

Florida, the whole number of the House is 432.

PROVIDING FOR CONSIDERATION OF H.R. 3189, WATER RIGHTS PROTECTION ACT; PROVIDING FOR CONSIDERATION OF H.R. 4015, SGR REPEAL AND MEDICARE PROVIDER PAYMENT MODERNIZATION ACT OF 2014; AND PROVIDING FOR PROCEEDINGS DURING THE PERIOD FROM MARCH 17, 2014, THROUGH MARCH 21, 2014

The SPEAKER. Without objection, 5-minute voting will continue.

There was no objection.

The SPEAKER. The question is on adoption of House Resolution 515.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HASTINGS of Florida. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 228, noes 184, not voting 19, as follows:

[Roll No. 126]

AYES—228

Aderholt	Farenthold	Kingston
Amash	Fincher	Kinzinger (IL)
Bachus	Fitzpatrick	Kline
Barber	Fleischmann	LaMalfa
Barletta	Fleming	Lamborn
Barr	Flores	Lance
Barton	Forbes	Lankford
Benishek	Fortenberry	Latham
Bentivolio	Fox	Latta
Bilirakis	Franks (AZ)	LoBiondo
Bishop (UT)	Frelinghuysen	Long
Black	Gardner	Lucas
Blackburn	Garrett	Luetkemeyer
Boustany	Gerlach	Lummis
Brady (TX)	Gibbs	Marchant
Bridenstine	Gibson	Marino
Brooks (AL)	Gingrey (GA)	Massie
Brooks (IN)	Gohmert	McAllister
Broun (GA)	Goodlatte	McCarthy (CA)
Buchanan	Gowdy	McCaul
Bucshon	Granger	McClintock
Burgess	Graves (GA)	McHenry
Byrne	Graves (MO)	McIntyre
Calvert	Griffin (AR)	McKeon
Camp	Griffith (VA)	McKinley
Campbell	Grimm	McMorris
Cantor	Guthrie	Rodgers
Capito	Hall	Meadows
Carter	Hanna	Meehan
Cassidy	Harper	Messer
Chabot	Harris	Mica
Chaffetz	Hartzler	Miller (FL)
Coble	Hastings (WA)	Miller (MI)
Coffman	Heck (NV)	Miller, Gary
Cole	Hensarling	Mullin
Collins (GA)	Herrera Beutler	Mulvaney
Collins (NY)	Holding	Murphy (PA)
Conaway	Hudson	Neugebauer
Cook	Huelskamp	Noem
Cotton	Huizenga (MI)	Nugent
Cramer	Hultgren	Nunes
Crawford	Hunter	Nunnelee
Crenshaw	Hurt	Olson
Culberson	Issa	Palazzo
Daines	Jenkins	Paulsen
Davis, Rodney	Johnson (OH)	Pearce
Denham	Johnson, Sam	Perry
Dent	Jolly	Petri
DeSantis	Jones	Pittenger
DesJarlais	Jordan	Pitts
Diaz-Balart	Joyce	Poe (TX)
Duncan (SC)	Kelly (PA)	Pompeo
Duncan (TN)	King (IA)	Posey
Ellmers	King (NY)	Price (GA)

Reed	Scalise	Turner
Reichert	Schock	Upton
Renacci	Schweikert	Valadao
Ribble	Scott, Austin	Walberg
Rice (SC)	Sensenbrenner	Walden
Rigell	Sessions	Walorski
Roby	Shimkus	Weber (TX)
Roe (TN)	Shuster	Webster (FL)
Rogers (AL)	Sinema	Wenstrup
Rogers (KY)	Smith (MO)	Westmoreland
Rogers (MI)	Smith (NE)	Whitfield
Rohrabacher	Smith (NJ)	Williams
Rokita	Smith (TX)	Wilson (SC)
Rooney	Southerland	Wittman
Ros-Lehtinen	Stewart	Wolf
Roskam	Stivers	Womack
Ross	Stockman	Woodall
Rothfus	Stutzman	Yoder
Royce	Terry	Yoho
Runyan	Thompson (PA)	Young (AK)
Ryan (WI)	Thornberry	Young (IN)
Salmon	Tiberi	
Sanford	Tipton	

NOES—184

Barrow (GA)	Green, Al	Nadler
Beatty	Green, Gene	Napolitano
Becerra	Grijalva	Neal
Bera (CA)	Gutiérrez	Negrete McLeod
Bishop (GA)	Hahn	Nolan
Bishop (NY)	Hanabusa	O'Rourke
Blumenauer	Hastings (FL)	Owens
Bonamici	Heck (WA)	Pallone
Brady (PA)	Higgins	Pascarell
Braley (IA)	Himes	Pastor (AZ)
Brown (FL)	Hinojosa	Pelosi
Brownley (CA)	Holt	Perlmutter
Bustos	Honda	Peters (CA)
Butterfield	Horsford	Peters (MI)
Capps	Hoyer	Peterson
Capuano	Huffman	Pingree (ME)
Cárdenas	Israel	Pocan
Carney	Jackson Lee	Polis
Carson (IN)	Jeffries	Price (NC)
Cartwright	Johnson (GA)	Quigley
Castro (TX)	Johnson, E. B.	Rahall
Chu	Kaptur	Richmond
Ciilline	Keating	Roybal-Allard
Clark (MA)	Kelly (IL)	Ruiz
Clarke (NY)	Kennedy	Ruppersberger
Clay	Kildee	Ryan (OH)
Cleaver	Kilmer	Sánchez, Linda
Clyburn	Kirkpatrick	T.
Cohen	Kuster	Sanchez, Loretta
Connolly	Langevin	Sarbantes
Conyers	Larsen (WA)	Schakowsky
Cooper	Larson (CT)	Schiff
Costa	Lee (CA)	Schneider
Courtney	Levin	Schrader
Crowley	Lewis	Schwartz
Cuellar	Lipinski	Scott (VA)
Cummings	Loeb sack	Scott, David
Davis (CA)	Lofgren	Serrano
Davis, Danny	Lowenthal	Sewell (AL)
DeGette	Lowe	Shea-Porter
Delaney	Lujan Grisham	Sherman
DeLauro	(NM)	Sires
DeBene	Luján, Ben Ray	Slaughter
Deutch	(NM)	Smith (WA)
Doggett	Lynch	Speier
Doyle	Maffei	Takano
Duckworth	Maloney,	Thompson (CA)
Edwards	Carolyn	Thompson (MS)
Ellison	Maloney, Sean	Tierney
Engel	Matheson	Titus
Enyart	Matsui	Tonko
Eshoo	McCarthy (NY)	Tsongas
Esty	McCollum	Vargas
Farr	McDermott	Veasey
Fattah	McGovern	Vela
Foster	McNerney	Velázquez
Frankel (FL)	Meeks	Visclosky
Fudge	Meng	Walz
Gabbard	Michaud	Wasserman
Gallego	Miller, George	Schultz
Garamendi	Moore	Waters
Garcia	Moran	Welch
Grayson	Murphy (FL)	Wilson (FL)

NOT VOTING—19

Amodei	Gosar	Swalwell (CA)
Bachmann	Kind	Van Hollen
Bass	Labrador	Wagner
Castor (FL)	Payne	Waxman
DeFazio	Rangel	Yarmuth
Dingell	Rush	
Duffy	Simpson	

□ 1423

Ms. SINEMA changed her vote from “no” to “aye.”

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

WATER RIGHTS PROTECTION ACT

GENERAL LEAVE

Mr. HASTINGS of Washington. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill H.R. 3189.

The SPEAKER pro tempore (Mr. YODER). Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 515 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 3189.

The Chair appoints the gentlewoman from North Carolina (Ms. FOXX) to preside over the Committee of the Whole.

□ 1425

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 3189) to prohibit the conditioning of any permit, lease, or other use agreement on the transfer, relinquishment, or other impairment of any water right to the United States by the Secretaries of the Interior and Agriculture, with Ms. FOXX in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Washington (Mr. HASTINGS) and the gentlewoman from California (Mrs. NAPOLITANO) each will control 30 minutes.

The Chair recognizes the gentleman from Washington.

Mr. HASTINGS of Washington. Madam Chairman, I yield myself such time as I may consume.

President Obama has made no secret of the fact that he is willing to act unilaterally to impose new laws and regulations on the American people, declaring that he has “a pen and a phone.”

Over the last 5 years, there have been numerous examples of what has become an Imperial Presidency. Under the administration, the reach of the Federal Government has extended into nearly every sector of our economy and ensnared it in new red tape and regulations.

An egregious example of this is the Federal Government's concerted effort to take water away from individuals and businesses. Water is the lifeblood of communities and essential for a strong economy. Cities, ranchers, farmers, businesses, along with the jobs

they support, all depend on a stable supply of water to survive.

For over a century, there have been established laws upholding a State's right to manage its water and its water laws, but now, this administration is threatening to undermine those laws and seeks to take away private property rights—or private water rights governed under State laws.

Madam Chairman, that is why we are here today, to consider H.R. 3189, the Water Rights Protection Act. This bipartisan bill would protect private property rights from Federal overreach that threatens to take water supplies away from water users, such as ski areas, ranchers, cities, towns, and local conservation efforts.

This bill is responding to a very real threat as the Obama administration has sought to extort water from individuals and businesses through the permitting process.

Now, how is this done, Madam Chairman? Federal agencies are threatening to withhold permits needed to operate on Federal lands, unless private water rights are turned over to the Federal Government.

Put more simply, the Federal Government is holding necessary permits hostage unless water rights are relinquished; and they are demanding that water rights be signed over without payment, which of course is a violation of the Constitution's guarantee of just compensation.

Unfortunately, these businesses that are affected need both the permits and the water in order to operate, so what the Federal Government is doing is forcing them into an impossible situation where either choice puts them in danger of losing their livelihood or their businesses.

□ 1430

During today's debate, we will hear specific examples of businesses and families, including ski resorts and ranchers, who have experienced this heavy-handed tactic of the Federal Government's.

It is important to be clear about the risk posed by the Federal Government's action. This is not simply a threat to ski resorts and to ski areas located on Federal land as, I am sure, some will argue on the floor here today. The known problem is much greater. We have heard testimony in our committee to that fact, and the threat is not limited to one part of the country.

If a Federal agency can demand that a ski resort in Vail or that a rancher in Utah has to hand over his water to get a Federal permit, then a Federal agency can certainly do the same thing in other States—Ohio, Florida, West Virginia. Water may be more plentiful in these regions of the country than in the arid West, but the Federal Government's appetite has no geographical limits when it comes to expanding its regulatory control and its disrespect for private property and the livelihoods

of American citizens. This is a threat being felt first by the West, but the risk is real, and it exists for the entire country.

Madam Chairman, regardless of where the Federal Government seeks to take water and from whom it is trying to take it, it is simply wrong, and it must be stopped. That is why H.R. 3189 is necessary, and it is why the bill is endorsed by numerous national and regional groups, including the U.S. Chamber of Commerce, the National Ski Areas Association, the American Farm Bureau Federation, the National Cattlemen's Association, the Natural Water Resources Association, and others.

Now, in the course of the debate, there will be claims and assertions made today that this bill is overly broad and that it will have a whole range of unintended consequences. Madam Chairman, I certainly don't blame those who support the Federal takings of private water rights from wanting to change the subject, but this bill is very focused. It has only one consequence, and that consequence is absolutely intended. It stops the Federal Government from taking the water of American citizens without paying for it. It does nothing else.

In fact, this bill carefully states that this prohibition will not affect irrigation water contracts, FERC licensing, endangered species recovery, national parks, or any other legal authorities. Important environmental restoration, wildlife protection and conservation work that has been occurring for years in a positive, cooperative manner—and that is whether it is in Puget Sound, which is in my State, in the Chesapeake Bay, nearby here, or in the Florida Everglades—will all continue, and all are protected. Such efforts will not be changed by this legislation.

Madam Chairman, I want to thank and recognize the sponsor of this legislation, our colleague from Colorado (Mr. TIPTON), for all of his hard work in advancing this important, common-sense, bipartisan legislation.

It is time for the legislative branch to exert itself on behalf of the American people and rein in the imperial overreach of the executive branch and this administration. No law gives Federal agencies the authority to take private property rights as the administration is seeking to do. In fact, the Constitution prohibits such takings. It is time to put an end to such tactics, so I urge my colleagues to support this legislation and send a strong signal to this administration—to leave private property rights alone.

I reserve the balance of my time.

Mrs. NAPOLITANO. Madam Chair, I yield myself such time as I may consume.

The legislation we have to consider today is flawed on many levels—it is flawed on process; it is flawed on policy; and it is flawed in claiming that it protects States' water rights. H.R. 3189 does not solve the problem—it creates

more problems—because it is so broadly written and has no chance of being enacted into law.

The majority introduced the Water Rights Protection Act as a way to protect private property rights. It is not about protecting private property rights. It is not about protecting States' water rights. It goes in the opposite direction, that of creating a new Federal definition of a "water right" when we have not had a hearing on that particular point.

Water rights have, for more than four centuries in American law, been defined as a matter of State law. If the majority is really concerned about Federal overreach, creating a sweeping new Federal definition of a "water right" without even a single hearing is not the best choice. H.R. 3189 only had a hearing, and it was held during the government shutdown, during the sequestration. As a result, the agencies affected were not able to provide expert analysis because they were not able to be at the hearing to talk to the bill's impacts. The bill's incomplete legislative record was worsened by the committee markup, whereby a clumsily drafted savings clause was added. This only added to the confusion as to the purpose of the bill, negating the purpose of the legislation, which I understand now makes it a broader bill in addressing some of the issues, as have been stated by my colleague, that it is overreach by the Obama administration, thus negating the water rights.

Today, the manager's amendment, with four additional savings clauses, continues to show the magnitude of the unintended negative consequences that H.R. 3189 would have on various activities that require a Federal permit.

There is some agreement on this bill. We both agree that the starting point of this legislation involves a conflict between the Forest Service and the ski resorts, which was the focus of the hearing. Unfortunately, the Forest Service issued a declaration, a release, that mandated certain things that are objectionable to my colleagues, and they are now having to set out a new policy directive that is under consideration by the OMB. We have not waited for the results of the OMB. We can't tell until after the comment period is given to the general public, and then it can be published.

There are currently 121 ski resorts located in 13 States that are operating on Federal Forest Service land. That is public land that belongs to the general public. It doesn't belong to the ski resorts, and it doesn't belong to this body. It belongs to the people. Through long-term special use permits, these resort companies are operating on public—taxpayer—land, belonging to the American people, for private profit. In many cases, these companies purchase water rights in order to operate the resort.

The Forest Service is currently struggling with what happens with the permitting of sales of water rights.

How could the agency find a new operator if there is no water to go with that land and if it is not available, if there is no water for the land? The Forest Service issued a directive in 2011 requiring that, as a condition of these special use permits, the applicant must place its water rights in the name of the United States. Who is the United States if it isn't the American taxpayer?

To be clear, this was not because President Obama is mad with power and wants to own water rights, as some have alluded to. Rather, it was so that the Forest Service could include those water rights as part of the package when seeking a new operator and issuing a new contract for an existing ski area on public—taxpayer—land.

The court validated that directive on procedural grounds, and the Forest Service is currently working on a new directive, as they have stated in the letter to this committee. One, they have said, will not involve permit applicants transferring their water rights to the Federal Government. It would be appropriate to consider legislation that really pinpoints and clarifies that ski area permits may not be conditioned on the transfer of water rights to the government. New legislation devising a real solution to this problem would not only be welcomed, it would be a necessity. This is why we support the Polis amendment, which addresses the narrow conflict between the ski resorts and the Forest Service, which is the real conflict.

This bill would prevent the entire Department of Agriculture and the entire Department of the Interior from conditioning any use of public property on the impairment of any water right. This bill goes well beyond ski resorts and well beyond the Forest Service to fundamentally alter public—taxpayer—land management, including the management of all units of the National Park System.

If this bill were to become law, grazing permits could no longer require that some water be left in the streams for the cattle, and bypass flows would be impacted. Any and all uses of public lands which touch on water would be affected. Without the ability to condition permits or authorizations on reasonable protections for water-dependent resources, such as habitat, timber, or recreation, agencies will not be able to comply with the conservation and multiple-use mandates required currently by law. The bill is so broad and so irresponsible that, if it were to be enacted, it would mean the very end of the public lands activities it is supposed to protect, because those activities could no longer be managed responsibly.

Congress should get out of the way, respect States' rights, and allow the Forest Service to issue its new directive, which is not the taking of anyone's property. Rather, it is placing responsible conditions on a permit allowing private companies to profit from their use of public—taxpayer—lands.

Finally, Madam Chair and Members, it is unfortunate that we are dedicating time and energy to this aspect of water management when our constituents and our communities are facing so many more important water challenges. Most of the U.S., especially the Western U.S., is suffering from drought. While 53 percent is facing moderate to exceptional drought, the entire State of California, my State, is in drought. We certainly have more fish to fry than talking about a bill that is limited to ski resorts and the Forest Service.

I do urge my colleagues to worry less about these resorts and more about the drought that is ravaging our West, the wildfires that are threatening our lives and property, and climate change, which, if we continue to fail to act or accept, makes snow skiing a thing of the past. Some would say that this goes far beyond ski resort issues and affects nationwide entities. I say let's deal with the ski issue and the Forest Service separately, and let's support the Polis amendment.

Madam Chair, I submit for the RECORD a letter dated February 11, 2014, from the National Ski Areas Association. In the very first sentence, they are including:

I am writing on behalf of the ski industry to express the reasons ski areas strongly support passage of the bipartisan Water Rights Protection Act, H.R. 3189/S. 1630, and to advocate changes to the bill to narrow its scope.

I oppose the legislation. I urge my colleagues to vote against this bill and to support the Polis amendment.

I reserve the balance of my time.

NATIONAL SKI AREAS ASSOCIATION,
February 11, 2014.

Re: Support for Water Rights Protection Act

Rep. SCOTT TIPTON,
Cannon HOB, Washington, DC.

Rep. JARED POLIS,
Longworth House Office Building,
Washington, DC.

Sen. JOHN BARRASSO,
Dirksen Senate Office Building,
Washington, DC.

Sen. MARK UDALL,
Hart Office Building Suite,
Washington, DC.

GENTLEMEN: I am writing on behalf of the ski industry to express the reasons ski areas strongly support passage of the bipartisan Water Rights Protection Act, H.R. 3189/S. 1630, and to advocate changes to the bill to narrow its scope. At the outset, the ski industry would like to express our deep appreciation of your effort to protect ski area water rights from federal encroachment over the past couple of years. Your leadership on protecting water rights and your commitment to working in a bipartisan fashion to solve this problem on behalf of ski areas and other permittees on federal land have had very positive and real effects to date. While ski areas have enjoyed a long and successful partnership with the Forest Service spanning almost eight decades, Forest Service water policy is an issue on which we simply do not agree. We have invested too much in water rights to simply hand them over to the federal government.

As you are well aware, the Water Rights Protection Act would stop the federal government from illegally seizing water rights

from private parties that develop them, such as ski areas, in violation of State water law and 5th Amendment property rights protections. The intent of the bill is narrow—to protect valuable assets of ski areas and other permittees that use federal land from seizure without compensation by the federal government. Essentially everyone agrees on the need for this protection, given recent (and past) Forest Service policy that demands transfer of valuable water rights to the U.S. without compensation. This policy threatened to rock the foundation of over a hundred years' worth of water law in the West, and again, thanks to your intervention, beneficial changes are expected in the future.

The intention of the Water Rights Protection Act is not to impact stream health or aquatic species in any way. Some conservation groups contend that HR 3189 has a broader effect than simply protecting water rights, and in fact would hinder federal efforts to protect stream health and fish. Ski areas and other stakeholders strongly disagree with this interpretation of the bill and would never support a bill that had this result. In fact, a "savings clause" was included in the bill to explicitly state that the measure had no other impacts than to protect permittees' water rights from forced transfers. More importantly, the bill does not alter in any way the minimum stream flow protections that are set and enforced by the states on virtually every river and stream. Ski areas support and abide by these minimum stream flow requirements and would never take action to undermine them.

However, to make it abundantly clear that ski areas have a narrow and pointed agenda with respect to this legislation and that we are committed to maintaining stream and aquatic species health, we are now advocating changes to the bill to narrow its scope even further. These changes include narrowing the scope of the bill to apply just to the U.S. Forest Service, and clarifying that the bill prohibits forced transfers of ownership of water rights to the United States by inserting the term "title" into the bill. We offer these changes to demonstrate emphatically our unwavering commitment to maintain stream health and aquatic species, and our narrow focus of simply protecting our valuable water rights assets. These changes are directed at solving the concrete problem at hand, which is overreaching policy by the Forest Service that requires a forced transfer of ownership of water rights from permittees to the United States. The bill will continue to benefit all permittees on Forest Service lands, not just ski areas.

The release of a new water policy is expected from the Forest Service sometime in 2014. Ski areas welcome this new policy change, which we understand will not require a forced transfer of ownership of water rights. The release of this policy will not change the need for federal legislation however. First, the new policy is expected to apply prospectively, such that existing water rights subject to past Forest Service water clauses could continue to be in jeopardy of a taking by the Forest Service. Ski areas are proposing an amendment to the bill to protect against the implementation of such clauses beginning with the effective date of this bill. Ski areas have experienced four changes in Forest Service water policy in the last ten years. Only Congress can help stop the pendulum from swinging and provide ski areas the kind of stability they need to grow and succeed in the future.

After prevailing on our challenge of the Forest Service's water rights takings policy in federal court in 2012, ski areas offered an alternative approach for the Forest Service to consider that would not involve forced transfers of water rights. We offered this alternative in the spirit of partnership, and as

a way for the Forest Service to work cooperatively with ski areas to support their viability, and the viability of mountain communities, over the long term. The alternative offered by ski areas was to require resorts to provide successors in interest an option to purchase water rights at fair market value upon sale of a ski area. We continue to support this approach as a viable alternative that meets the needs of the agency, provides ski areas needed flexibility, and respects state water law.

Ski areas are great stewards of water resources. It is important for everyone to remember that only a small portion of water that is used for snowmaking is consumed. Most of the water diverted from streams for snowmaking returns to the watershed. Although it varies from region to region, studies show that approximately 80 percent of the water used for snowmaking returns to the watershed. Since the majority of water used for snowmaking is water purchased by a ski area, brought onsite through diversions, stored on-slope, and typically released more slowly back into the watershed with the seasonal melting of the winter snowpack, snowmaking typically benefits the watershed in which it is taking place, as well as downstream users, and can help counteract the harmful effects of drought. In addition to using a whole array of conservation measures, many resorts impound or store water in reservoirs for use during low flow times of the year without affecting fish or aquatic habitat. The ability to control our water assets and investments—which will be the outcome of passage of the Water Rights Protection Act—will enable us to continue this stewardship in the future. It will also allow us to continue to provide a high quality recreation opportunity for millions of people on the National Forests.

In closing, we thank you for your work to date on this issue, and we look forward to continuing to work together in cooperation to ensure the bill's passage.

Sincerely,

MICHAEL BERRY,

President.

Mr. HASTINGS of Washington. Madam Chairman, I am very pleased to yield 3 minutes to the gentleman from Colorado (Mr. TIPTON), the sponsor of this legislation.

Mr. TIPTON. Madam Chair, after listening to our Democrat colleague's statement, probably the best thing that we can do to be able to allay their fears is for them to read the bill. It actually protects private property rights, and let me fill in the balance of the story from the letter that you just cited:

The ski areas are saying that they strongly support the passage of the bipartisan Water Rights Act, H.R. 3189.

I would like to submit for the RECORD letters from over 40 different organizations—farmers, ranchers, ski areas, municipalities—that are supporting this legislation to be able to protect private property rights in the United States.

Madam Chair, the fear in Washington is palpable. Yesterday, we heard from the White House of the threat of a veto, a veto against a piece of legislation which is just codifying what is protected in the Constitution—private property rights in this country. There is going to be a headline in tomorrow's paper. With the affirmative passage of this legislation, it will read that the House of Representatives stood with the American people—stood with pri-

vate property rights—to stop a job-killing Federal water grab. That is what this legislation is about.

A very clear choice exists today. You can choose to stand with farmers, with ranchers, with municipalities, with our ski areas to be able to protect the Constitution regarding the Fifth Amendment for just compensation, or you can embrace the heavy hand of government and support a job-killing Federal water grab. That is the clear choice that we face today.

This bill is narrow in scope. In fact, the manager's amendment that I will be putting forward is actually going to make sure that many of the concerns that we have just heard expressed are reasserted in that legislation to be able to protect the Endangered Species Act, to make sure that authorities are not currently under law or exceeded, and to make sure that our tribes are actually protected from the heavy hand of government being used as a tool for another Federal water grab.

□ 1445

This is a commonsense piece of legislation—legislation that is designed to stand for the very principle that we have in this country of private property rights.

Protect the water of the West. Protect that private property right. This is simple, 2-page legislation.

Madam Chair, this is legislation which serves the interests of this country, serves the interests of the West, and I ask for its adoption.

COLORADO CATTLEMEN'S
ASSOCIATION

Arvada, CO, March 12, 2014.

Hon. JOHN BOEHNER,

Speaker, Washington, DC.

Hon. NANCY PELOSI,

Minority Leader, Washington, DC.

DEAR SPEAKER BOEHNER AND MINORITY LEADER PELOSI: The Colorado Cattlemen's Association (CCA) and Colorado Public Lands Council strongly support the Water Rights Protection Act (WRPA), (H.R. 3189). The CCA and PLC represent Colorado's public and private lands ranching industries through a grassroots network of affiliates and individual members. Many of our members hold private water rights on federal lands, which serve as an integral part of their operations; thus, these water rights keep our members in business and rural communities thriving. However, landowners face an unprecedented threat to the future of their water rights on lands managed by the USFS and potentially other federal agencies.

H.R. 3189, introduced by Congressmen Scott Tipton (R-Colo.), Mark Amodei (R-Nev.), Rob Bishop (R-Utah), Tom McClintock (R-Calif.), and Jared Polis (D-Colo.) disallows the USFS and the Bureau of Land Management from seizing water rights without just compensation. An issue that arose in a USFS directive applicable to ski areas was seen by industry as an issue that could threaten all water users, including ranchers, as they depend on water rights on public land (and private) to keep their businesses viable. It is important that H.R. 3189 pass without limitation to specific industries—ensuring ranchers have access to the water rights they own, maintain and have developed.

We support an amendment by Representative Tipton that would make revisions to the legislation which would clarify the intent of the bill. We also understand that several ad-

ditional amendments have been submitted that would too narrowly focus the legislation so as to not protect livestock producers, and one amendment in particular that would cause the legislation to become applicable only to ski operations. CCA and PLC strongly oppose any amendment with exclusive language that will jeopardize the efficacy of the bill for our constituency, ranchers. Our members face the same threats as ski companies do—perhaps, with more at stake, as they are individuals and families depending on these water rights for their livelihood. It is important to include all industries that may be impacted in the legislation, to keep our rural communities thriving. Rep. Tipton's bill accomplishes the purpose of protecting all water right holders, including ranchers.

There is no justification to include an amendment that will only protect one type of water use, and we strongly urge all members of the House to vote against any such amendment.

We thank you for your attention to this crucial issue, and for supporting America's ranchers as they continue to be an essential part of rural communities and stewards of our public lands.

Sincerely,

GENE MANUELLO,

President,

Colorado Cattlemen's Association.

TIM CANTERBURY,

Chair,

Colorado Public Lands Council.

EAGLE RIVER WATER & SANITATION
DISTRICT, UPPER EAGLE REGIONAL
WATER AUTHORITY,

Vail, CO, February 27, 2014.

Rep. SCOTT TIPTON,
Washington, DC.

Rep. JARED POLIS,

Washington, DC.

Senator MICHAEL BENNET,

Washington, DC.

Senator MARK UDALL,

Washington, DC.

DEAR REPRESENTATIVES POLIS AND TIPTON AND SENATORS BENNET AND UDALL: Please be advised that we are in receipt of the February 10, 2014 letter to you on the letterhead of the Water Quality/Quantity Committee of the Northwest Colorado Council of Governments (NWCCOG) regarding H.R. 3189, the Water Rights Protection Act, and its companion bill, S-1630. That letter gives the improper impression that all of the listed members, associate members, and participating water and sanitation districts support the position taken in that letter. They do not.

As the largest municipal water provider within NWCCOG, serving the over 60,000 customers from Vail to Wolcott, we strongly support H.R. 3189 and S. 1630, and do not agree with the amendments proposed by the NVVCCOG letter. In particular, the Forest Service does not have the legal authority to impose bypass flows and a Federal Water Rights Task Force has so determined, and any amendment that they do would be a major expansion of federal authority over state granted water rights. Federal bypass requirements are really just a taking of water rights by another name and on a smaller scale. It is hard to imagine that the members of NWCCOG support the federalization and taking of any of the property of their residents and area businesses regardless of the name the federal government gives to its taking. Moreover, bypass flows should not be thought of as an environmental solution to low stream flows as they

are not water rights that can be administered by a water commissioner and shepherded downstream. Rather, senior water rights from public lands that are required to be bypassed can simply be taken up by a junior water right holder just past the Forest Service boundary. This is one of the main reasons why the Colorado Water Conservation Board, which is the State agency with exclusive authority to obtain in-stream flows, has consistently opposed federal attempts to impose bypass flows.

We have enclosed a copy of a piece prepared by The Federal Water Rights Task Force entitled "The Colorado 'Bypass Flow' Controversy" for your review. It is an excellent review of the limitations on existing rights of the Forest Service to impose bypass flows and practical reasons why imposing such flows is not a good idea. (The link for the entire report is <http://www.fs.fed.us/land/water/>.)

We believe that many of the largest water users within NWCCOG agree with our position.

Very truly yours,

FREDERICK P. SACKBAUER, IV,
*Eagle River Water & Sanitation District,
Chairman of the Board.*

GEORGE GREGORY,
*Upper Eagle Regional Water Authority,
Chairman of the Board.*

COLORADO RIVER DISTRICT
Glenwood Springs, CO, October 9, 2013.

Re H.R. 3189.

Hon. SCOTT TIPTON,
Washington, DC.

DEAR CONGRESSMAN TIPTON: The Colorado River Water Conservation District sincerely appreciates your leadership in Colorado and Western water matters. H.R. 3189 is just one more example. The Colorado River District will recommend that its Board support H.R. 3189 with the consensus amendments developed by your staff, the national ski areas and the River District.

With the clarifying amendments, H.R. 3189 provides responsible side boards to agency actions when permitting allowable activities and uses on federal lands. It prohibits the transfer of ownership of privately held water rights in exchange for required permits. We are also pleased that your staff will prepare a sponsor's statement to confirm that the bill will not change existing law that allows reasonable permit conditions that can protect both the natural environment and present and future downstream water users dependent on the forest for critical water supplies.

I want to express my genuine appreciation for your and your staff's willingness to work with us on language that accomplishes our mutual goals of protecting private property interests in western water while maintaining the authority to condition permits to ensure responsible exercise of those rights.

Sincerely,

R. ERIC KUHN,
General Manager.

COLORADO RIVER DISTRICT,
Glenwood Springs, CO, November 12, 2013.

Re H.R. 3189, Markup

Hon. SCOTT TIPTON
Washington, DC.

DEAR CONGRESSMAN: As we've discussed previously, the River District board appreciates your leadership on Colorado water matters including your recent introduction of H.R. 3189. We deeply appreciate your and your staff's continuing engagement with us to refine and clarify the language to address the critical issues of water rights' equity and ownership while avoiding unintended consequences or inviting litigation.

Adam Eckman from the subcommittee staff shared final draft language in prepara-

tion for markup. I believe the new and amended language is an improvement and consistent with the River District Board's existing support for the bill.

The River District looks forward to continuing to work with you in support of this important legislation. Thank you and best wishes for a successful markup.

Sincerely,

R. ERIC KUHN,
General Manager.

CENTER CONSERVATION DISTRICT,
Center, CO, October 25, 2013.

Hon. SCOTT TIPTON,
*Cannon House Office Building,
Washington, DC.*

Hon. JARED POLIS,
*Longworth House Office Building,
Washington, DC.*

DEAR REPS. TIPTON AND POLIS: The Center Conservation District commends you for your introduction of H.R. 3189, the Water Rights Protection Act and endorses the Tipton-Polis bill, and will work closely with you to broaden bipartisan support for this measure and to gain its swift consideration and approval by the House of Representatives.

It is our understanding that the H.R. 3189 grants no new rights to any party, nor does it in any way infringe on existing rights of individuals, states or the federal government. This legislation simply reaffirms what has been existing law for generations and which is expressed in numerous places in federal law, including the Mining Act of 1866; the 1897 Organic Act establishing the U.S. Forest Service; the Taylor Grazing Act; and the Federal Land Policy and Management Act of 1976.

There is no provision in federal law authorizing or permitting the Forest Service or the Bureau of Land Management to compel owners of lawfully acquired water rights to surrender those rights or to acquire them in the name of the United States. Thus, H.R. 3189 does nothing more than assure holders of BLM or Forest Service permits that their lawfully acquired rights will not be abridged and that federal agencies may not unlawfully use the permit process to acquire rights they do not currently possess.

We look forward to working with you on this important legislation and again commend you for your leadership in this important area.

Sincerely,

DANNY NEUFELD,
President.

NWRA,
Washington, DC, March 10, 2014.

Hon. DOC HASTINGS,
Chairman, House Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR CHAIRMAN HASTINGS, On behalf of the Board of Directors and the members of the National Water Resources Association (NWRA), I write in support of H.R. 3189, the Water Rights Protection Act. The NWRA is a nonprofit federation made up of agricultural and municipal water providers, state associations, and individuals dedicated to the conservation, enhancement and efficient management of our nation's most important natural resource, water. Our members provide clean water to millions of individuals, families, agricultural producers and other businesses throughout the western United States.

Collectively, NWRA members have spent billions of dollars investing in the development of state issued water rights and the associated infrastructure in order to provide a safe and reliable water supply to their customers. Their ability to continue meeting the nation's growing demand for clean water is dependent upon access to this vital resource. The Water Rights Protection Act

would protect NWRA members' water rights and those who depend on the water they deliver by preventing federal agencies from making a permit, permit renewal or other action conditional upon surrendering a water right. The protection of water rights is of the utmost importance to our members. Water rights constitute a valuable property right and as such are valuable assets that are often irreplaceable.

For more than eighty years NWRA members have helped finance, maintain and manage some of the most valuable and iconic water systems in the world and have turned virtual deserts into some of the most productive agricultural land on the planet. To accomplish this irrigators have worked collaboratively with federal agency partners at the Bureau of Reclamation and Army Corps of Engineers. That collaborative partnership, formed through contracts and other agreements, is protected by this bill. Our members are gravely concerned by recent efforts by the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) that have made agency actions contingent upon the relinquishment or modification of a water right. These efforts go counter to the principle foundations of western water law, fly in the face of state law and set a dangerous precedent. Our members count on federal infrastructure to deliver both project and non-project water. Non-project water is privately owned; it has not been appropriated, acquired by, or apportioned to, the United States. In addition, many of our members deliver water through facilities that cross USFS or BLM land. The creation of a process through which water deliveries could be made contingent on the modification, relinquishment or surrender of a water right is unacceptable. Moreover, allowing such a precedent would cause this assault on state water rights to spread in various forms to other agencies within the Agriculture and Interior Departments. Congress, needs to provide the respective Secretaries with clear guidance on this subject, H.R. 3189 provides this guidance.

The USFS and BLM efforts to curtail water rights have been focused on western states, but the implementation of this kind of policy would have ramifications throughout the nation. According to the United States Geological Survey, nearly seventy five percent of the irrigated agriculture in the U.S. is found in the seventeen western states. These states on average receive less than twenty inches of rain each year, making the reliable delivery of irrigation water vital. In order to protect our members' water rights, assure the continued delivery of clean water to millions of people and protect the integrity of Western water law the NWRA supports the Water Rights Protection Act.

On behalf of NWRA's members I thank you for your attention to the critical water supply issues facing our nation, and for supporting our members as they continue to be stewards of our nation's water supply and a critical part of the economy.

Sincerely,

ROBERT W. JOHNSON,
Executive Vice President.

Mrs. NAPOLITANO. Madam Chair, there is opposition to this bill from 90 conservation, recreation, and sportsmen groups, including the Grand County Board of Commissioners, Summit County Board of Commissioners, Eagle County Board of Commissioners, besides the other agencies.

LETTERS IN SUPPORT OF H.R. 3189

Hinsdale County; Rio Grande Watershed Association of Conservation Districts;

Conejos County Board of County Commissioners; Colorado River District; National Cattlemen's Beef Association; National Association of Conservation Districts; National Ski Areas Association; National Water Resources Associations; Western Governors Association*

*WGA has taken a neutral stance on H.R. 3189.

LETTERS IN OPPOSITION TO H.R. 3189

U.S. Department of Interior; U.S. Department of Agriculture Forest Service; Grand County Board of Commissioners; Summit County Board of Commissioners; Eagle County Board of Commissioners.

90 CONSERVATION, RECREATION, AND SPORTSMAN'S GROUPS INCLUDING:

California Environmental Groups; Alabama Rivers Alliance; American Bird Conservancy; American Rivers; American Whitewater; Appalachian Mountain Club; Atlantic Salmon Federation; California Sportfishing Protection Alliance; CalTrout; Chesapeake Bay Foundation; Clean Water Action; Connecticut River Watershed Council; Deerfield River Watershed Association; Defenders of Wildlife; Earthjustice; Foothill Conservancy; Friends of Butte Creek; Friends of Merrymeeting Bay; Friends of the Rivers of Virginia; Friends of the White Salmon River; Gunpowder Riverkeeper; Hydropower Reform Coalition; Idaho Rivers United; Lower Mississippi River Foundation; Maine Rivers; National Audubon Society; National Parks Conservation Association; Native Fish Society; Natural Resources Defense Council; Northwest Resource Information Center; Rivers Alliance of Connecticut; Shenandoah Riverkeeper; Sierra Club; Stewards of the Lower Susquehanna, Inc.; Tennessee Clean Water Network; Upstate Forever; Utah Rivers Council; WaterWatch of Oregon; Yadin Riverkeeper Inc.

I yield such time as he may consume to my colleague from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Well, here we are again. We had a real problem. The Forest Service did overreach and trigger this issue.

Later on, we will have an amendment offered by Mr. POLIS from Colorado—whose ski areas originally brought this issue to him and who now opposes this bill—to narrow the scope of this bill down to assure that the Forest Service doesn't re-propose the rule which they have withdrawn, which would have caused the problem.

The rule was offered. There was litigation. A new rule was begun. The Forest Service withdrew the rule. There is no rule pending. But we are going to pass legislation that affects all water rights in the Western United States because of a problem that doesn't currently exist.

This is fairly extraordinary. Because we held a hearing on this when the government was shut down, not very many people knew about or got to participate in the hearing. I was there. I read the bill. That is a bad habit I have. I pointed out that the bill was so broadly written that it would impact any and all Federal actions that have to do with water in the United States of America. That goes way beyond ski areas and water rights. It goes way beyond farmers or individual property rights. It has untold consequences.

As a consequence, Republicans at the time denied it. But now this bill has six savings clauses. What does that mean?

Well, the bill was so broadly and poorly drafted to begin with, they now are carving out six exemptions to say, Oh, we didn't mean to say we would take away tribes' water rights; we didn't mean to say that we couldn't have any control of Bureau of Reclamation projects and deal with flood control. Oh, we didn't mean this or that. So there are six savings clauses in this bill because it is so poorly and broadly drafted and has so many unfathomable and unintended effects. Then there is the sixth savings clause which says this bill does nothing.

Now how could that be? Well, because we are here about headlines. We are here about a headline that will be meaningless by some gullible reporter somewhere who actually believes what they are saying on that side of the aisle.

Here is the final savings clause of this unbelievably poorly drafted bill with unbelievable, unintended consequences:

Nothing in this act limits or expands any existing authority of the Secretaries . . .

That is, Interior and Agriculture.

. . . to condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on Federal lands subject to the respective jurisdictions.

So in the body of the bill they create a whole bunch of problems by threatening concessionaires in parks, issues relating to the Columbia River in Washington and Oregon, and a whole host of projects that relate to use of the water in the West. It is a very sensitive issue, the use of the water in the West. Then they carve out five particular exceptions, which are really hot button issues. Then they have this uber exception which says this bill doesn't do anything.

So what does the bill do? Well, that is the whatever thousand-dollar question here today. It may do something unbelievably destructive to private property rights.

On that side of the aisle we hear about this all the time. A couple of weeks ago, they passed another show bill pretending to deal with the drought in California by preempting 100 years of water law in the State of California. The Federal Government preempting it.

Now they are going to fight for water rights in the West—or, at least that is the headline they hope they get out of this. But that is not what they are doing because for the first time this bill has a Federal definition in statute of water right, which would seem to preempt or contradict the States. But it has sort of got a savings clause. So it says we are creating a new Federal water right, but it really doesn't mean anything because we are not affecting the States. And oh, by the way, we have got a clause at the end saying we are not doing anything at all anyway.

So why are we here? We are here because there was a narrow issue which we could have, in a bipartisan way, agreed to deal with. It could have been what is called a suspension bill. We probably wouldn't have even had a vote on it on the floor of the House—one of those routine bills we pass generally on Mondays or Tuesdays, travel days, requiring a two-thirds vote because they are noncontroversial.

It could have been done that way. But no, that wouldn't have got a headline. It would have solved a problem—a problem that used to exist and doesn't exist anymore and might exist in the future. It would have solved that problem if it ever existed again, if the Forest Service proposed the rule again, which they aren't going to. But let's just say some future administration chose to do that. We could have preempted them that way.

But no, we couldn't just do that because how could you come here and say you are fighting for cattlemen and you are fighting for agriculture and you are fighting for the little guy and private property rights and all those wonderful buzz words around here, when you are not really doing that, but get an undeserved headline out of it if you find a gullible reporter.

That is why we are here today. It is kind of a waste of time, to tell the truth. If you want to fix the bill and potentially fix a future problem if they do go after the ski area water rights again, vote for the Polis amendment. Go back to the narrow scope of the bill. That is where we started.

If that is adopted, that would be great, and we could vote for it. If that is not adopted, I would recommend that Members think long and hard about it because you may be causing unintended effects with this bill by defining a Federal water right that potentially preempts and upends hundreds of years of precedent in the Western United States and causes untold damage. It will certainly make a lot of lawyers happy, but it is not probably going to make your farmers and ranchers happy, who you think you are pleasing here today.

Mr. HASTINGS of Washington. Madam Chairman, I am pleased to yield 2 minutes to the gentlelady from Wyoming (Mrs. LUMMIS), a member of the Natural Resources Committee.

Mrs. LUMMIS. Madam Chair, this act reinforces our century-long system, working well in our States, where the States pass water law and administer State water law. State law is crucial in the West.

For example, take how a ski area permit is supposed to work. The Forest Service issues a permit for the use of the land, but the water is administered in accordance with State water law. The water does not belong to the Federal Government.

The headline here should be, "Keep your mitts off our water."

If the Federal Government wants water rights, it has to pay for them, or

get in line, just like other citizens and businesses. But now, instead of waiting its turn or paying fair value, the Forest Service is demanding water rights as a condition of ski area permits. They are demanding the full value of water rights it had no role in developing.

The Forest Service isn't just going after ski areas. It is targeting ranchers with grazing permits as well.

The Federal Government claims it needs the water rights because the Federal Government knows best how to manage water for ski recreation and grazing. The reality is the Federal Government doesn't know best at all, and that is why States are in control of water law.

Sound water management and conservation is necessary in the arid and semi-arid West, and the real work is done at the State and local level by individuals. These efforts will only be harmed if we let Federal agencies trample on State water law, substituting their judgment for those who live near water and depend on it for their well-being.

Madam Chair, I have spent thousands of hours of my life irrigating Wyoming's beautiful meadows.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. HASTINGS of Washington. I yield the gentlelady an additional 1 minute.

Mrs. LUMMIS. Madam Chair, when you are still and you are out in a meadow, you can hear the water bubble into the ground, and I swear you can hear the grass grow. It is the most amazing, fulfilling thing, and some of the happiest hours I have spent in my entire life. This is personal with me.

Madam Chair, I urge my colleagues to support the Tipton bill.

Mrs. NAPOLITANO. Madam Chair, may I inquire how much time remains?

The Acting CHAIR. The gentlewoman from California has 15½ minutes remaining. The gentleman from Washington has 18 minutes remaining.

Mrs. NAPOLITANO. Thank you, Madam Chair.

Madam Chair, I will include in the RECORD a list of amendments proposed that the Rules Committee did not find in order that are asking to exempt Allegheny National Forest, Delaware River Watershed, and Delaware Water Gap from the effects of the bill.

We also have the Chesapeake Bay Watershed, the Long Island Sound Watershed, the Puget Sound Watershed, and Olympic National Park Watershed. They all want to be excluded from this bill.

SUMMARY OF AMENDMENTS SUBMITTED TO THE RULES COMMITTEE FOR H.R. 3189—WATER RIGHTS PROTECTION ACT

SUMMARIES DERIVED FROM INFORMATION PROVIDED BY SPONSORS

[Listed in Alphabetical Order]

Cartwright (PA): No. 1—Exempts the Allegheny National Forest, Delaware River Watershed, and Delaware Water Gap from the effects of the bill.

Connolly (VA), Van Hollen (MD), Sarbanes (MD), Scott, Bobby (VA), Edwards (MD), Cartwright (PA): No. 13—States that no provisions of the bill shall affect water rights agreements within the Chesapeake Bay watershed.

Holt (NJ): No. 5—Exempts the Delaware River watershed from this Act.

Israel (NY), DeLauro (CT), Esty (CT), Crowley (NY), Engel (NY), Tonko (NY), McCarthy, Carolyn (NY), Bishop, Tim (NY), Courtney (CT): No. 8—Exempts the Long Island Sound watershed from any provision in the legislation.

Kilmer (WA), Heck, Denny (WA), Larsen, Rick (WA), Smith, Adam (WA): No. 9—Clarifies that nothing in the legislation would affect or apply to the Puget Sound watershed.

Kilmer (WA): No. 10—Affirms that nothing in the legislation would affect or apply to the Olympic National Park watershed.

Kilmer (WA), Huffman (CA): No. 11—Clarifies that nothing in the legislation would impact or diminish the treaty rights of federally recognized tribes and nothing would impact water rights of federally recognized tribes.

Langevin (RI), Cicilline (RI): No. 7—Exempts the Nanagansett Bay watershed and the Wood Pawcatuck watershed.

Lujan (NM): No. 2—Notification requirements for the implementation of water settlements.

Mullin, Markwayne (OK): No. 4—Ensures that the federal government cannot make Native America tribes, apply for or acquire water rights under state law for the federal government rather than acquiring the rights for themselves. Prohibits the federal government from using permits, approvals, and other land management agreements to take the water rights of Native American tribes without just compensation. Ensures that nothing in the Act limits or expands the reserved water rights or treaty rights of federally recognized Native American tribes.

Polis (CO), DeGette (CO), Perlmutter (CO), DelBene (WA), Kuster, Ann (NH), Cartwright (PA), Huffman (CA): No. 5—SUBSTITUTE Requires the U.S. Forest Service to issue a new draft water directive within 60 days that does not condition ski area permits on the transfer of title of any water right or require any ski area permittee to acquire a water right in the name of the United States.

Speier (CA), Miller, George (CA), Lee, Barbara (CA): No. 6—Excludes the California Bay Delta system from the provisions of the bill.

Tipton (CO): No. 12—MANAGERS Makes several clarifying technical changes to the bill, and clarifies that the Act will have no effect on Bureau of Reclamation contracts, implementation of the Endangered Species Act, certain existing federal reserved water rights, and certain authorities under the Federal Power Act.

Tonko (NY): No. 14—LATE Ensures that nothing in this Act will affect or apply to the Hudson and Mohawk River watersheds.

Tsongas (MA): No. 3—States that Nothing in this Act shall affect or apply to the Lowell National Historical Park and Minute Man National Historical Park.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC, WEDNESDAY, MARCH 12, 2014.

STATEMENT OF ADMINISTRATION POLICY
H.R. 3189—WATER RIGHTS PROTECTION ACT
(Rep. Tipton, R-Colorado, and 15 cosponsors)

The Administration opposes H.R. 3189, which would prohibit the U.S. Department of the Interior (DOI) and the U.S. Department of Agriculture (USDA) from exerting some control over the exercise of water rights lo-

cated on Federal lands. The bill threatens the Federal government's longstanding authority to manage property and claim proprietary rights for the benefit of Indian tribes and reserved Federal lands, and the broader public that depends on the proper management of public lands and resources. It adversely affects DOI's and USDA's ability to manage water resources to: (1) protect ongoing public lands uses and the environment; (2) allow for maximum beneficial use of Federal water facilities; and (3) ensure adequate water is available for fisheries or threatened or endangered species.

H.R. 3189 is overly broad and could have numerous unintended consequences. For example, the bill could impede private water rights holders from entering into voluntary agreements with Federal agencies, which benefit State, Federal, and private water rights holders' interests and improve water resource management.

The bill was introduced, in part, to address the U.S. Forest Service's ski area water rights clause proposal, which the Forest Service has changed in response to public feedback and will soon be publishing. The Administration looks forward to working with Congress to address any remaining concerns regarding the ski area water rights proposal after its publication and to developing legislation that maintains the Federal government's interest in protecting public lands and waters, allows for the continuance of voluntary agreements between the Federal government and other water rights holders, and ensures adequate protection of the environment.

Madam Chair, I yield such time as he may consume to the gentleman from California (Mr. HUFFMAN).

Mr. HUFFMAN. Madam Chair, H.R. 3189 is too broad. It would not solve the problem that it purports to address, but it would indeed impede ongoing collaborative efforts across this country.

Once again, I am afraid that the majority has ignored an opportunity for a bipartisan, solution-oriented engagement on an issue and instead chosen the same old attack-and-accuse and overreach politics.

This legislation stems from a very legitimate concern that was raised by the ski industry regarding how the Forest Service was proposing to handle water rights in public leases for ski areas. This was something that we could have worked together on. In fact, I think the House could have found a constructive bipartisan solution. We could have had this resolved by now.

Instead, the Republican leadership held a hearing on this issue during the government shutdown, meaning that we did not have the opportunity to question the Forest Service. Instead of the benefit of a dialogue and a conversation, we had an empty chair. Of course, the attacks on that empty chair ensued as part of the political theater.

Had the GOP bothered to actually talk to the Forest Service, they would have found a receptive partner in a solution to this problem. They would have found, in fact, that a solution was already in the works.

Had the Republican majority actually worked with the Forest Service, they could have influenced a proposal

that is being revised right now by the Forest Service. Instead, we are dealing with a bill here today that goes far beyond the scope of the issue at hand and could affect voluntary agreements and contracts across this country.

In fact, this bill before us today could stop the Federal Government from taking the very actions that could help ensure recreational opportunities for Americans, like skiing, rafting, kayaking, and fishing. Preventing water right holders from entering into agreements with Federal agencies could put our recreational economy at risk and could impede our ability to implement important water agreements throughout the West.

We still have an opportunity to get back on a constructive track here. We have a chance to pass an amendment—the Polis amendment—that narrows the bill's scope to its original intent and would address the concerns of the ski areas.

I urge my colleagues to support the Polis amendment to address the ski area water rights issues, and I encourage my colleagues on the other side of the aisle to work with us to try to salvage this bill and focus on the real concern at hand.

Mr. HASTINGS of Washington. Madam Chairman, I am very pleased to yield 2 minutes to the gentlemen from California (Mr. MCCLINTOCK), another member of the Natural Resources Committee.

□ 1500

Mr. MCCLINTOCK. Madam Chairman, people need to understand exactly what is going on here. The U.S. Forest Service and other Federal agencies have begun demanding that privately-owned businesses surrender their long-held water rights simply as a condition of receiving routine renewals in their special use permit so that they can continue to operate on public land.

This is a radical departure from more than 100 years of Federal deference to State law on this issue. It amounts to an uncompensated taking and is a violation of the Fifth Amendment of the Constitution, and it is an affront to State law, under which the Federal Government must acquire water rights through the proper channels as would any other user.

Now, there are 121 ski areas on Federal public lands that are affected by this practice; 14 of them are in my district. These businesses rely on their water rights for snowmaking. They use this water 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, while jeopardizing these enterprises all together and all the direct employment, spinoff economic activity, and tax revenues that they provide.

This involved far more than ski resorts. Our Subcommittee on Water and Power has also received reports of similar tactics directed against farm and ranch operations that rely on State-recognized water rights for irrigation and stock watering.

Mr. TIPTON's bill simply directs Federal agencies to stop perverting what should be a routine permitting process into an excuse to extract long-held water rights from private owners.

Mrs. NAPOLITANO. Madam Chair, I now yield such time as she may consume to the gentlewoman from Massachusetts (Ms. TSONGAS).

Ms. TSONGAS. Madam Chair, I rise in opposition to H.R. 3189 because it could have severe unintended consequences for the Third District of Massachusetts, which I represent.

A hearing on the bill was held in a most untimely manner, during a government shutdown, thus preventing the Forest Service, Fish and Wildlife Service, National Park Service or any other administration official from answering questions on this legislation.

Given the harsh statements about these very important agencies coming from the other side of the aisle, it seems only fair to have given them a chance to address these charges. According to "Views" of this legislation submitted by the Department of Interior after the fact, this bill "could significantly impact the Department's ability to manage water-related resources within public lands." It also goes on to say that "the legislation is overly broad and could have numerous unintended consequences that would affect existing law and voluntarily agreements."

My constituents echo this statement. From a local organization that works tirelessly to protect our rivers and watershed in Massachusetts, they say: "The bill is so very broad it is fairly impossible to assess its true impact. On those very grounds it should not be passed."

I will be supporting the Polis amendment to narrow the scope of this legislation to its original purpose and to address the legitimate concerns of the ski industry. If this amendment is not adopted, I urge my colleagues to heed the advice of my constituents and to reject this bill.

Mr. HASTINGS of Washington. Madam Chairman, I am very pleased to yield 2 minutes to the gentleman from Utah (Mr. BISHOP), a member of the House Natural Resources Committee.

Mr. BISHOP of Utah. Madam Chair, when the ranking member was speaking, he quoted from the bill and said: This does not limit the Secretary's right, nor does it expand the Secretary's right. So he said then, What does it actually do?

What it does is very simple. It stops the Federal Government from hurting people. This came to view in the Federal Government trying to take away water rights from ski resorts, and not just in Colorado. It was all ski resorts.

As I have said repeatedly, the ski resorts in Utah are far more significant and far better than the ski resorts in Colorado. It affects all of us.

It is not just limited to ski resorts. We also found out these same tactics have been used by BLM and other entities to affect farmers and ranches, same concept, same area.

So what the Tipton bill is trying to do is solve the problem for everybody, not just for a few people. Even people in the East who have water rights will be protected by this bill, whether they recognize that or not.

I want to introduce you to a guy by the name of Tom Lowry. He came to our committee to testify about what they were doing. This is a person, as soon as he got his ranch, the Federal Government—the BLM in this case—started to attack his private water rights. It took him \$800,000 in legal fees to go through the system to try and protect his rights.

He eventually got to the Idaho Supreme Court and won, where the Supreme Court said: You are right, the Federal Government was wrong, they have to back up. But it cost him 800 grand in legal fees to do it. That is what the Tipton bill is trying to solve—the rights of those ranchers and those farmers, the rights of ski resorts to actually conduct business and have their rights protected.

That is why any effort to try and limit this down to say, oh, let's just deal with the ski resorts because we care about them, and forget the Tom Lowrys of this world, is a ridiculous approach. The issue is, How can we protect the rights of our people? That is what Congress is supposed to do. The Forest Service hasn't solved their problem yet. They have withdrawn their rules but haven't changed the rules. They have still yet to propose new ones. It is the purpose, and the right, and the responsibility of Congress to step in.

The CHAIR. The time of the gentleman has expired.

Mr. HASTINGS of Washington. I yield the gentleman an additional 30 seconds.

Mr. BISHOP of Utah. It is the responsibility of Congress to tell the bureaucracy what they can and cannot do. We establish laws, not their rules and regulations, and we should tell them they have to respect the rights of individuals, and treat them as real people, and not take away their personal property rights, and that is exactly what the Tipton bill does.

Mrs. NAPOLITANO. Madam Chair, may I ask how many speakers my colleague from the other side has?

Mr. HASTINGS of Washington. Madam Chair, I have at least four others, besides myself, that want to address this very important issue.

Mrs. NAPOLITANO. Madam Chair, I reserve the balance of my time.

Mr. HASTINGS of Washington. I am very pleased to yield 2 minutes to the gentleman from Missouri (Mr. SMITH)

another member of the Natural Resources Committee.

Mr. SMITH of Missouri. Madam Chairwoman, I am proud to stand here with my colleagues today in support of H.R. 3189, the Water Rights Protection Act. With the drought going on in California, and the Federal Government strong-arming private property owners into giving up their water rights, I am afraid that some of my colleagues may think that the Federal confiscation and mismanagement of water resources only affects the West.

Let me tell you, this issue of the Federal Government intruding on private property and water rights is not just limited to the West. In my district in southeast Missouri, time and time again, ill-thought Federal policy has threatened, and will continue, unfortunately, to threaten, private landowners.

In my now 9 months and 8 days in Congress, we have already had to fight back Federal attempts to restrict citizens in my district from using water.

The Department of the Interior tried to create restrictive "buffer zones" as a part of the National Blueway System that would have taken away private property rights. Fortunately, we got this program stopped. While the legal framework for water rights is different in the West, this administration's disregard for private landowners applies everywhere.

I urge my colleagues to support this bill to protect water rights not only because it will protect holders of water rights in Western States, but also because it sends a strong, direct message that Congress is tired of these schemes to administratively take away private property rights.

Mrs. NAPOLITANO. Madam Chair, there is no taking of anybody's water rights in this case and the majority knows it. Claiming this is a taking is misleading and irresponsible.

The only way State or private water rights could, I repeat, could be transferred or diminished in any way is if the owner of those rights volunteers to a transfer or a limitation to a portion of those rights as part of a deal to receive the permission to use Federal land.

Volunteering to limit your water rights in exchange for the use of Federal land, taxpayer land, is the opposite of taking.

The various court cases the majority has thrown around deal with legitimate, I repeat, legitimate water rights issues; cases where there are overlapping or conflicting claims over the same water. This is not that type of a case.

I defy my colleagues to produce any case law holding that a decision to give up a water right, voluntarily, in order to get another Federal benefit is a taking. There are no such cases.

Madam Chair, I reserve the balance of my time.

Mr. HASTINGS of Washington. Madam Chairman, I am very pleased to

yield 2 minutes to the gentleman from Colorado (Mr. GARDNER), who I think was a member of the committee but is not anymore.

Mr. GARDNER. Madam Chair, I thank the chairman for his work on this very important issue, and my colleague from Colorado (Mr. TIPTON) for his hard work to protect Colorado water rights.

You know, if you go to the capitol of Colorado, you go into the rotunda of that great and beautiful building, there on the wall on a mural are the words of a poem by Thomas Hornsby Ferril, and that poem says: "Here is a land where life is written in water."

The foundational laws of our great State deal with the waters of Colorado, the four corners of our State, whose agriculture, commerce, industry, and municipalities depend on that water and, yes, our ski industries, our farmers, our ranchers.

Thank goodness for legislation like this that will protect our water rights. Thank goodness for legislation like this that will make sure that the State's water law remains supreme.

How dare this body think that the Federal Government has a right to control our water or to condition permits based on the blackmail of a permit issuance from a ski resort, from a farmer, from a city.

These rights have gone through Colorado water law for decades, over a century. Hundreds of millions of dollars have been spent in Colorado to adjudicate these rights.

To think that the Federal Government can come in and take them because they won't issue a permit unless you give it to them, that is a taking of water. The Federal Government has no right to do that.

It is our State law in water that remains supreme. It is our State law that must remain supreme when it comes to the water of our land.

Here is a land where life is written in water. Those words will remain in our great State. Our laws will remain, and thank goodness for legislation like this to make sure that our State can control its water, not Washington, D.C.

Mrs. NAPOLITANO. Madam Chair, the base bill actually creates all kinds of uncertainty, and allows a ski area owner to sell their water rights.

If you are a local business owner in that area who depends on the ski resort business, let's say you own a restaurant or an equipment store or have a hotel, H.R. 3189 means that you have no idea, from one year to the next, whether the resort, which brings people to town, will still be operating if it has water.

If the water rights are not tied to the resort in any way, which is what H.R. 3189 wants to ensure, there is no guarantee that the owners won't sell the water, leaving the Forest Service holding a ski resort that cannot operate without that water because the water rights have been previously sold.

It is the Forest Service that is trying to create some minimal certainty that

the resort would have current water rights to keep running, even if the current owners were to leave.

It is H.R. 3189 that is trying to prevent that certainty.

Madam Chair, I reserve the balance of my time.

Mr. HASTINGS of Washington. Madam Chair, I am very pleased to yield 2 minutes to the gentleman from Louisiana (Mr. SCALISE), a former member of the House Natural Resources Committee.

□ 1515

Mr. SCALISE. I thank the chairman for yielding, and I want to thank the gentleman from Colorado (Mr. TIPTON) for leading on this issue.

Madam Chair, I rise in strong support of this legislation that finally puts a check and a balance on Federal agencies that are literally out there shaking down landowners over their property rights.

When you look at what the Federal Government is doing and you wonder why people are losing faith in the government, why people don't trust government, when a Federal agent shows up and says the only way you can get a permit is if you give up your property rights to your water, literally, extortion is coming from Federal bureaucrats.

This is not the way our government is supposed to operate, Madam Chair. This is what this legislation is here to remedy.

When you look at what is going on, it is not just the Secretary of the Interior and the Secretary of Agriculture. We have seen this from other Federal agencies. Look at what the EPA does with their sue-and-settle process, where they literally go behind the cloak of darkness and cut secret deals and, again, force people to do things that aren't even in statute, just as a condition of getting basic permits. This is not how government is supposed to operate.

So while we have seen some of the egregious abuses limited in the Western parts of our country, this is not just a Western issue, Madam Chair. All Americans ought to be concerned when the Federal Government is literally shaking down and extorting Americans and forcing them to give away their private property rights just as a condition of getting a permit.

It is not right. It is not the right way to treat people. It is not the right way for the Federal Government to operate. This bill finally remedies that problem. It stops those abuses. I urge strong support of the legislation.

Mrs. NAPOLITANO. Madam Chair, H.R. 3189 turns the status quo on its head in order to provide a certain class of users a new advantage over all other users of our public lands.

It strikes me as interesting that I have heard farmers and ranchers mentioned a couple of times, although this, apparently, also affects grazing lands, which I believe farmers and ranchers

do use; and unfortunately, I am sure they have not looked at it well enough to understand what really could happen.

The status quo is that Federal land managers have to try to balance multiple competing uses of our public/taxpayer lands—recreation, timber, grazing, conservation, energy production, and the list goes on.

Under the status quo, one of the tools land managers use to achieve this balance is the ability to condition certain uses of public lands—taxpayer lands—on an agreement to transfer or limit water rights.

If you want the ability to graze or cut timber or build a dam on public lands, you have to agree to leave some water in the river for other uses, like recreation, habitat protection, et cetera.

If that authority is taken away, as the bill would do, then certain kinds of users of our public lands get to take all the water they want, leaving everybody else literally hanging high and very dry.

The status quo is balanced. H.R. 3189 tips the scale all the way in favor of a certain class of users and turns the status quo into chaos.

I reserve the balance of my time.

Mr. HASTINGS of Washington. Madam Chairman, I am very pleased to yield 2 minutes to the gentleman from Georgia (Mr. WOODALL), a member of the Rules Committee.

Mr. WOODALL. I thank the chairman for yielding.

Madam Chair, this is often characterized as a Western issue, and it is not a Western issue. The water wars that go on in the West are certainly a special type of battle; but this is an American issue in what it does.

There are two really interesting things going on, on the House floor today, that I hope all of my colleagues and I hope the American people are watching.

On the one hand, there is a really neat moment of agreement that is happening here. You hear so much about disagreement in Washington. The Federal Government issues an order that says, in order to continue to exercise your business, you must surrender your private property to the government. Well, we could all agree that is outrageous.

I thank the gentleman from Colorado (Mr. TIPTON) for leading in the effort to repeal that, which has been a bipartisan effort on both sides of the aisle. We have an actual order—an actual proposal, and we can come together and agree that this is not who we are, as a people. It is very interesting, and I am glad that we are able to do that.

The second thing that is happening, Madam Chair, is that there is a concern that a certain class of citizen is going to get a higher and better use of land; and I just want to point out that that certain class is the owner of a private property right. Right? That is actually the debate that is happening here.

If you own something, if something belongs to you, should you be allowed to use it? Or in the name of creating a better country, in the spirit of maximizing the utility of Federal lands, should the Federal Government be able to take that from you and redistribute it, so that things are fairer? That is a legitimate discussion to have.

I come down on the side of my friend from Colorado who says not only is it outrageous that the government tried to take private property rights in this circumstance; but why not take this step now to recognize that private property means something? Not only are we going to protect our ski resorts, but we are going to make sure this never happens to any other American citizens again.

“Extortion” is a strong word. It is a strong word, but I can think of no other word to apply to what the government was trying to do here today. I am grateful to my friends on both sides of the aisle for moving to stop that.

Mrs. NAPOLITANO. I reserve the balance of my time, Madam Chair.

Mr. HASTINGS of Washington. Madam Chair, I am very pleased to yield 1½ minutes to the gentleman from California (Mr. LAMALFA), a member of the Natural Resources Committee.

Mr. LAMALFA. I thank the chairman for yielding.

Madam Chair, I am glad to be able to speak today on H.R. 3189. This bill will have a great impact on many of the resource holders in my district here in the northeast part of California.

Yes, we are going through a drought, but this isn't just an issue that might affect ski resorts or even ranchers. This is a property rights issue that we should be looking at all across the country.

It is very dangerous when the U.S. Forest Service or BLM can just come in and arbitrarily decide, after long-held water rights—some of these ranches have been around 150 years or more—that they can change the game—change the rules.

The ranches have been around longer than some of these bureaucracies; yet they want to come in and say: we are going to change the game because we have decided it should be different.

Now, when you have this type of right under fire for something as beneficial—farming and ranching, grazing is actually beneficial to forest land, towards fire suppression—and yet, we have people who think that this is somehow a special right or something that is going to take additional water away from other people.

These are already adjudicated water rights—pre-1914 water rights in California. They are not taking more than what already belongs to them, so it is really a misnomer to think that we are now somehow rejiggering this because it is going to take more from other people.

For 150 years, they have been around; and now, in this day and age, because

of the thoughts of a few bureaucrats who want to do this by extortion—which is what it is—you get a permit only if you give up something that has belonged to you for many, many years.

It belongs to them because it is a long-held water right—a long-held property right, so I am glad to help sponsor and support this bill.

Mrs. NAPOLITANO. Madam Chair, I yield myself such time as I may consume.

My colleague is right, but then let's hold a hearing on the water rights themselves and bring the impacted and affected parties to the table, so that there is a fair hearing which is open, transparent, and fair, but we haven't done that.

We are talking about H.R. 3189, which essentially was set up to deal with the differences between the ski resorts and the Forest Service.

Water belongs to the State, and the State gives people the right to use it. It is owned by the people of the United States.

I reserve the balance of my time.

Mr. HASTINGS of Washington. Madam Chairman, I will reserve the balance of my time.

Mrs. NAPOLITANO. Madam Chair, I yield such time as he may consume to the gentleman from Colorado, Congressman POLIS.

Mr. POLIS. I thank the gentlewoman for yielding.

Madam Chair, I want to make it clear that I was an original sponsor of this bill. Like my colleague from Colorado (Mr. TIPTON), I wanted to address the 2011 directive as it affected ski resorts.

However, this bill, in markup and through the manager's amendment, became worse. We were unable to get the improvements that we needed to narrow the scope; and it became a Republican job-killing, water-grabbing bill, which was not the original intent.

Even the areas where the intent was to help the ski areas—in Summit County and Eagle County in my district, in Pitkin County in Mr. TIPTON's district—the counties have all come out against this very bill.

It is a Republican water-grabbing, job-killing bill, and absent the amendment that I proposed, it is not something that I can support. I encourage my colleagues on my side of the aisle who value recreational opportunities, like fishing and white-water rafting, to join me in opposing this bill, unless the Polis amendment is incorporated into the bill.

We will soon begin a debate on that amendment. This debate would focus the actual bill to fulfill its purpose, and I hope that this body will adopt it.

Mr. HASTINGS of Washington. Madam Chairman, I will advise my friend from California that I am prepared to close and will reserve the balance of my time.

Mrs. NAPOLITANO. Madam Chair, I am certainly grateful for the opportunity to have this dialogue, and I

think it is very important for the American people to listen in and understand that one bill that was meant to cover a specific issue has been turned into a gigantic—I would say—mess.

We understand the reasoning behind it, to some extent, and we trust that our colleagues understand and are prepared to vote on something that may have unintended consequences in their own backyards.

This bill is flawed. It is flawed on process, on policy, and in claiming that it does protect State water rights. The Governors Association has indicated that they wanted to ensure that the states' water rights remain protected.

We welcome legislation that devises a real solution to a targeted problem, which the amendment that Mr. POLIS has on the floor will address. We are supportive of that amendment and hope others will support his amendment, which was made in order.

We, unfortunately, feel that H.R. 3189 does not solve the problem. It creates more problems and has no chance of being enacted into law, and I trust that we will do the right thing by the people because we are talking about protecting the U.S. public, their lands, and their water.

I yield back the balance of my time.

Mr. HASTINGS of Washington. I yield myself the balance of the time.

Madam Chairman, let me just comment on a few points here that were made by my friends on the other side of the aisle. There was some concern about the timing of the hearing and the people who were invited.

I just want to make this point: when the hearing was held, we have to have advance notice. We had witnesses coming in from across the country, so we are going to have the hearing on the day we said because of the expense incurred by those private citizens who wanted to come here and testify to help protect private water rights.

The second point is this was a bipartisan bill, as my colleague from Colorado (Mr. POLIS) admitted. He was an original cosponsor of the bill. Maybe that was a reason why my friends on the other side of the aisle did not call a witness for or against the original legislation.

I just wanted to make that point. The hearing was scheduled, and it had to go through because of the expense of the private citizens coming in to testify.

I want to make another point, too, that some of my colleagues have made. Several of them have said that this legislation redefines Federal water rights.

Madam Chairman, that is simply not true. If they read the bill, they would see that the definition is for the purpose of this act only, meaning that the definition is only for this act, so that doesn't hold up either.

Just about all of my colleagues on the other side that talked about the Federal lands and so forth—I will acknowledge that this is about Federal activity on Federal lands, but no-

where—nowhere did my colleagues suggest or say that the Federal Government had the water rights.

Why? Because that is states' rights; and as my colleague from Wyoming said: Yes, it is Federal land; but it is State water, and you have to mesh those together.

And finally—I think this is probably more important than anything else, and frankly, a debate like this has been going on for some time.

□ 1530

We agree—we agree, both sides—that ski resorts have been potentially compromised by the threat of the Federal Government saying “no permit unless you give up water.” Both sides agree on that. The question is, What is the remedy?

The big difference I think between the two sides is this. Their remedy is, well, the rulemaking isn't over. Let's find out what the rulemaking is, and then we will respond to it. Our side takes a different approach. Our side says wait a minute. We are the House of Representatives. We are part of the Congress. We make the law.

That is what this legislation does. It makes the law saying the Federal Government cannot extort, through the permitting process, State water rights. It is as simple as that. And so if we are going to continue to have the debate in this House on divisions between the two parties and what their philosophy is, frankly, I welcome this, because it appears every time we have a debate similar to this, their side says let the bureaucracy write the laws. We say wait a minute. That is not the way it is supposed to be. We are the Congress. We write the laws. That is what this debate is about here today, and I look forward to the amendment process.

In the meantime, I urge my colleagues to support this legislation. It has been characterized as a Western piece of legislation, but as Mr. WOODALL says, indeed, it is not. It affects all water rights which are the province of the States.

It is good legislation, and I yield back the balance of my time.

Mr. CONNOLLY. Madam Chair, this legislation before us today claims to resolve a local and narrow conflict over water rights between the U.S. Forest Service and the Colorado ski industry. Unfortunately, this bill's scope and impacts have been expanded far beyond its originally stated intent.

Under the guise of addressing a specific local water rights issue the Republican majority is once again trying to tie the hands of agencies across the government as they work to protect and restore our waterways, public lands, and watersheds by restricting all actions that require a federal permit.

The deleterious effects, both intended and unintended, resulting from this deeply flawed bill will ripple far and wide across our country including in my region, most notably the Chesapeake Bay.

The Chesapeake Bay watershed is a national treasure stretching more than 64,000 square miles, encompassing six states, 150 major rivers and streams, and is home to more than 17 million people. It is America's largest estuary. But the Bay is in need of restoration.

Since 1983 federal, state, and local stakeholders have worked together to implement and refine the Chesapeake Bay Watershed Agreement. As a result we have seen significant improvements in phosphorus and sediment pollution reduction, better management of fisheries including the restoration of blue crab, and restoration of habitats and wetlands.

According to the Chesapeake Bay Foundation's 2012 State of the Bay Report, of the 13 indicators being monitored, improvements have been made in five and only one indicator declined. Of particular importance, habitat scores received a B+ and rockfish and crab fishery restoration received an A and B+ respectively.

That progress has been achieved only by using all the tools at our disposal, including requiring conditional permitting for water rights.

There is still more work to be done to get the Bay restored to full health. That is why I offered an amendment with colleagues from Virginia, Maryland, and Pennsylvania that would ensure that no provisions in the bill would affect water rights agreements within the Chesapeake Bay watershed. Sadly, the Republican-controlled Rules Committee refused to allow a floor vote on this.

One wonders about the true intent of this bill. Why didn't Republicans accept our amendment to protect the Bay? Why did they refuse similar amendments that would protect other local treasures including the Long Island Sound in the Northeast, the Puget Sound in the Northwest, and the California Bay Delta? All of these projects are threatened by this bill.

Unless this bill is amended to address these discrete local issues, I urge my colleagues to oppose H.R. 3189, an overreach that will harm watersheds across the nation.

The CHAIR. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on Natural Resources, printed in the bill, shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 3189

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Water Rights Protection Act”.

SEC. 2. TREATMENT OF WATER RIGHTS.

The Secretary of the Interior and the Secretary of Agriculture—

(1) shall not condition the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the transfer of any water right directly to the United States, or any impairment of title, in whole or in part, granted or otherwise recognized under State law, by Federal or State adjudication, decree, or other judgment, or pursuant to any interstate water compact; and

(2) shall not require any water user to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement.

SEC. 3. DEFINITION.

For purposes of this Act, the term "water right" means any surface, groundwater, or storage use filed, permitted, certificated, confirmed, decreed, adjudicated, or otherwise recognized by a judicial proceeding or by the State in which the user acquires possession of the water or puts it to beneficial use.

SEC. 4. IMPACT ON EXISTING AUTHORITY.

Nothing in this Act limits or expands any existing authority of the Secretaries to condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on Federal lands subject to their respective jurisdictions.

The CHAIR. No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in part A of House Report 113-379. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. TIPTON

The CHAIR. It is now in order to consider amendment No. 1 printed in part A of House Report 113-379.

Mr. TIPTON. Madam Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 3, line 13, insert "(including joint and sole ownership)" after "water right".

Page 4, line 9, insert "legally recognized" after "existing".

Page 4, line 10, insert "issue, grant, or" before "condition".

Page 4, after line 13, insert the following:

SEC. 5. EFFECT ON RECLAMATION CONTRACTS.

Nothing in this Act shall in any way interfere with existing or future Bureau of Reclamation contracts entered into pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act).

SEC. 6. EFFECT ON ENDANGERED SPECIES ACT.

Nothing in this Act shall affect the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 7. EFFECT ON FEDERAL RESERVED WATER RIGHTS.

Nothing in this Act limits or expands any existing reserved water rights of the Federal Government on lands administered by the Secretary of the Interior or the Secretary of Agriculture.

SEC. 8. EFFECT ON FEDERAL POWER ACT.

Nothing in this Act limits or expands authorities pursuant to sections 4(e), 10(j), or 18

of the Federal Power Act (16 U.S.C. 797(e), 803(j), and 811).

The CHAIR. Pursuant to House Resolution 515, the gentleman from Colorado (Mr. TIPTON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Colorado.

Mr. TIPTON. Madam Chair, I offer this amendment to further strengthen and improve this bipartisan bill. As we heard during general debate, the bill has one goal: to eliminate Federal expropriation of private property.

The Federal Government cannot and should not take and seize what it does not own without compensation, but that has been happening, and the threat continues to exist for a host of individuals and businesses who responsibly use our public lands for multiple purposes.

This bill ends this Federal property rights grab; however, we just heard a litany of charges that the bill impacts other Federal actions. Nothing could be further from the truth. The bill already has a savings clause ensuring that any existing Federal authorities are not impacted. Importantly, the Federal Government does not have the authority to take private property rights without just compensation; but, to further clarify, my amendment reiterates the specific actions into the bill—the protection of existing Federal water contracts.

The Colorado River Water District, the Family Farm Alliance, the National Water Resources Association, all organizations whose members have contracts with the Bureau of Reclamation, already support this bill, and that should have been enough. Yet we heard rhetoric from the other side today that water contracts are in danger despite the ardent support of water organizations.

This amendment specifically reiterates this protection, ensuring implementation of the Endangered Species Act and any flows needed for the species, the protection of reserved water rights for national parks and other Federal lands, and continuing the hydropower relicensing process for non-Federal dams. These additions to the bill are a simple reiteration of protections already built into the bipartisan bill.

Yet, in a good-faith effort to dispel any myths, I offer these provisions to ensure, once and for all, that the only thing the bill does is protect private water rights owners from being expropriated by the Federal Government through underhanded administrative means.

Mr. HASTINGS of Washington. Will the gentleman yield?

Mr. TIPTON. I certainly yield to the chairman.

Mr. HASTINGS of Washington. I thank the gentleman for his work on the underlying bill and his amendment.

I support the amendment.

Mr. TIPTON. Madam Chair, I reserve the balance of my time.

Mrs. NAPOLITANO. Madam Chair, I rise in opposition to the amendment.

The CHAIR. The gentlewoman from California is recognized for 5 minutes.

Mrs. NAPOLITANO. Madam Chair, the amendment doesn't fix the bill because the bill cannot be fixed.

The savings clause in the base bill and the savings clauses that will likely be added by the manager's amendment are symptoms of the problem with the initial bill, not the solution.

If you have a 4-page bill and you need to insert five different savings clauses, you have a problem, my friends. The need to insert layer upon layer of text trying to explain that you don't mean for the bill to do this or that proves beyond any doubt that the bill is a massive and dangerous overreach.

We have no idea how these savings clauses operate in the context of the bill, but what we do know is that, even with the five savings clauses, you haven't caught all the problems.

The only responsible policy is the one offered by Mr. POLIS in his substitute amendment which focuses, again, strictly on the main issue that brought this to the forefront, and that was the Forest Service and the ski resorts. Everything else is just a failed attempt to fix the bill.

Madam Chair, I reserve the balance of my time.

Mr. TIPTON. Madam Chair, I suppose I can bring some good news. It is not a 5-page bill, but actually a 3-page bill that we have actually put forward.

What I think we are really frustrated about is that we often hear from our colleagues that they want to be able to have bipartisanship. They are concerned about endangered species. While it is already protected in the bill, we add a further savings clause to be able to protect it.

They are concerned about the Federal Government being able to continue operations under legal authority—already protected in the original bill. We put in an additional savings clause to be able to address that.

We are concerned even more than they are, apparently, about standing up for Native American tribes in some proposed amendments that we are going to be putting forward to protect them from using Native tribes as a tool to extort water for the Federal Government.

This is a commonsense, sensible piece of legislation. Our colleagues want to say that it is expanded. Actually, I have the original bill in my hand. They say it is simply about ski resorts. We have common ground. I, too, want to be able to protect ski resorts, but I am not willing to sacrifice, on the altar of the Federal Government, our farm and ranch communities in addition to our municipalities.

Looking at the original bill, it doesn't mention ski areas once, yet an author of an amendment today said it has become more broad. Show me how.

This is a good piece of legislation. The manager's amendment addresses their very concerns.

With that, I reserve the balance of my time.

Mrs. NAPOLITANO. Madam Chairman, I yield 2 minutes to my colleague from Colorado (Mr. POLIS).

Mr. POLIS. Madam Chair, I want to be clear that the concerns are by no means limited to the Endangered Species Act. The Republicans may care about endangered species, but they don't care about jobs. The Forest Service, the BLM, Interior, and Agriculture agencies all have relevant authority with regard to bypass flows. None of those are mentioned under this particular manager's amendment.

What this manager's amendment shows is Republicans care more about endangered species than they do about jobs in our mountain resort areas. This manager's amendment added the term "impairment of title." We wanted this limited to "transfer of title" because "impairment of title" actually expands the scope of the bill from the original bill. In addition, the so-called savings clause actually appears to negate the very bill that it appears in.

This takes a bill that we had offered language to the committee and to Representative TIPTON to make this a bipartisan bill. I think it could have very closely unanimously passed the House, certainly enough to pass a suspension, and instead they made a bill that even the very ski areas that they are claiming to help—actually, all the counties that I have that have ski resorts actually oppose this job-killing Republican water grab bill.

Mr. TIPTON. Madam Chair, how much time remains?

The CHAIR. The gentleman from Colorado has 1½ minutes remaining. The gentlewoman from California has 2½ minutes remaining.

Mr. TIPTON. Madam Chair, for the point of clarity, to ease the concerns of my colleague from Colorado, the National Ski Areas Association endorses this bill today. That has not changed. Also, to alleviate the concerns that you just demonstrated, no existing authorities will be impacted under this legislation. No existing authorities will be impacted. No bypass flows will be impacted.

Effectively, what this bill is doing, Madam Chair, is we are codifying existing practice, which I think we all agree is a desirable thing to have continue.

This is about political theater. The job-killing part of what is happening right now is being conducted by the Federal Government. They are killing jobs with a Federal Government water grab.

Either you stand with the farmers, the ranchers, and long-held practices of the West or you don't. If you don't, I do, and that is what this bill continues to support.

Madam Chairman, I reserve the balance of my time.

Mrs. NAPOLITANO. Madam Chair, I know I have said it before, the ski resort association wants to focus on this bill, so I am suggesting that we do ap-

prove the Polis amendment and then hold a hearing—an open hearing and a transparent hearing—for those agencies that are impacted so they may have the ability to have a word and be able to move this forward. I might add that the savings clause does not include the national parks. So all the units, Grand Canyon and others, are impacted.

I reserve the balance of my time.

Mr. TIPTON. Madam Chair, again, I will refer my colleagues to the text of the bill. No Federal water rights that they currently have are going to be impaired. That includes national parks.

We continue to hear about the upcoming Polis amendment. The original bill that Mr. POLIS and I introduced never specifically mentioned just ski areas. It talks about any permit. So if you care about farmers, if you care about ranchers, if you care about municipalities, and if you care about ski areas, which we all share, let's protect those private property rights from Federal extortion.

With that, I yield back the balance of my time.

Mrs. NAPOLITANO. Madam Chair, when we considered the bill in committee, the majority claimed the bill had nothing to do with the ESA or the bypass flows or FERC or reclamation projects, which we pointed out that it did. Now they have a savings clause for each one of those issues. Now they admit their mistakes. Sadly, when a bill has this many holes in it, no amendment can fix them all, so this bill cannot be saved by this amendment.

I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Colorado (Mr. TIPTON).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. MULLIN

The CHAIR. It is now in order to consider amendment No. 2 printed in part A of House Report 113-379.

Mr. MULLIN. Madam Chair, I have an amendment at the table.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 3, line 18, insert "(including any federally recognized Indian tribe)" after "water user".

Page 4, line 7, insert after the period "Such term shall include water rights for federally recognized Indian tribes."

Page 4, after line 13, insert the following:

SEC. 5. EFFECT ON INDIAN WATER RIGHTS.

Nothing in this Act limits or expands any existing reserved water right or treaty right of any federally recognized Indian tribe.

The CHAIR. Pursuant to House Resolution 515, the gentleman from Oklahoma (Mr. MULLIN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Oklahoma.

Mr. MULLIN. Madam Chair, protecting the rights of the sovereign tribes is a top priority of mine, and I am proud to work with Congressman TIPTON in supporting the Water Rights

Protection Act and offering this amendment to clarify protections for the water rights of American Indian tribes. Many tribes rely on reserved water rights and water rights guaranteed by treaty to provide critical water supplies for their people. This amendment makes clear that these water rights are fully protected.

This amendment also ensures that the Department of the Interior and the Department of Agriculture can't use one-sided permits, licenses, approvals, and other land management tools to take water from Indian tribes without just compensation. American Indian tribes have a distinguished record of being outstanding stewards of their water supplies and should never have to fear forfeiture of their water rights to the Federal Government. By prohibiting these Federal agencies from using heavy-handed tactics to take Indian water rights, we can proactively protect tribes from the potential Federal water grabs.

□ 1545

Taken together, H.R. 3189 and this amendment provide comprehensive water rights protections for all water users and help ensure the water supply certainty and jobs that are dependent on those rights.

I thank the chairman and urge a "yes" vote on this amendment.

I reserve the balance of my time.

Mrs. NAPOLITANO. Madam Chair, I rise in opposition to the amendment.

The CHAIR. The gentlewoman from California is recognized for 5 minutes.

Mrs. NAPOLITANO. Madam Chair, this amendment does not fix the bill because the bill cannot be fixed.

The savings clause in the base bill and the savings clause that Mr. MULLIN's amendment includes are symptoms of the problem that we pointed out before in this bill, not the solution. The amendment would be the sixth savings clause added to this 4-page bill.

I do support Representative MULLIN's and Representative COLE's efforts in protecting our Native American communities' water rights. As the gentleman from Oklahoma (Mr. COLE) mentioned at the Rules Committee last night, Native American water rights are the oldest water rights in the system. They are time immemorial, and yet we choose to ignore them.

I remember Congressman KILDEE repeatedly saying, under the Constitution, they hold the first water rights in the United States, and yet we do not recognize them. Yet, since Republicans took the majority 4 years ago, there has been no legislation, no oversight hearings on any Indian water rights settlements.

If we want to support Native American water rights, Congress should consider tribal water rights legislation, enact tribal water rights legislation, and fund tribal water rights legislation.

I reserve the balance of my time.

Mr. MULLIN. I yield 1 minute to the gentleman from Washington, Chairman HASTINGS.

Mr. HASTINGS of Washington. Madam Chair, I thank the gentleman for yielding, and I want to commend the gentleman from Oklahoma for his hard work on behalf of Native Americans.

American Indian tribes rely on their water rights to provide critical supplies to their people and to promote and expand their local economies. These rights must be protected from Federal regulations that are designed to take water without paying for that water, and this amendment does just that.

This forward-looking amendment simply allows tribes to have the same protections that are afforded to others in the bill by prohibiting the Federal Government from using routine permits to extort private water rights. It also preserves the water rights guaranteed to tribes by treaty and by Federal reservation. Although this bill already does the latter, we believe it is important to clarify this important protection, so I urge my colleagues to support this commonsense amendment. I commend the gentleman for offering it.

Mrs. NAPOLITANO. Madam Chair, I reserve the balance of my time.

Mr. MULLIN. In Indian country, we have learned that we can never just take something that the Federal Government says and take it as truth. We have to always verify. This is simply trying to clarify that the Federal Government has no rights to come onto the Indian land and tell us how we can and can't use our water. This is just simply saying, look, we have the rights; the treaties say we have the rights, and we want to make sure that the Federal Government doesn't come in and grab our water rights. There should be zero opposition to this. There should be bipartisan support.

I yield back the balance of my time.

Mrs. NAPOLITANO. Madam Chair, this bill is so badly written we really have no idea—I repeat, no idea—what impact this may have on tribes. Yes, Mr. MULLIN, I totally support water rights for Native Americans. We have been working on that for at least 8 years in my subcommittee, as well as other water rights owners. We don't oppose your amendment, and we honestly really truly hope this will offer adequate protection to tribes. They deserve it. It is a long time coming. But, as we have said, the bill is beyond repair. Even if we were to adopt the amendment, H.R. 3189 is dangerous legislation that must be defeated.

I urge my colleagues to vote against this amendment; although, I don't oppose the amendment, but I do oppose the bill, H.R. 3189.

I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Oklahoma (Mr. MULLIN).

The amendment was agreed to.

AMENDMENT NO. 3 OFFERED BY MR. POLIS

The CHAIR. It is now in order to consider amendment No. 3 printed in part A of House Report 113-379.

Mr. POLIS. Madam Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PROHIBITION ON CONDITIONING SKI AREA PERMIT ON TRANSFER OR ACQUISITION OF WATER RIGHTS ON BEHALF OF THE UNITED STATES.

The Secretary of Agriculture, acting through the Chief of the Forest Service, shall not—

(1) condition the issuance, renewal, amendment, or extension of any ski area permit on the transfer of title or ownership, including joint ownership, of any water right granted or otherwise recognized under State law, by Federal or State adjudication, decree, or other judgment, or pursuant to any interstate water compact, directly to the United States; or

(2) require any ski area permittee to apply for or acquire a water right in the name of the United States under State law as a condition of the issuance, renewal, amendment, or extension of any ski area permit.

The CHAIR. Pursuant to House Resolution 515, the gentleman from Colorado (Mr. POLIS) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Colorado.

Mr. POLIS. Madam Chair, my colleague, the gentleman from Colorado (Mr. TIPTON), mentioned the National Ski Areas Association, and I include their February 11 letter for the RECORD. It states here, in part:

However, to make it abundantly clear that ski areas have a narrow and pointed agenda with respect to this legislation and that we are committed to maintaining stream and aquatic species health, we are now advocating changes to the bill to narrow its scope even further. These changes include narrowing the scope of the bill to apply just to the U.S. Forest Service, and clarifying that the bill prohibits forced transfers of ownership of water rights to the United States by inserting the term "title" into the bill.

I believe that my amendment is consistent with the position of the National Ski Areas Association.

I am a strong believer in the original purpose of this bill. Yes, the U.S. Forest Service overstepped its authority by issuing a policy that requires ski area permittees to transfer ownership of their water rights to the Federal Government.

Ski areas are the lifeblood of our mountain communities in Colorado and many communities across the Nation. Their economic viability and strength is extraordinarily important for working families. Ski areas have invested hundreds of millions of dollars of capital, and they can't be simply required to hand over their water rights to the Federal Government. This harmful policy hinders ski resort growth and expansion and harms the economy. My amendment fixes it.

There is a legitimate issue here, and Congress could be solving it in a bipar-

tisan manner. We agree that the 2011 U.S. Forest Service directive is a problem. This could have been a suspension bill, but H.R. 3189, despite our best efforts from my side of the aisle, does not reflect a bipartisan agreement to the water rights issue.

There is not one comparable Federal water rights directive like the U.S. Forest Service directive, but the Republicans couldn't help themselves here, and they have, instead of fixing an issue, created a job-killing, water-grabbing Republican bill that will destroy jobs in Colorado and in mountain resorts across the country.

This process has become convoluted and the bill overly broad. This legislation only serves to cast doubt on the complicated laws and precedents and authorities that make up our Nation's and States' water laws, and that it is critical to remain stable and predictable over time. This expansive legislation undermines jobs and recreational opportunities, from white-water rafting to fishing. Sportsmen's groups oppose this legislation. Ski counties in my district oppose this legislation.

It was brought up in committee yesterday, could the opposition be "political." Well, I want to be clear, one of the ski counties in my district, all three of the commissioners are Republican. Grand County, they oppose this bill unanimously, as do Summit County and Eagle County. Rafting and paddling groups oppose this legislation because it impacts our world-class, white-water runs.

I hope we can fix this bill. We have tried hard throughout this process to offer language in the committee that would make this a bipartisan bill, to offer language to the chief sponsor, Representative TIPTON. Up to this point, we have been rebuffed. This is our last hope to fix this bill and create something that actually responds to the flawed Forest Service directive of 2011. Without this change, this bill has nothing to do with the 2011 directive. It is just talk. It doesn't even respond to the issue it is designed to solve, which is why some of the very same ski communities that wanted a response to the 2011 directive don't even support this bill at this point.

Since ski area water rights are a valuable asset that need to be protected, I am proud to have offered this amendment with Representative KUSTER, Representative DEGETTE, Representative PERLMUTTER, Representative DELBENE, Representative CARTWRIGHT, and Representative HUFFMAN that would fix H.R. 3189, return the bill to its original purpose, lead to a strong House vote, and ensure that any U.S. Forest Service directive will not condition ski area permits on the transfer of title of any water right or require any ski area permittee to acquire a water right in the name of the United States.

I reserve the balance of my time.

NATIONAL SKI AREAS ASSOCIATION,

February 11, 2014.

Re Support for Water Rights Protection Act.

Hon. SCOTT TIPTON,
Cannon HOB,
Washington, DC.
Hon. JARED POLIS,
Longworth House Office Building,
Washington, DC.
Hon. JOHN BARRASSO,
Dirksen Senate Office Building,
Washington, DC.
Hon. MARK UDALL,
Hart Office Building,
Washington, DC.

GENTLEMEN: I am writing on behalf of the ski industry to express the reasons ski areas strongly support passage of the bipartisan Water Rights Protection Act, H.R. 3189/S. 1630, and to advocate changes to the bill to narrow its scope. At the outset, the ski industry would like to express our deep appreciation of your efforts to protect ski area water rights from federal encroachment over the past couple of years. Your leadership on protecting water rights and your commitment to working in a bipartisan fashion to solve this problem on behalf of ski areas and other permittees on federal land have had very positive and real effects to date. While ski areas have enjoyed a long and successful partnership with the Forest Service spanning almost eight decades, Forest Service water policy is an issue on which we simply do not agree. We have invested too much in water rights to simply hand them over to the federal government.

As you are well aware, the Water Rights Protection Act would stop the federal government from illegally seizing water rights from private parties that develop them, such as ski areas, in violation of State water law and 5th Amendment property rights protections. The intent of the bill is narrow—to protect valuable assets of ski areas and other permittees that use federal land from seizure without compensation by the federal government. Essentially everyone agrees on the need for this protection, given recent (and past) Forest Service policy that demands transfer of valuable water rights to the U.S. without compensation. This policy threatened to rock the foundation of over a hundred years' worth of water law in the West, and again, thanks to your intervention, beneficial changes are expected in the future.

The intention of the Water Rights Protection Act is not to impact stream health or aquatic species in any way. Some conservation groups contend that H.R. 3189 has a broader effect than simply protecting water rights, and in fact would hinder federal efforts to protect stream health and fish. Ski areas and other stakeholders strongly disagree with this interpretation of the bill and would never support a bill that had this result. In fact, a "savings clause" was included in the bill to explicitly state that the measure had no other impacts than to protect permittees' water rights from forced transfers. More importantly, the bill does not alter in any way the minimum stream flow protections that are set and enforced by the states on virtually every river and stream. Ski areas support and abide by these minimum stream flow requirements and would never take action to undermine them.

However, to make it abundantly clear that ski areas have a narrow and pointed agenda with respect to this legislation and that we are committed to maintaining stream and aquatic species health, we are now advocating changes to the bill to narrow its scope even further. These changes include narrowing the scope of the bill to apply just to the U.S. Forest Service, and clarifying that the bill prohibits forced transfers of owner-

ship of water rights to the United States by inserting the term "title" into the bill. We offer these changes to demonstrate emphatically our unwavering commitment to maintain stream health and aquatic species, and our narrow focus of simply protecting our valuable water rights assets. These changes are directed at solving the concrete problem at hand, which is overreaching policy by the Forest Service that requires a forced transfer of ownership of water rights from permittees to the United States. The bill will continue to benefit all permittees on Forest Service lands, not just ski areas.

The release of a new water policy is expected from the Forest Service sometime in 2014. Ski areas welcome this new policy change, which we understand will not require a forced transfer of ownership of water rights. The release of this policy will not change the need for federal legislation however. First, the new policy is expected to apply prospectively, such that existing water rights subject to past Forest Service water clauses could continue to be in jeopardy of a taking by the Forest Service. Ski areas are proposing an amendment to the bill to protect against the implementation of such clauses beginning with the effective date of this bill. Ski areas have experienced four changes in Forest Service water policy in the last ten years. Only Congress can help stop the pendulum from swinging and provide ski areas the kind of stability they need to grow and succeed in the future.

After prevailing on our challenge of the Forest Service's water rights takings policy in federal court in 2012, ski areas offered an alternative approach for the Forest Service to consider that would not involve forced transfers of water rights. We offered this alternative in the spirit of partnership, and as a way for the Forest Service to work cooperatively with ski areas to support their viability, and the viability of mountain communities, over the long term. The alternative offered by ski areas was to require resorts to provide successors in interest an option to purchase water rights at fair market value upon sale of a ski area. We continue to support this approach as a viable alternative that meets the needs of the agency, provides ski areas needed flexibility, and respects state water law.

Ski areas are great stewards of water resources. It is important for everyone to remember that only a small portion of water that is used for snowmaking is consumed. Most of the water diverted from streams for snowmaking returns to the watershed. Although it varies from region to region, studies show that approximately 80 percent of the water used for snowmaking returns to the watershed. Since the majority of water used for snowmaking is water purchased by a ski area, brought onsite through diversions, stored on-slope, and typically released more slowly back into the watershed with the seasonal melting of the winter snowpack, snowmaking typically benefits the watershed in which it is taking place, as well as downstream users, and can help counteract the harmful effects of drought. In addition to using a whole array of conservation measures, many resorts impound or store water in reservoirs for use during low flow times of the year without affecting fish or aquatic habitat. The ability to control our water assets and investments—which will be the outcome of passage of the Water Rights Protection Act—will enable us to continue this stewardship in the future. It will also allow us to continue to provide a high quality recreation opportunity for millions of people on the National Forests.

In closing, we thank you for your work to date on this issue, and we look forward to

continuing to work together in cooperation to ensure the bill's passage.

Sincerely,

MICHAEL BERRY,
President.

Mr. HASTINGS of Washington. Madam Chair, I rise in opposition to the amendment.

The CHAIR. The gentleman is recognized for 10 minutes.

Mr. HASTINGS of Washington. I yield myself such time as I may consume.

Madam Chair, I want to thank the gentleman from Colorado for recognizing that the Federal Government's taking of water rights and economic collateral of ski areas is wrong. His amendment also acknowledges that Congress must act to provide long-term certainty rather than rely on vague assurances from bureaucrats that are subject to change at any time.

I also appreciate the gentleman's initial support for the bill as introduced. His attention to this matter and willingness to fight for the ski areas in his district is commendable and has certainly been noted by colleagues on both sides of the aisle.

However, the amendment he offers today completely undermines the bill he originally added his name to in support. The bill, as introduced and in its current improved form, protects private property rights for all—Madam Chairman, all—water users across the country, not just ski areas. By limiting the bill's scope to ski area permits by the Forest Service, the Polis amendment transforms the bill so that it favors one special group at the expense of all others. Ski areas under his amendment would be protected, but any other water owner or user anywhere in the country would be subject to Federal expropriation. It frees the Federal Government to continue targeting the water rights of family farms and ranches and municipalities.

Madam Chair, it is not just wrong for the Federal Government to take water away from ski areas, it is wrong to do it to anyone. There should be no discrimination in this manner. The Polis amendment would eliminate protections for farms and ranches, our Nation's food suppliers. That is why the American Farm Bureau opposes this amendment and supports the underlying bill. The Farm Bureau's members have already been victimized by this Federal overreach, and this amendment would allow that to continue.

Because the Polis amendment is a complete substitute text for the underlying bill, it would strike out all of the protections currently in the bill. The Polis amendment would even eliminate the protections for the Indian treaty rights and Indian water rights that the House just adopted a moment ago with the Mullin amendment.

It is true that the ski areas have suffered greatly at the hands of this Federal overreach. For this reason, the underlying bill does fully protect ski areas, along with every other water

user. How many times do we have to say that? It protects ski areas and all water users, and that is why, as has been mentioned several times, the National Ski Areas Association wrote in February after the committee markup that it strongly supports the bill.

When it comes to protecting the water and private property of American citizens, the Congress shouldn't be picking winners and losers; and Congress should be making the law for that protection, not the bureaucrats. The legislative branch should act to protect all citizens of the executive branch.

It is for these reasons I urge my colleagues to vote "no" on the Polis amendment.

I reserve the balance of my time.

□ 1600

Mr. POLIS. Madam Chair, it is my honor to yield 2 minutes to the gentleman from California (Mrs. NAPOLITANO), the ranking member of the committee.

Mrs. NAPOLITANO. Madam Chair, I thank Mr. POLIS for yielding.

I must say that, again, I must direct attention to the fact that the February 11 letter from the ski resorts focuses on narrowing the bill, not the bill in total, but narrow focus.

Mr. POLIS joined Mr. TIPTON on this bill in an attempt to seek a reasonable solution to the problem facing ski resorts in the West, but when Mr. POLIS tried to work with the majority and when we on the committee tried to work with the majority to make reasonable, responsible changes to the bill, we were told no.

We were told the majority wanted a big, broad bill that goes way beyond the resorts and way beyond the Forest Service. We pointed out that when you start drafting big, broad bills that go beyond the original issue, you will have unintended consequences, but they would not listen.

Mr. POLIS' amendment is the last chance to make this a narrow, bipartisan bill that can actually pass, and we should adopt it.

Again, we don't want a job killing. We don't want a water grab. We don't want specific people to favor. I think the people need to understand it is the farmers and ranchers who benefit.

The six savings clauses the bill needs is not needed. It is in the Polis amendment because the amendment narrows the scope only to ski resorts and National Forest Service.

Mr. HASTINGS of Washington. Madam Chairman, I am very pleased to yield 2 minutes to the gentleman from California (Mr. MCCLINTOCK).

Mr. MCCLINTOCK. Madam Chairman, this amendment creates two different classes of citizens: ski resorts and everybody else.

It leaves the portion of the bill that protects ski resorts from being forced to relinquish their water rights as a condition of continuing to operate in the Federal forests, and that is good,

but then it creates a tier of second class citizens.

Unless you own a ski resort, you are fair game for the same demands by these Federal agencies to either give up your water rights or be forced out of business.

For example, our subcommittee heard testimony from Randy Parker. He is the CEO of the Utah Farm Bureau. He told us that the Forest Service and the Bureau of Land Management have threatened to force farmers that have grazing allotments to give up their water rights as a condition of continuing to use the public lands.

In some cases, these are permits that family businesses have held for generations. The water rights are accorded to them under State law. The Federal Government has no right to usurp that law or to force anybody into the Hobson's choice of closing their business or surrendering their water rights.

This amendment is an affront to the Equal Protection Clause of the 14th Amendment, as well as to the Takings Clause of the Fifth Amendment. These rights are fundamental constitutional rights that are unalienable for every American, not just those who happen to operate ski resorts.

Let's not take the Orwellian position that all Americans are equal, but some are more equal than others.

Mr. POLIS. Madam Chair, I yield 2½ minutes to the gentlelady from New Hampshire (Ms. KUSTER), a cosponsor of the amendment.

Ms. KUSTER. Madam Chairman, I first want to thank my friend, the gentleman from Colorado (Mr. POLIS) for his work on this issue and for leading this amendment.

I rise today in support of this substitute amendment that I am offering with Mr. POLIS and several colleagues in an effort to fix the issues with this legislation, but I wish I wasn't even here today to talk about this amendment. That is because this bill was originally introduced as a bipartisan bill to address a specific problem.

As we have seen all too often around here, the bill that is on the floor today doesn't look anything like it did when it was introduced. The bill that we are considering today wouldn't just address a water rights issue between ski areas and the Forest Service. It would go much further than that, impacting our national park system, wildlife refuges, hydropower relicenses, and so much more.

Where I come from, that doesn't make much sense. I came here to work with both parties to find common ground and to get things done. Instead of pushing partisan legislation that has no chance of becoming law, we should be working together on real solutions. That is why I joined Mr. POLIS to offer this substitute amendment.

What it will do is simple. It will narrow this bill so that it only addresses the issue between ski areas and the Forest Service. There is no need for this legislation to do anything more than that.

Let's pass the Polis amendment and start working together on common-sense policies to create jobs and opportunity for the middle class.

Again, I thank Mr. POLIS for his work on this issue.

Mr. HASTINGS of Washington. Madam Chairman, may I inquire as to how much time I have remaining?

The CHAIR. The gentleman from Washington has 4½ minutes remaining. The gentleman from Colorado has 2½ minutes remaining.

Mr. HASTINGS of Washington. Madam Chairman, I am very pleased to yield 2 minutes to the gentleman from Colorado (Mr. TIPTON), the sponsor of the underlying legislation.

Mr. TIPTON. Madam Chair, I thank the gentleman for yielding.

We continue to hear letters of support, ironically, out of my colleague from Colorado's home district. Eagle River Water and Sanitation District supports this legislation as we put it forward.

Colorado River Water Conservation District, Colorado Water Congress, National Cattlemen's Beef Association, and Family Farm Alliance support this bill.

When we look at the original incorporating legislation that my colleague and I introduced, it doesn't fit the narrow scope that they now want to talk about; so we do have to ask that question: Why are they so willing to be going to disregard farmers, ranchers, municipalities? Aren't they worthy of concern? I believe that they actually are.

We actually just received an email that came from the National Ski Association, which is dated March 12, supporting the bill with the Tipton manager's amendment. We are addressing their specific concern, but we aren't stopping there.

We think that that right to private property is inviolable, something that must be protected. If our friends want to say that farmers and ranchers and communities aren't worth protecting, we say they are.

That is what this legislation will do. We have worked with the minority. We have got a bipartisan piece of legislation that is standing up for those private property rights and to be able to assure that that constitutional right to receive just compensation that it is taking is actually preserved.

Madam Chair, I urge rejection of this amendment.

Mr. HASTINGS of Washington. Madam Chairman, I am prepared to close. I have the right to close, so I will reserve the balance of my time.

Mr. POLIS. Madam Chairman, I yield myself the balance of the time.

Ski area water rights are valuable assets that must be protected. Rather than disguise that in a catchall Republican job-killing water-grabbing bill, we have the opportunity through the Polis-DeGette-Perlmutter-DelBene-Kuster-Cartwright-Huffman amendment for this House to come together

around something that helps the economy grow in our ski resort areas across the country.

As so many times on issues of even greater importance, there is a fork in the road for this House, a decision to make, between the partisan-charged route of job-destroying Republican water-grabbing legislation or the opportunity to fix this bill and come together to make sure that our ski resort communities are secure in their water rights and can continue to justify their capital investments and grow. That is the choice we have with the Polis amendment.

This amendment improves the bill. It helps turn the bill from a controversial bill into something that I think the vast majority of this body can and will agree on.

The amendment ensures that any U.S. Forest Service directive will not condition ski area permits on the transfer of title of any water right or require any ski area permittee to acquire a water right in the name of the United States.

That is the issue from the directive on 2011 that gives us a reason to even have the bill; but instead of addressing that issue in a focused way, this bill has tried to essentially rewrite centuries of water law in a superficial 2-page bill that has the impact of destroying jobs in Colorado and other mountain resort communities across the country.

We can and we must do better—better for my district in Colorado. Many of the ski resort counties—like Pitkin County represented by Mr. Tipton, and Eagle, Summit, and Grand Counties that I represent—that benefit directly from the ski resort economy have come out opposed to this bill because it actually hurts their economy rather than helps it.

If the very folks that this bill was supposedly written to help oppose this bill, what on Earth are we doing here?

Thankfully, we have an amendment right now that can fix this bill. We tried in committee, we tried through the manager's amendment, and now, we are trying on the floor. Let's do it. Let's fix the bill.

I urge my colleagues to support my amendment and, unless it is incorporated, oppose the underlying bill.

I yield back the balance of my time.

Mr. HASTINGS of Washington. Madam Chairman, I yield myself the balance of the time.

I have to say, the debate on the underlying bill in this amendment I find rather interesting—no, maybe bizarre is better than that.

The issue here is whether we should protect the State's responsibility to write water law or allow the Federal Government to extort from private individuals that water. That is what the issue is all about here.

He had bipartisan support when the bill was heard in committee, but then it changed for some reason. Now, we have in front of us the Polis amend-

ment, which would very narrowly put this protection only to ski areas and not to everybody else that has private property rights.

The consequences if this were to become law—which it is not going to, I am convinced, with this amendment—but the effect of this would be this: okay. Ski areas are protected this year. Next year, it will be a rancher that is abused, so we will come back, and we will write a law to protect the rancher.

Next, it will be a water conservation district someplace that will be affected because of the directive, so we will come back and fix that. Then it will be some municipality someplace that will be affected because they don't have water rights because it was extorted by the Federal Government, so we will have a fix for that.

Madam Chairman, there is a better way to do that. Let's just simply respect states' rights to regulate water law and to codify that with this language.

Finally, just let me make this observation. The effect of adopting this, as I mentioned in my opening statement, as it relates to tribal rights, what this amendment really does more than anything else is it puts ski resorts' water rights above tribal rights. That is really what the adoption of this amendment does.

So I would say that the underlying bill is a bill that is the responsibility of us as the legislative branch in this Congress. It deserves our support. This amendment does nothing to advance that at all and should be defeated.

I urge my colleagues to vote "no," and I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Colorado (Mr. POLIS).

The question was taken; and the Chair announced that the noes appeared to have it.

Mr. POLIS. Madam Chair, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Colorado will be postponed.

Mr. HASTINGS of Washington. Madam Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. YODER) having assumed the chair, Ms. FOXX, Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 3189) to prohibit the conditioning of any permit, lease, or other use agreement on the transfer, relinquishment, or other impairment of any water right to the United States by the Secretaries of the Interior and Agriculture, had come to no resolution thereon.

DIRECTING THE CLERK OF THE HOUSE OF REPRESENTATIVES TO MAKE TECHNICAL CORRECTIONS IN THE ENROLLMENT OF H.R. 3370

Mr. GRIMM. Mr. Speaker, I send to the desk a concurrent resolution and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The text of the concurrent resolution is as follows:

H. CON. RES. 93

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill (H.R. 3370) an Act to delay the implementation of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 12—

(A) in the matter preceding the new subsection added by the amendment made by such section, strike “, as amended by the preceding provisions of this Act, is further” and insert “is”; and

(B) in the new subsection added by the amendment made by such section, strike “(e)” and insert “(d)”.

(2) In section 14, before the closing quotation marks that immediately precede the period at the end insert “and”.

(3) In section 30—

(A) in the matter that precedes paragraph (1), strike “is” and insert the following: “, as amended by section 27 of this Act, is further”;

(B) in paragraph (1)—

(i) in the matter that precedes subparagraph (A), strike “subparagraph (B)” and insert “subparagraph (C)”;

(ii) in subparagraph (A)—

(I) strike “subparagraph (A)” and insert “subparagraph (B)”;

(II) strike “subparagraph (D)” and insert “subparagraph (E)”;

(C) in paragraph (2), strike “and (C) as subparagraphs (D), (E), and (G)” and insert “(C), and (D) as subparagraphs (D), (E), (F), and (H)”;

(D) in paragraph (3), in the matter preceding the new subparagraphs inserted by the amendment made by such paragraph, strike “subparagraph (B)” and insert “subparagraph (D)”;

(E) in paragraph (4)—

(i) in the matter preceding the new subparagraph inserted by the amendment made by such paragraph, strike “subparagraph (E)” and insert “subparagraph (F)”;

(ii) in the new subparagraph inserted by the amendment made by such paragraph, strike “(F)” and insert “(G)”.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

FAITHFUL EXECUTION OF THE LAW ACT OF 2014

The SPEAKER pro tempore. Pursuant to clause 1(c) of rule XIX, further consideration of H.R. 3973 will now resume.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the amendment offered