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Committee on Natural Resources
Water and Power Subcommittee

Oversight Hearing on
Water for Our Future and Job Creation: Examining Regulatory and Bureaucratic Barriers to
New Storage Projects

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Testimony of
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Chairman McClintock, Ranking Member Napolitano, and members of the House Water and Power Subcommittee, my name is Norm Semanko and I am here on behalf of the Idaho Water Users Association (IWUA). I am the Executive Director and General Counsel of IWUA, and I appreciate the opportunity to provide testimony today on the important topic of the need for new water storage and the development of new water supplies in the Western U.S. and the many regulatory challenges we face in trying to build new water projects today.

IWUA is a statewide, non-profit association dedicated to the wise and efficient use of water resources. IWUA has more than 300 members, including irrigation districts, canal companies, water districts, municipalities, hydropower companies, aquaculture interests, professional firms and individuals. Our members deliver water to more than 2.5 million acres of irrigated farm land in Idaho. We are affiliated with both the National Water Resources Association and the Family Farm Alliance.

When you look back in Western history, the federal government was not a barrier to water development – it was a catalyst. First came the Carey Act in 1894, encouraging private investment in water storage and delivery projects, in exchange for the patenting of up to a million acres of federal land in each state. This led to several successful projects, including the construction of Milner Dam on the Snake River and two other private dams that together provide water to approximately 400,000 acres of irrigated ground in the south central region of Idaho.

Then, beginning in 1902, the federal Bureau of Reclamation (Reclamation) commenced building water development projects across the West. In Idaho, the early projects included Minidoka, Arrowrock and Owyhee Dams, to name just a few. Most of the large water storage facilities we currently depend upon for our water supplies in the West came about as a result of Reclamation's construction years.

These water projects led to homesteading and important settlements in the West, and promoted the economic development of the West. Reclamation has constructed more than 600 dams and reservoirs including Hoover Dam on the Colorado River and Grand Coulee Dam on the Columbia River.

Today, Reclamation is the largest wholesaler of water in the country, bringing water to more than 31million people, and providing one out of five Western farmers with irrigation water for 10

million acres of farmland, producing 60% of the Nation's fresh vegetables and 25% of its fruit and nut crops.

Reclamation is also the second largest producer of hydroelectric power in the western United States. Reclamation's 58 powerplants annually provide more than 40 billion kilowatt hours generating nearly a billion dollars in power revenues and producing enough electricity to serve 3.5 million homes.

The total Reclamation investment for completed project facilities is approximately \$11.0 billion. The Family Farm Alliance, a Western irrigated agriculture advocacy organization whose Advisory Committee I serve on, has estimated that over \$60.0 billion in economic benefits are provided to the U.S. economy annually as a result of the irrigated agriculture and dependent rural economy developed in the West, with \$12 billion of annual economic value provided by the initial \$11 billion investment in Reclamation projects.

Today, however, the emphasis in Reclamation programs has shifted from construction of dams and reservoirs to the operation and maintenance of existing federally-owned facilities. Reclamation's redefined official mission is to "manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public".

Reclamation's efforts to develop and manage water today are centered on water conservation and improved management in stretching existing supplies to meet the many burgeoning water demands of growing cities and environmental laws and regulatory requirements. Reliance on our aging water storage facilities, many built at the turn of the last century, has never been more acute. But shrinking federal budgets due to efforts to reduce the national debt have and will continue to all but eliminate the traditional federally-constructed water storage project.

Yet, as a result of increased demands for existing water supplies, interest in new storage projects continues to increase at the local and state level to replace these lost supplies. Without new sources of water, increasing urban and environmental demands will deplete existing agricultural supplies and seriously threaten the future of Western irrigated agriculture, drying up farmland and the rural communities dependent on the agricultural economy. Increasingly, state and local

governments, as well as private interests, are stepping forward to advance the possibility of new water storage projects.

Unfortunately, federal environmental laws such as the Clean Water Act (CWA), the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA) have been, and continue to be, used to threaten previously developed water supplies and to prevent any future water development for countless farms, ranches and cities, and not just in the West. Even in the Southeastern U.S., where significant droughts have in some years all but dried up water supplies for cities, farms, energy providers and the environment in the past, these federal laws are being used to control, if not eliminate the construction of water storage facilities vital to the economic and environmental survival of the region.

We also understand that there can be significant barriers to local, state and private development of additional storage in our Western watersheds as a result of the implementation of federal laws and regulations.

My testimony will focus on three major areas of concern on potential barriers to the planning and development of new water storage facilities in the West and how we can work to reduce or eliminate these barriers:

- Federal regulation under the Clean Water Act and the Endangered Species Act;
- Administration environmental policies and processes; and,
- The changing federal role in water infrastructure development.

Clean Water Act

One key concern voiced by water users in the West relates to administrative policy making occurring within the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) that will make it even tougher to accomplish what is already a daunting challenge: the obvious need to develop new water supplies to meet the growing water demands.

Anti-Storage Bias

For example - EPA Region 4 (which covers the Southeastern U.S.) - is implementing new guidelines that focus on proposals that contemplate developing additional storage capacity due to projected future demands. These guidelines were developed to inform local governments and water utilities of the actions EPA expects them to take “in order to eliminate or minimize the need for additional capacity before consideration of a water supply reservoir project on a stream or river.” EPA will also use these guidelines to evaluate water demand projections for new or significantly increased public surface water withdrawals or public ground water supply wells which are being reviewed through the National Environmental Policy Act or EPA programs.

The Clean Water Act permit process requires a clearly stated project purpose, which for water supply reservoirs includes a projected demand analysis to support additional water capacity needs, and an analysis of alternatives. Before EPA considers a water supply reservoir as an alternative to address the need for additional water capacity, the water utility “must take actions to ensure” that, to the maximum extent practicable, they are implementing “sustainable” water management practices, which consist of effective water management, water pricing for efficiencies, water use efficiency measures, and watershed approaches.

According to EPA Region 4, these measures “are designed to help an applicant eliminate the need for, or reduce the impacts to aquatic resources from future water facility expansions including the construction of water supply reservoirs.” The EPA guidance further states: “Any applicant for a reservoir project will be expected to conduct an extensive analysis using this approach in developing their water demand projections and alternative analysis and provide a thorough discussion of reservoir needs after analysis of these measures.”

While these guidelines have been adopted only by Region 4, we don’t yet know if similar standards will be proposed for the Western U.S. In August 2010, Colorado Governor Bill Ritter sent a letter to EPA Administrator Lisa Jackson describing the cooperative/collaborative efforts regarding the Chatfield Reservoir Reallocation Project, which involved numerous interests representing municipal, environmental and agricultural entities and would result in an additional 20,000 acre-feet of storage space for consumptive uses in the Denver metro area. Although the U.S. Army Corps of Engineers supported the proposed reallocation plan, in June EPA Region 8 staff stated they would deny it, and recommended that the ultimate decision be elevated to higher levels in Washington, D.C., even though the preferred project alternative was simply a reallocation of flood space to active storage within an existing storage facility.

“I am greatly concerned that a disagreement between two federal agencies could result in denial of a project so important to Colorado and fifteen of our communities,” Gov. Ritter wrote Administrator Jackson. The governor also asked that EPA proceed with “a thoughtful and transparent process that does not prejudge a project but instead balances important civic and environmental needs.”

In a turn of events during October of 2010, the EPA Region 8 Administrator announced that EPA was now “comfortable with the approach taken by the Corps in the preliminary draft CWA

404(b)(1) analysis". While this was good news for project proponents, it took months of hard work and direct action by the Colorado Governor himself before EPA stood down from their initial position of no new water storage. Many projects with similar benefits may not be so lucky.

Water Quality Standard Setting

Setting water quality standards is usually a state responsibility, and EPA should not usurp that important role. Updating water quality standards, especially for nutrients, could prove both controversial and costly, as "numeric" nutrient pollution standards have not been universally used and/or accepted. Yet, EPA has shown a preference for such standards in Florida and other states where they have taken a more aggressive role, despite the absence, in many cases, of any proven nexus between the regulated parameters and the identified designated water body use being protected.

Significant progress has been made since enactment of the landmark Clean Water Act and Safe Drinking Water Act almost forty years ago. The enhanced quality of our surface waters and the greater safety of our drinking water are testaments to decades of environmental protection and investment. Of course, other challenges remain, and EPA has indicated that it intends to "work more aggressively" to reduce and control pollutants that are discharged from industrial, municipal, agricultural, and stormwater point sources and nonpoint sources. Agency actions along these lines could become significant impediments to any new water resource development projects.

Endangered Species Act

The ESA provides numerous barriers significant enough to doom a water project. In most cases, only the courts can intervene, and in the past many have used the courts for the very purpose of scuttling a particular project. In the California Bay Delta, as well as the Klamath Project in Oregon and California, the ESA was used to physically shut off water to irrigated agriculture and other water users to protect ESA-listed fishery resources, using science that has been shown by the National Academy of Science in both cases to be questionable.

In my home State of Idaho, 487,000 acre feet of federally developed water supplies have been supplied annually in an attempt to meet river flows downstream annually to comply with federal endangered species requirements, with little, if any, benefits to listed salmon stocks. This water

could have been used to produce crops, recharge our aquifers, or provide for growing cities and industries.

While we need to develop more water storage in the areas of the West where the ESA drives conflict, pitting competing demands against each other for the same water source, that very statute could also be used to prevent the development of water supplies necessary to meet its own requirements for additional streamflows for listed species.

More federal, state and local coordination is needed in these circumstances in order for progress to be made on projects that can enhance water supplies to meet unmet demands. On the Santa Ana River in Southern California, for instance, the U.S. Fish and Wildlife Service recently “settled” an ESA-driven court case challenging the Service’s decisions over critical habitat (habitat deemed necessary for the very survival of a species listed by the ESA as threatened or endangered) for the listed Santa Ana Sucker.

In settling the case with the environmental plaintiffs, the Service greatly expanded critical habitat in the area of the river that included many miles of essentially dry river bed located directly below the Seven Oaks Dam, a Corps facility authorized to protect this area from high river flows during flood periods. The water districts in the area, which have seen reductions in water supplies imported from the California Bay Delta due to ESA restrictions, have been developing their own in-basin water supplies by perfecting water rights on the Santa Ana River resulting during a flood event. The districts are applying to the Corps for a change in release patterns from the Dam in order to store flood waters in the groundwater aquifers under their water right for later use in the basin.

According to the Service, the area was deemed critical habitat to protect gravel recruitment to downstream spawning areas in the river, again using science that is less than robust. In order to move that gravel, streamflows would need to exceed levels that would cause serious flood damage downstream on the Santa Ana River, where millions of people live – Orange County, California – contradicting the very purpose of the federal flood control project and negating the development of crucial in-basin water supplies by flushing water away from the water districts’ water storage project.

In Idaho, our state is taking the lead role in pursuing the possibility of new water storage projects, in cooperation with the Corps of Engineers. The Idaho Water Resource Board has authorized studies of both raising Arrowrock Dam on the Boise River and building a completely new dam, Galloway, on the Weiser River, both tributary to the Snake River. The Arrowrock raise, which would nearly double the existing storage space to 600,000 acre-feet, would provide additional water supplies for the growing Boise region, as well as needed flood control space and environmental enhancements. The Galloway project, which could provide as much as one million acre feet of storage, could provide important benefits for downstream fish while at the

same time freeing up water in other parts of the Upper Snake River Basin for other important needs.

Looming on the horizon for both of these Idaho projects is the ESA. The Boise River includes a dubious designation for bull trout critical habitat, all but guaranteeing a tricky Section 7 consultation with the U.S. Fish and Wildlife Service for the Arrowrock raise, while downstream anadromous fish listings will require additional Section 7 consultations with the National Marine Fisheries Service for both projects.

The heavy-handed approach taken by the Service on the Santa Ana River, and the potential for similar confrontations across the West, will continue to threaten water supply enhancement projects unless cooperation and collaboration can be instituted as the new paradigm. Many times, endangered aquatic species can be managed and protected without resorting to the scientifically unjustified reallocation and inefficient use of water originally developed for irrigation and urban uses. Collaborative efforts such as habitat conservation plans or other resource management tools can protect species and water supplies, but it takes willing parties, and a cooperative attitude, to work together outside of the courtroom to accomplish these goals.

Administration Policies

The often slow and cumbersome federal regulatory process is a major obstacle to realization of projects and actions that could enhance Western water supplies. We must continue to work with federal agencies and other interested parties to build a consensus for improving the regulatory process, instead of using administrative channels that create new obstacles.

Watershed Planning

The EPA has included, through its strategic planning process, provisions that drive the development of state watershed implementation plans. We are concerned with how these plans may impact existing and ongoing watershed planning efforts being conducted at the state and local levels, many of which include plans for new storage facilities. Thousands of watershed councils exist throughout the West and they are engaged in a variety of water conservation and environmental restoration projects which could be derailed or delayed by the imposition of new federal planning requirements.

Water users are active participants in these efforts and have a large stake in ensuring that these regional projects continue. It is unnecessary and a waste of public resources for EPA to develop and impose new watershed planning programs, especially if storage components are affected by federal top-down planning efforts. In addition, EPA needs to be cognizant of the difference between water quality regulation under the Clean Water Act and water resource management which is conducted pursuant to state law.

Also, the current process of rewriting the federal *Principles and Guidelines*, now known as *Principles and Requirements*, by the Administration through the Council on Environmental Quality (CEQ) will impact future storage projects by enhancing the “value” of environmental impacts and mitigation. Many times, environmental process and mitigation requirements already account for between 30% and 50% of a water supply development project’s total cost, and by adding additional emphasis on environmental impacts these new “requirements” can drive a project’s cost beyond affordable levels.

In a time when our nation is struggling to return to the path of economic prosperity, we cannot support the creation of a new federal watershed planning program, particularly for those states that have existing, productive watershed programs in place. Federal participation should be channeled through existing state programs, rather than creating uncertainty through cumbersome new federal requirements which threaten to derail important water quality and water conservation projects already underway. And the principles for analyzing water projects from the federal perspective must not inflate the costs of a project by overvaluing environmental impacts.

NEPA Reviews

NEPA is used throughout the federal government whenever a federal decision is made committing resources to a water project, including awarding a CWA permit for construction under federal and state laws. NEPA has traditionally been implemented in a very “stove-pipe” sort of manner, with each federal agency addressing the process individually for the same project, and with very little coordination or communication.

In implementing NEPA in a manner that can allow water projects to move forward, the federal agencies need to do a better and more consistent job of defining and characterizing cumulative impacts for a project. As it currently stands, the characterization used by agencies to define cumulative impact is many times unreasonably subjective, sometimes leading to superfluous challenges to the NEPA process that can delay the process and increase costs.

These agencies must eliminate redundant environmental review processes. Projects subject to NEPA analysis should only have to proceed through the environmental review process once. For example, if NEPA is completed on a water resources infrastructure project by one agency (e.g., the Bureau of Reclamation) then a second process should not be imposed by another agency on the same project (e.g., the Corps of Engineers when they consider an individual Clean Water Act Section 404 permit). Many times the alternatives proposed for assessment by federal NEPA regulators are inappropriate, unrealistic, difficult-to-implement, and often in conflict with state law.

In addition, federal agencies not directly involved in a project’s NEPA process often end up attempting to “veto” the final analysis Record of Decision at the eleventh hour, causing untold days and weeks of delays and additional costs involved in resurrecting a defensible project. This

approach is inexcusable as these agencies are all part of one federal government and should act accordingly, coordinating efforts and concerns from the beginning of the process, not at the very end.

On December 7, 2011, CEQ released draft NEPA guidance that outlines the following principles for agencies to follow when performing NEPA environmental reviews:

- NEPA encourages simple, straightforward, and concise reviews and documentation;
- NEPA should be integrated into project planning rather than be conducted after planning is complete;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies;
- NEPA reviews should use early and well-defined scoping to target environmental reviews to appropriate issues and avoid unnecessary work;
- Agencies should develop meaningful and expeditious timelines for environmental reviews; and
- Agencies should target their responses to comments to appropriate issues raised.

While the overall philosophy embedded in the above principles seems appropriate, it is difficult to see how the proposed guidance will actually change the status quo. There appears to be nothing in the CEQ draft guidance that is likely to have any impact on how agencies approach their NEPA responsibilities. A more direct linkage to “pilot” NEPA efforts could give stakeholders and Congress a way to set goals, track successes and showcase innovations in implementing these principles, but short of clearly identified and coordinated efforts that include benchmarks and outcomes, these principles may or may not be heeded by the agencies.

Innovative Financing

As I indicated earlier in this testimony, the traditional federally constructed and funded water supply project is no longer practical or affordable, given the need to reduce the nation’s debt. States, local government and private interests are increasingly stepping forward to fill the void. But that doesn’t mean the federal government cannot be a partner in supporting water supply projects in the future. State, local and private entities can and will step up to pay for future water development projects, but the cost of federal requirements for such projects must be reduced to affordable levels.

If the federal government and Congress are no longer willing or able to fund the construction of water supply development projects, then they should not expect the local beneficiaries to pay for expensive mitigation and environmental enhancement components usually required by federal agencies in permitting construction of these facilities.

Obviously, the federal laws that govern environmental oversight and permitting will not be rolled back anytime soon; therefore, the federal government should work to develop additional tools

that can be helpful in financing these projects to meet local, state and federal needs and requirements. Innovative financing tools, such as longer-term, low or no- interest loans and loan guarantees to enhance and leverage additional private financing, can be useful in expanding the availability of funding for water storage projects.

Conclusion

For more than 100 years, Western water policy has stood out as one of the modern era's great successes. Water supply developments took large areas of the West that were considered uninhabitable and made them so, while producing an agricultural economy envied by the rest of the world. Today, we still enjoy the fruits of the investments our forefathers made in water storage and delivery infrastructure. Our challenge will be how we meet the continuing challenges of maintaining these aging facilities, the needs of growing populations (both water supply and food production), and the ever-increasing environmental requirements and restrictions of federal laws and regulations.

Sound federal policies are needed that will encourage and enhance continued investment in new water supply enhancement projects, rather than risking diminished domestic food production and weakened urban and industrial economic growth. Relying on agriculture to be a "shock absorber" to soften or eliminate impending water shortage is not smart planning. Western irrigated agriculture is a strategic and irreplaceable national resource, and we must continue to protect it by developing additional sources of manageable water supplies to meet future demands.

Thank you for the opportunity to testify today.