



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 31 2018

The Honorable Tom McClintock
Chairman
Committee on Natural Resources
Subcommittee on Federal Lands
United States House of Representatives
Washington, D.C. 20515

Dear Mr. McClintock:

Enclosed are responses prepared by the Department to the questions for the record submitted following the January 30, 2018 legislative hearing on H.R. 4532, the Shash Jáa National Monument and Indian Creek National Monument Act.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Colleen Hanabusa, Ranking Member
Committee on Natural Resources,
Subcommittee on Federal Lands

Questions from Chairman Rob Bishop for Mr. Casey Hammond, Deputy Assistant Secretary, Land and Minerals Management, Department of the Interior

1. **Question:** H.R. 4532 would reinstate the 1.3 million acre withdrawal established in Presidential Proclamation 9558, effectively withdrawing the lands removed from National Monument designation. How are these lands currently being managed with respect to appropriation and disposal under public land laws; location, entry, and patent under the mining laws; and geothermal leasing law?

Response: These lands are managed according to the 2008 Monticello Resource Management Plan, as amended. These lands were reopened to mineral entry 60 days after the issuance of Proclamation 9681, but are subject to the decisions and stipulations in the 2008 land use plan.

2. **Question:** In the hearing on H.R. 4532, concern was expressed that public lands removed from Monument designation in the Bears Ears area may restrict Native American access for traditional ceremonies, gathering of plants, and woodcutting. For these public lands, are there any restrictions currently in place for Native American ceremonial access or vegetation gathering?

Response: No. In fact, the aim of Proclamation 9681 is to restore access threatened by the 2016 action.

3. **Question:** It is my understanding that approximately one third of the lands removed from Monument designation in the Bears Ears area already have in place protections associated with Wilderness Study Areas and Areas of Critical Environmental Concern. Outside of WSAs and ACECs, what additional resource protections are in place via restrictions on mineral extraction, rights-of-way, and cross country vehicular travel?

Response: Many federal conservation laws, except for the Antiquities Act, apply to these lands. This includes the National Environmental Policy Act, the National Historic Preservation Act, the Archaeological Resources Protection Act, the Paleontological Resources Preservation Act, the Wilderness Act, the Endangered Species Act, conservation sections of the Federal Land Policy and Management Act (FLPMA) such as those pertaining to ACECs and WSAs, and others. Proclamations 9681 and 9682 reference a number of applicable laws that pertain to the released lands.

According to Proclamation 9681, "A host of laws enacted after the Antiquities Act provide specific protection for archaeological, historic, cultural, paleontological, and

plant and animal resources and give authority to the BLM and USFS to condition permitted activities on Federal lands, whether within or outside a monument. These laws include the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa–470mm, National Historic Preservation Act, 54 U.S.C. 300101 et seq., Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d, Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., Federal Cave Resources Protection Act of 1988, 16 U.S.C. 4301 et seq., Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., Migratory Bird Treaty Act, 16 U.S.C. 703–712, National Forest Management Act, 16 U.S.C. 1600 et seq., Native American Graves Protection and Repatriation Act of 1976, 25 U.S.C. 3001 et seq., and Paleontological Resources Preservation Act, 16 U.S.C. 470aaa–470aaa–11. Of particular note, the Archaeological Resources Protection Act specifically protects archaeological resources from looting or other desecration and imposes criminal penalties for unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources. Federal land management agencies can grant a permit authorizing excavation or removal, but only when undertaken for the purpose of furthering archaeological knowledge. The Paleontological Resources Preservation Act contains very similar provisions protecting paleontological resources. And the Migratory Bird Treaty Act and Endangered Species Act protect migratory birds and listed endangered and threatened species and their habitats." Proclamation 9682 contains similar language.

4. **Question:** As Mr. Hammond's Testimony indicated, the Department of the Interior supports the legislative proposal of actual tribal co-management of the Shash Jaa and Indian Creek National Monuments, as opposed to relegating tribes to a more conventional advisory role. Given its support, what is the Department of the Interior doing to facilitate actual co-management of these important places by both Tribes and the federal government?

Response: Congress has the authority to ensure tribal co-management of the Monuments, which is why the Department supports H.R. 4532.

5. **Question:** What steps the Department of the Interior has taken to implement updates to the National Monuments, per President Trump's December 4th Proclamation. What sources of resources has the Department provided to the BLM to ensure that the new Monuments meet the intent of the proclamation.

Response: The Bureau of Land Management (BLM) officially commenced scoping efforts in January 2018 for the Indian Creek and Shash Jáa units; the Grand Staircase, Kaiparowits, and Escalante Canyon units; and federal lands previously included in the Grand Staircase-Escalante National Monument that are now excluded from its

boundaries. In total, the BLM is working to produce six land use plans and two Environmental Impact Statements. In March of 2018, the BLM hosted four public scoping meetings as part of the land use planning process. The scoping period closed on April 11, 2018. Currently, the BLM is in the process of completing the scoping report.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240
JUL 25 2018

The Honorable Doug Lamborn
Chairman
Subcommittee on Water, Power and Oceans
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Chairman Lamborn:

Enclosed are responses prepared by the Bureau of Reclamation and U.S. Fish and Wildlife Service to the questions for the record submitted following the April 12, 2018, oversight hearing before your Subcommittee on *Examining the Proposed Fiscal Year 2019 Spending, Priorities and Missions of the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the Four Power Marketing Administrations.*

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Jared Huffman, Ranking Member
Subcommittee on Water, Power and Oceans
Committee on Energy and Natural Resources

Committee on Natural Resources
Subcommittee on Water, Power and Oceans
Oversight Hearing
1324 Longworth House Office Building
April 12, 2018
2:00 p.m.

Oversight Hearing on *“Examining the Proposed Fiscal Year 2019 Spending, Priorities and Missions of the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the Four Power Marketing Administrations”*

Questions from Rep. Jared Huffman

1. **Question:** Has the Department of the Interior received any emails, letters, or other communications from the Westlands Water District, San Luis and Delta Mendota Water Authority, or other Central Valley Project contractors since January 20, 2017 regarding the potential expansion of Shasta Dam, including but not limited to a potential cost-sharing agreement with the Bureau of Reclamation? If yes, please provide those documents to the Committee.

Response: Reclamation attends several meetings where the above referenced entities discuss a wide array of issues. It is possible that the above-referenced topics have been informally discussed at those meetings, but Reclamation and the Department have not received formal information or correspondence specific to these topics from these entities.

2. **Question:** Has the Bureau of Reclamation begun discussions with CVP contractors, either jointly or individually, regarding cost-sharing agreements for a potential expansion of Shasta Dam?

Response: Reclamation has not formally begun these discussions, but as per the answer above, it is possible that the topic has been informally referenced in separate meetings on different topics.

3. **Question:** The State of California has asserted that expanding Shasta dam would violate state law, and Reclamation has essentially agreed with that conclusion in the final feasibility report. Does the Department disagree with this assertion? If so, on what basis does the Department of the Interior assert that state law does not apply to construction or operation of this project?

Response: Section 4007 of the Water Infrastructure Improvements for the Nation Act (P.L. 114-322) provides Reclamation with broad authority to participate in federally-owned and state-led water storage projects. Congress in turn appropriated funding in the Consolidated Appropriations Act of 2017 in May 2017 (P.L. 115-31) to proceed with

WIIN eligible projects. Reclamation identified the Shasta Dam and Reservoir Enlargement Project as an eligible project under Section 4007 in February 2018, recommending use of \$20 million for Shasta pre-construction activities, and in March 2018, Congress appropriated additional WIIN funding in the Consolidated Appropriations Act of 2018 (PL 115-141), and included language consistent with Reclamation's WIIN recommendations. Reclamation based its recommendation decisions on a thorough review Reclamation-wide to ensure a balanced approach that considered projects and programs on the basis of mission priorities, program objectives, and the requirements contained in the WIIN Act. Reclamation does not interpret the California Public Resources Code to explicitly prohibit enlargement of Shasta Dam; rather, the statute speaks to impacts on the McCloud River and fisheries. Legal, factual, technical and engineering questions exist as to whether the state law applies and whether those provisions are triggered by the Shasta enlargement.

4. **Question:** For years the Department of the Interior has complained about the prohibitive cost of implementing a drainage solution in the CVP's San Luis Unit, especially within Westlands Water District. But according to various sources, it now appears that resolving the drainage problem in California's San Joaquin Valley may be much less expensive than the approach set forth in Reclamation's \$2.5 billion Record of Decision from 2007 because there is now less drainage-impaired land than there was a decade ago (mostly due to a prolonged drought but also from other factors). In fact, Reclamation and the Department of Justice recently acknowledged in a federal court filing that they are collecting data regarding the acreage and location of drainage-impaired lands, and identifying potential changes to current implementation plans. If Reclamation determines that there is less drainage-impaired land than was assumed in the 2007 Record of Decision and that resolving the problem could be less costly than assumed a decade ago:

- (a) Will Interior modify its ROD and the Feasibility Report it submitted to Congress?

Response: Reclamation recognizes that current conditions have the potential to alter the conceptual plans for construction of drainage systems and facilities presented in the 2008 Feasibility Study, specifically with regard to the acreage and location of drainage impaired lands. Reclamation, in collaboration with Westlands Water District, San Luis Water District, Panoche Water District, and Pacheco Water District, is collecting data to verify and validate the original assumptions in the 2008 Feasibility Report and identify potential changes to the implementation plans based on changes in the acreage and location of drainage-impaired lands. Once this information is collected and assessed, Reclamation will determine if modifications to our 2007 Record of Decision for the San Luis Drainage Feature Re-evaluation and 2008 Feasibility Report will be required.

- (b) Will Interior renegotiate its 2015 drainage settlement agreement with Westlands to ensure taxpayers get a better deal (now that CBO has found the current deal

will cost taxpayers hundreds of millions of dollars, yet as of January the Settlement became completely voidable by the United States)?

Response: The 2015 Westlands Settlement is in the best interest of the American taxpayer. While CBO estimated that enacting the Settlement “would reduce offsetting receipts . . . by \$309 million over the 2017-2027 period”, CBO also estimated that implementing the Settlement “would reduce the need for discretionary appropriations to construct the drainage facilities.” CBO goes on to state:

CBO expects that those facilities [the drainage facilities] will cost about \$2.5 billion. By relieving the federal government of those obligations, CBO estimates that implementing H.R. 1769 would reduce spending subject to appropriations for the project by about \$1.5 billion over the next ten years (and by \$1 billion in later years).

Based on CBO’s own analysis, the cost of \$309 million in mandatory spending that scores under the Pay-As-You-Go rules, is far offset by the savings of \$2.5 billion that would be expended to implement Reclamation’s statutory obligation, which happens to not “score” under those same rules. The Settlement is in the interests of the American taxpayer.

5. **Question:** What is the total amount of federal funding and state funding provided to date to Panoche (Water District and/or Drainage District) for drainage-related work, including the pilot treatment plant and San Joaquin River Improvement Project management?

Response: Between 2009 and 2016 Reclamation has provided \$34.029 million to Panoche Drainage District for the activities at the San Joaquin River Improvement Project and \$4.381 million for activities at the Demonstration Treatment Plant. No funds have been provided to Panoche Water District for drainage-related activities. Reclamation does not have information on the amount of state funding provided to Panoche Drainage District or Panoche Water District.

6. **Question:** Is the Panoche district that is the subject of the pending State criminal investigations and the federal IG investigations the same Panoche district that Reclamation has previously funded to work on SJRIP and on a Pilot Treatment Plant? Is it also the same district that Reclamation is currently working with on an extension of the Grassland Bypass Project 4th Use Agreement for the San Luis Drain? What effect will those numerous pending investigations have on Reclamation’s continued support for Panoche in those various roles?

Response: On February 20, 2018, the Attorney General of the State of California filed a criminal complaint against four former employees and one current employee of Panoche Water District. The State of California audit, completed in January 2017, was on the Panoche Water District. As stated on page 1 of the State’s report, the Panoche Water

District provides administrative, operation, and maintenance services to several neighboring or sister small agencies including Panoche Drainage District, Pacheco Water District, Mercy Springs Water District and Charleston Drainage District.

Reclamation awaits the outcome of the Interior Office of Inspector General's investigation to understand the potential effects that the investigation will have on Reclamation's current approach to meeting its statutory obligation to provide drainage service to Panoche Water District. While the investigation is ongoing, Reclamation has taken additional precautionary measures to ensure that Federal funds provided to Panoche Drainage District are expended consistent with law. This includes stopping payment on activities at the San Joaquin River Improvement Project and additional oversight and review on activities at the Demonstration Treatment Plant.

7. **Question:** How much of Panoche's existing CVP capital repayment debt is proposed to be forgiven if Reclamation goes through with its draft Northerly District Agreement (based on the precedents for the San Luis Water District agreement and the Westlands drainage settlement)? How much land retirement within Panoche has Reclamation required as a part of a long-term drainage agreement/drainage settlement?

Response: At this time, Reclamation is not moving forward with the draft Northerly District Agreement.

8. **Question:** Please provide an update on the extension of the Grassland Bypass Project 4th Use Agreement for the San Luis Drain and please describe the potential role of Panoche in such an agreement.

Response: Reclamation has had preliminary discussions with stakeholders interested in a Fourth Use Agreement for the Grassland Bypass Project. The role of Panoche Drainage District in a Fourth Use Agreement has not yet been identified.

9. **Question:** In the DOI budget hearing, Secretary Zinke stated that the Fish and Wildlife Service's position on trophy imports has not changed. Are you or are you not going to allow the importation of any elephant and lion trophies from Zimbabwe and Zambia? Do you intend to go through a formal rulemaking process, including an opportunity for public comment, on the enhancement and non-detriment findings the service withdrew? Given the fact that many trophy hunters are extremely wealthy, do you think it is appropriate that the American taxpayer foots the bill for 92 percent of all permit fees for wildlife trophy imports? Does the FWS have enough people and resources to review these permits?

Response: On March 1, 2018, in response to a recent D.C. Circuit Court opinion, the FWS informed the public that it is revising its procedure for assessing applications to import certain sport-hunted species via their International Affairs sports-hunted trophies permit web page (<https://www.fws.gov/international/permits/by-activity/sport-hunted-trophies.html>). The Service has withdrawn the countrywide enhancement findings for a

range of species across several countries, including elephants and lions from Zimbabwe and Zambia. FWS will now make species enhancement findings for trophy imports on an application-by-application basis. The Court agreed that this is an approach that obviates the need for formal rulemaking. FWS will utilize all of the information previously collected for the country-wide enhancement findings, as well as any additional species information available before making any findings on the applications received. The importation of elephant and lion trophies will only be allowed if the Service is able to make a positive finding.

FWS is also in the process of developing a proposed rule that will update the fee structure charged for processing permits within the FWS International Affairs program. This increase should recover more of the processing costs of administering the permits program. In addition, the President's FY 2019 budget includes an increase of \$368,000 for the International Wildlife Trade program that is slated towards modernizing the permitting system, including moving toward a fully digital application submission and permit processing. We believe that these actions will result in efficiencies that will benefit the American taxpayers.

10. **Question:** You are proposing a cut in excess of 200 million dollars to the FWS budget in the FY19 requested budget for the Department of Interior. The agency request also cuts 28 million from the Office of Ecological Services, which manages endangered and threatened species protection. Can these agencies operate at optimum efficiency and save our critical species while receiving inadequate funding? Do you anticipate that the agency workforce cuts will hurt agency conservation efforts?

Response: The funding levels in the President's FY 2019 budget request for Ecological Services will allow FWS to address our highest priorities within the program, including an increase in funding for Recovery Activities that will expand FWS's capacity to work with other DOI bureaus, Federal agencies, States, and other stakeholders, to develop recovery plans and to address five-year status review recommendations on the national workplan.

11. **Question:** Given that we are in the middle of a global extinction crisis driven by irresponsible land use and climate change, do you believe that this budget will allow you to meet your statutory obligations under the ESA to prevent extinction and recover threatened and endangered species?

Response: Preventing extinction and achieving recovery of listed species has always been, and will continue to be, one of FWS's highest priorities, and it's important to note that Section 7 of the ESA calls on all Federal agencies to participate in the conservation and recovery of listed species. The President's FY 2019 budget requests \$211.8 million for FWS to conserve, protect, and enhance listed and at-risk fish, wildlife, plants, and their habitats. The budget prioritizes funding to promote the recovery of listed species and toward completing recovery actions and five-year species status reviews as required by the ESA. The budget proposes \$80.8 million for the Recovery activity to focus

available resources on the recovery of the more than 1,660 species listed as threatened or endangered, nearly 400 of which were listed between 2010 and 2017.

- Question:** We have seen DOI's report recommending shrinking boundaries and allowing commercial extraction in three marine national monuments: The Pacific Remote Islands, Rose Atoll, and Northeast Canyons and Seamounts Marine Monuments, which would render their rich and vulnerable biodiversity essentially unprotected from harmful extractive activities. We understand gutting these protections is very unpopular with the public. The public comments submitted during the Departments of Commerce and Interior reviews overwhelmingly supported maintaining full protection for our Marine National Monuments. Why shouldn't special places like these monuments that have such public support be protected to ensure they remain intact now and for future generations? Finally, rolling back these monuments would also be over the objections of recreational fishermen, who use these areas. How do you square this with your stated interest in improving recreational access to public lands and waters, and increasing the benefits that these resources provide American sportsmen and women?

Response: The recommendations made by the Secretary of the Interior included in the Department of the Interior's review under EO 13792 recognize the benefits of fisheries to the economy of American Samoa. Fishing in American Samoa is a mixture of commercial, subsistence, traditional and sport fishing. At the same time, we will still be managing to protect biodiversity and we will be evaluating all public comments.

Questions from Rep. Jim Costa

Shasta Dam

- Question:** Dr. Petty, I understand that Reclamation has proposed spending \$20 million dollars of the WIIN Act storage funding to advance an expansion of Shasta Dam. What specific activities would be performed with that \$20 million?

Response: WIIN funding will be used for environmental and pre-construction processes including: (1) finalizing a Record of Decision (ROD); (2) engineering design and data collection for an 18.5-foot dam raise, (3) planning real estate tasks for future activities related to pool enlargement; (4) coordination with federal, state, and local agencies; and (5) public involvement/stakeholder outreach.

- Question:** Dr. Petty, some of my colleagues have indicated that California law prohibits the Bureau of Reclamation from enlarging Shasta Dam. Is that an accurate characterization?

Response: Reclamation is performing the pre-construction activities at Shasta Dam consistent with existing authorities, and Reclamation plans to have a non-federal

cost-share partner prior to beginning construction at Shasta, which is planned for late 2019 (early fiscal year 2020). Reclamation based its WIIN Act funding recommendations on a thorough review Reclamation-wide to ensure a balanced approach that considered projects and programs on the basis of mission priorities, program objectives, and the requirements contained in the WIIN Act. Reclamation does not interpret the California Public Resources Code to explicitly prohibit enlargement of Shasta Dam; rather, the statute speaks to impacts on the McCloud River and fisheries. Legal, factual, technical and engineering questions exist as to whether the state law applies and whether those provisions are triggered by the Shasta enlargement.

3. **Question:** Who would benefit from raising Shasta Dam 18.5 feet?

Response: The Shasta Dam and Reservoir project was constructed by the U.S. Bureau of Reclamation (Reclamation) as an integral element of the Central Valley Project (CVP) from 1938 to 1945 for six purposes. They include: irrigation water supply, municipal and industrial (M&I) water supply, flood control, hydropower generation, fish and wildlife conservation, and navigation. The project also supports water-oriented recreation at the reservoir, which is located within the Shasta Unit of the Whiskeytown-Shasta-Trinity National Recreation Area. The benefits associated from raising Shasta Dam 18.5 feet would touch most of the nearly 40 million residents of California.

Los Vaqueros Reservoir Expansion

1. **Question:** Dr. Petty, the Los Vaqueros Reservoir Expansion Project in California has broad bipartisan support and is nearing the completion of a final federal feasibility study. This CALFED water storage project will provide critical water supply benefits to the Bureau of Reclamation's municipal, agricultural, and wildlife refuge water contractors. Federal permitting for the project, and additional federal studies, still remain to be completed. The project was not included in the Department of Interior's requested FY 2018 appropriations for water storage projects, as authorized by the WIIN Act. What factors led to this project not being prioritized for a FY 2018 funding request? Will the Los Vaqueros Reservoir Expansion Project be a priority for funding in FY 2019?

Response: Additional storage in the Los Vaqueros Reservoir could improve the reliability and quality of regional water supplies and provide for environmental enhancement. In selecting the projects for the WIIN Act storage project list submitted to Congress in February 2018, Reclamation based its decisions on a thorough review Reclamation-wide to ensure a balanced approach that considered projects and programs on the basis of mission priorities, program objectives, and the requirements contained in

the WIIN Act. Because of benefits associated with the Los Vaqueros expansion project, this project will receive future consideration as the feasibility report is completed.

Friant-Kern Canal

1. **Question:** The Friant-Kern Canal, as you know, is in significant need of repair. Due to subsidence, its full capacity to deliver water to Reclamation customers -- and provide for groundwater recharge -- is degraded by as much as sixty percent. As a result, the Canal is no longer functioning as it was originally designed and Friant Contractors are not receiving the full benefit of the project. For example, during the exceptionally wet 2016-2017 water year -- when the Friant-Kern Canal should have been recharging badly depleted groundwater supplies -- the Canal could function at only 40 percent of its capacity in areas with the greatest ability to store groundwater. What is the Department's plan, in dollars and assistance, to address this challenge?

Response: The Friant Water Authority (initially the Friant Water Users Authority) has operated and maintained the Friant-Kern Canal as a "transferred work" under contract with the Bureau of Reclamation since 1986. The Authority is responsible for all aspects of the Canal's operation, maintenance and replacement (OM&R) as well as all costs related to those activities. Reclamation, through the San Joaquin River Restoration Program (SJRRP), has two projects underway that may address, or are potentially affected by, the substantial subsidence problem on the Friant-Kern Canal. Reclamation requested and was awarded WIIN Act funding which is being applied to address these projects. In addition to the WIIN Act appropriations, the SJRRP will provide up to \$5M in mandatory funds made available through the San Joaquin River Restoration Settlement Act. Funds made available under the Settlement Act are non-reimbursable and are not subject to cost share requirements. The Friant Water Authority has expressed a preference to use funds not subject to the cost share first. Reclamation would like to use WIIN Act funds to supplement or add to an in-progress Financial Assistance Agreement depending on the Authority's preference.

In addition to these two projects on the Friant-Kern Canal, on April 30, Reclamation distributed a news release notifying the public about the availability of the Finding of No Significant Impact for a \$1 million WaterSMART program grant to Kern County Water Agency Improvement District Number 4 (IDR4), Pool 8 lining project. The project would line a portion of the Cross Valley Canal with concrete to reduce seepage losses and thereby retain more water volume delivered in the canal. The Cross Valley Canal is one potential way to route critical water supplies to the subsidence area along with the adjacent and downstream impacted districts while improvements are made to the Friant-Kern Canal.

Biological Opinion Consultation

1. **Question:** Dr. Petty, what are your agency's plans to provide sufficient resources to ensure the completion of the biological opinion consultation process reinitiation --

including the final biological opinions by the Fish and Wildlife Service and the National Marine Fisheries Service -- by 2020?

Response: Reclamation's Mid-Pacific Region has dedicated staff and resources to the re-initiation of consultation on the coordinated long-term operation of the CVP and SWP. Budget requests reflect required resources. Reclamation appreciates Congress's continued support of this important effort. Subsequent to the hearing date, Reclamation also allocated \$10 million in additional FY 2018 funds to this activity in its Work Plan submitted to Congress on May 7, 2018.

2. Question: Does Congress need to provide additional dollars or further direction?

Response: The Department appreciates efforts to support this priority and continues to evaluate additional needs and capability. As stated above, Reclamation has allocated additional FY 2018 funds.

Aging Infrastructure

1. **Question:** During the last century, the United States invested significantly in infrastructure. That infrastructure has aged. It now requires extraordinary maintenance work, to protect the prior investment. What plans are Reclamation developing to ensure the extraordinary maintenance work are funded and completed in an affordable and timely manner, including funding for Transferred Works?

Response: Secretary Zinke has made investments in infrastructure one of his highest priorities for the Department of the Interior. The continued reliable performance of Reclamation water and power facilities is due to effective preventive maintenance and the commitments of Reclamation and its managing partners to substantial ongoing investments in major rehabilitation and replacement activities. These activities address general aging of facilities, updated hydrologic or seismic data, new design standards, and similar issues that must be addressed to maintain safe and reliable project operations. To better support that commitment, Reclamation issued an Infrastructure Investment Strategy in 2015. The Strategy describes steps Reclamation is taking to improve the characterization and reporting of anticipated repair needs at Reclamation-owned facilities and prioritize repairs. Reclamation presented the Strategy at a public stakeholder meeting in Denver, CO in August 2015 and continues to engage external stakeholders through a series of formal and informal discussions on implementation of the Infrastructure Investment Strategy, infrastructure needs, and financing options. Reclamation is currently working on an update of the Strategy scheduled for release in 2018.

Questions from Rep. Grace F. Napolitano

- 1. Question:** The Title XVI program limits federal funding of a project to 20%. This program is in line with the Trump infrastructure plan as it incentivizes overwhelming state and local participation. Why is the Administration's Infrastructure plan advocating for expanding federal incentive programs while drastically cutting incentive programs like Title XVI?

Response: It is important to look at a wide range of approaches when it comes to helping the West effectively manage drought. Water recycling is a key component of efforts by Reclamation and the Department of the Interior to address water challenges currently facing cities and water districts in the West. Projects that increase supply through use of recycled water can diversify communities' water portfolios and promote resilient water supplies, since sources such as treated municipal wastewater continue to be available during periods of water shortage. Title XVI leverages investment from non-federal entities to develop water recycling projects, and we will continue to rely upon the investment of local communities to complement the federal investment for this program.

- 2. Question 2:** The 2019 Proposed Budget also includes a 64 percent cut to the popular WaterSMART Grants program (2019 = \$10 million; 2018 = \$28 million). The WaterSMART Program provides cost-shared grants that help states respond to drought and work to increase water supplies largely through conservation, water-use efficiency, and water-reuse projects. My state of California has suffered and will continue to suffer through severe droughts so we should increase funding to these vital programs so Western states can respond more effectively to persistent drought conditions. Why would the Administration propose severe cuts to yet another successful program that helps California and the West respond to drought conditions in innovative ways?

Response: The WaterSMART program continues to be an important tool that allows Reclamation to support local efforts to firm water supplies. While WaterSMART Grants experienced a reduction in the President's FY 2019 budget request, projects funded through that part of the program will continue to be an important tool available to assist local entities as they plan for and implement actions to increase water supply reliability through investments and attention to local water conflicts. The program will continue to complement other ongoing efforts to address drought, including through the WaterSMART Drought Response Program and by streamlining the approval process for new water supply infrastructure.

Questions from Rep. Sablan for Mr. Timothy R. Petty, Ph. D., Assistant Secretary for Water and Science, U.S. Department of the Interior

- 1) The Draft Management Plan for the Marianas Trench National Monument, required under Executive Order 8335 that created the Monument, was to be completed in two years, which was January 6, 2011. The plan is literally seven plus **years** overdue. There is no need to rehash the history but could you provide an answer as to whether we will ever see a Marianas Trench National Monument draft management plan and when that might be? And, if yes, what items are left to be completed all these years later?

Response: FWS has worked with partners (the Commonwealth of the Northern Mariana Islands (CNMI), National Oceanic and Atmospheric Administration - National Marine Fisheries Service, U.S. Coast Guard, and Department of Defense) to develop a draft Monument Management Plan and associated Environmental Assessment for the Marianas Trench Marine National Monument.

To date, a number of steps have been taken to address or resolve important outstanding issues. FWS issued a patent under the Territorial Submerged Lands Act for CNMI's territorial waters in December 2016, and NOAA Fisheries has developed and published fishing regulations for the Islands Unit of the Monument. These actions address issues that are further discussed within the draft management plan.

- 2) The Fish and Wildlife Service FY19 Budget Request for management of National Wildlife Refuges was \$473 million – a decrease of almost \$11 million. This includes decreases to wildlife and habitat management, visitor services, law enforcement and elimination of funding for refuge conservation planning. These cuts would ensure that American hunters, anglers, and other outdoor enthusiasts have less access to sporting opportunities on public lands. Do you believe the proposed funding levels for the nation's 566 National Wildlife Refuges are consistent with a vision of increasing access to America's public lands, while also managing and expanding the Refuge System to protect and enhance America's wildlife resources?

Response: The 2019 budget request ensures that we are able to address our priorities. It ensures access to high-quality opportunities for all Americans to enjoy wildlife-dependent recreation as well as maintaining habitat and facilities across the National Wildlife Refuge System. The proposed funding level advances the implementation of Secretarial Orders 3347, 3356, and 3366 that call for improving wildlife and habitat management and increasing outdoor recreation opportunities, particularly for hunters, anglers and sportsmen. Such activities include opening national wildlife refuges to new hunting and fishing opportunities, while aligning regulations with the states to improve access. In addition to maintaining its commitment to high quality fish and wildlife habitat and outdoor recreation, the budget request aims to improve existing lands and infrastructure and addresses refuge maintenance, which underpins every management activity that occurs in the Refuge System.

Questions from Rep. Denham for Mr. Timothy R. Petty, Ph.D., Assistant Secretary for Water and Science, U.S. Department of the Interior.

Statement:

The U.S. Fish and Wildlife Service (USFWS) recently submitted to the Federal Energy Regulatory Commission (FERC) proposed mandatory hydroelectric relicensing conditions for the Don Pedro project on the Tuolumne River in Central California. These include an astounding 243% increase in the minimum average annual¹ instream flow on the Tuolumne. USFWS claims that sending this huge amount of water to the sea is necessary to benefit the anadromous fisheries in the Tuolumne River, although the older science that USFWS cites in support of this conclusion is at odds with the results of newer Tuolumne River studies mandated by FERC as part of the relicensing process.

This increase in fish flows, proposed by USFWS in the name of the Secretary of the Interior, would cause correspondingly dramatic decrease in the amount of water available from Don Pedro Reservoir for irrigation, domestic use and groundwater recharge. During dry years, this reduction in agricultural and urban supplies could be devastating to the local economy served by Don Pedro, which is a *non-federal* facility wholly owned by the Turlock and Modesto Irrigation Districts, local public agencies.

I know that the USFWS is not in your area of responsibility, but you do oversee operation of the Reclamation's Central Valley Project (CVP), which is governed in large part by the *Central Valley Project Improvement Act of 1992* (CVPIA) (P.L. 102-575). The Department of the Interior is apparently of the view that the CVPIA, specifically (Sec. 3406(b)(1)), gives the USFWS the authority to mandate the operations of non-federal projects such as Don Pedro on rivers that are not controlled in any way by the CVP. USFWS also is apparently relying on provisions of the CVPIA to claim authority over Central Valley anadromous fisheries, such as salmon, that are everywhere else under the jurisdiction of the National Marine Fisheries Service (NMFS), which also is proposing a similarly harsh flow regime as a relicensing condition for Don Pedro.

The USFWS claim that CVPIA gives it authority to mandate flows and other actions for anadromous fisheries on non-CVP rivers and streams seems to be an overly expansive interpretation of Sec. 3406 of the Act, especially in light of the fact that NMFS already has authority over anadromous fisheries.

Questions:

- 1) Is it the Interior Department's view that CVPIA gives USFWS authority over rivers and streams not controlled by the CVP? If so, please provide the Committee with the legal justification for this interpretation.

Response: CVPIA does not give FWS authority over any Central Valley rivers or streams not controlled by the Central Valley Project. FWS is participating in the FERC relicensing process on Don Pedro and the FERC licensing process on La Grange under the authority of the Federal Power Act and the Fish and Wildlife Coordination Act. Pursuant to the Federal Power Act Section 10(j), fish and wildlife agencies such as FWS can make recommendations to FERC for license conditions to address protection, mitigation for damages to and enhancement of fish and wildlife affected by the project.

FERC then determines which conditions are included in the license. Additionally, FWS reviews and makes recommendations on water resource development projects under the Fish and Wildlife Coordination Act. The authority to make recommendations for fish and wildlife under the Federal Power Act and the Fish and Wildlife Coordination Act is exclusive of other legal authority, such as the CVPIA or Endangered Species Act (which provides NMFS jurisdiction over listed anadromous fishes for the purposes of the ESA). However, FWS considers the goals and obligations of multiple authorities in providing comments to FERC on the license application.

- 2) Is the USFWS interpretation of CVPIA a policy determination reached by an earlier Administration? If so, can this policy be revisited by the Department?

Response: As described above, FWS is exercising authority under the Federal Power Act and Fish and Wildlife Coordination Act to make recommendations for conditions in the FERC process for Don Pedro/La Grange. Under CVPIA, the Secretary is charged with doubling anadromous fish populations in the Central Valley. FWS has undertaken a substantial amount of study to determine how to improve conditions for anadromous fish, and works with partners on many rivers and streams in the Central Valley to provide mutually agreeable solutions to meet multiple beneficial uses consistent with the goals of CVPIA.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 20 2018



The Honorable Lisa Murkowski
Chairman, Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the Bureau of Reclamation to the questions for the record submitted following the June 13, 2018, legislative hearing on *S. 3001, the Contra Costa Canal Title Transfer Act* before your Committee.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Maria Cantwell, Ranking Member
Committee on Energy and Natural Resources

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water & Power
June 13, 2018 Hearing: *Pending Legislation*
Question for the Record Submitted to the Honorable Timothy Petty

Question from Senator James E. Risch

Question: I worked with the Bureau of Reclamation to develop the Reclamation Title Transfer Act of 2018 to alleviate the unnecessary time and burden required in Congress considering each additional transfer, two of which the Water and Power Subcommittee is discussing today. Can you speak to the benefit both for local entities and the Department of Interior by accelerating this process?

Answer:

Under Reclamation law, title to Reclamation projects, lands, and facilities must remain with the United States until a title transfer is authorized by Congress. For many years, Reclamation has been working together, along with other federal and state agencies and interested stakeholders, to negotiate the terms and conditions of specific title transfers. Once reached, these agreements must still be ratified in turn by Congress.

Unfortunately, even for simple transfers, this can be a time consuming and costly process. In many cases, otherwise non-complicated candidates for title transfer have not proceeded because of the cost and time it takes to complete the required process and receive congressional approval. Providing the Secretary of the Interior with this limited administrative authority to transfer title to simple non-complicated projects will reduce transactions costs as well as some of the uncertainties associated with the process – thereby providing an incentive for entities to more seriously consider whether assuming title to facilities is in the best interest of their customers and the communities in which they operate.

For more complex title transfers, such as those involving multi-purpose projects which may have competing demands for lands and facilities, Congress should remain the ultimate decision makers. These are those cases where there is no consensus among the project beneficiaries concerning the transfer, where multiple competent beneficiaries have expressed an interest in acquiring title, or where the institutional and legal concerns cannot be readily resolved and therefore would benefit from the oversight of Congress. We don't believe these would be good candidates for the administrative title transfer process that is proposed in the Reclamation Title Transfer Act of 2018.

Title transfers generally have provided mutual benefits to both Reclamation and the non-federal entities involved. Our support for this concept is grounded in our aim to enable local water managers to make their own decisions to manage infrastructure and improve water management at the local level, while allowing Reclamation to focus management efforts on projects with a greater federal nexus. The enactment of title transfer legislation would be the culmination of Reclamation's longstanding experience with interested stakeholders.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

JUL 10 2018

The Honorable Lamar Smith
Chairman, Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

Enclosed are responses prepared by the U.S. Geological Survey to the questions for the record submitted following the May 31, 2018, field hearing before your Committee to review the federal National Earthquake Hazards Reduction Program, to examine the strengths, weaknesses, and challenges of the 40-year interagency effort, and to receive recommendations for future reauthorization of the program.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Eddie Bernice Johnson, Ranking Member
Committee on Science, Space, and Technology

Question submitted by Rep. Suzanne Bonamici, House Committee on Science, Space, and Technology

1. In Northwest Oregon, it is not a question of if, but when, an earthquake along the Cascadia Subduction Zone will hit our state. The U.S. Geological Survey, in collaboration with the University of Oregon, the University of Washington, Caltech, and UC Berkeley, has developed ShakeAlert, an early earthquake warning system. The technology has been tested and is proved to work effectively.

Can you provide an update on the timeline for implementation of a fully developed and tested national early earthquake warning system that can deliver messages to the general public? What plans does USGS have to educate the public about earthquake early warning alerts and how to respond to them?

Response: ShakeAlert has been focused on the West Coast of the United States (California, Oregon, Washington and Alaska). While this system could be available “border-to-border,” at this time there is no definite timeline for the full implementation of this system. The President’s Fiscal Year 2019 budget did not request continued funding for ShakeAlert. However, the USGS will work with stakeholders to determine the appropriate federal, state and local cost share associated with any future ShakeAlert developments.

A plan for ShakeAlert communication, education and outreach (CEO) is in development, jointly with State and university partners. The group developing this plan includes broad representation, including from Oregon and Washington (see ShakeAlert.org for more information). This plan, when completed this Summer, will detail the specific activities to be accomplished in the education realm and the parties responsible for undertaking them. We expect to provide about \$870,000 this year for five of the most time-critical CEO projects identified in that plan.

We note that the USGS must rely on external partners to undertake and accomplish much of the education needed to ensure that people and businesses take the most appropriate actions when they receive earthquake warnings. Our strategy has been to coordinate public education and training related to ShakeAlert, not to assume responsibility for it, and our expectation is that the benefitting States will work to integrate ShakeAlert messaging within their existing earthquake education programs.