

AUGUST 2016



SUBCOMMITTEE ON  
**WATER, POWER & OCEANS**  
HOUSE COMMITTEE ON NATURAL RESOURCES

Over the past few months, the House Subcommittee on Water, Power and Oceans worked towards enhancing water and power supplies, instilling federal transparency and accountability and promoting fishing access in domestic and international waters. In the final months of the 114th Congress, the Subcommittee will continue these efforts through legislative and oversight activities. For additional information about the Subcommittee please visit our website at: <http://naturalresources.house.gov/waterpowerandoceans/>

## ENHANCING WATER AND POWER SUPPLIES

### *FEDERAL OVERREACH ON WATER*

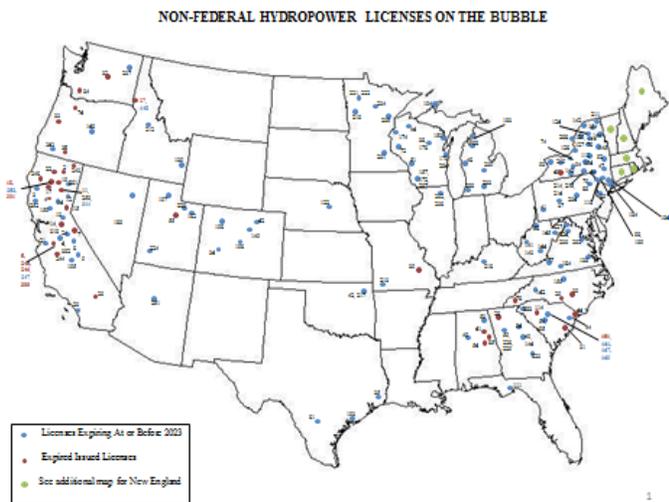
In April 2016, the Subcommittee held an oversight [hearing](#) to examine several of the Obama Administration's water initiatives, including the Environmental Protection Agency's and U.S. Army Corps of Engineers' "Waters of the United States" Rule, and the U.S. Forest Service's Groundwater Directive. Water users, including a [witness](#) from the Pacific Northwest, testified that these proposals have created more uncertainty and red tape. The hearing also examined the President's November 3, 2015 "Mitigation Impacts on Natural Resources" memorandum. Mr. Robert Lynch, testifying on behalf of numerous water users in Arizona, stated "*if the Memorandum's intent is to create a one-size-fits all "pay to play" cash register for federal lands, its very vagueness and undefined directives run totally counter to achieving that goal, let alone improving water management in the West.*" As a consequence, these policies have dis-incentivized some water users from constructing additional water infrastructure and hindered their ability to meet the public's water supply needs. Another witness emphasized the need to reform the title transfer process which,



*Witnesses testifying at the April 13, 2016 Oversight Hearing on "Empowering States and Western Water Users Through Regulatory and Administrative Reforms"*

when done correctly, can be a win-win for both the federal government and the local water user. Please see the Subcommittee's [briefing memo](#) for further details.

### ***REGULATORY CERTAINTY FOR NON-FEDERAL HYDROPOWER PROJECTS***



*Non-Federal Hydropower Licenses Expired/Expiring Licenses*  
Source: House Natural Resources Committee staff

The Subcommittee ended April with an oversight [hearing](#) that examined the current and future role of hydropower as America's cleanest and largest renewable energy resource. Natural resource agencies with mandatory conditioning authorities under the Federal Power Act have the ability to impose conditions on a utility seeking to license or re-license non-federal hydropower facilities. The hearing highlighted concerns with overlapping, concurrent and duplication within the federal mandatory conditioning process. The Subcommittee heard [testimony](#) from witnesses emphasizing the need for an improved and transparent process that will benefit both ratepayers and the environment.

With over 24 percent of existing non-federal hydropower facilities up for relicensing over the next five years, it is imperative that federal government take proactive steps to improve this process. The Subcommittee will continue to advocate for common sense improvements to keep existing hydropower facilities online while also encouraging new and expanded hydropower development. Provisions have been included in House and Senate versions of S. 2012, an energy bill that is currently in conference committee.

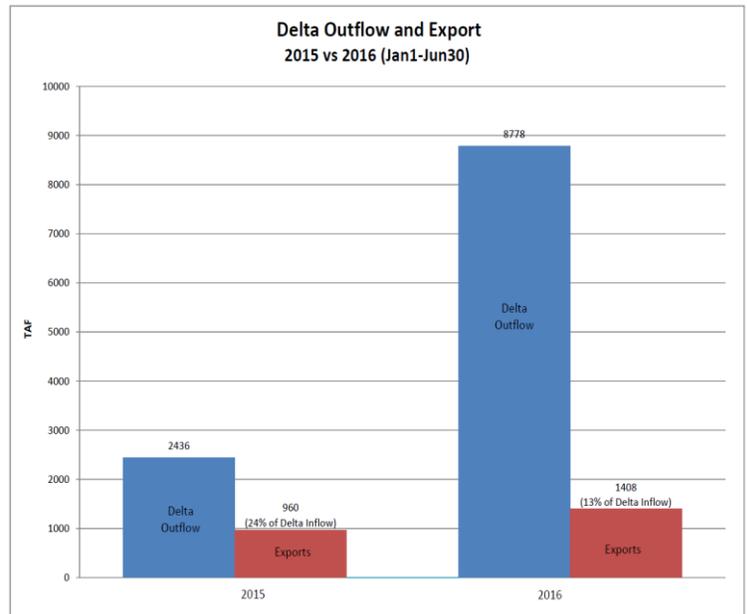
### ***CONFLICTING FEDERAL REQUIREMENTS EXACERBATE WATER PROBLEMS***

From the Central Valley of California to central Virginia, communities across the country find it increasingly difficult to provide clean, abundant and reliable water for their citizens. Following an [article](#) in the Sacramento Bee, the Subcommittee held an oversight [hearing](#) in July 2016 on separate and seemingly conflicting proposed actions by the U.S Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) related to water deliveries in parts of California. Although some northern reservoir levels are at full or nearly full historic levels, water users across the state remain concerned that they will not receive the water they were promised this year by the Bureau of Reclamation in its April 2016 allocation announcement due to the FWS and NMFS proposals.

Specifically, the FWS proposed to increase releases from reservoirs for the Delta smelt while NMFS proposed to limit such releases to provide more cold water for salmon. A [witness](#) from northern California testified that the post-allocation proposal from NMFS to limit releases out of Shasta reservoir this summer resulted in a cloud of uncertainty for the communities that rely on this water. Mr. Jeff Sutton, General Manager of the Tehama-Colusa Canal Authority, also testified that the proposal from NMFS *“has caused reduced ability to pump from the Delta to meet water allocations already announced south of the Delta, potentially resulting in shortages, after farmers had already taken out loans and expended significant funds to plant crops in reliance on receipt of water that was promised.”* Witnesses questioned what legal authority the agencies had to make these decisions,

while also questioning the scientific evidence supporting them. Mr. Ara Azhderian, Water Policy Administrator of the San Luis & Delta-Mendota Water Authority, stated *“In putting forth this proposal, FWS has not only ignored the best available science but also the Administration’s commitment to transparency, participation, and collaboration.”*

In response to these proposals, fifteen Members of Congress from California sent a bipartisan [letter](#) to Interior Secretary Sally Jewell and Commerce Secretary Penny Pritzker asking them to respond to a number of questions regarding process and statutory authorizations for these proposed actions. While a resolution to the proposed actions by NMFS has been reached, an agreement has yet been reached with the FWS on the proposed Delta smelt flows. The Administration also recently announced that it would engage in a re-consultation of the Biological Opinions governing smelt and salmon plans. The Subcommittee will continue these oversight efforts to help drought-stricken communities and promote the legislative proposals in the House Natural Resources Committee and House-passed [H.R. 2898](#), the *“Western Water and American Food Security Act of 2015.”* This bill, along with other western water provisions, is in the mix of proposals being discussed in the conference committee negotiations on S. 2012.



2015 and 2016 Delta Outflow and Exports. Source: San Luis & Delta-Mendota Water Authority

## ***REDUCING LITIGATION AND PROVIDING WATER CERTAINTY***

The Subcommittee held hearings on four water-related settlement bills over the past few months. These settlements, when crafted appropriately, could provide water certainty for Indian Tribes and other non-federal parties, reduce federal liability to benefit the American taxpayer and bring resolution to decades of litigation, claims and negotiations.

On May 24, 2016, the Subcommittee held a legislative [hearing](#) on a discussion draft of the proposed “*Blackfeet Water Rights Settlement Act of 2016*.” According to the Administration, the Blackfeet settlement seeks to resolve over one hundred years of litigation involving the use and control of the Reservation’s water resources, and bring water supply certainty by quantifying their tribal water right to more than 750,000 acre-feet of surface water. The Subcommittee also held a legislative [hearing](#) on the proposed “*Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act*” on June 23, 2016. The proposed Pechanga settlement would, according to the Administration, recognize a tribal water right of up to 4,994 acre-feet of annual water, and the Tribe would, in turn, agree to waive water rights claims against the United States.

The Subcommittee held a [hearing](#) on two proposals aimed at reducing litigation and providing certainty to water users and taxpayers. In May, the Subcommittee held a hearing on the “*San Luis Drainage Resolution Act*,” two bills sponsored by Rep. David Valadao (R-CA) and Rep. Jim Costa (D-CA). These proposed settlements, much like the proposed Indian Water Rights Settlements mentioned above, aim to bring final resolution to decades-long litigation over the federal government’s responsibility to provide drainage for certain lands in central California. The proposed settlements, if implemented, could relieve the American taxpayer of a potential \$2 billion drainage obligation, according to the Administration.

As another way of providing certainty, the Subcommittee held a hearing and the Natural Resources Committee passed [H.R. 5468](#), sponsored by full Committee Chairman Rob Bishop (R-UT). The bill would allow the Weber Basin Water Conservancy District in Utah to prepay its repayment contract obligations to the federal government, which will reduce the burden on local resources, bring financial certainty to the District and bring early revenue to the federal government as a result of accelerated repayments. This district specific prepayment concept is based on legislative precedent from prior Congresses and this Congress.

## ***LIMITING COSTLY PREDATION AND ADDING WATER STORAGE***

Following Subcommittee and Natural Resources Committee action, the House passed [H.R. 4582](#), the bipartisan “*Save Our Salmon Act*” on July 5, 2016. The bipartisan bill, introduced by Rep. Jeff Denham (R-CA), is the product of Subcommittee oversight hearings and eliminates a federal law’s goal of doubling the population of non-native striped bass (a voracious predator of salmon) in the California Bay-Delta. Striped bass predation decreases salmon populations, which can adversely impact water deliveries and salmon harvest opportunities for

anglers. Eliminating this conflicting federal goal is an important step towards bringing water supply certainty back into California’s water system and restoring salmon populations. Although the bill passed the House by voice vote, its status in the Senate is unclear.

The House also passed [H.R. 2273](#), a non-controversial bill introduced by Rep. Cynthia Lummis (R-WY), on July 5, 2016. The bill authorizes the Interior Secretary to study, design, plan and construct improvements to the Fontenelle Dam in Wyoming in order to add more storage capacity. The State of Wyoming would pay the full cost of anything authorized under the bill. U.S. Senator John Barrasso (R-WY) introduced the Senate bill (S. 1305), which has been included in the Senate version of S. 2012.



*Rep. Lummis on the House Floor during consideration of H.R. 2273. Source: Office of the Clerk, U.S. House of Representatives*

### ***FEDERAL WATER SUPPLY CONFLICTS OUTSIDE THE WEST***

Water supply issues are not confined to the western United States. The Town of Louisa (Town), Virginia is also struggling to provide its citizens with clean water because of conflicting federal standards. The Subcommittee held a [hearing](#) in June 2016 on [H.R. 5032](#), introduced by Rep. David Brat (VA-7). The Town has struggled to provide clean drinking water for its citizens after it was discovered that its drinking water was contaminated. The Town wishes to use a two percent portion of a park that was partially funded with federal Land and Water Conservation Fund dollars to develop a well in order to dilute the contaminated water. The Town is out of compliance with federal Environmental Protection Agency water quality standards as a result of the contamination, but the National Park Service refuses to allow the well and structure surrounding it to be developed in the park. Virginia’s Democratic Governor’s Administration [supports](#) the development of the well. H.R. 5032 exempts the park from federal land conversion restrictions so that the Town can have access to a safe and reliable source of water.

The Subcommittee also held a legislative [hearing](#) on Representative Louie Gohmert’s (R-TX) [H.R. 5430](#), the “*Public Water Supply Invasive Species Compliance Act of 2016*.” This bill exempts certain water transfers from the Lacey Act as long as all prohibited species in the water being transferred are located in both of the public water supplies between which the water is transferred. The bill is based on two federal laws passed in the last two Congresses. Mr. Mike Rickman, Deputy Director of the North Texas Municipal Water District, testified that: “*Water agencies rely upon long term planning horizons whose goal is a high degree of certainty they*

*will be able to fulfill their mission of providing an assured supply of water. Under the current enforcement policy of the U.S. Fish and Wildlife Service, such assurances are not possible. Failing to address this issue today virtually guarantees that enforcement of the Lacey Act in the future will conflict with additional water supply transfers. Addressing this issue before the next crisis occurs is a far better policy than case-by-case special exception legislation like this Committee provided to my District.”*

## **PROMOTING TRANSPARENCY AND ACCOUNTABILITY, EMPOWERING STATES**

### ***LEGISLATIVE EFFORTS ON TRANSPARENCY AND GOVERNMENT ACCOUNTABILITY***



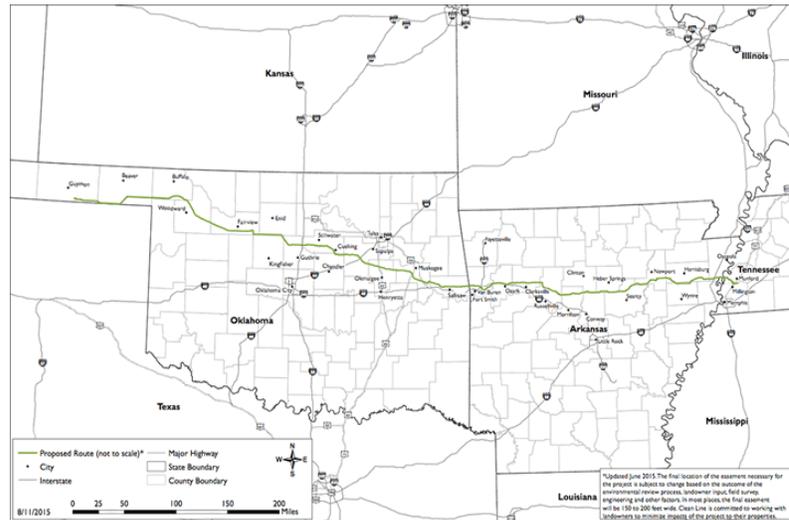
*Representative Paul Gosar (AZ-4)*

The Subcommittee remains committed to increasing transparency and stakeholder involvement in federal policies. On April 20, 2016, the Subcommittee held a [hearing](#) on [H.R. 1869](#), the “*Environmental Compliance Cost Transparency Act of 2015*.” Introduced by Subcommittee Vice-Chair Paul Gosar (R-AZ), the bill requires the four federal Power Marketing Administrations (PMAs) to estimate and report in monthly billing statements the direct and indirect costs of each of their wholesale customer’s share of any federal environmental laws impacting the conservation of fish and wildlife. These costs can be substantial. For example, these costs for the Bonneville Power Administration (BPA) – which markets power in the Pacific Northwest – accounted for 30 percent of its power rates in 2015. Mr. Patrick Ledger, CEO of the Arizona Electric Power Cooperative testified that: “*While many of the dedicated personnel at Western (Western Area Power Administration) are willing to share anecdotal information on how environmental compliance affects hydropower generation, the precise cost break down is missing from the public domain.*” H.R. 1869 provides electricity customers with the necessary information to better understand what they are paying for and whether or not these costs yield appropriate and effective results.

The Natural Resources Committee passed an [amended version](#) of H.R. 4245 on June 15, 2016. Introduced by Representatives Chellie Pingree (D-ME) and Bruce Poliquin (R-ME), the bill exempts certain seafood products – such as [sea urchins](#) – from onerous, expensive, and duplicative FWS export inspections that imposed added costs and spoiled shipments.

## EMPOWERING STATES

The House Natural Resources Committee passed a number of bills, including [H.R. 3062](#), the “*APPROVAL Act*” sponsored by Representative Steve Womack (AR-3). The bill, passed by the Committee on June 15, 2016 on a 19-11 basis, is in response to a private electricity transmission project that would impact private property in Arkansas. The project largely depends on federal domain authority in order for it to be built. The Department of Energy recently [announced](#) that it would participate in the project. The Arkansas congressional delegation supports the bill, which requires state approval before federal eminent domain authority can be used under a specific authority authorized in the Energy Policy Act of 2005.



Map of Proposed Clean Line Project Route. Source: <http://www.plainsandeasterncleanline.com/site/page/location>

The Committee also passed [H.R. 3094](#), the “*Gulf States Red Snapper Management Authority Act*.” Introduced by Representative Garret Graves (R-LA), the bill transfers management of the red snapper fishery to the five Gulf of Mexico states (Texas, Louisiana, Mississippi, Alabama and Florida). An amended version of the bipartisan bill passed the Committee 24-14 on June 15, 2016.

## PROTECTING FISHING ACCESS

### NATIONAL OCEAN POLICY HAS FISHING AND FARMING INTERESTS CONCERNED

The Subcommittee held a May [hearing](#) on President Obama’s National Ocean Policy. Following unsuccessful efforts to pass major national ocean policy legislation during three successive Congresses under both Democrat and Republican majorities, the Administration initiated the development of a sweeping multi-agency federal management plan for oceans, which culminated in July 2010 when President Obama issued [Executive Order 13547](#). This Executive Order created the National Ocean Council, which includes the heads of 27 different federal agencies. The Council is required to develop a framework for coastal and marine spatial planning – an initiative viewed as “zoning” oceans for conservation, public and economic uses. The National Ocean Policy imposes a new governance structure over agencies to ensure to the

fullest extent that all agency actions are consistent with the objectives laid out in the Executive Order, including marine spatial planning and ecosystem-based management.

The Subcommittee heard from witnesses representing fishing interests in the Northeast and Gulf of Mexico and a western farming and ranching witness. The Administration refused to provide a witness for the hearing to help clear up many unanswered questions. Representative Bradley Byrne (R-AL) successfully offered an amendment preventing federal funds from being used to execute actions under the National Ocean Policy to the Fiscal Year 2017 Interior Department appropriations bill.



*Dan Keppen, Executive Director of the Family Farm Alliance, discussed concerns western family farmers and ranchers have with the National Ocean Policy and the potential inland implications.*

#### ***CHAIRMAN BISHOP VISITS NEW ENGLAND COMMERCIAL FISHERIES PORT***

Following the one-year anniversary of the House passage of [H.R. 1335](#), legislation reauthorizing the Magnuson-Stevens Act, House Committee on Natural Resources Chairman Rob Bishop spent June 2, 2016 touring one of the Nation’s leading commercial fishing ports in New Bedford, Massachusetts. Accompanied by New Bedford Mayor Jon Mitchell, Representative Bill Keating, and fishing industry leaders, Bishop spent the day touring the harbor and shore-side facilities that support this robust working waterfront.



*(From left) Representative Bill Keating, President of Northern Wind, Inc. Michael Fernandes, New Bedford Mayor Jon Mitchell, and Chairman Rob Bishop*

Chairman Bishop also participated in a roundtable discussion with dozens of industry representatives at the historic New Bedford Whaling Museum. While the roundtable initially focused on the work of the Committee and efforts to reauthorize the Magnuson-Stevens Act, the conversation quickly turned to the proposed Marine National Monument off the coast of

Massachusetts currently under consideration by President Obama. During the roundtable, industry representatives noted the lack of transparency and presented an industry alternative to the proposal. This alternative mirrors the unified stance taken by

state fisheries directors from Maine to Florida outlined in a May 9 [letter](#) to President Obama from the Atlantic States Marine Fisheries Commission.

Following this visit, Chairman Rob Bishop penned an op-ed in the Boston Herald discussing the Administration's Marine National Monument proposal and highlighting the lack of transparency and stakeholder input in the Antiquities Act process. The Chairman's op-ed can be found [here](#). In response to widespread local opposition to this proposal, Representative Lee Zeldin (R-NY) successfully offered an amendment to the Fiscal Year 2017 Interior Department appropriations bill that prevents federal funds from being used to designate a Marine National Monument in U.S. federal waters (three miles from shore out to 200 miles). This followed the House's June passage of Zeldin's [H.R. 3070](#), the "*EEZ Zone Clarification and Access Act*." The bill allows recreational striped bass fishing in the Block Island Transit Zone and is the result of grassroots efforts by Long Island fishermen who testified at Natural Resources Committee hearings.

### ***BISHOP RECEIVES RECREATIONAL FISHERIES AWARD***

In June 2016, the Center for Coastal Conservation (CCC) named Chairman Bishop "[\*Conservationist of the Year\*](#)." Bishop received the award "for championing policies promoting healthy fish and wildlife populations and access to America's public lands and waters" at the joint gathering of the American Boating Congress and Center Focus on Washington. CCC President Jeff Angers cited Bishop's role in the House passage of H.R. 1335, the reauthorization of the Magnuson-Stevens Act, and H.R. 2406, the Sportsmen's Heritage and Recreational Enhancement Act, as primary reasons for the award.