

Committee on Resources

resources.committee@mail.house.gov

[Home](#) [Press Gallery](#) [Subcommittees](#) [Issues](#) [Legislation](#) [Hearing Archives](#)

Mr. Robert "Mac" McLennan
Vice President, External Affairs

On behalf of
Tri-State Generation and Transmission Association, Inc.

Testimony
Before the Committee on Resources Subcommittee on Water and Power
United States House of Representatives

On H.R. 2603,
To Impose Limitations on the Authority of the Secretary of the Interior to Claim Title or Other Rights to
Water

September 22, 2004

Chairman Calvert, Ranking Member Napolitano and members of the House Subcommittee on Water and Power, I appreciate the opportunity to appear before this subcommittee today to share Tri-State Generation and Transmission Association's views regarding H.R. 2603, introduced by Representative Stevan Pearce (R-NM), and to discuss the importance of this legislation to our members and customers.

My name is Mac McLennan, and I am the Vice President of External Affairs for Tri-State Generation and Transmission Association, a not for profit wholesale power supply cooperative that provides electricity to forty-four member distribution cooperatives in Colorado, Nebraska, Wyoming and New Mexico. As Vice President, I oversee Tri-State's government relations, communications and external association activities. Tri-State is based in Westminster, Colorado, but has facilities and employees throughout the region. Tri-State and its member systems provide electric service to nearly one million electric customers, primarily located in rural communities. Tri-State is also one of the largest customers of hydroelectricity generated by the Bureau of Reclamation and the Army Corps of Engineers in the interior West.

In another capacity, I serve as Chairman of the National Endangered Species Act Reform Coalition (NESARC). NESARC is a broad based coalition of more than 100 member organizations representing millions of individuals across the United States that is dedicated to updating and improving the Endangered Species Act (ESA). While I realize that the ESA is not the central focus of H.R. 2603, implementation of the ESA certainly is part of the root cause of some of the water issues in the West and the concerns that led to introduction of this legislation.

Mr. Chairman, my family and I, along with all of Tri-State members, live in the communities that we serve, and understand fully the needs of these communities, including the vital role of water and the need to supply the power necessary to meet the growing demand in the western states. I have a deep appreciation and respect for our land and water resources.

I believe that it is in our best interest to balance the role of states, which have retained the right to manage water, and the federal agencies' role in upholding federal laws. H.R. 2603 seeks to ensure that we establish clarity with respect to these roles and outlines the authorities granted to the Secretary of the Interior and the agencies within that Department. Further, H.R. 2603 will send a clear message to the courts regarding what authorities Federal agencies have with respect to water, including the allocation and use of water.

Had this legislation been in place, I believe we would not have been in the situation we are with respect to the silvery minnow, an endangered species in the state of New Mexico, where the Tenth Circuit Court of Appeals decision in the Rio Grande Silvery Minnow, et al. v. Keys, ruled that the Bureau of Reclamation has "discretion" to unilaterally disavow water delivery contracts with irrigators and other water users to provide that water for the benefit of the silvery minnow.

If allowed to stand, the Silvery Minnow decision, the heart of the issue before this committee, would destroy

the contractual relationship between the Bureau of Reclamation and the water users they serve. It would also usurp, throughout the West, the State's role in allocating water rights. By entering into contracts with the Bureau, water users expect a reliable source of scarce water resources. Water users have a right to expect the Bureau will honor the contractual obligations they have made. By allowing the Bureau and other federal agencies to unilaterally re-allocate contracted water to other uses, it would essentially render contracts unenforceable, creating uncertainty for water users and chaos for state water law. Decisions such as this result in unnecessary conflict regarding the allocation of scarce water resources.

I am deeply concerned about the effect of the Silvery Minnow decision and decisions like it which result from the implementation of the Endangered Species Act. Congress must take action to resolve the conflict created in the Rio Grande water allocation controversy, as H.R. 2603 is targeted at doing, and to avoid similar future conflicts. I am concerned that, without Congressional clarification, our members, systems and customers who are dependent on these water resources could find themselves adversely impacted by the unilateral reallocation of water supplies and unable to plan for long term water supply needs. In addition, we cannot fail to recognize the enormous financial and societal costs that these decisions have on our quality of life.

As this subcommittee and the full House Resources Committee consider legislative options, we urge the Committee to address the underlying problems associated with the Endangered Species Act (ESA) that contributed to the Silvery Minnow decision and the need for legislation such as H.R. 2603. What is happening to the citizens and communities of New Mexico as a result of the uncertainty created between water law and federal obligations is not an isolated case. We need clarification of laws surrounding water, as H.R. 2603 provides. We also need to update and improve the ESA to ensure that the federal government lives up to its existing commitments to provide water to the citizens of New Mexico and to protect citizens and communities throughout the United States from having the ESA used to unilaterally reallocate resources – without respect to the effect of such actions on communities, businesses and human needs.

Mr. Chairman, in closing, I would like to thank you for holding this hearing today and thank Representative Pearce for his leadership in introducing H.R. 2603. I further encourage you to continue to work on one of the underlying issues, the Endangered Species Act, that has brought us here today. We must continue to find ways to update and improve the laws that families, businesses and local governments must abide by while protecting the values those of us in the West live by and follow.