI. It will be made part of the record.

Mr. BARRETT. We will supplement that later with a departmental report which will contain suggested modifications to the legislation.¹

You have described the situation very well in your opening statement. The bill as written would authorize the Secretary to relieve the Vermejo Conservancy District of its repayment obligations and would also transfer to them title to the project works and require them to continue operation and maintenance of the project for its authorized purposes.

The Department of the Interior would not ordinarily endorse legislative relief from the repayment obligation. However, special conditions exist as you have described, which justify some relief in this case.

We support enactment of this type of legislation with modifications which are detailed in my written statement and in the report which you will receive.¹ The project was started actually in 1888 by the Maxwell Land Grant Co., a private concern. Over the next 50 years, a number of private companies took over operation and expansion of that project.

The Bureau of Reclamation became involved in 1944 when, at the request of the Maxwell Irrigation Co., then the current owners, we began a study of what to do to improve the project conditions.

The end result of that study was legislation passed by Congress in 1950 which authorized the Bureau of Reclamation to enlarge and rehabilitate the project features as a Federal reclamation project undertaking.

The Vermejo Conservancy District was formed at that time to contract with the United States for repayment of the construction obligation and to operate and maintain the project.

A repayment obligation of around \$2.2 million was assumed by the district. As you point out, the project has never produced enough income to meet its repayment obligation.

The basic problem is one of water supply. The runoff in that basin and the water supply available for the project has steadily declined since the time the project was studied by the Bureau and has never yielded enough water to accomplish project purposes.

The planned yield of the project was 20,000 acre-feet per year. By way of illustration of the problem, the actual 1972 to 1976 average

¹ See p. 4.

yield was only about 2,002 acre-feet with a high in 1972 of 8,000 acre-feet, and in 1977 there was actually no yield at all.

As a result of the lack of water, the amount of land that can be irrigated has been severely restricted. This project was planned to irrigate in the neighborhood of 7,400 acres.

Over the past 22 years they have only irrigated an average of 4,100 acres. The result is easy to see. If you don't have the water to irrigate the land, you cannot produce the income required to meet the payment obligation.

There has been the additional problem of siltation on some of the project works.

Senator, the sad story of the Vermejo project is a good example of the need for adequate understanding of economic and environmental ramifications of a reclamation project before it is authorized and funded.

Based on our current understanding of hydrology and soil characteristics of the area and the potential of the area for economic production of crops, this project probably should not have been built.

The fact that we now find ourselves faced with the decision to defer and possibly write off the cost owed to the United States because the project has not lived up to expectations is evidence of a need for a sounder approach to authorizing projects.

The contract entered into in 1952 has already been amended twice to defer payment. I think we have done about all we can do under our current legislative authorities by way of deferring payments for that district.

It is not effective because when you defer a payment you merely postpone it until some day in the future. Deferment is not a realistic approach to this type of problem. We agree that some legislative relief is clearly needed.

S. 876, as drafted, would provide complete relief to the district. The Department recommends and would support legislation if it is modified so that instead of providing complete legislative relief of the contract obligation, the Secretary would be authorized to enter into a new amended contract with the district under which repayment would be collected if a payment capacity is ever developed on the project.

We would like to reserve the right of the United States to collect some repayment if the project ever gets to the point where there is repayment capability. Basically, that's the difference we have between our proposal and the legislation you have.

With that brief summary, I would be pleased to answer any questions you might have.

Senator DOMENICI. Under your proposal, what would happen to the delinquent payments?

Mr. BARRETT. They would be forgiven. We would only talk about from the date of enactment of the legislation forward. We would forgive penalties and past-due payments.

Senator DOMENICI. Your amendment actually contemplates authority to go down there and renegotiate, and the real substance of the new agreement would be, pay if possible?

Mr. BARRETT. Yes, sir. We have not had time to work out the details and they would have to be negotiated with the district. What we envision is a contract which would provide for a variable amount of payment. The amount of payment would be based on a combination of water supply and crop production and gross income of the project. If those three things got together and there was a payment capacity produced, we would collect that and reduce the debt to the United States.

Senator DOMENICI. The original contract was for how many years, 40?

Mr. ELLIS. I believe the expected life of the project and expected payback period is 76 years.

Mr. BARRETT. Let me introduce my colleague at the table, Mr. Frank Ellis, who is our senior staff specialist on repayment contracts.

Senator DOMENICI. Thank you for being here, Frank.

Mr. ELLIS. Thank you.

Senator DOMENICI. What would the length of the amended contract be then?

Mr. BARRETT. I think, sir, it would have to be indefinite. It would run until enough money was collected to pay off the obligation. I don't think you could set a specific time frame now because the amended contract would be based on a variable formula. It would have to be an open ended contract until the project was paid for.

Senator DOMENICI. Really, the only difference between what you are proposing and what the bill proposed is that you are saying if it ever justifies any payment, the Government would get paid something?

Mr. BARRETT. Yes. If I might, sir, I would like to correct my testimony. A few minutes ago you asked me if we would forgive under our legislation all previous deferments. I think I said yes and the answer is really no. We would only forgive the delinquency charges, not the actual delinquent payment.

Senator DOMENICI. I know this testimony had to clear OMB. I assume your testimony reflects OMB's views.

Mr. BARRETT. Yes, sir.

Senator DOMENICI. Aren't we wasting an awful lot of time and effort based on what you really know to keep something on the books, to say you really haven't wiped out this debt. When, as a matter of fact, it is so fragile that anyone in the business of carrying this debt would never expect to collect?

Mr. BARRETT. Sir, my personal opinion would be that the likelihood of ever collecting significant amounts of repayment under the type of contract we are proposing is probably small. But as a matter of principle and policy, we really believe that we ought to preserve that option in case it ever comes about.

Senator DOMENICI. I wholeheartedly agree with you that this is indicative of a broader problem than just the Maxwell situation.

Mr. BARRETT. Yes, sir.

Senator DOMENICI. I have no further questions. I am going to first tell you that I greatly appreciate your effort. This is a very small matter in terms of the overall water policy but for those few people involved, it is a very, very serious financial and human problem and

we must make every effort to try to resolve it. I appreciate your coming down today and your cooperation.

What I think we will do is leave the record open for about a week. We will send your comments and proposed testimony to the counsel for the Maxwell Water District and to the people involved and get their input and get it back as soon as possible. We may then have to run it by you and your experts before we mark up the bill, but we will leave the record open in that fashion.

Mr. BARRETT. Thank you, we will be glad to work with you in any way we can.

Senator DOMENICI. Thank you very much.

[The prepared statement of Mr. Barrett follows:]

STATEMENT OF CLIFFORD I. BARRETT, ASSISTANT COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to offer testimony with respect to proposed bill S. 876. A bill "To authorize the Secretary of the Interior to amend the contract between the Vermejo Conservancy District and the United States for construction, operation, and maintenance of the Vermejo Reclamation Project, New Mexico."

We recommend that the bill be enacted if modified as we propose in this statement and the attached paper.

The bill as written would authorize the Secretary of the Interior to take two major actions:

1. Further amend Contract No. 178r-458, of August 7, 1952, as amended, to relieve the Vermejo Conservancy District of its remaining repayment obligation totaling \$2,065,099 plus delinquencies and penalties of about \$30,000;

2. Transfer to the Vermejo Conservancy District all rights, title, and interest in or to all project facilities, and;

The bill further provides that the district shall continue to operate and maintain the facilities of the project for the benefit of all authorized project purposes.

Mr. Chairman, we recommend that the proposed bill be modified to provide the Secretary discretionary authority to negotiate an amendatory contract with the Vermejo Conservancy District that would defer payment of the district's current repayment obligation but would not eliminate the obligation, and would require payments be made toward the capital cost in those years when water supply and crop returns are favorable and repayment is determined to be feasible by the Secretary. Provision would be included in the amendatory contract to defer payment but not the obligation when water supply and crop returns are below a minimum level which would be established by the Bureau in the new contract. Delinquency assessments and other special charges on the debt would be relieved.

Because of unanswered questions that still exist with respect to the repayment ability of the district, and because of the prospect of possible favorable years in the future, we believe that the district's contract obligation should not be terminated but merely deferred at this time.

On the other hand, we strongly recommend that title to the project works, except fish and wildlife lands and any attendant water rights, revert to the district and that the United States should be relieved of all responsibility and liability for ownership, upkeep, rehabilitation, or all types of failures in the system. Continued upkeep of project facilities must be the sole responsibility of the district. Quite frankly, Mr. Chairman, any additional Federal expenditures on this project should be avoided to the extent possible, as it is unlikely that any repayment would ever be obtained.

The Department would not ordinarily favor the course of action proposed in S. 876 and has not often done so. Where a significant sum of the Federal taxpayers' money has been spent for the benefit of a specific group of beneficiaries, and where the law calls for repayment from those beneficiaries, we strongly believe that a fair repayment should be obtained. There are special circumstances in this case, however, which we believe justifies the legislative relief, with the modifications suggested.

The Vermejo Project works include Vermejo Diversion Dam, Vermejo Canal with appurtenant structures, Eagle Tail Canal Headworks, Eagle Tail Canal with appurtenant structures, Stubblefield Dam and Reservoir, Dam and Reservoirs Nos. 2, 12, and 13, and a lateral distribution system serving 7,379 acres.

The Vermejo Project is situated in northeastern New Mexico, in the Canadian River Basin, and lies approximately in the center of Colfax County. The Vermejo Conservancy District includes a total of some 49,000 acres of land, of which 7,379 acres are irrigable, lying in a general northwesterly direction from the village of Maxwell, New Mexico. Maxwell is located 27 miles south of Raton, the county seat.

The project is located in an open basin, bounded on the northeast by high mesas and on the west and northwest by high mountains. The elevation is about 6,000 feet above sea level; and the terrain is gently rolling interspersed by a large number of depressions, some of which receive the discharge of small water courses and form natural lakes. Chico Rico Creek and Vermejo River, tributaries of the Canadian River, comprise the two main sources of the project water supply.

The first irrigation development on the project area was in 1888 by the Maxwell Land Grant Company, which diverted water from the Vermejo River. In 1903, the Vermejo Ditch Company, owned by the Maxwell Land Grant Company, took over and did some development work. In 1908, the Maxwell Irrigated Land Company took over the system and developed a source of water from Chico Rico Creek.

In 1912, the water users organized the Maxwell Ditch and Reservoir Company and operated until 1935 when the organization went into bankruptcy, and the Maxwell Irrigation Company was organized. In 1952, the Vermejo Conservancy District took over the project system, which was in a very deteriorated condition.

The Bureau of Reclamation first became involved in the affairs of the Vermejo project when it made a reconnaissance investigation in 1944 at the request of the Maxwell Irrigation Company. This investigation was completed early in 1945, and work was started on a feasibility report. The project was authorized by Public Law 848 dated September 27, 1950.

Construction work was started in the spring of 1953 and was essentially completed early in 1955. This work consisted of the enlargement and rehabilitation of three offstream, on-project reservoirs, and the rehabilitation and construction of new headworks for the diversion dam on the Vermejo River. New structures along the Vermejo Canal were constructed and the first mile of the Vermejo Canal was rebuilt. New structures and headworks were constructed on the Eagle Trail Canal, which brings water from the old Hebron Dam on the Chico Rico Creek. On the project, the main distribution system was rehabilitated by constructing many new structures and minor surface drains. In accordance with the terms of the repayment contract, the district cleaned the Vermejo and Eagle Tail Canals, the lateral system, and rehabilitated operating roads.

Repayment Contract No. 173r-458 provided for a maximum repayment to the United States of \$2,010,080. This contract was amended August 31, 1954, to increase the obligation of the district by \$97,863,33, the amount of principal and interest due on Reconstruction Finance Corporation bonds, making a total obligation of \$2,107,943.33. The contract was amended on November 13, 1962, to extend the development period from 7 to 10 years. An amendment to the contract dated November 18, 1964, provided for annual construction installments of \$2,213.70 for 1966, 1967, and 1968. In 1968, the contract was further amended to defer part of the construction installments and fixed the obligation at \$3,690, or 50 cents an acre, for the years 1969 through 1973. After that time, payments were to be made using a variable formula taking into account parity concepts and current gross crop values produced on the project. The 1974 payment of \$12,688 computed under that formula was made on time and the district paid \$5,000 of its 1975 billing which totaled \$16,842. The remaining 1975, 1976, 1977, and 1978 payments totaling \$26,634 are delinquent. Annual operation and maintenance assessments, which have averaged about \$6 to \$8 per acre of irrigated land, have been regularly paid by the water users.

Mr. Chairman, this bill would effectively relieve the Vermejo Conservancy District of its contract responsibilities to repay costs owed to the United States Government for construction and rehabilitation of the Vermejo Project works. In recent years, the district has often been unable to pay its annual installment under the existing contract because of claims of inadequate income. The principal cause for the district's difficulties in meeting its annual payments appear to have been inadequate water supplies, which have in turn have resulted in very low crop production. The only available long-term streamflow records for the Vermejo

watershed taken at Dawson, New Mexico, indicates a declining trend in total runoff. The average water supply for the project has been far short of what was originally expected at the time of project authorization. With the exception of the 1973 growing season, project water supply has run about 15 percent of water needs as is demonstrated in the table below:

| Year | Irrigated acreage | Acre feet | |
|--------------|-------------------|------------------|----------|
| | | Total deliveries | Per acre |
| Planned..... | 7,379 | 120,000 | |
| 1972..... | 4,912 | 1,800 | 0.37 |
| 1973..... | 5,083 | 7,700 | 1.51 |
| 1974..... | 6,262 | 1,770 | .28 |
| 1975..... | 5,422 | 1,200 | .22 |
| 1976..... | 2,748 | 1,845 | .67 |
| 1977..... | 0 | 0 | 0 |

¹ Includes rainfall and natural runoff and deliveries through project works.

Because of the drought, no water was available for delivery in 1977. Water deliveries this year have totaled 3,689 acre-feet so far, which, as you can see, indicates a relatively good year, comparatively speaking.

Silt has also hampered project operations. Stream diversions include an extremely large quantity of silt, which adds to the maintenance problems of canals, laterals and other main supply works and results in rapid sedimentation of the storage reservoirs.

One indicator of the disappointing economic situation in the project is the gross crop income figures have fallen below the feasibility estimates done in 1957 and 1964. The gross crop income reported for the project from 1955 through 1976—a period of 22 years—has averaged \$176,195. The harvested areas have averaged about 4,100 acres during this period. The best income year was in 1970, when \$341,271 was reported for 4,687 acres. In 1976, a meager \$12,960 was earned on 1,845 harvested acres in that low water year. The worst year was 1977, when no irrigation water was delivered and no irrigated cropland was harvested.

Low reservoir storage during the early part of the growing seasons has consistently deterred project farmers from fertilizing and planting crops and proceeding with other improvements. Runoff continues to be unpredictable. It may occur in significant quantities, well spaced throughout the year. Or it may come in one high intensity storm lasting only a few days. There is obviously a high correlation between water deliveries and crop production.

The area of the Vermejo Conservancy District is substantially a range livestock growing area. The project contains about 7,300 acres of irrigable land of the total 49,000-acre area within the district. While we fully recognize the difficulties the project has incurred since its inception, and we believe this should be recognized in legislation, we do not at this time have a satisfactory understanding of the possible relationship between the livestock operations on non-project district lands and the agricultural operations on the irrigated lands in the project, nor of the possible land ownership relationships between project lands and non-project lands within the district.

We believe that the project has suffered from inconsistent objectives and activities under the soil bank program and through development of upstream impoundments through Soil Conservation Service assistance. It appears that a number of these impoundments may have retarded runoff into the project area. Participation in soil bank programs by land owners in the district, both on and off the irrigated lands, has in some instances impeded the development of efficient land ownership cropping patterns, and land development needed for irrigation. In determining possible repayment capabilities of the district in future years under a modified contract, these issues, as well as the more immediate factors of water availability and delivery, agricultural output and other factors in a given year, will have to receive further consideration.

Mr. Chairman, the sad story of the Vermejo Project is a good example of the need for an adequate understanding of the economic and environmental ramifications of a reclamation project before it is authorized and funded. Based on our current understanding of the hydrology and soil characteristics of the area and the potential of the area for economic production of crops, this project probably

should not have been authorized. The fact that we find ourselves faced with a decision to defer and possibly write-off costs owed the United States because a project has not lived up to its expectations is evidence of the need for a more sound approach to evaluating and authorizing projects.

The district and its water users have had the benefit of some \$2 million expended by the Bureau since 1955 when the project was declared to be complete. The water users paid only operation, maintenance and replacement costs (OM&R) during the 10-year development period through 1965. Reduced payments and relief from capital payments were granted during the first 8 years of capital payments. From 1966 through 1975, the water users have repaid only about \$43,000 toward amortizing the debt. This represents an average assessment of less than \$0.60 per irrigable acre or less than \$0.10 per acre for the total conservancy district which includes 49,000 acres.

We believe that our proposed amendment to the bill would allow the Secretary sufficient flexibility to obtain repayment, when possible, up to the ability of the water users to pay or to defer payments. We intend to work with the water users to secure such an arrangement. Such a contract could be completed in less than 1 year. Delinquency assessments and other associated penalties will be cancelled. Only the remaining outstanding repayment obligation after the enactment of this bill will be considered for future repayment.

Attached to this statement is our suggested markup of the proposed bill. We recommend S. 876 be modified accordingly and enacted.

I appreciate the opportunity to offer this statement. If you have any questions, I will be glad to respond to them now.

AMENDMENT TO S. 876

We recommend that the bill be amended by deleting all on the second page after the word "project" on line 2, and by substituting the following language: "to defer payments on the remaining repayment obligation of the Vermejo Conservancy District under such contract, until such time or times as the Secretary determines additional repayment to be reasonably feasible, to relieve the District of such other penalties, assessments, or costs, including interest, which have accrued or may become due under the existing contract prior to enactment of this Act, and to transfer all right, title, and interest in or to the project works facilities serving the Vermejo Conservancy District: *Provided*, That the Vermejo Conservancy District shall, to the extent practicable, continue to operate and maintain the facilities of the Vermejo project for the benefit of all authorized project beneficiaries and in accordance with the authorized project purposes: *Provided further*, That the Federal Government shall incur no further expense on behalf of the Vermejo project or the Vermejo Conservancy District for the operation and maintenance or rehabilitation of existing facilities or for the development of any new facilities related to the delivery or impoundment of water, and further Federal expenditures related to the Vermejo Federal Reclamation project shall be limited to administration of such amended contract for the purpose of determining and obtaining such reasonable repayment as may be feasible, and to necessary expenses for fish and wildlife purposes. Transfer of project facilities to the District shall be without any additional consideration in excess of the existing repayment obligation of the District, and shall include any related lands or interests in lands acquired by the Federal Government for the project, except that any lands or interests in land, or interests in water, or other contractual arrangements which may be held by the Bureau of Reclamation or the United States Fish and Wildlife Service for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements. Any amended contract which provides for deferral of the District's repayment obligation shall provide that the obligation shall continue in effect until repaid or for the useful life of the existing facilities, and the Secretary shall provide for a flexible plan of repayment of the remaining obligation of the District according to the District's ability to repay as determined by the Secretary. Determinations of ability to repay shall include water deliveries achieved in a given year, as well as such other factors as the Secretary considers to be pertinent."

Secondarily, we recommend on page 1, placing a comma after the word "authorized" on line 4, and deleting the words "with and".

Senator DOMENICI. The hearing is adjourned.

[Whereupon, at 9.40 a.m., the hearing was adjourned.]



