



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **CONGRESS**

#### **Senate/Water Bills**

On December 12, the Senate Energy and Natural Resources Committee held a business meeting to consider 23 bills related to land and water in the West, including: (1) the Open Access Evapotranspiration Data Act (S. 1118); (2) the Great Salt Lake Stewardship Act (S. 1955); (3) the Urban Canal Modernization Act (S. 2160); (4) the Watershed Results Act (S. 2169); (5) the Upper Colorado and San Juan River Basins Endangered Fish Recovery Programs Reauthorization Act (S. 2247); (6) the Pecos Watershed Protection Act (S. 3033); and (7) an untitled bill (S. 461) to make certain North Dakota irrigation districts eligible to receive hydropower from the Bureau of Reclamation Pick-Sloan Missouri Basin Program.

The Committee withdrew S. 461, S. 2160, and S. 2169 from the agenda, but the rest of the bills were reported favorably.

#### **Senate/Tribal Water Rights**

On December 19, the Senate passed S. 950 by unanimous consent, an untitled bill that makes a technical correction to the 2009 Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act (P.L. 111-11). The bill provides \$5M in back-interest payments to the Shoshone-Paiute Tribes Water Rights Development Fund. See WSW #2474.

#### **House/Members**

On December 12, the House Transportation and Infrastructure (T&I) Committee held a hearing to approve membership changes to the roster, adding newly-elected Representative Celeste Maloy (R-UT) to three subcommittees: Highway and Transits; Economic Development; and Water Resources and Environment.

Maloy was elected to the House of Representatives in November, following Rep. Chris Stewart's (R-UT) resignation due to unanticipated family health concerns. Maloy served on Stewart's staff, and focused on infrastructure projects in rural Utah. Maloy was appointed

to the T&I Committee following the December 6 Committee resignation of Rep. Chuck Edwards (R-NC), who now serves on the House Appropriations Committee.

Maloy said: "I'm excited to represent Utah on this Committee, as we have some of the fastest growing areas in the nation, which means we need to be paying attention to transportation and infrastructure."

### **LITIGATION**

#### **Rio Grande/Texas v. New Mexico and Colorado**

On December 11, Utah and 22 other states filed an amicus brief in support of the states in the Supreme Court case *Texas v. New Mexico and Colorado* (#22O141). The brief responded to the Exception to the Special Master's Report filed by the United States, objecting to the party States' Consent Decree resolving their Rio Grande Compact dispute. See WSW #2587, #2579, #2563, #2545, #2529.

The amicus brief included the States of Alaska, Arizona, Arkansas, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Montana, Nebraska, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wyoming.

The brief argued that the ability to form interstate compacts is a key component of state sovereignty, enabling them to address issues that cross jurisdictional boundaries, including the ability to equitably apportion and manage interstate waters. "As parties to interstate water compacts, *Amici* States expect certainty from their agreements and to be able to manage their state waters in accordance with such agreements. If a dispute arises regarding an interstate water compact, the state parties to the compact have the authority to resolve these disputes among themselves. State sovereignty and principles of federalism prevent undue interference from the United States when the United States is not a party to the compact."

The *Amici* States argued: "Even in those instances where there is a federal water project associated with an

interstate compact, the existence of the federal water project does not create a role for the United States in the enforcement or interpretation of the compact or in the division and governance of water between the States. Federal law requires that the United States comply with state law relating to the control, appropriation, and distribution of water in federal water projects. See 43 U.S. § 383 [Section 8 of the Reclamation Act]; see also 43 U.S.C. § 666 [McCarran Amendment]. Federal water project authorizations do not supersede compact terms negotiated by States and cannot impose new terms and conditions that were not agreed to by the compacting parties. This Court should reject the United States' argument that it may enforce against state parties its own interpretation of interstate water compacts to which it is not a party and refuse the United States' attempt to expand its role in the interpretation and enforcement of such compacts."

The Amici States noted that the Bureau of Reclamation could still resolve its concerns by going back to the states: "That does not mean, however, that the United States is without recourse. If the United States has a claim regarding water appropriated to it in relation to a federal water project, the United States, like all other water right holders, may turn to state courts to protect project water rights.... In line with these principles, laws authorizing federal water projects that involve compact water recognize that such projects are subsidiary to interstate compacts and must operate within the compact framework."

### **ORGANIZATIONS/CONGRESS** **CIFA/SRFs**

On December 14, the Council of Infrastructure Financing Authorities (CIFA) sent a letter to the House and Senate Appropriations Committee leadership with four recommendations on funding the Clean Water and Drinking Water State Revolving Funds (SRFs) for FY2025.

First, CIFA noted that the demand for SRF loans has increased in the past five years as the cost of infrastructure has increased. Fully funding the SRFs at Congressionally authorizations of \$3B each would enable the kind of financing that leads to water security, protection of public health, and access to affordable water.

Second, the Congressionally directed spending and community funded projects should be funded in addition to rather than in lieu of the SRFs. The \$2.3B diverted in the past two years has impacted the ability of the state programs to: (1) maintain low interest rates on SRF subsidized loans to ensure financing remains affordable; (2) provide principal forgiveness and grants to

communities that can't otherwise afford to build the water infrastructure needed to protect public health; (3) issue bonds to leverage their programs to meet a higher demand for financing; (4) supplement state and local water quality programs that protect water quality and train staff at local water utilities; (5) provide technical assistance to help small and rural communities comply with water quality standards, build physical and operational resiliency, and develop water infrastructure projects; (6) build a permanent pool of loan repayments that can provide affordable financing for water infrastructure projects in the future.

Third, while there were nearly 1,200 Congressional earmarks appropriated in FY22 and FY23, EPA had only awarded 134 recipients by October 2023. CIFA recommended Congress adopt measures to accelerate the disbursement of federal funding, requiring applications within six months of the appropriation, and that the funds be released back to the SRF programs after the deadline.

Fourth, EPA recently revoked the waiver for domestic procurement requirements for construction materials and manufactured products in the Build America, Buy America Act (BABAA) for water infrastructure projects that receive federal funding after FY24. "Without relief from these new domestic procurement requirements, communities that have engineering or construction underway may be forced to return to the planning phase or abandon federal funding, including congressional earmarks and low-cost SRF financing."

### **PEOPLE**

Colorado Governor Jared Polis has appointed **Tracy Koslof**, Acting State Engineer, Colorado Division of Water Resources (CDWR), and **Lauren Ris**, Director, Colorado Water Conservation Board to the WSWC. Tracy will replace WSWC Member **Kevin Rein**, State Engineer/Director, CDWR, who is retiring at the end of the year. Governor Polis also appointed **Kelly Romero-Heany**, Assistant Director of Water, Colorado Department of Natural Resources, as an alternate member. Current WSWC Members **Jojo La**, Policy Advisor, Colorado Department of Public Health and Environment, **Rebecca Mitchell**, State of Colorado Commissioner, Upper Colorado River Commission, and **Scott Steinbrecher**, Deputy Attorney General, Colorado Department of Law, will continue serving as alternate members. We congratulate Tracy, Lauren, and Kelly and on their appointments and look forward to working with them. We wish Kevin all the best in his future endeavors.

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