



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

Climate-Adaptive Drought Planning

On August 15, Elizabeth Ossowski, National Integrated Drought Information System (NIDIS) and Gretel Follingstad, Intermountain West Drought Early Warning System (DEWS), conducted the kick-off federal partners meeting for the new Climate-Adaptive Drought Planning (CADP) platform. The platform will provide technical information from government and academic sources needed for drought planning.

The Climate Program Office news release said: "The CADP is a whole-of-government collaboration that integrates and curates scientific data products and downscaled global climate modeling for drought risk assessments in a changing climate. The CADP serves as a deliverable to the National Drought Resilience Partnership (NDRP), which is co-led by the U.S. Department of Agriculture and the U.S. Army Corps of Engineers. In addition to improving drought risk assessment, the CADP will provide high quality, up-to-date drought planning guidance and resources curated from federal, tribal, state, and local agencies; academia; private and non-profit organizations. The CADP will provide a usable, integrated platform for needed technical assistance for drought planning with consideration of climate change impacts. The partnering agencies will launch a Needs Assessment survey for the CADP in November of 2023. The CADP will be a functioning element on drought.gov by the end of 2026." <https://cpo.noaa.gov/news-events/>

Klamath Project

On September 5, the Bureau of Reclamation (USBR) announced that, due to the late season precipitation, the projected reductions to the Klamath Project water supply allocation would no longer be necessary. The USBR had notified the irrigation district and tribes of the possible curtailment on August 18. The announcement affirmed the increased allotments of 260,000 acre-feet from the Upper Klamath Lake, and 35,000 acre-feet from the Gerber Reservoir and Clear Lake. Matthew Strickler, Department of the Interior (DOI) Deputy Assistant Secretary for Fish and Parks said: "The Department

appreciates the willingness of our partners to engage in productive conversations to work through the past couple of weeks.... We landed in a place that confirms our commitment to water users and fulfilling environmental needs." USBR Commissioner Camille Touton said: "Managing the limited supplies of 2023 required close coordination with the entire basin and is a clear example that collaboration and communication is the key to this basin's future.... We thank the water users and Tribes as well as our partners at NOAA for navigating through the 2023 water year and are grateful for the Department's all-of-basin leadership with Deputy Assistant Secretary Strickler." USBR noted that it is required to meet minimum elevation levels in the Upper Klamath Lake and provide critical streamflows in the Klamath River.

CONGRESS/WATER RESOURCES

Safeguarding Our Levees Act

On August 29, Rep. Josh Harder (D-CA) and Rep. Clay Higgins (R-LA) introduced the Safeguarding Our Levees Act (H.R. 5304), which would amend the Flood Control Act of 1941 by imposing a 180-day deadline on the Army Corp of Engineers (Corps) to initiate repair or restoration of broken levees. It would also create a 75% federal/25% non-federal cost share for levee improvements.

Rep. Harder said: "Families in San Joaquin County are still dealing with flood damage from the heavy rain earlier this year and we need to do everything we can to prevent catastrophic flooding before the next big storm.... The fact that there are broken levees that still haven't been fixed simply because of red tape is unacceptable, and my bill aims to change that. The Central Valley is incredibly vulnerable to severe flooding, and this is an important step to protect homes, businesses, farms, and communities in our region."

Rep. Higgins said: "From the north, Louisiana receives all the water from the entire Mississippi River basin, and the Gulf of Mexico itself presents endless threat of flood.... Our levee systems have not been adequately modernized and maintained for decades, primarily because of unnecessarily complex bureaucracy and endless delays caused by government interference.

This legislation forces the federal government to act in a very timely manner once Congress approves and funds a project. It's a win for all of America." <https://harder.house.gov/sites/evo-subsites/harder.house.gov/files/evo-media-document/harder-safeguarding-our-leveees-act.pdf>

Arizona/Domestic Water Protection Act

On September 1, Rep. Ruben Gallego (D-AZ) and Rep. Raúl Grijalva introduced the Domestic Water Protection Act (H.R. 5325), which would amend the Internal Revenue Code (P.L. 99-514) to impose a 300% excise tax on the sale and export of any water-intensive crop by any foreign company or government in areas experiencing prolonged drought. The tax would be implemented consistent with international trade agreements and the proceeds from the tax would be used in a Drought Trust Fund to finance drought response and resilience efforts.

Rep. Gallego says the bill would stop the abuse of water resources by foreign governments: "Arizona's water and crops belong in Arizona - not Saudi Arabia. No longer should foreign governments and companies be given sweetheart deals that leave Arizonans worse off. I'm proud to lead the Domestic Water Protection Act to stop these entities from stealing our state's water."

Rep. Grijalva said: "As our communities in Arizona feel the intense effects of the climate crisis and prolonged drought, we are simultaneously being stripped by Saudi-owned companies of our most precious resource - our water. ... Arizona Attorney General Mayes has taken positive steps to revoke well-drilling permits, but more must be done to ensure that no foreign company or government can ever take advantage of our water resources. That's why I'm proud to join Rep. Gallego as a cosponsor of the Domestic Water Protection Act to make certain we codify protections and regulations to safeguard our groundwater in Arizona and across the nation for generations to come." <https://rubengallego.house.gov/media-center/press-releases>

LITIGATION

California/Water Quality Standards

On August 30, the U.S. District Court for Eastern California dismissed the USBR's intergovernmental immunity (IGI) claim against the California State Water Resources Control Board (SWRCB), holding that the claim is not ripe for adjudication (*United States v. SWRCB et al.*, 19-cv-547). At issue were SWRCB's 2018 Bay-Delta Plan Amendments that provided selectively less stringent salinity objectives for the Southern Delta, while requiring USBR, which operates the New Melones Dam and Reservoir on the Stanislaus

River, to continue to abide by the stricter salinity standard. Although the court agreed that implementation of this standard would cause hardship, it granted the SWRCB's motion for dismissal stating that until the amendment is implemented, it won't be possible to determine if similarly situated parties have been treated differently. The court dismissed the IGI claim, and called for supplemental briefs addressing applicability of *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976) to the remaining state law claims under the California Environmental Quality Act.

Colorado River

On August 30, New Mexico joined in the answering brief of the Colorado River states (AZ, CA, CO, NV, UT, and WY) in the appeal of *Save the Colorado, et al. v. DOI* (9th Circuit, #23-15247). The underlying case was filed in the U.S. District Court for Arizona in 2019, and challenged the DOI's failure to consider alternatives in its environmental analysis of future operations. The Colorado River states intervened as defendants. WSW #2378.

The District Court denied the plaintiffs' motions for summary judgment in December 2022, holding that National Environmental Policy Act (NEPA) only requires consideration of reasonable alternatives consistent with the agency's policy objectives and the purpose of the 2016 Long-Term Experimental and Management Plan (LTEMP), which is to set guidelines regarding water releases based on the 2007 Interim Guidelines and the Law of the River. Complying with the Law of the River, meeting water delivery requirements, and complying with other federal laws is an appropriate goal for the federal defendants. The range of alternatives considered in the Environmental Impact Statement (EIS) was consistent with the NEPA goals of informed decision-making and informed public participation. The EIS provided explanations for why the plaintiffs' proposed alternatives (decommissioning Glen Canyon Dam, equalizing upstream flows, filling Lake Mead first, or run-of-the-river) were rejected. On February 23, 2023, the plaintiffs appealed the decision to the 9th Circuit.

The Colorado River States joined in the answering brief of DOI, but offered additional arguments opposing the plaintiffs' arguments that "directly threaten the States' interests as well as the operational certainty that the States negotiated for and that the Law of the River provides." They noted that, for over 100 years, the river has been the subject of contested claims that have been resolved "through negotiation, litigation, and development of a complex legal framework known as the 'Law of the River.'" The States argued that the plaintiffs sought to "challenge the LTEMP to address broader concerns with the Law of the River, but the LTEMP must operate within - and cannot change - the constraints of the Law of the River."

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.