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

Opening Statement of

Chairman Tom McClintock

Subcommittee on Water and Power

On Thursday, April 15, 2013

1334 Longworth House Office Building Full Committee Oversight Hearing on

"Federal Impediments to Water Rights, Job Creation and Recreation: A Local Perspective."

The Sub-Committee on Water and Power meets today to hear testimony that arises from a torrent of complaints from multiple Western States of federal laws and federal officials usurping long-established water rights in a manner that threatens entire sectors of their economies including agriculture, ranching, tourism, and municipal water supplies.

We will hear of a pattern of conduct by federal agencies that seems abusive, high-handed and contrary to the proper role of the government as envisioned by the Founders. This pattern evinces a design to assert federal control over the water resources traditionally reserved to the states under a time-honored doctrine that recognizes and protects the property rights of water users.

For over a century, western water law has been based on the "prior appropriation" doctrine to allow for communities which were first in line to receive water from sometimes distant rivers. This philosophy created a mechanism of investment where beneficiaries paid for the water and power they received based on water rights preserved and protected at the state level, but with the backing of the federal government.

This system helped lead to the creation of over 348 Bureau of Reclamation projects that stored water in wet years and wet places for release or delivery in dry years or to dry places – all in accordance with state laws. The West grew and prospered because of this arrangement.

Water rights procured under state law started to erode with the federal Endangered Species Act of 1973. For example, the Central Valley of California is once again threatened with massive water cutbacks to accommodate federally-ordered releases of billions of gallons of water for the amusement of the Delta Smelt.

So far, 812,000 acre feet – all of which were once water rights assigned to irrigators and communities – have been lost to the ocean. These communities are currently slated to receive only 400,000 acre feet of their normally allotted 2 million acre feet.

We will hear dramatic testimony of litigation in Texas that could upend state water law across the Western United States, while doing absolutely nothing to protect the species it purports to save.

The ESA is failing not only species, but people. And the law needs changed on a number of fronts, including counting artificially propagated species.

It is becoming increasingly clear that some federal land management agencies are driven by an extreme ideology that is hostile to public use of public land, and antithetical to the fundamental framework of American federalism.

The Forest Service, for example, now controls 193 million acres within our nation – a land area equivalent to the size of Texas. We will hear of how this agency is abusing its authority to undermine the legitimate water rights of citizens attempting simply to contribute to the economy of their regions.

For example, there are 121 ski areas on those lands. These ski areas rely on privately held water rights for snowmaking, and as collateral for financing to build and maintain their facilities, and for supplying water to the local communities they support. In 2011, the Forest Service issued a directive that would effectively take these private property rights without compensation, in violation of state law, and at the expense of millions of dollars to ski areas – all the while jeopardizing continued recreational use in the future.

We will hear of an edict establishing a "National Blueways" system – passed not by Congress but rather imposed by a former American Rivers executive turned bureaucrat who is trying to turn a 44 million acre watershed into a federal playground under the guise of "coordination". As one witness asks, "How can a designation that requires no public notice, no comment opportunity and was created without coordination or consultation with affected landowners, local governments or States could result in increased coordination."

When the Norman and Plantagenet kings of England declared one third of the land area of Southern England off-limits to the common people, the result was that no fewer than five clauses in the Magna Carta were specifically written to redress the people's grievances. I would hope that the process we begin today takes us to our generation's Runnymeade, where the fundamental rights of the people over the people's land can be restored.