



MEMORANDUM
MARCH 27, 2019

TO: BOARD OF DIRECTORS

FROM: CHRIS TREESE

SUBJECT: FEDERAL AFFAIRS:
1ST QUARTER 2019

***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.

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:

- **Diana DeGette and Joe Neguse have been appointed to House Natural Resources Committee. A victim of smaller minority party membership, Scott Tipton is no longer on Resources.**
- **Senator Bennet (D-CO) and Congressman Neguese (D-Boulder) introduced legislation in their respective houses to protect about 400,000 acres of public land in Colorado. The Colorado Outdoor Recreation and Economy Act (CORE Act). It's the biggest Colorado public-lands protection bill in 26 years in terms of total acreage. The CORE Act would set aside acreage in new or expanded wilderness areas (San Juan and Continental Divide) and bar oil and gas development on other lands (Thompson Divide settlement). It would also create a new 28,728-acre national historic landscape surrounding Camp Hale.**

- **President Trump has appointed David Bernhardt as his new Secretary of the Interior, succeeding Ryan Zinke who resigned the post. Bernhardt is a Rifle, Colo native and good friend of the River District and Colorado.**
- **David Bernhardt announced that Bill Werkheiser, deputy director of the U.S. Geological Survey, will become his science adviser. Bernhardt also announced an "expanded portfolio" for Alan Mikkelsen, now senior adviser to the secretary for water and Western resource issues. Mikkelsen was acting Reclamation Commissioner until Brenda Burman's appointment. Mikkelsen took action following a meeting Eric Kuhn and I had with him regarding Reclamation's refusal to fully and financially participate in Colorado's mussel prevention programs.**
- **Senator Gardner's office has been extremely helpful in ensuring the Wild & Scenic River designation on stretches of the Green River in Utah cannot adversely impact Drought Contingency Plan operations of Flaming Gorge Reservoir.**
- **After two years of Congress clamoring for details on his much-touted infrastructure plan, President Trump's vague State of the Union call for lawmakers to send him a bipartisan package raised questions over whether the issue could take off without leadership. The president's budget seems to backtrack on his call for widespread infrastructure investment.**
- **The Senate voted to confirm Andrew Wheeler as the next Administrator of the Environmental Protection Agency (EPA). Mr. Wheeler had been serving as Acting Administrator since last summer and was nominated to take on the full time role of Administrator by President Trump in January.**
- **President Trump signed into law the bipartisan public lands package that:**
 - **Finally got the Bolts Ditch Access and Use Act across the finish line!**
 - **Maintains funding for the Upper Colorado and San Juan River Recovery Programs through 2023.**
 - **Permanently reauthorizes the Land and Water Conservation Fund. Note, the reauthorization of LWCF did not include guaranteed funding.**
 - **The new law also creates four national monuments, adds more than 367 miles of rivers to the National Wild and Scenic Rivers System (none in Colorado, Green River in Wyoming included protective-DCP language we advocated), and increases the size of national parks by more than 42,000 acres.**
- **Scott Cameron, principal deputy assistant secretary for policy, management and budget said the Interior Department is still interested in moving the Bureau of Land Management headquarters out West but hasn't decided yet on the destination. He went on to say the department is "only talking about moving something in the order of 40 positions" in 2020.**
- **Separate House and Senate committee hearings are being held as I write this on the DCP agreements and the yet-to-be introduced bills in each house. DCP and its allied Senate legislation apparently enjoy bi-partisan support based on comments from the chair, ranking member and committee members present. John Entsminger (SNWA) clearly and fully addressed Imperial Irrigation District's refusal to sign on to the DCP (the only party in the basin states withholding support).**

- **David Bernhardt’s confirmation hearing to become Secretary of the Interior is tomorrow before the Senate Energy and Natural Resources Committee. He’ll face a panel dominated by Republicans who enjoy an 11-8 advantage over Democrats on the committee. Confirmation is expected predominantly along party lines by both the committee and full Senate.**

Budget:

The President’s budget – traditionally considered dead on arrival:

- **Requests \$1.1 billion for the Bureau of Reclamation, with an emphasis on operating, maintaining, and rehabilitating existing water resources infrastructure throughout the western United States,**
- **Includes \$19.9 million for the WaterSMART Program [the program received \$83 million in 2018] with Reclamation anticipating funding for “approximately 12-16 water and energy efficiency grants, 35-40 small-scale water efficiency projects, and 3-5 water marketing strategy grants,”**
- **Through the Bureau of Reclamation and Bureau of Indian Affairs, the Budget requests \$179 million for the implementation of enacted Indian water rights settlements in support of Federal trust responsibilities to Tribes,**
- **The budget also invests \$194 million in water-related science at USGS and the Bureau of Reclamation to sustain and enhance ground and surface water quality and quantity research and monitoring and to develop new technologies to respond to the water resource challenges facing the Nation, and**
- **The Land & Water Conservation Fund is not fully funded in the requested budget.**

Some of the work Reclamation set forth for FY2020 includes:

- **\$1,000,000 for Upper Colorado Floodplain Habitat Development - Construct gated water control/fish screening facility(ies) to reconnect floodplain backwater(s) to river ecosystem.**
- **\$500,000 for Grand Valley Irrigation Company Fish Screen - Rehabilitate existing fish screen with additional modified features.**
- **\$100,000 for Upper Colorado Program Management - Program management tasks include preparing program budgets, expenditure tracking, contract administration, participation in recovery program activities to determine the best path to individual species recovery and efforts to address concerns and issues associated with implementation of capital projects.**

Drought Contingency Plans:

On February 6, 2019, the Department of the Interior published a notice in the Federal Register requesting input from the Colorado River Basin States on potential actions by Interior that: “(a) would be appropriate to take to reduce the risks the Colorado River Basin is facing, and (b) could be adopted prior to the August 2019 determinations of operations for Lake Powell and Lake Mead in 2020, in the event that DCPs could not be completed and promptly adopted.”

On March 19, the states and several key water districts submitted their respective DCPs to Congress. But for the DCP to be finalized, Congress must pass legislation authorizing its implementation. Arizona — one of the last states to sign on — made its participation contingent on the legislation.

The agreement and proposed legislation have been sharply criticized by the river's largest single user, Southern California's Imperial Irrigation District.

The Imperial Irrigation District (IID) refused to sign on to the DCP, seeking \$200 million in federal funding for environmental mitigation at the Salton Sea.

Separate House and Senate committees meet this week to examine the recently signed drought contingency plan for the Colorado River. Separate Senate and House bills should be introduced this week. I expect to have an update and good news at the April meeting.

Waters of the US (WOTUS):

Mid-December, the Trump administration released its proposed revised definition of "waters of the United States." According to the administration's release, the proposal covers "six types of aquatic resources: traditionally navigable waters, tributaries, impoundments, wetlands adjacent to traditionally navigable waters, some ditches, and some lakes and ponds. It covers streams and creeks that flow year-round or intermittently into larger downstream waters, including navigable waters and other tributaries to them."

The December document dedicates considerable time to the definition and limited applicability of ditches. There is a new category for ditches proposed for addition to the definition of "waters of the US." "Ditches" are generally defined not to be "waters of the US." Only "jurisdictional ditches" may be considered waters of the US. Jurisdictional ditches are those that "function as traditional navigable waters, if they are constructed in a tributary and also satisfy the conditions of the proposed "tributary" definition, or if they are constructed in an adjacent wetland and also satisfy the conditions of the proposed 'tributary' definition."

Encouragingly, the pre-publication document explains, "The regulatory status of ditches has long created confusion for farmers, ranchers, irrigation districts, municipalities, water supply and stormwater management agencies, and the transportation sector, among others. In an effort to reduce that confusion, the agencies propose to delineate the categories of ditches that would be "waters of the United States," and are proposing to exclude all other ditches from that definition."

On December 11, the Army Corps of Engineers ("Corps"), Department of Defense ("DOD"), and the United States Environmental Protection Agency ("EPA") (collectively "the Agencies") jointly proposed a new "Waters of the United States" (or "WOTUS") definition. The Agencies intend for the proposal to replace the Obama-era "Clean Water Rule: Definition of 'Waters of the United States, 2015'."

The Agencies stated that the Proposed 2018 WOTUS Rule is intended to "further clarify jurisdictional questions, eliminate case-by-case determinations, and narrow CWA jurisdiction to

align with Justice Scalia's opinion in *Rapanos v. United States*. The Agencies' definition encompasses "relatively permanent flowing and standing waterbodies that are traditional navigable waters in their own right or that have a specific connection to traditional navigable waters, as well as wetlands abutting or having a direct hydrologic surface connection to those waters."

Of particular interest to the River District and germane to our comments on the 2015 rule, this new rule simplifies and narrows the definition of ditches. Importantly, this rule appears to exclude most irrigation ditches from the definition of "waters of the United States." While an improvement over the 2015 rule, additional clarity is needed to limit the inevitable jurisdictional questions of irrigation ditch inclusion/exclusion.

Finally, the new rule expressly excludes certain waters from the definition of "waters of the United States." Specifically, the proposal's exclusions include:

- 1) groundwater,
- 2) ephemeral surface features and diffuse stormwater run-off,
- 3) ditches that do not fall into the category of jurisdictional ditches,
- 4) prior converted cropland,
- 5) artificially irrigated areas,
- 6) artificial lakes and ponds constructed in uplands,
- 7) most stormwater control features,
- 8) wastewater recycling features, and
- 9) waste treatment systems.

On February 14, the U.S. Army Corps of Engineers and US EPA (the Agencies) published a proposed rule to revise the definition of "Waters of the United States" defining the scope of federal jurisdiction under the Clean Water Act. The deadline for comments is April 15 — the Agencies have denied requests for an extension. Staff will present an update at the April meeting.

Forest Health

The Colorado Water Congress, Club 20, Front Range Water Council and The Nature Conservancy have formed the Colorado Forest-Watershed Advocacy Alliance. We have identified several advocacy/action areas deserving investment (time more than money right now). The Alliance will only pursue projects/actions that enjoy full consensus and genuinely address forest-watershed health.

Timely to the Alliance's formation, the Colorado State Forest Service announced in March the state's spruce beetle infestation worsened in 2018. The pest was active on 278 square miles of high elevation lands last year. Since 2000, the beetle has damaged about 2,800 square miles.

Additionally, the agency reported that wildfires consumed the second-largest area in state history in 2018.

Legislation:

Bolts Ditch Access:

Bolts Ditch access language is included in S.47 the Public Lands legislative package the lengthy Public Lands package bill that passed both houses and was signed by President Trump.

Water Rights Protection Act

Congressman Tipton re-introduced his Water Rights Protection Act again this Congress. H.R.579

Forest Health, H.R. 691

Congressman Greg Walden (R-OR) introduced H.R. 691 to increase thinning of forests suffering from disease and bug infestations, picking up where Republicans left off last year in pressing more intensive forest management.

H.R. 691 would amend the Healthy Forests Restoration Act of 2003 to authorize insect and disease treatment on federal land, which typically involves thinning trees and conducting prescribed burns. It was referred to the Agriculture and Natural Resources committees.

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.

Upper Colo River & San Juan Recovery Programs

Funding authorization for both the Upper Colorado and San Juan River Recovery Programs are included in S.47, the lengthy Public Lands package bill that passed both houses and was signed by President Trump.

Land & Water Conservation Fund

Permanent re-authorization (but not assured funding) was included in S.47, the lengthy Public Lands package bill that passed both houses and was signed by President Trump.

CRD Priorities for the 116th 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 with particular attention to our new delegation member. 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 amplify our voice and foster coalitions 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:

- Monitoring the frequent personnel changes in this Administration and offering support and assistance, where appropriate, to new appointees and their offices
- Upper Colorado River and San Juan River ESA Recovery Programs funding (legislative authorization – appropriations)
- Providing education and outreach within the District regarding beneficial programs and provisions in the recently passed 2018 Farm Bill
- Colorado River Drought Contingency Plan authorization/implementation legislation
- Support for Bolts Ditch “access”
- Good Samaritan legislation
- Waters of the US (rulemaking, legislation possible)
- Monitor and protect water rights in proposed Colorado Wilderness (legislative) and other special land designations (legislative and administrative)
- Deep Creek Wild & Scenic designation (legislative)
- USDA Conservation Programs Funding, including NRCS snow course funding (legislative, appropriations)
- Healthy Forest initiatives and programs to assist forest and watershed health
- Ski Area Water Rights Rule/Legislation (regulatory and legislative)
- Water and Wastewater Infrastructure Funding, annual revolving loan fund appropriations (legislative)
- Legal irrigation through and with federal water infrastructure for hemp and marijuana
- Tax exemption for water conservation rebate programs
- Provide support for reauthorization and full funding of the Land and Water Conservation Fund