



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS/WATER RESOURCES

Arizona/Groundwater

On June 1, Governor Kate Hobbs (D-AZ) released the Arizona Department of Water Resources (ADWR) latest study of the groundwater conditions in the Phoenix Active Management Area (AMA). The updated groundwater model projects that, over the next 100 years, dropping water levels will affect water resources and 4.86 million acre-feet (MAF) of water demand will not be met without further action. The press release said: "Arizona's Assured Water Supply Program is the most rigorous water management standard in the nation, providing water security for existing communities and continued growth. These results demonstrate this rigor and provide the notice we need in order to address projected groundwater water shortages well before they occur."

The ADWR update on groundwater supply said: "In keeping with these findings of unmet demand, the State will not approve new determinations of Assured Water Supply within the Phoenix AMA based on groundwater supplies. Developments within existing Certificates or Designations of Assured Water Supply may continue, but communities or developers seeking new Assured Water Supply determinations will need to do so based on alternative water sources." ADWR Director Tom Buschatzke said that within the Phoenix AMA, new development would have to find alternative sources of water from outside the AMA, or find other ways to meet the certificate requirements, such as long-term storage credits or reclaimed water. <https://new.azwater.gov/phoenix-ama-groundwater-supply-updates>

Governor Hobbs also announced an investment of American Rescue Plan Act (ARPA) funds (\$40M) for water infrastructure and conservation, as well as grants and financial support through the Arizona Water Resiliency Fund for water resiliency efforts and to facilitate sustainable groundwater management. She said: "What the model ultimately shows is that our water future is secure: the Assured Water Supply Program is working. Water supplies for homeowners and businesses are protected. Growth has been planned for, and will continue. My message to Arizonans is this: we are not out of water and we will not be running out of

water because, as we have done so many times before, we will tackle the water challenges we face with integrity and transparency. I will not bury my head in the sand, cut corners, or put short-term interests over the State's long-term economic growth. This proven approach is how we built a thriving Arizona, and I know it's how we will continue to prosper long into the future." <https://azgovernor.gov/office-arizona-governor/news/2023/06/governor-hobbs-unveils-100-year-study-protect-valley>

Texas/Water Supply

On June 9, Governor Gregg Abbott (R-TX) signed SB28, passed by the Texas Legislature in May. The bill created a New Water Supply for Texas Fund, administered by Texas Water Development Board (TWDB), "to undertake finance projects...that will lead to seven million acre-feet of new water supplies by December 31, 2033." Potential projects include desalination, produced water treatment, aquifer storage and recovery, and water transportation infrastructure. Qualifying projects can receive loans with repayment terms up to 30 years. For applications from cities or other political subdivisions, TWDB was directed to consider: (1) the intended users of the water supply, the needs of the area to be served by the project, the expected benefit of the project to the area, the relationship of the project to the water supply needs of the state overall, and the relationship of the project to the state water plan; (2) the amount of water expected to be produced by the project; and (3) the availability of money or revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including all interest. The bill authorizes money to be transferred from a proposed Texas Water Fund to the New Water Supply for Texas Fund. A new constitutional amendment to create the Texas Water Fund must be approved by voters in order for the bill to take effect.

The 2022 State Water Plan projects that Texas will need 6.9 MAF of additional water supplies to meet the demand for water in 2070. "While population is projected to increase 73% over the next 50 years, total water demand for all sectors in Texas is projected to increase by only 9%, from about 17.7MAF per year in 2020 to about 19.2MAF in 2070. Municipal demand is projected

to increase in greater proportion and total volume over the next 50 years than any other water use category, from 5.2MAF per year in 2020 to 8.5MAF in 2070. This projected demand includes passive conservation from plumbing codes that are similar in magnitude to the volume of recommended municipal conservation strategies in this plan as detailed in Chapter 8. Agricultural irrigation demand is projected to decrease, from 9.4MAF per year in 2020 to about 7.6MAF in 2070, due to more efficient irrigation systems, reduced groundwater availability, and the transfer of surface water rights from agricultural to municipal users. Manufacturing and livestock demands are projected to increase, while mining demand is projected to decline. Water demand for steam-electric power generation is projected to remain constant over the next 50 years primarily due to a combination of anticipated factors, including a projected increase in wind and solar power generation and increased water efficiencies at existing facilities.”

The Plan continued: “Existing water supply – categorized as surface water, groundwater, and reuse water – is projected to decrease approximately 18%, from 16.8MAF per year in 2020 to about 13.8MAF in 2070. For planning purposes, existing supply represents water supplies that are physically and legally available to be produced and delivered with current permits, current contracts, and existing infrastructure immediately in the event of an onset of drought of record conditions. Existing surface water supplies are projected to decrease by about 2%, from 7.2MAF per year in 2020 to 7.1MAF in 2070 due to sedimentation and changes in water contracts. Groundwater supplies are projected to decrease 32%, from 8.9MAF per year in 2020 to 6MAF in 2070. This decrease is primarily due to reduced groundwater availability from the Ogallala Aquifer (as a result of its managed depletion over time) and the Gulf Coast Aquifer (due to mandatory reductions in pumping to prevent land surface subsidence). Additionally, groundwater conservation districts made policy decisions through the groundwater management area joint planning process that also resulted in changes to groundwater availability. Total annual reuse supply makes up nearly 4% of total supplies in 2020, with approximately half of this supply occurring in Region C. Reuse supplies are estimated to increase statewide about 15% from 2020 to 2070.” <https://www.twdb.texas.gov/waterplanning/swp/2022/index.asp>

LITIGATION

Nevada/City of Fernley v. Reclamation

On June 1, the City of Fernley, Nevada filed an amended complaint in *City of Fernley v. Reclamation* (U.S. District Court for Nevada, #3:21-cv-00119). The original complaint in 2021 sought declaratory and injunctive relief for alleged violations of the National

Environmental Protection Act (NEPA) and Administrative Procedures Act (APA) for a Record of Decision on an infrastructure safety and maintenance project along the Truckee Canal that passes through the City of Fernley as an unlined earthen ditch. The northern embankment of the canal was breached after a storm event in 2008, causing flood damage to 590 homes in the City of Fernley. The canal has since been operating under flow restrictions to avoid the risk of future breaches. The project proposes to place a non-permeable liner within the 1905 canal, which would cut off the historical recharge that the leaking canal provided to the Fernley groundwater aquifer.

Of note, the city alleged that between 1973 and 1985, the U.S. Geological Survey and the Nevada State Engineer assessed the water supply of the Fernley Area Groundwater Basin and found that the natural recharge of 600 acre feet per year was supplemented by 18,000 acre-feet per year of seepage from the canal. “In reliance on the USGS water budgets and the seepage from the Canal, the Nevada State Engineer has issued more than 11,500 acre-feet per year of ground water permits in the Fernley Basin including approximately 8,900 acre-feet per year of permits for municipal water. In addition to the ground water permits issued by the Nevada State Engineer, several hundred domestic wells have been drilled to supply water to homes within the Fernley area that do not have access to the Fernley municipal water system or any reliable alternative source of water.”

The city originally alleged that Reclamation: (1) failed to consider alternatives that would accomplish the project’s purpose without cutting off the recharge; (2) failed to consider the full environmental impacts to groundwater levels, domestic wells, and municipal water supply; and (3) failed to consider potential mitigation measures to offset or lessen those impacts.

On appeal to the 9th Circuit, the original claims were dismissed, but the case was remanded to the District Court to give the City of Fernley leave to amend their NEPA claims to allege environmental harms. The amended complaint adds the environmental harms of “land subsidence, loss of water for phreatophyte vegetation, the concentration of harmful constituents within Fernley’s water supply [including arsenic and radionuclides], and other environmental impacts resulting from declining groundwater levels.”

MEETINGS

On June 21, at 10:00 am (MDT) the Western States Federal Agency Support Team (WestFAST) will host a webinar on Supporting Drought Resilience Through State Planning. For further information see <https://westernstateswater.org/events/supporting-drought-resilience-through-state-planning/>.