

From: [Thompson, Aaron M](#)
To: [Ryan, Michael J](#); [Chaffin, John](#)
Cc: [Soucy, John F](#); [Campbell, Gary W](#)
Subject: RE: Motion to Intervene in NE DNR appeal of IMPs
Date: Monday, February 28, 2011 3:10:26 PM

I am unaware of any specific data to support the assertion that our O&M cost increase during times of reduced water supply. The point concerning lost revenues from the ID's based on their "ability to pay" is still a good point. At one time we only paid 70% of O&M and now we pay over 95%. We can show how this has reduced revenue to the Federal Government by \$5M. This loss of revenues is a result of decreasing water supplies over time and not specifically to one year. A majority of the O&M cost that was once paid by our customers is now a burden of the taxpayers of the U.S.

In John's third paragraph below it concludes the U.S. incurs additional cost to the facilities specifically allocated to recreation and fish and wildlife. Our managing partners may have increased cost to deal with invasive species, but this happens every time we have a prolonged drought. We can show that Reclamation has given our managing partner extra dollars to deal with this, but can we say overall O&M has increased or just this specific sector of O&M? My answer today; it is still complex to show that overall O&M cost (not the revenue difference) have increase because of reduced water supply.

Craig had one other thought related to the IMPs that goes along with the theme of lost revenues ... we may see further injury in the future if the IMPs are implemented in a way that impacts the water supplies and the ID's future viability. We could get to a point in the future where the U.S. is subject for the full cost of our projects O&M. Also, the current IMP language does not guarantee payment for curtailing/taking water in a "water short" year.

From: Ryan, Michael J
Sent: Friday, February 25, 2011 11:02 AM
To: Chaffin, John
Cc: Thompson, Aaron M; Soucy, John F; Campbell, Gary W
Subject: Re: Motion to Intervene in NE DNR appeal of IMPs

Good morning John,

We should check with the Area Office regarding increased OM&R costs at dams and reservoir lands when water levels are low. If we can verify the assertion with cost data I believe the second paragraph in 18 is fine. If we cannot produce the data we may need to modify the language in a manner similar to the Amicus Brief for the Supreme Court.

Mike.

From: Chaffin, John
To: Ryan, Michael J
Cc: Thompson, Aaron M; Soucy, John F; Campbell, Gary W
Sent: Fri Feb 25 09:28:43 2011
Subject: Motion to Intervene in NE DNR appeal of IMPs
Mike,

I believe that I am going to get approval to file our Motion to Intervene in the irrigation district's appeal of the NE DNR approval of the IMPs. I note that in paragraph 18, I use as an example of direct injury by BOR that O&M costs go up when reservoirs are not filled as planned. In light of your concerns of a similar statement in the US brief to the Supreme Court, I thought I should check with you on the language in the Motion. Following is the language as drafted and specifically the second paragraph.

18. The Order of September 20, 2010 directly affects Reclamation. Without the ability to store

and then release surface water, Reclamation may be unable to meet its contractual commitments for water deliveries. Without the water deliveries, the irrigation district water users will not produce the crops that produce the revenues to repay Reclamation. Failure to repay Reclamation is a direct injury to the United States.

Reclamation constructed its reservoir for optimal operations at full or near full reservoirs. When these reservoirs do not fill, it causes added wear and tear and thus the cost of operation, maintenance, and replacement (OM&R) increases. Reclamation pays the majority of the OM&R at its Republican River Basin reservoirs. Reclamation suffers direct injury when its reservoirs do not fill, especially if the occurrence is year after year.

Recreation, and Fish and Wildlife are authorized uses at Reclamation reservoirs. With the encouragement of the Nebraska Game and Parks Commission, Reclamation has constructed facilities for recreation, and fish and wildlife use at its Republican River Basin reservoirs. In addition to the loss of recreation, and fish and wildlife opportunities by the public, Reclamation incurs additional OM&R costs to the facilities dedicated specifically to these opportunities. Reclamation suffers direct injury when its reservoirs cannot provide such opportunities.

We added this paragraph as the recommendation of the IDs, because the State is arguing that there is no injury to the IDs and we wanted to show injury by BOR.

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