



July 25, 2017

Re: TU Opposes the Water Rights Protection Act (S.1230).

Dear Chairman Lee, Ranking Member Wyden, and members of the Subcommittee:

Trout Unlimited opposes S.1230, the Water Rights Protection Act as currently written and we offer the following comments with the hope that we can work with the bill sponsors and members of the subcommittee to make improvements to the bill text.

The Water Rights Protection Act Is Overly Broad.

TU opposes The Water Rights Protection Act in its current form because it is overly broad. The bill's inception, to address the U.S. Forest Service (USFS) ski area water rights clause, has already been reversed and removed by the agency. The bill, however, goes well beyond a measure designed to ensure that a similar water rights clause is not again imposed. Sections 3(3) and 4 of the Act, for example, call into question the long-standing authority of the USFS to condition uses of National Forest lands and waters in order to protect fish and wildlife.

The Water Rights Protection Act Curtails Federal Land Stewards' Ability to Provide Drought Resilience.

TU does not support the Water Rights Protection Act because it limits the federal agencies' ability to be effective stewards of aquatic resources on public lands. The Department of the Interior's and USFS' authority to require permit conditions for the protection of fish and wildlife is essential to the agencies' ability to provide habitat protections and to provide drought resilience that benefits downstream water users and communities. In particular, Section 5(a) of the Water Rights Protection Act's savings clause for by-pass flow authority reverses decades of USFS authority that it has exercised to benefit trout fisheries, imperiled species, and drought resilience on National Forest lands.

A success story based on the USFS' authority is the rebuilding of Colorado's native Greenback cutthroat trout—the largest restoration effort in Colorado for the Greenback, that will ultimately produce nearly 40 miles of connected streams and lakes supporting the Greenback cutthroat. This success story started with TU's challenge to the USFS permit granted for expanding the Long Draw Reservoir that failed to include protections for fish and wildlife. The federal court decision upholding the USFS' stewardship obligations was then implemented by the parties: the Water Supply and Storage Company, State of Colorado, USFS, and Colorado TU. One of the last stages of this effort was recently announced in which the Water Supply and Storage Company is providing a trust fund, with Colorado TU acting as trustee, and the USFS taking responsibility for project implementation. Colorado's rarest native trout will benefit, and the aquatic resources enhanced and protected at a landscape scale will serve all Coloradans.

We have spent a good deal of time on considering this bill's previous versions and House counterparts, and we offer the following suggestions to make the bill neutral with regard to federal bypass flow authority, and other federal authorities specifically enumerated in the bill's savings clauses.

Specific Suggestions:

- Sec. 2, paragraph (2), strike "filed";
- Sec. 3, paragraph (1), strike "or on any impairment of title or interest, in whole or in part";
- Sec. 3, strike paragraph (3), including 3(A) and 3(B);
- Sec. 4, paragraph (1)(B), strike "and imposes no greater restriction or regulatory requirement, than"
- Sec. 4 – strike subpart (2)(A)(iii) and paragraph (B).
- Sec. 5 – paragraph (a), strike "any".

Conclusion

TU looks forward to working with the Committee to ensure that the Water Rights Protection Act does not keep future success stories like Long Draw Reservoir's Greenback cutthroat trout from happening. We would be happy to work with the Committee and the bill's cosponsors to modify the bill to address our concerns.

Thank you for your time in considering these important issues. For questions related to these comments, please contact the following:

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