



MEMORANDUM  
SEPTEMBER 28, 2018

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**TO:** BOARD OF DIRECTORS

**FROM:** CHRIS TREESE

**SUBJECT:** FEDERAL AFFAIRS:  
3RD 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.

**NOTE:** There are relatively few updates indicated in bold in this quarter’s federal affairs memo, reflecting a distinct lack of progress on nearly all of our issues as of this writing. I am traveling to DC this coming week and look forward to providing a verbal progress report at your quarterly meeting. Attention now turns to the lame duck session. I will be working in DC to “package,” position and communicate our priorities for the few remaining legislative days before the election and for potential “omnibus” and appropriations bills in the lame duck session.

**Highlights: 3rd Quarter:**

- **President Trump announced his intent to nominate Alex Herrgott for executive director of the Federal Permitting Improvement Steering Council (FPISC), an interagency panel created to improve government-wide coordination on infrastructure approvals.**

- **The House passed a Water Resources and Research & Development bill (for the second time). WRDA is traditionally the Army Corps’ projects authorization bill. Of interest to CRD, again this Congress, WRDA had a Reclamation title. Of interest:**
  - **Sec. 4201 Reauthorizes the WIFIA program through 2021 at \$50 million annually.**
  - **Sec. 4301 Directs the Administrator of EPA and the Commissioner for the Bureau of Reclamation to enter into an agreement for infrastructure financing within a year of enactment of this law**

**It does not include a broad Reclamation Title, as it did through the process up to final passage.**

- **2019 Energy and Water Appropriations bill includes funding for the Upper Colorado and San Juan recovery programs for FY19 (Section 505). The Recovery Program participants are beginning discussions on new legislation to authorize annual funding for FY20-23 in the next session of Congress. Still discussion in the group about changing to annual appropriations rather than hydropower funding. I personally am very concerned to switching to appropriations - would be curious what the others think. We failed to convince OMB of the existing authorization for direct spending of hydroelectric power revenues as has been the practice for the past 28 years. Accordingly, our only option for funding of the Upper Colorado and San Juan River recovery programs is annual appropriations bills (which, of course, requires annual appropriations bills actually pass before the new fiscal year and the Congress has a poor track record).**

**Budget:**

**On September 21, the President signed into law a three-bill FY19 appropriations measure which contains the Energy & Water appropriations. In addition, both the House and the Senate passed a short-term Continuing Resolution that would extend funding for the federal agencies not included in the recently signed appropriations package. This short-term funding bill will run until December 7.**

**The Energy & Water appropriation totals \$44.64 billion, an increase of \$1.44 billion above FY2018. The summary below focuses on the Bureau of Reclamation’s appropriations, which I consider very positive.**

	<b>FY19 Conference</b>	<b>FY 19 Request</b>	<b>FY 18 Omnibus</b>
Water & Related Resources	<b>\$1.39 B</b>	\$891 M	\$1.09 B
Rural Water	<b>\$98.7 M</b>	-	\$43.8 M
Water Conservation & Delivery	<b>\$224 M</b>	-	\$92.8 M
Environmental Restoration or Compliance	<b>\$40 M</b>	-	\$5 M
Facilities OM&R	<b>\$4 M</b>	-	\$4 M
Desalination and Water Purification Program	<b>\$19.8 M</b>	\$2.9 M	\$17.8 M
WaterSMART Grants	<b>\$34 M</b>	\$10 M	\$34 M

Cooperative Watershed Management Program	<b>\$2.25 M</b>	\$250 K	\$4.2 M
Basin Studies	<b>\$5.2 M</b>	\$2 M	\$5.2 M
Drought Response	<b>\$4 M</b>	\$2.9 M	\$4 M
Water Conservation Field Services Program	<b>\$4.18 M</b>	\$1.75 M	\$4.2 M
Title XVI Water Reclamation & Reuse Program	<b>\$58.61 M</b>	\$3 M	\$54.4 M

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

***Revival.*** On August 16, the US District Court, South Carolina granted a motion enjoining the Trump-era rule that suspended the Waters of the United States (WOTUS) rule nationwide. The suit arose out of the issuance of an administration rule issued earlier this year suspending the 2015 WOTUS Rule until 2020. The Court found that the government failed to comply with the requirements of the Administrative Procedures Act in implementing the rule suspending the 2015 WOTUS rule. However, this revival of WOTUS only applies to certain states. The revival of the 2015 rule does apply to Colorado.

### **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.

#### 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.

**The comment deadline for proposed streamlining of ESA consultations was September 24. The proposal addresses section 4 and 7 of the ESA, including, but not limited to:**

- **Procedures for programmatic consultations under section 7 and incidental take permits intended to streamline the Services' development of biological opinions;**
- **Procedures that allow for "expedited consultation" where actions have minimal adverse or predictable effects;**
- **A definition of "foreseeable future" for listing decisions that extends only so far as the Services can reasonably determine that conditions posing danger of extinction are probable;**
- **To remove "listing in error" from a delisting justification; and**
- **Designating unoccupied areas as critical habitat only when occupied areas are inadequate to ensure recovery.**

**This regulatory proposal coincides with a number of legislative proposals originating with the Western Caucus to streamline the ESA. In late July, members of the caucus introduced nine bills to amend and modernize the ESA, incentivizing voluntary conservation efforts, creating state-led cooperative agreements for recovery, and prioritizing data from local communities in making scientific decisions about conservation. These bills largely followed recommendations from the Western Governors' Association.**

**Of note is a bill from Congressman Tipton, H.R. 6344, the LOCAL ("Land Ownership Collaboration Accelerates Life Act of 2018) Act. The bill seeks to codify voluntary conservation programs like Species Recovery Agreements and Habitat Reserve Agreements. In addition, it establishes a private party conservation grants program and a habitat conservation planning loan program for state and local governments.**

**However, these ESA reform bills drew only "cautious support" from the Trump administration during a hearing this week on four of the bills. Even the conservative Pacific Legal Foundation cautioned against several of the bills' efforts to limit judicial review, at least according to E&E News.**

#### 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.

**The 2019 Energy and Water Appropriations bill includes funding for the Upper Colorado and San Juan recovery programs for FY19 (Section 505). The Recovery Program participants have begun discussions on new legislation to authorize annual funding for FY20-23 for introduction in the next session of Congress. The group is also considering changing (accepting) to annual appropriations rather than hydropower funding for the remainder of the programs' lives. Reassuringly, Reclamation Commissioner Burman stated that she will do everything in her power to maintain these programs through any disruptions in appropriations.**

#### 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), passed on May 23; the bill is now on 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.

**As reported last time, the House passed its version of the WRDA bill in June. However, the Senate’s proposal has stalled, with at least one senator (Sen. Burr) blocking it as a way to force action on the Land and Water Conservation Fund. According to news sources, the new bill would be a compromise between the two chambers’ proposals. However, Senate negotiators have added hundreds of pages of new language for consideration, slowing progress on a compromise bill.**

### 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.

**The conference committee began meeting on the 2018 farm bill in early September with 56 committee members (47 from the House) trying to hash out the Supplemental Nutrition Assistance Program (SNAP, aka Food Stamp) and conservation programs. According to committee leaders, recent cost estimates for the bill are high and are slowing negotiations. We continue to advocate for several funding provisions and process improvements in the conservation title. The 2014 Farm Bill is set to expire this weekend.**

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