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Committee on Environment
and Public Works

Subcommittee on Transportation
and Infrastructure

Washington, D.C.

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PERSPECTIVES ON NEW AND EXISTING US ARMY CORPS OF ENGINEERS AUTHORITIES TO RESPOND TO WATER MANAGEMENT ISSUES INCLUDING DROUGHT AND WATER CONSERVATION

Tuesday, May 16, 2023

United States Senate

Committee on Environment and Public Works

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The committee met, pursuant to notice, at 2:30 p.m. in room 406, Dirksen Senate Office Building, the Honorable Mark Kelly [chairman of the subcommittee] presiding.

Present: Senators Kelly, Padilla, Cramer, Ricketts.

STATEMENT OF THE HONORABLE MARK KELLY, A UNITED STATES SENATOR FROM THE STATE OF ARIZONA

Senator Kelly. The subcommittee will come to order.

I want to welcome everyone to the first hearing of the Transportation and Infrastructure Subcommittee for the 118th Congress. This is my first hearing chairing this committee.

I want to thank my colleague, who will be with us shortly, Senator Cramer, for his partnership and assistance leading up to this hearing. I look forward to our future work together.

I also want to thank Senator Cramer's staff, I think they are here, and the EPW Committee staff, for their assistance in making today's hearing a reality.

I had the opportunity to say this to each of them right before the hearing gaveled in but I also want to again say thank you to all of our witnesses for joining us today and taking part in this important discussion.

The topic of today's hearing is an important one, understanding how the Army Corps of Engineers has been successful at responding to emerging water management challenges like drought risks in the western United States or increased flooding in the midwest, and how the Corps can be a better partner in responding to these challenges.

For Arizona, the most prominent challenge that we face today, and one I talk about on this committee all the time, is

drought. Arizona and the entire western United States is in the midst of a two decade-long drought. This has put incredible strain on watersheds throughout the West.

In Arizona, this strain is seen most prominently along the Colorado River, but it is by no means the only impacted watershed. We had an unseasonably wet winter this year. We got great snow pack in the Rockies. This means we have better than usual runoff. All that is good news. It really is. We know from experience that wet winters are often followed by dry winters the next year.

We need to continue to prepare for this. Congress has already acted to take emergency actions to respond to the drought in the west. I secured $4 billion in the Inflation Reduction Act for the Bureau of Reclamation to respond to drought conditions along the Colorado River. Already the Bureau of Reclamation has used that funding to conserve nearly 500,000 acre-feet of water on the Colorado River through some short-term water reduction agreements.

I will also note that the Gila River Indian Community and Governor Lewis stepped up here and made one of the most significant contributions in this process, agreeing to leave 125,000 acre-feet of water in Lake Mead. This helps us stop the bleeding.

But we know more is needed. The name of the game in the

western United States is long-term system conservation and efficiencies. Those efficiencies will limit water loss and promote better conservation.

The Bureau of Reclamation is making some investments to support these projects but this must be a whole-of-government effort. That includes the Army Corps of Engineers. That is why I worked hard in last year's WRDA to secure key provisions to help address these water supply challenges.

This included a number of things like providing new authorities to the Army Corps to respond to drought risk, to reauthorizing the tribal partnership program for ten years. It also included requiring the Corps to study ways to better support and manage aquifer recharge efforts, and examining how installing natural features at Federal reservoirs can improve storage capacity.

I want to give Senator Cramer some credit for his work to establish a Western Water Cooperative Committee in WRDA which is going to foster more collaboration between States when addressing supply challenges in the western United States.

I look forward to hearing more from our witnesses today about how these programs and provisions are being implemented. I also hope we can explore what more needs to be done. For example, do the flood control curves established by the Army Corps, which govern how much water can be retained in all

Federal reservoirs for drinking water or flood control, does it make sense, given the changing hydrology in the western United States, do those curves still make sense or should we modify them?

At a time when we don't have time or water, we don't have either to waste, is the Corps able to move quickly enough to support needed infrastructure investments in the western United States? What more can and should the Corps be doing to address invasive plant species in these rivers and in these watersheds?

I look forward to discussing all of these questions and more with our witnesses today. I am going to start with some introductions. Depending on the timing, we will see where we go next because I would like to hear from Senator Cramer for his opening remarks and some further introductions.

Let me first start with Governor Stephen Lewis. He is currently serving his third term as Governor of the Gila River Indian Community and previously served as the Community's Lieutenant Governor.

Governor Lewis was born in Sacaton on the Gila River Indian Community. He graduated from Arizona State University like my younger daughter, Claire, and pursued graduate studies at the JFK School of Government at Harvard University.

During his tenure leading the Community, Governor Lewis has developed a track record for bringing innovative solutions to

water challenges on the Community. He spearheaded the development of the Community's Managed Aquifer Recharge Sites, which I have visited on multiple occasions. He restored the Community's riparian area. He has also been a key collaborative partner in the ongoing negotiations around Colorado River Conservation issues.

Governor Lewis has also spearheaded education initiatives, collaborations with the Community's veteran population and advocated for protection of the Indian Child Welfare Act, both at home and nationally.

Governor Lewis serves as Secretary for the National Congress of American Indians; he is the President of ASU's American Indian Policy Institute; he is on the Executive Board of the National Indian Gaming Association; and is on the Board of Trustees for the Heard Museum in Phoenix.

Leslie Meyers is the Associate General Manager and Chief Water Resources Executive for the Salt River Project. Ms. Meyers joined SRP in 2022 and has more than 30 years of experience with water resources management in Arizona and the southwest.

Prior to joining SRP, Ms. Meyers served as the Area Manager for the Phoenix Area Office with the Bureau of Reclamation. Ms. Meyers received her BS in Civil Engineering from Texas A&M University, and is a registered professional engineer.

Christy Plumer is the Chief Conservation Officer for the Theodore Roosevelt Conservation Partnership, or TRCP. Ms. Plumer joined TRCP in 2016 before which she worked with Solar City, the Nature Conservancy, and the Conservation Fund on issues related to Federal land and renewable energy policy.

For seven years she worked on Capitol Hill working for former Senators John Chafee and Bob Smith, and was staff director for Senator Lincoln Chafee when was Chair of the Fisheries, Wildlife and Water Subcommittee of this committee.

Ms. Plumer has a BA in Biology and Environmental Studies from the University of Pennsylvania and an MA in Environmental Studies from Brown University.

With that, let me turn it over to it over to Senator Cramer. I said all these great things about you but you weren't here. I will turn it over to him for his opening statement and also to introduce our remaining two witnesses.

Senator Cramer.

[The prepared statement of Senator Kelly follows:]

STATEMENT OF THE HONORABLE KEVIN CRAMER, A UNITED STATES SENATOR FROM THE STATE OF NORTH DAKOTA

Senator Cramer. [Presiding.] Thank you, Chairman Kelly, for that and for the kind words you said earlier. I will verify them later.

I like this committee a lot. I like this subcommittee a lot. I enjoyed my work on it previously. As the Ranking Member with Senator Cardin, we accomplished some big things. I look forward to even bigger things with Chairman Kelly who is going to do what I just did and that is to vote on the Floor.

Thank all of you witnesses for being here as well. As I said, this is a good committee. The whole committee is a good committee. This subcommittee especially, I think we have worked on some really important things together. I look forward to many more of those. I think today's hearing is a good place to start with that.

We are focused today on gathering feedback and information from stakeholders regarding new and existing authorities that enable the Corps of Engineers to respond to challenges related to drought, floods and water supply. It is amazing all those things have happened at the same time in our great big Country for some years.

Additionally, the hearing will provide an opportunity to discuss the Water Resources Development Act of 2022 and help

inform future WRDA legislative action concerning water management issues.

Before we turn to that, I want make a few comments about the doctrine of cooperative federalism and the States' well-established rights regarding water management. I happen to think that the States' rights have been overlooked in lots of areas, not just water management, but it is probably as good a display of some of the imbalance that we should not see in cooperative federalism.

Regarding the western States, Congress and the courts have given clear and consistent deference to States for water allocation through the 1944 Flood Control Act and the Water Supply Act of 1958. The history matters.

Despite this, the Corps has pursued various regulatory actions over the years and decades, namely their proposed Water Supply Rule in 2016 threatening to erode western States' authority to manage water resources within their boundaries, the States' boundaries.

Cognizant of this continued State and Federal conflict over water management, Congress established the Western Water Cooperative Committee through the Water Resources Development Act of 2022. It was harder to do than I thought it would be but the committee, through this, will provide a platform of dialogue for western States to work out water appropriation and other

issues with the Corps. I am hopeful this committee will help bring about a more cohesive State-Federal partnership relating to water management.

This committee can serve as a first step towards improving the existing partnership to better account for States' rights and better resemble the model of cooperative federalism envisioned by Congress.

One of the things about this committee that we are forming is it recognizes two important facts. One is that water belongs to each of us when it is in our State but it belongs to all of us collectively. It also recognizes while not every State is the same, the halves of our Country are very different. The west is different than the East. West Mississippi and West Missouri is different than east.

I am anxious to see how well the committee works and if it is going to work as well as the members of it apply themselves.

In addition, I want to also take a moment to briefly touch on the Snake Creek Embankment issue in my State. In 2007, the Corps realized they were experiencing some foundational problems with the embankment. The relief wells they put in place were not properly maintained over the years. Instead of physically fixing the problem to prevent embankment failure, the Corps decided to implement a water control plan that would limit the pool differential between Lake Sakakawea and Lake Audubon. Only

people from North Dakota would know what I am saying when I do this. The State and others objected to this change as it would inhibit water supply to what is called the McClusky Canal, among other concerns.

I worked hard to secure a provision in WRDA 2020 requiring the Corps to reevaluate structural and operational alternatives to reduce risk of an embankment failure and to properly account for the economic benefits provided by the embankment. Boy, aren't there economic benefits or economic consequences if there is adequate water or not adequate water. Water is pretty critical to economic opportunity.

The Corps has since conducted a dam modification study and completed the associated draft environmental assessment earlier this year. The State and the Garrison Diversion Conservancy District have raised concerns with the Corps' recommended plan primarily as it fails to fully account for the economic impacts associated with the entire embankment. I look forward to getting into that a little bit today.

I have since communicated with General Spellman and urged the Corps to take an all-encompassing perspective on the importance of the embankment, fully recognizing its integral role in ensuring water supply to roughly 50 percent of North Dakota's population and the billions of dollars' worth of development that are on the line due to the need for consistent

water supply. This issue is simply too important for the future of the State to get it wrong.

I look forward to speaking more with our witnesses and getting valuable feedback on a variety of water management issues. Thank you to all our witnesses for being here today. I know you all bring tremendous expertise and certainly a lot of local and regional understanding of the importance of this issue.

Now I get to introduce my witnesses. I call them my witnesses. You are all of our witnesses and you are all wonderful.

It is an important hearing and it is my honor to introduce as witnesses Andrea Travnicek, Director of the North Dakota Department of Water Resources and Jennifer Verleger, Chair, Western States Water Council. Thank you both for being here.

Dr. Travnicek, we call her "Trav." You all will eventually. It is easier to pronounce and spell. But it is Dr. Andrea Travnicek.

She was appointed by Governor Burgum in 2021 to serve in this role as the Director of the North Dakota Department of Water Resources. She has had lots of very important roles. She oversees the management of water resources for the State through water development, regulatory responsibilities, planning, education and safety.

Previously, Dr. Travnicek was the Director of the North Dakota Parks and Recreation Department and also worked in various roles at the United States Department of the Interior, including serving in the Water and Science Hallway. She is intimately familiar with western water issues and the impacts Federal policy has on States.

Further, Dr. Travnicek has a Ph.D. in Natural Resource Management Communication from North Dakota State University and was recently given the 2023 Horizon Award which honors NDSU graduates doing outstanding work and community service. Congratulations on that.

She certainly keeps herself busy. She testified earlier this morning at the House Transportation and Infrastructure Committee. We are grateful to have you here today.

Jennifer Verleger is testifying before this committee today as Chair of the Western States Water Council. However, she is also North Dakota's Assistant Attorney General and provides general counsel and litigation services to the North Dakota Department of Water Resources and State Water Commission, a lot of work.

Ms. Verleger has represented the State on water issues in the United States Supreme Court, Federal appellate courts, the North Dakota Supreme Court, State and Federal district courts and Office of Administrative Hearings in several areas including

interstate rivers, federalism, water rights, water appropriation, drainage, and sovereign lands. It is hard to imagine a more important legal job than that one.

Ms. Verleger sits on the National Water Supply Alliance Board and is a member of the Conference of Western Attorneys General. She has been an excellent resource to me and my staff. They talk about you a lot, Jennifer, as we have worked through water supply and water law conflicts with the court.

Thank you both, Andrea and Jennifer, for being here today. I value this opportunity to gather input from all of you and your insights. I look forward to a meaningful discussion on water management in our western States and other issues pertaining to the Corps.

[The prepared statement of Senator Cramer follows:]

Senator Cramer. I should have read slower. Maybe the Chairman could have gotten here. We will proceed without him and he will catch up.

We are going to start with witness statements. You will each have five minutes. You can see the lights in front of you. It is just like driving. You know what red, yellow and green mean.

We will start with Ms. Plumer. Thank you for being here.

STATEMENT OF CHRISTY PLUMER, CHIEF CONSERVATION OFFICER, THEODORE ROOSEVELT CONSERVATION PARTNERSHIP

Ms. Plumer. Thank you, Senator Cramer. Thank you to Chairman Kelly and other members of the subcommittee for the opportunity to testify today.

I am Christy Plumer, Chief Conservation Officer of the Theodore Roosevelt Conservation Partnership, a coalition of 63 hunting, fishing, outdoor recreation, landowner, and scientific associations that was founded in 2002. At the TRCP, we are dedicated to ensuring the places Americans love to hunt and fish are conserved and the species upon which we depend as hunters and anglers are managed at sustainable levels.

Water conservation and Federal and State authorities related to water quantity and quality are therefore core to our mission and we work closely with Federal, State, tribal and regional partners to accelerate the pace and scale of aquatic restoration.

As a part of this effort, we host working groups through the TRCP Policy Council that bring together our organizational partners to develop, respond to, and advance water and natural infrastructure policy, and we engage with Congress on the biennial Water Resources Development Act and with the U.S. Army Corps of Engineers to implement aquatic restoration programs and authorities.

Today, I will touch on the growing water management challenges, particularly in the west, and the opportunity for the Corps and this committee to advance nature-based solutions.

The Corps plays an important but often-overlooked in the West providing water to meet the needs of around 101 million people and supporting agricultural irrigation from 24 projects. Corps-owned facilities also provide abundant hunting, fishing and outdoor recreation opportunities in the west and across the country. Drought and wildfire, aging infrastructure and increasing levels of water demand, along with climate change, are growing challenges for the Corps.

Addressing these challenges, we believe, will require rapid deployment of nature-based solutions and natural infrastructure such as restoring wetlands and improving watershed health. The Corps has several existing tools and authorities at their disposal to scale natural infrastructure investments. One example is the Sustainable Rivers Program, a partnership with the Nature Conservancy that funds local efforts to integrate environmental flow and natural infrastructure objectives into existing Corps operations.

In southern Arizona, this program supports a partnership to design releases from the Alamo Dam on the Bill Williams River to enhance riparian areas and reduce flood risk. Another example is the Continuing Authorities Program, specifically the Section

206 Aquatic Ecosystem Restoration Authority, which provides a streamlined process for the Corps to design and implement natural infrastructure projects.

The Water Resources Development Act of 2022 includes new authorities and direction for the Corps to address drought with provisions on managed aquifer recharge, updating water control manuals in response to drought, and facilitating dialogue on western water management.

We specifically appreciate Section 8208 of WRDA 2022 which directs the Corps to assess opportunities to use natural infrastructure to reduce drought and wildfire risk to Corps infrastructure in the southwest United States. This study will provide information on how natural infrastructure may be integrated into existing agency risk management and operational guidance. We encourage Congress to fully fund the study.

Looking ahead, this Congress has numerous opportunities to continue to build on existing programs and authorities to tackle drought. First, Congress should invest in the existing Drought Resilience Program to meet the outsized demand in the west, including the Sustainable Rivers Program, the Continuing Authorities Program authorities and WRDA 2022 drought-focused provisions.

Second, Congress should strengthen technical assistance. The Silver Jackets Program is one successful model for flood

risk management and should be expanded to address drought.

Third, Congress should encourage the Corps to enhance cross-boundary partnerships with Federal land management agencies and non-Federal partners.

Fourth, Congress should consider directing the Corps to update their benefit cost analysis process to account for the multiple benefits of natural and nature-based infrastructure.

Finally, on the topic of hunting and fishing access, Congress should enable the Corps to invest in recreational infrastructure through the bipartisan LAKES Act, spearheaded by Senator Cramer, thank you, and Senators Heinrich and Padilla.

In closing, we stand ready to work with this subcommittee and the full committee, Congress and the Corps to advance these fish and wildlife-focused solutions. Once again, thank you, Chairman Kelly and Ranking Member Cramer, for holding this important hearing today. I look forward to answering your questions.

[The prepared statement of Ms. Plumer follows:]

Senator Kelly. [Presiding.] Thank you, Ms. Plumer.

Ms. Meyers.

STATEMENT OF LESLIE A. MEYERS, P.E., CHIEF WATER EXECUTIVE, AND ASSOCIATE GENERAL MANAGER OF WATER RESOURCES, SALT RIVER PROJECT

Ms. Meyers. Thank you, Chairman Kelly. Good afternoon Ranking Member Cramer.

I am Leslie Meyers, Associate General Manager for Water Resources at the Salt River Project. Thank you for inviting me today to provide testimony on how we can improve our ability to respond to water management challenges using existing and potential new authorities. It is a privilege to share my insight and observations with you.

SRP has been serving Arizona since 1903, almost 10 years before Arizona became the 48th State. We are the third largest not-for-profit community-based public power entity in the country providing sustainable, reliable and affordable electricity to nearly 3 million people.

SRP is also the largest supplier of raw water in the Phoenix Metropolitan area, delivering about 800,000-acre-feet annually from the Salt and Verde Rivers to municipal, industrial and agricultural customers.

SRP manages and operates seven dams and reservoirs that can store approximately 2.3 million-acre-feet of water as well as 1,300 miles of canals, lateral stitches, and pipelines.

Roosevelt Dam was authorized as one of the first projects in the 1902 Reclamation Act. In 1905, Reclamation began

construction on Roosevelt Dam 40 miles northeast of Phoenix, which it completed in 1911. SRP has operated and managed the dam for over 100 years.

The U.S. constructed Roosevelt Dam as a water storage and power generation facility and it remains a critical source of stored water and hydroelectric power generation today. Reclamation undertook several significant modifications to the dam in the 1990s raising it 77 feet in elevation, adding 550,000 acre-feet of dedicated flood control space, 1.2 million acre-feet of safety of dam surcharge capacity, and increasing water conservation storage capacity by about 280,000 acre-feet.

The flood control space is under the jurisdiction of the Corps of Engineers under Section 7 of the Flood Control Act of 1944. The Corps of Engineers, Reclamation and SRP developed a flood control plan in 1997 that requires that SRP evacuate water within 20 days of it first entering the flood control space.

While the Flood Control Manual ensures that SRP can operate the dam safely under the most extreme flood events, it also requires SRP to evacuate water during small and moderate flood events, something we are working with the Corps of Engineers and Reclamation to revise.

The 2006 and 2020 Water Resources Development Acts included provisions authorizing the Corps of Engineers to accept funds from non-Federal entities to review flood operating plans at

Reclamation facilities with dedicated flood control space like Roosevelt Dam. Since Congress enacted these provisions, SRP, along with 14 tribal, agricultural, industrial, and municipal partners, were funding a coordinated effort with the Corps and Reclamation to review the flood control plan. This review resulted in our proposal to temporarily extend the release period in the bottom 20 percent of the flood control space from 20 to 120 days in certain years. Engineers from both the Corps of Engineers and Reclamation concluded that the proposal was safe or risk neutral.

This type of cross-sectional public-private partnership is a great example of what it will take to maintain resilient water supplies in the future. The Federal and non-Federal partners work together to improve water management while maintaining the safety and integrity of our critical dam infrastructure.

If approved, this proposal could make up to 109,000-acre feet of flood water annually available for use in three of the next five years. Put in perspective, this amount of water can support the annual needs of roughly 330,000 households in the Phoenix metropolitan area.

The Salt and Verde Rivers are highly variable river systems and we anticipate that the changing climate will produce increasingly variable annual flows. Projections predict a hotter, drier climate that has higher variability in river

flows, including wetter wet periods and sharper, deeper drought periods.

The Salt and Verde River systems experienced significant runoff this season and water rose 6 feet into the flood control space. If the proposed changes to the flood control plan were in place, SRP would have been able to reduce the flood releases by 109,000 acre-feet.

Thank you, Chairman Kelly and Ranking Member Cramer for this opportunity to testify today. I look forward to answering your questions.

[The prepared statement of Ms. Meyers follows:]

Senator Kelly. Thank you, Ms. Meyers.

Governor Lewis.

STATEMENT OF STEPHEN ROE LEWIS, GOVERNOR, GILA RIVER INDIAN COMMUNITY

Governor Lewis. Chairman Kelly and Ranking Member Cramer, thank you for the opportunity to testify today on behalf of the Gila River Indian Community.

The subcommittee's focus on the role of the Corps of Engineers highlights the need for an efficient, all-of-government approach to the drought crisis on the Colorado River. The Corps is a key partner in addressing water management, conservation and infrastructure related to drought and is already engaged in new infrastructure investments, operational improvements at existing facilities, ecosystem resilience and planning assistance.

The Corps has also taken positive steps to ensure that tribal governments, especially those tribes with significant water supplies, are at the table as strategic governmental partners.

I do want to acknowledge that the relationship between the Corps and tribal Nations has not always been a positive one. Historically, decisions around flood control, pipelines and other projects have, at times, pitted the Corps against tribal governments.

But there is an important role for the Corps to play in drought mitigation. We have been encouraged by the more recent

focus of the Corps, through its current leadership and tribal partnership program, to look for innovative ways to partner with tribes and support those innovative projects that bring long-term solutions to the ongoing drought crisis that we find ourselves in.

In November 2022, the Corps issued new interim tribal partnership guidelines and guidance to expand the types of partnerships through which the Corps can engage with tribal governments. A critical component of the revised guidance is the stated commitment to tribal sovereignty and an acknowledgment of tribal capacity that, in many cases, either meets or exceeds the capacity of the Corps to carry out projects on trial lands.

Following this guidance, the Community sought to partner with the Corps on a project that was already well underway when the guidance was issued, a pilot project to install solar panels over a stretch of one of the Community's irrigation canals. The Community's concept is that solar over canals would generate renewable energy for operating our system and reduce water evaporation. This concept has been considered but never tested in the United States.

Using the Community's own resources, we commissioned a study that showed that our design would indeed increase system efficiency, conserve water, and generate energy. Although Phase

1 of the pilot project will only cover about 1,000 feet of canal, our study shows real potential for this concept.

To give you an idea of how significant this technology might be, there are approximately 150 miles of canals through the reservation that would be suitable for this installation. If fully developed, we could generate over 750 megawatts of power and conserve over 6,000 acre-feet of water from evaporation loss each year.

This project will have long-lasting water conservation impacts and will serve as a model that can be used by other tribes and local governments. This is the type of project innovation that Congress intended when you included $25 million for similar pilot projects for solar over canal in the Inflation Reduction Act.

But when you are the first to bring a new concept to a large, bureaucratic agency, such as the Corps, the process can be cumbersome. Unfortunately, current Corps policy required that the Corps do its own validation study, which essentially duplicated the work we have already done to study the project and its potential and slowed the project down.

The Corps timeline for construction is also much slower than ours. Their project budget exceeds what the cost would have been if the Corps could contract directly from the community to complete the work under the Indian Self-

Determination and Education Assistance Act. Although the project could already be well underway and heading toward completion, the Corps' inability to contract directly with tribes has slowed the process, exactly what you don't need when you are responding to the drought crisis we are all facing.

While there have been some issues and delay, I want to state that I do think the Corps is moving in the right direction under Assistant Secretary Connor's leadership. In the past few days, we have had major movement from the Corps on our project. The Corps' validation study was approved late last week and the conclusions matched those of the Community's validation study. Both the Community and the Corps are confident that we will be signing an historic partnership agreement for construction of the Solar Over Canal Project within the next three weeks.

Based on the Community's experience, my one recommendation for the committee along with the need for continued and expanded funding for the Corps' Tribal Partnership Program, would be to consider statutory language to allow for tribal self-determination programs to be implemented at the Corps because the drought crisis and other complex infrastructure issues can't be solved without tribal governments being at the table as true partners, Senators.

Thank you, Senator Kelly, for inviting the Gila Indian Community to participate in this hearing and for your leadership

within the State and the basin on drought issues.

[The prepared statement of Governor Lewis follows:]

Senator Kelly. Thank you, Governor Lewis.

Ms. Travnicek.

STATEMENT OF ANDREA TRAVNICEK, DIRECTOR, NORTH DAKOTA DEPARTMENT OF WATER RESOURCES

Ms. Travnicek. Good afternoon, Chairman Kelly, Ranking Member Cramer, and members of the Committee. Thank you for your invitation to testify today on the importance of jointly managed water infrastructure in the State of North Dakota.

My name is Andrea Travnicek and I am the Director of the North Dakota Department of Water Resources.

The Department of Water Resources has trust responsibilities for managing and developing North Dakota's waters. We strive to sustainably manage and develop North Dakota's water resources for the health, safety and prosperity of its people, businesses, agriculture, energy, industry, recreation, and natural resources. We know that sound infrastructure must be maintained and modernized to meet multiple objectives.

The Garrison Dam, completed in 1956, forms Lake Sakakawea and was authorized by the Rivers and Harbors Act of 1935 and the Flood Control Act of 1944. The dam is part of a project planning effort known as the Garrison Diversion Unit authorized by Congress in 1965. The Garrison Diversion Unit, associated with the Bureau of Reclamation, diverts water from Lake Sakakawea to provide water for irrigation and water supply.

As part of the Pick-Sloan Plan, irrigation of over 1

million acres and other water development opportunities in central and eastern North Dakota were authorized by the Federal Government. The Snake Creek Embankment impounds Lake Audubon, a sub-impoundment of Lake Sakakawea. Lake Audubon's elevation is cooperatively managed by Reclamation, the North Dakota Game and Fish Department, and the U.S. Fish and Wildlife Service by pumping water from Lake Sakakawea across the Embankment to Lake Audubon, where it is then diverted eastward for its federally-authorized uses through the McClusky Canal.

The Embankment is authorized to provide relocation routes for a highway, railroad, and utilities inundated by the creation of Lake Sakakawea and to serve as a sub-impoundment dam for the diversion of Missouri River water to eastern North Dakota as part of the Garrison Diversion Unit.

The diverted water is then used to support the State's largest industry, agriculture, by providing water to the McClusky Canal. The diverted water also supports municipal, rural, and industrial water supplies; fish and wildlife; recreation; and other project purposes in accordance with Federal reclamation laws.

The Embankment's original design included relief walls specifically designed to maintain structural integrity during a high-water differential, ensuring obligations for water and recreational users on Lake Audubon are met even during drought.

In 2007, a post-drought seepage analysis determined there is a potential for adverse under-seepage that could lead to Embankment failure when pool differentials exceed 43 feet between Lake Sakakawea and Lake Audubon and further identified performance issues due to a lack of relief well maintenance.

In 2019, the Embankment Interim Risk Reduction Measures Project identified a selected alternative to modify the Water Control Manual to incorporate an operating restriction that limits the pool differential between Lakes Sakakawea and Audubon to 43 feet during times of extreme drought. This means a partial drawdown of Lake Audubon could occur, which could impact regional water supply projects and irrigation, especially during times of drought when supply is most needed.

In response to concerns, Senator Cramer included a provision in the 2020 Water Resource Development Act directing the Corps to reevaluate structural and operational alternatives to reduce the risk of an Embankment failure; coordinate on the alternatives with State and local entities whose water obligations would be impacted by a drawdown; and to properly account for the economic benefits provided by the Embankment.

In 2021, the Corps initiated a Dam Safety Modification Report for the Embankment to identify and recommend a Risk Management Plan. The recommended plan is an operational alternative to remodify the 2019 Water Control Manual to include

risk-informed language, update the dam monitoring and surveillance plan, and remove the formal reference to the 43-foot differential constraint.

While removing the differential is progress, the Corps is not addressing the overall concern of the project in not meeting all authorized purposes that are associated with the Snake Creek Embankment–Lake Audubon Project. The draft report and recommended plan are only based on the perspective of potential dam failure that could result in a low-potential loss of life, rather than the breadth of economic and ecosystem impacts associated with the entire Garrison Diversion Unit and Snake Creek Embankment–Lake Audubon Project.

The other authorized purposes associated with the project are not fully credited in this study and are therefore minimized when determining the recommended plan and the final benefit-cost ratio. The lack of consideration of the other authorized purposes and the low benefit-cost ratio developed as a result of diminishing the value of these services have led to a decision by the Corps to have an operational fix versus a sound structural fix. This decision leaves current and future projects in jeopardy.

Sound, reliable, infrastructure is a top priority for the State and local project sponsors. As of May 2023, Federal, State, and local partners have already committed over $500

million to projects dependent on the Embankment's stability to put Missouri River system water to beneficial use. It is imperative that the Corps look at water management from a wholistic approach, especially as it relates to all project purposes and directives that have been authorized by Congress.

Furthermore, State and local investments and dependence on reliable water sources that may be impacted by a compromised Embankment must be fully considered for the citizens of our State who are looking to the Federal Government to keep the promises that have been made.

[The prepared statement of Ms. Travnicek follows:]

Senator Kelly. Thank you, Ms. Travnicek.

Ms. Verleger.

STATEMENT OF JENNIFER VERLEGER, CHAIR, WESTERN STATES WATER COUNCIL

Ms. Verleger. Chairman Kelly, Ranking Member Cramer, and members of the committee, thank you for holding this hearing and your efforts to achieve a balance between Federal policies and programs and the role of the States in our federalist system.

My name is Jennifer Verleger. I am here today as the Chair of the Western States Water Council. I am also an Assistant Attorney General for the State of North Dakota, where I represent the State Water Commission and the Department of Water Resources. In that capacity, I am also a delegate to the Conference of Western Attorneys General. Additionally, I sit on the board of the National Water Supply Alliance which focuses on Corps water supply issues.

Over the decades, western States and the Corps of Engineers have butted heads when State water law has conflicted with Federal programs and priorities, particularly when it comes to water supply. The problem can be illustrated with an analogy. Think of a typical kitchen sink. There are usually two sides to the sink, with a divider in the center and a faucet that swings between each side.

On one side, the drain is plugged. This is the Corps' storage reservoir. On the other side, there is no plug, which is the flowing river. The running faucet is the upstream river

and surface runoff, which is controlled by Mother Nature.

The Corps controls which side of the sink the faucet is running into by opening and closing the outflow of its reservoirs. Once the plugged side of the sink is full, the Corps must drain some of the water, or move the faucet to the uncontrolled, free-flowing side.

The Corps takes the position that all of the water in the sink is in storage and subject to their control and the fees they charge. The States take the position that the sink is in their own house, and that even though the Corps gets to control which side of the sink is filling, it only gets to enter a water supply agreement or charge users when they take water from the plugged side of the sink. Water that is coming out of the faucet, before it gets to the sink, for example when you fill a glass, and water that flows into the open portion of the sink is the States' to appropriate.

After several years of the States' unsuccessful attempts to resolve their differences with the Corps over this issue, a provision was included in WRDA 2014 prohibiting the Corps from charging surplus water fees in the Upper Missouri River Basin for 10 years.

However, undeterred, in 2016, the Corps published its Proposed Water Supply Rule. The States had several issues with the proposed rule. Despite the Corps' insistence that it sells

"storage," the rule never defined that term. As a result, the Corps continues to assert that all the water in the reservoir is its to manage. In other words, the entire kitchen sink.

In the rule, the Corps specifically stated that it was aware of North Dakota and other States' position that "users should not be required to pay for benefits they do not receive," but stated that the law "does not require the Corps to undertake such an analysis."

Not only did the proposed rule require States to pay for benefits they do not receive, it usurped the States' rights and authority to control and allocate their own water resources. It ignored multiple declarations from Congress that States have the primary responsibility for water supply and water management.

Congress and the courts have unequivocally established and repeatedly affirmed the doctrine of cooperative federalism regarding water management issues. There was bipartisan opposition to the proposed rule from the Western States Water Council, Conference of Western Attorneys General, and Western Governors Association. There was bipartisan opposition to the rule from 19 Senators, including Senators Cramer and Merkley.

Ultimately, the Proposed Water Supply Rule was withdrawn in 2020. Most recently, Senator Cramer successfully incorporated into WRDA 2022 a permanent ban on the Corps from charging surplus water fees from the Upper Missouri River Basin. While

this resolves the issue for some States regarding fees, it still leaves the fee issue open for other States as well as leaving unresolved, for all States, the issue regarding control over the water allocation.

As such, WRDA 2022 established the Western States Cooperative Committee, which requires the Corps to annually meet with delegates from the Western States to develop and make recommendations to avoid or minimize conflicts between Corps projects and water rights and water laws of the western States. The committee must provide a report to Congress.

The Western States Water Council and the Conference of Western Attorneys General are working diligently with their memberships to make their committee appointments. In fact, I believe we have sent a letter that went out yesterday making some of those appointments.

While there is no expectation the committee will be the end-all solution to States' conflicts with the Corps, there is hope that with this additional Congressional oversight, the Corps will take the cooperative portion of its cooperative federalism responsibilities more seriously.

Thank you for the opportunity to testify and I stand for any questions.

[The prepared statement of Ms. Verleger follows:]

Senator Kelly. Thank you, Ms. Verleger.

I am going to recognize myself for five minutes. Then we will go to Senator Cramer. With the four of us here, if it remains that, I think we will get a couple opportunities.

I want to start with Governor Lewis. Thank you for your opening statement. That is exactly what I want to talk about, which is aligning of these canals. Some of the stuff you went through pretty quickly so I want to kind of drill down.

First, let me say thank you for everything the Gila River Indian Community is doing in trying to mitigate for this horrific drought we have been experiencing for 20 years. It really is going to take all of us. The Community stepping up the way you have is much appreciated by the State of Arizona, myself, and my office.

The advantage we get from this is we are going to save some water and also generate some electricity. You went through some of this already but I want to make sure we get this correct for the record. My understanding is initially it is going to be 1,000 feet, lineal feet, of solar panels covering these canals. For that 1,000 feet, what is the anticipated water savings per year in acre-feet?

Governor Lewis. Thank you, Chairman. The Community expects that the project will conserve water, of course, that is lost to evaporation and thermo-electric energy usage. So it is

expected to conserve roughly 8 acre-feet of water annually. That is combined to 5.4 from evaporation and 2.58 acre-feet from thermo-electric energy usage.

Senator Kelly. How many total megawatts would that lining of the 1,000 lineal feet of canal generate?

Governor Lewis. It would equate to 1,000 feet would produce 1 megawatt of energy.

Senator Kelly. One megawatt of energy. What is the total cost of the project? What is the Federal versus non-Federal? Can you go into a bit more detail, I think in your opening statement you said if the Army Corps was to do this on their own, it would take longer and cost more? Could you give us an estimate of how much more it would cost?

Governor Lewis. The traditional cost share percentage is a 65 percent to 35 percent breakdown. That is for agricultural water supply. In accordance with 33 USC, Subsection 22.13(c), this would include credits for LERRDs, which stands for lands, easements, rights-of-way, relocations and disposal.

However, associated implementation guidance modifies the cost sharing agreement for tribes by applying a waiver of $665,000 to the non-Federal share. So this will reduce the Community's cost share to 25 percent of the regular 35 percent share.

This reduction results in an estimated non-Federal cost share of roughly 6 percent of the estimated total project cost of $423,850. The adjusted Federal costs are around $6,320,000.

Senator Kelly. What are the opportunities? How many miles of canals did you say there were?

Governor Lewis. That is suitable for this project, 150 miles.

Senator Kelly. One hundred and fifty miles. So, 6,000 feet or so in a mile, so you could expand this by well over a couple orders of magnitude, potentially. Obviously, the cost would be in proportion. My point is I think there is an opportunity to save significant amounts of water and generate significant electricity.

Governor Lewis. Yes, Chairman. This is a goal that as a tribal leader I set for our Community to be one of the first net-zero communities especially in Arizona to potentially be a significant energy producer as well through this project. We might be in competition with my good friend to the right of me from the Salt River Project.

Senator Kelly. You said there was a recommendation of a change to statutory language. I am going to go over here by about 30 seconds. Could you go over that again and be a bit more specific?

Governor Lewis. We are realizing that the Corps lacks, Chairman, that essential statutory authority to treat tribes as respective sovereign partners. We are respectfully looking for Congress to potentially significantly enhance the Corps' ability to execute the TTP, Chairman, by granting the agency the ability to enter into those self-governance contracts with tribes thereby respecting tribes' inherent sovereign nature.

Senator Kelly. Thank you, Governor Lewis.

Senator Cramer?

Senator Cramer. Thank you, Mr. Chairman.

For all of you, I am quite sure there is going to be plenty of demand for both. There is going to be more demand than there is electricity. Keep them all going as long as you can.

I will start with you, Ms. Verleger. All of you are great. At least for nerds like us, it was fascinating to listen to all your stories and anecdotes.

Ms. Verleger, your insight has been really helpful to my team, as I mentioned earlier. I thank you for that, and I see why you are so valuable to them.

You provided some very instructive background. I loved the illustration of the sink and the two sides. But with regard to that water supply rule, from a legal standpoint, again, you talked about Congress, but could you dig down just a little more for me on the legal objections to the supply rule in the first

place? Because I think history is instructive. I am glad we had it withdrawn and wanted to ultimately make it permanent for everyone. Maybe give a legal analysis of why it was so objectionable.

Ms. Verleger. Thank you for the question.

Basically, by the Corps trying to usurp control over all of that water in the entire kitchen sink, that takes away the States' ability to allocate the water in accordance with their State laws. So, every State allocates their water somewhat differently. Arizona is a little bit different than North Dakota. But generally we all use the prior appropriation system in the west.

There are already mechanisms already set up in place to allocate water between users, especially in times of shortage. When the Corps comes in and tries to take control of the whole sink, that really takes away the States' ability to do any sort of regulation. That is contrary to State law.

Senator Cramer. Maybe even the Constitution.

Ms. Verleger. And the Constitution.

Senator Cramer. I was going to ask you about the Western Water Cooperative Committee, which again, the Corps wasn't crazy about our doing. Their sense was we can with attorneys general and governors in individual States.

Tell me how you see the new committee working and why it might work better in getting better cooperation with the Corps.

Ms. Verleger. I see it working as, the committee appoints, there is one person appointed by the Governor and one appointed by the attorney general from each of the States. Those are supposed to be people who actually have technical expertise. These aren't meant to be political appointments but people who are actually going to be able to dig down into the weeds with the Corps of Engineers' staffers, discuss the problems, and try to find solutions.

Also, they are required to report to Congress every year after we have the meeting about whatever it is that the committee talks about. I expect it to be focused a lot on water supply issues, but there is no language in the bill that says it has to focus on water supply issues. I think we can maybe broaden out from that and see where there is conflict.

Senator Cramer. I appreciate that. I am looking forward to being in the middle of that quite honestly, so thank you for your work on that.

Dr. Travnicek, thank you for your work on the Snake Creek Embankment and for understanding my illustration. Dig down a bit more for me on what an EA should include in terms of information. Unfortunately, General Spellmon lifted the time, provided more time for comment. It is kind of fun, this is how

it works in North Dakota. I text the Governor, the Governor calls Andrea, and pretty soon we are getting more information. Fortunately, what they ignored first go round, they are now asking for in the second go round.

Tell us a little bit about that additional information. That is, by the way, it is their charter, right?

Ms. Travnicek. Right. Senator Cramer, thank you for that question.

Yes, as we are looking at the Snake Creek Embankment and the economic analysis that goes with it, right now the Corps is looking at the economic analysis just from the dam safety perspective, so the loss of life.

I mentioned in the testimony that there are multiple purposes associated with this embankment. Looking at it from that water supply, recreation, fish and wildlife perspectives, that is why we have the concerns. That is why we reached out to you and the Governor's office looking for that extension.

We had requested seeing the data that was associated with the economic analysis and what that looked like. We did have to sign an NDA associated with the extra information. But my team was able to dive in, working with Garrison Diversion Conservancy District as well, on what those numbers are.

We feel that if there was an opportunity to make sure we are looking at this from a multiple purpose perspective versus

just the dam safety, loss of life perspective, we would be above that 1.0 that is needed for the benefit cost ratio to move forward with a structural fix versus an operational fix.

Senator Cramer. Thanks for that. I think in the next round I may come back to that and drill down a little more on things like loss of economic opportunity if you do not have the water.

Thank you.

Senator Kelly. Thank you.

Senator Padilla.

Senator Padilla. Mr. Chairman, thank you for holding this hearing. As you and I together, the Senators representing California and Arizona during this 1,200 year mega-drought, we know all too well the Federal response to drought and water management requires a whole-of-government approach based on science and data.

Governor Lewis, I particularly want to thank you for being here today. Thank you for your work on behalf of the Gila River Indian Community to elevate tribal voices within the Colorado River discussion and for being so proactive in finding solutions to the crisis. I look forward to working together to ensure the sustainability of the Colorado River for many generations to come.

In California, the Army Corps works closely with State and local agencies to improve, among other things, the forecasting of atmospheric rivers which are often described as rivers in the sky, rivers that can carry as much water as 15 Mississippi Rivers. They produce most of the rain and snow that the West depends upon each and every year.

The research conducted through the Forecast Informed Reservoir Operations program by the Corps, in partnership with State and local agencies, has enabled water managers to retain water that otherwise would be needlessly released, resulting in not just cost savings, but more importantly, a more reliable water supply while also preventing and enhancing flood control capabilities.

My first question is for Ms. Verleger. As you stated in your testimony, western States experience great variability in precipitation which has serious impacts and consequences for the management of water projects. How critical is FIRO for effectively managing drought and flood operations across the West?

Ms. Verleger. Thank you for the question. I would say it is very critical for States in the West. I understand that NOAA has submitted a report to Congress recommending a pilot project for improving the western S2S, which is subseasonal to seasonal forecasting, to support water management.

The Council would recommend that the Corps should enter an agreement with NOAA to partner on that project and tailor it to ensure it supports the FIRO, Forecast Informed Reservoir Operations.

Senator Padilla. Thank you for that. I am looking forward to following up with you on those items.

In addition, there is a strong and growing interest across not just California, but beyond, in understanding the broad benefits of flood-managed aquifer recharge or flood-more projects. Flood-more projects use flood water from rainfall or snowmelt for managed aquifer recharge on agricultural lands and working landscapes, including refuges and floodplains. Flood-more projects demonstrate how natural infrastructure can make flood impacts, maximize water retention and provide habitat benefits for fish and wildlife.

This question is for you, Ms. Plumer. Can you speak to how water conservation and drought provisions included in the 2022 WRDA will help stakeholders across the west implement watershed-scale, multi-benefit projects to mitigate climate impacts?

Ms. Plumer. Thank you, Senator Padilla, for that question.

Exactly in line with the testimony we provided, tremendous built-up authorities over multiple WRDAs in support of these levels of projects. We are strongly supportive of the vast range of authorities across the Continuing Authorities Program

such as Section 206 that I mentioned in my testimony, aquatic ecosystem restoration, to provide the tools for non-Federal partners to do things like wet meadow restoration, flood plain restoration and really look at these abilities for natural features that exist in the landscapes today to be restored and do more long term water storage, water conservation that takes some of these fluctuations out of the water that we are seeing right now, of the vast changes happening between atmospheric conditions, such as facing California and these mass flooding events that are happening.

So really holding, storing, and slowing the water over long periods of time and really tapping into the large expanse of authorities that the Corps, this committee and other efforts that Congress that has pushed the Corps on to think again about these natural features and nature-based solutions to these types of conservation objectives for our systems in the west.

Senator Padilla. Thank you. With the few seconds I have left, I am going to squeeze in one more question. But I will not stick around for a second round.

To follow up, Ms. Plumer, as we speak, the Corps is managing the flows of four reservoirs to minimize flood risk by low-lying Central Valley communities in California facing potentially catastrophic spring snowmelt.

How can managed aquifer recharge near Corps facilities such as those in California help mitigate flood risks for these types of communities?

Ms. Plumer. Thank you again, Senator.

Again, I think it is very much about slowing the water down, storing it, and utilizing the features we have on the landscape to store that water for future use, so, thinking about geologic storage, combined with things like wet meadow storage.

Also, we are very focused on ensuring wildfire resilience and that our forest systems are able to store the water and snowmelt and that there is a slower pace in terms of hitting the reservoirs. Sedimentation, for our interests, in terms of recreation and how sedimentation impacts reservoirs and the health of hunting and fishing on our systems is another area of focus. Putting in these natural features blended with the structural features is a win-win in terms of reservoir health and storage.

Senator Padilla. Thank you very much.

Thank you, Mr. Chairman.

Senator Kelly. Senator Ricketts.

Senator Ricketts. Thank you, Mr. Chairman. Thank you very much for holding this, and Ranking Member Cramer, as well, for this important talk about water resources. It is something that is certainly very important to Nebraska.

Nebraska has a long history of managing our water in a responsible way. In fact, the Daugherty Water for Food Institute has looked at our farmers' crop water productivity which is how much water our farmers are basically using to be able to grow corn and soybeans. From 1990 to 2014, it has increased by 75 percent which means we are being more productive and growing more crops with less water.

Nebraska has had a system of water management in place through 20 local natural resource districts for over 50 years that has helped us manage our overall aquifer to keep it within 1 foot of where it was in the 1950s, where States like Colorado have drained their aquifer down by nearly 14 feet.

We have worked with surrounding States like Wyoming and Kansas to create compacts. In fact, we have a compact with Colorado that goes back 100 years that entitles us to water on the South Platte River which comes from the Rockies through Colorado into Nebraska.

Actually, in years like the past couple years, we have had drought. At one point on the South Platte River, I saw there was no water coming across that, even though Colorado is supposed to be giving us 120 cubic feet a second during the summer. We can get even more in the non-irrigation season if we have built a canal which we are undertaking to do.

In fact, the compact from 100 years ago gives us the ability to build a canal in Colorado to Nebraska to a reservoir system. We started funding for it when I was Governor. This legislature has significantly increased backing for that project so we can continue to make sure we get the water for our State. Because that is going to impact drinking water all the way to Lincoln and Omaha as well.

We are talking about water and Nebraska. I know it is all about you, Senator Cramer, but North Dakota. I am going to get there.

Ms. Travnicek, you talked about the Army Corps and I think the Snake Creek Embankment and the uncertainty they were creating by not appropriately looking at the types of ROI. What can Congress do and this committee do to make sure that we are properly enforcing the Water Resources Development Act? Are there more things we could be doing to be proactive here in this committee or in Congress?

Ms. Travnicek. Senator, thank you for the questions.

I think what would be beneficial is just making sure it is fully clarified. Clearly with the last Water Resource Development Act for 2022, there was discussion, I think Senator Cramer included, related to the economic analysis. But they decided to take it at a smaller lens just looking at one authority versus the multiple authorities.

So I think trying to figure out the appropriate authorization and can that be expanded to multiple purposes. I think that is where that would be helpful, making really crystal clear, if you have these projects that have multiple purposes, why are we not looking at it as a whole.

Senator Ricketts. What has been your response in working with the Army Corps of Engineers? What have they been saying?

Ms. Travnicek. Senator, the last discussion we had last week in regard to the economic analysis, where they really did just focus on the one element, the dam safety, loss of life for the economic analysis. And that is where we, as a State, continue to impress on looking at all the other authorized purposes that are associated with it, especially the water quantity side of things.

Senator Ricketts. So they haven't acknowledged yet the other purposes? They have still only acknowledged the one?

Ms. Travnicek. Senator, they talk about the multiple purposes, but they don't include it in the economic analysis.

Senator Ricketts. What do we need to do in WRDA to be able to make sure they are recognizing those other purposes?

Ms. Travnicek. Senator, I think making it crystal clear to make sure they are looking at the multiple purposes.

Senator Ricketts. So write it into the language when we update it. Got it.

Ms. Travnicek. Yes.

Senator Ricketts. Ms. Verleger, can you talk a bit about what your experience with the Army Corps of Engineers has been like when you have had your conversations with them?

Ms. Verleger. Thank you for the question. I think it depends on who has been in charge and where we have been in the process. The problems we have been having over water supply in North Dakota have dated back at least to the time I have been there, which is about 14 years. I know we have gone through this same round of things back in the 1980s. I wasn't there, but I have all the documents and history.

So a lot of the problem seems to be, we talk to the staff level. They tell us, well, that is not our decision; that is a headquarters decision. Then we talk to headquarters and they send us back. There is a lot of bouncing around back and forth trying to even get to the right person who can help us.

So that has been a problem. I am hopeful the Western Cooperative Committee will help solve that problem, because those are the people who are supposed to be in charge and helping us.

Senator Ricketts. Do you agree with Dr. Travnicek's assessment, though, that more clarification in WRDA will be helpful to that?

Ms. Verleger. I do agree with that assessment, yes.

Senator Ricketts. Great. Thank you, Mr. Chairman.

Senator Kelly. Thank you.

Ms. Meyers, you discussed in your opening remarks work that SRP has done with the Corps to update flood control manuals. I want to get into that a bit more.

Across all your reservoirs at SRP, how much storage capacity do you have to keep available for flood control management? Then can you explain how the Army Corps Flood Control Manuals impact the river operations?

Ms. Meyers. Thank you, Chairman Kelly.

Of our seven reservoirs we operate, only one has dedicated flood control space. That is Theodore Roosevelt Dam. There are 550,000 acre-feet of flood control space in Theodore Roosevelt Dam. That is operated pursuant to our Water Control Manual with the Corps of Engineers and the Bureau of Reclamation.

Senator Kelly. Beyond the Army Corps telling you through these flood control curves how much storage capacity you have to have for flood control, is there anything more that affects your operations or is just having that number based on the existing curve?

Ms. Meyers. Today, we operate that, the Flood Control Manual dictates that we evacuate the space in Roosevelt Dam, which is the highest upstream dam on the Salt River, in 20 days. Our Flood Control Manual does allow for temporary deviations, as

do many other flood control manuals. We have been working with the Corps of Engineers and the Bureau of Reclamation to solidify that proposal. Our proposal is to use the bottom 20 percent of that space and extend that release period from 20 days to 120 days.

In Arizona, especially for our spring runoff which is what we had this year, some really intense spring storms, if we could extend the release period for 120 days until the summer, we could meet some real critical demand with that water supply.

Senator Kelly. How much water would that be?

Ms. Meyers. About 109,000 acre-feet annually.

Senator Kelly. You mentioned that in your opening remarks.

When was the last time the Army Corps did an update for one of its manuals?

Ms. Meyers. I can only speak for our manual but I know that it is not unusual for the Corps to go for many decades if there is no substantive changes to the reservoir system and not update their manuals. Our manual was established in 1997. This is our first relook at that.

Senator Kelly. It has been over 25 years since that has been updated. With that 550,000 acre-feet of available storage for flood control, meaning if you could, if you need to, you could flow that amount of water and it is not going to flood, how often maybe have you exceeded that?

Ms. Meyers. This year actually the elevation rose to about 6 feet in the flood control space. The total is 24 feet. That is the highest elevation we have been in in the flood control space in Roosevelt Dam.

Senator Kelly. That is 25 percent, essentially, if you are just thinking about linear feet?

Ms. Meyers. Yes.

Senator Kelly. About 25 percent of what you have available for flood control, you actually used going back how far?

Ms. Meyers. To the 1990s when it was modified.

Senator Kelly. Since the 1990s.

Ms. Meyers. The fifth largest city in the Country is just downstream of this dam, so there are significant benefits from the flood control space.

Senator Kelly. But do you now feel you can modify that to be more favorable towards water storage as opposed to flood control?

Ms. Meyers. We certainly feel that this bottom 20 percent, the lowest 5 feet, is a good place to start. Our proposal is to do a 5-year plan and we can enter into flood control space up to three times during that. We will get some really good data and information from that. If it is successful, we will move forward with a long-term modification to the Water Control Manual.

Senator Kelly. Was that enabled by what we did in the 2020 WRDA?

Ms. Meyers. Yes, sir, it was. That did allow us, the Salt River Project, to work more closely with the Corps and the Bureau of Reclamation on the reevaluation.

Senator Kelly. Do you feel like we are moving in the right direction on this?

Ms. Meyers. Yes, I do.

Senator Kelly. Thank you, Ms. Meyers.

Senator Cramer?

Senator Cramer. Thank you again, Mr. Chairman.

Dr. Travnicek, I wanted to talk a little more about the other factors that should be in the economic analysis. But your discussion with Governor Ricketts reminded me there is nothing more feared by the Corps of Engineers than a governor who becomes a Senator and gets on the EPW Committee.

[Laughter.]

Senator Cramer. Governors always have all this experience and pent-up frustration they want to take out.

However, I thought the discussion was great because I think both Jennifer and Andrea gave the answer, but the Corps still didn't seem to be hearing our voice in the mandate, you know, you have to consider these other things.

However, this is where hope lies, in my view. The Western Water Cooperative Committee, where governors and attorneys general appoint these people, the reason the Corps leadership did not want to do it is because they like talking to each governor one at a time, or staff level discussions one at a time.

But as a group, the West, together, strong bipartisan as we notice in this room, while aren't identical, we have similar concerns. That is why we created this committee that will answer to both the Corps and then to Congress so we will be able to be kept up to date on how they are responding so that we hopefully can make crystal clear, Dr. Travnicek, what they are either meeting or nor meeting.

Now, I am going to be hopeful because I am a hopeful person. I agree with several of the witnesses that say right w have right now pretty good leadership. I think we do at the Corps. I have great respect for General Spellmon, I have great respect for Secretary Mike Connor.

I am really hopeful. Secretary Connor having been involved in other agencies, Interior and understanding the role of States and the Federal Government, and natural resource management, I am going to be hopeful, but will reserve the tough ones for you, Governor.

But maybe, Dr. Travnicek, just expand a bit more. Having been an economic development director, in the role of water, obviously irrigation is critical. Obviously municipal use is a really big deal. Both are big economic drivers that should be considered as part of any analysis.

But beyond that, there is the whole role of industrial development. It is hard to measure what would have been possible had we had the water where we needed the water, for example. I think of all the projects that probably have gone by the wayside because we did not have adequate water.

Can that be a part of the analysis? I want to have integrity. But can that be a part of it, if you could document projects that are either in the docket or the queue or lost opportunities if there was just a better supply?

Ms. Travnicek. Thanks for the question.

That would be our hope. We are hopeful as well. Some of the discussions related to that, knowing that the water supply projects that we have been working on, knowing we have had authorization from 1965, in order to use the McCluskey Canal, in order to get water out east to the Farber region, to the Grand Forks region, so trying to get water out east is for 50 percent of the population of North Dakota. So we have been trying to move those projects forward.

It has been in the works a long time. We hope they would take that into account for the economic analysis.

Senator Cramer. Is there anything you would add to that, Jennifer? Are we hopeful about the leadership of the Corps right now and maybe they are going to listen a little better?

Ms. Verleger. Yes, Senator, I am always hopeful that leadership at the Corps will be helpful to us. I would echo your comments about General Spellmon. He has been very good to work with, and has been helpful in listening to the State's prerogative.

Senator Cramer. My observation, and of course again, I look to Governor Ricketts because he has so much experience with the Omaha office. I think over the generations of leadership, we can always get along with Omaha. It is when it gets to Oregon or Washington that it gets more complicated.

That is enough for me. I am grateful to all of you. I think your testimony has been great. I am ending on a note of optimism.

Senator Kelly. I will recognize Governor Ricketts.

[Laughter.]

Senator Ricketts. Senator now, but I would agree with Senator Cramer's statement about when you have a little bit of knowledge, from personal experience, it certainly gives you a background in it.

That is actually one of the areas I want to hit upon. I will say that in the last few months, we have seen a big change in the Corps in Nebraska with regard to more timely responses to getting things done.

So I do echo your point about some of the leadership there is maybe a bit more responsive. But I can tell you, for example, in the past, we had a permit that took six years to issue that was for just raising the levees around Offutt Air Force Base. Because the Corps did not give that permit in a timely manner, we had floods in 2019 that did $1 billion in damage. It cost the taxpayers $1 billion because they were not timely with that.

One of the challenges I think we have, and Dr. Travnicek you referenced the Flood Control Act of 1944, where it directs the Corps to protect against flooding, protecting life and property. Of course, one of the other functions of the Corps is navigation.

But there was also a court case in Minnesota that directed the Corps to also take into account the Endangered Species Act. I think this is an area where we, in Congress, have to be thinking about how we may be hampering the Corps in its mission. Because of that court case, Congress has never dedicated which of those is a priority, flood control, navigation, or endangered species. So the Corps has to juggle all those without direction

from Congress. So that is an opportunity for perhaps this committee to think about that.

In your experience in North Dakota, can you think of projects that were delayed because of the Corps having to juggle flood control, navigation, and endangered species?

Ms. Travnicek. Senator, as we look at those types of projects, and we do have the authorized purposes associated with the Main Stem Dam, Lake Sakakawea within North Dakota that has all those different purposes, fish and wildlife, navigation, and flood control. And we have been able to, in working with the Corps, they are the ones that operate that system.

But as we look at other projects that could be delayed for permits, for instance, for Northwest Area Water Supply, in regard to getting a 408 permit in order to move forward with that project, that has taken over two years to get the permit that is needed.

It kind of depends on the situation and on the project, definitely recognizing they do have a lot of authorized purposes they have to be looking at, but also trying to make sure we are not delaying things in the process.

Senator Ricketts. Ms. Verleger, do you have any experience with regard to the Corps and having to juggle flood control, navigation and endangered species and whether there are projects you can think of that were delayed because of that?

Ms. Verleger. Thank you for the question.

I cannot think of a specific project but we have had in North Dakota, we have had some issues with the Corps, disagreement, I would say, over endangered species, the Endangered Species Act. The Corps has a responsibility to meet the Endangered Species Act and those provisions. We do, of course, have threatened and endangered species on the Missouri River.

So there is some disagreement about how much control that gives the Corps over certain activities they can do, projects, how they operate things. I think there is some disagreement there because I think the Endangered Species Act is somewhat used to further whatever purpose it is that the Corps is trying to further without looking at the holistic picture.

Senator Ricketts. Some of the experiences I had as Governor of Nebraska were that without that clear direction from Congress with regard to what is the priority, you are really kind of left to the judgment of the Corps and they have multiple masters to serve here. So it is, in fairness, difficult for them.

But that also can drive projects, at least I have seen along the Missouri River and along the Nebraska/Iowa border where it is driving projects that lead to additional flooding. That is one of the things I think, again, this committee and

this Congress can do, look at how we can prioritize that to prioritize protecting people and property overall. I don't know if you would have any further comment on that, either one of you. All right, great. I will turn it back to you, Mr. Chairman. Thank you.

Senator Kelly. Thank you, Senator.

Ms. Plumer, I am going to have some questions for you for the record. We have to go to an all-Senators briefing.

I want to thank all of our witnesses for being here and sharing your perspectives on what the Army Corps can be doing with their water management approach.

Before we adjourn, we have some housekeeping for Senators Ricketts and Cramer. We can submit written questions for the record by 4:00 p.m. on Tuesday, May 30, which is two weeks from today.

With that, this hearing is adjourned.

[Whereupon, at 3:52 p.m., the subcommittee was adjourned.]