



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER RESOURCES **Colorado River/Conservation Agreements**

On December 13, the Biden Administration announced several agreements with California water agencies to conserve 643,000 acre-feet of water in Lake Mead through 2025. The agreements include approximately \$295M in funding for Colorado River water conservation, water efficiency, and environmental protection projects. The announcement highlighted agreements with the Coachella Valley Water District to save up to 105,000 acre-feet of water and the Quechan Indian Tribe to save up to 39,000 acre-feet through 2025, and a recently signed agreement with the Imperial Irrigation District to conserve approximately 100,000 acre-feet of water in 2023. Additional system conservation agreements with the Palo Verde Irrigation District, Bard Water District – in cooperation with the Metropolitan Water District of Southern California – and a second agreement with the Coachella Valley Water District are expected to be finalized in the coming weeks. <https://www.doi.gov/pressreleases/biden-harris-administration-announces-several-new-water-conservation-agreements>

Bureau of Reclamation Commissioner Camille Calimlim Touton said: “These agreements represent another critical step in our collective efforts to address the water management challenges the Colorado River Basin faces due to drought and climate change. Addressing the drought crisis requires an all-hands-on-deck approach, and close collaboration among federal, state, Tribal and local communities. When we work together, we can find solutions to meet the challenges of these unprecedented drought conditions.”

To date, the Biden administration has allocated \$281M for 21 water recycling projects that are expected to increase annual capacity by 127,000 acre-feet. Partners in Arizona, including state agencies, tribes, and agricultural and municipal water users, have been party to 18 water conservation implementation agreements to conserve up to 348,680 acre-feet of water in Lake Mead in 2023 and up to 984,429 acre-feet through 2026.

CONGRESS **CWA/WOTUS**

On November 30, Senator Mike Rounds (R-SD) introduced the Farmers Freedom Act (S.3366), which would require the Environmental Protection Agency (EPA) and the Army Corp of Engineers (Corps) to revert to the definition of “prior converted cropland” (PCC) from the Trump Administration’s Waters of the United States (WOTUS) Rule. The bill has been referred to the Senate Environment and Public Works Committee.

Under the Trump Administration’s 2020 Navigable Waters Protection Rule (NWPR), a PCC was required to be used for agricultural production at least once every five years in order to maintain its Clean Water Act (CWA) exemption (85 FR 22320). The preamble specified that cropland left idle or fallow for conservation purposes remained in agricultural use and maintained PCC status.

The Biden Administration’s 2023 WOTUS rule requires PCC to revert to a wetland status if it is unavailable for commodity production or undergoes a change in use. The EPA and Corps said the changes were intended to bring the rule into alignment with the Wetland Conservation (also known as Swampbuster) provisions of the Food Security Act (FSA), which discourages farmers from altering wetlands. The changes made to the WOTUS rule following the *Sackett* decision retained this definition of a PCC.

Senator Rounds’ press release said: “For the last several decades, wetlands converted to cropland before 1985 have remained exempt from WOTUS regulation. Under the Biden administration’s rule, previously-converted cropland could revert to a wetland status if it is unavailable for commodity production. Specifically, if a section of PCC floods and is unable to produce commodities, it could be subject to regulation under the authority of the Clean Water Act.

Western cosponsors included Senators John Thune (R-SD), Pete Ricketts (R-NE), Roger Marshall (R-KS), Mike Braun (R-IN), John Hoeven (R-ND), Kevin Cramer (R-ND), and John Barrasso (R-WY).

House/Agency Rulemaking

On December 12, the House passed the Ensuring Accountability in Agency Rulemaking Act (H.R.357), which would require that any “notice and comment” agency rule must be signed and issued by an individual appointed by the President and confirmed by the Senate. The legislation passed the House 218-203, with three democrats voting in favor. The President said he would veto H.R. 357.

Rep. Ben Cline (R-VA), who sponsored the bill, said: “Passage of this legislation on the House Floor is a step in the right direction to help rein in Washington bureaucrats’ overreach of power and ensure a government that is accountable to the American people.” Rep. Andy Biggs (R-AZ) said in a Rules Committee Hearing: “H.R. 357 will increase the accountability of policy makers in the executive branch. As we all know, the executive branch promulgates regulations that far exceed the number of laws passed by congress in any given year. In 2022 this disparity was 3168 regulations issued by agencies compared to 247 laws passed by congress... H.R. 357 would remedy this by generally requiring that only politically accountable officials, not career bureaucrats, initiate regulations. This bill will increase political accountability in federal policy making and restore the right of the American people to choose who governs them.”

The White House issued a statement on December 11, stating the bill would result in unnecessary delays while nominees await confirmation, encumber the rulemaking process, and limit the flexibility of Senate-confirmed officials to delegate. The statement also said that there are already procedures in place that provide the sought-after oversight. Ranking Member Gerald Nadler (D-NY) said: “H.R. 357 imposes unnecessary requirements and undermines the regulatory process.... It would give congress even more incentive to block nominations for the sake of a partisan goal.... Regulations ensure that we have clean air to breathe, clean water to drink, and safe food to eat but this legislation could be used to stop this process in its tracks putting our health and safety at risk.”

LITIGATION

Rio Grande/Texas v. New Mexico and Colorado

On December 4, the States of Texas, New Mexico, and Colorado filed a joint reply to the exceptions filed by the U.S. to the Special Master’s Report in *Texas v. New Mexico and Colorado* (#22O141). The States argued that they are able to resolve ambiguities in an interstate compact, and that the Supreme Court has historically honored such agreements between states. The States explained how the Consent Decree is consistent with the

Rio Grande Compact, and argued that the Bureau of Reclamation acts as an agent of the Compact, not of the States. “The United States asserts, incorrectly, that Reclamation, and not the Compact, ‘dictate[s] the terms of the apportionment’ below the Reservoir. That radical position would stand the normal principles of compact apportionment on their head and vest the United States with freedom to determine how much water New Mexico and Texas receive. Because the Compact, not Reclamation, establishes the apportionment... Reclamation simply does not have discretion to adjust the amount of water to which each State is entitled. Any other result would undermine State sovereignty and allow the apportionment to change based on the unilateral actions of the United States – a non-signatory to the Compact.”

WATER RESOURCES

Water Supply Outlook

On December 7, the National Integrated Drought Information System (NIDIS) noted that the 2024 Water Year has had a dry start due to above-normal temperatures and low precipitation. Widespread snow drought has developed in the Northern Rockies, Sierra Nevada, and parts of the southern Intermountain West. The Rio Grande Basin headwaters and north-central New Mexico are particularly concerning, with extreme and exceptional drought already present following a weak monsoon season. However, the Pacific Northwest, Northern Great Basin, and Central Rockies have experienced strong storms which have improved snowpack conditions. Ongoing high-elevation rain is reversing gains in the Cascade Range. The National Weather Service’s seasonal outlook predicts above-normal temperatures throughout the Northern Rockies, and below normal precipitation centered in Montana. www.drought.gov/

PEOPLE

Alaska Governor Mike Dunleavy has named WSWC Member **Emma Pokon** as the commissioner-designee for the State’s Department of Environmental Conservation. Emma has been serving as the Acting Commissioner since August, when Jason Brune stepped down. We congratulate Emma on her appointment.

Washington Governor Jay Inslee has appointed **Stephen North**, Assistant Attorney General, to the WSWC. Stephen will replace **Alan Reichman**, Senior Counsel, Washington State Attorney General’s Office and WSWC member, who is retiring from state service by the end of the year. We congratulate Stephen on his appointment and look forward to working with him. We wish Alan all the best in his future endeavors.

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