

Statement of Congressman Scott Tipton
October 10, 2013
Before the House Natural Resources Water and Power Subcommittee
Legislative hearing on H.R. 3176 and H.R. 3189

Thank you Chairman McClintock for convening today's hearing and thank you for your support and engagement in working with me on this critical issue. I also want to thank Mr. Bishop, Mr. Amodei, Ms. Lummis, Mr. Gosar, Mr. Simpson, Mr. Coffman and Mr. Polis who have all joined in this bipartisan effort and continue to work with me to safeguard western water rights. Finally I want to thank David Corbin and Glenn Porzak from Colorado and Randy Parker from Utah for making the trip to DC to testify on behalf of the Water Rights Protection Act.

Recent federal attempts to manipulate the federal permit, lease, and land management process to circumvent long-established state water law and hijack privately-held water rights have sounded the alarm for all non-federal water users that rely on these water rights for their livelihood. The most recent case of the federal government's overreach and infringement on private property rights, which we will discuss more in today's hearing, involves a U.S. Forest Service attempt to require the transfer of privately held water rights to the federal government as a permit condition on National Forest System lands. There is no compensation for the transfer of these privately held rights despite the fact that many stakeholders have invested millions of their own capital in developing them.

This Forest Service permit condition has already hurt a number of stakeholders in my home state of Colorado including the Powderhorn Ski Area in Grand Junction and the Breckenridge Ski Resort. Despite having been excellent stewards of the environment and their water rights, the Forest Service has demanded the relinquishment of state granted water rights from these ski areas in order to continue their operations. The same nefarious tactics have been used in Utah, Nevada, and other western states where agencies have required surrender of possession of water rights in exchange for approving the conditional use of grazing allotments. This federal water grab has broad implications that have begun to extend beyond recreation and the farming and ranching community, and are now threatening municipalities and other businesses.

To add insult to injury, the Forest Service claims—remarkably with a straight face—that it's implementing this federal agency permit condition to prevent water rights from being sold off and/or used improperly. However, according Forest Service Chief Tom Tidwell's comments made in this very committee, there have never been any such cases where these privately held rights have been used improperly. Furthermore, the language of the Forest Service's water clause offers no guarantee that the Forest Service could not divert water to other locations or direct water for another purpose altogether.

As a result of efforts that began in October 2011 and encompass testimony from several hearings, conversations with numerous stakeholders across Colorado and the West, and close collaboration with my friends on this Committee, I introduced, the bipartisan Water Rights Protection Act. This legislation provides critical protection for water rights' holders from federal takings by ensuring that federal government agencies cannot extort private property rights through uneven-handed negotiations. The Water Rights Protection Act offers a sensible approach that preserves water rights and the ability to develop water requisite to living in the arid west,

without interfering with water allocations for non-federal parties or allocations that protect the environment cherished by all Westerners. As could be expected of West-wide legislation that seeks to protect all water users from the relentless efforts of the federal government to extort non-federal water rights, this bill is a work in progress. I look forward to continuing to work with my colleagues from other Western states to ensure that no state recognized water right goes unprotected from the class of actions this bill prohibits.

To this end, the brief two page bill prohibits federal agencies from pilfering water rights through the use of permits, leases, and other land management arrangements, for which it would otherwise have to pay just compensation under the 5th Amendment of the Constitution. The bill also prohibits federal land management agencies from forcing water users to apply for or acquire rights for the United States rather than for the water users themselves. Finally, this commonsense legislation provides certainty by upholding longstanding federal deference to state water law on which countless water users rely. The Water Right Protection Act has already received the endorsement of the National Ski Areas Association, the Colorado Water Congress, Colorado Ski Country USA, the Associated Governments of Northwest Colorado, the American Farm Bureau, the National Cattlemen's Beef Association, the Family Farm Alliance, the Public Lands Council, the Colorado River Water Conservation District, the Pacific Northwest Ski Area Association, the California Ski Industry Association, the Southwestern Water Conservation District, Club 20 and more groups continue to add their support. Mr. Chairman, I would to submit for the Congressional Record their letters of support. (*Wait for Mr. McClintock to ask if there are any objections and say so ordered.*) Thank you Mr. Chairman.

My hope is that today's hearing will further strengthen the bipartisan efforts to protect local water rights from federal government overreach and takings. I appreciate the opportunity to discuss this important legislation and with that, Mr. Chairman, I yield back.