



MEMORANDUM  
JULY 5, 2018

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**TO:** BOARD OF DIRECTORS

**FROM:** CHRIS TREESE

**SUBJECT:** FEDERAL AFFAIRS:  
2ND QUARTER 2018

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***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***

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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 115<sup>th</sup> 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: 2nd Quarter:**

- **Mike Catanzaro, the chief White House staffer on domestic energy and environmental policy since February 2017, stepped down in April.**
- **Former Colorado State Forester Jim Hubbard has been nominated as the USDA Under-Secretary for Natural Resources and the Environment. This important position oversees the U.S. Forest Service and the Natural Resource Conservation Service, among other duties.**
- **Senator Bennet (D-CO) introduced legislation to protect more than 60,000 acres of land as wilderness in the southwest region of Colorado. The legislation is reported as a product of consultation between San Miguel, San Juan and Ouray Counties. Previous versions of the bill passed at the House and Senate committee level but never become law. The River District is working with his office to resolve water rights issues in Ouray County.**

- Colorado Senators Michael Bennet (D) and Cory Gardner (R) are cosponsoring the bipartisan *Hemp Farming Act of 2018*, which would legalize and clearly define hemp as an agricultural commodity and remove it from the list of controlled substances. The legislation also would give states the opportunity to become the primary regulators of hemp.
- The Senate's "America's Water Infrastructure Act," (WRDA 2018) includes multiple provisions aimed at streamlining water project approvals. It directs Reclamation and the Army Corps to develop sediment management plans for federal reservoirs and supports the selection of natural ("green") infrastructure alternatives. This later provision earned the bill the support of several environmental groups. (See update in legislative section below.)
- The White House Council on Environmental Quality (CEQ) outlined its intent to update its NEPA regulations, a move that would apply to permitting agencies across the federal government.
- The Bureau of Land Management continues to reshuffle its top leadership, replacing acting Deputy Director of Operations Mike Nedd with a senior Interior Department official who has never worked at BLM. Richard Cardinale, Interior's director of the business operations division in the Office of the Chief Information Officer, has moved into BLM's deputy director of operations position.
- Behind the scenes negotiations on WRDA continue in the Senate. There is an opportunity to include a Reclamation title to the Senate WRDA bill (S.2800), the Majority has given its OK for this. (See update in legislative section below.)
- Secretary Zinke announced the Bureau of Reclamation has allocated more than \$4 million for federal, state, and tribal projects "to prevent, contain, control, and monitor invasive quagga and zebra mussels in the West."
- Next Thursday, July 12<sup>th</sup> 8-10 bills geared toward updating and improving the Endangered Species Act are scheduled for introduction. While many of these bills would improve the ESA, the STORAGE Act – I've only seen in draft – would clarify that habitat created or destroyed by operational changes in water levels shall not be designated as critical habitat. The River District will follow the STORAGE Act in particular.

**Budget:**

- Following passage of the Omnibus Appropriations bill to fund the remainder of the current fiscal year, Congress' attention turned to individual FY'19 appropriations bills. No predictions or promises on the (un)likelihood of appropriations bills passing before the fiscal year begins (October 1).
- Senate Appropriations Chairman Richard Shelby (R-AL) said he hopes the Senate can clear three or four bills (FY 19) before the new fiscal year begins. But Shelby has conceded that a lame-duck spending omnibus will still be needed after the November elections.
- House leadership introduced a \$15.4 billion package of spending cuts ("rescission") sought by the White House that would defund appropriations made for the current

**fiscal year in the Omnibus Appropriations bill. Congress has 45 days to act for date of introduction. Failure to act or failure to pass means no rescission.**

- **The rescission bill failed.**
- **The Senate FY'19 Ag Appropriations bill provides \$4.3 billion overall to fight wildfires. That includes \$2.5 billion for fire suppression at the Forest Service and Interior. The proposed spending level for wildfire suppression reflects lawmakers' commitment in the fiscal 2018 omnibus spending bill to provide additional funding beyond the 10-year rolling average of wildfire costs until a new disaster funding mechanism is put in place in 2020. This averts "fire borrowing," in which the Forest Service has been forced to take money out of non-fire-related accounts to cover escalating wildfire expenses. The bill also would give the Forest Service overall \$6.3 billion for fiscal 2019, roughly \$1.7 billion more than the White House proposal.**

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

- **The House Energy and Water Appropriations bill includes a rider to repeal the Obama administration's Clean Water Rule until the Trump administration is able to write and finalize a new definition.**
- **The administration in mid-May released its newest regulatory and rule reform agenda. The agenda indicates the administration will not finalize its repeal of the WOTUS rule until November 2018. The agency is expected to release a "supplemental" proposal for the repeal this month. In the meantime, EPA and the Army Corps of Engineers are working on a new definition of "waters of the U.S." to clarify which wetlands and waterways are covered by the Clean Water Act. The agenda also states a new definition will be proposed in August, with a final rule expected in September 2019.**
- **The House passed its version of the Energy & Water Development Appropriations bill by a 235 to 179 vote, including a provision that repeals the Waters of the United States rule. A similar provision was removed from the Senate's Energy & Water Development Appropriations bill, which was up for vote last week.**
- **Two weeks ago, the U.S. District Court for the Southern District of Georgia blocked implementation of the 2015 Clean Water Rule proposed by the Obama Administration at the request of 11 states (Georgia, Alabama, Florida, Indiana, Kansas, North Carolina, South Carolina, Utah, West Virginia, Wisconsin and Kentucky). The potential effect of this decision is limited because the Trump administration has delayed implementation of the 2015 rule until 2020 while goes the rewriting process.**

#### **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. **S. 677 assigned in Senate to Energy and Natural Resources.**

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. 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 III.A.

### 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 22<sup>nd</sup>. 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 introduced 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.

**(See also updates in Farm Bill coverage below.)**

### 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 marked 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.
- **Complementing, but not companion, bills are expected to be introduced in the Senate next week.**

#### Upper Colorado 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. **Separately, the Upper Colorado River Commission at its latest meeting voted unanimously to cease further participation in SCPP projects at this time believing that legislative and institutional work is a priority over new pilot programs.**

### **WRDA**

The Senate EPW Committee passed S. 2800, America's Water Infrastructure Act of 2018 (AWIA), on May 23; the bill now goes to the full Senate. Of interest to CRWCD are the following provisions:

- *WIFIA (Water Infrastructure Financing and Innovation Act) study*: study on WIFIA implementation impediments at the Corps.
- *WIFIA Reauthorization*: extends authorization at \$100 million for fiscal years 2020 through 2021, for a total of \$200 million.
- *Water Infrastructure Resiliency and Sustainability Program*: establishes EPA grant program in FY 2019 & 2020 owners or operators of water systems for the purpose of increasing the resiliency or adaptability of the systems to any ongoing or forecasted changes (based on the best available research and data) to the hydrologic conditions of a region of the United States. Practices and projects include water banking, other forms of water transactions, and conjunctive use of groundwater and surface water.

The House passed the Water Resources Development Act of 2018 by a 408-2 vote. The House bill is far more streamlined than the Senate bill and does not include financing provisions. As expected, the action will be in the conference committee.

### **Farm Bill**

After House lawmakers failed to pass H.R. 2, the Agriculture and Nutrition Act of 2018 ("House Farm Bill") in a 198 to 213 vote on May 18, they were able to squeak it through on June 21 in a 213 to 211 vote.

Senate Ag Committee Chairman Roberts (R-KS) introduced the Senate farm bill, S. 3042, the Agriculture Improvement Act of 2018, on June 11. The Senate will now consider H.R. 2.

Senator Gardner and Bennet have been very helpful in our efforts to include Conservation Title language addressing some our more frustrating experiences implementing the Lower Gunnison RCPP program. Senator Gardner has also been instrumental in seeking resolution to the exclusion of "Fire Regimes IV and V" from the FY '18 Omnibus Spending bill. The House bill extensively addresses forest health/wildfire issues.

**There will be much to reconcile between the two bills.**

### **CRD Priorities for the 115<sup>th</sup> 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, 115<sup>th</sup> 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