



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

Clean Water Act – Anniversary

The 50th anniversary of the Clean Water Act (CWA) was marked with events and reflections from the White House, and the Environmental Protection Agency (EPA).

An October 17 White House proclamation read: “Fifty years ago, the Congress passed the Clean Water Act of 1972, revolutionizing America’s responsibility to protect and restore the vital waterways that sustain our communities, our economy, and our ecosystems.

Before this landmark legislation, America’s waters were in crisis, often flooded and even on fire with toxic pollution and cancer-causing contaminants. Industrial waste and sewage threatened our drinking water, and wetlands disappeared at an alarming rate. The Clean Water Act met these challenges head-on, setting and enforcing national water quality standards, restricting pollution, and investing in wastewater treatment and better wetlands management.

Five decades later, our Nation’s waters are dramatically cleaner. Once dead rivers and lakes are now flourishing with wildlife. People have returned to boat, fish, and swim. Sacred waters that Tribal Nations have relied on for generations are clean again. This is a testament to the tireless partnerships that the Environmental Protection Agency has forged with State, local, and Tribal governments. It is a powerful tribute not only to the activists who first sounded the alarm, built a movement, and fought to pass this powerful law but also to the Americans everywhere who have since done so much to help enforce it, safeguarding our waterways and taking on polluters in court.” <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/17/a-proclamation-on-the-50th-anniversary-of-the-clean-water-act>

On October 18, EPA Administrator Michael Regan, Assistant Administrator for Water Radhika Fox, and White House Council on Environmental Quality Chair Brenda Mallory along with national and local environmental leaders, gathered in Cleveland, Ohio to recognize the 50th Anniversary on the banks of the

Cuyahoga River. “The Clean Water Act has played a transformational role in protecting people’s health and safeguarding our natural resources for the enjoyment of future generations,” said Regan. “From establishing legal policy to driving technological innovation, the Clean Water Act has led to landmark standards, regulations, and protections for waterways across this country. Combined with other key initiatives and historic resources flowing to EPA, the Clean Water Act will continue to reduce pollution, restore and protect precious waters throughout the United States.”

“Water shapes our lives. 50 years ago, our nation came together and passed the Clean Water Act – a monumental piece of legislation,” said Fox. “While we’ve made incredible progress, we need to continue to move forward, focusing the ‘North Star’ for the Clean Water Act towards ensuring every community has access to fishable, swimmable bodies of water.” EPA’s Office of Water released a story map on the history and successes of the Act. <https://www.epa.gov/history>

“President Biden believes every person deserves access to clean water. When the Cuyahoga River burned fifty years ago, people from all backgrounds came together with one voice to demand action,” said Mallory. “Today the Clean Water Act ensures healthier rivers and waters, opening up new possibilities for communities nationwide. Building on the progress of the last 50 years, the Bipartisan Infrastructure Law and the Inflation Reduction Act make unprecedented investments in our nation’s water infrastructure so that we can protect clean water for generations to come.”

LITIGATION/WATER RIGHTS

Texas v. New Mexico/Rio Grande

On October 25, New Mexico Attorney General Hector Balderas announced that after a nearly decade-long battle over the waters on the Rio Grande, the case has reached an important legal milestone www.nmag.gov/resources/press-releases.

The States of Texas, New Mexico, and Colorado have reached a historic agreement after nine years that, if finalized, will settle the massive legal dispute between

the States over how water from the Rio Grande is divided between southern New Mexico and west Texas. The agreement addresses interstate issues, but intrastate issues related to the federal Rio Grande Project within New Mexico remain.

Texas filed a lawsuit in 2013, before the Supreme Court, which has original jurisdiction over cases between States, bypassing lower courts. The Court allowed the U.S. to intervene due to the impact on the Bureau of Reclamation's Rio Grande Project. The Court appointed a Special Master, Michael Melloy, a senior U.S. 8th Circuit Court of Appeals judge, to first hear arguments (U.S. Supreme Court, #22O141). Texas argues groundwater pumping in Southern New Mexico has reduced Rio Grande flows, limiting how much water makes it across the border. New Mexico argues it has been shorted on its share of the river. Last fall, Melloy took testimony from farmers, hydrologists, irrigation district managers and others, with more hearings anticipated. He will now review the States' agreement and ultimately make a recommendation to the Supreme Court for action.

On November 3, Texas Attorney General Ken Paxton announced that the historic agreement, if approved by the United States Supreme Court, would guarantee that the resources of the Lower Rio Grande River are justly distributed among the states. The 1938 Compact provided for an "equitable apportionment" of the waters of the Rio Grande among the three states, and the proposed agreement would resolve any disputes the states have about their obligations under the Compact.

The dispute focuses on a stretch of the Rio Grande between Elephant Butte Dam and Hudspeth County and involves not only surface water, but the use of groundwater supporting the flow of the river. The federal government and some irrigation districts have announced their objection to the settlement, but the States are currently in the process of requesting approval despite the objections.

"I've continued to fight to ensure our state has the legal access to the Rio Grande River that we're owed, and that we can responsibly use the river's resources to limit the damage of droughts and help Texas farmers," said Paxton. "This agreement helps protect the resources of all the states involved, and I encourage the federal government to reconsider its objection to this important agreement." <https://www.texasattorneygeneral.gov/news>

"Extreme drought and erratic climate events necessitate that states must work together to protect the Rio Grande, which is the lifeblood of our New Mexico

farmers and communities," Balderas said. "And I'm very disappointed that the U.S. is exerting federal overreach and standing in the way of the states' historic water agreement." (Santa Fe New Mexican, October 26).

November 14 is the deadline for the States to submit a motion requesting approval of the agreement to the Special Master. Then the parties are expected to prepare legal briefs addressing whether or not the States have the ability to settle the case over the objection of the U.S. Federal officials and downstream irrigation districts will have an opportunity to respond by January 6, 2023, in preparation for a hearing scheduled for January 24, 2023. (See WSW Special Report #2456)

The status report released by the Special Master on October 24, is available at: [https://ecf.ca8.uscourts.gov/files/smDocuments/10242022%20Status%20Report%20and%20COS%20\(00139497xD2C75\).pdf](https://ecf.ca8.uscourts.gov/files/smDocuments/10242022%20Status%20Report%20and%20COS%20(00139497xD2C75).pdf).

From its origin in southcentral Colorado, the Rio Grande flows 1,896 miles through New Mexico, Texas, and into Mexico before discharging into the Gulf of Mexico. It provides water to agricultural producers and multiple cities in Colorado, New Mexico, and Texas.

The Elephant Butte Irrigation District (EBID) last spring cautioned its agricultural producers to plan for a critically water short year. Some Rio Grande ranches in New Mexico recorded historic low flows, and some farmers voluntarily fallowed fields to help the State meet compact obligations. Recent monsoon rains provided a good start to the 2023 water year, but Elephant Butte Reservoir is at only 6% of capacity.

According to Phil King EBID's hydrology consultant, "The Rio Grande Project was built and lives on snowmelt runoff from southern Colorado and Northern New Mexico (the watershed headwaters), and that's what has cratered." He explained, "We still get the monsoonal inflow spikes like we're getting right now, but we're not getting the 'meat and potatoes' which is the spring snowmelt runoff."

Even with average precipitation this past winter, with soil moisture deficits, only 35 percent of the median spring runoff made it to Elephant Butte Reservoir. The hot dry outlook for the next few months, consistent with a third year of La Niña (cooler Pacific equatorial surface temperatures), indicates persistent drought conditions. It will take significant winter snowpack for runoff next spring to make its way to Elephant Butte. EBID expects another later start for the 2023 surface water irrigation season. <https://www.ebid-nm.org/blog-post/ebids-october-outlook-state-of-the-water-update>

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.

