

MEMORANDUM

APRIL 7, 2011

TO: BOARD OF DIRECTORS

FROM: CHRIS TREESE

SUBJECT: FEDERAL AFFAIRS:
1ST QUARTER 2011

I will continue my tradition of a “progressive memo” on federal affairs for the Board’s quarterly meetings. Since federal issues remain active longer than state issues, creating separate quarterly memos for each federal issue would be redundant and inefficient. This progressive memo will follow the issues and developments of interest to the River District in the 112th Congress with **new materials and updates appearing in bold**. Since a session of Congress runs for two years, I will continue the same memo through 2012 to provide the Board with an easier, read-at-a-glance communication concerning federal affairs.

The length of this memo will grow considerably with each quarterly Board meeting. If Board members have questions between quarterly updates or desire additional information on federal legislative developments, do not hesitate to contact me.

Director direction is invited, but no specific action is requested at this time.

1st Quarter (2011) Highlights:

- **The USF&WS determined the skiff milkvetch warrants listing under the ESA, but will remain on the candidate list because there are “higher priority species.” Skiff milkvetch is found on sparsely vegetated slopes within open sagebrush habitat, primarily within the Hartman Rocks Recreation Area near Gunnison.**
- **On January 20, Rep. Geoff Davis (R-KY) formally introduced H.R. 10 (NOTE: bills numbered 1-10 are the majority’s top priorities for the session), a bill called the Regulations from the Executive In Need of Scrutiny (REINS) Act. The bill generally requires Congress to pass a resolution approving major agency rules, targeting EPA.**
- **Both parties struck a deal aimed at easing the procedural roadblocks in the Senate, from filibusters to anonymous holds, that often slowed the chamber to a crawl in recent years. The bipartisan agreement is only marginally binding. The Senate is also developing a bill a to trim by about one-third the number of presidential nominees subject to Senate confirmation (fewer “honorable” men and women in government).**
- **The Full Monty: Senate Appropriations Chairman Daniel Inouye (D-HI) announced that his committee will no longer permit earmark requests for the fiscal 2011 and 2012 spending bills. President Obama vowed in his State of the Union address to "veto any legislation containing earmarks." At this time, no earmark appropriations is the general order in both houses.**

- **Less clear is the “CUTGO” rule that limits Congressional authorizations to no more than seven years and requires an equal dollar de-authorization to accompany all authorizations. Further, Congressional staff have informed us that the offsetting de-authorizations must be of projects or programs that were likely to be appropriated and expended. No guidance on what “likely means or how it will be judged.**
- **EPA’s Clean Water State Revolving Fund is proposed to be cut by at least \$700 million and the EPA Drinking Water State Revolving Fund by \$250 million.**
- **Following meetings with the US Bureau of Reclamation and Congressional committee staffs in both the House and Senate, we will hold off seeking legislation to make permanent our anticipated contract for Ruedi Reservoir water until we have secured the contract. We anticipate it will be early 2012 before we have a final contract for the 5412.5 acre feet of Ruedi water.**
- **An amendment to the February’s Continuing Resolution would impose a six-month freeze on payments to individuals and groups that bring successful environmental lawsuits against the federal government. The amendment, passed on a 232-197 vote. This is a major source of income to many national environmental groups.**
- **The House passed HR 872 reversing a Court of Appeals ruling requiring pesticide applicators to secure a discharge (NPDES) permit by April 9 in addition to complying with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) . Senator Roberts (R-KS) will carry the bill in the Senate. The Court of Appeals ten days ago extended its deadline to place its ruling in effect from April 9 to October 31, 2011.**
- **As I write this, federal agencies are preparing for a nation-wide shut down of the federal government. Only “essential personnel” will report for work after April 9 when the current Continuing Resolution (in lieu of appropriations bills being passed) expires. A further Continuing Resolution is expected - along with significant cuts to non-military discretionary spending - to fund the remainder of this federal fiscal year (ending September 30).**

112th Congress:

Hydro Incentives:

Congressmen Adrian Smith (R-NE) and Jim Costa (D-CA) introduced legislation that will wholly exempt hydropower projects generating less than 1.5 megawatts from the Federal Energy Regulatory Commission (FERC) licensing process. To qualify, projects must be constructed on manmade conduits that are existing components of a water district's system. While FERC currently offers an exemption from its onerous permitting requirements for certain small projects, applicants must still undertake a costly, paperwork-driven process that can take months to complete. This bill would eliminate these requirements entirely.

Pesticide Application, H.R. 872:

A bi-partisan bill, co-sponsored by lawmakers from the House Agriculture and Transportation and Infrastructure Committees, was introduced in early March 2011. HR 872 would address the Court of Appeal’s ruling in the National Cotton Council (NCC) case that requires pesticide users-including farmers, ranchers, forest managers, state agencies, city and county municipalities, mosquito control districts, and water districts, among others to obtain a permit under the Clean Water Act (CWA) for the use of pesticides, in addition to compliance with the Federal Insecticide, fungicide and Rodenticide Act (FIFRA). HR 872 must be enacted by April 9, at that time the court ruling will go into effect and pesticide applications not covered by a National Pollutant Discharge Elimination System (NPDES)

permit are subject to a fine of up to \$37,500 per day per violation. In addition to the cost of compliance, pesticide users will be subject to an increased risk of litigation under the citizen suit provision of the CWA. Colorado water users have indicated this is an important issue for Colorado farmers.

Hydro Incentives:

A bill introduced by Ranking Member Lisa Murkowski (R-AK) includes provisions aiming to streamline the small hydropower regulatory process. At a hearing on the bill before the Water & Power subcommittee, Bureau of Reclamation Commissioner Michael Connor signaled his agency's support for small hydropower initiatives. Reclamation is in the midst of a one-year study of small hydropower opportunities at federally owned facilities as a follow-up to a final study released today on hydropower opportunities as a whole. The agency also intends to announce small hydropower pilot project grant opportunities in the coming weeks.

FERC Director Jeff Wright indicated his support for more efforts to streamline the process and voiced his optimism that a pilot project in which FERC partnered with the State of Colorado to fast-track projects could be replicated nationwide. "My hope and dream is that if we can do something like this that is a success in Colorado [it can be implemented nationwide]," he said.

HR 1042, The DELIST Act:

This Legislation was introduced in March by Congressman Joe Baca (D-CA) with 8 co-sponsors including three Democrats. "DELIST" provides that any species given ESA protection must be declared extinct after 15 years if it has not increased in population and if the listing poses an economic hardship on the communities located in the range of the species. Mr. Baca is particularly focused on the Deli Sands Flower-Loving Fly whose ESA status has hamstrung economic development projects in his district in Southern California and adjacent areas.