



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER RESOURCES

Pumped Storage Hydropower

On February 14, the Western States Federal Agency Support Team (WestFAST) hosted the first in a new series of webinars on pumped storage hydropower (PSH) systems in the Western United States. The presenters were Vladimir Koritarov, Director of the Center for Energy, Environmental, and Economic Systems Analysis at Argonne National Laboratory; and Rocio Uria Martinez, research and development staff member at the Oak Ridge National Laboratory. They provided a high-level overview of the energy storage concept; a description of open- and closed-loop systems; an explanation of modern technologies and energy capacities; and PSH support for variable energy resources such as solar and wind.

Most PSH plants in the United States were built between 1960 and 1990, and increases to PHS capacity over the past thirty years have been almost exclusively due to upgrades to existing plants. Renewed interest in PSH development started in 2000, but low electricity prices through the 2010s challenged the business case for the investment to build new facilities. Recent federal legislation has introduced new incentives to encourage PSH development, including tax credits in the 2022 Inflation Reduction Act for new energy storage facilities, and expedited Federal Energy Regulatory Commission (FERC) licensing processes for closed-loop systems in the 2018 American Water Infrastructure Act.

By the end of 2021, 96 new PSH projects were in the developmental pipeline, and nearly 60% of those projects are located in the West. Projects with a preliminary FERC permit are still at the feasibility stage and currently have a high attrition rate. Three closed-loop projects have been issued FERC construction licenses and have been granted extensions to continue pre-construction efforts, including securing additional permits, financing, and power purchase agreements: (1) Eagle Mountain (CA); (2) Gordon Butte (MT); and (3) Swan Lake (NV). Two more projects have applied for FERC construction licenses within the past year, the Goldendale Energy Storage Project (WA) and the Seminole Pumped Storage

Project (WY). The presentations and webinar recording are available at <https://westernstateswater.org/events/an-introduction-to-pumped-storage-hydropower/>.

WATER RESOURCES

National Water Use Data Summit

On February 15, the Interstate Council on Water Policy, Internet of Water Coalition, U.S. Geological Survey, and WSWC hosted a virtual water use data summit. Attendees represented federal, state, local, and regional water resources agencies, and technical water data management professionals. Presentations and discussions focused on: (1) standardization of water data quality assurance and quality control systems; and (2) government policies and practical limitations of sharing water data - collected for a variety of purposes - with end users and the public. A recording and summary of the meeting are available at <https://icwp.org/opportunities/2023-national-water-use-data-virtual-summit-registration-info/>.

WATER RESOURCES/LITIGATION

Rio Grande/Texas v. New Mexico

On February 15, the New Mexico House Appropriations and Finance Committee approved a substitute bill, HB2, which added under the section 5 special appropriations three new provisions to fund Rio Grande water resource efforts by the State Engineer: (1) \$15M to expand middle Rio Grande dynamic following and improvements to the low flow conveyance channel; (2) \$35,000 to "augment the water supply on the lower Rio Grande, including through possible brackish water treatment and aquifer recharge projects, and for continued support of the attorney general in interstate water litigation and settlement under the Colorado River and Rio Grande compacts"; and (3) \$10,000 for "river channel maintenance to improve river flows into Elephant Butte and for habitat restoration, low flow conveyance channel maintenance and flood control projects related to the San Acacia reach of the Rio Grande." <https://www.nmlegis.gov/Sessions/23%20Regular/bills/house/HB0002AFS.pdf>

On February 9, Jeff Wechler, the lead attorney representing New Mexico in *Texas v. New Mexico and Colorado* (U.S. Supreme Court, #22O141), met with members of the New Mexico Senate Conservation Committee. Wechler and state officials told lawmakers “they need more than \$125M over the next five years to address water supply for the Mesilla Aquifer – which feeds Las Cruces – and to reduce pumping in southern New Mexico below Elephant Butte by about 17,000 acre feet.” (The Source 2/10/23) The efforts to cut groundwater pumping are part of the settlement and proposed Consent Decree filed by Texas, New Mexico, and Colorado, which is still pending approval by the Special Master and the Supreme Court. (See WSW #2529)

As reported by The Source: “Wechsler told state lawmakers that the deal on the table incorporates an equation based on a drought period from 1951 to 1978 as a ‘baseline’ for how much...” tributary groundwater can be pumped depleting the Rio Grande. A budget request for \$75 million would go toward groundwater recharge projects “...and potentially desalinating water in the Mesilla Valley, said Rolf Schmidt-Petersen, Interstate Stream Commission Director. The rest would go to programs to retire farmlands. All \$125M would be spent over a five-year period.... Senator Antoinette Sedillo-Lopez (D-Albuquerque) asked Wechsler what would happen if the judge or the U.S. Supreme Court sided with the federal government’s arguments that New Mexico would need to cut more groundwater pumping under an even higher standard. Wechsler said the consequences would be quite significant, and New Mexico would need to cut back hundreds of thousands of acre-feet instead of 17,000. ‘In those circumstances,’ he said, ‘there would be very, very significant and draconian measures taken below Elephant Butte to severely reduce depletions and water use.’”

The proposed Consent Decree, originally filed jointly by the States under seal, was made public on January 9. In unsealing the proposal, the Special Master said: “After motions for intervention and dismissal, a Supreme Court opinion, further motions to dismiss, discovery, a pandemic, motions for summary judgment, a partial trial, and extensive negotiations – with and without mediators, before and after the partial trial – the States have reached a proposed settlement in this nine-year-old original jurisdiction matter... with an accompanying motion, brief, and supporting affidavits. The United States as intervenor opposes entry of the Decree.”

The Special Master continued: “The States, but not the United States, now have reached a proposed settlement of their pending claims against one another. The proposed settlement differs in many ways from the parties’ litigation positions. Such is the nature of settlement and compromise. Texas, however, asserts

that it is satisfied the Decree achieves its primary goal: ensuring delivery to Texas of Texas’s share of Rio Grande water with well-defined methods to verify delivery and enforceable consequences for under- or over-delivery. New Mexico, similarly, asserts that it is satisfied the Decree achieves New Mexico’s primary goals: ensuring delivery in New Mexico of the appropriate share of Rio Grande water without unduly infringing upon New Mexico’s sovereignty to address water-related disputes between New Mexicans, between New Mexico and its citizens (including water districts), or between New Mexico and the United States. Colorado, whose interests are primarily upstream of the Elephant Butte Reservoir, agrees that the Decree is consistent with the Compact and adequately protects Colorado’s interests. Finally, the Decree does not amend the Compact. In fact, it expressly disavows any such amendment as well as any interference with the United States’ duties towards Mexico and towards native citizens’ tribes. To achieve these goals, the proposed Decree employs several mechanisms found elsewhere in the Rio Grande Compact and in many other interstate compacts. For example, the Decree calls for a gauge to measure flow near El Paso and imposes a delivery requirement on New Mexico at that gauge. The delivery requirement is based on formulas that use many inputs including the flow leaving Caballo Reservoir just downstream of Elephant Butte Reservoir. Recognizing the likelihood that actual deliveries will vary from formula-required deliveries, the Decree establishes deviation limits and calls for responsive actions in the event deliveries exceed or fall short of requirements. In part, responsive actions are left for New Mexico to select in its sovereign prerogative. Ultimately water transfers through the Rio Grande Project and adjustments to water escrow accounts are required if any state fails to remedy deviations adequately or in a timely fashion.”

See Special Master’s Order, Document 742, and proposed Consent Decree, Document 720, Exhibit 1, <https://www.ca8.uscourts.gov/texas-v-new-mexico-and-colorado-no-141-original>.

PEOPLE

On February 10, the Oregon Environmental Quality Commission selected **Leah Feldon** as the new Director of the Department of Environmental Quality. Commission Chair Kathleen George said: “Leah Feldon stood out as the kind of leader DEQ needs right now because of her deep understanding of DEQ and her vision for taking the agency to a new level. She is committed to building a more inclusive and welcoming agency while addressing Governor Tina Kotek’s expectations for accountability in serving Oregonians.” We congratulate Leah on her new position and look forward to working with her.

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.