

**Statement of Michael L. Connor, Commissioner
Bureau of Reclamation
U.S. Department of the Interior
Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
U.S. Senate**

**S. 789
July 23, 2009**

Madam Chairwoman and Members of the Subcommittee, I am Michael Connor, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 789, the Tule River Tribe Water Development Act. For reasons discussed below, the Department does not support S. 789.

The proposed legislation would direct Interior “to conduct a study on the feasibility and suitability of constructing a storage reservoir, outlet works, and a delivery system for the Tule River Indian Tribe of California to provide a water supply for domestic, municipal, industrial, and agricultural purposes, and for other purposes.” The Act would authorize \$3 million for Reclamation to conduct a feasibility study to be completed within 2 years after funds are appropriated.

Reclamation delivered testimony on similar legislation (HR 2535) during the 110th Congress on September 25, 2007. While S. 789 contains some notable changes in Section 2, the Department’s concerns with this bill remain.

Reclamation has not reviewed and is not in a position to verify the accuracy of the cost estimates upon which appropriations are authorized in S. 789. Before being asked to consider a request for authorization or funding of a feasibility study, Reclamation typically has had an opportunity to conduct appraisal-level analysis of a project. Without a completed appraisal level study, the Department believes it is premature to authorize this feasibility study. The authorization of \$3 million for this study would further compete with the funding needs of other already authorized projects. Reclamation generally requires completion of an appraisal level study before considering whether the project warrants continuing to a feasibility-level analysis. Reclamation understands that the Tribe has conducted a substantial amount of technical, planning, and environmental work over the past decade; however, Reclamation has not reviewed these documents nor determined how they may affect the scope, cost, or schedule of a feasibility study.

In addition, the proposed legislation does not specify a local non-Federal cost-share partner or a cost share requirement for the feasibility study. Reclamation typically shares feasibility study costs with the non-Federal partners paying 50 percent of study costs. There is ample legislative precedent which supports this approach. For several years settlement agreement negotiations have been conducted between the Tribe, downstream water users, and the Federal negotiation team regarding the Tribe’s federally reserved water rights. However, not all of the issues between the Tribe and the Federal negotiating team have been resolved. Moreover, the Department has not analyzed the settlement needs of the Tribe and other parties including the

question of whether the proposed storage reservoir, outlet works, and delivery system are a cost effective approach to accomplishing the goals of the settling parties. Nor have issues of cost and cost sharing with other settlement parties been negotiated. Until the Department has completed its analysis of the proposed settlement, it is premature to take a position on the scope, schedule, and cost of the feasibility study that is proposed in this legislation.

Typically, a feasibility study of this size and shape, including National Environmental Policy Act compliance, requires several years to complete with significant costs. Actual costs for this study would be determined after study authorization and appropriations are provided followed by a Plan of Study and public scoping processes. The time and cost to complete the feasibility study and environmental documentation for the Tule River Tribe Water Development Project could be shortened if the Tribe's technical and environmental analyses and documentation are sufficient and compatible with Federal requirements. The costs of a feasibility study are significant and may exceed the \$3 million authorization in this bill.

This bill also includes a new subsection 2(c) that would restrict the use of water from any project "relating to the feasibility study" authorized in this legislation, prohibiting the use of water supplies provided by this project for the casino of the Tule River Tribe or any other tribal casino or facility designed to support gaming activity. The Department opposes conditioning support for tribal water development upon restrictions on permissible activities. This bill, if enacted, will place a restriction upon any project that may be authorized as part of a comprehensive water rights settlement even if the exact feasibility study authorized by the bill is never carried out. We understand that the Tribe supports this legislation, but we believe that it raises serious precedent and fairness problems.

Although we do not support this bill, the Department understands the importance of a reliable water supply and will continue to work with the Tribe toward this goal in addressing the issues described above.

That concludes my statement. I would be pleased to answer any questions.