

**STATEMENT
OF
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ASSISTANT SECRETARY – INDIAN AFFAIRS
BEFORE
THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON S. 438
THE IRRIGATION REHABILITATION AND RENOVATION FOR INDIAN TRIBAL
GOVERNMENTS AND THEIR ECONOMIES ACT**

March 4, 2015

Good afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee. My name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for inviting the Department to provide testimony on S. 438, the Irrigation Rehabilitation and Renovation for Indian Tribal Governments and Their Economies Act, a bill to provide for the repair, replacement, and maintenance of certain Indian irrigation projects. We appreciate the Committee's continued leadership on the daunting challenge the Department faces on addressing the deferred maintenance at the 17 Bureau of Indian Affairs' (BIA) Irrigation projects.

Larry Roberts, Principal Deputy Assistant Secretary for Indian Affairs, for the Department, testified before this Committee last September and provided an overview of the Irrigation Projects in Indian Country, along with the BIA's Irrigation Program's accomplishments, Irrigation project condition assessments, and the deferred maintenance estimates for our 17 BIA Irrigation Projects. S. 438 seeks to address the deferred maintenance for the BIA's Irrigation Projects by identifying the eligible projects, establishing a priority for allocating \$35 million per year to our BIA Irrigation projects for twenty-two years to carry out the maintenance, repair and replacement activities at the irrigation projects. S. 438 also provides for establishing programmatic goals and conducting a study aimed at improving program and project management, and performance of BIA irrigation projects with a report to be delivered to Congress within 2 years. The Department supports the goals of working with tribes to address the maintenance of irrigation projects, and we look forward to working with you to address the best means of doing so given current budget constraints and the ability of irrigation projects to financially sustain themselves in the long run.

Background

The Federal government has been involved with Indian irrigation since the Colorado River Indian Irrigation Project was authorized in 1867. In the early 1900's, Congress began authorizing funding for the construction of numerous Indian irrigation projects in the western United States. At that time, the Indian Irrigation Service led construction and early administration of the projects. In the late 1930's and through the 1940's, as construction activities wrapped up on most projects, the Indian Irrigation Service ceased to exist and operation and maintenance (O&M) was transferred to the BIA, where it continues today. Many

of these programs began at a time when Federal policies were far different. These irrigation projects remain very important today to the communities they serve. The BIA irrigation program is responsible for oversight and administration of fifteen revenue-generating Indian irrigation projects that provide service and water delivery to over 25,000 customers and 750,000 acres of land in Indian Country. The asset inventory and program responsibilities also include BIA-owned facilities at non-revenue generating irrigation projects, including the Navajo Indian Irrigation Project in New Mexico and Pyramid Lake Irrigation Project in northern Nevada. At these facilities the BIA does not assess O&M charges to irrigators; those charges are instead paid through appropriations or other means.

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S. 438 would create an “Indian Irrigation Fund” (IIF) in the Department of the Treasury from the reclamation fund that was established in the Act of June 17, 1902 (32 Stat. 388, chapter 1093). The IIF would be funded at \$35 million per year for 22 years for a total investment of \$770 million. The legislation also caps the year to year spending at \$35 million, but includes amounts of interest earned on investments from the IIF, if applicable, “to carry out maintenance, repair and replacement activities” for one or more of the eligible Indian irrigations projects identified in Sec. 202 of the S. 438.

Section 104 requires the Secretary of the Interior to invest portions of the IFF that in the judgment of the Secretary are not required to meet current withdrawals. We recommend that the U.S. Treasury be designated as the federal agency responsible for investing IFF assets. We need to consult with the Department of the Treasury in more detail about these provisions.

Section 201(b) of S. 438 describes funding “to carry out maintenance, repair and replacement activities...”. The term “maintenance” is used and further states “including any structures, facilities, equipment, or vehicles used in connection with the operation of those projects.” We interpret this language as authorizing funding for the purchase of heavy equipment to address some deferred maintenance items, conduct routine and preventative maintenance activities, and also to purchase vehicles to support water delivery/operation activities. If this is the case we request adding the term “personnel” to the list of items in parenthesis in Section 201(b) in order to clarify that hiring personnel is allowable in supporting O&M of the eligible projects.

Section 202 of S. 438 defines the eligible projects for the IIF. The following is a list of the 17 Irrigation Projects that meet the criteria listed in Section 202.

- Blackfeet Indian Irrigation Project (MT)
- Colorado River Indian Irrigation Project (AZ/CA)
- Crow Indian Irrigation Project (MT)
- Duck Valley Indian Irrigation Project (NV)
- Flathead Indian Irrigation Project (MT)
- Fort Belknap Indian Irrigation Project (MT)
- Fort Hall Indian Irrigation Project (ID)
- Fort Peck Indian Irrigation Project (MT)
- Navajo Indian Irrigation Project (NM)

- Pine River Indian Irrigation Project (CO)
- Pyramid Lake Indian Irrigation Project (NV)
- San Carlos Indian Irrigation Project – Indian Works (AZ)
- San Carlos Indian Irrigation Project – Joint Works (AZ)
- Uintah Indian Irrigation Project (UT)
- Walker River Indian Irrigation Project (NV)
- Wapato Indian Irrigation Project (WA)
- Wind River Indian Irrigation Project (WY)

We recommend amending Section 202(2), as follows: “are managed and operated by the Bureau of Indian Affairs (including projects managed, operated and/or maintained under contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) *or other agreements with water users, water user groups and/or water user associations*; and....” This is to ensure that the irrigation projects with 638 Contracts or Memorandum of Agreements (MOAs) with water user groups for O&M are not excluded.

Section 203, which refers to “requirements and condition,” includes the Commissioner of Reclamation. Section 2 also describes the Secretary of the Interior as acting through the Commissioner or Reclamation. We recommend amending these references since the Bureau of Reclamation (Reclamation) is not involved in the operation and maintenance of the 17 eligible irrigation projects, nor is Reclamation involved in the allocation of resources among funds created within the Treasury. In Section 203(2)(E), regarding the funding prioritization criteria/methodology, the BIA has been collecting Condition Assessment data that BIA has used over the past decade. The BIA is initiating irrigation project Modernization Studies, which will provide additional and very valuable decision-making information on how BIA would best rehabilitate the existing irrigation project infrastructure. We recommend adding language to Section 203 that allow the results of the Modernization Studies to be incorporated into the criteria/methodology used in the implementation of S. 438.

Section 205 requires Tribal Consultation and Water User Input. As this Committee is aware, Tribal consultation can be a lengthy process, and we understand our responsibility to consult with affected tribes and water users for these 17 irrigation projects and to provide adequate notice to make such consultation meaningful, usually 30 days. In order to facilitate the consultation required under this Section, we recommend the timeframe be changed from “60 days” to a “not later than 120 days.”

Section 206 of S. 438 provides a foundation for establishing which projects to prioritize and takes into consideration a reduced priority for those projects that have received funding by an “act of Congress” in the previous 15 year period. According to Section 206(b), the following projects have received funding under an “Act of Congress that expressly identifies the Indian irrigation project or the Indian reservation of the project to address the deferred maintenance, repair, or replacement needs of the Indian irrigation project:”

- Crow Indian Irrigation Project, Crow Tribe Water Rights Settlement Act of 2010, Public Law 111-291, signed into law on December 8th, 2010.

- Duck Valley Indian Irrigation Project, 2009 Omnibus Public Land Management Act (H.R. 146, 111th Congress)
- San Carlos Indian Irrigation Project – Indian Works, Arizona Water Settlements Act, 118 STAT. 3478 PUBLIC LAW 108–451—DEC. 10, 2004
- Navajo Indian Irrigation Project, Public Law No. 87-483, 76 Stat. 96 (1962) (NIIP Act) – receives annual appropriations for construction and maintenance activities.

Section 206(b) provides the “Priority” as first based on an Indian irrigation project(s) serving more than one Indian tribe within “an Indian reservation.” Based on this requirement the following irrigation project would receive funding priority under S. 438 over the first few years.

Priority List:

The only Irrigation Project that serves more than one Indian tribe within an Indian reservation is:

- Wind River Indian Irrigation Project (Northern Arapahoe Tribe, Eastern Shoshone Tribe, Wind River Reservation)

The priorities identified next according to Sec. 203 “programmatic goals” to fulfill S. 438, and “critical maintenance needs” include the following Projects not listed in order of priorities:

- Blackfeet Indian Irrigation Project
- Colorado River Indian Irrigation Project
- Flathead Indian Irrigation Project
- Fort Belknap Indian Irrigation Project
- Fort Hall Indian Irrigation Project
- Fort Peck Indian Irrigation Project
- Pine River Indian Irrigation Project
- Pyramid Lake Indian Irrigation Project
- San Carlos Indian Irrigation Project – Joint Works
- Uintah Indian Irrigation Project
- Walker River Indian Irrigation Project
- Wapato Indian Irrigation Project

Irrigation Projects that serve only 1 Indian tribe within an Indian reservation but have received funds in last 15 years (if S. 438 enacted this year):

- Crow Indian Irrigation Project (received Settlement funds)
- Duck Valley Indian Irrigation Project (received Settlement funds)
- San Carlos Indian Irrigation Project – Indian Works (received Settlement funds)
- Navajo Indian Irrigation Project (receives annual appropriations)

Last September, we testified before this Committee that the BIA operates its irrigation projects consistent with numerous laws, regulations and policy guidance and many projects have extensive and specific legislative histories. For example, specific statutory authorities require that BIA charge an assessment to both Indian and non-Indian customers for O&M costs. Most of

the 15 revenue-generating projects receive little or no appropriated funds. Whenever possible and practical, BIA works to leverage cost-share opportunities with any other funding that is made available to tribes and water user organizations. Funding to maintain these systems must also compete for other pressing priorities in Indian Country.

Historically, BIA has not charged sufficient Operation, Maintenance & Rehabilitation (OM&R) rates to allow for adequate project maintenance and replacement. Over time, this has resulted in less maintenance accomplished and a steady increase in deferred maintenance. This contributed to critical reviews by the Office of Inspector General in the 1990's and the Government Accountability Office in 2006. The 2013 deferred maintenance estimate for BIA-owned irrigation facilities is approximately \$600 million. Less clear is what should be the appropriate allocation of responsibility between the users and beneficiaries of these systems, particularly by non-tribal members, and the general taxpayer.

Over the past 9 years we have increased our O&M rates an average of 26% across all projects. We believe that rates are approaching levels to stem the growth of deferred maintenance, but the existing level of deferred maintenance is such that it may be difficult to address through increased O&M rates alone. To ensure the protection of the investments that would be provided by this Act, BIA will continue to evaluate the O&M rates assessed to irrigators while considering the local agricultural economies. The BIA irrigation projects are vital economic contributors to the local communities and regions where they are located. The BIA estimates that irrigated lands served by the 15 BIA revenue generating irrigation projects add \$490M in revenue and supports almost 10,000 jobs. This Administration supports investments in vital economic contributors and supports the goals of the bill, and we look forward to working with you to address the best means of doing so given current budget constraints and the ability of irrigation projects to financially sustain themselves in the long run.

This concludes my prepared statement. I will be happy to answer any questions you may have.