



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

Nominations/NASA Administrator

On March 19, President Biden nominated Bill Nelson to be the next Administrator of the National Aeronautics and Space Administration (NASA). The NASA press release noted that Nelson represented Florida in the Senate from 2001-19, serving as ranking member on the Commerce, Science, and Transportation Committee from 2015-2019. Previously, he represented Florida's 9th and 11th Congressional Districts in the U.S. House of Representatives. "While chair of the House space subcommittee, Nelson flew aboard the space shuttle Columbia as a payload specialist on the STS-61C mission in 1986. He was appointed to the NASA Advisory Council by former Administrator Jim Bridenstine in May 2019." The White House press release said: "Most every piece of space and science law has had his imprint, including passing the landmark NASA bill of 2010.... That law set NASA on its present dual course of both government and commercial missions.... In the Senate he was known as the go-to senator for our nation's space program."

ADMINISTRATION/WATER QUALITY

Lead and Copper Rule

On March 31, the Environmental Protection Agency (EPA) announced a series of public listening sessions and roundtables focusing on Lead and Copper Rule Revisions "to ensure that communities and stakeholders have the opportunity to provide their perspectives to the agency on protections from lead in drinking water." In the press release, new EPA Administrator Michael Regan said: "Lower income communities and communities of color are often disproportionately exposed to lead, which can cause life-long negative effects. Today, we are inviting these communities and other stakeholders to share their perspectives so that EPA can ensure that its review of the revised Lead and Copper Rule is grounded in their lived experience."

Public listening sessions will be held on April 28 and May 5 from 10:00a to 10:00p EDT. Those interested in speaking can register at www.epa.gov/safewater. Community - focused roundtables will begin in May. In

June, EPA will host roundtables with drinking water utilities, intergovernmental associations, environmental organizations, environmental justice organizations, public health organizations, and consumer organizations. In July, EPA will host a national co-regulator meeting with states, tribes, and territories to discuss the feedback received from communities and stakeholders. EPA requests that communities or organizations that would like to be considered for a community-focused or stakeholder roundtable submit a nomination letter no later than April 23. Public comments can be submitted via the docket at: <http://www.regulations.gov>, Docket ID: EPA-HQ-OW-2021-0255 until June 30.

ADMINISTRATION/WATER RESOURCES

Reclamation/SECURE Water Act

On April 5, the Bureau of Reclamation released the 2021 West-Wide Climate and Hydrology Assessment, the 421-page technical report that supports its Water Reliability in the West - 2021 SECURE Water Act Report submitted to Congress in January. (WSW #2440). The Executive Summary said: "The 2021 Assessment investigates changes in climate and hydrology across the West using approaches that align with Reclamation's 2011 and 2016 SECURE Water Act Reports and new techniques, data, and analyses that provide a broader assessment of future hydroclimate changes to support water management in the West." The 2021 Assessment includes additional data, including paleohydrology and refined models for future projections. It offers an analysis of hydroclimate projections in eight major Reclamation river basins, quantifies climate risks to five Reclamation reservoirs, and synthesizes climate impacts on groundwater recharge and discharge. It also provides a discussion on the uncertainties in the analyses.

In a press release, Deputy Commissioner Camille Calimlim Touton said: "Western water supply and delivery systems are affected by changing hydrologic conditions and competing demands. These reports highlight Reclamation's effort to use the best-available science to meet its mission while also collaborating with its water and power customers, states and local agencies, and tribes to address critical western water management issues." www.usbr.gov/climate

Reclamation/WaterSMART

On March 17, Reclamation announced \$42.4M in WaterSMART grants for 55 projects in 13 states that conserve and use water more efficiently. Reclamation noted that the projects are anticipated to conserve 98,000 acre-feet of water per year. “The selected projects are in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, Oregon, Texas, Utah, Washington and Wyoming. Projects include canal lining and piping to reduce seepage losses; installation of advanced metering, automated gates, and Supervisory Control and Data Acquisition systems to improve water management; and programs in urban areas to install residential water meters.”

On March 25, Reclamation announced \$2.1M in WaterSMART grants for 11 collaborative watershed management projects in Arizona, California, Colorado, Idaho, Oklahoma, Oregon and Washington. The press release said: “These projects have been developed by groups of stakeholders working together to address critical water supply needs and water quality concerns. They help water users meet competing demands and avoid conflicts over water.”

Reclamation has also announced two funding opportunities open to projects eligible under the Water Infrastructure Improvements for the Nation (WIIN) Act (PL 114-322). One is available to sponsors of seawater or brackish desalination projects eligible under WIIN Act §4009(a), and the other is available to sponsors of water reclamation and reuse projects eligible under WIIN Act §4009(c). Applications for both are due April 23. <https://www.usbr.gov/watersmart/>

LITIGATION

Florida v. Georgia/Equitable Apportionment

On April 1, the U.S. Supreme Court issued its 9-0 decision in *Florida v. Georgia* (#22O142). The Court held that Florida had not shown clear and convincing evidence of serious ecological injury caused by Georgia’s alleged overconsumption, and thus was not entitled to an equitable apportionment of interstate waters. The Court noted that the precise causes of Florida’s injuries remain a subject of ongoing scientific debate: “As judges, we lack the expertise to settle that debate and do not purport to do so here. Our more limited task is to evaluate the parties’ arguments in light of the record evidence and Florida’s heavy burden of proof. And on this record, we agree with the Special Master that Florida has failed to carry its burden.”

The Court declined to rule on the causation standard applicable in equitable apportionment cases – e.g., whether Georgia’s consumption of water must be the sole cause of injury or at least a substantial factor contributing to it – because “...Florida has failed to establish a sufficient causal connection under any of the

parties’ proposed standards.” The Court noted that the fundamental problem with Florida’s evidence of oyster collapse “...is that it establishes at most that increased salinity and predation contributed to the collapse, not that Georgia’s overconsumption caused the increased salinity and predation.... The NOAA, in fact, primarily blamed ‘prolonged drought conditions’ and the Corps’ reservoirs operations – not Georgia’s consumption during drought conditions – for the elevated levels of salinity and predation in the Bay. Other record evidence, moreover, indicates that the unprecedented series of multiyear droughts, as well as changes in seasonal rainfall patterns, may have played a significant role.” Further, the Court found an absence of evidence of actual harm to other wildlife and plant life along the river in terms of population decline, particularly when the U.S. Fish and Wildlife Service found that one of the species is stable and may be increasing in population size.

The Court concluded: “In short, Florida has not met the exacting standard necessary to warrant the exercise of this Court’s extraordinary authority to control the conduct of a coequal sovereign. We emphasize that Georgia has an obligation to make reasonable use of Basin waters in order to help conserve that increasingly scarce resource. But in light of the record before us, we must overrule Florida’s exceptions to the Special Master’s Report and dismiss the case.” See WSW# 2379, #2302.

WATER RESOURCES

Nevada/Water Banking and Conservation

On April 5, the Nevada Legislature Assembly Committee on Natural Resources held hearings on the Nevada Water Banking Act (AB354) and a bill to create a Program for the Conservation of Water (AB356). The banking bill, which is similar to Utah’s program, proposes to “(1) promote the optimal use of water in [Nevada]; (2) promote transparency and provide access to water markets; (3) provide an innovative method of administering water rights and distributing water; (4) support the agricultural economy in [Nevada]; (5) facilitate robust and sustainable agricultural production while meeting the growing demands for municipal and industrial water use; and (6) promote water quality standards and facilitate a healthy and resilient natural environment.”

The conservation bill, similar to Oregon, would create a “voluntary program for water conservation which allows certain persons holding perfected water rights that are used for irrigation to apply to the State Engineer for an allocation of conserved water based on conservation measures implemented by the person which allow the person to conserve water. The conserved water will be allocated between the applicant and the source of the water to create a reserve of water in each basin.”