Statement of David Murillo, Deputy Commissioner, Operations
Bureau of Reclamation
U.S. Department of the Interior
Before the
Committee on Energy & Natural Resources
Subcommittee on Water and Power
United States Senate

S. 201
May 19, 2011

Madam Chairman and Members of the Subcommittee, I am David Murillo, Deputy Commissioner of Operations of the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the U.S. Department of the Interior (Department) on S. 201, legislation specific to lands underlying the C.C. Cragin Dam, Reservoir and utility corridor (C.C. Cragin project) in Arizona. The legislation seeks to clarify federal jurisdiction with respect to the C.C. Cragin project, which includes a dam, reservoir, and 11.5-mile utility corridor containing a transmission line and high-pressure pipeline. The project is located nearly entirely within the Coconino National Forest in north-central Arizona.

Language included in the Arizona Water Settlements Act (AWSA, Public Law 108-451) created questions about the respective jurisdiction of the U.S. Forest Service (Forest Service) and Reclamation related to the C.C. Cragin project. We have come to an agreement that we think can resolve this issue. This legislation is consistent with that arrangement. We look forward to continue working with the Committee on reaching a resolution.

Reclamation and the Forest Service worked closely with the Salt River Project Agricultural Improvement and Power District (SRP), the entity that operates and maintains the C.C. Cragin project under the AWSA, and reached agreement in mid-2010 on legislation to clarify jurisdiction of the Federal agencies. The legislation, S. 1080, was considered during the 2nd session of the 111th Congress. The bill was not enacted during the last Congress, but both S. 201 and its companion bill, H.R. 489, contain the same provisions as S. 1080, as reported.

This legislation accommodates the needs of Reclamation and SRP by ceding exclusive administrative jurisdiction over the lands underlying the C.C. Cragin project to Reclamation and by expressly acknowledging SRP's responsibility for operating and maintaining the C.C. Cragin project pursuant to the AWSA and the 1917 agreement between the Department and SRP. This is a unique situation due to the AWSA. In addition, this approach accommodates the Forest Service by allowing the agency to manage the lands underlying the utility corridor with respect to recreation, wildfire, law enforcement, and other activities consistent with the Forest Service's authorities, responsibilities, and expertise; the AWSA; the 1917 agreement; and the existing right-of-way over the utility corridor held by another party. This approach would allow for integrated management of tens of thousands of acres of ecosystems across National Forest System lands underlying and adjacent to the C.C. Cragin project, including watershed, wildlife habitat, range, and vegetation management. S. 201 allows for a workable agreement for both day-to-day activities and other activities that will improve the management and safety of the covered land. The Administration believes that this legislation provides a sound approach for

future management of the C.C. Cragin project. Both Reclamation and the Forest Service are committed to working diligently with SRP to ensure needed work for the C.C. Cragin project can be accomplished expeditiously, including any necessary emergency and non-emergency repairs and replacement of improvements, in full compliance with applicable law, including the National Environmental Policy Act and the Endangered Species Act, as provided in the AWSA.

Reclamation's long-standing experience working with SRP over nearly a century has been very productive. SRP has proven to be a responsible and reliable operator and caretaker of U.S. interests and resources. Reclamation and SRP have nearly a century of responsible stewardship in regard to both the technical operation of dams and reservoirs and protection of natural resources. It is our hope that combining that history with the Forest Service's land management authorities and expertise would result in even more effective stewardship.

This concludes my testimony. I will be pleased to answer any questions.

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S. 419 – Dry-Redwater Regional Water Authority System Act of 2011
May 19, 2011

Madam Chairman and Members of the Subcommittee, I am David Murillo, Deputy Commissioner for Operations at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 419, legislation authorizing construction of the Dry-Redwater Regional Water Authority System (System) in the State of Montana. We recognize that changes have been made to the language of this bill since the last Congress, however, the Administration still has concerns with this bill that we want to work with Congress to address.

S. 419 would authorize the planning, design, and construction of the System in eastern Montana and would authorize appropriations of at least $115 million for the System. The bill would require that the Federal government provide up to 75 percent of the project's overall cost.

The Department concurs in the need for a safe and reliable water supply for the citizens of eastern Montana, and earlier this year, Reclamation began providing financial assistance to complete a feasibility study of this project in accordance with Title I of the Rural Water Supply Act of 2006 (Public Law 109-451), as described below. However, we have concerns with the legislation as currently written. In particular, the Department is concerned about the process issues raised by this legislation authorizing a project for construction before the feasibility study is complete even while other rural water projects are being studied, the potential strain on Reclamation's budget that could come about from this authorization, the cost share requirement proposed in the bill, and the proposed use of power from the Pick-Sloan Missouri Basin Program (P-SMBP) for non-irrigation purposes.

Of Reclamation's seven currently authorized rural water projects being constructed or funded at some level today, five are in Reclamation's Great Plains (GP) region and are currently being constructed in the Dakotas and Montana[1]. All of these projects pre-date Public Law 109-451, which authorized the Secretary of the Interior to create a rural water supply program to address rural water needs in the 17 western States. Within the GP region, more than 224,926 people are presently being served by the six partially completed projects (approximately 45,860 on Indian reservations and 179,066 off reservations). The fiscal year (FY) 2012 rural water project request was $35.5 million. This includes $15.3 million for the operation and maintenance of tribal

[1] Mni Wiconi Project (SD), PSMB/Garrison Diversion Project (ND), Fort Peck Reservation/Dry Prairie Rural Water System (MT), Rocky Boy's/North Central Montana Rural Water System (MT), Jicarilla Apache Water and Wastewater Improvement Project (NM), Lewis & Clark Rural Water System (SD), Eastern New Mexico Rural Water Project (NM). Perkins County (SD) has received its full appropriation and is not included in this reference.

systems and $20.2 million for construction. In addition, the American Recovery and Reinvestment Act of 2009 provided approximately $232 million to these rural water projects. The remaining construction ceiling for these six projects totals approximately $1 billion. The Department of the Interior (Bureau of Reclamation) prioritizes funding for these ongoing authorized projects based on (1) the required O&M component; (2) projects nearest completion; and (3) projects that serve on-reservation needs.

In view of these existing authorizations, the Department is concerned about the non-Federal cost share for the System. S. 419 contemplates that the United States would fund 75 percent of the cost of constructing the System for the benefit of Montana citizens of Dawson, Garfield, McCone, Prairie, and Richland Counties, and North Dakota citizens of McKenzie County. While this has been the cost share level proposed in other rural water projects enacted into law, it represents the very maximum Federal cost share allowed under the Rural Water Supply Act of 2006, which includes a requirement for a Feasibility Report that includes an analysis of the sponsor's capability-to-pay and identifies an appropriate contribution by the local sponsors.

The Dry-Redwater Regional Water Authority (Authority) prepared a study that was accepted by Reclamation as an appraisal study in June 2010. The Authority then submitted a proposal to Reclamation for financial assistance to complete a feasibility study in accordance with Title I of the Rural Water Supply Act of 2006. Reclamation approved the request and provided cost-share funding in the amount of $120,500 in direct contributions. Reclamation also agreed to provide technical assistance valued at $119,500 using its own resources, resulting in a total Federal contribution of $240,000, which is 50 percent of the total study cost of $480,000. This cooperative agreement was executed in January 2011 and the feasibility study is scheduled for completion in September 2012. Reclamation will continue to work with the Authority to prepare the feasibility study and prepare a feasibility report to verify the accuracy of the cost estimates and provide information on what the sponsor's capability-to-pay would be which helps determine the appropriate non-Federal cost share.

Section 5 of S. 419 authorizes the delivery of 1.5 megawatts P-SMBP pumping power to be used and delivered between May 1 and October 31 for the benefit of this System at the firm power rate. Section 5(b)(2) of the bill requires that the System be operated on a "not-for-profit basis" in order to be eligible to receive power under those terms. Reclamation is not certain of the impact the bill's requirements could have on Western Area Power Administration's existing contractual power obligations.

In addition to those concerns mentioned above, we have yet to verify whether or not water rights issues associated with the System have been adequately addressed. Without an opportunity to thoroughly review the proposed System at feasibility study level, we are not in a position to verify that other technical issues do not also exist. We would like to suggest that the System sponsors continue working with Reclamation's GP Regional Office and the Montana Area Office to complete feasibility-level studies consistent with the Rural Water Supply Act of 2006.

That concludes my statement. I am pleased to answer any questions.

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S. 499 – Bonneville Unit Clean Hydropower Facilitation Act
May 19, 2011

Madam Chairwoman and members of the Committee, I am David Murillo, Deputy Commissioner for Operations of the Bureau of Reclamation. I am pleased to be here today on behalf of the Assistant Secretary for Water and Science who oversees the Central Utah Project Completion Act activities to present the Administration's views on S. 499, the Bonneville Unit Clean Hydropower Facilitation Act. The proposed legislation is associated with development of hydropower on the Diamond Fork System, Bonneville Unit, Central Utah Project.

The Central Utah Project Completion Act (CUPCA) provides for the completion of the construction of the Central Utah Project (CUP) by the Central Utah Water Conservancy District (CUWCD). CUPCA also authorizes programs for fish, wildlife, and recreation mitigation and conservation; establishes an account in the Treasury for deposit of appropriations and other contributions; establishes the Utah Reclamation Mitigation and Conservation Commission to coordinate mitigation and conservation activities; and provides for the Ute Indian Water Rights Settlement.

Hydropower development on CUP facilities was authorized as part of the Colorado River Storage Project Act (CRSPA) under which the Central Utah Project is a participating project. The development of hydropower on the Diamond Fork System has been contemplated since the early days of the CUP. The 1984 Environmental Impact Statement on the Diamond Fork System described the construction of five hydropower plants with a combined capacity of 166 MW of power.

However, these hydropower plants were never constructed and the 1999 Environmental Impact Statement on the Diamond Fork System presented a plan which specifically excluded the development of hydropower, stating "there are no definite plans or designs, and it is not known if or by whom they may be developed."

Although hydropower development was not included, construction of pipelines and tunnels for the Diamond Fork System were completed and put into operation in July 2004. Under full operation the Diamond Fork System will annually convey 101,900 acre-feet of CUP Water and 61,500 acre-feet for Strawberry Valley Project water users.

In 2002 CUPCA was amended to authorize development of federal project power on CUP facilities. With this new amendment plans for hydropower development at Diamond Fork were included in the 2004 Utah Lake System Environmental Impact Statement and the 2004

Supplement to the Definite Plan Report for the Bonneville Unit (DPR). These documents describe the construction of two hydropower plants on the existing Diamond Fork System for a total generating capacity of 50 MW.

Section 208 of CUPCA included provisions that power on CUP features would be developed and operated in accordance with CRSPA and CUP water diverted out of the Colorado River Basin for power purposes would be incidental to other project purposes.

There are two options for hydropower development on the Diamond Fork System: 1) federal project development or 2) private development under a Lease of Power Privilege contract with the United States.

Under the first option the CUWCD would construct the Diamond Fork hydropower plants under contract with the United States and contribute an upfront local cost share of 35 percent of the construction costs. In addition to the hydropower plant construction costs, the costs of conveyance facilities upstream of Diamond Fork System that are allocated to power would have to be repaid. The DPR allocates costs of the CUP according to project purposes. The reimbursable costs allocated to power are $161 million based upon the costs of developed features upstream of the Diamond Fork System. It is anticipated that under this option, these allocated costs would be repaid through an arrangement among Interior, CUWCD, and the Western Area Power Administration (WAPA).

Under the second option, private hydropower could be developed. Although the DPR and 1999 EIS describe federal hydropower development, they also provide the option for a Lease of Power Privilege arrangement with the United States. Under this arrangement Interior would implement a competitive process to select a lessee for private development of hydropower at Diamond Fork. The lease arrangement would require repayment of the $161 million of upstream costs plus annual payments to the United States for the use of the federal facilities, amounting to at least a 3 mil rate paid by the lessee to the United States.

S. 499 does not preclude federal development of hydropower, but it does increase the likelihood of private development. If enacted, this bill would indefinitely defer the $161 million in costs allocated to power development in the Diamond Fork System under section 211 of CUPCA, thus reducing the cost of hydropower development at this site. This bill would increase the likelihood that a private developer would pursue a Lease of Power Privilege arrangement because the private developer would not, under this legislation, be required to repay the $161 million of construction costs that were allocated to power as would be required under existing law.

We understand and appreciate the goal of this legislation of facilitating the development of hydroelectric power on the Diamond Fork System.

However, the Administration has serious concerns about losing our ability to recoup the Federal investment made in these facilities as set forth in this legislation. The Federal government may benefit in the medium term from the annual payments for the use of Federal facilities that would be paid if a lessee entered into a Lease of Power Privilege arrangement for production of hydroelectric power on the Diamond Fork System. Assuming only a summer water supply as

under current deliveries, these payments are estimated at about $400,000 a year starting the year that the project is completed and continuing for the life of the project. However, because payment of $161 million of allocated power costs would be postponed indefinitely, it is unclear what the long-term fiscal implications of enactment of this legislation would be and how the United States Treasury would be made whole. This legislation would potentially permanently postpone anticipated receipts to the U.S. Treasury at the expense of the Federal taxpayer. While it is not clear at this time whether a nonfederal developer would propose a hydroelectric project at Diamond Fork under current law, if this were to occur, repayment of the allocated power costs would begin after the hydroelectric project is completed and average $5.3 million a year for 50 years.

Section 5 of S. 499 would prohibit the use of tax-exempt financing to develop any facility for the generation or transmission of hydroelectric power on the Diamond Fork System. This provision was added to the bill to prevent any loss of revenue to the federal government as a result of the financing mechanism used for development of hydropower at this site.

This concludes my testimony. I am happy to answer any questions.

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S. 808
May 19, 2011

Madam Chairman and Members of the Subcommittee, I am David Murillo, Deputy Commissioner of Operations of the Bureau of Reclamation (Reclamation). Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 808, as introduced on April 13, 2011. This legislation allows for prepayment of the current and future repayment contract obligations of the Uintah Water Conservancy District (District) of the costs allocated to their municipal and industrial water (M&I) supply on the Jensen Unit of the Central Utah Project (CUP) and provides that the prepayment must result in the United States recovering the net present value of all repayment streams that would have been payable to the United States if S. 808 were not enacted. S. 808 would amend current law to change the date of repayment to 2022 from 2037. The legislation would also allow repayment to be provided in several installments and requires that the repayment be adjusted to conform to a final cost allocation. The Department supports S. 808.

The District entered into a repayment contract dated June 3, 1976, in which they agreed to repay all reimbursable costs associated with the Jensen Unit of the CUP. The Jensen Unit's total water supply was envisioned at this time to be roughly 18,000 acre-feet because plans anticipated completion of another pumping plant at a location on the Green River known as Burns Bench.

However, for a variety of reasons, the Burns Bench feature was never built. And with the enactment of language in Section 203(g) of the Central Utah Project Completion Act of 1992 (P.L. 102-575), the District's contract was amended in 1992 to reduce the project M&I supply subject to repayment to 2,000 acre-feet annually, and temporarily fix repayment for this supply based upon a reduced interim cost allocation developed for the still-uncompleted project. The amended 1992 contract required the District to repay about $5.545 million through the year 2037 at the project interest rate of 3.222% with annual payments of $226,585. The current balance due, without discounting, is $3,949,058 as of 2011.

It is important to note that this $3,949,058 figure reflects a repayment amount that is statutorily lowered by the 1992 legislation, and does not reflect the true repayment costs of the Jensen Unit. The costs allocated to the 2,000 acre-feet of contracted M&I supply, and the M&I supply available through additional incomplete project features, may be significantly revised upward in the future upon project completion or enactment of this bill, both of which would require a Final Cost Allocation. An additional currently unallocated cost of $7,419,513 is expected to be allocated to the contracted 2,000 acre-feet in order to achieve a full and final project repayment.[1]

[1] This allocation will be subject to revision should there be additions to the project.

These are the costs that paragraph 3 of S. 808 requires to be included in the prepayment. The 2011 balance on the 1992 M&I repayment contract is $3,949,058 and the adjustment amount when factoring in the total project cost including interest on that debt is $7,419,513. Therefore, in total non-discounted dollars, the Conservancy District owes the Federal government $11,368,571.

Under Reclamation law, water districts are not authorized to prepay their M&I repayment obligation based upon a discounted value of their remaining annual payments.

This legislation would authorize early repayment by the Uintah Conservancy District to the Federal government. Because there is an interest component to the M&I repayment streams to be repaid early, early repayment without an adjustment for interest would result in lower overall repayment to the United States. To keep the United States whole, the Bureau of Reclamation would collect the present value of the whole amount that would be due without early repayment.

The language in S. 808 has been amended from the language contained in an earlier version of this legislation, S. 1757 (111th Congress). The amended language clarifies that this legislation requires that the Federal government be paid what it is owed by the Conservancy District. Because the United States supports the goals of providing for early repayment under this contract so long as the United States is kept whole, and S. 808 clearly establishes that early repayment under this legislation must be of an amount equal to the net present value of the foregone revenue stream, the Department supports this legislation.

This concludes my testimony. I will be pleased to answer any questions.