American Bird Conservancy * American Rivers * Center for Biological Diversity
Defenders of Wildlife * Earthjustice
EPIC – Environmental Protection Information Center * Klamath Forest Alliance
League of Conservation Voters * Los Padres ForestWatch
Natural Resources Defense Council * San Juan Citizens Alliance
Southern Environmental Law Center * Western Environmental Law Center

The Honorable Mike Lee
Chairman
Subcommittee on Water and Power
United States Senate
Washington, D.C. 20510

Senator Mazie Hirono
Ranking Member
Subcommittee on Water and Power
United States Senate
Washington, D.C. 2051

Dear Senators:

We are writing to express our strong opposition to S. 2902, the "Western Water Supply and Planning Enhancement Act of 2016." Instead of offering practical solutions to the known challenges of the drought and water supply emergencies in the West, the proposed legislation offers a litany of measures that will eviscerate critical environmental protections and undermine the ability of federal agencies to effectively manage public lands and waters. Cobbling together several bills, this bill uses the water crisis in the West as an opportunity to pursue an anti-environmental agenda that would put the health and safety of our lands and water at risk by circumventing thoughtful analysis and decisionmaking.

For example, Subtitle B of Title I, "Protecting Critical Water Supply Watersheds," would completely eliminate environmental review and stakeholder input under the National Environmental Policy Act (NEPA) for a broad range of national forest and public land projects. Under the guise of a "categorical exclusion," which the bill defines as "exception" to NEPA, the proposed legislation waives environmental review entirely for certain management activities affecting up to 15,000 acres of public lands. In addition, this Subtitle unnecessarily limits the consideration of management alternatives to just two, which is in direct conflict with the Council on Environmental Quality's implementing regulations and common sense. Curtailing environmental analysis through categorical exclusions and elimination of NEPA alternatives is a short-sighted and counter-productive approach to address western water supply shortages and other natural resource issues. NEPA provides the appropriate process to engage the public and state and local governments in fact-based analyses of the effects of federal land management activities on water quantity, water quality, fish habitat, and overall watershed health.

Subtitle D of Title I, the "Water Supply Permitting Act," would further erode environmental review and permitting of surface storage projects by the Bureau of Reclamation. For example, Section 133 would establish the Bureau of Reclamation as the lead agency for all environmental reviews and permits, undermining the roles of Fish and Wildlife Service and NOAA under the Endangered Species Act, Fish and Wildlife

Coordination Act, and Clean Water Act. Sections 134 and 135 require other agencies to defer to the Bureau of Reclamation's administrative record in making factual and scientific findings and establish unrealistic time limits for permitting storage projects.

In Congressional testimony on this Act last year, when it was considered as S. 1533, the Department of Interior (DOI), questioned the necessity of these provisions limiting environmental review, stating that "[o]n the whole, it is unclear what public policy problem would be addressed by the bill" and that they were "not aware of any Reclamation or USDA-sited surface water storage projects that have been denied construction because of delays associated with project review or permitting." As DOI testified, environmental review and public input are not the problem. Rather, "project economics and the pricing and repayment challenges in the potential markets where projects would be built are the primary reasons for some projects being authorized, but not constructed."[1]

Subtitle E of Title I, the "Bureau of Reclamation Project Streamlining Act," includes even more draconian provisions aimed at critically undermining the environmental review and permitting process for Bureau of Reclamation projects. The toxic rollbacks of environmental protections include:

- Establishing unrealistic timelines for completion of feasibility reports, NEPA reviews and other permits, establishing financial penalties for federal agencies that fail to meet these arbitrary deadlines, and requiring Reclamation to publish a notice of rulemaking to establish new categorical exclusions under NEPA;
- Establishing new limitations on public comment under NEPA and narrowing the statute of limitations for challenges to permitting decisions;
- Allowing private parties to be lead agencies for NEPA and other permit reviews, which would allow the project sponsor to decide with the Secretary what mitigation measures are necessary, undermining federal authority to ensure compliance with NEPA and other federal laws; and
- Requiring the Bureau of Reclamation to be the lead agency for all environmental reviews and permits, including permits under the ESA and other laws, and requiring other agencies to use Reclamation's environmental document for their permitting decisions and reviews.

The DOI, in a statement for the record on this legislation when it was considered as H.R. 5412, again challenged this legislation's premise that water supply shortfalls can be remedied by reducing analysis and public input and noted that no Reclamation project "was denied construction because of the requirements of [NEPA] or because it was 'overstudied.'" Far from "accelerating" project delivery, these provisions would have the

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[1] Statement of Dionne Thompson, U.S. Department of the Interior, Before the Committee on Energy and Natural Resources, Subcommittee on Water and Power, June 18, 2015.[1] Available online at: www.energy.senate.gov/public/index.cfm/files/serve?File_id=6ac02e59-6350-48fc-8106-7eb6cc67530a

unintended effect of making project construction less likely and increasing the potential for delay by increasing the possibility of litigation.

Title II, the "Water Rights Protection Act," is virtually identical to S. 982, which the DOI opposed in testimony to the Senate Energy Committee's Subcommittee on Water and Power on June 18, 2015. As DOI testified previously, the language in this title:

> Threatens the Federal Government's longstanding authority to manage federal lands and associated water resources, uphold proprietary rights for the benefit of Indian tribes, and ensure the proper management of public lands and resources. The legislation is overly broad, drafted in ambiguous terms, and likely to have numerous unintended consequences that would have adverse effects on existing law, tribal water rights, and voluntary agreements.[2]

This title undermines the ability to protect federal reserved water rights, including groundwater, and restricts federal agencies' ability to apply for state water rights. As such, the title is unnecessary and would significantly undermine the ability of federal agencies to place conditions on the use of public lands and waters under federal jurisdiction.

In total, this legislation is not a serious response to the drought crisis affecting millions of people. Instead of offering solutions that are responsive to known causes of project delays, such as project economics, this bill recycles discredited ideas simply aimed at rolling back decades of environmental laws and regulations. Projects of the size, complexity, and importance of those considered under this bill, demand the careful planning and meaningful community input required under laws such as NEPA. For these reasons, we strongly oppose this legislation.

Sincerely,
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[2] Id.

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