

**Testimony of Jerry Nypen**  
**Manager**  
**Lower Yellowstone Irrigation Projects**  
**Sidney, Montana**  
  
**on H.R. 2202,**  
**Lower Yellowstone Reclamation Projects Conveyance Act**  
  
**before the Subcommittee on Water and Power**  
**Committee on Resources**  
**U. S. House of Representatives**  
  
**June 5, 2002**

Mr. Chairman and members of the Subcommittee, my name is Jerry Nypen. I am the Manager of the Lower Yellowstone Irrigation Districts One and Two, the Savage Irrigation District, and the Intake Irrigation District. Thank you for the opportunity to provide testimony on H.R. 2202, Lower Yellowstone Reclamation Projects Conveyance Act. We appreciate this Subcommittee's support for the transfer of Bureau of Reclamation features to local public entities.

The three Federal irrigation projects involved in this legislation are located along a 72-mile section of the Yellowstone River near the borders of the states of North Dakota and Montana. The Projects' facilities for transfer involve public water rights and diversion and distribution facilities for providing irrigation water to about 500 farms. There are about 56,000 acres being irrigated within the Projects resulting in crop values that exceed \$20 million in most years. The Projects provide for a special economy within an area sparsely populated. In fact, the only industry providing stability in the area is irrigated agriculture.

The Bureau of Reclamation constructed the Savage and Intake project features, 55 years ago, and the Lower Yellowstone Project about 90 years ago. The operation and maintenance as well as replacements and repayment responsibilities were transferred to our locally formed Irrigation Districts following the construction. We have successfully cared for the Projects for decades. It is important to emphasize that the Districts are very public in nature, organized and operating under State laws. This transfer of title should not be construed as "privatization".

It is important to understand why the transfer of title is being pursued. This transfer is consistent with the Bureau of Reclamation's mission of transferring projects that are "efficiently and effectively managed by non-Federal entities". We have certainly fulfilled the terms of the original contracts that were executed with the Bureau of Reclamation. Since these contracts state that transfer of title will take place with Congressional approval, we expect that the Bureau will abide by these terms as well.

Transfer is also being pursued to acquire and maintain local control. Local businesses and industry believe that acquiring title is important now to preserve the stability and integrity of the Projects. Without transfer, the community can only consider themselves caretakers or custodians of the Projects even though they have had almost 100% of the responsibility for decades. Transfer will alleviate a sense of nervousness that is

created by implementing national policy for Federal works that can cripple projects of our nature.

The transfer will reduce costs for the Bureau and the Districts. For example, the Bureau is required to renew a 50-year old Water Supply Contract for the Savage District. The Bureau's water supply is defined as a pumping plant that the Bureau constructed in 1949. The Savage Irrigation District has operated the pumps and long discharge lines for 53 years and has replaced them at their cost. However, the Bureau is still required to renew a 20-year contract at an estimated cost to the District of \$60,000. This irrigation development involves only 2,300 acres. Routine review and reporting exercises and other compliances cost all the Districts an estimated \$60,000 per year. We are not aware of the savings to the United States for administrating and maintaining their assets, but it is no doubt significant.

It is important to understand that the Projects will operate the same as they have in the past. The Districts will carry out their work regardless of ownership of the physical features. The Districts have met their obligations, and it seems only fair that ownership is transferred to them at this time.

Fiscal management will be the same. The irrigation works are paid for except \$68,280 is to be paid by the Savage Irrigation District, and \$667,702 is to be paid out of Pick-Sloan Program power sales. Both of these amounts are itemized in the Bill. There is no Federal money involved in the operation and maintenance of the Projects.

The Districts have worked diligently with the Bureau of Reclamation for five years setting up the conditions for transfer. We have worked together in organizing public meetings, various fisheries studies, real estate reviews, recreational agreements with the State of Montana, cultural resources and hazardous waste surveys, and development of fish protection devices.

A 'Memorandum of Understanding' was executed with the Bureau spelling out various principles and compliances that are to be met, the responsibilities for each phase of the process, and the division of cost. The main feature of this agreement is the compliances with environmental laws: NEPA, NHPA, ESA and CERCLA. We recognize these authorities and have worked closely with the various agencies to meet the requirements.

The most involved compliance activity is a Section 7 ESA process for fish protection. Protection devices will include a fish passage structure and a fish screen that will be in place before transfer takes place. The Bureau will be responsible for the installation, and our Districts will be responsible for future operation and maintenance.

There seems to be a misunderstanding by some over the continuation of the Federal power to lift water to the Projects' community water conveyance systems. Part of the Lower Yellowstone Irrigation Districts' lands, and all of the Savage and Intake Irrigation Districts' lands are at elevations requiring the pumping of water. These elevated areas were developed and are sustained only because affordable electrical power is delivered from the Pick-Sloan Missouri Basin Program's irrigation program.

We are an integral part of the Pick-Sloan Program's "ultimate development plan", a unique plan whereby irrigation developments are created and maintained for public benefit within the Missouri River Basin. This Bill maintains the primary purpose of the Pick-Sloan Missouri Basin Program, which is to maintain a stable economy through irrigation development. That definitely does not change.

The Pick-Sloan Program provides pumping power delivered to the Projects' pumps at a rate known as the "project-use-rate". This rate, now 1.1 cents per kWh, has been adjusted downward in the past by the Bureau of Reclamation to 0.25 cents per kWh to match the districts' ability-to-pay. This Bill provides for the continuation of project-use-power under the existing contract conditions except that the ability-to-pay adjustment will no longer be applicable. We are foregoing this condition because we recognize that title transfer savings can offset the adjustment. The Districts obligation to pay full value of the irrigation pumping rate should be recognized as a direct benefit to the U. S. taxpayer.

Parties concerned about continuing the contracts for project-use-power are the Bureau of Reclamation and the Pick-Sloan Program's power customers. The Bureau administers the irrigation component of Pick-Sloan, and the power customers pay for the balance of costs not paid by the irrigation community. This is a unique program that has provided great economic benefits throughout the Western States.

The Bureau and the power customers are concerned that the Bill will set a precedence that would allow a flood of non-Federal irrigation entities to become eligible for project-use-power causing power rates to go up. But the irrigation-pumping component of Pick-Sloan is fixed. An established irrigation suballocation of 15% of the Program's capacity is the limit. Also, Congress must approve every application.

Over-appropriated water in the West, instream-flow designations, and in general our country's social attitudes that discourage large-scale irrigation development will certainly not allow any future runaway community-style irrigation development to take place.

The States recognize that the intended Pick-Sloan irrigation development will not happen. Congress passed legislation in the 106<sup>th</sup> Congress (Dakota Water Resources Act of 2000) that reduced North Dakota's potential irrigation to under 60,000 acres, a mere 5% of that state's allotment of project-use-power. Montana is intending to introduce legislation for irrigation programs for about 70,000 acres that will drastically deflate the use of Pick-Sloan pumping also. Federal development for non- Indian projects is no longer being considered in these states. Developments by Local or State Governments are possible avenues being pursued, but as you would expect, it would be on a very small scale.

There is no credence to the objectors' precedence issue. The Bureau's latest requirement is that the Projects receiving Pick-Sloan project-use-power must be authorized as "units" of the P-SMBP and that the recipients sign a 25-year contract to pay an appropriate share of costs for construction of P-SMBP power facilities. But many projects receive project-use-power that does not fit this policy. In Montana and North Dakota; Buffalo Rapids, Buford Trenton, Dodson, Intake, Lower Yellowstone 1&2, Kinsey, Sidney Water Users, Haidle, and Hammond are all public irrigation entities that have been authorized by Congress to receive project-use-power. Various Acts of Congress including Acts of 1939 and 1944 authorized them. They are not "units" of Pick-Sloan, nor do they participate in contracts to share costs for construction of power facilities. In fact four of them are non-Federal irrigation developments. All of these entities are enrolled in the Pick-Sloan Program only for receiving the project-use-power. They are all satisfying the purpose of the Pick-Sloan Program; they foster public benefit.

More importantly, precedence has also been clearly set in previous title transfer processes to leave long-term power contracts alone. Congress recently authorized two facility transfers where Federal power contracts were specifically extended. They are Public Law 105-351, "to convey certain facilities of the Minidoka Project to the Burley Irrigation District": In Section 1. (d.) '*PROJECT RESERVED POWER. —The Secretary shall continue to provide Burley (irrigation project) with project reserved power from the*

*Minidoka Reclamation Power Plant, ... in accordance with terms of the existing contracts, including renewals thereof as provided in such contracts.’; and Public Law 106-221: the “Wellton-Mohawk Transfer Act”, in Section 3: ‘WATER AND POWER CONTRACTS. Notwithstanding the transfer, the Secretary and the Secretary of Energy shall provide for and deliver Colorado River water and Parker-Davis Project Priority Use Power to the District in accordance with the terms of the existing contracts with the District, including any amendments or supplements thereto or extensions thereof and as provided under section 2 of the agreement’.*

There are numerous irrigation project/power project arrangements around the 17 Western States; however, whether it is the Parker Davis Project in Arizona or the Pick-Sloan Program in Montana, the intentions of the Reclamation Program are the same—to provide project power to main pumping facilities for creating and sustaining irrigation development for public benefit.

It is important to know that our Projects have had project-use-power contracts for over 50 years, and have provided without fail the intended public benefits. This would not change with title transfer. It would seem very appropriate to consider title transfer as a condition that would allow the projects to continue to function as they have.

The removal of the Projects from the irrigation component of the Pick-Sloan Missouri Basin Program will not allow the transfer of irrigation features to take place! The power rates would increase from 0.25 cents to 8.0 cents per kilowatt-hour for 3 of the Irrigation Districts, and from 0.25 cents to 3.0 cents for the other District. The cost of operating and maintaining the public irrigation features to convey water to the irrigated area for the Savage Irrigation District would increase from \$30 per acre to \$70 per acre. Please understand that this is the cost of getting water from the river to the boundaries of the farms. The true cost of water to the farmers would be this community cost plus their costs of distribution on their property. This total cost far exceeds their capability.

We hope that Reclamation’s title transfer was never intended to tear apart the fabric of an irrigation development by denying access to historically utilized Federal project power.

Mr. Chairman, transferring the title of Federal irrigation works of the Lower Yellowstone, Savage, and Intake Projects in Eastern Montana and Western North Dakota is very beneficial to the United States Government and to the local farms and businesses. The Government’s work has clearly been completed and the irrigation districts are very capable of continuing the public benefits for which the Projects were built.

The Lower Yellowstone business communities, the producers, the laborers who depend on the welfare of the irrigation system, and others support the passage of H. R. 2202.

Thank you for the opportunity to testify. I would be pleased to answer any questions you may have.

#####