

NATURAL RESOURCES: Lawmakers trade barbs on migratory birds, water projects

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Body

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A House Natural Resources subcommittee held a tempestuous hearing yesterday, as lawmakers debated half a dozen bills that included water storage, chemical contamination and wildlife protections. One source of debate was a draft by Rep. Alan Lowenthal (D-Calif.), which seeks to amend the Migratory Bird Treaty Act to facilitate punishment of companies that accidentally kill protected birds. Lowenthal and his allies say the legislation would simply make clear the law outlaws the so-called incidental take of migratory birds.

"The draft bill would override the Trump administration's radical reinterpretation of this act," said Water, Oceans and Wildlife Subcommittee Chairman Jared Huffman (D-Calif.). "It's the same pattern that we keep seeing unfortunately from this administration -- the oil and gas industry is prioritized above public well-being." Republican witness Wayne D'Angelo, a partner at the firm **Kelley Drye & Warren LLP** focusing on resource issues, said the bill was more than a mere clarification. He called it an expansion of the MBTA. One of his concerns, he said, was that "under the draft bill, incidental take becomes prohibited only if the activity causing the take is commercial in nature." Things got heated when Huffman took a shot at Republicans and ranking member Tom McClintock (R-Calif.) for suggesting industry's harm to birds is negligible, especially when compared with house cats. Huffman noted that many Republicans oppose elements of the Green New Deal climate resolution because windmills pose a danger to birds. "I am struggling with what seems like quite a contradiction," Huffman said. "On the one hand, the ranking members offered a withering criticism of this bill that would simply affirm this long-standing incidental take authority; on the other hand, he's the co-sponsor of legislation that invokes and affirms this incidental take authority in the context of criticizing the Green New Deal." McClintock suggested Democrats were hypocrites for wishing to protect birds harmed by the oil and gas industry, but not those killed by wind production. He referenced the GOP resolution against the Green New Deal. "I think the chairman has misrepresented or at least misunderstood the disapproval resolution," he said. "It actually cites the double standard, the hypocrisy of exempting incidental takings of the golden eagle by wind turbines while enforcing them on other forms of energy production." Rep. Mike Johnson (R-La.) said the bill was another example of Congress ceding power to the executive branch while passing environment regulation. Indeed, one concern is it would give the administration latitude in implementing its mandates. "At some point, we have to take ownership of our Article 1 powers again," Johnson said, referencing the Constitution's section on Congress. Lowenthal said many Republican concerns were excuses to deregulate. However, he appeared open to tightening mandates for the administration. "We'll listen to everything, we'll make this work," the congressman told E&E News. "We're just interested in not hurting birds." Water infrastructure legislation was also a point of contention, reviving strong divisions on the panel about how to secure supplies in California. H.R. 2473, from Rep. Josh Harder (D-Calif.), would create a fund to support water storage projects and reclamation, reuse and desalination efforts. Brett Barbre, director of the Orange County, Calif., Municipal Water District, said the 2030 start date is too far in the future to help solve current problems. "We have a water system in California that has broken under the weight of environmental problems, regulations, lack of investment and outright political obstructionism," Barbre said. "You authorize \$300 million in [fiscal] 2030 to 2060 for water infrastructure

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and drought solutions, why wait?" he asked the committee. Huffman called the concern on project delays, which Republicans embraced, "disingenuous." "I've just heard withering criticism about this idea of Mr. Harder's bill calling for reclamation funds spending 10 years out," Huffman said. "But suddenly there's this great desire to accelerate it." Huffman said, "Were we to immediately begin that mandatory spending, my friends across the aisle would immediately turn around and oppose it, so I find this to be disingenuous and at best confusing." Barbre also said the bill would spend too much money on inefficient projects that should only be a small part of the solution, like underground water storage and desalination. Instead, he suggested the government should consider raising the level of the Shasta Dam, a proposal that has been hotly debated in the past (E&E Daily, May 17). Agricultural interests want to raise Shasta Dam, but many California leaders oppose inundating the McCloud River, which is protected under the state Wild and Scenic Rivers Act. Huffman said, "The Shasta project that some folks keep holding out as the holy grail is illegal under California law, that's why it hasn't moved forward, that's why it's not going to move forward." Other bills on the agenda were: * H.R. 1976, introduced by Rep. Dan Kildee (D-Mich.), which would direct the U.S. Geological Survey to conduct a study on the level of per- and polyfluoroalkyl substances, or PFAS, in the country. * H.R. 1162, from Rep. Grace Napolitano (D-Calif.), to create a grant program for water recycling and reuse projects. * H.R. 2685, introduced by Rep. Jeff Van Drew (D-N.J.), to reauthorize the Wild Bird Conservation Act through 2025. * H.R. 967, introduced by Rep. Greg Gianforte (R-Mont.), to authorize the construction of the Musselshell-Judith Rural Water System, in addition to studying the Dry-Redwater Regional Water Authority system. * H.R. 1446, introduced by Rep. Lacy Clay (D-Mo.), to direct the Postal Service to continue selling the Multinational Species Conservation Fund semipostal stamp until it runs out of stock.

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