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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

Opening Statement of
Chairman Tom McClintock
Committee on Natural Resources
on Tuesday, June 24, 2014

1324 Longworth House Office Building

Water and Power Subcommittee Oversight Hearing on

***“New Federal Schemes to Soak Up Water Authority: Impact on States, Water Users,
Recreation and Jobs”***

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The Subcommittee meets today in response to urgent protests made by a wide range of state and local governments, farmers, ranchers, and public land users and private land owners in response to threatened action by the EPA and the Forest Service to vastly expand their authority over water use at the expense of long established state jurisdictions, rights and prerogatives and in direct violation of the constitutional separation of powers.

This Subcommittee met two years ago to discuss how the Forest Service planned to extort ski areas of their water rights in exchange for operating permits. The House passed a bill to remedy that.

Now, the Forest Service threatens, through executive fiat, to assert management control over – quote “surface and groundwater resources that are hydraulically interconnected, and (to) consider them interconnected in all planning and evaluation activities.” It also asserts federal supremacy over state water rights not only on National Forest Service land, but on adjacent lands that could conceivably affect federal lands.

The unconstitutional and illegal assertion of such authority would impose federal riparian rights in direct violation of current federal law. It overturns western state doctrines of prior appropriations that have guided water policy in those states for more than 150 years. As we will hear, the economic impact of this action is devastating to those states.

Meanwhile, the EPA now threatens, again through executive fiat, to vastly increase its jurisdiction over ALL water in the United States. The Clean Water Act provided EPA jurisdiction over navigable waters. In 2010, then-Congressman Oberstar proposed legislation to delete the term “navigable waters” to and vastly re-define “waters of the United States.” The Democratic majority in that Congress declined even to hear the bill. Under a Constitution that gives Congress exclusive authority to legislate, the EPA now threatens to change the law itself to vastly increase its power and jurisdiction.

By this act, the EPA is seizing control over virtually every body of water in the United States, including many agricultural and drainage ditches, ornamental lakes, conduits used for water recycling, and small creeks and streams, including those that exist only during heavy run-offs.

What this means in practice is that the Forest Service and the EPA can, under these proposals, require cost-prohibitive federal permits for any proposal tangentially affecting virtually any body of water in the United States.

What this means constitutionally is that legislative power exclusively assigned to Congress has now passed unrestricted to the Executive – including the power to repeal existing laws such as the McCarren amendment that guarantee to states supremacy in establishing and enforcing the water rights within their jurisdictions – and the power to amend laws – in direct defiance of Congress -- including changing the fundamental terms of executive jurisdictions.

These proposals not only threaten to upend 150 years of state water laws, but also present us with a Constitutional crisis, the significance of which cannot be overstated.

To add arrogance to injury, the agencies responsible for these proposals have refused the invitation of this sub-committee to explain themselves and their conduct, submitting at the last minute fatuous and wholly unresponsive written testimony.

Their absence speaks volumes about their lack of defense for these proposals and makes a mockery of this Administration's pledge for "transparency".

These proposals must be withdrawn and there is bipartisan support to do just that. Many Democrats have joined Republicans to urge this Administration to withdraw the "waters of the US" proposal. Chairman Hastings and many members of the Natural Resources committee and the House and Senate Western Caucus are sending a letter today urging the Agriculture Secretary to withdraw his Forest Service Groundwater Directive.

We will pursue legislation through both the appropriation and authorization powers of Congress to stop this unconstitutional and illegal overreach.

I believe that these proposals open a new chapter in executive agencies running amuck – seizing powers by their own edicts that have been specifically denied them by the legislation that created them in the first place. They fundamentally alter the relationship between the legislative and executive branches and the relationship between the states and the federal government – all in a manner wholly antithetical to the structure and construct of our system of checks and balances and of the sworn duty of every official to abide by the laws and the Constitution.