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**TESTIMONY ON H.R. 5791 –
THE EMERGENCY WATER SUPPLY RESTORATION ACT**

**SUBMITTED TO THE
HOUSE NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS**

JUNE 8, 2012

Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee, thank you for the opportunity to testify on behalf of The Wilderness Society in regard to H.R. 5791, the Emergency Water Supply Restoration Act. I ask that my written testimony be made a part of the hearing record.

The Wilderness Society works on behalf of its 500,000 members and supporters to protect wilderness and inspire Americans to care for our wild places. We work to preserve America's wilderness areas for the benefit and enjoyment of present and future generations.

I would like to state, at the outset, that The Wilderness Society supports the ability of state and local agencies to access, maintain, repair, and restore their water facilities in wilderness areas. America's wilderness areas are a wonderful source of clean drinking water and some wilderness areas contain water facilities that help distribute this water to American residents. Wilderness areas are a critical component of a national forest system that, according to the Forest Service, provides drinking water to sixty-six million people.

The Wilderness Act provides for the maintenance and repair of these facilities in two ways. First, wilderness designations are subject to valid existing rights. That means that any rights that pre-date wilderness legislation—such as the right to access and maintain a water facility—remain valid after designation. Second, section 4(c) of the Wilderness Act provides management agencies the right to authorize activities that would otherwise be prohibited in wilderness, where such activities are “necessary to meet the minimum requirement for the administration of the area.”

These provisions are the proper mechanism to address access and repair needs regarding water facilities in wilderness. The Wilderness Society supports the use of these provisions to provide operators of water facilities in wilderness the ability to access, maintain, repair, and restore their facilities.

By contrast, H.R. 5791 would provide broad new authority to state and local agencies, effectively waiving environmental laws, and causing significant adverse impacts on the natural environment, jeopardizing the health and safety of downstream water users, and undermining water law throughout the United States. For these reasons, The Wilderness Society opposes H.R. 5791. Our specific concerns are detailed below.

H.R. 5791 hands control of wilderness areas to state or local agencies.

Under H.R. 5791, during a state of emergency, decisions about the access, repair, reconstruction, and construction of water facilities are to be made at the “sole discretion” of state or local agencies and no federal agency may regulate or interfere with such access. The declaration of a “state of emergency” itself lies within the sole discretion of a state governor. This means that a governor can trigger the exercise of broad powers to undertake activities in wilderness areas—including those that contradict the Wilderness Act—with no federal oversight. Such a grant of authority far exceeds what is authorized on other federal lands, and could lead to significant new developments in wilderness.

The Wilderness Act declares the policy of Congress is to “secure for the American people of present and future generations the benefits of an enduring resource of wilderness” and directs that wilderness areas be “administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness.” Congress should not abrogate this policy by handing over to state and local agencies the ability to degrade wilderness areas that have been preserved for the American people.

H.R. 5791 effectively waives all environmental, and health and safety laws, for the reconstruction of water facilities in wilderness.

During a state of emergency, no federal agency may “regulate, permit, interfere, or otherwise impede” access, reconstruction, repair, or restoration of water facilities in wilderness. This means that federal agencies may not enforce the Clean Water Act, Safe Drinking Water Act, Wilderness Act, or any of the dozens of other laws that protect Americans’ health and safety or natural environment.

As described above, the Wilderness Act provides mechanisms whereby operators of water facilities in wilderness can access, maintain, and repair those facilities. These mechanisms have been successfully utilized to permit the maintenance of wilderness water facilities.

Through the Safe Drinking Water Act and Clean Water Act, Congress has provided assurances to the American people that they will have access to safe, clean drinking water. There is no reason to renege on that commitment. By waiving the laws that protect America’s

environment and its citizens from pollution, H.R. 5791 may result in a despoiled environment and unsafe water for downstream water users.

H.R. 5791 gives blanket authorization to state agencies to construct new dams in wilderness with no environmental review.

H.R. 5791 authorizes the “construction of permanent water catchment structures and above-grade diversionary flumes or other diversion infrastructure” in wilderness at the “sole discretion” of a state or local agency. Section 4(d)(4) of the Wilderness Act provides authority to the President to authorize the establishment of reservoirs in wilderness areas upon his determination that, “such use or uses in the specific area will better serve the interest of the United States and the people thereof than will its denial.” This provision is the proper mechanism to review proposals for new dams and other water facilities in wilderness.

Under H.R. 5791, state or local agencies could construct new dams, water diversions, pipelines, or other water facilities in wilderness without complying with federal environmental or health and safety laws. Such authority goes far beyond what is authorized outside of wilderness areas. The result of this provision could be the construction of unsafe dams and other infrastructure within wilderness areas that not only cause undue environmental degradation, but lead to the provision of unsafe, unhealthy water for downstream residents.

H.R. 5791 interferes with state water laws by authorizing the construction of new water facilities without regard to competing water rights.

H.R. 5791 provides state or local agencies the authority to develop new water facilities including dams and diversionary structures with no federal oversight. However, the legislation does not require the state or local agency to develop the new water facilities on water to which they are legally entitled to. Instead, decisions about new facilities are to be made at the “sole discretion” of the state or local agency.

Under H.R. 5791, any state or local agency could divert or claim water to which they have no legal right. Other water users, including those who believe they are legally entitled to the same water, would have no legal recourse because the new facilities can be developed at the “sole discretion” of the state or local agency.

The broad new authority in H.R. 5791 could overturn state water laws, as well as decades of established precedent on water rights. The result of such a dramatic shift in water law could ignite a whole new series of water wars and water grabs throughout the western United States.

H.R. 5791 applies to all 110 million acres of American wilderness.

As described above, H.R. 5791 could have significant adverse impacts on America’s natural environment, the health and safety of water provided to American citizens, and the rights of other water users. Because the legislation applies to all 110 million acres of wilderness, these impacts could be widespread and severe.

For these reasons, we urge the Committee to reject H.R. 5791, and instead find a solution to the water needs of state and local agencies that complies with federal environmental and health and safety laws, protects the safety of water provided to American citizens, and does not interfere with the rights of other water users. Thank you for the opportunity to testify.