A BILL

To authorize the Secretary of the Interior to finance operation, maintenance, and replacement work from revenues received in connection with operations under the Reclamation law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, from and after October first, nineteen hundred and eighty eight, all revenues deposited in the Reclamation Fund, which are generated by Reclamation projects, shall be available as a revolving fund without further appropriation for operation, maintenance, and replacement of, and emergency expenditures for, all facilities of multi-purpose projects which have an allocation of operation and maintenance costs to one or more of those functions which are reimbursable under Reclamation law, subject to such restrictions and limitations as may be included in annual appropriation Acts: Provided, That after the requirements for the projects included above are satisfied, the balance of revenues shall be available annually for appropriation for other purposes authorized by law.

Sec. 2. Section 255(g)(1) of Public Law 99-177 is amended by inserting after "Bureau of Indian Affairs miscellaneous trust funds, tribal funds (14-9973-0-7-999);" the following programs and activities: "Bureau of Reclamation, operation and maintenance (14-5064-0-2-301); Colorado River Dam Fund, Boulder Canyon Project (14-5656-0-2-301); Lower Colorado River Basin Development Fund (14-4079-0-3-301); Upper Colorado River Basin Fund (14-4081-0-3-301);".
Over 82 percent of the funds provided to the O&M program from the Reclamation Fund for those projects which have reimbursable functions are reimbursed directly to the Federal Treasury within the same year in which they are expended and are, therefore, repaid at current value. Of the remaining 18 percent, a large portion is dedicated to the purposes of salinity control, safety of dams, fish and wildlife enhancement, recreation, and flood control, which are non-reimbursable by law or treaty, but which nevertheless are closely associated with the reimbursable program.

The level of funding of the water and power OM&R program in the final analysis has little or no impact on the Federal Treasury, since these programs are entirely reimbursable from the water and power revenues which by law must be sufficient to meet whatever level of funding is required to meet the OM&R needs of the facilities.

Continued funding at present levels will cause further reductions in the ongoing OM&R program. This will drastically affect Reclamation's ability to maintain dependable production at existing power facilities and deliveries from water supply facilities. In September 1985, for example, Reclamation identified funding needs in the appropriated OM&R program of $160 million for fiscal year 1987. However, the President's fiscal year 1987 budget request contained only $150 million. The Continuing Resolution in effect for fiscal year 1987 authorized only $140 million.

There is considerable financial risk associated with deferring needed maintenance and replacement work. Costs, downtime, and revenue losses all can be minimized if necessary work is performed in a timely manner. Conversely, extended delays can result in potentially life threatening system failures, destruction of public property, and excessive repair costs, downtime, and revenue losses. The $20 million shortfall in fiscal year 1987 funds could cost Reclamation three or four times that amount in excessive costs to repair breakdowns and in revenue losses in future years resulting from service failures attributable to deferred work.

As an example, Reclamation is systematically replacing polychlorinated biphenyl (PCB) equipment to eliminate the potential for contamination and costly cleanup in the event of a spill, and the continuing burden of compliance monitoring of equipment. The recent rupture of PCB Transformer K3C at Folsom Powerplant, Central Valley Project, California, and subsequent cleanup activities serve as a reminder of the potential problems which can develop if this program is not given proper priority or funding. The cleanup is costing $300,000 while the replacement cost would have been $25,000.
Such financial costs will be recovered through water and power charges in order to satisfy project repayment requirements, and it is thus the water and power consumers who must bear the ultimate financial burden of an ineffective/untimely O&M program.

It should be noted that the Colorado River Storage Project, the Colorado River Basin Project, and the Fort Peck Project are already operated as revolving funds. Similarly, the Boulder Canyon Project already operates under a permanent appropriation. In these projects, the O&M programs are allowed to function in an orderly, reasonable fashion with no net impact on the Federal Treasury. So long as water and power revenues are available in the respective funds, they can be used for O&M purposes, without further appropriation.

Of the two power marketing administrations within the Department of Energy which sell and transmit surplus electric power generated by Reclamation projects, one, the Bonneville Power Administration (Bonneville), already operates with a revolving fund established by the Federal Columbia River Transmission System Act of 1974.

Currently, Reclamation and the Western Area Power Administration must request annual congressional authorizations and appropriations for operating expenses. The sources of these appropriations, of course, are the very revenues deposited by Western, Reclamation, and Bonneville from their respective activities. The proposed legislation would eliminate this process by creating a revolving fund for Reclamation O&M activities and would allow funds to be withdrawn from the Reclamation Fund for authorized O&M purposes without further appropriation. The annual appropriations process does not provide enough flexibility, financial certainty, or financial responsibility for the efficient operation of business like, revenue-generating water and power functions which are wholly financed by end users.

The Reclamation O&M programs should be run on a self-supporting business-like basis. The records of the Colorado River Storage Project and the Colorado River Basin Project since their inception, and Bonneville since 1974, support this contention. Furthermore, revolving funds have allowed these projects to optimize scheduling of major expense activities, thereby reducing costs meeting completion targets more consistently, and optimizing resource potential and revenue generation.

Revenues to the Reclamation Fund are more than sufficient to meet the requirements of the O&M program. The context of the Reclamation laws makes it abundantly clear that water and power rates must be high enough so that they will produce revenues at least sufficient each year to equal the O&M cost that year. A tabulation of the total revenues which are deposited in the Reclamation fund is attached and amply demonstrates that sufficient revenues are collected each year to support the O&M program.
It should be noted that the OM&R of Reclamation water and power resource projects is a shared responsibility between Federal and State Governments and the beneficiaries of the Federal projects.

This relationship is clearly pointed out in Table 1 and in the tabulation below which depicts the OM&R expenditures for the Reclamation program in fiscal year 1986.

<table>
<thead>
<tr>
<th>Fiscal Year 1986</th>
<th>Expenditures for Operation and Maintenance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Federal Funds</td>
<td></td>
</tr>
<tr>
<td>Reclamation</td>
<td>$127,270,500</td>
</tr>
<tr>
<td>Western</td>
<td>133,996,000</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$261,266,000</td>
</tr>
<tr>
<td>Non-Federal Funds</td>
<td></td>
</tr>
<tr>
<td>Revolving Funds</td>
<td>$159,221,000</td>
</tr>
<tr>
<td>Water User Advances</td>
<td>11,173,000</td>
</tr>
<tr>
<td>Water User O&amp;M</td>
<td>225,000,000</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$394,394,000</td>
</tr>
<tr>
<td>Total</td>
<td>$655,660,500</td>
</tr>
</tbody>
</table>

As noted elsewhere in this report, the Federally funded water and power OM&R programs are entirely reimbursable from water and power revenues which by law must be sufficient to meet whatever level of funding is required to meet the O&M needs of these facilities.

Although these water resource projects are an integral part of this Nation's infrastructure, they are very dissimilar from the infrastructure elements most commonly referred to in the media, such as roads, bridges, and urban water systems, in that the expenses of operating each project are reimbursable by a clearly identified specific entity or entities, who are contractually obligated to repay these costs.

Thus, in analyzing the factors illustrated in Figure 1 and the above tabulation, two points should be stressed:

(1) Any attempts to constrain the Federal funding program for the OM&R of Reclamation projects for budgeting reasons are constraining only 40 percent of the OM&R program since 60 percent of the OM&R program is non-federally funded. Since project beneficiaries are responsible for both the 60 percent non-Federal portion and most of the 40 percent Federal portion, it would appear logical and reasonable to vest control of all OM&R expenses in the project beneficiaries, without added constraints imposed by non-project entities. It is the water and power consumers who provide the final control on the OM&R program through the rate-making process.
(2) The strategy and overall policy for that portion of the infrastructure funded through the Federal appropriation process should set an example of the level of OM&R funding which is expected to properly administer this Nation's resources. Since the Federally funded portion generally represents reserve works which are the backbone of the water and power infrastructure, it is imperative that these works be maintained to adequate standards to insure delivery capabilities in the most reliable and effective manner. Attempts to downgrade the standards by which the Federal portion is maintained will surely result in degradation of standards by which the remainder is maintained. Again, it is the water and power consumers and dependent economic enterprises in the service area who will bear the ultimate financial burden of an ineffective/untimely OM&R program.
TABLE 1.

ANALYSIS OF RECLAMATION FUND RECEIPTS AND EXPENDITURES
FOR OPERATION AND MAINTENANCE OF RECLAMATION PROJECTS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts from Reclamation Project Operations 1/</td>
<td>$210,502,884</td>
<td>$266,475,263</td>
<td>$231,135,578</td>
<td>$235,905,880</td>
<td>$305,472,484</td>
<td>$417,008,000</td>
<td>$430,596,604</td>
<td>$465,241,278</td>
</tr>
<tr>
<td>Expenses, O&amp;M</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reclamation Annual O&amp;M Appropriation</td>
<td>$78,500,000</td>
<td>$62,398,000</td>
<td>$82,303,000</td>
<td>$83,651,000</td>
<td>$123,760,000</td>
<td>$138,628,000</td>
<td>$127,210,500</td>
<td>$136,950,000</td>
</tr>
<tr>
<td>Western Total Operating Costs 2/</td>
<td>$115,293,000</td>
<td>$105,695,000</td>
<td>$112,400,000</td>
<td>$102,211,000</td>
<td>$142,223,000</td>
<td>$166,397,000</td>
<td>$133,996,000</td>
<td>$165,922,000</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$193,793,000</td>
<td>$168,093,000</td>
<td>$194,704,000</td>
<td>$185,804,000</td>
<td>$265,983,000</td>
<td>$305,025,000</td>
<td>$261,266,500</td>
<td>$302,872,000</td>
</tr>
<tr>
<td>Revenues Available for Repayment</td>
<td>$193,793,000</td>
<td>$168,093,000</td>
<td>$194,704,000</td>
<td>$185,804,000</td>
<td>$265,983,000</td>
<td>$305,025,000</td>
<td>$261,266,500</td>
<td>$302,872,000</td>
</tr>
</tbody>
</table>

1/ Includes collections by Bureau of Reclamation, Bonneville, and Western Area Power Administrations.
2/ Includes Western Area Power Administration purchase power and wheeling costs.
Fiscal Year 1986
Spending for Operation and Maintenance

FIGURE 1.
Black = Non-Federal
White = Federal
October 25, 1984

Mr. John D. Musick, Jr.
Musick & Cope
P.O. Box 4579
Boulder, CO 80306

Dear John:

On behalf of Governor Lamm and myself, I want to thank you for the time you took to provide a briefing to state officials concerned with water matters on the Galloway Group's scheme to export Upper Basin water to the San Diego County Water Authority. We also appreciate your appearing before the Colorado Water Conservation Board.

Colorado cannot accept your proposal that the state, acting through the governor, purchase an option with Galloway entitling the state to contribute water for storage in a proposed reservoir and then participate in profits from the lease or sale of that water to the Authority. Colorado law does not permit the state to withhold from appropriation water apportioned to it by compact. Thus, the state has no water to sell or lease. While state agencies can appropriate water to effect their statutory purposes, the export of water developed from such rights for a profit is not now contemplated by state law. Proprietary involvement by the state in the sale of water would require articulation of new laws and policies which should be enacted, if at all, only after thorough debate and discussion.

Our greatest concerns with the Galloway proposal are not with the arrangements for state participation in profits, but with several serious legal and policy issues. As I have explained to you in our discussions, I have substantial reservations about the legality of the proposed scheme and about its practical and political feasibility. The materials which you have sent me address some of the issues, but fail to resolve them satisfactorily or fully.

Following are some of the most important questions. Unless they can be answered, there is little point in pursuing the Galloway proposal further and you will have no support from Colorado.
1. How can the proposed transaction comply with the applicable interstate compacts and laws allocating the waters of the Colorado River? In addition to obligations of individuals to obey, and the state to enforce, such laws and agreement, the Colorado export statute (C.R.S. 37-81-101) requires that exports "not impair the ability of this state to comply with its obligations under any judicial decree or interstate compact which apportions water between this state and any other state or states". Specifically, you should address how the proposed transaction can comport with restrictions and requirements of:

a. The Colorado River Compact, articles II, III, IV(b), and VIII,

b. The Upper Colorado River Basin Compact, articles III, VI, and XV(a),

c. The Boulder Canyon Project Act, section 13(c) and (d), and

d. The decree in Arizona v. California.

2. How can the proposed transaction, which is to result in the delivery of water to California in excess of California's entitlement, be effected consistently with the requirement of Colorado's export statute that use of water in another state be credited as a delivery to that state?

3. How can the proposed transaction satisfy the provision of the Colorado export statute that requires that "the proposed use of water will not deprive the citizens of this state of the beneficial use of waters apportioned by interstate compact or judicial decree"? Although the agreement purports to allow termination on notice and to limit the term of the "lease" of water, there is no assurance that the contract will remain unamended in this respect or that it will be enforced to allow use of the water in Colorado when it is needed.

4. How can Galloway guarantee that water developed in Colorado can be delivered to the Authority using the river channel? How can intervening states and their users be prevented from diverting the water once it is in the stream? Could the Bureau of Reclamation, consistent with the Law of the River, make reservoir releases to satisfy delivery schedules agreed upon by Galloway and the Authority?

5. Assuming the legality of the Galloway scheme, what are the consequences to Colorado of Galloway's proposed storage
facilities? Any attractiveness to the Galloway scheme involves construction of storage facilities that could later be used to meet Colorado's instate water needs. That advantage is seriously diluted if the facility is not of a size or at a location where future Colorado uses are likely to occur. If the project depends on a million acre-foot facility on the lower Yampa River, I am not satisfied that it will have future utility for reasonably foreseeable needs in Colorado. Furthermore, there may be serious environmental concerns with the location of such a project consistent with obtaining maximum benefits for Colorado.

It is not the state's policy to frustrate the ability of your clients or other private individuals to develop waters of the state consistent with the state Constitution and statutes, and with other applicable laws and compacts. However, at this point I fail to see how that can be done. Unless I am convinced otherwise, I believe it is the obligation of all state officials to oppose a project that is contrary to law. Indeed, Colorado must always be mindful of our obligations under interstate compacts as we depend on those agreements to protect our own ability to develop the water we need for the future.

I would appreciate receiving your answers to the several questions in this letter in time to distribute them to the Colorado Water Conservation Board in advance of its November 15 meeting, at which meeting this subject will be on the agenda. We would be willing to meet with you in advance of the Board meeting for a fuller explanation of your answers if that is necessary.

Sincerely,

David H. Getches
Executive Director

DHG/gl

cc: Governor Lamm
    Attorney General Woodard
    Bill McDonald
    Jeris Danielson
    Felix Sparks
    Members, CWCB