

# Testimony

Before the House Natural Resources  
Subcommittee on Water, Wildlife, and Fisheries

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By

James Brower, Manager,  
Lower Yellowstone Irrigation Project  
2327 Lincoln Avenue SE  
Sidney, Montana 59270  
(406) 478-4502  
jbrower@midrivers.com

Chairwoman Harriet Hageman, Ranking Member Val Hoyle, and Members of the Subcommittee—thank you for the opportunity to testify today, and thank you for holding this hearing on H.R. 6568, the Lower Yellowstone River Native Fish Conservation Act.

My message today is simple: the Fish Bypass is a federal Endangered Species Act mitigation facility on federal land, built for a national conservation purpose, and it must remain federally operated and funded to protect the taxpayer’s investment and the progress made in pallid sturgeon recovery.

My name is James Brower, and I manage the Lower Yellowstone Irrigation Project (LYIP)—a Bureau of Reclamation project that has delivered dependable water to this high-plains landscape for more than a century. The LYIP first delivered water in 1909 and has helped farms and ranches endure historic droughts, including the Dust Bowl. The Project provides irrigation water to 4 irrigation districts serving roughly 59,000 acres in eastern Montana and western North Dakota, supporting approximately 300 farm families, and the broader rural economy of Dawson & Richland County of Montana, and McKenzie County of North Dakota.

Those acres produce the crops and livestock that keep our businesses, main streets, elevators, implement dealers, co-ops, and grocery stores alive—and they do so in a region that often receives only about 12 inches of rain a year. In our part of the world, the Project isn’t just an irrigation system; it is an anchor for the region’s agricultural base.

We are here because the Lower Yellowstone Fish Bypass Channel was designed and built by federal agencies to meet federal Endangered Species Act responsibilities and advance pallid sturgeon recovery—and it should remain a federal responsibility to operate and maintain.

H.R. 6568 does something straightforward and necessary: it reaffirms that the Bureau of Reclamation retains ownership, operational control, and financial responsibility for the federal

Fish Bypass Channel. This bill keeps responsibility where it belongs: with the federal agencies that built the bypass, control the land, and have the statutory duties and technical expertise to manage it. Today, that clarity is urgently needed because Reclamation is moving toward a handoff of operations and maintenance responsibility to the LYIP irrigation districts—even though there is no MOU or contract requiring it, the bypass lies outside our legal boundaries, and it is unrelated to irrigation delivery.

Responsibility should follow authority. And if that handoff occurs, the consequences are predictable: a federally constructed mitigation facility would be operated by local farmers with no jurisdiction over the site, no fisheries staff, and no reliable mechanism to fund perpetual maintenance. That is not a plan to protect the pallid sturgeon—it is a plan that risks the bypass degrading over time and jeopardizing America’s investment in sturgeon recovery.

The Yellowstone River is a powerful, free-flowing river system—running from Wyoming through Montana and into North Dakota before joining the Missouri River. Near Intake, Montana, the LYIP diverts water through federal diversion works, fish screens, and headworks that feed the main canal system serving farms in two states. The diversion structure at Intake is not a storage reservoir. It is a low underwater diversion feature—a weir—designed to raise water levels just enough to divert flow into the canal while the river continues downstream.

Over time, federal agencies determined that modifications were needed at Intake to address Endangered Species Act concerns related to fish passage and pallid sturgeon recovery. Those decisions were made and implemented by federal agencies, under federal jurisdiction and federal statutory obligations, and they resulted in federal reconstruction work at Intake and construction of the Fish Bypass Channel. At no point did the LYIP irrigation districts sign an agreement—no MOU, no contract amendment—accepting responsibility to operate and maintain a federal ESA mitigation facility like this bypass.

There are three reasons this facility must remain federal:

- **First, Authority:** it sits on federal land and outside LYIP boundaries.
- **Second, Purpose:** it was built for ESA mitigation and fish recovery, not to deliver irrigation water.
- **Third, Capacity:** it requires specialized engineering, permitting, and fisheries management that irrigation districts simply do not have.

The Fish Bypass Channel is not part of our irrigation delivery system. It was not built to deliver irrigation water. It was built to move fish. It is located outside the legal and operational boundaries of the Lower Yellowstone Irrigation Project and is constructed on federal land. The LYIP’s mission and legal authority are limited to diverting and delivering irrigation water through Project works. We have no legal jurisdiction to manage, permit, or fund ongoing work on a federal fish passage channel located outside our boundaries.

The Yellowstone River at Intake is powerful and dynamic. At this location, the river can be nearly a half-mile wide. In winter, severe ice processes—ice dams and ice jams—can build

dramatically and suddenly move with destructive force, driving erosion and threatening infrastructure such as bridges, the diversion works, and adjacent bank protection.

The bypass was built using adaptive management concepts—intended to naturalize over time. That sounds good in theory, but in practice it demands ongoing monitoring, maintenance, and engineering intervention: stabilizing banks, replacing and resetting riprap and other armoring, addressing sedimentation and channel widening, and ensuring the bypass remains functional for fish passage without threatening nearby federal diversion infrastructure. That is a perpetual, technical management responsibility—not a seasonal irrigation operations task.

Here is the hard point: the farmers who rely on and operate the Lower Yellowstone Irrigation Project are not fish experts. We are not fisheries biologists. We do not have the technical staff, equipment, or legal authorities to operate and maintain a federal fish passage facility designed for ESA mitigation. This is specialized work, with specialized permitting, engineering, and biological monitoring—work that belongs with the agencies that were charged to build it and have the expertise to manage it.

We support pallid sturgeon recovery—and we are proud that the bypass is working. I have personally attended Adaptive Management meetings where fisheries professionals tracked radio-tagged pallid sturgeon and confirmed that 82 tagged pallid sturgeon and thousands of other native fish have successfully used the bypass to migrate upstream. But “working” does not mean “maintenance-free.” Pallid sturgeon reproduction depends on long, connected river reaches so eggs and larvae can drift and develop. That is exactly why consistent, professional operations and maintenance matter—and why this facility needs stable federal stewardship and appropriated funding.

If O&M is shifted to the districts, the likely result is deferred maintenance, bank failures, sedimentation, and reduced fish passage—putting sturgeon recovery progress at risk and threatening the federal diversion infrastructure at Intake. A bypass that isn’t maintained doesn’t stay a bypass—it becomes a problem.

And if I may add one light but true line: we all recognize the importance of recovering the pallid sturgeon—yet I’d respectfully ask the Committee to remember that the American family farmer is a bit like an endangered species these days too... even if the U.S. Fish and Wildlife Service doesn’t keep a list for us.

The federal agencies own the facility, control the land, and carry the statutory duty to maintain a compliant mitigation measure. The Fish Bypass Channel is a federal conservation asset serving a national public purpose, and it should continue to be funded and managed as such.

Congress and the American people have invested tens of millions of dollars in this facility and decades of recovery work. H.R. 6568 protects that investment by preventing an improper handoff of responsibility to entities that lack jurisdiction and expertise, and by ensuring the federal government remains accountable for the mitigation measure it designed and built.

In closing, we appreciate Representative Troy Downing's leadership on H.R. 6568 and Senator Steve Daines' leadership on the companion bill in the Senate. We look forward to working with Representative Downing, this Subcommittee, and all interested parties as this legislation moves through the committee process and—hopefully—is enacted into law.

I respectfully urge the Subcommittee to advance H.R. 6568 to ensure Reclamation retains operations and maintenance responsibility and receives appropriated funding to maintain the Fish Bypass Channel.

Thank you, and I welcome your questions.