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Legislative Hearing on Several Bills, Including S. 2533, the California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act; and S. 2902, the Western Water Supply and Planning Enhancement Act of 2016

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Good afternoon Members of the Subcommittee.

Thank you for the invitation to testify today on behalf of Trout Unlimited (TU) and its 150,000 members nationwide. I have had the privilege to work for many years with TU's volunteers to restore local streams and engage young people in TU's efforts to conserve, protect and restore our Nation's watersheds. I live and work in Montana, and have experienced first-hand the devastation of prolonged drought in an already-arid land.

Westerners experience water scarcity at a number of different levels. Extended drought creates problems for individual rancher and farm operations struggling to find enough river flows to irrigate crops, and for the fish that find that their habitats have heated up, shrunk, or just plain dried up. Swings and cycles in regional weather patterns create basin-level scarcity that affects not only irrigation districts but also municipalities worried about meeting water demands.

#### **I. Collaborative, Watershed Solutions: The Path Forward**

The seriousness and scale of these problems is why I've dedicated the last 18 years of my professional life to finding collaborative solutions to water scarcity in the West. I've pioneered collaborative approaches to creating new water supplies with Montana ranchers, created working architecture for drought response plans that operate at the basin scale, and assembled diverse coalitions of interests to come together around innovative changes to water management across multiple, large river basins. Although these approaches vary in scale and focus, the one thing they have in common is building the trust to apply creativity to difficult, long-standing problems born of too many demands and too little water in arid lands.

My message is simple: on the ground throughout the West partners are coming together to find innovative solutions to water scarcity challenges at a variety of scales, and as Congress considers legislation, we hope you consider finding ways to replicate and reward locally driven, collaborative, watershed-scale solutions. Here are four of their stories:

#### **A. Yakima River, Washington**

The West is desperately seeking ways to balance its need to find more water for agriculture and people, with its other great need to conserve valuable and imperiled fisheries, and growing recreation demands. A diverse group of stakeholders in the Yakima Basin in central Washington have found a path forward.

The Yakima Plan is a balanced package of actions that will restore hundreds of thousands of salmon and steelhead to the basin, improve water quality and quantity, and support a healthy agricultural and recreational economy. The plan was agreed upon by a diverse coalition of conservation groups, irrigators, farmers, sportsmen and women, local, state, and federal governments and the Confederated Tribes and Bands of the Yakama Nation. Similarly, these partners recognize that the resources needed to cover the costs of the plan must come from a variety of sources. Significantly, the State of Washington has provided \$161 million to date towards implementation.

Some portions of the Yakima Plan need new Federal authorization. Thanks to the bipartisan efforts of Senator Cantwell, Senator Murkowski, and many Members of this Subcommittee, the Yakima bill, S. 1694, recently passed the full Senate as part of the broader energy bill. In addition, Representative Reichert and Representative Newhouse introduced H.R. 4686, a companion measure in the House. The Yakima Plan has had this success in large part because it is built as a mosaic of approaches to drought resilience: water infrastructure improvements, new water storage, groundwater recharge, instream flow restoration, fish passage, headwater habitat restoration and protection, and flexibility in water management across the basin, from reservoir operations to temporary water right transfers. Collaborators in the Yakima Plan achieve results for their own interests that they would not standing alone.

The effort to create an intact watershed process that led to the Yakima Plan already spurred additional creative solutions to acute challenges in the basin. For example, during last summer's drought, partnerships built through the plan resulted in rapid action to provide flows in streams that would have otherwise run dry, securing important habitat for salmon and steelhead. Important not only to those who live and work in the Yakima basin, the Yakima Plan also provides a transferable model for water scarcity issues across the West; working collaboratively at a watershed level to craft and implement long-term solutions.

### **B. Sun River, Montana**

In Montana's upper Missouri River basin on the Sun River, TU, the Fort Shaw Irrigation District, and members of the Sun River Watershed Group worked to create multi-sector benefits. They are an example of a public-private partnership at its best. The Bureau of Reclamation's WaterSMART program provided significant irrigation infrastructure funding in 2012 and 2013, matched by state and local dollars, contributions from the Irrigation District, and private contributions from the Coca-Cola Company. The Natural Resources Conservation Service (NRCS) contributed to the success of the project with new on-ranch center pivots that required less water to be delivered, to match the more efficient delivery of water through the irrigation district. The Coca-Cola Company's contributions were essential to securing the flow restoration benefits to the chronically-dewatered Sun River from the irrigation infrastructure upgrades within Fort Shaw Irrigation District. Two-thousand feet of lined canal, 2,310 feet of PVC pipe, and a new bypass canal created the opportunity to keep more water in the Sun River's wild trout fishery. The Sun River's wild trout have responded by more than doubling their population over the last three years.

### **C. Upper Colorado River's System Conservation Pilot Program (SCPP)**

Over the past eight years in Wyoming, TU has developed partnerships with ranchers and local and state resource agencies to not only improve trout streams, but also benefit agricultural operations and rural communities. We have found that by fixing aging irrigation infrastructure and improving water delivery for agricultural operations we can also improve trout streams that flow across private ranch lands. The quiet success of trust and friendships forged through restoration partnerships is increasing Wyoming's drought resilience, one stream at a time. The investment in private ranch land habitat is vital to reconnecting fragmented migratory corridors and allowing trout to fulfill their migratory patterns that build healthier, more resilient populations. This work is successful because it is pragmatic, voluntary, and non-regulatory. It's designed to benefit both people and fish.

In 2015, the Bureau of Reclamation and four municipal water providers in the Colorado River Basin announced the System Conservation Pilot Program (SCPP) to begin developing tools for responding to long-term drought conditions. The purposes of the SCPP for the Upper Basin included testing voluntary, demand-management measures that could ultimately be used to help maintain water in Lake Powell above the minimum levels needed to meet compliance with Colorado River compacts and to maintain hydropower generation at the reservoir.

In the Upper Basin, TU has worked closely with producers, state agencies and the Upper Colorado River Commission to successfully implement the SCPP. In the first round of the program, TU worked with producers to develop six applications, most focused on split-season leasing. All six proposals were fully funded and the total volume of water conserved was 2,008.14 acre feet.

In the second round, TU worked with Wyoming ranchers to offer more than 10,000 acre-feet of water conservation during the 2016 irrigation season, and developed additional applications in partnership with landowners in Colorado and Utah. In all, 15 SCPP applications that TU helped facilitate were approved in round two.

Trout Unlimited supports the SCPP because it is a voluntary, market-based tool that landowners can use to offset economic and environmental impacts of ongoing water shortages in the Colorado River. Water leased under this program remains tied to the land and keeps operations whole, which has great benefits for both agriculture and coldwater fisheries. For the first time in Wyoming, landowners participated and benefitted from a program that attached a value to the non-diversion of a water right during low flow conditions, and tributaries in the Upper Green realized improved streamflows for coldwater fish. Tributaries that historically suffered from dewatering or low flows maintained conditions suitable for trout throughout the entire summer.

#### **D. Klamath River, Oregon and California**

Trout Unlimited's work and partnership in California's and Oregon's Klamath River Basin provides another prime example of ground-up, collaborative and creative solutions to water management in the West. And for purposes of today's hearing, where we are asking ourselves "what more can Congress do to promote drought resiliency in the West?" the story of the Klamath not only provides a critical example of success; but also a valuable precautionary tale.

Residents and policy-makers struggled for decades to reconcile the water needs of agriculture, tribes, communities, and fish and wildlife in the basin. Years of negotiations produced three hard-won, bipartisan agreements between farmers and ranchers, tribes, a major utility company, the federal government and the States of California and Oregon to better share and manage water in the Klamath Basin. The three landmark agreements would provide water security for all these parties, and collectively provide a comprehensive water solution for the third-most productive fishery for salmon and steelhead on the West Coast.

Congressional action was required to move forward and, although this Committee approved the bill, the legislation did not pass before one of the agreements expired. As a result, the whole package almost fell apart. We feared that everyone would go back to their corners and restart the water wars. But so far, the parties have remained remarkably united and determined to find a common path forward. We have a long way to go, but people are beginning to take steps to move forward again.

A great, recent step came in the form of an accord to amend the Klamath Hydroelectric Settlement Agreement to allow the states of California and Oregon to work with PacifiCorp to remove four dams on the Klamath River using non-federal funds through normal hydropower licensing process, eliminating the

need for Congress to resolve that issue. The parties also recommitted themselves to improving water supply and power reliability for irrigation. Then Senators Wyden and Merkley co-sponsored a successful amendment to the Energy Bill in April 2016, and the Senate voted to help with Klamath irrigation infrastructure and water supplies for wildlife refuges.

### **E. Lessons Learned**

What TU has learned in over a decade and a half of deeply engaging in watershed efforts is that even the most entrenched, complex water-scarcity conflicts can find solutions when local interests come together to think creatively and collaboratively. None of these success stories came about easily or quickly. It is slow, patient, and difficult work. It requires cultivating the support of state and federal agencies. It requires finding a way to balance the length of the three legs on the drought-resilience stool: improving reliability of irrigation water; securing water for municipalities; and, improving watershed health. Congress can help by supporting basin-wide collaborative groups and working with local stakeholders where new authorizations may be needed; but ultimately the solutions lie elsewhere, with leadership from within a basin from the people working and living there to uncover their mutual benefits that outweigh their points of conflict in order to balance the three legs of the stool. .

It is through this lens of our deeply-held experience with watershed-scale solutions that TU offers the following comments on S. 2533 and S. 2902. We highlight positive concepts and identifying areas of concern for your consideration as the Subcommittee continues its work on this important and complex topic of building drought resiliency in the West.

## **II. Positive Concepts in S. 2533, S. 2902 and Senator Cantwell’s White Paper**

### **A. Senator Cantwell’s White Paper: *A National Policy Framework to Address Drought and Water Security in the United States* (March 22, 2016)**

TU’s experience in developing an intact watershed process to grapple with water scarcity issues across a range of scales is reflected in the architecture of Senator Cantwell’s Drought and Water Security White Paper. In it are the key federal elements to support successful efforts to create durable conservation and water security outcomes: support for collaborative, watershed-scale solutions; bringing financing to these solutions based on streamlined federal funding and public-private partnerships; using and advancing the best science, technology, and tools applied to water management; and recognizing that these watershed-scale, locally-driven solutions require the development of a portfolio of projects addressing watershed and flow restoration, reliability of irrigation water supply, and security of municipal water supply. As these concepts are expressed through legislation, TU looks forward to supporting them with our track-record of how they provide a path forward in even difficult and controversial water-scarcity conflicts.

### **B. S. 2533, the California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act (“S. 2533”)**

TU supports WaterSMART as an important part of bringing federal funding to watershed-based solutions to water scarcity, as illustrated by TU’s work in the Sun River basin in Montana. TU appreciates Senator Feinstein’s leadership in highlighting how WaterSMART can provide key incentives to creating benefits across the three legs of the drought-resilience stool through projects that provide multiple benefits. Section 101 of S. 2533 adds new authority for WaterSMART projects that are water-management improvement projects. Section 101 directs a strong prioritization for funding projects that use integrated water management on a watershed scale (including water re-use or water recycling as an example), while simultaneously creating benefits to fisheries and fresh-water ecosystems and benefits to agricultural and urban water users. This prioritization of WaterSMART water-management projects that create multiple,

simultaneous benefits across the ecological, agricultural, and municipal sectors is an important part of the path forward in solving water scarcity problems.

As the Committee considers new authorities, we encourage you to make sure that they complement existing federal programs thereby ensuring streamlined funding so that each dollar can be stretched as far as possible.

TU also supports section 124 that authorizes the EPA to continue to carry out the voluntary program known as the “WaterSense Program” to identify and promote water-efficient products for consumers, similar to the popular Energy Star program.

Section 508, which requires the Secretary of the Interior to establish and maintain an open water data system, is an important component of successful watershed-based planning efforts. Accessible and accurate information about water use and river and stream flows is essential to improving water management at the basin-scale. Finally, we appreciate Senator Feinstein’s efforts to promote habitat restoration and water recycling embedded as reoccurring themes throughout S. 2533.

### **C. S. 2902, the Western Water Supply and Planning Enhancement Act of 2016 (“S. 2902”).**

TU supports the concepts behind section 101 titled “Reservoir Operation Improvement.” It is our understanding that similar language recently passed the Senate as part of S. 2012, the “Energy Policy Modernization Act of 2016” (the Energy bill). Moreover, a comparable provision was included in the Water Resources Development Act of 2016, a bill that was recently reported by the Senate Committee on Environment and Public Works. Section 101 focuses on the fact that many water control manuals, which include the operations rules for reservoirs, are out of date and provides authority for both the Bureau of Reclamation and the Army Corps of Engineers to carry out pilot projects to implement revisions of water operations manuals based on the best available science. We support efforts to direct the agencies to begin the process of updating and revising water operations manuals.

We also support Title I, Subtitle C, titled, “the Reclamation Transparency Act.” A similar provision was included in S. 2012, the Energy bill, that recently passed the Senate. This subtitle requires the Bureau of Reclamation to assess the maintenance needs of its facilities, develop a ranking system to prioritize the rehabilitation needs of facilities that it operates, and work with nonfederal partners that have taken over the operation of other facilities to develop similar systems for those facilities that need rehabilitation.

Much of Reclamation’s infrastructure was constructed more than 50 years ago and maintaining aging infrastructure remains an ongoing challenge for the agency. We appreciate the direction provided in this subtitle to provide more detailed information to Congress and the public on Reclamation’s ongoing activities in this area.

## **III. Areas of Concern in S. 2902 and S. 2533**

### **A. Title II of S. 2902**

Trout Unlimited opposes Title II of S. 2902, the “Water Rights Protection Act,” which contains similar language included in S. 982. Simply put, the language of this title will jeopardize the ability of federal resource agencies to condition federal permits and apply for state water rights needed to protect valuable fisheries.

A key part of drought resiliency is protecting headwater flows on federal lands. For years, TU has worked with the Forest Service and other stakeholders to protect instream flows on National Forests. Federal land managers have an important role to play in protecting streams—under the authority of the Property Clause of the Constitution, Section 505 of the Federal Land Policy and Management Act,

provisions of the Federal Power Act, and other authorities—and they also have a responsibility to work with their stakeholders and the states to do it right. Provisions of this title would harm the ability of federal land managers to use these authorities to protect the nation’s headwaters on federal lands.

In June 2015, Reclamation testified that S. 982 “threatens the Federal Government’s longstanding authority to manage federal lands and associated water resources, uphold proprietary rights for the benefit of Indian tribes, and ensure the proper management of public lands and resources.” Moreover, Reclamation stated that “[t]he legislation is overly broad, drafted in ambiguous terms, and likely to have numerous unintended consequences that would have adverse effects on existing law, tribal water rights, and voluntary agreements.”

### **B. Subtitle D and Subtitle E of Title I - S. 2902**

TU does not support Subtitle D and Subtitle E of Title I because they do not work toward broad-based, collaborative solutions to water scarcity. As described in our experience in the Yakima and Klamath basins, new storage is best planned and carried out in a multi-stakeholder, basin-wide process that considers a variety of alternatives.

Rather than encouraging cooperative stakeholder processes or providing funding to catalyze cooperative solutions, Subtitle D deems the Bureau of Reclamation to be the lead agency for all environmental reviews and permits notwithstanding existing roles of agencies such as the Fish and Wildlife Service in carrying out laws including the Fish and Wildlife Coordination Act. This subtitle also requires specified deadlines to be met for consulting with cooperating agencies, completing environmental reviews, and determining project schedules. Reclamation has testified to the fact that there have been no examples of any Reclamation or USDA-sited surface water storage projects that have been denied construction because of delays associated with project reviews or shortcomings in communication among Reclamation, USDA, or any other state or federal partners.

Subtitle E requires that Reclamation complete project studies in three years at a cost of not more than \$3 million, and imposes financial penalties for agencies that fail to meet specified deadlines. As mentioned above, Reclamation has testified that there are no examples of any Reclamation surface water storage projects that have been denied construction because of delays associated with project review or permitting. Moreover, in October 2015, Deputy Secretary of the Interior Michael Connor testified that “[c]onstraining or circumventing project environmental reviews and permits impedes the opportunity to consider alternatives with potential impacts on communities and the environment which may be less adverse.”

### **C. Section 112 of S. 2533.**

Section 112 grants West-wide authority to construct those storage projects whose feasibility studies are completed within the next five years, or by 2021. While section 112 is primarily aimed at new California storage, TU opposes the broad language of section 112 for three reasons. First, TU firmly believes that new storage should be evaluated and carried out in a multi-stakeholder, basin-wide process that considers a variety of alternatives. The broad authority in section 112 could undermine such collaborative processes. Second, TU strongly opposes raising Shasta Dam because it would inundate even more of the McCloud, Sacramento, and Pit Rivers. TU members value these rivers immensely and oppose any additional harm to them. Section 112 would make it easier to raise Shasta Dam. Finally, although the scope of section 112 is currently limited to those storage projects that pass through feasibility studies within the next five years, this time limitation could be extended to expand authorization for new storage to the detriment of collaborative, watershed-driven solutions.

**D. Title III, S. 2533.**

Title III of S. 2533 includes a number of provisions instructing the Secretary to provide the “maximum quantity of water supplies” practicable to Central Valley Project agricultural, municipal, and industrial contractors, water service or repayment contractors. In October 2015, Deputy Secretary of the Interior Michael Connor testified that, “It is already Reclamation’s practice, working closely with other federal and state agencies, as well as stakeholders, to provide maximum contract quantities when hydrology and operational constraints allow.” He went on to state that “there are significant potential legal uncertainties associated with a ‘maximum quantity of water supplies practicable’ standard written into law which could readily generate litigation for the state and federal governments.”

TU is concerned that this title could interfere with Reclamation’s ability to manage the Central Valley Project to meet the needs of other water users and communities that depend on fisheries. Legislatively designating some sets of water users as higher priorities than others seems likely to perpetuate, rather than move past, water wars and to fuel more litigation and conflict. While the debate centers on California, many sport and commercial fishing businesses along the length of the Pacific coast are concerned that actions taken in the Central Valley may adversely impact fisheries in their States. While TU appreciates Senator Feinstein’s attempt to develop legislative answers to hotly-contested issues, we believe solutions for California’s Central Valley will have to come from the people who live and work in the region, working with creativity and collaboration to find solutions at points of conflict.

**IV. Conclusion**

Trout Unlimited is deeply invested in working with partners, regulators, and policymakers to identify and implement constructive and collaborative solutions to mitigate the impacts of drought on fisheries, economies, and communities throughout the West. As such, we recommend that Congress should encourage cooperative stakeholder processes and provide adequate funding for cost-effective programs that catalyze cooperative solutions, such as key Farm Bill conservation programs, and the Bureau of Reclamation’s competitive grant and basin study programs.

TU appreciates the attention given by this Subcommittee to this critical topic and I thank you for the opportunity to testify today. I am pleased to answer any questions you have at this time.