



To: Subcommittee on Water, Oceans and Wildlife Republican Members
From: Subcommittee on Water, Oceans and Wildlife Republican Staff; Kiel Weaver (Kiel.Weaver@mail.house.gov), Annick Miller (Annick.Miller@mail.house.gov), and Rob MacGregor (Robert.MacGregor@mail.house.gov)
Date: June 28, 2021
Subject: Legislative Hearing on H.R. 1851, H.R. 1869, H.R. 3877, and H.R. 4099

The Subcommittee on Water, Oceans and Wildlife will hold a legislative hearing on four bills: [H.R. 1851](#) (Rep. Matthew Rosendale, R-MT), [H.R. 1869](#) (Rep. Mark Amodei, R-NV), [H.R. 3877](#) (Rep. Raul Ruiz, D-CA), [H.R. 4099](#) (Rep. Grace Napolitano, D-CA) on **Tuesday, June 29, 2021, at 1:00 p.m. (EDT)** via Cisco WebEx.

Member offices are requested to notify Annick Miller **no later than Monday, June 28, at 4:30 p.m. (EDT)**, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- These bills attempt to resolve regional and local water supply-related issues.
- H.R. 4099 (Napolitano) significantly departs from existing federal assistance on water recycling projects in the western states. No dollar caps, potential triple-dipping of funding opportunities and lack of congressional authorization of these projects in the bill decrease oversight and accountability.
- Republicans are for an “all of the above” water strategy that includes water storage, innovative technologies, and conservation with a direct federal nexus.

II. WITNESSES

Panel I: Congressional Panel

- **Rep. Mark Amodei** (R-NV-2, H.R. 1869)
- **Rep. Matthew Rosendale** (R-MT-At Large, H.R. 1851)
- **Rep. Grace Napolitano** (D-CA-32, H.R. 4099)
- **Rep. Raul Ruiz** (D-CA-36, H.R. 3877)

Panel II: Governmental Panel

- **Mr. David Raff**, Chief Engineer, U.S. Bureau of Reclamation, Denver, Colorado
- **The Honorable Brian Thomas**, Chair, Shoshone-Paiute Tribes of the Duck Valley Reservation, Owyhee, Nevada

Panel III: Non-Federal Panel

- **Ms. Jennifer Patrick**, Project Manager, Milk River Irrigation Project Joint Board of Control, Havre, Montana (*H.R. 1851*)[*Republican Witness*]
- **Mr. Frank Ruiz**, Salton Sea Program Director, Audubon California, Coachella Valley, California (*H.R. 3877 and H.R. 4099*)
- **Mr. John Entsminger**, General Manager, Southern Nevada Water Authority, Las Vegas, Nevada (*H.R. 4099*)
- **Mr. Deven Upadhyay**, Assistant General Manager/Chief Operating Officer, Metropolitan Water District of Southern California, Los Angeles, California (*H.R. 4099*)

III. BACKGROUND

H.R. 1851 (Rep. Matthew Rosendale, R-MT), To establish a Federal cost share percentage for the Milk River Project in the State of Montana. *St. Mary's Reinvestment Act.*

Congress authorized construction of the Milk River Project (project), located in north-central Montana, for irrigation purposes in 1905.¹ A component of this federal project is the St. Mary Unit, which includes a diversion dam, a 29-mile long canal, two siphons, and five concrete drop structures.² Water for the project originates in northwest Montana's Glacier National Park and travels more than 200 miles through Canada before re-entering the United States where it reaches Fresno Reservoir near Havre, Montana. The project is the primary source of water for eight irrigation districts, the Fort Belknap Indian Irrigation Project, contract pumpers, and several municipalities, serving approximately 110,000 acres of land and about 18,000 end users.³

In 2020, the Alliance for the Wild Rockies (Alliance) sued the Bureau of Reclamation (Reclamation) over the potential impact of the St. Mary unit on bull trout,⁴ which is listed as "threatened" under the Endangered Species Act (16 U.S.C. 1531 et seq., ESA).⁵ The Alliance specifically sued Reclamation because the agency did not have an Incidental Take Statement (ITS) permit on bull trout from the U.S. Fish and Wildlife Service (FWS). However, the FWS's issuance of a Biological Opinion and ITS on September 4, 2020, that led to the dismissal of the lawsuit.⁶ As a result, local project beneficiaries are pursuing rehabilitation of parts of the project.

¹ <https://www.usbr.gov/projects/pdf.php?id=136>

² <https://www.usbr.gov/projects/index.php?id=352>

³ <https://www.usbr.gov/projects/pdf.php?id=136>

⁴ *All. for Wild Rockies v. Burman*, CV 20-22-GF-KLD (D. Mont. Oct. 30, 2020)

⁵ https://www.fws.gov/pacific/bulltrout/pdf/Final_Saint_Mary_RUIP_092915.pdf

⁶ *All. for Wild Rockies v. Burman*, CV 20-22-GF-KLD (D. Mont. Oct. 30, 2020)

H.R. 1851 authorizes \$52 million over the next ten fiscal years for the Secretary of the Interior (Secretary) to pay for the federal share of the “St. Mary Canal Rehabilitation Phase 1 Project,” which encompasses construction activities relating to the St. Mary Diversion Dam or the St. Mary Canal Headworks. The bill stipulates that the federal share of the project must be at least 26.04 percent of the total capital cost and that such amounts are non-reimbursable (not repaid by project beneficiaries). The bill also requires the Secretary to pay for and conduct a study of the ability for project beneficiaries to pay the cost of the St. Mary Canal Rehabilitation Phase 1 Project and to establish repayment terms in accordance with the results of the study. An ability-to-pay study, in this case, analyzes whether the beneficiary has the financial means to repay its portion of the capital cost share to the federal government. If it is demonstrated that the beneficiary cannot repay the amount in question, then the federal government or another beneficiary would be required to pay for the difference between what the beneficiary can pay and what it cannot pay.

H.R. 1851 does not have any cosponsors, but U.S. Senators Jon Tester (D-MT) and Steve Daines (R-MT) have introduced an identical version of the bill.⁷ A Reclamation witness will recognize the resolution of some issues from a prior bill in the 116th Congress but will express concerns with the ability-to-pay provisions of this bill. A project beneficiary will testify in support of the bill.

H.R. 1869 (Rep. Mark Amodei, R-NV), To amend the Omnibus Public Land Management Act of 2009 to make a technical correction to the water rights settlement for the Shoshone-Paiute Tribes of the Duck Valley Reservation, and for other purposes. *Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2021.*

The Duck Valley Indian Reservation, located in southern Idaho and northern Nevada, includes 1,700 enrolled members of the Shoshone-Paiute Tribes (Tribes).⁸ Public Law 111-11 included the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act (Settlement or Act), which authorized \$60 million to implement parts of the Settlement. Congress appropriated the \$60 million between fiscal years 2010 and 2014. As a result, the Settlement became effective on January 25, 2016.⁹ The Settlement stated that funds be made available to the Tribes after the Settlement’s effective date. The Secretary was also directed, upon the effective date, to manage the funds as a trust fund that will bear interest for the benefit of the Tribes.¹⁰ Contrary to the Settlement and the Act, the funds were “inadvertently invested and earned interest for a period of time prior to January 25, 2016,” according to an Obama Administration letter.¹¹ Current administration officials recently indicated that this inadvertently happened with four other settlements enacted in 2009 and 2010.

⁷ <https://www.congress.gov/bill/117th-congress/senate-bill/737?q=%7B%22search%22%3A%22h.r.+1851%22%7D&s=1&r=3>

⁸ <https://www.shopaitribes.org/spculture/>

⁹ <https://www.govinfo.gov/content/pkg/FR-2016-01-25/pdf/2016-01401.pdf>

¹⁰ 123 STAT. 1410

¹¹ https://republicans-naturalresources.house.gov/UploadedFiles/Letty_Belin_Letter.pdf

As a result, Shoshone-Paiute Chairman Lindsey Manning requested that any revenue generated by the investment of the funds prior to January 25, 2016, be paid to the Tribes.¹² According to Tribes, the funds are estimated to be around \$5.5 million.¹³ The Obama administration declined this request, citing that the Department of the Interior (Interior) lacked the legal authority to do so.¹⁴ According to Interior, “since there is no explicit language in the Act or the Settlement identifying interest as a source of the Fund nor directing the payment of interest from the Fund pre-effective date, it is the Department’s position that it lacks the authority to expend any interest generated by the investment of the Fund prior to January 25, 2016.”

H.R. 1869 amends the Act to grant Interior the legal authority to transfer the interest earned pre-effective date to the Settlement funds for the Tribes. The bill does not list a specific amount authorized. The bill does not have any cosponsors, but the Idaho and Nevada Senate delegations support an identical Senate version (S. 648).¹⁵ An administration witness will submit testimony supporting H.R. 1869 and will not be available for questions. Chair Brian Thomas, the tribal witness, will testify in support of the bill.

H.R. 3877 (Rep. Raul Ruiz, D-CA), To amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize additional projects related to the Salton Sea, and for other purposes. *Salton Sea Projects Improvements Act.*

The Salton Sea, located in southeast California, is the State’s largest lake. It was formed in 1905, when flooding caused a break in an irrigation canal and the Colorado River flowed into the Salton Basin for eighteen months. Since then, the Salton Sea’s existence has been maintained primarily by agricultural return flows from the Imperial, Coachella, and Mexicali Valleys. Decreasing water quantity and quality over the last two decades, as described below, has resulted in tilapia fish kills and exposed soils that contribute to dust emissions.

In the late 1990s, pressure mounted on California to live within its annual 4.4 million-acre foot Colorado River entitlement as drought conditions worsened and Arizona and Nevada began to take their full water entitlements.¹⁶ Between 1999 and 2003, there were multiple intra-California disputes over water rights. These resulted in the adoption of the 2003 Quantification Settlement Agreement (QSA). The QSA facilitated the nation’s largest agriculture-to-urban water transfer, moving water from the Imperial Valley to San Diego County. Under the QSA, California agreed to assume responsibility for environmental mitigation requirements in excess of \$133 million (in 2003 dollars), the amount that the QSA requires local water agencies to pay for this purpose. In addition, then-Governor Gray Davis signed the Salton Sea Restoration Act, which states that it is the “intent of the

¹² https://republicans-naturalresources.house.gov/UploadedFiles/Investment_Ltr_.pdf

¹³ Id.

¹⁴ https://republicans-naturalresources.house.gov/UploadedFiles/Letty_Belin_Letter.pdf

¹⁵ <https://www.congress.gov/bill/117th-congress/senate-bill/648>

¹⁶ At the time, California was using about 5.2 MAF. The excess water used by California was legally diverted through surplus contracts from Arizona and Nevada’s unused apportionments, but there were concerns about California’s dependence on these unused flows and how it might affect other states’ future growth.

Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem.”¹⁷

In 2007, State officials released the Salton Sea restoration plan (plan) mandated under the Salton Sea Restoration Act. The preferred alternative in the plan was estimated at \$8.9 billion.¹⁸ For the next decade, the State had a series of failed attempts at addressing this issue and did not fund the plan.¹⁹ In 2017, California released yet another plan – the Salton Sea Management Program – this time with a much lower \$383 million price tag.²⁰ However, it is still unclear if this plan will ultimately succeed since very little work has been completed thus far.²¹

Unlike California, the federal government continues its limited statutory role in the restoration of the Salton Sea. In the context of H.R. 3877, P.L. 102-575 directed the Secretary to spend \$10 million on a “research project” on ways to “reduce and control salinity, provide endangered species habitat, enhance fisheries, and protect human recreational values.”²² In 1997, Interior completed this task with an evaluation of several proposed alternatives, including diked impoundments and pumping water out of the Salton Sea, intended to address the salinity and surface elevation problems.²³

The State and Interior entered into a Memorandum of Understanding (MOU) in 2016 affirming that the State has the lead role in Salton Sea efforts and expressing mutual intent to try to support achievement of restoration goals. Under the MOU, the federal government agreed to provide up to \$30 million for certain habitat and monitoring activities to assist the State. To date, the Interior Department has provided \$14 million of that amount.

H.R. 3877 makes changes to the original Salton Sea research project authorization under P.L. 102-575. These changes include a new \$250 million funding authorization for Reclamation to provide grants and enter into contracts or cooperative agreements to carry out projects such as dust suppression activities, fish and wildlife habitat, recreational opportunities, and water quality. The bill does not have any cosponsors and there is no Senate companion bill. A Reclamation witness and an environmental advocate will testify in support of the bill.

¹⁷ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040SB277

¹⁸ https://lao.ca.gov/2008/rsr/salton_sea/salton_sea_01-24-08.pdf

¹⁹ <https://www.usatoday.com/pages/interactives/salton-sea/timeline/>

²⁰ <https://www.desertsun.com/story/news/environment/2017/03/16/california-has-new-383-million-plan-shrinking-salton-sea/99124850/>

²¹ <https://saltonsea.ca.gov/wp-content/uploads/2021/03/Updated-Draft-Salton-Sea-Management-Program-Phase-I-10-Year-Plan-Project-Description-March-2021.pdf>

²² 106 STAT. 4661

²³ [Hearing in Palm Desert, Calif. before the Subcom on Water and Power to review proposals to improve the deteriorating water quality of the Salton Sea in California caused by high salinity and other factors.](#)

H.R. 4099 (Rep. Grace Napolitano, D-CA), To direct the Secretary of the Interior to establish a grant program to provide grants on a competitive basis to eligible entities for large-scale water recycling and reuse projects, and for other purposes. *Large Scale Water Recycling Project Investment Act.*

H.R. 4099 creates a new \$750 million grant program for water recycling projects whose total cost is \$500 million or greater. Reclamation already has a program that funds water recycling projects, referred to as “Title XVI projects” a reference to Title XVI of P.L. 102-575. The general purpose of Title XVI projects is to provide supplemental water supplies by recycling/reusing agricultural drainage water, wastewater, brackish surface and groundwater, and other sources of contaminated water.

H.R. 4099 makes significant departures from the Title XVI project authorizations. First, it specifically prohibits a dollar cap on federal contributions to a project, as long as the amount is within the allowable percentage of total cost share. For most projects in the bill, the federal cost share is up to 25 percent and is nonreimbursable. However, the bill allows for up to 75 percent federal cost share if a project “advances a least a proportionate share of non-reimbursable benefits.”²⁴ Current Title XVI grants are capped at 25 percent or \$20 million, whichever is less. Related to non-reimbursement, the bill does not define a “federal benefit.”

Second, H.R. 4099 allows the Secretary to fund projects without congressional approval. Current law requires that all Title XVI projects be listed by name in an appropriations bill or individually authorized to be eligible for federal funding. In contrast, the bill requires a notification to Congress, but does not give Congress the mechanism to disapprove a project unless the grant is more than \$100 million.

Lastly, this legislation goes against established congressional agreements that western water investments be an all-the-above approach. This approach was exemplified in the Water Infrastructure Improvements for the Nation Act (P.L. 114-322, WIIN Act;). The WIIN Act provisions, which were negotiated by U.S. Senator Dianne Feinstein (D-CA) and western House Republicans and signed into law by President Barack Obama, provided a five-year effort to streamline and jump-start new western water storage projects, employ water supply innovation technologies such as water recycling and desalination, fund multiple environmental restoration projects, and use science to provide for fish protections and specific water operations in California.

Currently, Metropolitan Water District of Southern California’s (Metropolitan) Regional Recycled Water Program (RRWP) is the only project that will benefit from this new authorization. The RRWP is a partnership with the Sanitation Districts of Los Angeles County to purify treated wastewater that is currently discharged into the ocean.²⁵ In 2019, Metropolitan began a 500,000 gallon/day demonstration facility in Carson, California. The proposed full-scale project is estimated to cost \$3.4 billion and is designed to deliver up to

²⁴ H.R. 4099, page 5 lines 18-20.

²⁵ <http://www.mwdh2o.com/AboutYourWater/Sources%20Of%20Supply/Local-Supplies/Regional-Recycled-Water/Pages/Regional-Recycled-Water.aspx>

150 million gallons of water a day to the regional groundwater basins and two of Metropolitan's water treatment plants.²⁶ In 2020, Metropolitan and the Southern Nevada Water Authority (SNWA) signed a memorandum of agreement in which SNWA agreed to contribute 25 percent of the cost of the RRWP in exchange for a portion of Metropolitan's Colorado River water allocation.²⁷

H.R. 4099 has three Democrat cosponsors and identical Senate legislation does not exist. Republican focus and support remain on continuing the WIIN Act authorities which are set to expire on December 16, 2021. Legislation has been introduced by California's Republican delegation in the House of Representatives that would reauthorize the WIIN Act provisions.²⁸ A Reclamation witness will express concerns over the lack of a dollar cap and the long-term impacts on Reclamation's future budget. Representatives from Metropolitan and SNWA will testify in support of the bill.

IV. MAJOR PROVISIONS & ANALYSIS

H.R. 1851 (Rep. Matthew Rosendale, R-MT)

- Authorizes \$52 million in federal funds for the St. Mary Canal Rehabilitation Phase 1 Project.
- Requires the Secretary to pay for and complete an ability to pay study for project beneficiaries and establish a repayment period based on the results of the study.

H.R. 1869 (Rep. Mark Amodei, R-NV)

- Makes available the interest that accrued from the Settlement Fund prior to January 25, 2016.

H.R. 3877 (Rep. Raul Ruiz, D-CA)

- Authorizes \$250 million for Reclamation to provide grants to fund Salton Sea projects.

H.R. 4099 (Rep. Grace Napolitano, D-CA)

- Establishes a new \$750 million water recycling grant program for projects that cost more \$500 million in Reclamation states.
- Allows for a 75% federal cost share for projects that include non-reimbursable benefits, including fish and wildlife benefits.
- Prohibits a dollar cap on federal contributions.
- Allows water recycling projects in the bill to be eligible for funding even if they are already funded under Title XVI or WIIN Act authorities.

²⁶ http://www.mwdh2o.com/PDF_About_Your_Water/Regional_Recycled_Water_Supply_Program.pdf

²⁷ http://www.mwdh2o.com/PDF_NewsRoom/RRWP%20SNWA%20press%20release%20FINAL.pdf

²⁸ H.R. 737 (Valadao) and H.R. 1563 (Garcia)

- Provides notification to Congress of a proposed water recycling grant. Congress can only disapprove of a grant, through a joint disapproval resolution, over \$100 million.

V. COST

None of the bills have received a Congressional Budget Office cost analysis.

VI. ADMINISTRATION POSITION

See above descriptions for preliminary positions on each of the bills.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 1869 \(Rep. Mark Amodei, R-NV\)](#)

[H.R. 3877 \(Rep. Raul Ruiz, D-CA\)](#)