

**Statement of Michael L. Connor, Deputy Secretary
U.S. Department of the Interior
Before the
Energy and Natural Resources Committee
United States Senate
on
S. 1936
New Mexico Drought Preparedness Act of 2015
October 8, 2015**

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am Mike Connor, Deputy Secretary at the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on S. 1936. This bill aims to enhance coordination for water acquisitions, authorize appropriations for projects to assist with water conservation, authorize appropriations for the study of the lower reaches of the Middle Rio Grande, support efforts to provide an annual spring peak flow for the Middle Rio Grande, and provide for a study of Rio Grande reservoirs. The Department supports many elements of the New Mexico Drought Preparedness Act of 2015, but has concerns with some of the new authorizations and with the introduced language of Section 6 of the bill as detailed in my statement.

Although this bill mentions the Upper, Middle, and Lower Rio Grande basins, as well as the Lower Pecos, Gila, Canadian, San Francisco and San Juan River basins, the primary focus is on work in the Middle Rio Grande in New Mexico. The 2003 biological opinion for water operations and river management in the Middle Rio Grande defines the Middle Rio Grande as the area of the Rio Chama watershed and the Rio Grande, including all tributaries, from the Colorado/New Mexico state line downstream to the headwaters of Elephant Butte Reservoir. The Bureau of Reclamation's (Reclamation) Middle Rio Grande Project (Project) extends from the Velarde area of northern New Mexico south to the backwaters of Elephant Butte Reservoir. The irrigation features of the Project divert water from the river to irrigate between 50,000 and 70,000 acres of irrigable land, including an approximate 20,000 acres of Pueblo Indian land.

Reclamation has been leasing water on the Pecos River and from San Juan-Chama Project contractors for over a decade to supplement river flows for endangered species, consistent with the language of Section 3 of S. 1936. We have spent tens of millions of dollars acquiring San Juan-Chama Project water and relinquished Rio Grande Compact credit water in recent years to augment flows in the Middle Rio Grande. However, other than the relinquished Rio Grande Compact credit water, Reclamation has not been able to lease and make use of the water that is native to the Rio Grande in New Mexico due to the administrative, legal, and institutional complexities involved. In the explanatory statement printed December 11, 2014, for the Congressional Record, in reference to P.L. 113-235, the Consolidated and Further Continuing Appropriations Act, 2015, Congress encouraged Reclamation to pursue efforts to facilitate agricultural water leasing along the Middle Rio Grande and San Juan Chama Projects. In response, Reclamation has started a pilot leasing program of pre-1907 water rights and is planning a grant opportunity to solicit the services of outside experts to evaluate a leasing program led by the Middle Rio Grande Conservancy District (District). This bill would provide

Reclamation and the District with increased flexibility to implement and effectively manage such a program.

For years, Reclamation has provided funding and technical assistance for irrigation districts and water utilities in New Mexico and west Texas to develop sustainable water supplies under various water conservation programs. Examples of such assistance include improving efficiency and conservation under the WaterSMART Program through Water and Energy Efficiency Grants to entities such as the Elephant Butte Irrigation District and funding for the Albuquerque Bernalillo County Water Utility Authority's water recycling and reuse (Title XVI) project, and through the Native American Affairs Program. Reclamation is also working with partners to carry out various basin studies and other related efforts through Landscape Conservation Cooperatives, the Cooperative Watershed Management Program, and the Water Conservation Field Services Program. This year, Reclamation and the District are beginning work on a plan of study for a Middle Rio Grande Basin Study, and the six Middle Rio Grande Pueblos participate in the Rio Grande Pueblos Irrigation Infrastructure Improvement Project. Any water conservation actions by the District and Pueblos that would result in more efficient use of the available water supply is welcome by Reclamation. However, as indicated previously, existing programs are available to provide the opportunity to cost-share conservation actions that will benefit the Rio Grande system. Two such programs, WaterSMART and the Reclamation States Emergency Drought Relief program, are proposed for additional appropriations ceiling in S. 1936 and, therefore, new authority such as provided in Section 4(a) is not necessary.

Section 5(a) of S. 1936 contains provisions granting five more years of the temporary deviation in the operation of Cochiti Reservoir by the U.S. Army Corps of Engineers. Such deviations allow for creation of a spike flow in the Middle Rio Grande through the impoundment and regulation of spring flows. The Department supports a feasibility study in partnership with the Army Corps of Engineers and Cochiti Pueblo to assess maximized operational flexibilities if the concerns of Cochiti Pueblo are addressed. The ability to stage water in the spring to augment the native flows in the Middle Rio Grande is an important cue to the endangered Rio Grande silvery minnow to reproduce.

Section 5(b) of S. 1936 authorizes a comprehensive study and a series of projects in the Isleta and San Acacia reaches of the Middle Rio Grande aimed at giving Reclamation and other partnering agencies a better understanding of this area, which is designated as critical habitat for the Rio Grande silvery minnow. The Middle Rio Grande below Cochiti Dam is divided into four reaches defined by locations of mainstem irrigation diversion dams. The Cochiti Reach extends from Cochiti Dam to Angostura Diversion Dam. The reach from Angostura Diversion Dam to Isleta Diversion Dam is called the Albuquerque Reach. The Isleta Reach is bound upstream by Isleta Diversion Dam and downstream by San Acacia Diversion Dam. Finally, the reach below San Acacia Diversion Dam to the headwaters of Elephant Butte Reservoir is the San Acacia Reach. The study would also assist with development of a plan for moving forward with coordinated water conservation measures.

Reclamation and Department policy require scientific and scholarly information considered in our decision making to be robust, of the highest quality, and the result of best possible scientific and scholarly processes. Most importantly, users must be able to trust the information. Section 6

of S. 1936 authorizes a National Academy of Sciences Study of the water and reservoir management and operation from Heron and El Vado down to Abiquiu, Cochiti, Jemez Canyon, Elephant Butte, and Caballo reservoirs. A full evaluation of the legal authorities of each of these reservoirs weighed against the hydrologic reality and potential impacts of climate change would likely provide water managers all along the Rio Grande in New Mexico with useful information that could prove important as we struggle to meet growing needs with a decreasing water supply. However, there is a budget concern associated with such a study. A study of this magnitude is not anticipated in Reclamation's budget and would have to compete for funding among numerous existing priorities. Additionally, this study would likely duplicate other efforts, including the Upper Rio Grande Impact Assessment completed by Reclamation in 2013, or even the Lower Reach or Cochiti studies that would be authorized by S. 1936. As an alternative to the study proposed under Section 6 of S. 1936, the Department recommends commissioning a National Academy of Sciences review of the findings of the Middle Rio Grande Basin Study that Reclamation anticipates the District will pursue. The Department would seek to secure cost-share partners for the review, consistent with the requirements for Basin Studies. This approach would achieve the study objectives outlined in S. 1936, allow for independent scientific and scholarly input, and limit duplication of efforts and resources.

New Mexico has endured five years of consecutive drought. Rain this spring and summer has provided some temporary relief. Emergency funding for infrastructure improvements, crop losses, and settlement of water rights claims would be positive. Although Reclamation utilizes drought funding for water leasing, it should be noted that Reclamation is currently in the process of leasing all of the water that is available at a reasonable price (i.e. excluding what would be covered under the pilot leasing program described above).

The Department supports language in Sections 8 and 9 of S. 1936 relating to the authorizations for the WaterSMART Program and under the Reclamation States Emergency Drought Relief Act. There are some technical changes warranted to bring those Sections into conformance with recently passed language provided in appropriations bills (e.g. Section 8(2) should be \$400 million, not \$300 million), and to ensure that the language can be carried out through Reclamation's existing programs. We would be glad to work with the sponsors' offices and the Committee to refine those sections, and to ensure that the additional financial assistance authorities included in Section 7 do not duplicate other existing authorities. In addition, the legislation should ensure that any drought relief wells funded should be in response to a critical need and prioritization process, and do not add to existing problems associated with groundwater depletion.

Section 10 of S. 1936 provides additional time for completion of the study originally authorized under Section 9106 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11). The purpose of the study is to assess the feasibility of projects to repair, rehabilitate, reconstruct, or replace Pueblo irrigation facilities recommended to be implemented from fiscal years 2010 through 2019. The study was to be submitted to Congress in March 2011; however, due to a lack of funding, Reclamation was delayed in starting the study. Now that sufficient funds have been appropriated and transferred, Reclamation is scheduled to complete the study in 2016.

All 18 New Mexico Rio Grande Pueblos have agreed to participate in the project. Reclamation supports the language in S. 1936 to extend the study period until December 31, 2016, and extend the ten-year construction period through 2024. The Department acknowledges the potential need for the bill's language increasing authorization for construction appropriations from \$6 million to \$12 million per year during this ten-year period, though we note that budget realities may not allow for the opportunity to request this level of funding, and these authorizations would need to compete with other budget priorities. Because not all projects can be built, Reclamation will prioritize the projects based on the cost-effectiveness of the proposed investments.

This concludes my statement. I am pleased to answer questions at the appropriate time.

**Statement of Michael L. Connor, Deputy Secretary
U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
United States Senate
on
HR 2898 – Western Water and American Food Security Act of 2015
October 8, 2015**

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am Mike Connor, Deputy Secretary of the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on HR 2898, the Western Water and American Food Security Act of 2015, and describe actions being taken to help water users in California through this fourth year of drought.

While the Department and its bureaus recognize the severity of drought in California and the West, for the reasons summarized below, the Department strongly opposes HR 2898. As the Committee is aware, the Department and the Bureau of Reclamation (Reclamation), working in concert with fisheries agencies and the State of California, have taken extraordinary measures in recent years to adapt to dry hydrology and provide as much water as possible amidst severe drought. Innovative arrangements allowing for transfers and exchanges of finite water supplies have been developed in concert with water contractors; Reclamation and the state have secured agreements with the State Water Resources Control Board allowing for relaxation of flow and water quality requirements, conserving hundreds of thousands of acre-feet of water that would otherwise have been unrecoverable; the operations staff for the state and federal water projects are interacting daily and sometimes hourly to monitor real-time conditions to determine any necessary adjustments to Delta pumping needed to protect the environment while optimizing water supply; and tens of millions of dollars have been awarded by Reclamation and other agencies for water conservation projects across the state, continuing through this summer.

Nevertheless, we understand the desire of this Committee for legislative action to address the severity of California's drought. This year, the Administration has conveyed its concerns about HR 2898 through a July 14, 2015, Statement of Administration Policy (SAP), as well as a July 7, 2015, letter to the leadership of the House Natural Resources Committee. Since the time those statements were transmitted, the House of Representatives passed HR 2898 with amendments on July 16, 2015. While some changes were made to the bill during debate on the House Floor, the Department continues to be of the strongly held view that, rather than increasing water supplies, HR 2898 dictates operational decisions, prescribes infeasible outcomes, and creates new conflicts among existing laws that will hinder, rather than help, an effective drought response. While HR 2898 holds out the hope of swift and easy relief to drought-weary families, it is a false hope. We believe HR 2898 will slow decision-making, generate significant new litigation, and limit the real-time operational flexibility that has proven critical to maximizing water delivery during the current drought. H.R. 2898 also represents an unprecedented congressional amendment to existing biological opinions that have been upheld as scientifically and legally sound. The Department does not support such an approach.

To provide additional detail on those concerns, my statement will cover the major provisions in each of the bill's first six titles that bear on specific project operations in California and the West. Titles VII through XI are a compilation of separate West-wide legislative proposals on which the Department has previously testified in 2014 or 2015. For that reason, the latter portion of my statement will summarize the Department's previously expressed views on the proposals in those five titles.

Beginning with Title I, I draw your attention to language in Sections 102(a)(1) and 103(b)(2)(A) that would require the selective use of data sets and survey methods aimed at creating specific outcomes for exports from the Sacramento-San Joaquin Bay Delta (Delta). The date ranges and monitoring locations specified in those subsections do not represent the best available science and prescribe the use of information that is skewed to de-emphasize threats to listed species like Delta Smelt, and authorize more permissive export pumping regimes without consideration of more comprehensive data or the language's potential effects on listed species. In Section 103(e)(2), the Secretary of the Interior is instructed to take steps to manage reverse flows in the Old and Middle Rivers to a specific flow rate. But since the State of California operates its own export facilities, Federal law mandating specific federal operations, by itself, cannot achieve the results the bill intends. It will be impossible to meet such a rate without close coordination and cooperation with the state. Recognition of the division between state and federal operations and the magnitude of collaboration on both sides is a significant gap in this legislation.

For these provisions as well as all other provisions identified as problematic in my statement today, the Department would be glad to work with the Committee to propose alternate language.

The Department supports the discretionary approach to authorities found in Section 203 of HR 2898 for the benefit of fish and wildlife. Provisions intended to build upon the agencies' current actions to improve data gathering, monitoring, and scientific methodologies can greatly benefit operations with respect to water supply and species protection. In particular, the Department strongly supports well-designed collaborative scientific research into predation. The language at Section 203(d) of HR 2898 (and Section 202(a)(3)(B)(i) of S. 1894) authorizing federal participation in a 100 percent locally funded pilot program to protect native anadromous fish in the Stanislaus River, Delta and other tributaries, if based upon well shaped research strategies and developed through a collaborative, scientific, and technically disciplined process (akin to our work in the Collaborative Adaptive Management Team), could help create a strengthened predation research program that was able to provide near- and long-term benefits for the environment and for state and federal water users across California. We would welcome a discussion with Members, staff, and the water districts on how to shape the proposal to achieve our desired outcome.

Moving ahead to Title III, several provisions that seek to dictate operations of the state and federal water export facilities in the Delta either contain problematic requirements or ignore the legal division between the projects. Section 302(a) dictates that the Secretary "shall provide the maximum quantity of water supplies practicable to all individuals or districts who receive Central Valley Project (CVP) water" based on a Sacramento Valley Water Year Index of 6.5 or lower (Dry or Critically Dry).

Putting aside the potential legal uncertainties associated with writing “maximum quantity of water supplies practicable” into law, operational history shows that this trigger – an index of 6.5 or lower – occurred in nearly 75% of the 109 years from 1906 to 2014. To apply a “maximum quantity” standard to operations and water deliveries without regard to the many other factors that influence final deliveries is to guarantee a misalignment between the mandates of the bill and the realities of CVP operations.

In addition to dictating operational decisions, HR 2898 imposes a new legal standard, which could actually limit water supplies by creating confusing conflicts with existing laws, potentially slowing down decision-making, generating significant litigation, and limiting real-time operational flexibility. Specifically, the newly defined term “negative impact on the long-term survival” is used throughout the bill—often in combination with the undefined terms “imminent” and “significant”—in provisions that would require operators to maintain certain operations unless doing so would cause such an impact. This new standard could conflict with the Endangered Species Act’s jeopardy standard, thereby creating two different standards for operations of the Central Valley Project and State Water Project. These potentially conflicting standards would invite litigation.

Similarly, Section 302(b)(2)(A) creates unrealistic expectations by mandating a water transfer permit deadline of 30 days for completion of “all requirements under the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973 necessary to make final permit decisions on the request.” Reclamation recognizes the need to act efficiently and expeditiously and is frequently able to meet this turnaround time; however, all of the agencies involved in this process are also subject to the California Water Code and associated water transfer rules, which can extend the time needed to approve transfers. Additionally, if water transfer requests are made too early in the year, before operators can determine whether conveyance capacity is available, a 30-day decision deadline can be unworkable. Also of note, Section 302(b)(4) calls on the Secretary to “allow and facilitate” transfers from the Harvey O. Banks Pumping Plant, a State of California-owned and -operated facility. This Section provides yet another instance in which this bill misses the distinction between state and federal operations and under-appreciates the collaborative efforts necessary to address the drought. The Department has several other concerns about Title III which we would be glad to detail further for the Committee in writing.

Title IV of HR 2898 also poses several concerns for the Department. Of the five studies referenced in this Section, one is now complete and was submitted to Congress in July 2015 (Shasta Lake Water Resources Investigation); two are dependent upon local cost-share partners for completion (North of Delta Offstream Storage/Sites Reservoir, and Los Vaqueros Reservoir); one is undergoing final review and verification of the scientific assumptions associated with its conclusions relative to fish and wildlife benefits (Upper San Joaquin/Temperance Flat); and the final study, referenced at Section 401(5), San Luis Low Point Improvement Project (SLLPIP), requires further analysis and resolution of recently identified safety concerns at B.F. Sisk Dam. Requiring completion of the studies on the proposed dates could compromise Reclamation’s ability to provide sufficient basis for a decision on construction, and could prohibit adequate input from cost-share partners.

In Section 502 of HR 2898, “Area of Origin Protections,” the Secretary is directed, in operating the CVP, to “adhere to” the State’s laws governing water rights priorities and to honor water rights senior to the rights held by the U.S. for the CVP. The Secretary does operate the CVP in compliance with state water rights law when Reclamation diverts water for CVP purposes. However, courts have concluded that deliveries of CVP water to Reclamation contractors are governed by Reclamation contracts. That is to say, Reclamation contractors’ rights to receive deliveries of CVP water are based on their contracts with the United States. There is no rationale identified in the bill for providing a greater water supply benefit or certainty to these contractors – a benefit, which, by necessity, entails a possible detriment to other CVP contractors who derive some or all of their water supply from these rivers. Similarly, the requirements in Section 504 to provide “not less than 100 percent of their contract water quantities” in Wet, Above Normal and Below Normal water year types, and not less than 50 percent even in a Dry year, pose serious challenges to the ability of the CVP to meet the multiple purposes inherent in the project’s authorization. The “No Effect on Allocations” language in Section 504(c) will likewise be almost impossible to implement without significant redirected impacts elsewhere in the CVP or elsewhere in California.

Title VI of HR 2898 amends the Central Valley Project Improvement Act (CVPIA) with new planning requirements on the expenditure of monies by the CVP Restoration Fund. Section 602(a) requires that “For each fiscal year, the Secretary shall submit to Congress a plan for the expenditure of all funds deposited into the Restoration fund in the preceding fiscal year.” While this provision appears straightforward, there are already extensive annual reporting requirements associated with the CVP Restoration Fund that cover both planned expenditures and accomplishments. These reports are posted on Reclamation’s web site,¹ comprise several hundred pages, and provide extensive transparency on the program’s administration. Moreover, the bill’s requirement that a plan be prepared to document expenditures from a preceding fiscal year’s deposits ignores the fact that funds are almost always obligated for expenditure in the same year the deposits occur. There is no time lag, and so submitting such a new “plan” makes no sense because the expenditures have already occurred. That being said, we are constantly looking to improve the effectiveness of our expenditures within this important program. We facilitate these improvements through a flexible adaptive management program that responds to the latest scientific, economic, and environmental conditions. We would be happy to work with this committee as we make such improvements, and keep you informed as we continue to target increased effectiveness of CVPIA expenditures to achieve the program’s challenging goals.

Some of the operational problems identified in Title III continue in Title VI, with requirements at Section 606 directing that the Secretary transfer the New Melones Unit to “interested local water and power providers”. The Department has serious concerns about this language, not the least of which is the fact that the New Melones Unit is a significant feature of the CVP, and the CVP is an integrated project providing benefits to several-hundred-thousand acres of California. New Melones Reservoir is a major federal storage facility on the Stanislaus River, a large tributary of the San Joaquin River and whose flows directly affect the Delta. New Melones Reservoir has

¹ http://www.usbr.gov/mp/cvpia/docs_reports/

prevented tens of millions of dollars in flood damage, provides over two-million acre-feet of project storage, and provides critical water to meet the water quality requirements applicable to the CVP's permits under D-1641. In the absence of this resource, Reclamation would not be able to meet Delta water quality standards under D 1641, as measured at Vernalis, without purchasing water from other operators within the San Joaquin River watershed.

The CVP, including the New Melones Unit, has not been designated as complete and the construction costs associated with the CVP have not been fully repaid. While Reclamation has a long record of support for title transfer legislation when agreement has been negotiated among all affected parties, HR 2898 does not include specific language at Section 606(b) addressing price, or a process to determine the price to be paid, in title transfer negotiations concerning both the named facilities as well as appurtenant water rights. The bill should assure that there be no financial or other detriment to the United States or CVP contractors who rely on benefits provided to the rest of the project by the New Melones Unit.

Section 608 of the bill prohibits any releases of water from Lewiston Dam in excess of the volumes required by the Record of Decision (ROD) for the Trinity River Mainstem Fishery Restoration Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR), dated December 2000. This provision specifically targets supplemental fall flows released by Reclamation from the Trinity River Division to the lower Klamath River. The Trinity River is the largest tributary to the Klamath River, whose confluence lies approximately 40 miles upstream from where the Klamath River flows into the Pacific Ocean.

Reclamation makes these fall flow augmentation releases separate from ROD flows to protect anadromous fish returning to the lower Klamath River. Flow augmentation releases prevent recurring outbreaks of Ich (*Ichthyophthirius multifiliis*), the fish disease thought primarily responsible for a historic 2002 die-off of Chinook salmon and ESA-listed coho salmon that return to spawn in both the Trinity and Klamath Rivers. The Department makes these fall flow augmentation releases consistent with its statutory authorities and with Reclamation's obligation to protect tribal trust resources of the Hoopa and Yurok Tribes, who rely on Chinook salmon migrating through the lower Klamath River for subsistence, ceremonial, and other purposes.

The rest of HR 2898 consists of Titles taken from other legislation pending in the 114th and 113th Congresses. The Department has testified on the stand-alone bill version of each of these titles, and the remainder of my statement will summarize those positions.

Title VII, with some modifications, largely consists of language from S. 1533 (114th), the Water Supply Permitting Coordination Act. Reclamation testified on S. 1533 on June 18, 2015 before the Water and Power Subcommittee of this Committee. The Bureau expressed concern that the bill included lands lying beyond the 17 western Reclamation states, and we appreciate the clarification to this now found at Section 702(3) of HR 2898. However, the Department's other concerns about S. 1533, primarily the fact that there is already ample basis for review of projects and coordination among federal agencies involved in water supply planning, remain regarding the language in this current bill.

Title VIII is comprised of the provisions of HR 2097 (114th) and HR 5412 (113th) -- for which the Department provided a statement for the record to the House Natural Resources Committee's Subcommittee on Water and Power on September 10, 2014 when the bill was in draft form. In the Department's view, this legislation would restrict the time available to establish the merits of a surface water storage project and to consider a project's potential environmental effects. Constraining or circumventing project environmental reviews and permits impedes the opportunity to consider alternatives with potential impacts on communities and the environment which may be less adverse. Such constraints could make favorable recommendations for project construction less likely and increase the potential for delay as a result of litigation, which, I would note, would have the opposite effect of the provisions' intentions. The Department does not support Title VIII of HR 2898.

Title IX of HR 2898 is an updated version of HR 3981 (113th), the Accelerated Revenue, Repayment and Surface Water Storage Enhancement Act on which Reclamation provided a statement for the record to the House Water and Power Subcommittee on February 5, 2014. The bill contains provisions to enable the conversion of any water service contract to a repayment contract, with allowance for pre-payment. While Reclamation's February 2014 statement identified several programmatic concerns about the bill, it is also noteworthy that current CVP water service contracts already contain language for their eventual conversion to repayment contracts at such time that it is determined that the remaining construction costs of the CVP can be repaid within a specified repayment term and without adversely affecting the operations of the CVP. Additionally, the bill proposes a one-year timeframe to convert existing contracts, which may not be reasonable given the realities of CVP operations and repayment status.

Title X of HR 2898 contains the language of HR 2749 (114th), the Dams Accountability, Maintenance and Safety Act, and closely corresponds with Section 205 of the Senate version of the 2016 Energy and Water Development Appropriations bill (HR 2028) reported on May 21, 2015. Reclamation testified on HR 2749 before the House Water and Power Subcommittee on June 25, 2015. The Department sees merit in this proposal as a potential means to efficiently combine projects and maximize the benefit of existing facilities by amending the Reclamation Safety of Dams Act. In order to apply such provisions, Reclamation and the Department would evaluate the authorization of additional project benefits language from the perspective of preserving the effectiveness of the dam safety program, while also upholding the 'beneficiaries pay' principle that underlies Reclamation law. Any authorization should ensure that the beneficiaries of the non-safety-related project construction pay their full share of the costs as a condition of construction; i.e., there should be no repayment contract for that portion of the project.

If HR 2749, HR 2028, or HR 2898's Safety of Dams Act amendments were to be enacted, it would be important to assure that adequate appropriations authorization levels (i.e. "ceiling") specific to the additional benefits were available for the particular authorized project. Reclamation would need to certify this authority on a case-by-case basis in order to apply this new authority consistent with Congressional intent.

Finally, title XI of HR 2898 contains language from S. 982 (114th), the Water Rights Protection Act. As stated in testimony provided on June 18, 2015, to the Water and Power Subcommittee of this Committee, the Water Rights Protection Act is overly broad, drafted in ambiguous terms, and likely to have numerous unintended consequences that would have adverse effects on existing law, tribal water rights, and voluntary agreements. These provisions would interfere in multiple ways with legitimate federal water management activities and would likely generate years of needless litigation. The Department opposes Title XI and S. 982.

In closing, I would like to echo the Department's statement to this Committee on June 2 of this year: the Department is acutely aware of the drought-related challenges and worries confronting families, farmers, tribes, businesses, cities, rural communities and the environment throughout the west. Simply put, we understand the implications for western communities and the need to secure long-term water reliability and resiliency in the face of drought and the related impacts of climate change.

Throughout the debate surrounding these drought bills, there has been constant speculation that legislation dictating how to operate the water export facilities, or a strong El Nino event, will decisively end California's drought. For the reasons I've described above, we strongly disagree with the idea that this bill can salvage more water than the operators on the ground are wringing from the system every day. And as for El Nino, the odds of a one-year end to a four-year drought are also slim. In the areas most critical to California's water supply (the Shasta-Trinity mountains, the Sierra Nevadas, and the Colorado River basin), El Nino does not always result in large amounts of snow and rain. Even if it results in large amounts of precipitation in those key areas, it's highly unlikely to make up for the impacts of the current drought, which have left California's water supplies at historically low levels.

While El Nino will not be a standalone solution to our long-term water shortages, over the past few years, aggressive drought response measures at the federal, state, and local levels have helped to mitigate the impacts of drought. Working with the State Water Resources Control Board, operational changes by Reclamation have conserved nearly 800,000 acre-feet as of the end of August², substantially more than the 300,000 acre-feet I reported as of late May. While those and many other measures have not fully alleviated the drought's impacts, we've proven that we have the capacity to improve overall water management building on the work of creative local partners. By sustaining these activities, I believe we can build long-term drought resiliency, even accounting for what El Nino may or may not yield in this and future years.

The Department will continue to take a multi-faceted approach and to marshal every resource at its disposal to assist western communities impacted by drought. We disagree with the language of HR 2898, but we stand ready to work with this Committee, the House, and the Senate to find common ground on legislation that can complement the Administration's efforts to assist communities impacted by drought.

This concludes my written statement. I am pleased to answer questions at the appropriate time.

² http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/accounting_reports/

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Committee on Energy and Natural Resources
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S. 1894 – California Emergency Drought Relief Act of 2015
October 8, 2015**

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am Mike Connor, Deputy Secretary of the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on S. 1894, the California Emergency Drought Relief Act of 2015. I am pleased to have the opportunity to speak briefly about the Administration's efforts to assist California and the West in addressing drought, and to provide input on the introduced language of S. 1894.

As stated during this Committee's June 2, 2015, hearing on west-wide drought, the Administration is acutely aware of the drought-related challenges confronting families, farmers, tribes, businesses, cities, rural communities and the environment throughout the West, and we are committed to doing all we can to meet those challenges. Unabating drought poses health and safety risks to certain communities and threatens the economic livelihood of many others. Simply put, we understand the implications for western communities and the need to secure long-term water reliability and resiliency in the face of drought and the related impacts of climate change. The Department is taking a multi-faceted approach and marshalling every resource at its disposal to assist western communities impacted by drought. Those efforts were summarized in our testimony on June 2. I want to highlight some of our most important efforts for the Committee, including:

- The Department's WaterSMART Program is helping lead the way in drought response and preparedness. Under WaterSMART, Reclamation and its local partners will achieve water conservation capability for agricultural, municipal, industrial, and environmental uses in the western United States by 975,000 acre-feet (since 2009) through September 30, 2016. This Program's assistance to communities in stretching water supplies has already exceeded the prior goal of 840,000 acre-feet by the end of FY 2015 by partnering with states, Indian tribes, irrigation and water districts and other organizations with water or power delivery authority to implement programs resulting in water conservation.
- In 2013, the Administration announced a partnership between 7 Federal agencies, including the Department, to help communities better prepare for droughts and reduce the impact of drought events on families and businesses. The National Drought Resilience Partnership (NDRP) coordinates Federal efforts broadly across the country and is working closely with state and local governments, agriculture and other partners to improve community preparedness and resilience to drought.
- Working with the State Water Resources Control Board, operational changes by Reclamation have conserved nearly 800,000 acre-feet as of the end of August, substantially more than the 300,000 acre-feet I reported as of late May. While those and many other measures have not fully alleviated the drought's impacts, we've proven that we have the capacity to improve overall water management building on the work of

creative local partners. If sustained, I believe we can build long-term drought resiliency, even accounting for what El Nino may or may not yield in this and future years.

- Since December 2013, state and Federal agencies that supply water, protect fish and wildlife, and regulate water quality, have worked tirelessly together to balance water supply, biological protections, and water quality during this drought. Following the Governor's emergency drought proclamation, on January 29, 2014, Reclamation and DWR sought and acquired temporary modifications to their water rights permits and licenses to respond to the drought conditions, resulting in the conservation of hundreds of thousands of acre feet of water in California that would otherwise not have been conserved.
- In June of this year, Reclamation announced investments in more than \$24 million in grants for 50 water and energy efficiency projects in 12 western states, more than \$23 million for seven water reclamation and reuse projects in California, and nearly \$2 million for seven water reclamation and reuse feasibility studies in California and Texas.
- And also in June, the Department, the U.S. Department of Agriculture (USDA), and the State of California announced the California Headwaters Partnership. The program will coordinate the diverse activities of government agencies, property owners, and non-profit groups to restore streams and meadows, improve habitat and thin overgrown forests, and protect the economic uses of the land, such as logging and grazing. The California Headwaters contribute greatly to the state's water supply with the Sierra-Cascade watersheds provide drinking water to 25 million people, almost two-thirds of the California population, and the majority of water for irrigated agriculture.

Our efforts complement those of state and local leaders as well as other federal agencies. For example, on May 18, 2015, USDA announced the availability of an additional \$21 million through the Natural Resources Conservation Service Environmental Quality Incentives Program to assist farmers and ranchers in eight western states experiencing drought. These additional funds were targeted to practices improving rangeland health and improving water use efficiency on cropland. In addition, the Department of Labor has provided assistance to dislocated workers, including \$18 million for temporary jobs for drought affected workers; 6-month temporary positions working on drought mitigation through public and nonprofit agencies; and grant eligibility for dislocated workers.

Turning to S. 1894, the Administration gratefully acknowledges the many months of effort and constructive dialog underlying the bill's proposals for drought relief in California. We appreciate the work of Senator Feinstein and her staff to allow the Department and personnel from the Bureau of Reclamation (Reclamation) and our colleagues from NOAA to review some of the language as the bill was drafted over the past year. Each of the bill's four titles and subtitles contain distinct and targeted provisions that touch on operational, environmental, planning and budget functions. For this reason, my statement will articulate the Department's position for each of the titles rather than the bill as a whole. As a threshold matter, this is a complicated bill, with overlap and interplay between the Titles. In addition to policy issues, there are a number of technical drafting issues to be addressed. The Department will be available to work with the Committee on these issues.

Title I of S. 1894 applies to operational decisions on the state and federal water projects in California for two years, or for as long as the Governor has declared a drought emergency. While S. 1894 contains far fewer operational mandates than the House bill before the Committee today, HR 2898, Section 101 of S. 1894 directs that federal agencies “shall provide the maximum quantity of water supplies possible to...contractors, State Water Project contractors, and any other locality of municipality in the State by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as possible”. It is already Reclamation’s practice, working closely with other federal and state agencies, as well as stakeholders, to provide maximum contract quantities when hydrology and operational constraints allow. But as stated in the Department’s testimony on comparable provisions in Section 302(a) of HR 2898, there are significant potential legal uncertainties associated with a “maximum quantity of water supplies practicable” standard written into law which could readily generate litigation for the state and federal governments. Additionally, subparagraph 101(e) directs that federal agencies issue final decisions “not later than 10 days after the date on which a meeting is requested” by the state on projects or operations to provide additional water supplies. While Reclamation conducts operations in real time and works expeditiously to capitalize on every opportunity to provide emergency water supplies, this time limitation may be difficult for an agency that is already managing pursuant to a drought emergency and may ultimately prove a detriment to sound decision-making.

We are also concerned that there exists the potential for conflict between the mandate in 101(c) and the mandate in section 113(a) requiring no redirected adverse impacts. Additionally, the Department has concerns with the reporting requirements in Section 123. Collectively, the bill has over 20 reporting requirements which would have the effect of diverting resources away from the timely analysis and decision-making needed to effectively address drought conditions on a real-time basis. Finally, we are also concerned with the language in section 101(a)(2) as it could be interpreted to limit the Secretary’s ongoing ability to manage water resources in the Klamath Basin. This language needs to be clarified to ensure there is no limitation on the Secretary’s ability to meet all legal obligations, including protection of the tribal fishery.

The Department supports the discretionary approach to authorities found in Title II of S. 1894 and Section 203 of HR 2898 for the benefit of fish and wildlife. Provisions intended to build upon the agencies’ current actions to improve data gathering, monitoring, and scientific methodologies can greatly benefit operations with respect to water supply and species protection. In particular, the language at Section 202(a)(3)(B)(i) of S. 1894 and Section 203(d) of HR 2898, authorizing federal participation in a 100-percent locally funded pilot program to protect native anadromous fish in the Stanislaus River, Delta and other tributaries, if based upon well shaped research strategies and developed through a collaborative scientific and technically disciplined process (akin to our work in the Collaborative Adaptive Management Team), could help create a strengthened predation research program able to provide near- and long-term benefits for the environment and for state and federal water users across California. We welcome a discussion with Members, staff, and the water districts on how to shape the proposal to achieve our desired outcome.

Titles III and IV of S. 1894 contain many new authorizations with different funding mechanisms. In general, the Department appreciates the bill’s recognition that federal water resource investments are important in effectively leveraging state, local, and private funds to build

drought resiliency. Nonetheless, we have concerns that a number of the authorizations are duplicative with other federal programs and could expand Reclamation's responsibilities well beyond its limited budget. Nonetheless, there are numerous provisions that the Department can support. First, the Department appreciates and fully supports the increase in WaterSMART funding authorization to \$400 million (Sec. 421(b)(3)). The water and energy efficiency grant program has been tremendously successful in stretching water supply in the West, and building drought resiliency. In addition, section 431 would alter Reclamation's roles under the Water Desalination Act of 1996 and the Reclamation Wastewater and Groundwater Study and Facilities Act, commonly referred to as Title XVI.

Section 421(b) of the bill provides an additional appropriations ceiling under the Secure Water Act (Section 9504 of PL 111-11), enabling Interior to continue providing funding through the WaterSMART Program. As we describe above, this additional funding authority was requested in Reclamation's FY 2016 Budget Request, and the Department appreciates inclusion of this language in S. 1894.

Section 431 amends current law to provide blanket construction funding authority for projects to reclaim and reuse wastewater or impaired surface water based on their being determined to be feasible. While this language expands upon existing law, which provides that Reclamation can only fund design and construction of Title XVI projects when there is a specific Congressional authorization, it is timely to examine expanding program eligibility to any projects that are determined to be feasible and which compete well under Reclamation's existing prioritization criteria, which are consistent with the program's statutory origins in Public Law 102-575, as amended. Over the past 20 years, projects developed and constructed under the Title XVI program are contributing nearly 350,000 acre-feet of water annually to address California's water demands, particularly in Southern California. This supply has helped address drought and other issues in the oversubscribed Colorado River basin. Accordingly, water reuse has proven to be one tool in building regional resilience to drought.

It is not clear how Section 431 would relate to subsections 301(b) and (c) of S. 1894, which references 105 water reuse and 26 desalination project sponsors specifically enumerated for review and funding awards. With the proposed changes in section 431, it does not appear that the authorizations in Section 301 are necessary, particularly, since there is no funding made available to carry-out these projects in the near-term. In addition, given the Administration's support for increasing the authorized ceiling for WaterSMART, and the fact that the program as currently authorized is already oversubscribed, there is not a need to create duplicate authorizations as contemplated in Section 322 and the new authorization within Section 421 (i.e. the amendment to 42 U.S. 10368(c)). The Department does support reauthorization of the Desalination Act in subsections 302(a)-(d).

The Department also supports language in Title III, Subtitle B pertaining to federal and non-federal water storage, although technical changes are needed (e.g. Section 312(b) appears to authorize Reclamation to invest in storage projects outside its current 17-state service area). As the Committee is aware, federal agency budgets, including Reclamation's, are under increasing pressure due to expanding needs and the priority of deficit reduction. Accordingly, Section 312 includes requirements that construction of storage projects "shall not commence until the

Secretary secures an agreement providing such funds as are necessary to pay the capital costs for any purpose that would otherwise be considered to be reimbursable under the reclamation laws.” This language is very timely, because the traditional Reclamation business model, in which feasibility studies, consistent with the 1983 Principles and Guidelines for Water and Related Resources Development, are first authorized, funded, and submitted to Congress, and then construction is authorized and funded, does not always address the needs of project sponsors at the state and local levels. Moreover, given budget limitations and the availability of other available financing mechanisms, the historic federal role in financing water storage projects through the Bureau of Reclamation must be revisited with a greater emphasis on non-federal financing.

The Department supports the above provisions in Title III, but recommends some changes. Section 312(a)(2) authorizes federal participation in up to 50% of project costs. While that 50% figure is a maximum, not a minimum contribution, the Department recommends that a 25% maximum federal share ceiling would better reflect the budget realities confronting federal agencies, and the appropriate balance of costs among project beneficiaries. Additionally, Section 312(b)(2) requires that federal participation in non-federal storage projects be requested by the Governor of the State. However, it may be appropriate to broaden, beyond the Governor of a State, which entities can request federal participation in non-federal storage, given that there are other entities involved in storage projects, such as those referenced at Section 312(a)(1).

The Department also has concerns about at Section 313(b), the provision in the “CALFED Storage Projects” Section that would set deadlines for the completion of ongoing water storage studies. Of the five studies referenced in this Section, one is now complete and was submitted to Congress in July 2015 (Shasta Lake Water Resources Investigation); two are dependent upon participation and funding by non-federal cost share partners (North of Delta Offstream Storage/Sites Reservoir, and Los Vaqueros Reservoir); one is undergoing final review and verification of the scientific assumptions associated with its benefits to fish and wildlife (Upper San Joaquin/Temperance Flat); and the final study, referenced at Section 313(b)(5), San Luis Low Point Improvement Project (SLLPIP), requires further analysis and resolution of recently identified safety concerns at B.F. Sisk Dam (B.F. Sisk impounds San Luis Reservoir). Requiring completion of the studies on the proposed dates could compromise Reclamation’s ability to provide sufficient basis for a decision on construction and could prohibit adequate input from cost-share partners.

At the programmatic level, the Department supports language at Section 314 authorizing the combination of dam safety construction work with construction for other project benefits. This language closely corresponds with four other legislative vehicles pending this Congress: Title X of HR 2898 (Valadao); Section 205 of the Senate version of the 2016 Energy and Water Development Appropriations bill (HR 2028) reported on May 21, 2015; S. 1657 (Barrasso); and HR 2749 (Valadao), currently pending before the House. As stated in testimony this past June on HR 2749, the Department believes that any use of this new authority should ensure that the beneficiaries of the non-safety-related project construction pay their full share of the costs as a condition of construction; i.e., that there be no repayment contract for that portion of the project. The Department would be glad to work with the Committee to propose alternative language. It would also be important to assure, if S. 1894 or HR 2749 were to be enacted and those

provisions utilized, that adequate appropriations authorization (i.e. "ceiling") specific to the additional benefits was available for the particular project where the new authority would be applied. Reclamation would need to certify this authority on a case-by-case basis in order to apply this new authority consistent with Congressional intent.

The Department supports language in Section 325 to authorize federal agencies to assist efforts of the State Water Resources Control Board to help manage the state's water supplies during the drought emergency, so long as this provision is limited to illegal water diversions.

The Department supports Section 328 of the legislation, which formally establishes the Open Water Data Initiative. The Open Water Data Initiative (OWDI) is the process of taking federal water data sets and making them publicly interoperable or machine readable, to allow for use with other data sets. When implemented, OWDI will allow for the use of select federal water data sets with other data sets from other federal agencies, states, and localities.

An application of the OWDI process is data visualization, like the December 2014 California Drought visualization http://cida.usgs.gov/ca_drought/. The California visualization utilizes existing, open data sets (federal/local/state) and provides a visual platform in telling the story of the drought in California.

We are especially excited about the progress on the Colorado River Drought Visualization, which we anticipate to release by the end of this year. Visualizations are a great application of the OWDI process, providing a mechanism for communicating current water resource challenges to our key stakeholders and the general public through data-driven insights. The visualizations also show the possibility of progress through the OWDI process.

Title IV Subtitle A contains a "Reclamation Infrastructure Finance and Innovation Act" (RIFIA). Overall, the Department supports the development of new financing options that reduce pressure on agencies' appropriated budgets, and the Administration is exploring alternatives for infrastructure financing, including public-private partnerships and a National Infrastructure bank. The intent of this strategy is to facilitate the best use of federal and non-federal dollars to reduce risk and improve the reliability of the Nation's infrastructure. The Administration is still reviewing the RIFIA proposal and does not have a position at this time.

Finally, Sections 441-444 of the bill would provide \$3.75 billion of mandatory funding for water resources investments in the 2026 to 2050 timeframe. The Administration believes that any major commitment of Federal funds such as this should be carefully considered and recognize the existing framework of budgetary and fiscal constraints. Originating these funds in 2026 circumvents existing PAYGO rules and undermines the fiscal constraints that those rules were intended to protect. The Department does appreciate the recognition that significant new investments are needed to meet the challenges associated water resources in an era of increasing demand and a changing climate, both of which are exacerbating the impacts of drought. Nonetheless, it is important that local communities, working with their state governments take the primary lead in developing and paying for these projects. The Federal government should continue to support these efforts through existing programs that facilitate studies, planning, technology development, and an appropriate cost-share for projects that provide for public

benefits. In addition, within Reclamation, there is already a substantial backlog of projects and actions for which Reclamation has legal obligations. Any new funding proposals should account for those obligations, and should not further impact Reclamation's existing backlog.

In closing, I would once again like to echo the Department's statement to this Committee on June 2 of this year, when we expressed the Department and Administration's deep concern about continuing drought and the toll it is taking on communities urban and rural communities, businesses large and small, farmers and fishermen, and hardworking families. We continue to do all we can to address this situation. As noted previously, Reclamation and California's Department of Water Resources (DWR) are operating through a Real Time Drought Operations Management Team (RTDOMT) comprised of representatives from Reclamation, DWR, State and federal fish and wildlife agencies, and the SWRCB to discuss more flexible operations of the Projects while protecting beneficial uses. Together, these agencies worked through existing statutory and regulatory obligations so that water operations could adjust quickly to changes in the weather and environment to support and improve water supply deliveries when possible while protecting water quality and fish and wildlife as required under state and federal laws and permits. The RTDOMT agencies recognize the importance of their efforts to minimize potential impacts from drought to provide food security, economic stability, and species protection in California.

Toward this end, we are open to further refinements to S. 1894. We understand the implications for western communities and the need to secure long-term water reliability and resiliency in the face of drought and the related impacts of climate change.

As noted in the Department's statement on HR 2898 which is also before the Committee today, the debate surrounding these drought bills has brought abundant speculation that legislation dictating how to operate the water export facilities, or even that relying on a strong El Nino, will decisively end California's drought. For the reasons I've described more specifically in our statement on HR 2898, we strongly disagree with the idea that new legislation will salvage more water than the operators on the ground are wringing from the system every day. And as for El Nino, the odds of a one-year event ending to a multiple-year drought are also slim. In the areas most critical to California's water supply (the Shasta-Trinity mountains, Sierra Nevadas and Colorado River basin), El Nino does not always result in large amounts of snow and rain. Even if it results in large amounts of precipitation in those key areas, it's highly unlikely to make up for the impacts of the current drought, which have left California's water supplies at historically low levels. By several metrics (e.g. snowpack, soil moisture, and even groundwater depth in some areas), this may be the worst drought in at least 500 years.

Simply put, there is no standalone solution to long-term water shortages significantly impacted by drought and the additive factor of climate change. Nonetheless, over the past few years, aggressive drought response measures at the federal, state, and local levels have helped to mitigate the impacts of drought. By sustaining these activities, I believe we can build long-term drought resiliency, even accounting for what El Nino may or may not yield in this and future years.

Looking ahead, it's imperative that the Federal government, states, tribes and local communities think beyond the scope and scale of the current drought, and plan for the needs of the future in a changing climate. According to the best available science, a warmer, drier climate this century will pose significant new challenges to communities across the West.

The Administration looks forward to working with Congress and communities across the West to: foster the development of new technologies to expand supply, reuse water and expand efficiency efforts; leverage water pricing systems and incentives to conserve water; ensure communities and decision makers have the data they need to manage water resources in a changing climate; encourage efficient water use across the agriculture sector; and utilize markets and water trading mechanisms to maximize scarce water resources.

We stand ready to work with this Committee and Senators Feinstein and Boxer to find common ground on legislation that can complement the Administration's efforts to assist communities impacted by drought.

This concludes my written statement. I am pleased to answer questions at the appropriate time.