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Testimony of Attorney William A. Hritsco,
General Counsel to East Bench Irrigation District, Dillon, MT
before the U.S. House of Representatives
Natural Resources Committee
Subcommittee on Water and Power
June 10, 2014

In Support of H.R. 4508
East Bench Irrigation District Contract Extension

Dear Chairman McClintock and Members of the Subcommittee:

I provide this written testimony and supporting material as general legal counsel for the East Bench Irrigation District, headquartered in Dillon, MT. The East Bench Irrigation District (hereinafter "the District") is grateful to Congressman Daines for sponsoring H.R. 4508, a bill which will allow the Secretary of the Interior to extend the District's 1958 Water Service Contract with the United States until the recently negotiated long-term Repayment Contract the parties reached in 2006 can be approved by a Montana District Court, or until December 31, 2019.

The District was formed in accordance with Montana statutes in 1958 in eager anticipation of the construction of the East Bench Unit of the Pick-Pick-Sloan Missouri River Program (commonly known as The Flood Control Act of 1944). The East Bench Unit serves two constituencies: (a) the East Bench Irrigation District, which provides a full supply of irrigation water to some 28,000 acres of new and productive farm land in the Southwestern Montana counties of Beaverhead and Madison; and (b) the Clark Canyon Water Supply Company, a private water delivery corporation formed to

deliver supplemental storage water for those farmers who already had water rights on the Beaverhead River, but desired the consistent and regulated supply of water which the East Bench Unit promised. The shareholders of the Clark Canyon Water Supply Company irrigate an estimated 33,000+ acres in the Beaverhead River Valley by utilizing their underlying natural flow water rights and their contracted supplemental water, which comes from storage water held in the Clark Canyon Reservoir. A map of the East Bench Unit showing the dam and the Clark Canyon Reservoir, and the irrigated lands of both the District and the shareholders of Clark Canyon Water Supply Company, is attached hereto as EXHIBIT A. The economic and and social importance of a reliable supply of irrigation water to these arid lands in Southwestern Montana cannot be overstated.

The District and the Clark Canyon Water Supply Company first contracted for long-term (40 year) Water Supply Contracts with the United States in 1958. After reaching agreement on the contracts, construction on the project began and water was first delivered to both entities in 1965, the year that triggered the beginning of the 40-year contracts. Hence, those contracts were due to expire by December 31, 2005. Both entities (as well as other area irrigation districts) began working with the Bureau of Reclamation in the early 2000s to negotiate renewals of the long term contracts. It soon became apparent that the parties needed additional time to complete the contracting process prior to the 2005 expiration date. Accordingly, the District and several other irrigation districts and projects in Montana sought and obtained federal legislation allowing the United States to extend the terms of the underlying contracts while new contracts were being negotiated. The first of such legislative efforts provided a two-year extension, or until December 31, 2007. A copy of the legislation is attached hereto as "EXHIBIT B" and is cited as Section 208 of Public Law 108-447.

The District and the Clark Canyon Water Supply Company completed the process of renewing their long-term contracts in late 2006. The District then commenced a proceeding in the local Montana Fifth Judicial District Court seeking the "confirmation of the execution of the contract," as required by state and federal law.[1] One landowner, who is not a member of the

[1] See Sec. 85-7-1957, Montana Code Annotated and 43 U.S.C. Sec. 423e.

District, lodged the sole objection to the contract. Part of the objection involves the proper place of use of the irrigation water within the District's boundaries. *Place of Use* is one of several elements of a valid water right, and and the Montana Water Court has sole jurisdiction over the determination of the validity of water rights.[2] Accordingly, the case was certified from the District Court to the Montana Water Court in early 2007.

As Members of the Subcommittee may be aware, Montanans have been engaged in the process of adjudicating their claimed water rights for nearly three decades now. The Montana Water Court tackles the adjudications in a river basin by river basin approach. The process has been more cumbersome than anyone anticipated, and in 2007, the adjudication of the Beaverhead River was still in the distant future. The Montana Water Court determined that it could not rule on the Place of Use question presented by the District Court confirmation case, and therefore deferred proceedings on the matter until the adjudication process reached the Beaverhead River valley. However, the Water Court moved the Beaverhead River to the top of its list of river basins yet to be adjudicated, and a Preliminary Decree was issued for the Beaverhead River (and its major tributary, the Red Rock River) on May 9, 2013. The issuance of a Preliminary Decree triggers a year-long objection process, followed by several more years of hearings on contested water rights before a Final Decree can be issued.

Knowing it could not resolve the objection to its new long-term contract by the expiration date of December 31, 2007, the District again sought legislation allowing for an extension of the 1958 contract so that it remained in the position of operating under a binding contract with the United States. The District was successful in securing the passage of Section 213 of Public Law 110-161, which set a new expiration date of December 31, 2009. A copy of this legislation is attached hereto as EXHIBIT C.

When it became apparent that the Montana Water Court was not going to issue the Preliminary Decree for the Beaverhead River by the new deadline of December 31, 2009, the District sought yet another extension. This time, the District sought a four-year extension and Reclamation agreed. Despite

[2] See Sec. 3-7-510, Montana Code Annotated.

full support from Montana's Congressional delegation and the Bureau of Reclamation, efforts to secure passage of the extension were unsuccessful until Senator Tester made the issue a stand-alone piece of legislation. The District secured the passage of the third extension in June 2012, retroactive to the previous expiration date. The third extension is cited as Public Law 112-139, a copy of which is attached hereto as EXHIBIT D.

The third extension was set to expire on December 31, 2013. Although the water right adjudication process had finally reached the Beaverhead River by 2013, the District knew it could not expect to actually litigate the place of use question in the Water Court until after the close of the objection period in 2014. Therefore, the District, supported again by Reclamation, began working with Senator Baucus' office to obtain an additional extension. On behalf of himself and Senator Tester, Senator Baucus introduced S. 1965 on January 28, 2014. S. 1965 is identical to H.R. 4508 introduced in the House by Congressman Daines on April 29, 2014. A copy of S. 1965 is attached hereto as EXHIBIT E. A copy of H.R. 4508 is attached hereto as EXHIBIT F.

Fortunately, Reclamation and Montana's Congressional delegation concurred with the District's request for an extension for a longer period of time, so as to avoid the repeated efforts to keep the District's 1958 contract in effect. Both S. 1965 and H.R. 4508 propose to amend the previous extension by amending its effective period from four (4) years to ten (10) years. If passed, the District will have the assurance of operating under a valid and binding contract with the United States until the earlier of December 31, 2019, or the final court confirmation of the 2006 contract.

The legal challenges made to the 2006 contract are relatively novel and it is difficult to predict how long it will take to resolve the case. However, the District remains prepared to proceed with the litigation in the Montana Water Court at the first opportunity. The District hopes the Water Court proceedings can commence in 2014, and perhaps even be determined before the end of the year.

Once the Montana Water Court has resolved the challenge to the proper place of use of the District's water right, it will return the case to the

state District Court for further proceedings. The District Court can then determine the validity of the objections to the 2006 contract, and either confirm the contract or not. Such a final decision could be appealed to the Montana Supreme Court, which is the court of last resort.

The District's latest efforts at seeking an extension still enjoy the full support of Reclamation and Senator Tester, and the District was pleased to learn that Senator John Walsh signed on to co-sponsor the Senate version of the legislation on June 3, 2014. No objections to the District's previous extensions were made, and none are anticipated by the District to the current effort.

As with the previous extensions, there is no fiscal impact to the United States. In fact, the District submits the extension is in the best interests of the United States as well as the District, because the District remains contractually obligated to make payments to the United States under the 1958 contract. Just since reaching agreement on the new long-term contract in 2006, the farmers within the East Bench Irrigation District have paid more than $1,300,000.00 to the United States for their water supply and their share of operations and maintenance expenses.

As evidence of Reclamation's support of the District's legislative efforts, the District attaches hereto as EXHIBIT G the written *Statement of Robert Quint, Senior Advisor, Bureau of Reclamation, U.S. Department of the Interior before the [Senate] Committee on Energy and Natural Resources, Subcommittee on Water and Power* wherein Mr. Quint conveys Reclamation's support for S. 1965. Mr. Quint testified in favor of S. 1965 before the Senate Subcommittee on Water and Power on February 27, 2014. The Senate Subcommittee Members had no questions for Mr. Quint regarding S. 1965 during or following the hearing. However, the District is not aware of the current status of S. 1965 and whether it has been favorably reported out of the Subcommittee to the Senate Committee on Energy and Natural Resources or to the full Senate itself.

The District has always enjoyed a favorable working relationship with the Bureau of Reclamation, which continues to this day. This Subcommittee may wonder why the extensions are deemed so critical to the District when

there are agreements and contract amendments already in place between the District and Reclamation to the effect that Reclamation has committed itself to continue to negotiate a final, long-term contract with the District in the event the 2006 contract is not ultimately confirmed. The District secured such a commitment from Bureau of Reclamation Commissioner Robert W. Johnson in a letter dated January 28, 2008. A copy of Commissioner Johnson's letter is attached hereto as EXHIBIT H. The District again secured the promise that Reclamation is still committed to good faith contract negotiations with the District for continued water service in the event the 2006 contract is not confirmed. A copy of the letter of assurance from the Bureau of Reclamation's current Commissioner, Michael L. Connor, is attached hereto as EXHIBIT I.

The District's concern is that despite its excellent relationship with Reclamation, the fact remains that the District is only statutorily entitled to negotiate the renewal of a long-term contract with Reclamation, upon terms mutually agreeable to both parties, if it is still a party to a binding contract with the United States and prior to the expiration thereof.[3] Until the new 2006 contract is confirmed, it is not binding on the United States. Therefore, Therefore, if the District's 1958 contract is allowed to lapse, conceivably the District could find itself in a "take it or leave it" situation if it is unable to come to mutually agreeable terms with Reclamation on a new, long-term contract.

Surely this Subcommittee appreciates how precious the Nation's fresh water supply is. The East Bench Irrigation District is situated at the headwaters of the Missouri River, a river system which drains almost one-one-third of the Nation's land mass. Because the East Bench Unit is a relatively new Reclamation project, it has a very junior water right from the Beaverhead River of 1961. The most senior rights on the Beaverhead River date back to 1858! In a "first-in-time, first-in-right" state like Montana and the other Western states, the District's junior water right is especially vulnerable. The District believes it is wise to remain in a contractually binding relationship with the Bureau of Reclamation, *especially when the*

[3] 43 U.S.C. Sec. 485h-1.

future promises competition for Montana's fresh water resources in degrees which may sound absurd today, but could well come to pass fifty years from now.

Finally, passage of H.R. 4508 will merely maintain the status quo. The District has enjoyed a mutually beneficial, valid and binding contractual relationship with the United States since 1958, and it desires to remain in such a position while it litigates legal challenges brought against the new 2006 contract. Passage of H.R. 4508 assures the rights and obligations of both the District and Reclamation remain unchanged from those of the last fifty-six years.

The East Bench Irrigation District is grateful to the House Subcommittee on Water and Power for this opportunity to provide written testimony and supporting documents urging passage of H.R. 4508. The District also thanks Congressman Daines for his strong support and leadership in introducing this important legislation to the House and guiding it through the process to become law.

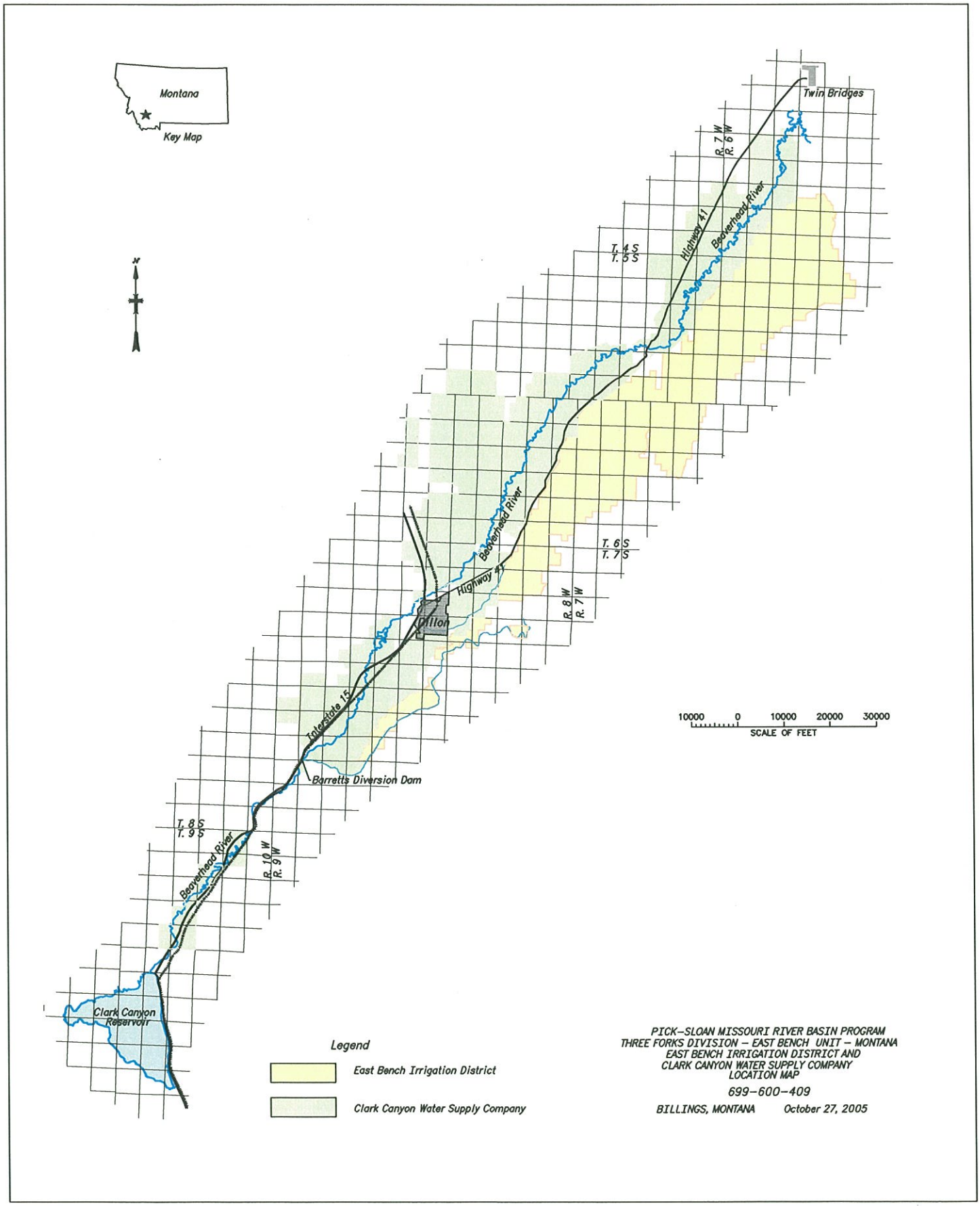
Sincerely Yours,

DAVIS, WARREN & HRITSCO

By /s/ William A. Hritsco
William A. Hritsco

EXHIBIT A

Map of East Bench Unit
Dillon, Montana



Source: *Final Environmental Assessment - Conversion of Long-Term Water Service Contracts to Repayment Contracts* United States Department of the Interior, Bureau of Reclamation, Great Plains Region, Montana Area Office, 2006.

EXHIBIT B

First Extension Legislation

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Public Law 108–447
108th Congress

An Act

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2005, and for other purposes.

Dec. 8, 2004
[H.R. 4818]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consolidated Appropriations Act, 2005

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated Appropriations Act, 2005".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.
Sec. 4. Statement of appropriations.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I—Agricultural Programs
Title II—Conservation Programs
Title III—Rural Development Programs
Title IV—Domestic Food Programs
Title V—Foreign Assistance and Related Programs
Title VI—Related Agencies and Food and Drug Administration
Title VII—General Provisions

DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I—Department of Justice
Title II—Department of Commerce and Related Agencies
Title III—The Judiciary
Title IV—Department of State and Related Agency
Title V—Related Agencies
Title VI—General Provisions
Title VII—Rescissions
Title VIII—Patent and Trademark Fees
Title IX—Oceans and Human Health Act

DIVISION C—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2005

Title I—Department of Defense—Civil
Title II—Department of the Interior
Title III—Department of Energy
Title IV—Independent Agencies
Title V—General Provisions
Title VI—Reform of the Board of Directors of the Tennessee Valley Authority

DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2005

Title I—Export and Investment Assistance

That when such improvements are to federally owned facilities, such funds may be provided in advance on a non-reimbursable basis to an entity operating affected transferred works or may be deemed non-reimbursable for non-transferred works: *Provided further,* That the calculation of the non-Federal contribution shall provide for consideration of the value of any in-kind contributions, but shall not include funds received from other Federal agencies: *Provided further,* That the cost of operating and maintaining such improvements shall be the responsibility of the non-Federal entity: *Provided further,* That this section shall not supercede any existing project-specific funding authority: *Provided further,* That the Secretary is also authorized to enter into grants or cooperative agreements with universities or non-profit research institutions to fund water use efficiency research.

SEC. 207. ANIMAS-LA PLATA NON-INDIAN SPONSOR OBLIGATIONS. In accordance with the nontribal repayment obligation specified in Subsection 6(a)(3)(B) of the Colorado Ute Indian Rights Settlement Act of 1988 (Public Law 100–585), as amended by the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106–554), the reimbursable cost upon which the cost allocation shall be based shall not exceed $43,000,000, plus interest during construction for those parties not utilizing the up front payment option, of the first $500,000,000 (January 2003 price level) of the total project costs. Consequently, the Secretary may forgive the obligation of the non-Indian sponsors relative to the $163,000,000 increase in estimated total project costs that occurred in 2003.

SEC. 208. MONTANA WATER CONTRACTS EXTENSION. (a) AUTHORITY TO EXTEND.—The Secretary of the Interior may extend each of the water contracts listed in subsection (b) until the earlier of—

(1) the expiration of the 2-year period beginning on the date on which the contract would expire but for this section; or

(2) the date on which a new long-term water contract is executed by the parties to the contract listed in subsection (b).

(b) EXTENDED CONTRACTS.—The water contracts referred to in subsection (a) are the following:

(1) Contract Number 14–06–600–2078, as amended, for purchase of water between the United States of America and the City of Helena, Montana.

(2) Contract Number 14–06–600–2079, as amended, between the United States of America and the Helena Valley Irrigation District for water service.

(3) Contract Number 14–06–600–8734, as amended, between the United States of America and the Toston Irrigation District for water service.

(4) Contract Number 14–06–600–3592, as amended, between the United States and the Clark Canyon Water Supply Company, Inc., for water service and for a supplemental supply.

(5) Contract Number 14–06–600–3593, as amended, between the United States and the East Bench Irrigation District for water service.

EXHIBIT C

Second Extension Legislation

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

CONSOLIDATED APPROPRIATIONS ACT, 2008

Public Law 110–161
110th Congress

An Act

Dec. 26, 2007
[H.R. 2764]

Making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending September 30, 2008, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consolidated Appropriations Act, 2007.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consolidated Appropriations Act, 2008".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.
Sec. 4. Explanatory statement.
Sec. 5. Emergency designations.
Sec. 6. Statement of appropriations.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2008

Title I—Agricultural Programs
Title II—Conservation Programs
Title III—Rural Development Programs
Title IV—Domestic Food Programs
Title V—Foreign Assistance and Related Programs
Title VI—Related Agencies and Food and Drug Administration
Title VII—General Provisions

DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2008

Title I—Department of Commerce
Title II—Department of Justice
Title III—Science
Title IV—Related Agencies
Title V—General Provisions
Title VI—Rescissions

DIVISION C—ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2008

Title I—Department of Defense—Civil: Department of the Army
Title II—Department of the Interior
Title III—Department of Energy
Title IV—Independent Agencies
Title V—General Provisions

DIVISION D—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2008

Title I—Department of the Treasury
Title II—Executive Office of the President and Funds Appropriated to the President
Title III—The Judiciary

"(b) COST SHARING.—The Federal share of the cost of the project described in subsection (a) shall not exceed 25 percent of the total cost of the project.

"(c) LIMITATION.—Funds provided by the Secretary shall not be used for operation and maintenance of the project described in subsection (a).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $20,000,000.

"SEC. 16___. CUCAMONGA VALLEY WATER RECYCLING PROJECT. California. 43 USC 390h–22.

"(a) IN GENERAL.—The Secretary, in cooperation with the Cucamonga Valley Water District, may participate in the design, planning, and construction of the Cucamonga Valley Water District satellite recycling plants in Rancho Cucamonga, California, to reclaim and recycle approximately 2 million gallons per day of domestic wastewater.

"(b) COST SHARING.—The Federal share of the cost of the project described in subsection (a) shall not exceed 25 percent of the capital cost of the project.

"(c) LIMITATION.—Funds provided by the Secretary shall not be used for operation and maintenance of the project described in subsection (a).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000.

"(e) SUNSET OF AUTHORITY.—The authority of the Secretary to carry out any provisions of this section shall terminate 10 years after the date of the enactment of this section.".

(c) CONFORMING AMENDMENTS.—The table of sections in section 2 of Public Law 102–575 is amended by inserting after the last item the following:

"16___. Inland Empire Regional Water Recycling Program.
"16___. Cucamonga Valley Water Recycling Project.".

SEC. 211. Prior to the unilateral termination or removal of cabin or trailer sites on Bureau of Reclamation lands in North Dakota for the purpose of changing land use, the Secretary of the Interior is directed to submit a report describing the action to the Committee on Energy and Natural Resources, United States Senate and the Committee on Natural Resources, United States House of Representatives and the House and Senate Committees on Appropriations: *Provided,* That the Secretary shall not move forward with the proposed action until 60 days after the report is submitted to the Committee Chairmen. North Dakota. Reports. Deadline.

SEC. 212. Section 3507(b) of Public Law 102–575 (106 Stat. 4600) is amended by striking "$4,660,000" and inserting "$12,660,000". 106 Stat. 4733.

SEC. 213. AUTHORITY TO EXTEND WATER CONTRACT. The Secretary of the Interior may extend the water contract 14–06–600–3593, as amended, between the United States and the East Bench Irrigation District for water services, until the earlier of—

(1) the expiration of the 2-year period beginning on the date on which the contract would expire but for this section; or

(2) the date on which a new long-term water contract is executed by the parties to the contract listed in subsection (b).

SEC. 214. SOUTHERN CALIFORNIA DESERT REGION INTEGRATED WATER AND ECONOMIC SUSTAINABILITY PLAN. (a) IN GENERAL.—

EXHIBIT D

Third Extension Legislation

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Public Law 112–139
112th Congress

An Act

June 27, 2012
[S. 997]

To authorize the Secretary of the Interior to extend a water contract between the United States and the East Bench Irrigation District.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

East Bench Irrigation District Water Contract Extension Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the "East Bench Irrigation District Water Contract Extension Act".

SEC. 2. AUTHORITY TO EXTEND WATER CONTRACT.

The Secretary of the Interior may extend the contract for water services between the United States and the East Bench Irrigation District, numbered 14–06–600–3593, until the earlier of—

(1) the date that is 4 years after the date on which the contract would have expired if this Act had not been enacted; or

(2) the date on which a new long-term contract is executed by the parties to the contract.

Approved June 27, 2012.

LEGISLATIVE HISTORY—S. 997:

HOUSE REPORTS: No. 112–527 (Comm. on Natural Resources).
SENATE REPORTS: No. 112–65 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD:
Vol. 157 (2011): Nov. 2, considered and passed Senate.
Vol. 158 (2012): June 18, considered and passed House.

EXHIBIT E

S. 1965

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

113TH CONGRESS
2D SESSION

S. 1965

To amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2014

Mr. BAUCUS (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EAST BENCH IRRIGATION DISTRICT CONTRACT EXTENSION.

Section 2(1) of the East Bench Irrigation District Water Contract Extension Act (Public Law 112–139; 126 Stat. 390) is amended by striking "4 years" and inserting "10 years".

○

EXHIBIT F

H.R. 4508

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

113TH CONGRESS
2D SESSION

H. R. 4508

To amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2014

Mr. DAINES introduced the following bill; which was referred to the Committee on Natural Resources

---

A BILL

To amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EAST BENCH IRRIGATION DISTRICT CONTRACT EXTENSION.

Section 2(1) of the East Bench Irrigation District Water Contract Extension Act (Public Law 112–139; 126 Stat. 390) is amended by striking "4 years" and inserting "10 years".

○

EXHIBIT G

Statement of Robert Quint, Senior Advisor
Bureau of Reclamation

Senate Subcommittee on Water and Power
Hearing held February 27, 2014

Statement of Robert Quint, Senior Advisor
Bureau of Reclamation
U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
Subcommittee on Water and Power
S. 1965, East Bench Irrigation District Contract Extension
February 27, 2014

Chairman Schatz and members of the Subcommittee, I am Bob Quint, Senior Advisor at the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on S. 1965, to amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services. The Department supports S. 1965.

Reclamation's Clark Canyon Dam and Reservoir are located in southwest Montana and supply irrigation water under contract to the East Bench Irrigation District (EBID). EBID's water service contract with Reclamation was first executed in October 1958 and expired on December 31, 2005. Pursuant to Section 1 of the Act of May 15, 1922 (42 Stat. 541), Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649), and Section 85-7-1957, Montana Code Annotated, execution of a new contract between the United States and any irrigation district requires confirmation by a Montana District court..

In 2006, EBID filed a petition with the Montana Fifth Judicial District Court seeking confirmation of the execution of their renewed contract with Reclamation. A hearing was convened on December 14, 2006, in Dillon, MT, and one objection to the confirmation was filed.

A part of the legal challenge to confirmation of the contract involves the proper place of use of the water, which is an element of a water right which the Montana Water Court has sole jurisdiction over. Therefore, the case was certified from the Montana District Court to the Montana Water Court.

Once the Montana Water Court addresses the proper place of use for the subject water right, it will send the case back to the Montana District Court for further proceedings on the various additional legal challenges to the contract. A decision by either the Montana Water Court or the Montana District Court may be appealed directly to the Montana Supreme Court, which is the court of last resort.

Prior year appropriations bills have extended the contracts for terms of up to two years. Most recently, in the 112th Congress, Public Law 112–139; 126 Stat. 390 extended the contract for four years (to December 31, 2013) or until the date on which a new long-term contract is executed. EBID remains concerned about losing their right to renew their 1958 contract if it is allowed to expire prior to securing court confirmation of the renewed 2006 Contract. For this reason they are pursuing extension of the 1958 contract.

Under current law, the 2006 contract is not binding on the United States until court confirmation is secured. A final decree from the court confirming the 2006 contract has not occurred. Therefore,

EBID is seeking authority under S. 1965 to extend the 1958 contract. S. 1965 would extend the contract for six years beyond Public Law 112–139 for a total of ten years (to December 31, 2019) or until a new contract is executed and still defer to the court to take up the issue again at a time of its choosing. The Department believes that a 10 year extension under S. 1965 will allow adequate time for confirmation by the Montana Fifth Judicial District Court. The Department supports this legislation because it would allow water service to the EBID to continue and protects the right for contract renewal while the court confirmation process is given time to be completed.

This concludes my statement. Again, the Department supports S. 1965. I would be pleased to answer questions at the appropriate time.

EXHIBIT H

Commissioner Johnson Letter

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, DC 20240

JAN 28 2008

IN REPLY REFER TO:

96-42050
ADM-1.10

Mr. William A. Hritsco
Davis, Warren & Hritsco
P.O. Box 28
Dillon, MT 59725-0028

Dear Mr. Hritsco:

This is in response to your letter dated December 15, 2007, and a follow-up to our December 18, 2007, meeting on the proposed amendments to the East Bench Irrigation (District) contracts. Thank you for taking the time to travel to my office to discuss this important issue with me personally.

The Bureau of Reclamation is working to amend the 1958 Water Service Contract 14-06-600-3593 (1958 Contract) in accordance with Section 213 of H.R. 2764: Department of State, Foreign Operations, and Related Programs Appropriations Act 2008, as enacted. The proposed amendment will extend the term of the 1958 Contract to the fullest extent allowed by law.

Reclamation will also work with the District to amend the 2006 Repayment Contract 069F670009 (2006 Contract) to add a provision committing the United States to negotiate a contract that provides continued water service to the District, under mutually agreeable terms and conditions, in the event that the 2006 Contract is not confirmed by a court of competent jurisdiction.

Reclamation staff will be in contact with the District on the proposed amendments, and will work expeditiously on this matter within the parameters allow by Reclamation laws and policies.

If you have any additional questions or concerns, please contact Dan Jewell, Montana Area Office Manager at 406-247-7298.

Sincerely,

Robert W. Johnson
Commissioner

cc: Mr. Gill Stoddard
President, East Bench Irrigation District
1200 Highway 41
Dillon, MT 59725

TAKE PRIDE IN AMERICA

EXHIBIT I

Commissioner Connor Letter

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, DC 20240

DEC 20 2013

IN REPLY REFER TO:

Mr. Gil Stoddard, President
East Bench Irrigation District
1200 Highway 41
Dillon, MT 59725

Dear Mr. Stoddard:

I understand you recently met with Brent Esplin, the Area Manager for Reclamation's Montana Area Office to provide an update on the East Bench Irrigation District's efforts to confirm the negotiated 2006 Repayment Contract. On November 22, 2006, the District petitioned the Montana Fifth Judicial District Court for confirmation of the 2006 Repayment Contract as required in the Contract. Due to an objection, the confirmation of the 2006 Repayment Contract was put on hold while some outstanding water right questions are resolved. It is expected that the water right issues may not be resolved for two or more years, which will further delay confirmation of the 2006 Repayment Contract.

Due to the delay, Reclamation understands that the District is presently seeking Congressional authorization to allow Reclamation to amend the District's 1958 water service contract number 14-06-600-3593 in order to extend the expiration date. The extension is necessary to keep the 1958 contract in effect until such time as the 2006 Repayment Contract can be confirmed by the Montana Fifth Judicial District Court.

The purpose of this letter is to inform you that Reclamation is still committed to good faith contract negotiations with the District to provide continued water service in the event that the 2006 Repayment Contract is not confirmed, in whole or in part, by a court of competent jurisdiction. This commitment was previously made by Commissioner Robert Johnson on January 28, 2008, and subsequently memorialized in Amendment #1 to the 2006 Repayment Contract.

If you have any questions or concerns, please contact Montana Area Office, Area Manager, Brent Esplin, at 406-247-7298.

Sincerely,

Acting For

Michael L. Connor
Commissioner