

Testimony of Jed Petersen, on behalf of East Bench Irrigation District

In Support of S.997

*East Bench Irrigation District Water Contract Extension Act*

Before the House Subcommittee on Water and Power

June 6, 2012

Chairman McClintock and Members of the Subcommittee, my name is Jed Petersen and I appear today to offer testimony in support of Senate Bill 997, the *East Bench Irrigation District Water Contract Extension Act*. On behalf of the East Bench Irrigation District, I thank you for the opportunity to speak.

I am the fifth generation of my family to farm the same property in Southwest Montana. Since the first deliveries of East Bench irrigation water in 1964, our family has been a member in good standing of the Irrigation District and we have relied heavily on the regular delivery of irrigation water for our hay and grain crops. The Members in our district irrigate approximately 28,000 acres of productive farmland in Beaverhead and Madison Counties, and the livelihood and very existence of our farms is dependent upon water service from the East Bench Irrigation District. Without water from this Bureau of Reclamation Project, our lands would revert to the arid, high desert ground which pre-dated the Project.

There are two primary reasons why East Bench is requesting the passage of Senate Bill 997. The first reason is because East Bench desires to remain in a contract with Reclamation which is binding on both sides. The second reason is because East Bench is only entitled to negotiate a renewal contract if it is still a party to a valid existing contract.

The East Bench had a 40-year Water Service Contract with Reclamation which was due to expire on December 31, 2005. We refer to this as “the 1958 contract.”

We began formal negotiations with Reclamation for a contract renewal in 2004, but required additional time to complete the process. Our Montana delegation assisted with the passage of legislation extending the 1958 contract to December 31, 2007. (*Montana Water Contracts Extension Act of 2004*, Section 208, Title II of Public Law 108-447)

We completed our negotiations with Reclamation in 2006 and arrived at a new contract which was acceptable to all parties. We refer to this as the “the 2006 contract.” However, under federal law, the 2006 contract is not binding on the United States until it has been “confirmed” by a Montana State District Court. We petitioned our local District Court for confirmation of the contract in 2006 and received a single objection from a neighboring farm which is not within the District. The objection raised issues relating to the water right which the District shares with the United States, and the Montana Water Court is the court which has sole jurisdiction over water rights. Accordingly, our case was moved to the Water Court, where it is still pending. Part of the delay in the Water Court is attributable to the arduous water right adjudication process which has been underway in Montana for more than two decades.

Because of the legal challenge to the 2006 contract, we again secured help from our Montana Delegation in passing a second extension of the 1958 contract, which extension expired on December 31, 2009. (Section 213 – *Authority to Extend Water Contract*, Public Law 110-161 (a part of the Consolidated Appropriations Act of 2008))

Since mid-2009, we have been working with Senator Tester’s office to secure a third extension to keep the 1958 contract in force while we litigate the objection to our new contract. Unfortunately, it has proven difficult to secure passage of such legislation, not because there has been any opposition, but rather because no appropriate legislation has been passed which our extension could have been attached to. Finally, Senator Tester made our request a stand-alone piece of legislation, which is Senate Bill 997. This bill passed the Senate on November 2, 2011. Senate Bill 997 would keep our 1958 contract in force retroactively from December 31, 2009 to

December 31, 2013. We hope to have the litigation to our new 2006 contract resolved by that time and we hope we will not need an additional extension. For these reasons, we respectfully urge this Subcommittee to recommend passage of the extension so that our District can continue to operate under the authority of a binding contract with Reclamation.

The second reason our District is requesting an extension has to do with our unqualified right to negotiate new contract terms in the event our 2006 contract does not withstand the legal challenges made to it. (43 USC Sec. 485h-1) So long as East Bench has a valid and binding contract, federal law provides the District with a right to seek renewal of a water contract, upon terms mutually agreeable to both the District and Reclamation. However, if our 1958 contract were allowed to expire, our District could lose that unqualified right to seek renewal, and although unlikely, it is possible other competing interests could seek to contract with Reclamation for the water we have depended on since 1964. While we have sought and obtained assurances from Reclamation that the United States will stand by its promise to negotiate a renewal contract if our 2006 contract cannot be confirmed, our legal remedy to enforce this promise will vanish if the 1958 contract is allowed to expire. Passing Senate Bill 997 will retroactively keep our 1958 contract in force from December 31, 2009 until December 31, 2013.

To our knowledge, there is no objection to this bill, and no fiscal impact to the United States. Passage of the bill will provide great relief and assurance to our District Members, and ensure that we retain the unqualified right to seek a renewal contract if necessary. Passage will also simply maintain the status quo in the Beaverhead River Valley until the objections to the contract can be resolved. Thank you for your interest and attention and for the good work you do on behalf of the nation's farmers and ranchers.

Sincerely,

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Jed Petersen for East Bench  
Irrigation District, Dillon, MT

