



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

682 East Vine Street / Suite 7 / Murray, UT 84107 / (801) 685-2555 / Fax 685-2559 / www.westernstateswater.org

Chair - Jennifer Verleger; Executive Director - Tony Willardson; Editor - Michelle Bushman; Subscriptions - Julie Groat

ADMINISTRATION **U.S. Geological Survey**

On August 15, the Department of the Interior (DOI) swore in the new Director of the U.S. Geological Survey (USGS), David Applegate. He joined the USGS in 2004, and in 2021 began serving as the USGS Associate Director for Natural Hazards. Secretary of the Interior Deb Haaland said: "David's long and impressive tenure will continue to be essential to ensuring that the Department continues to be an international leader in developing the climate science needed to understand the Earth's past, present and future climate. With science at the heart of Interior's mission, David will also play a key role in helping us to strengthen and reinforce the scientific integrity of the Department's work."

ADMINISTRATION/WATER RESOURCES **Drought/Klamath**

On August 18, the Bureau of Reclamation (USBR) notified irrigation districts in the Klamath Basin that water diversions from Upper Klamath Lake, already reduced to 15% of 2022 demand, would be cut off for the remainder of the season. The districts have questioned Reclamation's legal authority to cut off water supply to the farming community. On August 23, the Klamath Irrigation District notified Reclamation that it had closed the A Canal Headworks "under duress and continued protest." Irrigators are pumping groundwater to keep crops alive, and return flow-dependent wildlife refuges are dry.

In May, the Klamath Tribes filed a lawsuit against the federal government for letting farmers take irrigation water rather than leaving water in the lake for endangered fish, in violation of a 2020 biological opinion and the Endangered Species Act. The current guideline establishes a minimum 4,138' elevation.

On August 23, DOI announced a \$26M allocation of Infrastructure Investment and Jobs Act (IIJA) funds for Klamath Basin restoration projects, including \$16M for ecosystem restoration, water quality improvements, and sustaining wetlands, and \$10M to expand the fish rearing capacity of the Klamath Falls National Fish Hatchery.

The USBR and National Fish and Wildlife Foundation will provide another \$2.2M to improve fish and wildlife habitat. Projects include the removal of fish passage barriers, improved access to cold water refugia, instream habitat enhancement, water conservation, and fine sediment reduction.

CONGRESS **Great Salt Lake Recovery Act**

On July 14, Senator Mitt Romney (R-UT) introduced the Great Salt Lake Recovery Act (S. 4536), referred to the Environment and Public Works Committee. This bill is to "study how the Great Salt Lake and other saline lakes are affected by drought and to require a feasibility study on drought solutions..." The bill authorizes \$10M for the U.S. Army Corps of Engineers (Corps) to establish a monitoring and assessment program for saline lakes in the Great Basin, including the Great Salt Lake. The bill also authorizes funding for a feasibility study to evaluate technologies capable of redirecting water to the Great Salt Lake. Identical legislation (H.R. 8389) has been introduced by Rep. Chris Stewart (R-UT). In 2021, Senator Jeff Merkley (D-OR) and Rep. Blake Moore (R-UT) introduced the Saline Lakes Ecosystems in the Great Basin States Program Act (S.1466/H.R. 5345 to authorize the Director of the USGS to establish a regional program to assess the hydrology and wildlife of saline lakes. www.congress.gov

Drought/Inflation Reduction Act

On August 16, Congress passed the Inflation Reduction Act (H.R. 5376) funding energy security and climate change programs, as well as substantial funding for drought resilience and other programs with: (1) \$4B to "mitigate the impacts of drought in the Reclamation States, with priority given to the Colorado River Basin and other basins experiencing comparable levels of long-term drought," including "compensation for temporary voluntary reduction in diversion of water or consumption of water use" (Section 50233); (2) \$837.5M for Department of Housing and Urban Development loans and grants to improve energy or water efficiency (Section 30002); (3) \$550M for USBR grants for "the planning, design, or construction of water projects the primary

purpose of which is to provide domestic water supplies to communities or households that do not have reliable access to domestic water supplies" (Section 50231); (4) \$50M for National Oceanic and Atmospheric Administration (NOAA) competitive grants "to fund climate research as it relates to weather, ocean, coastal, and atmospheric processes and conditions, and impacts to marine species and coastal habitat" (Section 40004); (5) \$25M to USBR to cover water conveyance facilities with solar panels (section 50232); (6) \$23.5M for the USGS to produce, collect, disseminate, and use 3D elevation data (Section 50271); and (7) emergency drought relief for tribes (Section 80004).
<https://www.congress.gov>

LITIGATION

California/FERC/CWA §401 Certifications

On August 4, a Ninth Circuit panel vacated and remanded the Federal Energy Regulatory Commission's (FERC) ruling that the California State Water Resources Control Board (SWRCB) had waived its Clean Water Act (CWA) §401 state water quality certification for certain hydroelectric projects during relicensing (*California SWRCB v. FERC*, No. 20-72432). Under the California Environmental Quality Act (CEQA), the SWRCB must receive and consider an analysis of a project's environmental impact before granting a CWA §401 certification request. For complex projects such as hydroelectric dams that are licensed for 40 or 50 years, the CEQA process may take more than a year to complete, which extends beyond the one-year federal deadline for CWA §401 certifications. California regulations require SWRCB to deny certifications without prejudice if the CEQA review is not complete, unless the applicant withdraws the request for certification. In three separate orders, FERC held that the project applicants' withdrawals and resubmissions of their CWA §401 certification requests did not re-start the SWRCB's one-year review clock, and that the certification authority was thereby waived.

The Ninth Circuit noted that because the one-year CWA §401 certification deadline is not always feasible, "a practice has developed over the last several decades – in California and in other states – whereby project applicants withdraw their requests for certification before the end of the one-year review period and resubmit them as new requests, rather than have their original requests denied. The theory behind this practice is that a withdrawn-and-resubmitted request starts a new one-year review period, affording the project applicant more time to comply with procedural and substantive prerequisites to certification and the state more time to decide whether and under what conditions it will grant the certification request. Although FERC expressed misgivings in some orders that withdrawal-and-resubmission could lead to delays in federal licensing,

FERC accepted the withdrawal-and-resubmission practice for many years." The Court noted that FERC changed its position in 2019 following the decision in *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019), which held that California and Oregon had waived their certification authority by engaging in a "coordinated withdrawal-and-resubmission scheme" to delay federal licensing proceedings on the Klamath River. Notably, the *Hoopa Valley* case involved formal written contracts between the parties to defer certification. In contrast, the SWRCB "acquiesced in the Project Applicants' own decisions to withdraw and resubmit their applications rather than have them denied" due to incomplete CEQA evaluations.

WATER QUALITY

PFAS

On August 18, Northwestern University chemists published a research article titled, "Low-temperature mineralization of perfluorocarboxylic acids" in the Science journal. A press release said: "Using low temperatures and inexpensive, common reagents, the research team developed a process that causes two major classes of PFAS [Per- and polyfluoroalkyl substances] compounds to fall apart, leaving behind only benign end products." The researchers noted that the carbon-fluorine bonds make PFAS chemicals nearly indestructible, but by heating PFAS in a solvent of dimethyl sulfoxide and a reagent of sodium hydroxide, the charged oxygen atoms fall off and the carbon-fluorine bonds fall apart. The chemists tested and successfully degraded 10 compounds, but noted that EPA has identified more than 12,000 PFAS compounds. William Dichtel, who led the study, said: "Our work addressed one of the largest classes of PFAS, including many we are most concerned about. There are other classes that don't have the same Achilles' heel, but each one will have its own weakness. If we can identify it, then we know how to activate it to destroy it."
<https://www.science.org/doi/10.1126/science.abm8868>

IBWC/Tijuana River Sewage

On August 18, the International Boundary and Water Commission (IBWC) held a ceremony to announce that the U.S. and Mexico have agreed to fund sanitation projects in San Diego and Tijuana to stop cross-border pollution. The IBWC Minute No. 328 of the 1944 Water Treaty, "Sanitation Infrastructure Projects in San Diego, California – Tijuana, Baja California for Immediate Implementation and for Future Development," commits funding from both countries (\$330M and \$144M, respectively) to increase wastewater treatment capacity and rehabilitation or replacement of sewer lines and pump stations. <https://www.epa.gov/newsreleases/us-and-mexico-agree-invest-474m-address-tijuana-river-sewage-problem>