Katherine Haase

From: Felmlee, Brenda <Brenda.Felmlee@mail.house.gov>
Sent: Thursday, March 05, 2015 2:22 PM
To: Katherine Haase
Subject: FW: Water Rights Protection Act in the 114th
Attachments: TIPTON_010_xml.pdf; WRPA DC.pdf

Hi Katherine,
This just came to me yesterday and I will be asking for a letter of support on Tuesday during my visit.
Thanks for your help and I'll see you soon!

Brenda Felmlee
SLV Regional Field Representative

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FINANCIAL SERVICES
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
OVERSIGHT AND INVESTIGATIONS

Congress of the United States
House of Representatives
Washington, DC 20515–0603

Protect privately held water rights and prohibit federal takings

Dear Colleague,

I urge you to become an original cosponsor of the Water Rights Protection Act (WRPA).

In recent years the federal government has repeatedly attempted to circumvent long-established state water law in order to hijack water rights. These efforts constitute a gross federal overreach and a violation of private property rights. On multiple fronts, the U.S. Forest Service (USFS) and other federal land management agencies are currently attempting to ignore state law and take private water rights, despite objections from elected officials, business owners and private property advocates.

For example, the USFS attempted to implement a permit condition that requires the transfer of privately held water rights to the federal government as a permit condition on National Forest System lands while offering no compensation for the transfer of these privately held rights - despite the fact that many stakeholders have invested millions of their own capital in developing the rights.

The same nefarious tactics have been used in attempts to hijack privately held water rights associated with agricultural production in the heart of rural America, where farmers and ranchers rely on these rights to secure loans, as well as irrigate crops and livestock. This federal water grab has broad implications that have begun to extend beyond recreation and the farming and ranching community, and are now threatening municipalities and other businesses.

Furthermore, the USFS's recently proposed Groundwater Directive would have expanded the agency's reach over groundwater and established new bureaucratic hurdles to interfere with private water users' ability to access their water. Make no mistake, the USFS seeks to further federalize water resources, erode state authority, and pave the way for unilateral mandates on state water resources while overriding decades of long standing law and policy that states, and States alone, hold jurisdiction over their groundwater. Despite statements by USFS Chief Tom Tidwell that the agency is, for the time being, backing off of its controversial Groundwater Directive, Chief Tidwell offered no guarantees that the Directive, or something similar, won't be back in the future. In fact, Chief Tidwell noted that the agency still intends to move forward with it in some form after gathering more input.

The need for a permanent legislative solution to protect private water rights from federal takings and interference cannot be overstated. For these reasons, I am reintroducing the Water Right Protection Act which passed through the House of Representatives with bipartisan support in the 113th Congress.

This legislation will prevent the USFS from taking actions that would adversely affect these historic State water rights and mute the chilling effect this Directive would have on future development while providing certainty for Western landowners.

The Water Rights Protection Act would protect communities, businesses, recreation opportunities, farmers and ranchers as well as other individuals that rely on privately held water rights for their livelihood from federal takings. It would do so by prohibiting federal agencies from extorting water rights through the use of permits, leases, and other land management arrangements, for which it would otherwise have to pay just compensation under the 5th Amendment of the Constitution. The bill also prohibits the implementation of the Groundwater Resource Management Directive recently promulgated by the USFS, as well as any similar directives or regulations they may consider in the future.

Specifically, the Water Rights Protection Act would:

- Prohibit agencies from implementing a permit condition that requires the transfer of privately held water rights to the federal government in order to receive or renew a permit for the use of land.

- Uphold longstanding federal deference to state water law.

- Prohibit the Secretary of the Interior and the Secretary of Agriculture from asserting jurisdiction over groundwater historically controlled by the states.

- Recognize the states' long standing authority related to evaluating, protecting and allocating groundwater resources.

If you would like to be an original cosponsor of this bill or have additional questions, please contact Tim Martin at tim.martin@mail.house.gov or (202) 225-4761.

Sincerely,

Scott Tipton
Member of Congress

.....

(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R. _____

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretaries of the Interior and Agriculture, and to require the Secretaries of the Interior and Agriculture to develop water planning instruments consistent with State law.

IN THE HOUSE OF REPRESENTATIVES

Mr. TIPTON introduced the following bill; which was referred to the Committee on _____

A BILL

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretaries of the Interior and Agriculture, and to require the Secretaries of the Interior and Agriculture to develop water planning instruments consistent with State law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Water Rights Protection Act''.

SEC. 2. DEFINITION OF WATER RIGHT.

In this Act, the term ''water right'' means any surface or groundwater right filed, permitted, certified, confirmed, decreed, adjudicated, or otherwise recognized by a judicial proceeding or by the State in which the user acquires possession of the water or puts the water to beneficial use, including water rights for federally recognized Indian tribes.

SEC. 3. TREATMENT OF WATER RIGHTS.

The Secretary of the Interior and the Secretary of Agriculture shall not—

(1) condition or withhold, in whole or in part, the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on—

(A) the transfer, limitation, or encumbrance of any water right (including joint and sole ownership), directly or indirectly to the United States or any other designee; or

(B) any other impairment of title of any water right, in whole or in part, granted or otherwise recognized under State law, by Federal

or State adjudication, decree, or other judgment, or pursuant to any interstate water compact;

(2) require any water user (including any federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement;

(3) assert jurisdiction over groundwater withdrawals or impacts on groundwater resources, unless—

(A) the groundwater lies beneath land to which title is held, and over which jurisdiction has historically been exercised, by the Federal Government; and

(B) jurisdiction is asserted, and any regulatory or policy actions taken pursuant to such assertion are, consistent with applicable State laws (including regulations) and policies governing the protection and use of groundwater resources; or

(4) infringe on the rights and obligations of a State in evaluating, allocating, and adjudicating the

waters of the State originating on or under, or flowing from, land owned or managed by the Federal Government.

SEC. 4. RECOGNITION OF STATE AUTHORITY.

(a) IN GENERAL.—In carrying out section 3, the Secretary of the Interior and the Secretary of Agriculture shall—

(1) recognize the longstanding authority of the States relating to evaluating, protecting, allocating, and adjudicating groundwater by any means, including a rulemaking, permitting, directive, water court adjudication, resource management planning, regional authority, or other policy; and

(2) coordinate with the States in the adoption and implementation by the Secretary of the Interior or the Secretary of Agriculture of any rulemaking, policy, directive, management plan, or other similar Federal action so as to ensure, to the maximum extent practicable, consistency with State groundwater programs.

(b) EFFECT ON STATE WATER RIGHTS.—In carrying out this Act, the Secretary of the Interior and the Secretary of Agriculture shall not take any action that adversely affects—

(1) any water rights granted by a State;

(2) the authority of a State in adjudicating water rights;

(3) definitions established by a State with respect to the term ''beneficial use'', ''priority of water rights'', or ''terms of use'',

(4) terms and conditions of groundwater withdrawal, guidance and reporting procedures, and conservation and source protection measures established by a State; or

(5) any other rights and obligations of a State established under State law.

SEC. 5. EFFECT OF ACT.

(a) EFFECT ON EXISTING AUTHORITY.—Nothing in this Act limits or expands any existing legally recognized authority of the Secretary of the Interior or the Secretary of Agriculture to issue, grant, or condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on Federal land subject to the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture, respectively.

(b) EFFECT ON RECLAMATION CONTRACTS.—Nothing in this Act interferes with Bureau of Reclamation contracts entered into pursuant to the reclamation laws.

(c) EFFECT ON ENDANGERED SPECIES ACT.—Nothing in this Act affects the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(d) EFFECT ON FEDERAL RESERVED WATER RIGHTS.—Nothing in this Act limits or expands any existing reserved water rights of the Federal Government on land administered by the Secretary of the Interior or the Secretary of Agriculture.

(e) EFFECT ON FEDERAL POWER ACT.—Nothing in this Act limits or expands authorities under sections 4(e), 10(j), or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j), 811).

(f) EFFECT ON INDIAN WATER RIGHTS.—Nothing in this Act limits or expands any existing reserved water right or treaty right of any federally recognized Indian tribe.