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Opening Statement of
Chairman Tom McClintock
Subcommittee on Water and Power
On Thursday, October 10, 2013,
1334 Longworth House Office Building Full Committee Legislative Hearing on
H.R. 3189, "The Water Rights Protection Act"
H.R. 3176, Reauthorization of Reclamation States
Emergency Drought Relief Act"

Today, the Water and Power Subcommittee will hear two bills, one of which protects valuable private water rights from efforts by the Federal Government to expropriate those rights though what should be a routine permitting process. The other bill reauthorizes the Emergency Drought Relief Act, which provides federal taxpayer dollars for local drought-related water programs.

HR 3189, the "Water Rights Protection Act", is a straight-forward act to prevent the U.S. Forest Service from demanding that privately-owned ski resorts surrender long-held water rights under state law as a condition of receiving special use permits for long-standing uses of public land.

Despite over 100 years of federal deference to state law, federal agencies have adopted the practice of demanding that water users transfer rights granted to them by states over to the federal government as a condition of getting a permit to operate on federal lands. This amounts to an uncompensated taking, and is a violation of both the 5th Amendment to the Constitution and a violation of state law under which the federal government must acquire water rights through the proper channels as would any other user.

There are 121 ski areas on federal public lands, 14 of which are on Forest Service lands in my district (near Tahoe) alone.

These ski areas rely on privately held water rights for snowmaking, using this water as collateral for financing to build and maintain their facilities, and for supplying water to the local communities they support. In 2011, the Forest Service issued a directive that would effectively take these private property rights without compensation, in violation of state

law, while jeopardizing these enterprises altogether and all the direct employment, spin-off economic activity, and tax revenues they provide.

This action illustrates an increasingly hostile attitude by this agency toward those who make productive use of our vast national forests, in this case by enhancing and attracting the tourism upon which our mountain communities depend. Although the principle victims of this policy have been our ski resorts, this sub-committee has also received reports of similar tactics directed against farm and ranch operations that rely on state recognized water rights for irrigation and stock watering.

Mr. Tipton's bill simply prohibits the federal government from using what should be a routine permitting process to extract long-held water rights from private users. This bill seeks to restore federal accountability and responsibility and gets the Forest Service out of what has been historically a state prerogative.

We will also hear HR 3176, the Drought Relief Act offered by Mr. DeFazio. This measure reauthorizes a program that provides federal money for drought relief programs. Given the disappointing rainfall last year in many parts of the country, this is an important and timely subject.

Of course, the whole purpose of federal water and power projects is to assure that there are ample supplies of water in times of drought. We will hear from the Competitive Enterprise Institute that natural processes produce some 45,000 gallons of fresh water each day for every man, woman and child on the planet. The problem is that this abundant supply is unevenly distributed over both time and distance, which is the whole reason we build dams and aqueducts. The more dams and aqueducts we have, the fewer water shortages we suffer. The problem is, we haven't been building a lot of these projects for quite some time for reasons this sub-committee has often discussed.

When we did build them, they were financed on the beneficiary pays principle in which federal money fronted for these projects is repaid by the users of the water and power these projects provide.

I am interested in knowing why that principle is not applicable here, and whether our approach to drought relief ought to be aimed at producing permanent abundance rather than managing temporary shortages. It is certainly an important and timely discussion to have.

Although the federal agencies are not here today, we look forward to getting their submitted testimony and answers to many questions for the record. For those that are here, I look forward to today's testimony on how we can protect state recognized water rights and all of the many industries and uses that rely on them, and how we can better prepare for drought conditions to avoid needless expenditure of taxpayer dollars.