



MEMORANDUM
OCTOBER 3, 2017

TO: BOARD OF DIRECTORS

FROM: CHRIS TREESE

SUBJECT: FEDERAL AFFAIRS:
4TH QUARTER 2017

Board action: No specific action requested with this memo; however, as always, Board direction and priority-setting welcomed. I will have just returned from DC at the October meeting and may have requests for action or specific direction based on Hill and Administration visits.

I will continue my tradition of a “progressive memo” on federal affairs for the Board’s quarterly meetings. Since federal issues remain active longer than state issues, creating separate quarterly memos for each federal issue would be redundant and inefficient. This progressive memo will follow the issues and developments of interest to the River District in the 115th Congress. Since a session of Congress runs for two years, I will update this memo through 2018 to provide the Board with an easier, read-at-a-glance communication concerning federal affairs. The length of this memo will grow with each quarterly Board meeting. New materials will be highlighted in **bold** for easy reference.

If Board members have questions between quarterly updates or desire additional information on specific federal developments, please do not hesitate to contact me.

Highlights: 3rd Quarter:

- **The full Senate approved the nomination of David Bernhardt for Interior Department deputy secretary. Senators voted 53-43, mostly along party lines, to confirm Bernhardt - all Republicans present, four Democrats and one independent voted in favor of confirmation. Sen. Bennet voted in favor.**
- **The Environmental Protection Agency and the Army Corps of Engineers (the agencies) formally proposed the withdrawal of the “Waters of the U.S.” Rule. The proposal was published in the July 27 Federal Register. The agencies are undertaking a two-step process to rescind and rewrite the Waters of the United States rule.**
 - **Step one involves the recodification of existing rules governing the jurisdiction of the Clean Water Act as an interim measure to provide certainty for those affected by the rule. This first step of recodification of the pre-2015 rule would be implemented in accordance with Supreme Court decisions, agency guidance (from 2008), and longstanding practice.**
 - **Step 2 involves the substantive reworking of the rule to actually define “waters of the United States.”**

- **Senators Michael Bennet (D-CO) and Dean Heller (R-NV) led a bipartisan group of eight Western senators in sending a letter to Secretary of Agriculture Sonny Perdue requesting the U.S. Department of Agriculture (USDA) direct a portion of recently-appropriated funds for the *Watershed Protection and Flood Prevention Program (Watershed Act)* to the Colorado River Basin (CRB). “We request that you provide \$75 million of this funding to the CRB over a multi-year period to address critical water infrastructure and drought contingency planning needs in the Upper and Lower basins,” the senators wrote.**
- **The Trump administration supports ending the practice of "fire borrowing," a Forest Service employee confirmed during a Senate Energy and Natural Resources Committee hearing. The White House is "absolutely committed" to addressing the practice, in which the Forest Service and the Interior Department dip into money from other programs to cover the increasing cost of fighting wildfires.**
- **U.S. Environmental Protection Agency announced it will reestablish on-site assistance to the more than 46,000 small community drinking water utilities to help with federal environmental compliance.**
- **In mid-August, the President issued an Executive Order directing establishment of a single (federal) agency permitting program with coordinating and facilitating responsibilities for infrastructure projects. The most pertinent policy statement in the EO is, “(to) make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.”**
- **Interior Secretary Ryan Zinke reportedly has said Denver "will probably" become the headquarters for three major agencies within the department as part of an ambitious reorganization effort slated to get underway in fiscal 2019. The Bureau of Land Management, Fish and Wildlife Service, and the Bureau of Reclamation could eventually move their headquarters operations from Washington to Denver, according to U.S. Geological Survey senior executives in Denver.**
- **Zinke has issued a memorandum directing Deputy Secretary Bernhardt and the Bureau of Land Management to "immediately begin implementing" the recommendations of an Interior Department review panel amending federal greater sage grouse conservation plans. Interior is set to publish a notice in the *Federal Register* reopening the plans that were finalized in 2015. There will be a 45-day comment period upon release of the notice.**
- **Secretary of Agriculture Sonny Perdue appointed Tony Tooke as the new Chief of the U.S. Forest Service. Interestingly, Tooke is a career Forest Service employee (one of very few career employees to receive senior appointments in this administration). You’ll recall I had spread the rumor that Rich Cables (USFS, CPW, Vail Resorts) was a possible appointee to this position.**
- **Greg Shoop, a longtime BLM career official, was named acting director of the Colorado office. Previous state director Ruth Welch was transferred to Reclamation in an early shakeup of BLM senior staff under Secretary Zinke.**
- **Starting shortly after Labor Day and concluding just before Thanksgiving, the EPA and the Corps will hold ten teleconferences to hear stakeholders’ recommendations**

to revise the definition of "Waters of the United States" under the Clean Water Act. The River District will participate in the appropriate meeting through the National Water Resources Association.

- **Senator Crapo (R-ID) introduced S.1571 “to reauthorize the National Flood Insurance Program and other purposes.” Notably “other purposes” includes sections providing funding alternatives to “fire borrowing,” ensuring the costs of fighting major wildfires on federal lands will not impact land management agencies’ annual operating budgets (including funds for forest management and fire prevention).**
- **President Trump tapped David Ross to lead EPA's Office of Water; the post I had hoped Mark Pifer would be tapped to fill. Ross currently directs the Wisconsin Department of Justice's Environmental Protection Unit.**
- **U.S. Secretary of Agriculture Sonny Perdue announced that wildland fire suppression costs for the fiscal year have exceeded \$2 billion, making 2017 the most expensive year on record. Forest Service spending on fire suppression in recent years has gone from 15 percent of the budget to 55 percent, which means the Forest Service must continue cannibalizing budgeted funds intended for forest management and other purposes in order to pay firefighting costs.**
- **The Senate Committee on Energy and Natural Resources’ Subcommittee on Public Lands, Forests, and Mining held a hearing on S.1230, the Senate version of Mr. Tipton’s Water Rights Protection Act. Sen. Barrasso (R-WY) is prime sponsor, Sen. Gardner (R-CO) is co-sponsor. Of concern is the Senate bill does not include the “compromise” language we worked out with Mr. Tipton. The good news is Dustin from Cong. Tipton’s office is moving over to Sen. Gardner’s office to assume his water and natural resources portfolio and will be a significant aid to us on this (and other) issues.**
- **Minute 323: The United States and Mexico have agreed to the terms of the latest updates to the 1944 Treaty governing the Colorado River. With Minute 319 set to expire this year, Minute 323 will take effect next year and expire in 2026. Mexican and American officials signed onto Minute 323 on September 26 in Ciudad Juárez and again at a signing ceremony in Santa Fe, NM that Eric, Dave Kanzer, and I had the honor of witnessing. The framework for the agreement is:**
 - **Maintenance of the shortage and surplus regimen set by Minute 319 with a new provision requiring the International Boundary Water Commission to consult with stakeholders regarding the effects of any proposed increased deliveries;**
 - **The establishment of a Binational Hydrology Work Group to study and analyze risks of low levels in Lake Mead;**
 - **The establishment of a Binational Water Scarcity Contingency Plan to address shortages, requiring Mexico — dependent of an agreement among California, Arizona, and Nevada — to conserve its allotment of Colorado River water if Lake Mead decreases below 1,075 feet elevation;**
 - **\$31.5 million by the United States to Mexico to be used for conservation projects, such as canal lining, on-farm conservation, fallowing, and regulating reservoirs, to generate an extra 200,000 acre-feet;**

- **Maintenance of the Binational Flow Variability Work Group to reduce variability in river flow—including investigations of new water sources.**

Budget:

Senate Ag Subcommittee approved the Natural Resources Conservation Service (NRCS) budget at \$874.1 million, \$9.6 million above the FY2017 enacted level and \$108.1 million over the president's budget request. This is for conservation operations to help farmers, ranchers, and private forest landowners conserve and protect their land. The appropriations bill also includes \$150 million for the Watershed and Flood Prevention Operations program to support needed investments in rural communities.

(August) The House of Representatives, just before leaving for its August recess, passed a "mini-bus" appropriations bill that will fund a number of federal programs in fiscal year 2018. This legislation, the Department of Defense Appropriations Act (Make America Secure Appropriations Act) H.R. 3219 packages four Appropriations Subcommittee bills into a single bill including the Energy and Water Appropriations bill which funds the Bureau of Reclamation and the Army Corps of Engineers. Overall, the bill provides \$1,229,166,000 for the Bureau of Reclamation, \$77,334,000 below fiscal year 2017 and \$131,773,000 above the budget request. It also bill provides \$6,157,764,000 for the Civil Works programs of the U.S. Army Corps of Engineers, \$120,000,000 above fiscal year 2017 and \$1,155,764,000 above the budget request.

(September) President Trump struck a deal with House and Senate Democratic leadership to pass a Continuing Resolution that funds the government until mid-December and to increase the Federal Debt Ceiling, also until mid-December. Ironically, with Democrats fully on board there are enough votes to pass with both issues (and kick the budget can down the road for another quarter).

While the Senate has yet to pass any of its fiscal 2018 spending bills, with passage of the Continuing Resolution, current federal funding runs through December 8th. This gives the House and Senate almost three months to try to find compromise the appropriations bills.

The House of Representatives passed the Make America Secure and Prosperous Appropriations Act (H.R. 3354) to fund the federal government for remainder of the 2018 fiscal year. The bill, passed by a 211-198 vote.

The omnibus appropriations package contains funding for all of the 12 annual appropriations bills and totals \$1.2 trillion. Lawmakers included the four previously-passed spending bills in this package, which contained a policy rider exempting the Trump Administration's efforts to repeal and replace the Obama Administration's Clean Water Rule from the Administrative Procedures Act. In addition, the package included:

- **\$1.24 billion for the Bureau of Reclamation, a \$79 million reduction from fiscal year 2017 enacted levels**

- **\$6.16 billion for the Army Corps of Engineers, an increase of \$120 million**
- **\$7.5 billion for EPA, a \$528 million reduction**
- **\$20 billion for agriculture and rural operations, an \$876 million reduction**

Today, Wednesday, October 4, the Senate will start working on its proposed budget. It is reasonable to expect a significant discussion of tax reform in conjunction of this effort.

Presidential Appointments:

Brenda Burman, nominee for Reclamation Commissioner, received nearly unanimous committee support. Her confirmation doesn't appear to have any opposition. The challenge is finding Senate floor time for her confirmation and (the few) others who have little to no opposition.

There is still no appointee from the White House for Assistant Secretary for Water & Science (Interior).

Waters of the U.S. (WOTUS)

The Environmental Protection Agency and the Army Corps of Engineers formally proposed the withdrawal of the Waters of the U.S. Rule, publishing in the July 27 Federal Register.

Legislation:

Bolts Ditch Access:

H.R. 689 is a do-over of the previous Congress' bill granting the Town of Minturn access to the headgate of Bolts Ditch, which is just within the boundaries of the Holy Cross Wilderness Area. Rehabilitation of Bolts Ditch will allow Minturn to develop local storage. HR 689 passed the House and the Senate Energy and Natural Resources Committee.

Duplicative Pesticides Permitting/Regulation:

Congressman Gibbs (R-OH) introduced H.R. 953 to remove the duplicative permitting requirements and oversight for pesticide applicators that resulted from the US Supreme Court's ruling in the National Cotton Council case. HR 953 would remove regulation under the Clean Water Act and the associated risk of citizens' suits. The River District has supported similar legislation for the past 3 Congresses.

Water Supply Permitting Coordination Act:

Rep. McClintock (R-CA) introduced HR 1654 establishing Reclamation as the lead agency for coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals of "qualifying" (most) reservoir projects. Congressman Tipton is a co-sponsor.

S. 677 is the companion Senate bill. The full House passed H.R.1654 on a vote of 233-180. Acting Interior Assistant Secretary for Water and Science Scott Cameron earlier testified the bill complements the Trump administration's efforts to reduce bureaucracy for infrastructure generally. Senator Barrasso (R-WY) introduced the companion Senate bill, 677.

Water Rights Protection Act

Congressman Tipton introduced his Water Rights Protection Act again this Congress. I testified earlier this year in conceptual support before the Water, Power and Oceans subcommittee. Since that time, Mr. Tipton's office has worked closely with us to resolve concerns over by-pass flow language. H.R. 2939 is the result. It is attached. *I request formal direction on this bill. I recommend support.* A copy of the bill is attached. The new language is very close to the bill from the last Congress that we supported. The goal of the compromise language is to include neutral language on federal by-pass flow authorities that does not prejudice in any way any future challenge to by-pass flow authority. The bill passed the House Resources Committee 24-14.

Senator Barrasso (R-WY) introduced S. 1230, the Senate companion bill; Senator Gardner is a co-sponsor. The Senate bill's language is more problematic.

The House version, which the Board unanimously endorsed in July, was attached to H.R. 23 as title VII and passed the full House. HR 23 is Representative Valadao's (D-CA) "Gaining Responsibility on Water Act ("GROW" Act)." It primarily addresses California water issues and may be too complex, politically involved, and/or too costly to proceed in the Senate.

The Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining held a hearing on S.1230, the Senate version of Mr. Tipton's Water Rights Protection Act. Sen. Barrasso (R-WY) is prime sponsor, Sen. Gardner (R-CO) is co-sponsor. Of concern is the Senate bill does not include the "compromise" language we worked out with Mr. Tipton.

Forest Health

There are three proposed bills under consideration that will address wildfire.

Senators Wyden and Crapo have proposed S. 1842, the Wildfire Disaster Funding Act, which creates emergency funding for wildfire by requiring "specified adjustments to discretionary spending limits in FY2017-FY2026 to accommodate appropriations for wildfire suppression operations in the Wildland Fire Management accounts at the Department of Agriculture (USDA) or the Department of the Interior." The bill also requires the President's budget to include the average costs for wildfire suppression over the previous 10 years. S. 1842 has been referred to the Budget Committee.

Congressman Bruce Westerman (R-AR) introduced H.R. 2936. The House Natural Resources Committee held a hearing on a draft version of the legislation and included it in a markup June 22nd. I testified in 2015 before the Senate Ag. Committee in favor of wildfire legislation that addresses both budgetary and regulatory issues. The Resilient Federal Forests Act accomplishes this. The House Natural Resources Committee passed HR 2936 23-12. However, three other House Committees also have jurisdiction and have not taken action.

Senators Daines and Tester of Montana proposed, S. 605, the Litigation Relief for Forest Management Projects Act, which would reverse a Ninth Circuit Court of Appeals decision

requiring U.S. Forest Service to consult more with the Fish and Wildlife Service on endangered species potentially affected by projects.

H.R. 953, Duplicate Permitting for Pesticide Applicators

Congressman Bob Gibbs (R-OH) introduced HR 953 addressing the US Supreme Court's decision in the National Cotton Council case. As a result of the ruling, pesticide applicators, public and private, are subject to dual permitting and regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Clean Water Act. HR 953 would eliminate the requirement for Clean Water Act permitting and the risk of citizen suits under the CWA to anyone following FIFRA requirements. Elimination of this duplicate permitting requirement has been a River District priority for at least the past three Congresses.

The House passed legislation in late May to allow the application of pesticides near waterways without federal Clean Water Act permits, HR 953. The vote was 256-165. Twenty-five Democrats joined 231 Republicans voting yes.

Water Conservation Rebate Tax Parity Act

H.R. 644 by Jared Huffman (D-CA) would exclude rebates for water conservation or stormwater management from taxable income. This would treat water conservation rebates the same as energy conservation rebates for tax purposes. This would also eliminate the requirement that utilities issue Form 1099s reporting taxable income for every rebate provided as an incentive for water conservation measures purchased or implemented.

ESA Reform

The House Natural Resources Committee is marking up a series of bills aiming to become the basis for reform of the Endangered Species Act.

- **H.R. 717, the Listing Reform Act, introduced by Congressman Olsen (R-TX), requires the review of the economic cost of adding a species as endangered or threatened;**
- **H.R. 3131, the Endangered Species Litigation Reasonableness Act, introduced by Congressman Huizenga (R-MI), adjusts rates awarded to lawyers in ESA litigation;**
- **H.R. 1274, the State, Tribal, and 5 Local Species Transparency and Recovery Act, introduced by Congressman Newhouse (R-WA), requires data used in the federal decision-making be made available to the states and ensures that state, and tribal data is used.**
- **H.R. 2603, the Saving America's Endangered Species Act, Introduced by Congressman Gohmert (R-TX), provides that nonnative species shall not be treated as endangered or threatened under the ESA.**

CRD Priorities for the 115th Congress:

Generally:

The River District will establish and maintain a close, working relationship with each of the delegation's offices, both in DC and appropriate field offices. The River District will monitor

water-related legislative and administrative proposals for potential impact to the River District and western Colorado water users. The River District will leverage its membership and involvement in national and West-wide organizations such as National Water Resources Association, Family Farm Alliance, and Western Coalition of Arid States to secure their assistance on issues of primary importance to the CRD.

Generally, the River District will not champion nationwide issues, such as ESA reform or NEPA streamlining, though we may add our voice, as appropriate, to such larger campaigns. Typically, we will focus our federal involvement on issues, both regulatory and legislative, that uniquely or disproportionately affect western Colorado.

Priority Issues:

Figuring out the new Administration and offering support and assistance, where appropriate, to new appointees.

Colorado River ESA Recovery Programs Funding (legislative – appropriations)

Colorado River System Conservation Program (administrative; potentially legislative (appropriations))

Farm Bill, 115th Congress: Planning and drafting for anticipated introduction in 2018 for a 2019 Farm Bill

Federal aquatic nuisance species (ANS) funding and Reclamation involvement

Support for Bolts Ditch “easement”

Possible “Colorado River Basin Initiative” to focus agency efforts and federal funding to Colorado River programs.

Good Samaritan legislation (legislative)

Colorado Wilderness (legislative) and other special land designations (legislative and administrative)

U.S. Bureau Reclamation Colorado River Basin Study follow up (administrative)

USDA Conservation Programs Funding, including NRCS snow course funding (legislative)

Elimination of duplicate permitting requirements for pesticides (legislative)

Federal Agency Planning and Management Issues

USFS and BLM Water Issues: Bypass Flows, Special Use Permitting, Wild & Scenic, Land Management Plans (administrative)

Ski Area Water Rights Rule/Legislation (regulatory and legislative)

Water and Wastewater Infrastructure Funding (legislative)

Recovery Program participants will be asking Congress this year to reauthorize CRSP annual funding through 2023. Passage is essential to the annual operational funding for both the Upper Colorado and San Juan Recover Programs.