Issue #2439
February 12, 2021

Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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LITIGATION

Kansas/Quivira National Wildlife Refuge

On January 15, the Audubon of Kansas (AOK) sued the U.S. Department of the Interior (DOI), the U.S. Fish and Wildlife Service (FWS), the Kansas Department of Agriculture (KDA), and the Chief Engineer of the KDA Department of Water Resources (DWR), over water resources for the Quivira National Wildlife Refuge (QNWR). The FWS holds a 1957 priority water right to protect the wetlands at the refuge, but groundwater pumping by neighboring junior water users has impacted the water levels at the refuge. The FWS spent decades working with Kansas trying to resolve its water right impairment concerns before filing a formal complaint with KDA-DWR in 2013. The DWR's investigation found that the QNWR's water rights were impaired by groundwater pumping. The Big Bend Groundwater Management District No. 5 (GMD5) sought to reduce water use and address declining streamflows through a Local Enhanced Management Area (LEMA) plan, but it was rejected as inadequate. In 2019 DWR prepared to reduce the water use of the junior water rights. Senator Jerry Moran (R-KS) and then-Representative Roger Marshall (R-KS) brokered an agreement between the FWS, KDA, and GMD5 to postpone administration of water rights to allow more time to seek a remedy to the impairment. AOK alleged violations of the National Wildlife Refuge System Improvement Act, the Administrative Procedures Act, the Endangered Species Act, and the National Environmental Policy Act. AOK asserted that the FWS must obtain water supplies through the federal reserved water rights doctrine with a 1955 priority date that coincides with the creation of the QNWR, plus additional state-law water rights to ensure adequate water supplies for the QNWR. AOK sought orders requiring FWS to obtain court injunctions that require the long-term curtailment of junior groundwater rights, and to request "the full administration of all water rights in the Rattlesnake Creek sub-basin that have impaired and are impairing the Refuge Water Right...." (WSW #2360)

WATER RESOURCES

California/FIRO

On February 4, a collaborative multi-agency steering committee issued its Final Viability Assessment for Forecast-Informed Reservoir Operations (FIRO) at Lake Mendocino. The participating state and federal agencies include the California Department of Water Resources, Sonoma Water, Scripps Institution of Oceanography, the Army Corps of Engineers (Corps), the National Oceanic and Atmospheric Administration (NOAA), and the Bureau of Reclamation. The report assesses a six-year effort to demonstrate the viability of flexible water management using "data from watershed monitoring and improved weather and hydrologic forecasting to help water managers selectively retain or release water from reservoirs in a manner that can adapt to weather extremes and that leverages advancements in the science of meteorological and hydrologic forecasting." The report supports the Corps' "approval and adoption of FIRO-based operations in the Lake Mendocino Water Control Manual (WCM)."

Advances in understanding atmospheric rivers and their role in flood events in California has led to improved forecasting tools and optimization of water resources. The press release explained: "Many dams in the West are strictly regulated by [Corps] issued water control manuals based on historical long-term averages of winter storms and spring runoff. These manuals do not rely on forecasts and have traditionally operated on directives to 'manage water on the ground' and typically specify lower reservoir levels in the fall to make room to prevent winter storm runoff floods and raise levels in the late spring. The variability of when rainfall occurs from year to year is not directly considered. Many water control manuals were developed prior to modern technology such as satellites, radar, and numerical models that have led to significant improvements in forecasting skill." The pilot demonstration project leveraged modern data and tools to enable proactive, adaptive adjustments to variable weather conditions. It established "an approach that could be tested at suitable additional reservoirs elsewhere in California and other regions where water supply can vary widely." During the demonstration period, Lake Mendocino experienced both wet and dry years, and operators were able to increase water supply benefits with a 19% increase in water storage and still managed flood risks, with "significant regional benefits for people, the environment, and the economy." See https://scripps.ucsd.edu/news/new-report-confirms-benefits-forecast-informed-reservoir-operations-lake-mendocino.

Colorado River/Utah

On February 3, the Utah House and Senate leadership introduced the Colorado River Amendments (H.B. 297) to create a new authority to manage Utah's interests in the Colorado River. The six-member authority includes the Utah Division of Water Resources (UDWR) Director, the Utah Department of Natural Resources' Executive Director, and the Colorado River Commissioner, which recently became a Governor-appointed position separate from UDWR. The legislation states, "The authority may advise, support, gather information, and provide input to the river commissioner. The mission of the authority is to protect, conserve, use, and develop Utah's waters of the Colorado River system. The authority may develop a management plan to ensure that Utah can protect and develop the Colorado River system and to work to ensure that Utah can live within the state's apportionment of the Colorado River system." The legislation also outlines the duties of the river commissioner of the Colorado River and allows the commissioner to also be a member of the authority as the chair. It states, "The river commissioner shall act for the state and the Utah Colorado River users in consultations or negotiations with: (1) the Upper Colorado Commission; (2) the states in the Colorado River Compact; and (3) the government of the United States." It would also enable the river commissioner to make and enter into compacts between Utah and the other Colorado River Basin States. See https://le.utah.gov/~2021/bills/static/HB0297.

WATER RESOURCES/ENVIRONMENT

Columbia River Basin/Lower Snake River Dams

On February 7, Representative Mike Simpson (R-ID) released his "Energy and Salmon Concept" that lays out a comprehensive, $34B framework for addressing the persistent problems associated with the interaction of energy, the economy and salmon recovery in the Pacific Northwest. The press release stated, "For the last three years, [Simpson] and his staff have held over 300 meetings with stakeholders, tribes, elected representatives and other interests trying to understand and break down the complex issues related to the ongoing litigation, studies, appeals, biological opinions, spill and other issues creating regional uncertainty related to salmon recovery, dams, energy and transportation."

Central to the framework is breaching the earthen portions of the four Lower Snake River Dams to allow salmon to more easily return to their natal streams in Idaho, Oregon and Washington. In each of the stakeholder meetings Simpson and his staff held, they asked: (1) How would your group be affected by breaching the dams?; (2) Could the benefits you currently receive from the dams be replaced so that you could continue operations with certainty and security on your own terms?; and (3) How expensive might it be to replace those benefits?

The framework acknowledges the many benefits provided by the dams, and that it would be very expensive to replace them. It also acknowledges that salmon are not doing well, for several reasons, despite spending $17B on salmon recovery and management. It concludes that breaching the dams is the most viable option for ensuring that salmon runs recover to healthy populations..

The proposal would distribute federal funds across all sectors through a new Columbia Basin Fund. It includes $10B to replace the energy generation, $2B on grid resiliency, $2B on salmon spill energy replacement, $1B on a dam mitigation and indemnification program, 35-year extensions for Columbia Basin dams, and a 35-year moratorium on litigation related to salmon and the dams. States would become co-equal and primary northwest fish managers alongside the regional tribes through a new Northwest State and Tribal Fish and Wildlife Council, and would receive an increase to $123M in annual block grants (3 times the current $40M/year cap). It provides $3B for watershed partnerships to address issues in the agricultural sector, $1.6B for animal waste management incentives, and $1.5B for barge grain transportation. It also includes funding to study and increase transportation along the Columbia and Lower Snake Rivers, and development to promote tourism in affected communities. It would establish the Snake River Center for Advanced Energy Storage and the Pacific Northwest National Laboratory.

Simpson said, "The Northwest has been caught in an unsustainable cycle of conflicts over salmon and energy. For over thirty years, lawsuits, appeals, salmon management directives and endless spending have prevailed, while salmon, energy, agriculture and transportation interests continue to suffer. What I am releasing today is a proposal to break that cycle and deliver certainty and security to the Northwest without picking winners and losers." Simpson has not yet drafted legislation, but is beginning discussions with the Northwest Delegation, states, tribes, governors, and other stakeholders to craft a solution that can help shape the vision of the Northwest in coming decades. See https://simpson.house.gov/news/documentsingle.aspx?DocumentID=399149

PEOPLE

Tim Davis, WSWC Chair and Water Quality Division Administrator, Montana Department of Environmental Quality (DEQ) has accepted a position as the Director, Division of Drinking Water, Utah Department of Environmental Quality. We congratulate Tim on his new position and express our sincere appreciation for his dedicated service and leadership to the WSWC.