



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS/WATER RESOURCES

California/Drought

On March 28, Governor Gavin Newsom (D-CA) signed an Executive Order (N-7-22) expanding measures to address the ongoing drought emergency in California. It called on urban water suppliers to move Water Shortage Contingency Plans to Level 2, based on a projected shortage of up to 20%, and encourage voluntary activation of Level 3 requirements based on a shortage level up to 30%. The order directed the State Water Resources Control Board (SWRCB) to adopt emergency regulations defining “non-functional turf” and ban its irrigation in commercial, industrial, and institutional sectors. It directed the Department of Water Resources (DWR) to develop strategies to improve conservation, including technical and financial assistance.

The order directed SWRCB to “expand inspections to determine whether illegal diversions or wasteful or unreasonable use of water are occurring and bring enforcement actions....” Further, it suspended ordinances and regulations that prohibit hauling water outside a basin of origin to facilitate hauling water by truck for domestic use to communities with degraded water quality or supply due to drought. To increase the resilience of state water supplies, the order directed DWR to “prepare for the potential creation and implementation of a multi-year transfer program pilot project for the purpose of acquiring water from willing partners and storing and conveying water to areas of need.”

To facilitate and protect the use of groundwater during drought, the order directed DWR to work with other agencies to expedite regulatory pathways to repair or reconstruct small community public supply wells. It prohibits local agencies from issuing new permits for groundwater wells – other than domestic wells less than two acre-feet per year – in basins “subject to the Sustainable Groundwater Management Act [SGMA] and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency [GSA]” that the proposed well would not interfere with the local GSA’s sustainability plan.

The order directed state agencies to “collaborate with tribes and federal, regional, and local agencies on actions related to promoting groundwater recharge and increasing storage.” It directed SWRCB and the Regional Water Quality Control Boards to prioritize “water right permits, water quality certifications, waste discharge requirements, and conditional waivers of waste discharge requirements to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation events for local storage or recharge, consistent with water right priorities and protections for fish and wildlife.” It suspends various statutes and regulations to address the need to recharge groundwater during the drought. See <https://www.gov.ca.gov/wp-content/uploads/2022/03/March-2022-Drought-EO.pdf>.

ADMINISTRATION

Interior/Tribal Water Codes

On April 7, the Department of the Interior (DOI) announced that it would rescind a 1975 memorandum on the authority to approve Tribal water codes, issued by then-Secretary Rogers C.B. Morton. The press release said: “The memorandum imposed a procedural hurdle to adoption or enactment of water codes for Tribes with constitutions that require Secretarial approval of such codes. The action has created unnecessary confusion for nearly 50 years regarding the Department’s willingness to work with and support Tribes considering water regulation within their reservations. Most Tribes have constitutions that do not require Secretarial approval of Tribal water codes. In circumstances where Tribes have congressionally enacted Indian water settlements, they often include Tribal water code provisions that otherwise avoid potential conflicts with states or non-Indians. Even for those whose constitutions require Secretarial approval of Tribal water codes, those Tribes may still amend their constitutions to remove Secretarial approval requirements. Any approval of Tribal water codes must be done consistent with applicable court decisions and laws, including any enacted Indian water settlement, and contain provisions for the protection of Indian allottees consistent with advice previously provided by the Solicitor.”

DOI will engage and consult with tribes to discuss the appropriate delegation of approval authority, and guidance on approval standards. Secretary Deb Haaland

said: "If we are truly to support Tribal self-determination, we cannot be afraid to review and correct actions of the past that were designed to create obstacles for Tribal nations. The 'Morton moratorium' is inconsistent with the Department's commitment to upholding Tribal self-determination and the federal trust responsibility to support Tribal sovereignty." See www.doi.gov.

Reclamation/Klamath Project

On April 11, the Bureau of Reclamation released the Klamath Project 2022 Temporary Operating Procedures to adaptively manage supply, including flushing flows for migrating salmon, and other ecosystem, agricultural, and tribal culture benefits. It announced the initial water supply allocation of 50,000 acre-feet for limited irrigation in the Klamath Project, based on the Natural Resources Conservation Service's (NRCS) inflow forecast. Reclamation also announced \$20M in aid for the 2022 irrigation season, and another \$5M in technical assistance for tribal-led projects.

Reclamation Acting Commissioner David Palumbo said: "The Klamath Basin is experiencing prolonged and extreme drought conditions that we have not seen since the 1930s. We will continue to monitor the hydrology and adaptively manage conditions in close coordination with Project water users, Tribes and state and federal agency partners. Reclamation is dedicated to collaborating with all stakeholders to get through another difficult year and keep working toward long-term solutions for the Basin." <https://www.usbr.gov/newsroom/#/news-release/4168>

CONGRESS

U.S. Supreme Court

On April 7, the Senate voted 53-47 to confirm Ketanji Brown Jackson to serve as the 116th Associate Justice on the U.S. Supreme Court. She is the first Black woman to serve on the Supreme Court, and will join the Court as Justice Breyer retires at the end of the 2021-22 term. Judge Jackson said: "I've...spent the better part of the past decade hearing thousands of cases and writing hundreds of opinions. And in every instance, I have done my level best to stay in my lane and to reach a result that is consistent with my understanding of the law and with the obligation to rule independently without fear or favor. I am humbled and honored to continue in this fashion as an Associate Justice of the Supreme Court of the United States, working with brilliant colleagues, supporting and defending the Constitution, and steadfastly upholding the rule of law." See www.whitehouse.gov.

WATER RESOURCES

Nebraska/Perkins County Canal Project

On April 12, the Nebraska Legislature passed the Perkins County Canal Act (LB1015) by a vote of 42-4, authorizing the Nebraska Department of Natural

Resources to build a canal under the terms of the 1923 South Platte River Compact. The stated purpose of the Act is to provide "Nebraska water users certainty of continued South Platte River flows to protect Nebraska's communities, businesses, agriculture, and environment. Without this project, Colorado's water planning documents and recent legislation have identified the South Platte River flows to Nebraska as excess that should be stored and diverted to other uses within Colorado." The legislative findings said: "[I]t is essential to the economic prosperity, health, and welfare of the people of the State of Nebraska, and to the environmental health of the entire Platte River Basin, to protect Nebraska's full entitlement to the flows of the South Platte River as provided for in the South Platte River Compact."

Utah/Drought

On April 12, Salt Lake City, Utah announced that it would start the peak season of water demand at Stage 2 of its 5-stage Water Shortage Contingency Plan. The Plan's five water shortage stages are triggered by water supply levels, streamflows, and water demand. Under Stage 2, actions are focused on augmenting current water supplies and saving for prolonged shortages, while water customers are asked to meet a 5% reduction in daily water use, and municipal water users, parks, and city-owned buildings will be required to take specific actions to reduce overall water use and adjust lawn watering frequency. The Department of Salt Lake City Public Utilities (SLCDPU), tasked with monitoring water conditions, noted that Utah remains in severe or extreme drought, with many reservoirs below capacity. The snowpack is below normal, although soil moisture has improved, and forecasts indicate a season of higher temperatures and lower precipitation. See <https://www.slc.gov/mayor/2022/04/12/salt-lake-city-starts-peak-demand-season-under-stage-2-of-its-water-shortage-contingency-plan/>.

South Dakota/Infrastructure

On April 13, the South Dakota Department of Agriculture and Natural Resources (DANR) announced \$1.1B in grants and loans to more than 90 organizations for drinking water and wastewater projects. The grants and loans were awarded from DANR's Drinking Water State Revolving Fund Program, Clean Water State Revolving Fund Program, Consolidated Water Facilities Construction Program, and the American Rescue Plan Act.

Governor Kristi Noem (R-SD) said: "These projects will serve our grandchildren and their grandchildren. I am proud to support these community investments to ensure the people of South Dakota continue to have clean drinking water and safe disposal systems to serve their needs for decades to come." See <https://news.sd.gov/newsitem.aspx?id=30106>.

The WESTERN STATES WATER COUNCIL is a government entity of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.