

**Testimony of Bennett W. Raley
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**Before the House Committee on Natural Resources,
Subcommittee on Water and Power, Concerning
H.R. 6060, "*Endangered Fish Recovery Programs Extension Act of 2012.*"
House of Representatives, Washington, D.C.**

July 10, 2012

Chairman McClintock, Ranking Member Napolitano, Members of the Subcommittee, it is an honor to be before you today to discuss H.R. 6060. I serve as Counsel to the Northern Colorado Water Conservancy District. Northern Water is the repayment entity for the Colorado-Big Thompson Project, which is one of the most successful federal reclamation projects in the West. Northern Water and its Municipal Subdistrict also own, operate and are in the process of developing other major water supply projects in Colorado in the Colorado River and South Platte River Basins. Approximately 850,000 people live within the boundaries of Northern Water and its Municipal Subdistrict. Northern Water and its Municipal Subdistrict provide year-round water supplies to over 40 municipalities and domestic water supply districts. Northern Water also delivers water to more than 120 ditch, reservoir, and irrigation companies that serve thousands of farms and more than 640,000 acres of some of the most productive farmland in the western United States. Northern Water participates in and supports the Upper Colorado River Endangered Fish Recovery Program.

My perspective on HR 6060 is also shaped by my experience over the years, with varying levels of intensity, with aquatic and terrestrial Endangered Species Act issues in Colorado, the Klamath River Basin, the Central Valley of California and the Middle Rio Grande in New Mexico, and with ESA-related litigation in federal courts in New Mexico and Arizona. I have also had some experience with the Multi-Species Conservation Plan in the Lower Colorado River, the Adaptive Management Program in the Grand Canyon of the Colorado, the Platte River Recovery Implementation Program, the Middle Rio Grande Endangered Species Collaborative Program, and finally, the Upper Colorado River and San Juan River Endangered Fish Recovery Programs that are the subject of today's hearing.

I am also authorized to state that the Front Range Water Council, which includes Aurora Water, Denver Water, Colorado Springs Utilities, Northern Water, Pueblo Board of Water Works, Southeastern Colorado Water Conservancy District and the Twin Lakes Reservoir and Canal Company, is in full support of HR 6060. The Front Range Water Council entities collectively provide a water supply derived from Colorado River projects covered by the Upper Colorado River Program to approximately 4 million people and over 900,000 acres of irrigated lands.

I know that the Members of this Subcommittee and your staff are very knowledgeable about the Upper Colorado and San Juan Endangered Fish Recovery Programs, and that the testimony of other witnesses and the legislative history of this and prior related legislation contain a complete Program description, so I will focus my testimony on two points in order to avoid needless repetition.

First, I cannot overstate the importance of the Upper Colorado River Endangered Fish Recovery Program to Northern Water and the other Front Range Water Council entities. These entities are in the process of spending millions of dollars in support of the Program in addition to the contributions by the States and power customers. These entities have the obligation and responsibility to provide a safe and reliable water supply for approximately 80% of Colorado's economy. The Front Range Water Council entities support the Program because it is the best way to avoid uncertainty and the economic and social costs experienced by other areas of the West that have been plunged into chaos by conflicts between water supply needs and endangered species. The risks of not having a successful Program are far too great. And as the Members of this Subcommittee well know, those risks include years of litigation at best, and potentially a devastating disruption of water supplies that are critically important to cities, agriculture and industry.

Many years ago my Congressional testimony was to the effect that in a perfect world the Endangered Species Act would be repealed and replaced with a program that does more in the real world to protect species and their habitat and does less for lawyers and consultants. However, we do not live in a perfect world, and reauthorization and reform of the Endangered Species Act as a whole does not appear to be imminent. As an attorney who has participated in ESA-related litigation and has the responsibility of advising clients regarding the risks of litigation under the ESA, I can tell you that my advice to clients who wish to focus on delivering water instead of spending their time in court defending their water supplies is to support a reasonable program that achieves ESA objectives without sacrificing operational flexibility and yield of their water supply projects. Entities like Northern Water and the other Front Range Water Council entities have concluded that programs like the Upper Colorado River Endangered Fish Recovery Program are the best way for them to avoid potentially catastrophic conflicts under the Endangered Species Act and to continue to provide safe and reliable water supplies for cities, for farms, and for industry. I do not mean to suggest that Northern Water and other water entities will not have scientific and legal defenses to attempts to use the ESA to interfere with their water supply projects, but the certainty of the Program is clearly preferable to the uncertainty of litigation.

Second, my testimony in support of the swift passage and enactment of H.R. 6060 is also shaped by a portion of the history of the Upper Colorado River Endangered Fish Recovery Program. While this Program had been in existence for a number of years, in the late 1990's water users in Colorado were suddenly confronted with threats to use the Endangered Species Act to impose "target flows" for listed species for the

Colorado River at the Colorado-Utah State line. The threatened target flows were substantial – under some hydrologic conditions meeting the target flows would have required no new depletions in the Colorado River Basin in Colorado and the cessation of hundreds of thousands of acre feet of existing diversions. Simply put, we were about to go over a precipice into the chaos of litigation and court-directed operations of the Colorado River water supply projects that are the lifeblood of the State of Colorado.

Things looked quite grim until some of the major water users in Colorado, Ralph Morganweck, the then-Regional Director of the United States Fish and Wildlife Service, and leading members of the environmental community in Colorado developed the trust that was necessary to develop a mutually acceptable cooperative recovery program that avoided the looming conflict between water and hydropower projects and the endangered species in the Upper Colorado River Basin. The Upper Colorado River Endangered Fish Recovery Program, as currently constituted and implemented through the 1999 Programmatic Biological Opinion, was the result of this trust. While not perfect, this Program has so far survived two record-setting droughts in the Colorado River Basin and produced continuing gains for the listed species and a means by which over 2,300 existing and future water-related activities could receive ongoing Section 7 coverage.

I participated in those negotiations on behalf of Northern Water. At the time, Northern Water believed that periodic Congressional reauthorization of the Program was critically important to creating a sound program that was supported by Congress, the Department of the Interior, the Upper Colorado River Basin States, water users and power customers, and the environmental community. As a result, in 2000 Northern Water supported the legislation that was enacted as Public Law 106-392. Today, Northern Water strongly believes that Congress should reauthorize the Program as was originally contemplated back in 2000.

Your oversight and support of the Program is essential, as the future success of this Program is dependent on a continuation of the trust that allowed the Upper Colorado River Basin to avoid the catastrophic conflicts between endangered species and water development and use that exist elsewhere in the West. That trust is best preserved by your continued oversight of the Program and its expenditures. Northern Water and the Front Range Water Council entities support HR 6060, including appropriate measures that are designed to ensure that the available funds are used in the most effective manner possible.

A failure of the Upper Colorado River Endangered Fish Recovery Program will be good for lawyers and not much else. More importantly, a failure of the Program will put at risk the water supply for 4 million people and 900,000 acres of irrigated land in the Front Range of Colorado. Accordingly, Northern Water and the Front Range Water Council urge the swift passage and enactment of HR 6060.

Thank you for allowing me to testify today.