

**SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

John E. Tubbs, Director
State of Montana
Department of Natural Resources and Conservation
July 18, 2018

**S. 3168 – A bill to amend the Omnibus Public Land Management Act of 2009
to make Reclamation Water Settlements Fund permanent.**

Chairman Hoeven, Vice Chairman Udall, and distinguished members of this committee, thank you for the opportunity to appear in front of you today in support of S. 3168.

I am John Tubbs, Director of the Department of Natural Resources and Conservation for the State of Montana. Governor Bullock sends his greetings. Today I appear on behalf of the State of Montana and the Western States Water Council.

My Department is made up of four divisions: Forestry; Trust Lands; Conservation and Resource Development; and, most relevant to this hearing, Montana's Water Resource Division. This topic today – water settlements – is very near and dear to my heart. Under President Obama, I was proud to serve as Deputy Assistant Secretary for Water and Science with the U.S. Department of the Interior.

The 1979 Montana Legislature established the Reserved Water Rights Compact Commission as part of the comprehensive state-wide adjudication process to negotiate settlements with Montana's tribal nations and federal agencies claiming reserved water rights within the State of Montana. Montana has eighteen compacts settling reserved water rights within our borders – including our seven reservations. These negotiations were massive

undertakings, and Montana is very proud that it was able to secure positive results, as well as avoid protracted and costly litigation. Just last month, Secretary Zinke and Blackfoot Tribal Chairman Barnes executed the Blackfoot Water Settlement that will enable clean drinking water and irrigation projects to go forward. As you know, the Confederated and Salish and Kootenai Tribes have a water settlement bill that is on deck. Thank you, leaders of this Committee, for giving these matters the time and attention they deserve.

The State of Montana and Western States supports any effort to provide a stable and appropriate funding source for water settlements. Of course you are aware that previously Western States asked the Administration and the Congress to fully appropriate the receipts and collections accruing to the Reclamation Fund subsequent to the Reclamation Act and other acts for their intended purpose of continuing conservation, development and wise use of resources to meet western water-related needs.

In regard to S. 3168, Montana and Western States support this effort to make the Reclamation Water Settlement Fund permanent. Congress, and this Committee in particular, has made impressive efforts to move water settlement bills, and it makes good sense for future water settlement dollars to be assured.

Montana and Western States are committed to continuing to work cooperatively with the Department of Interior and the Bureau of Reclamation to meet our present water needs in the West, and those of future generations, within the framework of state water law, as envisioned by President Roosevelt and the Congress in 1902.

I am happy to be here in support of S. 3168 and stand ready to answer any questions you may have related to my testimony.



Position No. 408
Revised and Readopted
(see former Position No. 367 – 7/18/2014;
Position No. 333 – 7/29/2011;
and Position No. 304 – 7/11/2008)

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
THE RECLAMATION FUND
Rohnert Park, California
June 29, 2017

WHEREAS, in the West, water is indeed our “life blood,” a vital and scarce resource the availability of which has and continues to circumscribe growth, development and our economic well being and environmental quality of life – the wise conservation and management of which is critical to maintaining human life, health, welfare, property and environmental and natural resources; and

WHEREAS, recognizing the critical importance of water in the development of the West, the Congress passed the Reclamation Act on June 17, 1902 and provided monies “reserved, set aside, and appropriated as a special fund in the Treasury to be known as the ‘reclamation fund,’ to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of water for the reclamation of arid and semiarid land...” in seventeen western states, to be continually invested and reinvested; and

WHEREAS, then President Theodore Roosevelt stated, “The work of the Reclamation Service in developing the larger opportunities of the western half of our country for irrigation is more important than almost any other movement. The constant purpose of the Government in connection with the Reclamation Service has been to use the water resources of the public lands for the ultimate greatest good of the greatest number; in other words, to put upon the land permanent homemakers, to use and develop it for themselves and for their children and children’s children...”¹ and

WHEREAS, the Secretary of the Interior was authorized and directed to “locate and construct” water resource projects to help people settle and prosper in this arid region, leading to the establishment of the Reclamation Service – today’s U.S. Bureau of Reclamation; and

WHEREAS, western states and the Bureau of Reclamation have worked in collaboration to meet the water-related needs of the citizens of the West, and protect the interests of all Americans, recognizing changing public values and the need to put scarce water resources to beneficial use for the “ultimate greatest good of the greatest number;” and

WHEREAS, the Bureau of Reclamation has facilities that include 338 reservoirs with the capacity to store 245 million acre-feet of water, irrigating approximately 10 million acres of farmland that produce 60 percent of the nation’s vegetables and 25 percent of its fruits and nuts, as well as providing water to about 31 million people for municipal and industrial uses, while generating more than 40 billion kilowatt hours of energy each year from 53 hydroelectric power plants, enough to serve 3.5 million households, while providing 289 recreation areas with over 90 million visits annually, and further providing flood control, and fish and wildlife benefits; and

WHEREAS, project sponsors have and continue to repay the cost of these facilities, which also produce power receipts that annually return some one billion in gross power revenues to the federal government, prevent millions in damages due to floods each year, and supports over \$45 billion in economic returns and supporting over 344,000 jobs; and

¹State of the Union Address, 1907

WHEREAS, the water and power resources developed under and flood control provided by the Reclamation Act over the last century supported the development and continue to be critical to the maintenance of numerous and diverse rural communities across the West and the major metropolitan areas of Albuquerque, Amarillo, Boise, Denver, El Paso, Las Vegas, Los Angeles, Lubbock, Phoenix, Portland, Reno, Sacramento, Salt Lake City, Seattle, Tucson and numerous other smaller cities; and

WHEREAS, western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet our present water needs in the West and those of future generations, within the framework of state water law, as envisioned by President Roosevelt and the Congress in 1902; and

WHEREAS, according to the Administration’s FY 2018 request actual and estimated receipts and collections accruing to the Reclamation Fund are \$ 1.969 billion for FY 2016, \$1.475 billion for FY 2017, and \$1.528 billion for FY 2018, compared to actual and estimated appropriations of \$996 million for FY 2016, \$ 1 billion for FY 2017, and \$878 million for FY 2018 and as a result the unobligated balance at the end of each year respectively is calculated to be \$15.133 billion, \$15.608 billion and \$16.308 billion; and

WHEREAS, this unobligated balance in the Reclamation Fund continues to grow at an increasing rate from an actual balance of \$5.67 billion at the end of FY 2006, to the estimated \$16.308 billion by the end of FY 2018, over a 187% increase; and

WHEREAS, under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principle means to finance federal western water and power projects with revenues from western resources, and its receipts are derived from water and power sales, project repayments, certain receipts from public land sales, leases and rentals in the 17 western states, as well as certain oil and mineral-related royalties – but these receipts are only available for expenditure pursuant to annual appropriation acts; and

WHEREAS, with growing receipts in part due to high energy prices and declining federal expenditures for Reclamation purposes, the unobligated figure gets larger and larger, while the money is actually spent elsewhere for other federal purposes contrary to the Congress’ original intent;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council asks the Administration and the Congress to fully appropriate the receipts and collections accruing to the Reclamation Fund subsequent to the Reclamation Act and other acts for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs – recognizing and continuing to defer to the primacy of western water laws in allocating water among uses – and work with the States to meet the challenges of the future.

BE IT FURTHER RESOLVED, that such “needs” may include the construction of Reclamation facilities incorporated as part of a Congressionally approved Indian water right settlement.

BE IT FURTHER RESOLVED, that the Administration and the Congress investigate the advantages of converting the Reclamation Fund from a special account to a true revolving trust fund with annual receipts to be appropriated for authorized purposes in the year following their deposit (similar to some other federal authorities and trust accounts).



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
INDIAN WATER RIGHTS SETTLEMENTS
Albuquerque, New Mexico
October 20, 2017**

WHEREAS, the Western States Water Council, an instrumentality of eighteen western states advising Western Governors on water policy, has consistently supported negotiated settlement of disputed Indian water rights claims; and

WHEREAS, the public interest and sound public policy require the resolution of Indian water rights claims in a manner that is least disruptive to existing uses of water; and

WHEREAS, negotiated quantification of Indian water rights claims is a highly desirable process which can achieve quantifications fairly, efficiently, and with the least cost; and

WHEREAS, the advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities; and

WHEREAS, the successful resolution of certain claims may require “physical solutions,” such as development of federal water projects and improved water delivery and application techniques; and

WHEREAS, the United States has developed many major water projects that compete for use of waters claimed by Indians and non-Indians, and has a responsibility to both to assist in resolving such conflicts; and

WHEREAS, the settlement of Native American water claims and land claims is one of the most important aspects of the United States’ trust obligation to Native Americans and is of vital importance to the country as a whole and not just individual tribes or States; and

WHEREAS, the obligation to fund resulting settlements is analogous to, and no less serious than the obligation of the United States to pay judgments rendered against it; and

WHEREAS, Indian water rights settlements involve a waiver of both tribal water right claims and tribal breach of trust claims that otherwise could result in court-ordered judgments against the United States and increase costs for federal taxpayers; and

WHEREAS, current budgetary pressures and legislative policies make it difficult for the Administration, the states and the tribes to negotiate settlements knowing that they may not be funded because either they are considered earmarks or because funding must be offset by a

corresponding reduction in some other expenditure, such as another tribal or essential Interior Department program;

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council reiterates its support for the policy of encouraging negotiated settlements of disputed Indian water rights claims as the best solution to a critical problem that affects almost all of the Western States; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration to support its stated policy in favor of Indian land and water settlements with a strong fiscal commitment for meaningful federal contributions to these settlements that recognizes the trust obligations of the United States government; and

BE IT FURTHER RESOLVED, that Congress should expand opportunities to provide funding for the Bureau of Reclamation to undertake project construction related to settlements from revenues accruing to the Reclamation Fund, recognizing the existence of other legitimate needs that may be financed by these reserves; and

BE IT FURTHER RESOLVED, that Indian water rights settlements are not and should not be defined as Congressional earmarks; and

BE IT FURTHER RESOLVED, that steps be taken to ensure that any water settlement, once authorized by the Congress and approved by the President, will be funded without a corresponding offset, including cuts to some other tribal or essential Interior Department program.

**Originally adopted March 21, 2003
Revised and reaffirmed Mar 29, 2006, October 17, 2008, October 7, 2011 and October 10, 2014
(See also Nos. 250, 275, 310, 336 and 376)*