

# Committee on Resources

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## Witness Testimony

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Testimony of  
**Jennifer A. Salisbury**  
Secretary  
Energy, Minerals and Natural Resources Department  
State of New Mexico  
Before the Water and Power Subcommittee  
May 17, 1996

Mr. Chairman and members of the subcommittee, I am Jennifer A. Salisbury, Secretary of the Energy, Minerals and Natural Resources Department, which oversees the New Mexico State Park system. Thank you for giving me the opportunity to present written testimony on behalf of the State of New Mexico and Governor Gary E. Johnson.

The draft bill circulated by Congressman Skeen would transfer certain surface lands and mineral rights at Brantley Reservoir from the bureau of Reclamation to the Carlsbad Irrigation District. While we applaud the purpose behind the transfer, the language of the draft bill is unclear. The draft bill's intent is to return land that the Carlsbad Irrigation District purchased prior to federal involvement in building the reservoir so that the district can directly access revenue from mineral rights. The mineral rights were transferred to the United States with the surface rights in order for the project to be established.

Brantley Lake State Park was developed with a combination of state and federal funds. Under the terms of the contract, \$70,000 of the revenues the state park generates in user fees each year are pledged by Contract No. 7-07-57-X0888 toward repayment of the federal government's investment in the park until the year 2041. In order to assure lands needed to maintain public access are not subject to this transfer, it would be important that the federal government retain an easement for public recreation use on the park lands subject to transfer. In addition to lacking clarity on the land to be transferred, the bill as drafted could be read to transfer all revenues derived from Park user fees to the Carlsbad Irrigation District. The result would be a windfall to the district which did not participate in the Park's development and therefore is not entitled to receive any of the funds collected from recreational park users. The district has indicated it is not interested in receiving park revenues. We have, therefore, prepared language which could be included in the draft legislation to address these situations as follows:

Section 1. (C)(3) The United States shall retain an easement for public recreational access, recreational facility development, maintenance and recreational use on all lands identified in Exhibit "A" of the Joint Powers Agreement dated March 9, 1977 between the United States of America and the State of New Mexico (Contract No. 7-07-57-X0888), such easement shall continue after the expiration of the contract. The District shall not interfere in either the United States or State of New Mexico's performance under contract No. 7-07-57-X0888 and shall be obligated to adhere to the terms and conditions of the agreement as it may relate to the title transfer granted by the Act. The district shall not be entitled to any revenues or fees which are derived from recreational use of project lands.

Further, to assure continuity in the draft legislation, one other section would need amendment as follows (underlined terms added):

Section 2 (b) Management of Leases.--The District, upon conveyance of the Acquired Lands under the Act, shall be entitled to immediately assume the management of all oil and gas leases on the Acquired Lands, including leases entered into before the date of enactment of this Act, and shall be entitled to any revenues from such leases accruing after the date of such conveyance.

Should the draft bill be enacted without the amendments described above, then, we believe the state of New Mexico, at a minimum, would be subject to suit for breach of contract because the language of the bill as drafted neither forgives

the debt nor the use of fees as the source of repayment of the obligation to the United States. Unfortunately, the operation of the Park could suffer by this unintended consequence and the state could lose access to the revenue source which is relied upon for repayment.

We believe this situation can be easily remedied by amending the bill as suggested above to make the conveyance subject to the agreement dated March 9, 1977 between the Bureau of Reclamation and state of New Mexico and providing greater specificity in the description of the lands to be transferred and the leases to be assumed. We would be happy to work with Congressman Skeen or Subcommittee staff if further clarification is needed.

Thank you for advising me of the hearing and allowing me to present written comments to the Subcommittee.

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