

Statement of Congressman Scott Tipton
Thursday November 14, 2013
Before the House Natural Resources Committee
Full Committee Markup

Thank you Chairman Hastings for holding this important markup and for including my legislation—*H.R. 3189, the Water Rights Protection Act*—as one of the bills under consideration. The Water Rights Protection Act is the result of bipartisan 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 in order to protect state recognized water rights.

Recently there have been several examples where the federal government has attempted to circumvent long-established state water law in order to take privately-held water rights. By using the federal permit, lease, and land management process to extort water rights from those who hold rights pursuant to state law, the federal government is clearly overreaching and violating private property rights.

Such occurrences have been well documented in testimony before this committee and in numerous court cases. The Forest Service has aggressively attempted to implement a permit condition that would require the transfer of privately held water rights to the federal government as a condition for continued use on National Forest System land. Glenn Porzak testified on behalf of the National Ski Areas Association that, “By issuing these directives, the Forest Service has not only violated the 5th Amendment to the U.S. Constitution by taking property without paying compensation, it has attempted to use its permitting authority to circumvent long-established federal and state water laws. The Water Rights Protection Act protects these privately and publically held water rights, prohibits federal takings, and upholds state water law.” The Public Lands Council (PLC) and the National Cattlemen’s Beef Association (NCBA) strongly support H.R. 3189 and

indicated this legislation is necessary as, “The USFS has been notorious for violating private property rights... and repeatedly ignored established state water laws.” The California Ski Industry called the Water Rights Protection Act a, “narrowly focused bill designed to resolve an unfair regulation.”

Similar tactics have been used in other attempts to pilfer privately held water rights associated with agricultural production in the heart of rural America where farmers and ranchers rely on these rights to secure loans, as well as irrigate crops and livestock. Federal land management agencies have attempted to take additional water by requiring water users to apply for water rights under state law in the name of the United States rather than for themselves. Randy Parker from the Utah Farm Bureau testified to the importance the Water Rights Protection act and stated that “H.R. 3189 precludes the Forest Service and BLM from acquiring livestock water rights as a condition of the rancher’s use of the grazing allotment and protects the holder of the livestock water right – a taking under the Constitution.” The Family Farm Alliance has called on Congress to pass the Water Rights Protection Act and proclaimed that “Federal agencies should not be able to leverage those water rights against farming and ranching families who have long depended upon federal permits and leases to support actions like grazing.”

While I am encouraged that the Forest Service indicated in their statement to accompany the record for the October 10, 2013, hearing that their future water rights clause may no longer require the transfer of privately owned water rights, this clause has yet to be seen, they have aggressively pursued such takings for over two years, and their comments indicate that we will likely only see a temporary fix that is ski resort specific. Water is the lifeblood of the Western United States and water users need certainty that all federal land management agencies, not just the Forest Service, are prohibited from future attempts to take privately held water rights. Additionally, H.R. 3189 would prohibit future Forest Service officials from shifting course and engaging in the similar water grabs in the future.

The Water Rights Protection has already received the endorsement of twenty-seven different organizations including: the National Ski Areas Association, American Farm Bureau, National Cattlemen's Beef Association, Family Farm Alliance, Public Lands Council, National Association of Conservation Districts, Pacific Northwest Ski Area Association, California Ski Industry Association, Colorado Water Congress, as well as numerous water conservation districts and local municipalities.

This bill has been a work in progress and I have accommodated several suggestions from colleagues and stakeholders on both sides of the aisle. This is further evidenced by the amendment I will offer today. The final version of H.R. 3189 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.

I urge the Committee's support of this commonsense, bipartisan legislation and with that, Mr. Chairman, I yield back.