

**Statement for the Record
Bureau of Reclamation
U.S. Department of the Interior
before the
Committee on Natural Resources
Subcommittee on Water, Power and Oceans
U.S. House of Representatives**

**Hearing: “Proposed Federal Water Grabs and their Potential Impacts on
States, Water, and Power Users, and Landowners”
April 14, 2015**

The Bureau of Reclamation (Reclamation) submits the following statement in response to the Subcommittee’s hearing titled “Proposed Federal Water Grabs and their Potential Impacts on States, Water, and Power Users, and Landowners”. This statement builds on last year’s statement to this Subcommittee for the June 24, 2014 hearing titled, “New Federal Schemes to Soak Up Water Authority: Impacts on States, Water Users, Recreation, and Jobs”, which was focused on the same proposed rulemaking.

As noted in last year’s statement, we recognize the Subcommittee’s interest in assuring that federal regulations do not adversely impact our environment and economy, and we appreciate the desire for a clear understanding of the 2014 proposed rule regarding the definition of “waters of the United States” under the Clean Water Act (Act). As this Subcommittee is aware, the proposed rule was issued by the Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) who have jurisdiction over the Clean Water Act. Reclamation has outlined its views on the proposed rule below; however, Reclamation does not have jurisdictional authority in interpreting the Clean Water Act nor implementing regulations thereunder. We believe that EPA and the Corps are the appropriate entities to discuss the details of their proposed rule, as they did in depth in a joint hearing before the Senate Committee on Environment and Public Works and House Committee on Transportation and Infrastructure on February 4, 2015.

On April 21, 2014, the Federal Register published the proposed rule from the EPA and Corps¹ that is the subject of today’s hearing. Titled the “Definition of ‘Waters of the United States’ Under the Clean Water Act”, the proposed rule was published in response to longstanding uncertainty about the scope of waters regulated under the Act. As stated in the materials accompanying the proposed rule’s release, members of Congress, state and local officials, industry, agriculture, environmental groups, and the public have asked for nearly a decade that a rulemaking occur to provide clarity on the scope of federal jurisdiction under the Act.

Since that time, interested Congressional committees including those with jurisdiction over EPA and the Corps have held several hearings and members have introduced at least three pieces of legislation or amendments to other bills, specifically targeting the proposed rule. Early this year, EPA and the Corps withdrew the interpretive rule which aimed to clarify the existing

¹ <http://www2.epa.gov/sites/production/files/2014-04/documents/fr-2014-07142.pdf>

404(f)(1)(A) exemption under the Clean Water Act in compliance with specific Congressional direction to withdraw the interpretive rule, contained in Section 112 of the FY 2015 Consolidated Appropriation (PL 113-235).

While we continue to believe that EPA and the Corps are the appropriate entities to discuss the details of their proposed rule, it remains our understanding that the proposed rule was never designed to expand the Act's applicability beyond existing regulation; that it is not designed to cover groundwater; and that the rule does not expand the Act's reach to cover additional irrigation ditches or alter the existing water transfers exclusion, which are obviously of special relevance for Reclamation. For the purposes of Reclamation's water and power mission areas that are of interest to this Subcommittee, Reclamation shares the interest of our stakeholders in preserving our shared ability to operate and maintain facilities and deliver water and power. To that end, we were pleased that EPA and the Corps have included a proposed exclusion in the rule for ditches excavated wholly in uplands and draining only uplands, with less than perennial flow, including those that may carry groundwater. The significance of this detail is that ditches excavated for drainage purposes in uplands on agricultural lands are unlikely to serve their intended function unless they carry flow at least intermittently, so it is important that ditches with intermittent flow be eligible for the proposed exclusion.

We are encouraged that the EPA and Corps worked with State and tribal partners to assure these voices are effectively represented during this rule-making process. We appreciate EPA and the Corps' efforts to improve clarity and preserve existing Clean Water Act exemptions and exclusions for agriculture. For example, we appreciate that the rule does not change, in any way, existing Clean Water Act exemptions from permitting under Section 404 for discharges of dredged and/or fill material in waters of the U.S. associated with normal farming, silviculture, and ranching activities, such as upland soil and water conservation practices; construction and maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches; and construction or maintenance of farm, forest, and temporary mining roads, where constructed and maintained in accordance with best management practices. We also appreciate that the rule does not change, in any way, existing Clean Water Act exemptions from permitting for agricultural stormwater discharges and return flows from irrigated agriculture.

The EPA and the Corps extended the public comment period on the proposed rule twice until November 14, 2014 in order to provide a full and effective opportunity for public comment. The public docket shows that over one million public comments on the proposed rule have been gathered by the agencies, and as part of the rulemaking process the EPA and the Corps would review the comments received by all entities, including comments submitted by participants in today's hearing, as they prepare revisions that provide additional clarity regarding the geographical scope of the Clean Water Act.

The Clean Water Act is over four decades old, with several instances of litigation over Congress's true intentions in passing the law, and we recognize the value in updated regulations to guide its implementation. Reclamation shares the interest of our stakeholders in preserving our shared ability to operate and maintain facilities and deliver water and power. As with the proposed rule, Reclamation will continue to participate in the interagency review process in

support of our collective interests, as the agencies work to finalize or revise the rule consistent with Congressional direction.

Thank you for the opportunity to participate in today's hearing. #