

**Statement of Tom Iseman,  
Deputy Assistant Secretary for Water and Science  
U.S. Department of the Interior  
Before the  
Committee on Natural Resources  
Subcommittee on Water and Power  
U.S. House of Representatives  
HR 4562  
To Authorize Early Repayment Within the Northport Irrigation District  
June 10, 2014**

Chairman McClintock and members of the Subcommittee, I am Tom Iseman, Deputy Assistant Secretary for Water and Science at the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on HR 4562, legislation to authorize the early repayment of obligations within the Northport Irrigation District within the State of Nebraska. The Department supports this bill.

HR 4562 would authorize landowners served by the Northport Irrigation District to prepay the remaining portion of construction costs allocated to them for the North Platte Project. Completed repayment will relieve the landowners within the District from the full cost pricing, compliance and land use certification obligations associated with the Reclamation Reform Act of 1982 (RRA). Subsection 213(c) of the RRA specifies that no authority is provided for lump sum or accelerated repayment of construction costs, except for repayment contracts that provide for lump sum or accelerated repayment that were in effect as of the enactment of RRA. Therefore, Reclamation and the Congress have interpreted current law to require water contractors to obtain additional statutory authority to make accelerated repayments of construction costs allocated to irrigation, except for those contracts already in effect as of the RRA's enactment, or for contracts otherwise exempt from the provisions of the RRA.

Northport is the only remaining district in the North Platte Project that is subject to RRA acreage limitations. All other districts with the Project have repaid their construction obligations in full to Reclamation, which relieved those districts from the full-cost pricing, compliance and land use certification obligations associated with the RRA.

As long as proposals such as this do not reduce revenues or negatively impact the United States, Reclamation typically supports legislation authorizing the pre-payment of repayment contracts, and has done so previously before this subcommittee<sup>1</sup>. Specific statutory authorization for early or accelerated repayment is not required in all cases involving construction costs that are allocated to irrigation, but would be in the case of Northport.

In general, early repayment authority in contracts is limited to landowners. In other words, a district cannot pay out early; rather, each landowner can decide if his or her land should be paid out early. It is Reclamation policy to require landowners who want to pay out early to pay out all

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<sup>1</sup> HR 818 testimony May 12, 2011; HR 5666 testimony July 27, 2006; HR 4195 testimony November 9, 2005

of their land in the subject district and not just a portion of their land. This policy would continue to be applied for Northport and the North Platte Project if HR 4562 were to be enacted. Early payout would accelerate the repayment of these project costs to the United States Treasury. Where these repayment obligations are not accompanied by interest, early repayment has a net positive impact on overall repayment to the Treasury and we are highly confident that this will be the case under this bill.

This concludes my written statement and I would be pleased to answer questions at the appropriate time.

**Statement of Tom Iseman**  
**Deputy Assistant Secretary for Water and Science**  
**U.S. Department of the Interior**  
before the  
**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Subcommittee on Water and Power**  
**HR 4508, East Bench Irrigation District Contract Extension**  
**June 10, 2014**

Chairman McClintock and members of the Subcommittee, I am Tom Iseman, Deputy Assistant Secretary for Water and Science at the Department of the Interior (Department). I am pleased to provide the views of the Department on HR 4508, to amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services. The Department supports HR 4508.

Reclamation's Clark Canyon Dam and Reservoir are located in southwest Montana and supply irrigation water under contract to the East Bench Irrigation District (EBID). EBID's water service contract with Reclamation was first executed in October 1958 and expired on December 31, 2005. Pursuant to Section 1 of the Act of May 15, 1922 (42 Stat. 541), Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649), and Section 85-7-1957, Montana Code Annotated, execution of a new contract between the United States and any irrigation district requires confirmation by a Montana District court..

In 2006, EBID filed a petition with the Montana Fifth Judicial District Court seeking confirmation of the execution of their renewed contract with Reclamation. A hearing was convened on December 14, 2006, in Dillon, MT, and one objection to the confirmation was filed.

A part of the legal challenge to confirmation of the contract involves the proper place of use of the water, which is an element of a water right which the Montana Water Court has sole jurisdiction over. Therefore, the case was certified from the Montana District Court to the Montana Water Court.

Once the Montana Water Court addresses the proper place of use for the subject water right, it will send the case back to the Montana District Court for further proceedings on the various additional legal challenges to the contract. A decision by either the Montana Water Court or the Montana District Court may be appealed directly to the Montana Supreme Court, which is the court of last resort.

Prior year appropriations bills have extended the contracts for terms of up to two years. Most recently, in the 112<sup>th</sup> Congress, Public Law 112-139; 126 Stat. 390 extended the contract for four years (to December 31, 2013) or until the date on which a new long-term contract is executed. EBID remains concerned about losing their right to renew their 1958 contract if it is allowed to expire prior to securing court confirmation of the renewed 2006 Contract. For this reason they are pursuing extension of the 1958 contract.

Under current law, the 2006 contract is not binding on the United States until court confirmation is

secured. A final decree from the court confirming the 2006 contract has not occurred. Therefore, EBID is seeking authority under HR 4508 to extend the 1958 contract. HR 4508 would extend the contract for six years beyond Public Law 112–139 for a total of ten years (to December 31, 2019) or until a new contract is executed and still defer to the court to take up the issue again at a time of its choosing. The Department believes that a 10-year extension under HR 4508 will allow adequate time for confirmation by the Montana Fifth Judicial District Court. The Department supports this legislation because it would allow water service to the EBID to continue and protects the right for contract renewal while the court confirmation process is given time to be completed.

This concludes my statement. Again, the Department supports HR 4508. I would be pleased to answer questions at the appropriate time.

**Statement of Tom Iseman,  
Deputy Assistant Secretary for Water and Science  
U.S. Department of the Interior  
before the  
U.S. House of Representatives  
Committee on Natural Resources  
Subcommittee on Water and Power  
HR 3716, Pyramid Lake Paiute Tribe – Fish Springs Ranch Settlement Act  
June 10, 2014**

Chairman McClintock, Ranking Member Napolitano, and members of the Subcommittee, my name is Tom Iseman, Deputy Assistant Secretary for Water and Science at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department on H.R. 3716, the Pyramid Lake Paiute Tribe - Fish Springs Ranch Settlement Act, which would authorize and ratify a settlement agreement negotiated by the Pyramid Lake Paiute Tribe (Tribe) and Fish Springs Ranch LLC (Fish Springs), resolve litigation brought by the Tribe against the Bureau of Land Management (BLM), and relieve the United States of any potential liability related to the settlement. The Department does not object to H.R. 3716.

**Background**

In 2006, the Tribe filed a lawsuit in the federal District Court challenging a Bureau of Land Management (BLM) decision to grant to Fish Springs a right-of-way across federal land for the construction of a groundwater transmission pipeline. In March 2007, the District Court granted the Tribe's motion for a preliminary injunction and enjoined construction related to the pipeline. At this time, the Tribe and Fish Springs began settlement discussions.

In May 2007, the Tribe and Fish Springs entered into a settlement agreement (Original Agreement). Under the Original Agreement, in consideration of \$3.6 million, the transfer of over 6,200 acres of land, and other benefits provided by Fish Springs, the Tribe petitioned the District Court to dissolve the preliminary injunction and stay proceedings in the case against BLM. This allowed Fish Springs to construct the pipeline and begin pumping groundwater according to terms agreed upon by the Tribe and Fish Springs.

In 2013, the Tribe and Fish Springs entered into a Supplement to the Original Agreement (Supplemental Agreement) whereby Fish Springs and the Tribe agreed to seek legislation to settle all claims, if any, of the Tribe and the United States on behalf of the Tribe and its members for impacts or injuries to existing and claimed tribal water rights and injuries to tribal trust resources related to groundwater pumping by Fish Springs. This includes final resolution of the Tribe's lawsuit against BLM. Upon enactment of this legislation, Fish Springs will provide an additional \$3.6 million, plus accrued interest, to the Tribe.

## **H.R. 3716**

Section 3 of H.R. 3716 would authorize and ratify the Supplemental Agreement entered into by the Tribe and Fish Springs.

Section 4 of H.R. 3716 includes waivers and releases of claims by the Tribe against both Fish Springs and the United States. H.R. 3716 would authorize the Tribe to waive claims against Fish Springs and to subordinate its existing and claimed water rights to the Fish Springs project. The Tribe would also waive claims against the United States, including claims related to: BLM's approval of the Fish Springs project; injuries to the Tribe's trust and reserved resources related to the project; and the negotiation of the Original Agreement, the Supplemental Agreement, and the implementing legislation. Rather than requiring the Department to sign waivers of claims, H.R. 3716 would extinguish any claims that the United States could bring on behalf of the Tribe and its members to the same extent that those claims are waived by the Tribe.

H.R. 3716 would ratify an agreement negotiated by the Tribe and Fish Springs. In addition, it would resolve litigation against the BLM and relieve United States of any potential liability related to the Fish Springs project, the Original Agreement, the Supplemental Agreement, and the implementing legislation. H.R. 3716 would provide these benefits without any appropriation.

The Original Agreement and the Supplemental Agreement reflect a creative and cooperative approach by the Tribe and Fish Springs to resolve a dispute regarding Fish Springs' use of groundwater and the potential effect to the Tribe's interests. These agreements were negotiated without the involvement of the Department.

Therefore, the Department does not object to H.R. 3716.

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

**Statement of Tom Iseman,  
Deputy Assistant Secretary for Water and Science  
U.S. Department of the Interior  
Before the  
Committee on Natural Resources  
Subcommittee on Water and Power  
U.S. House of Representatives  
HR 4166  
Lake Berryessa Recreation Enhancement Act of 2014  
June 10, 2014**

Chairman McClintock and members of the Subcommittee, I am Tom Iseman, Deputy Assistant Secretary for Water and Science at the Department of the Interior (Department). I am pleased to provide the views of the Department on HR 4166, the Lake Berryessa Recreation Enhancement Act of 2014. For reasons described below, the Department supports the transfer of administrative jurisdiction over recreation facilities at Lake Berryessa from the Bureau of Reclamation (Reclamation) to the Bureau of Land Management (BLM). While we support this transfer, the Department notes that given the site conditions, available resources, and applicable authorities, the BLM may not be able to meet the public's expectations nor manage the recreation area as the sponsor intends under the bill as written.

Lake Berryessa is created by the water behind the Bureau of Reclamation's (Reclamation) Monticello Dam, a principal feature of the Solano Project, located in northern California's Solano and Napa Counties. The Solano Project's multiple-use benefits include recreation, flood protection, a high-quality water supply for irrigation and municipal use for the cities of Vacaville, Suisun City, Vallejo, and Fairfield.

At capacity, Lake Berryessa stores 1.6 million acre feet of water and is one of the largest bodies of fresh water in California. Reclamation administers the Lake Berryessa Recreation Area, which includes two large day-use areas (Oak Shores and Smittle Creek), as well as the Capell Cove public boat launch and many smaller dispersed day use areas. Reclamation park rangers patrol the lands and waters to provide visitor services and to protect and conserve sensitive resources. The Recreation Area has seven sub-areas set aside for concession-operated resorts. Currently five of the areas are operating and offer boating, swimming, water skiing, fishing, camping, rustic lodging and picnicking.

In the early 2000s, Reclamation recognized the need to begin planning for future operations at Lake Berryessa that would improve public access to the lake after the then existing concession contracts expired. Recreation at the lake had primarily occurred under seven 50-year concession contracts that were due to expire in 2008 and 2009. These long-term concession contracts had originated during the time that Napa County managed the concession areas under an agreement with Reclamation. Generally, the concession contracts as administered by Napa County had allowed for recreation at Lake Berryessa to evolve into several instances of semi-permanent exclusive use by trailer owners and long term campers. The terms of the concession contracts were in some cases vague or not strictly enforced, and the lake had come to require regular visits by local law enforcement.

With expiration of the concession contracts on the horizon, Reclamation initiated the planning process for future recreation operations and use of Lake Berryessa in 2000. Between 2000 and 2006, Reclamation conducted outreach to interested parties including the general public, concession contractors, permittees, local, Federal and state government agencies and Congress. Reclamation initiated work for a new Visitor Services Plan (VSP) in 2000 and published a Draft Environmental Impact Statement (EIS) in October 2003. After considering comments, Reclamation published a Final EIS in October 2005 and then held 12 public meetings and briefings, attended by some 1,200 participants, to encourage additional public comment for consideration in the decision process. A Record of Decision (ROD) was signed in June 2006, based upon the fundamental assumption from the VSP that new contractors will invest significant capital to develop a broad range of recreation facilities for short-term visitor use at all the lake's seven concession areas.

In June 2007, Reclamation publicly advertised a prospectus for the operation of the seven concession areas at Lake Berryessa. Due to a lawsuit filed by four of the then-existing contractors, Reclamation was precluded from evaluating proposals until November 7, 2007, when the Court of Federal Claims entered final judgment in favor of the United States and dismissed the Plaintiff's complaint with prejudice. Reclamation prevailed concurrently in two other lawsuits by a trailer owner group alleging that Reclamation had no authority to change use of the Federal land before removing 1,500 long-term privately owned trailers in advance of new commercial development as set forth in the VSP.

Reclamation subsequently convened a multi-agency team, including members from the National Park Service, DOI Solicitors Office, Reclamation and several contractors, in January 2008 to evaluate previously submitted concession proposals. In April 2008, Reclamation selected the best proposals from three offerors, for new concession contracts at Lake Berryessa. Unfortunately, in February 2009, it was concluded that key provisions of the new concession contracts were legally insufficient, requiring Reclamation to cancel final contract negotiations with two offerors and develop and re-solicit a revised Prospectus. One long-term contract was awarded to Forever Resorts for Pleasure Cove, after renegotiation, in 2010. As a result, only one new long-term contract was awarded, leaving four of six remaining concession areas closed during the 2009 recreation season; two others remained open under short-term, interim contracts. Reclamation continued to conduct its cleanup of abandoned former concession facilities and private property at all of the concession areas through 2012.

Reclamation released a revised Prospectus in May 2009 for the six remaining concession areas. A similar evaluation team was again convened to evaluate proposals; and in January 2010, Pensus Lake Berryessa Properties LLC (Pensus) was selected as the successful offeror for six of the lake's seven concession areas<sup>1</sup>. The company signed a contract to develop new public use facilities including launch ramps, marinas, stores, restaurants, hotels, lodges, cabins, RV sites, camping sites, and other recreational opportunities consistent with the 2006 VSP ROD. Unfortunately, additional setbacks occurred when Pensus did not comply with the terms of their contract, and Reclamation was forced to terminate the contract for default in December 2012, undertake the interim management of the sites itself, and once again re-solicit new long-term

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<sup>1</sup> Steele Park, Spanish Flat, Lake Berryessa Marina, Rancho Monticello, Markley Cove, and Putah Creek



concession contracts. To minimize disruptions in public services, in spring 2013, Reclamation awarded new interim concession contracts for four of the six concession areas formerly under contract with Pensus. Together with the long-term concessionaire at Pleasure Cove Marina, there are a total of five concession areas currently open and operating, two of which have the full complement of developed visitor services (Pleasure Cove and Markley Cove) and three with more basic services. Two concession areas which were never reopened by Pensus remain closed (Monticello Shores and Berryessa Point).

Following Pensus' contract termination, Reclamation initiated the Lake Berryessa Community Forum (Forum) in January 2013, a public involvement program to keep the public and local agencies informed, and use feedback from that program in the concession development planning process. During these meetings, the public overwhelmingly supported a planning effort to better identify the current market demand and services to be provided, and to ensure that these services can be economically sustainable by analysis utilizing a financial feasibility study. The Forum asked to be informed and partake in the process of developing the required services at each area.

In August 2013, Reclamation retained an architect-engineering and recreation planning firm to conduct a market analysis, develop conceptual site plans and perform financial feasibility analyses for five concession areas. The results of these planning efforts have been shared with the public via numerous Forum and other public meetings in 2013 and 2014. Additionally, Reclamation reallocated significant resources and awarded several contracts for concession area improvements in 2013 to enhance public services during the interim period, and will complete installation of those improvements in 2014. Reclamation has also awarded contracts to perform NEPA analysis and to develop a new prospectus, and will shortly award a contract to finalize infrastructure design and initiate permitting for water, wastewater and other utilities in five concession areas. Reclamation is working to prepare a separate draft prospectus for one of the developed concession areas, Markley Cove, to be advertised separately from the undeveloped former Pensus sites. Since the termination of the prior contract in 2012, Reclamation has or will obligate or expend over \$4.5 million of previously unplanned funds to support the provision of interim services and to develop a new viable prospectus opportunity for long-term development.

In view of the history at Lake Berryessa, Reclamation understands the desire of the bill's sponsor to consider whether another agency can more efficiently manage recreation at Lake Berryessa. The premise of HR 4166 is to transfer "administrative jurisdiction" over the lands and water body at the lake in order to provide visitor services sooner than Reclamation's current timeline.

As a threshold issue, Reclamation and the Department support arrangements whereby other entities manage recreation at Reclamation facilities. There are 289 Reclamation project areas that have developed recreation facilities and opportunities available for public use, and over 100 are managed by a Federal recreation partner. The remaining 187 developed recreation areas are managed by Reclamation or a non-Federal recreation partner, and draw over 24 million visits annually. Across these locations, more than 225 concessionaires offer a variety of outdoor facilities and services to the public at Reclamation recreation sites. Twelve Reclamation water projects have received the nationally significant designation as National Recreation Areas and are managed by the National Park Service or U.S. Forest Service. Wherever practical,

Reclamation works to secure entities to manage recreation and potentially improve public access as well as economic opportunity for local businesses.

While the Department supports the transfer, we note that given the limited available BLM resources, a transfer of jurisdiction to the BLM would not alleviate the management concerns that have been raised by the public and the sponsor. We would like the opportunity to work with the sponsor and Committee on the bill so that visitor expectations can be met and positive relationships for the future management of the site can be developed and maintained.

The BLM currently administers recreation commercial leases, which are similar to concessions contracts, under existing authorities. However, the BLM is concerned that the bill as written does not provide sufficient authority under which the BLM would administer these concessions contracts. The BLM is further concerned that site-specific concessions authority for Lake Berryessa alone would lead to inconsistent management across BLM-managed lands and uncertainty for concessionaire businesses. In addition, the BLM would like to explore with the sponsor and the Committee potential opportunities to identify adequate legal authority for the management of all existing and new concessions contracts throughout BLM-managed lands nationwide.

We would also recommend some minor changes to the language of HR 4166. Section 5(d) of the bill contains language aimed at preserving “existing agreements”, which the Department interprets as applying to existing concessions contracts, environmental compliance/environmental commitments, third party agreements such as Lake Solano Managing Partner Agreement (MPA), Camp Berryessa MPA, and others. In order for the legislation to preserve the agreements with certainty, the Department recommends the bill specifically enumerate the agreements by name and provide for a transition process to ensure that agreements are consistent with the authorities of the new managing entity.

The reference in Section 5(a) of the bill to Public Law 93-483 we believe is a drafting error and should actually reference Public Law 93-493, the correct statute specific to recreational development at Lake Berryessa.

The Department also recommends the legislation more specifically address transfer of ownership and operation of facilities such as launch ramps, day use areas, administrative complex, utilities and infrastructure currently managed by Reclamation. Additionally, Section 8 authorizes the Secretary to collect recreation or concession fees, “in accordance with Section 803 of the Federal Lands Recreation Enhancement Act”. The Department appreciates the sponsor’s interest in ensuring appropriate fee-collection and retention authority for the site, and would like to work with the sponsor on language to ensure that the agency receiving administrative jurisdiction can enter into, administer, and retain fees for concessions agreements.

Further, we look forward to working with the committee on transition provisions to minimize disruption of visitor services if the bill is enacted.

That concludes my written statement. I am glad to answer questions at the appropriate time.