



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

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The Honorable Tom McClintock
Chairman, Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter provides the views of the Department of Interior (Department) on HR 3189, the Water Rights Protection Act, which was the subject of a legislative hearing by the Subcommittee on Water and Power. The Department has serious concerns that HR 3189 could significantly impact the Department's ability to manage water-related resources within public lands managed by the Department. The legislation is overly broad and could have numerous unintended consequences that would affect existing law and voluntary agreements. The federal government retains the right to regulate government lands under Article IV, Section 3 of the Constitution. Pursuant to that provision, the United States has authority to reserve water rights for its reservations and its property. Although the federal government generally defers to the States in the allocation and regulation of their water rights, a bill prohibiting two federal departments from exerting some control over the exercise of water rights located on federal lands threatens to undermine their longstanding authority to manage property and claim proprietary rights for the benefit of Indian tribes and reserved federal lands. The bill would create uncertainty for many existing voluntary arrangements that are designed to produce a more efficient operation of U.S. facilities in the wake of climate change and reduction of water supplies.

HR 3189 may prohibit parties from voluntarily entering into agreements with the Department or its bureaus with respect to water rights in order to protect state, federal or third party interests. For example, this bill could prevent the Bureau of Reclamation from partnering with parties who use groundwater for recreational activities on Reclamation lands, since the recreational users often apply jointly with Reclamation for a state permit since Reclamation is the land owner. Further, there are numerous examples where the Bureau of Reclamation has contracts with water users that include the transfer or relinquishment of pre-existing private water rights in exchange for a license or contract that provides project benefits at Reclamation facilities, e.g. storage or delivery of water. The bill, as written, may prohibit renewal of such contracts, thus interfering with voluntary, mutually-beneficial agreements that improve water resource management. We do not believe it was the intent of this legislation to prohibit such agreements and we believe the Department should be explicitly excluded.

The legislation would also prohibit the National Park Service from exercising its authority to perfect water rights in the interest of the United States for waters diverted from or used on National Park Service lands, including operations associated with National Park Service concessioners, lessors or permittees. The requirement that all water rights on National Park Service lands be held in the name of the United States is grounded, in part, on the potential damage and disruption that privately held water rights could cause to park resources and operations.

As drafted, the legislation would also impose unnecessary restrictions on the Bureau of Land Management's ability to cooperatively mitigate impacts to sensitive water resources. The BLM frequently partners with public land users through collaborative agreements to plan, finance, and develop water resources. The legislation would not provide additional protections for the holders of water rights beyond current BLM policy, and if enacted, would jeopardize the BLM's ability to manage water-related resources vital to many multiple uses on public lands.

We appreciate the opportunity to present the Department's views on HR 3189. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program. If you have any questions, please call me, or Libby Washburn, Deputy Commissioner for External & Governmental Affairs, Bureau of Reclamation, at 202.513.0616.

Sincerely,



Anne Castle
Assistant Secretary
for Water and Science