MEMORANDUM
APRIL 2, 2018

TO: BOARD OF DIRECTORS

FROM: CHRIS TRESEE

SUBJECT: FEDERAL AFFAIRS:
1ST QUARTER 2018

ACTION: No specific action requested with this memo; however, as always, Board direction and priority-setting welcomed.

STRATEGIC INITIATIVE(S):
1.B Outreach and Advocacy
7. Water Needs/Project Development

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.

I will be in D.C. next week with the National Water Resources Association and Colorado Water Congress. I will provide a verbal update at the quarterly meeting.

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

Highlights: 1st Quarter:

- President Trump proposed big changes to the National Environmental Policy Act as part of his program to overhaul the nation's infrastructure. Much of the proposal focuses on reforming the permitting process with a "one agency, one decision" framework for environmental reviews, directing the White House Council on Environmental Quality to rewrite its NEPA guidance for the first time since 1978, with the goal of streamlining decisions. The plan would designate a lead agency that would produce a single, combined review document for each project, with a two-year deadline.
- The Water and Power Subcommittee of the Senate Energy and Natural Resources Committee held a hearing on S.2166, Reauthorization of Funding for Colorado River
Recovery Programs. Interior testified on the bill supporting the efforts of the recovery programs and commenting favorably on the recovery programs. The hearing was informational in nature and no action was taken on the bill. Full committee markup will likely take place in 3 to 4 weeks.

- Secretary Zinke is proposing a sweeping change to the maps defining regions within the Interior Department. This is likely to include broad relocation of jobs from DC to regional offices and may include relocating whole departments, such as BLM, to western states. A map is attached of the proposed new regions. Note that Colorado would be united for Reclamation and all other agencies within the department.
  
  o Colorado Gov. John Hickenlooper stopped short of endorsing a Western relocation of the Bureau of Land Management to the West, asserting that such a move would need to guarantee the agency's "resilience and effectiveness."
  
  o Former Interior Department officials from both Democratic and Republican administrations criticized Zinke's proposed overhaul of the agency, characterizing the undertaking as a waste of tax dollars and effort.

- As further evidence of Interior’s commitment to ANS, the U.S. Department of the Interior released a report highlighting the progress made in the fight against invasive zebra and quagga mussels. The report comes after Secretary Ryan Zinke announced a set of initiatives to protect western ecosystems and hydroelectric facilities from the destructive species through continued collaboration with western governors as well as federal, state, and tribal agencies.

- A new bill from Rep. Grace Napolitano (D-Calif.) would help fund water reuse and recycling programs. The "Water Recycling Investment and Improvement Act," H.R. 5127, pushes back against a Trump administration’s budget proposal to fund Bureau of Reclamation water reuse and recycling programs (Title XVI) at just $3 million — a fraction of the current spending level of $34 million. Napolitano's bill would increase funding for those programs to $500 million but would also provide $375 million for grants to projects that “conserve, manage, reclaim or reuse water, wastewater or stormwater.”

- The “new” administration still has vacancies for heads of Interior's Bureau of Land Management, Fish and Wildlife Service, and Park Service. No Presidential nomination has been made for any of these positions.

- Good Samaritan redux?: The House Natural Resources’ subcommittee on energy and mineral resources held a hearing on the need for and benefits of Good Samaritan legislation that would protect clean-up efforts from lawsuits or government fines. Separate House and Senate bills are rumored to be in the works.

- A five-year status review of the razorback concluded that the risk of extinction is low, and that the Service should consider down-listing the fish to threatened in the next year.

- Susan Combs, an Endangered Species Act critic whose Interior Department nomination appears stuck in Capitol Hill limbo, will oversee the Fish and Wildlife Service and the National Park Service on a temporary basis. She has been named the department's acting assistant secretary for fish, wildlife and parks. It's a powerful
position, though not the one she was initially nominated for last summer (Assistant Secretary for Policy, Management and Budget).

Budget:
- Congress and the President avoided a sixth temporary spending bill and a third federal shutdown with passage of a 2,232-page, $1.3 trillion omnibus spending bill hours before the deadline. This will fund the government through the end of the current fiscal year, September 30, 2018. This budget pours huge sums into Pentagon programs and domestic initiatives ranging from building roads to combatting the nation's opioid crisis. Congressional Republicans applaud the bill's defense increases. Democrats tout spending boosts on biomedical research, child care and infrastructure projects.

Relevant elements of the spending bill:
- Fire borrowing was addressed in the reconciled budget with a $2.1B contingency fund that is indexed to inflation. This fund will be employed to fight the nation’s growing wildfires instead of annually diverting Forest Service funds budgeted for other programs. This is a big win!
  - Lawmakers also reached a deal to dull the effects of a federal court ruling in the Cottonwood Environmental Law Center v. US Forest Service case giving the Forest Service more flexibility to move forest management projects forward while sorting out issues around the ESA. It also provides for categorical exclusions from NEPA, for hazardous fuels reduction projects up to 3,000 acres in national forests. (This provision is a contentious element of several Healthy Forest bills currently before the Congress.)
- The Watershed Act received $150M in the FY18 omnibus. Congress also amended the law to raise the congressional notification threshold to $25 million (from $5 million; this was nearly a stumbling block for our RCPP) and removed the 250k acreage limit for watershed size. Congress prioritized a portion of the $250M for ag irrigation, watershed health, and fish and wildlife.
- $20 million in the omnibus was appropriated toward raising Reclamation's Shasta Dam in northern California by 18.5 feet; a project that California doesn't want and says violates state law.
- EPA's efforts to repeal the contentious Clean Water Rule (WOTUS) by allowing it to be exempted from the Administrative Procedure Act fell short in the omnibus. Without the rider, the repeal — which hasn't yet been finalized — will almost certainly be tied up in court, with environmental groups and 11 states challenging the delay of the Obama administration’s WOTUS rule’s implementation.
- Interior's proposed reshuffling of regions received a setback with a declaration that lawmakers would need detailed reports before any large shifts are made.
Final appropriations for Clean Water Act state revolving loan funds and WIFIA both received sizeable increases over initial figures.

- The Land and Water Conservation Fund received a “plus up” giving it more money than originally proposed. However, the budget bill did not fully fund LWCF, nor reauthorize LWCF.

**Waters of the U.S. (WOTUS)**

- The US Supreme Court ruled unanimously that lawsuits challenging the WOTUS Rule should be filed in district courts, not a court of appeals. The Court acknowledged that, so long as the WOTUS rule stands, a party’s challenge to the rule presents a live controversy.

- The Court also held that the permitting regime that predated the WOTUS rule continues in effect, as EPA and the Corps work to formulate a new rule and rescind the Obama-era WOTUS Rule.

- Now that the Supreme Court has established the proper jurisdiction for the litigation, several district court cases that had been stayed could be restarted; however, the Trump Administration is unlikely to defend the Obama-era WOTUS Rule, which may spur further challenges by environmental groups in favor of the rule.

- The high court’s ruling means the nationwide stay issued by the 6th Circuit must be withdrawn “imminently.” When the court acts, the Obama-era WOTUS will go into effect in 37 states, putting the administration in the awkward position of enforcing the rule in some states while simultaneously working to replace it nationwide.

- U.S. EPA and the Army Corps of Engineers finalized a rule that would delay the effective date of the 2015 Clean Water Rule. The new applicability date will be two years from the rule's listing in the Federal Register, EPA said. For most rules, it's 30 to 60 days after publication. EPA Administrator Scott Pruitt said, "The 2015 WOTUS rule developed by the Obama administration will not be applicable for the next two years, while we work through the process of providing long-term regulatory certainty across all 50 states about what waters are subject to federal regulation."

**Infrastructure:**

- House and Senate lawmakers introduced legislation to give states more opportunities for loans under the 2014 Water Infrastructure Finance and Innovation Act (WIFIA). Sen. John Boozman (R-AR) and Rep. John Katko (R-NY) introduced companion bills that would give states greater flexibility when funding water and wastewater projects. The Senate bill is S. 2364, the "Securing Required Funding for Water Infrastructure Now Act." The House version is H.R. 4902. These bills would offer up to $7 billion in financial assistance per state from fiscal 2019 through fiscal 2023.

- President Trump formally released his infrastructure plan. It includes $200 billion of new spending. The White House’s Legislative Outline states that it will stimulate roughly $1.5 trillion in investments over ten years to repair and upgrade America’s
infrastructure. State and local governments are expected to make up the difference by matching any federal allocation by at least a four-to-one ratio.

The Trump plan is structured around six principles including: generating $1.5 trillion for an infrastructure proposal; streamlining the permitting process; investing in rural infrastructure projects; and advancing workforce training.

The Administration proposes a $200 billion direct federal investment for the package, to be paid for by largely by cuts elsewhere in the federal budget. Half of the federal seed money would go toward an incentive program to match financing from state and local governments investing in rebuilding projects, while a quarter of the appropriations would be used for rural projects in the form of block grants to states so governors may decide where to invest. The block grants would allot $20 billion for "transformative programs" meant for new projects rather than rehabilitation of old infrastructure. Another $20 billion is meant to expand the use of loans and private activity bonds, while the last $10 billion would go into a "capital financing fund."

- President Trump told subsequently lawmakers he wants to raise the gasoline tax by 25 cents a gallon to help pay for his infrastructure plan. This idea mirrors a proposal floated in January by the U.S. Chamber of Commerce suggesting raising the per gallon fee - which hasn't seen a hike since 1993 - by 25 cents over five years.

- At the beginning of this month, President Trump conceded that the "biggest, boldest infrastructure plan" may not make it through Congress until after the November elections.

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, still awaiting 20 seconds of floor time.

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. Passed House; assigned to Senate Environment and Public Works.

Water Supply Permitting Coordination Act:
Rep. McClintock (R-CA) introduced H.R.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. Passed House.
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 bypass 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. **Senate Energy & Natural Resources Committee held a hearing on S.1230 at the end of March 2018.**

**Senator Flake (R-AZ) introduced S.2563, the “Water Supply Infrastructure and Drought Resilience Act of 2018” which includes, among other provisions, the Senate version of the Water Rights Protection Act in its entirety as Title IIIA.**

**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. The full House passed H.R.2936; it has been assigned to Senate Committee of Ag., Nutrition and Forestry.

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.

Sen. Lisa Murkowski (R-Alaska), chairwoman of the Senate Interior, Environment and Related Agencies Appropriations Subcommittee, announced that leaders pulled away from a wildfire provision in the hours before announcing the two-year budget agreement. Accordingly, efforts will continue in other avenues to end “fire borrowing” and prioritize healthy forest practices to ensure sustainable watersheds.

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. It has been assigned to the Senate Committee on Environment and Public Works.

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. House Natural Resources Committee passed the bill on to the floor.
- **H.R. 3131**, the Endangered Species Litigation Reasonableness Act, introduced by Congressman Huizenga (R-MI), adjusts rates awarded to lawyers in ESA litigation. House Natural Resources Committee passed the bill on to the floor.
- **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. House Natural Resources Committee passed the bill on to the floor.
- **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. House Natural Resources Committee passed the bill on to the floor.

**Upper Colo River & San Juan Recovery Programs**

Newly elected Utah Congressman John Curtis and Colorado Senator Gardner introduced separate House and Senate bills to extend annual funding authorization for the Upper Colorado River and San Juan River Endangered Fish Recovery Programs. Passage is necessary to continue the programs and the benefits provided by the programs to water users in the four upper basin states. Senator Gardner introduced S. 2166 as a companion bill.

House Resources’ Water, Power and Oceans subcommittee held a hearing on H.R. 4465 in early December. The full Committee passed it by unanimous consent.

**At the end of February, the Water and Power Subcommittee of the Senate Energy and Natural Resources Committee held a hearing on S.2166, Reauthorization of Funding for Colorado River Recovery Programs.** At the hearing, the Department of Interior testified on the bill. Interior supported the efforts of the recovery programs and commented favorably on the recovery programs. The hearing was informational in nature and no action was taken on the bill. Full committee markup will likely take place in 3 to 4 weeks.

**H.R. 4465 passed the House on a suspension vote (requires 2/3) on a 392-6 vote (3/13/2018).**

**Senate subcommittee on Water & Power (of Energy and Natural Resources Committee) held hearings at end of March 2018; markup not scheduled. All testimony was positive.**

**Land & Water Conservation Fund**

The Land and Water Conservation Fund, which uses off-shore lease revenues to preserve and maintain the nation's parks, forests, recreation areas and cultural sites, is set to end at the end of this fiscal year, unless Congress reauthorizes it. The program provides grants to states and local communities, and the federal government uses some of the money to acquire land and water to
promote conservation and recreation. House Resources Chairman Rob Bishop (R-UT) and ranking member Raúl Grijalva (D-AZ.) have different ideas for how to go about preserving the fund, which has been around since the 1960s.

"There will be a bill" for LWCF next year, Bishop reported. Rep. Grijalva introduced, H.R. 502, last year to permanently reauthorize the fund. That bill recently reached 218 co-sponsors, including 26 Republicans. It has not had a hearing. Chairman Bishop wants more oversight of LWCF. Rep. Simpson (R-ID) introduced a measure this year that would provide $450 million annually in mandatory funding for both LWCF and a new National Park Service and Related Agencies Maintenance and Revitalization Conservation Fund. This bill, H.R. 2863, extends the Land and Water Conservation Fund (LWCF) through FY2024. LWCF would fare differently under the House and Senate fiscal 2018 Interior spending bills. The Senate measure would set aside $400 million for the program, while the fund would receive $275 million in the House version. President Trump's fiscal 2018 budget request recommended slashing LWCF to $64 million.

The Land and Water Conservation Fund received a “plus up” giving it more money than originally proposed. However, the budget bill did not fully fund LWCF, nor reauthorize LWCF.

SCPP
Senator Heller (R-NV) introduced S.2539 extending authorization for federal spending on the System Conservation Pilot Program (Colorado River basin) for four more years, from 2018 to 2022. S.2539 was assigned to the Committee on Energy and Natural Resources.

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.

Reauthorization of the Land and Water Conservation Fund