



TO: David Modeer and CAWCD Board

FR: Terry Bracy, Tracy Tucker, Brandon Avila and Michael Bracy

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RE: Federal Legislative Report for February Board Meeting

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### **Legislative Overview**

In the wake of last week's Republican Senate win in Massachusetts that has deprived the Majority of their 60-vote supermajority, and concern over the direction of the economy, the Administration and Congressional leaders are reassessing their legislative outlook in a year that will be closely scrutinized leading up to the midterm election.

Focused on the creation of jobs and the economy, the Senate last week held an appropriations oversight hearing on a jobs bill. The House narrowly passed a \$154 billion jobs bill, H.R.2847, in December. However, with many opposed to increased government spending, it may be difficult to get the fiscal conservatives on the Hill to support such a measure. Similar efforts to convince moderates in the House and Senate who are facing close elections could provide a difficult path to consensus on other priorities such as health care, cap and trade, and financial regulatory reform bills.

In addition to these legislative priorities, the 2010 budget cycle will soon be set in motion. The Administration is scheduled to release their Fiscal Year 2011 budget request to Congress the first week of February. It is already expected that many domestic programs will see significant cuts compared to last year's budget.

### **White Mountain Apache Bill Passes House**

On January 21, the House passed, 262-147, H.R. 1065, White Mountain Apache Tribe Water Rights Quantification Act. The measure was cosponsored by the entire Arizona Congressional delegation.

The Rules Committee had approved an amendment from Rep. McClintock (R-CA) that would prevent the bill from taking effect until the Justice Department submitted a formal response confirming the settlement would represent a net benefit to taxpayers. However, McClintock did not offer the amendment on the House floor because the Justice Department submitted a preliminary response to his office.

Rep. McClintock has questioned the costs of settling the cases, and in September wrote a letter to the Justice Department asking whether the tribes are likely to win their water rights in court and whether it would cost more to litigate the claims than to settle them. Despite this objection, the entire Arizona delegation maintained their support for the bill.

### **Navajo Generating Station**

BTBV is conducting a series of briefings of the Arizona Congressional delegation staff to share the findings of the “Impact of Navajo Generating Station Retrofit Options on Cost of Central Arizona Project Water and Development Fund Revenues” response to EPA.

### **Climate Change - Cap and Trade Legislation**

In light of the election of Sen. Brown (R-MA) and a continued concern over the financial impacts of a cap and trade program, the chances of a global warming bill passing this year continue to lessen. With the larger cap and trade program in jeopardy, Senators are still pushing alternatives. There is discussion about a "sector only" option that would cap emissions on just utilities, an idea Sen. Richard Lugar (R-IN) is considering. Then there is the "cap and dividend" model offered by Sens. Cantwell (D-WA) and Collins (R-ME) that essentially would take the "trade" out of cap and trade. Their approach would recycle 75 percent of the revenue raised by a full carbon auction back to consumers as a way to buffer higher energy costs.

Senator Graham (R-SC), who is working with Sen. Joe Lieberman (I-CT) and John Kerry (D-MA) to forge a legislative compromise on climate change, said he believes that what will ultimately emerge from the Senate will be a combination of both the cap-and-trade and cap-and-dividend approaches.

The BTBV team has scheduled meetings this week with the AZ delegation and Committee staff to express the concern CAP has with the impact of the cap and trade proposal on the energy used from the Navajo Generating Station. We will continue to have conversations with key offices and Committees as this bill continues to be crafted and amended.

### **Senator Murkowski Attempts to Block EPA on Climate Regulations**

Senator Lisa Murkowski (R-AK) introduced a disapproval resolution on the Senate floor that would veto EPA's finding that greenhouse gases threaten public health and welfare. EPA's finding gives them the authority to move forward with pending climate rules.

Sen. Murkowski's resolution has the backing of three moderate Democrats and 35 Republican co-sponsors. Murkowski's resolution would need 51 votes to clear the Senate and would then require approval by the House and President Obama. Democratic Sens. Blanche Lincoln of Arkansas, Mary Landrieu of Louisiana and Ben Nelson of Nebraska signed on as co-sponsors. Sen. John McCain, considered one of the key players in the climate debate, also signed on.

Sen. Murkowski was unclear on the timing of a floor vote, but said she would hold out hope on reaching a broader agreement on energy and climate change. Reps. Joe Barton (R-TX) and Darrell Issa (R-CA) are leading the charge in the House, where they hope to garner the support of moderate Democrats who may be unhappy about the threat of EPA regulations. However, the prospect of this resolution passing would be unlikely, considering the President would threaten a veto.

### **Hoover Power Reallocation Act (H.R. 4349/S. 2891)**

On December 16, Rep. Napolitano (D-CA) introduced H.R. 4349, the Hoover Power Reallocation Act. Sen. Reid (D-NV) introduced the companion, S. 2891, on the Senate side. In the Arizona delegation, Rep. Franks, Shadegg, Grijalva, and Flake joined 43 total cosponsors as original cosponsors of the bill. The bills were referred to the Water and Power Subcommittee in the House and the Energy and Natural Resources committee in the Senate.

The House Subcommittee on Water and Power will be holding an oversight hearing on the legislation on February 11th. The Pasadena municipal utility, WAPA, Arizona Power Authority, CRC, Southern California Edison and the Intertribal Council of AZ received an invitation to testify.

The BTBV team is going to attend the hearing in Washington DC.

### **PEPFAR – Funding for Native American Settlements**

In July 2008, Congress passed the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (P.L. 110-293). The Act, among many things, included a title (Title VI) to establish the Emergency Fund for Indian Safety and Health and authorized \$2 billion for law enforcement, health care and water projects benefitting American Indians and Alaska Natives. Of the total authorized, \$1 billion would be dedicated to water settlements.

A coalition of advocates in Congress and beyond, including the Navajo and Hopi Tribes and CAP, have identified this authorization as a potential mechanism to secure some of the funding necessary to support Indian water rights settlements. A series of meetings with the officials of the Office of Management and Budget (OMB) in the Administration and Senator Inouye will occur the week of Feb. 1. BTBV will attend the meetings on behalf of CAWCD.

### **EPA Publishes Nitrogen Dioxide (NO<sub>2</sub>) standard**

Today, the EPA strengthened the federal public health standard for nitrogen dioxide (NO<sub>2</sub>) pollution. The final rule introduces a new one-hour maximum standard for NO<sub>2</sub> at 100 parts per billion (ppb). The agency is also retaining the existing annual standard of 53 ppb. NO<sub>2</sub> forms from the emissions of cars, trucks and buses, off-highway equipment and power plants.

The new standard also establishes new monitoring requirements to measure NO<sub>2</sub> levels near major roads. Cities with at least 500,000 residents must have monitors near roadways, and larger cities and areas with major roads will have additional monitors. Cities with at least 1 million residents will continue with communitywide monitoring.

The revision marks the first time EPA has updated the national health-based NO<sub>2</sub> standard in nearly four decades. The Clean Air Act requires the agency to set national standards for six pollutants, including NO<sub>2</sub>, and to periodically review those standards. EPA has reviewed the health-based NO<sub>2</sub> standards twice since the standard was first proposed in 1971 but both times chose not to revise the standards. EPA's final rule falls within recommendations by EPA's scientific advisers but does not go far enough for some environmentalists and public health advocates. EPA expects to identify areas in compliance with the standard based on the existing monitoring network by January 2012. New monitors must begin operating by Jan. 1, 2013. The agency intends to redesignate whether areas meet the new standard when three years of data are available from the new monitoring network.

The final rule will take effect 60 days after publication in the *Federal Register*.

### **Congressional Fiscal Commission Proposed**

President Obama this weekend endorsed the proposal to create a congressional bipartisan commission to find ways to reduce the federal deficit. The proposal, from Senate Budget Chairman Kent Conrad, D-N.D., and Ranking member Gregg (R-NH), would create a debt panel by law and establish a fast-track process for putting its recommendations on the floor for a vote. The Conrad-Gregg proposal is set to be considered Tuesday as an amendment to legislation (H J Res 45) that would raise the debt limit by \$1.9 trillion.

Under the Conrad-Gregg bill (S 2853) an 18-member commission — ten Democrats and eight Republicans — made up of members of Congress and administration officials would have the authority to propose debt and deficit reduction policies that could touch on any aspect of the budget and tax code. Any recommendations agreed on by 14 of the 18 members would be reported to Congress. The House and Senate would take up the legislation, which could not be amended, and passage would require a three-fifths majority vote in both chambers.

The statutory commission is opposed by House Speaker Nancy Pelosi, D-Calif., and other lawmakers such as Senate Finance Committee Chairman Max Baucus, D-Mont. Both agreed to the plan to create the commission by executive order, but creating it through legislation could take more power out of the hands of congressional leaders and committee chairmen.

Liberal groups oppose the Conrad-Gregg plan, arguing it will be used to cut Social Security and Medicare benefits. Some conservative groups have voiced opposition, contending it will lead to tax increases. The powerful AARP lobby also has come out against the proposal.

Supporters of the statutory commission say reining in deficits and the debt is too difficult for Congress and a special process is needed tackle the issue.

### **Reclamation Stakeholders FY2011 Budget Meeting**

On February 1st the Bureau of Reclamation will be hosting a FY2011 budget meeting for stakeholders in Washington DC. Reclamation leaders will present the Administration Priorities for FY201, a status report of the Recovery Act, and other operations updates.

The BTBV team will be attending to represent CAWCD.

### **Chemical Security bill:**

H.R. 2868 passed the House on a vote of 230-193 on November 6. The bill was referred to the Senate Committee on Homeland Security and Government Affairs. The bill would expand the Department of Homeland Security's authority to regulate security at chemical-handling facilities and authorize the Environmental Protection Agency to regulate chemical security at wastewater and drinking water plants. Republicans oppose H.R. 2868, arguing the current Chemical Facility Anti-Terrorism Standards should be given time to be fully implemented before imposing new burdensome requirements on facilities.

### **Summary of bill:**

The Chemical and Water Security Act would give the Department of Homeland Security the authority to create a list of "substances of concern," determine which facilities manufacturing those substances are at high risk for a terrorist attack and require action to reduce risk if appropriate.

It also would give U.S. EPA authority to oversee security measures at drinking water and wastewater facilities, incorporating language from another bill, H.R. 3258. The committee members agreed to give EPA oversight of wastewater facilities in a compromise announced last week. The Association of Metropolitan Water Agencies has called for wastewater and drinking water facilities to be covered by one agency.

The bill would require EPA to establish risk-based performance standards for drinking water and wastewater plants. Additionally, it would provide authority to fund grants to municipalities to develop their own locally determined security measures for these facilities.

Of particular concern to Republicans is the "inherently safer technologies" (IST) requirement that facilities assess methods to reduce the consequences of a terrorist attack. Those facilities that DHS designates as having the highest risk would then be required to use safer technologies and processes.

The water facilities would face a slightly different approach to the safer technologies provision. Those using certain hazardous chemicals would have to evaluate the feasibility of safer alternatives. The bill would then would direct the state agency tasked with enforcing the federal Safe Drinking Water Act to review the safer technologies determination of the highest risk facilities and, if necessary, direct the utility to implement the alternative after evaluating feasibility, cost and water quality implications. Covered facilities would have the chance to appeal if they disagree with the government's determination about safer technologies.

## **OTHER ISSUES -**

### **Hearing on H.R. 2944, "*Southern Arizona Public Lands Protection Act of 2009*":**

On January 22, the National Parks, Forests and Public Lands Subcommittee held a hearing on H.R. 2944, a bill to ban new mining claims in the Coronado National Forest and other federal lands in southeastern Arizona near Tucson. Chairman Raúl Grijalva (D-Ariz.) and Rep. Gabrielle Giffords (D-Ariz.) are cosponsors of the bill.

The legislation would allow existing claims to be developed, if a company can show they contain an economically viable mineral deposit. The measure comes in the wake of several controversial mining proposals in the area. A proposal by Arizona Portland Cement for a limestone quarry, which would be located partially within the sensitive Davidson Canyon Natural Preserve, is the subject of a fierce local fight. Augusta Resource Corp.'s controversial proposed open-pit Rosemont Copper Mine would be sited on an existing claim in the area covered by the bill.

The Rosemont project would cover 3,330 acres of Forest Service land, 995 acres of private land and less than 100 acres of other state and federal holdings. Proposed in 2007, the mine is projected to extract 230 million pounds of copper annually for 19 years.

Ned Norris, Jr., chairman of the Tohono O'odham Nation, testified that the Rosemont mine would destroy numerous tribal cultural resources sites. A Pima County administrator, a local pecan farmer and an official from an environmental group all testified in favor of the bill for reasons beyond the Rosemont project, saying that mining in that region could degrade water quality, public health and the tax base in the area.

### **Field Hearings on the California water crisis**

Today, House Democrats and Republicans of the Natural Resources Water and Power Subcommittee will hold competing field hearings on the California water

crisis, addressing the ongoing debate over how to address chronic water shortages that have affected the state.

Water and Power Subcommittee Chairwoman Napolitano (D-CA) is hosting a field hearing in Los Angeles to discuss "Perspectives on California Water Supply: Challenges and Opportunities."

The chairwoman will focus on Southern California's efforts in meeting water conservation goals and how these methods could be replicated throughout the state. Meanwhile, Ranking member McClintock (R-CA) will host a forum in Fresno to focus on the plight of the San Joaquin Valley. The forum, co-hosted by the Congressional Western Caucus, will hear from area water managers, farmers and business interests.

Democrats have stressed the need for conservation, recycling and a comprehensive look at how California manages its water resources. Los Angeles, for example, dropped its citywide water use to the lowest level in nearly two decades within five months of enacting a mandatory conservation program last year. Therefore, Rep. Napolitano will discuss Southern California's past successes in meeting water conservation goals and how the methods could be applied in other parts of the state.

But Republicans and some Democrats from the farm-heavy Sacramento-San Joaquin Delta region have called for immediate help to assist the agricultural community. They want the federal government to waive federal pumping restrictions that protect endangered fish in the region but restrict water deliveries for farmers.

The Democratic leadership has rejected the suggestion that waiving the ESA restrictions is the appropriate way to confront the water crisis in the San Joaquin Valley. Instead, environmental groups say farmers are exaggerating how much water has been restricted by the Endangered Species Act provisions and that the pump limits are needed to restore the over-used delta to ecological health and shore up endangered salmon and delta smelt.

The Water and Power Subcommittee hearing is at 1 p.m. today at the Metropolitan Water District headquarters in Los Angeles. The GOP forum is scheduled for 8:30 a.m. today in the Fresno City Council Chambers.