

House Committee on Natural Resources
Subcommittee on Water, Power and Oceans
1324 Longworth House Office Building
Tuesday, March 22, 2016
2:00 P.M.

Oversight Hearing:

"Examining the Missions and Impacts of the President's Proposed Fiscal Year 2017 Budgets of the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Bureau of Reclamation and the Power Marketing Administrations."

Questions from Rep. Gosar for Administrator Gabriel

1. **Question:** Last October, the Governmental Accountability Office (GAO) issued a report to the Chairman of the House Budget Committee documenting the retention of unobligated balances by several agencies including the Western Area Power Administration (Western). According to the report, the Western carried forward \$556 million from Fiscal Year 2014 to 2015. Moreover, the GAO investigators found that Western carried forward funds in excess of levels that were deemed necessary to address "unexpected events." \$556 million represents more than half of Western's total operating budget. Where in the current 2017 budget proposal submitted by the Administration has the Department accounted for the carry-over of funds from Fiscal Years 2014 to 2015 and the carry-over of unobligated balances from Fiscal Years 2015 to 2016?
2. **Question:** Is the proposed 2017 budget partially offset by the anticipated carry-over of funds from the current fiscal year? If so, please identify how much, the source of the funds and where these funds are identified in the Administration's budget request?
3. **Question:** From Fiscal Year 2015 to Fiscal Year 2016, has Western reprogrammed any funding within a regional office or between regional offices? How much was carried over, what type of funding was used (Net Zero, Appropriations, Customer Funding), for what purpose and how did it impact the amount of unobligated balances in the current fiscal year?
4. **Question:** When Western has surplus Net Zero, Program Direction (PD) or Construction funding in the regions near the end of the fiscal year, it appears that those funds are transferred to the Desert Southwest Region. Desert Southwest then reverses out the transactions paid for through customer funding and charges are expensed against the transferred surplus, leaving an excess of DSW customer funding. Although, this process helps Western demonstrate a successful budget execution, what steps does Western take to reduce the rates paid by customers that provide the initial customer funding? If no rate decreases are made, how are the customers informed of this transfer of costs between funding types? If this has occurred in the past, how much has been transferred annually, between which regions and how is it documented?
5. **Question:** In responding to the request from Congress for detailed accounting of Western's budget authority in February, as required by the Omnibus Appropriations bill passed in 2015, did

the Department or Western reflect the amount of carry-over funding that would be used by Western in 2016? If so, where is it presented? If not, why did Western decide not to present this information to Congress?

6. **Question:** In reviewing the document that Western prepared in response to the Congressional request in the Omnibus funding bill for a detailed explanation of the use of Western's budget authority, it appears that the Desert Southwest Office relies on more than \$26 million in appropriated authority for its operations. Please explain why more than 20% of the Desert Southwest Office's budget relies on appropriated authority when customers reportedly provide all necessary funding through rates for the operations managed in the Desert Southwest Region?
7. **Question:** In the report presented to Congress in response to the Omnibus Appropriations bill, Western has indicated that \$10.231 million of budget authority will be used for headquarters staff. Western also indicates that there are 374 FTE and FTE equivalents supported by this budget authority. Please explain whether all 374 Headquarters FTEs and FTE equivalents are solely supported by the \$10.231 million in budget authority as depicted on the chart prepared for Congress? If not all FTEs and FTE equivalents are supported solely by the \$10.231 million in budget authority, please identify what budget authority is used within other regions to support the headquarters personnel. Additionally, if not all 374 FTEs and FTE equivalents are not solely supported by the \$10.231 million please explain why Western did not disclose the reliance on budget authority for other regions in the materials submitted to Congress?
8. **Question:** Western increased FTE from FY2014 to FY2015 by 26 FTE. Western again increased the number of FTE's for FY2017 by 52 FTE; totaling an increase of 78 in a 3-year period. Please document why so many new FTEs are required and the source of revenues to support the additional FTEs? In explaining why new FTEs are required please provide comparisons to Southwestern Power Administration and increases in FTEs required to meet similar if any, regulatory and compliance obligations?
9. **Question:** Operations, Construction, Financial Reporting from Western has been limited to high level summaries of their mission execution. Western has recently announced that a link within its web site called the Source which has been developed to provide access to detailed reports. Please explain why Western has chosen not to disclose details on the use of budget authority for headquarters expenses and employees in the Source? In addition please identify which documents within the Source illustrate the amount of unobligated balances that Western has carried forward from the 2015 Fiscal Year to Fiscal Year 2016?
10. **Question:** In draft contracts released by Western for the Hoover resource, Western has specifically excluded paragraphs from the General Power Contract Provisions including a provision providing a contractor with the right to terminate the agreement in the event that power rates increase. Please explain why Western has decided to exclude this provision from the contract and what protections will be afforded to power customers if Western raises rates to levels at or above prevailing market rates?

Questions from Rep. Gosar for Deputy Director Jim Kurth:

1. Question: On May 20, 2015, the Service [issued a News Release](#) that established new boating restrictions and expanded the no wake zone within the Havasu National Wildlife Refuge, effectively closing motorized boating in an area that had been utilized by recreational enthusiasts for decades. This order was “effective immediately” and the newly closed areas were quickly marked with regulatory buoys and signs. This order was implemented by the acting refuge manager without engaging local stakeholders or providing an opportunity for public comment. These arbitrary closures also became effective two days before Memorial Day Weekend, a very important tourist weekend for Lake Havasu. Why was there no public comment period?

2. Question: A FOIA request from Rep. Gosar revealed multiple emails from the Acting Refugee Manager indicating she believed the Service couldn’t arbitrarily close the channel and if they chose to pursue such a closure the agency would be required to hold a 30-60 day public comment period. An email from the acting refugee manager’s boss stating that a closure would likely meet resistance and require NEPA compliance was also discovered in the request. Why did those opinions change?

3. Question: On July 10, 2015 the Service sent a poorly worded response to the June 24th letter stating that the “Service recognizes the importance of public involvement in decisions regarding visitor use on the Refuge...[and] will initiate a review of the overall recreation boating program occurring on the Refuge. This will include soliciting public input from all users of the Refuge” The Service went on to state that existing restrictions will remain in place till that occurs. Nearly a year later, no public comment period has commenced and recreational motorized boating at the north end of Lake Havasu has remained closed. At the hearing Deputy Director Kurth indicated that a public comment period on this matter would begin soon. Yet, on a conference call on 3.31.2016 with the Service and members of Rep. Gosar’s staff, the service indicated that they would hold a public comment period in April 2016 and that a public meeting would be held in May 2016 on the Service’s desire to initiate a compatibility determination for all boating areas within the refuge. In the July 10, 2015 letter, the Service indicated this process was supposed to being last fall. However, staff indicated that reopening the extended no wake zone area arbitrarily closed by the Service would not be considered as an option during that process. Why not? Will this public comment process actually begin in April? Will a public meeting actually occur in May? When will the notice for these two items go out?

4. Question: In the July 10 letter, the Service stated this arbitrary closure was allowed under its regulations in the form of (50 CFR 32.22). That particular regulation deals with regulations for hunting and fishing in the Refuge, not motorized boating. Was that a mistake in the July 10th letter? What regulations do authorize this closure if it was? In the hearing, the Deputy Director also indicated a public comment process occurred when this particular regulation was implemented. Staff indicated on the conference call that they think that was in 1994. A public comment period more than 20 years ago should never be used to say you did hold a public comment period before taking this action. No one envisioned the repercussions of this closure at that time or that the Service would take such action. Do you still believe today that comment period in 1994 is sufficient public comment on this matter?

5. Question: The arbitrary notice your agency posted a couple days prior to Memorial Day Weekend without public comment that shut down motorized boating in the back channel (mouth) at the north end of Lake Havasu is outrageous. How do you justify making this closure without public comment, especially as a special needs child and other recreational enthusiasts have enjoyed motorized boating activities in this area for multiple decades?

6. **Question:** On the conference call on 3.31.2016 Service staff indicated that an increase in boating violations in this area were part of the reason for this closure and that there had been 12 citations since 2012. That's around three per year. The Service also indicated that the impact on migratory bird habitat contributed to the closure. Yet, Service staff admitted that they had no data or environmental studies which documented any wash outs of threatened or endangered species nests prior to making this arbitrary decision. In fact, when asked if wakes had harmed wildlife in this area, staff stated, "I assume the answer is yes." "Assume" proves there was no proof. So which was it? Were the May 2015 restrictions imposed because of safety or wildlife concerns?

7. **Question:** On the conference call on 3.31.2016, the Service admitted that the idea to close this area was first initiated by complaints made by two paddle boaters. Is it fair to close an area that has been utilized for motorized boating by numerous people for more than 30 years as a result of complaints from two people?

8. **Question:** Will you reopen the area closed to motorized boating with the May 2015 restrictions and go through a public comment process for activities within the area in question? If not, why not?

9. **Question:** Word has gotten out about this closure and tourists have cancelled trips and Havasu is losing money as a result. What should I tell small business in the area who are being harmed by your arbitrary decision?

10. **Question:** What should I tell community members and recreational enthusiasts who have contacted my office in significant numbers and expressed outrage?

11. **Question:** What should I tell the special needs child who no longer has a safe place to wakeboard as a result of this arbitrary closure?