Legislative Perspective: The Federal View

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Before his deputy assistant secretary position, Kris served under Commissioner Bob Johnson as the Deputy Commissioner for external & intergovernmental affairs for the Bureau of Reclamation. Kris also served as the Vice President for Government Relations of the National Water Resources Association where he began working as a legislative assistant in 1992. Kris is a graduate of Nebraska Wesleyan University and a native of Wauneta, Nebraska, where his family has farmed for five generations.

Thank you for the opportunity to speak with you today.

There are several issues that I would like to talk to you about this morning. First is small hydropower, which incidentally, is one of the few things that Congress actually got passed. The vote was 433-0 in the House for HR 267 and 416-7 for HB 678. The corresponding bills in the Senate passed. Both bills passed very quickly. They were introduced and passed in their respective chambers a couple months later. As a result, there are now 18 applications for small hydropower project before the Federal Energy Regulatory Commission (FERC), 14 pending.

The Water Resources Development Act (WRDA) was instituted in Congress years ago and the idea was that there would be one WRDA every Congress. This was also done in a time when we had something called "earmarks." An earmark is nothing more than a member of Congress wanting a project and putting it in the WRDA legislation. The WRDA funds the Army Corps of Engineers projects like flood control, wastewater treatment, putting in levees, water pipelines, and things like that. Reclamation is a different apple all together. The last time we had a WRDA passed was 2007, and before that it had been quite a few years. But now, we have a WRDA that has actually passed. This legislation provides $12.2 million for 18 projects that have already been approved by the Army Corps of Engineers. It also sets up a system to identify projects for the authorization. There are two different kinds of legislation in Congress. There is an authorization and there is an appropriation. An authorization is passing legislation to build a project. This is generally pretty easy to do. An appropriation is actually paying for it. Appropriations are difficult because there is a huge backlog list of authorized projects that have no hope of ever being paid for. For this legislation, the Senate reduced the time it takes for feasibility studies to less than three years, improved the environmental review process, and established a 5-year project financing pilot program.

A lot of the states now have funds due to mineral extraction and fracking and from sources of funding that the federal government doesn't have. There is an attempt to have water projects funded by the states as well as federal organizations. In the House, we had a very strong vote of 417-3 to move additional WRRDA (Water Resources Reform and Development Act) legislation (WRRDA with an extra "r" for "reform"). It is essentially the same thing, authorizing $10 billion for priority water resources infrastructure improvements

recommended to Congress by the Chief of the Army Corps and de-authorizes $12 billion of old, inactive projects that were authorized prior to WRDA 2007. It sunsets new authorizations to prevent future project backlogs—some of these feasibility studies we have ten years in and there is just no end in sight for time or cost.

Included in WRRDA in the House is levee safety. It provides for federal technical assistance to states to improve or create levee safety programs. It also calls for the establishment of federal guidelines for levee safety that incorporate federal, state, and local activities.

WRDA/WRRDA is actually in conference now, the first meeting took place on November 20. I'm not sure when it is going to be over, not before Christmas or New Year's, probably sometime in the early spring. This is something Congress wants to get done before the elections because they want to be able to point at something that they actually did. Some conferees include: EPW Chairwoman Senator Barbara Boxer (D-Calif) from the Private and Public Works Committee. She is the lead of the conferees for the Senate. You have a lot of westerners: John Barrasso of Wyoming, James Inhofe of Oklahoma, and Max Baucus of Montana, and Barbara Boxer. Others include Thomas Carper from Delaware, Ben Cardin of Maryland, Sheldon Whitehouse of Rhode Island, and Ranking member David Vitter of Louisiana. On the House side you have a mix of westerners and easterners (Fig 1).

I'd like to talk about a different topic, EPA's proposed Clean Water Act Jurisdiction. For years there have been legislative attempts to expand the jurisdiction of the Clean Water Act. The Clean Water Act was the landmark for a lot of environmental laws passed in the early 1970s. One of the things that the Act included was the definition of navigable waters. Congress used that word 81 times in their revision of the Clean Water Act—a lot of people obviously like that term. "Navigable waters" was where the Clean Water Act was supposed to end. State and other folks pick up after that. But there has been a legislative effort in the past three or four congresses, and that legislative effort is over largely because the proponents have been unlikely.

Now we have a draft EPA Rule that has been under-touted for the majority of this administration. What this Rule is reported to do is to say that streams, regardless of size or how frequently they flow, are **connected** to and impact downstream waters. It also says that wetlands and open-waters in floodplains of streams and rivers, and in riparian areas, are **integrated** with streams and rivers, affecting the water flow, introducing nonpoint source pollution, and exchanging biological species. It also acknowledges that there is **insufficient information to generalize** about wetlands and open-waters located outside of riparian areas and floodplains and their connectivity to downstream waters. So basically, our waters are all connected.

House Conferees

- John Duncan Jr. (R-Tenn.)
- Frank LoBiondo (R-N.J.)
- Shelley Moore Capito (R-W.Va.)
- Candice Miller (R-Mich.)
- Duncan Hunter (R-Calif.)
- Larry Buchson (R-Ind.)
- Bob Gibbs (R-Ohio)
- Richard Hanna (R-N.Y.)
- Daniel Webster (R-Fla.)
- Tom Rice (R-S.C.)
- Markwayne Mullin (R-Okla.)
- Rodney Davis (R-Ill.)
- Nick Rahall (D-W.Va.)
- Peter DeFazio (D-Ore.)
- Corrine Brown (D-Fla.)
- Eddie Bernice Johnson (D-Texas)
- Tim Bishop (D-N.Y.)
- Donna Edwards (D-Md.)
- John Garamendi (D-Calif.)
- Janice Hahn (D-Calif.)
- Rick Nolan (D-Minn.)
- Lois Frankel (D-Fla.)
- Cheri Bustos (D-Ill.)

Figure 1. 2013 House Conferees

The U.S. Supreme Court said we should look at it on a case-by-case basis and there needs to be a nexus of significant connection between one body of water to another. If you take this theoretically, the jurisdiction of the Clean Water Act could go all the way from the Mississippi to your faucet. The reality is that there is a distinction, and we have states with something called "primacy of state water law." All states in the West are founded upon primacy of water law. This is a situation where federal law is trying to get states' authorities. Another thing the Rule intends to do is create a definition that gets away from a case-by-case basis. Comments are due by November 6. There will be a peer review panel on that report; we will hear more about this Rule as it evolves.

Concerning the Bureau of Reclamation budget, the big point is that it is at best flat-lined. If you adjust for inflation, Reclamation's funding, as with many of the government agencies, continues to go downward. We have sequestered, we had a shutdown, and we have been through so much recently that we are numb to the headlines. But, as a result of all of these things, the Bureau of Reclamations budget has been reduced by $54.7 million. Reclamation's 2014 budget request is $1.0 billion again, with water and related resources at $791.1 million (Fig. 2). Included in the request are items that help irrigation districts. The Water Conservation Field Services program, which is a 50/50 match between Bureau of Reclamation and irrigation districts, is an enormously popular program. It only funds about $3.4 million West-wide.

2014 Reclamation Budget Request

WaterSMART: $35.4 millionGrants: $12 million

- Basin Studies: $4.7 million
- Title XVI Water Reclamation and Reuse: $14 million
- Water Conservation Field Services: $3.4 million
- Shared Investment Water Innovation Program: $1.0 million
- Cooperative Watershed Management: $250,000

Figure 2. 2014 Reclamation Budget Request

I want to talk about FDA Proposed Rulemaking for "agriculture water." In 2011, Congress passed the Food Safety Modernization Act. It is the first major update to food safety standards since 1938. This came across our radar screens the past six months, and we are concerned about irrigation districts. This new regulation came as a surprise. According to the FDA, there have been a number of health scares and problems. This proposed rule is for agricultural water—and, of course, agricultural water is what we think of as irrigation. They are looking at *E. coli* in water.

There are also some exceptions to the proposed Rule, which are curious because this is about food safety. They exempt specified produce commodities that are rarely eaten raw, potatoes are a good example. Also there is an exception for produce grown for personal or on-farm use. Another exemption is commercially processed produce that chemically removes microorganisms. When you process apples, they go through a chlorination path along with other vegetables and produce. Small farms with an average annual value of food sold during the prior three years of $25,000 and farms that have food sales averaging less than $500,000 per year during the last three years and whose sales to qualified end-users that are consumers or a restaurant/retail shop within the state and with 275 miles are also exempt. They want to avoid stepping on local farmers' markets. They kept talking about local farmers' markets and folks who sell to local restaurants and so forth. If you are going to exempt all of those folks but you are concerned about food safety, isn't there a huge hole in your food safety program? When you think about it, the biggest risk you have when you buy apples, for example, is the person before you who picked it up at the market and put it back down.

In April we had a meeting with some FDA folks and Washington State. I want to stress that the FDA has wonderful people. They are educated, very gracious, met with us, spent over an hour talking, and they wanted to learn. They are good people. They are trying their best to work with Congress, but one of the things they told us was that research has shown that Washington doesn't always know what is best. We asked the FDA folks to come out and see us, and they did. They brought about 10 people out and other good folks from Washington, Oregon, and Idaho. We spent a day with them on August 13th. We also read what people would write to our magazine where you

have the comment period and would post in an article.

Mike Taylor, the assistant secretary for the FDA attended the tour. On one of the tour stops, we met with a gentleman from Diamond Processing, who is also a farmer. We were standing in an apple processing plant that was inactive at that time, and this happened toward the end of the day. The farmer explained they can work with the FDA in the processing plant—they can have additional spray bars put in; they can increase the time that the produce is in the decontamination wash. Things like that can be done. But how are you going to treat irrigation water? The average irrigation well produces a thousand gallons a minute. How are you going to treat that? It would cost millions and it would be ineffective. The farmer made our case for us. This particular spray bar is being repaired, but Bill pointed out that additional spray bars could be added. The apples will tumble along and get sprayed with decontamination fluid. Bill indicated that they can increase the process time and reduce the potential amount of contamination.

We then went over to visit a canal near Quincy, Washington and saw a typical irrigation district with the Colombia Basin Irrigation Project. Mr. Darvin Fales, the general manager of the Quincy Columbia Basin Irrigation District, explained to the entire entourage including ten FDA folks, some state folks, and a lot of other involved people. At the Quincy Main Canal, our last stop around 5 o'clock, Mr. Fales explained the canal is wider than a city street and moves faster than a man jogs, at about 3,000 cubic feet of water per second (cfs). The canal starts about fifty miles up-canal from that point and goes down-canal about another thirty miles where it gets smaller and more narrow as it makes its deliveries. We showed the tour participants how big this was—and this was only one canal. There are canals up there that move 11,000 cfs. The size of the Columbia Basin is exceptionally large. One thing Mr. Taylor from the FDA said, and it was worth all the airline tickets, the day's efforts, everything—was it is clearly not practical to treat all of this irrigation water. It is not practical. Good decisions are based on good information. It is up to the agricultural community to explain to folks what it is we do and how we do it. By doing tours like this, we can educate folks, like the folks of the FDA, on how to best make their decisions. The comment period was over on November the 15th, and we will be interviewing Mr. Taylor in the magazine, *Irrigation Leader*, so please look for that.

In conclusion, I think you are going to see federal funding continue to drop. You will see states picking up an increasing share of funding. You will see expanded numbers of water quality regulations and an increasing need for the agricultural community to educate folks about what it is we do.

With that, I would like to say thank you and I would be happy to answer any questions.