



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **CONGRESS/ADMINISTRATION**

#### **California/Delta Conveyance Project**

On January 11, Congressional Representatives from the Delta region of California sent a letter urging the Bureau of Reclamation (USBR) to deny the California Department of Water Resources' (CDWR) request for funding for the Delta Conveyance project. The project is designed to bring water from northern California to the southern part of the state. CDWR certified the final environmental impact report (EIR) for the project on December 21. Josh Harder (D-CA), John Garamendi (D-CA), Mike Thompson (D-CA), Mark DeSaulnier (D-CA) and Doris Matsui (D-CA) signed the letter.

The letter also requests that the USBR decline to join as co-petitioner in the CDWR's request for a change in water rights and point of diversion to enable the construction. The letter argues: "The tunnel would threaten family farms and agricultural operations, tribal cultural resources, and imperil the fragile Delta ecosystem and surrounding communities... Central Valley Project water users have not expressed a united interest in participating in the project due to the very high risks and costs associated with the construction and operation of the single tunnel."

In its EIR certification announcement, CDWR said it made "a significant and concerted effort to address local Delta concerns related to the effects of the project on the people of the Delta, Tribes, and disadvantaged members of historic and legacy communities." Carrie Buckman, the project's Program Manager at CDWR, said: "The environmental review process has been thorough and provided us with opportunities to work with the community to minimize potential impacts. We are now poised to take the next steps in engineering, design and permitting, and further developing a comprehensive Community Benefits Program."

### **CONGRESS**

#### **Water Resources Development Act**

On January 11, the House Transportation and Infrastructure Committee held a Member Day hearing to

discuss priorities for the U.S. Army Corp of Engineers and the Water Resources Development Act (WRDA). Representatives from California, Texas, and Washington provided testimony to advocate infrastructure investment priorities in their districts.

Chairman David Rouser (R-NC) said in his opening remarks: "As one of our witnesses wisely said in our last hearing, WRDA is the most important piece of legislation that most Americans have never heard of.... WRDA is a critical legislative vehicle, ensuring communities' water resources needs are met nationwide. Navigation, flood control, beach nourishment, ecosystem restoration, hydropower, water supply, and recreation at Corps facilities are all important issues we will address in this year's WRDA. In other words, our nation needs WRDA to keep our communities safe and functional."

### **CONGRESS/WATER QUALITY**

#### **Abandoned Mines/Good Samaritans**

On January 10, the WSWC sent a letter to the Senate leadership and the Environment and Public Works Committee, supporting and making recommendations on the Good Samaritan Remediation of Abandoned Mines Act (S. 2781) reintroduced in September. The bill would require the Environmental Protection Agency (EPA) to establish a Good Samaritan pilot program, under which EPA would issue permits to Good Samaritans to remediate historic mine residue. See WSW #2577.

The letter emphasized the adverse impacts abandoned mines pose to Western State water quality, water supply, recreation, agriculture, and livestock, and the need to prioritize cleanup projects and limited resources for the greatest impact. WSWC supports legislation that addresses the following hindrances to hardrock mine cleanup: (1) the absence of solvent responsible parties; (2) inadequate funding and resources at all levels of government; (3) the inability of interested third parties to act as voluntary Good Samaritans without incurring the risk of severe liability penalties; and (4) the backlog of inventory efforts to identify the location of and environmental hazards. The

letter included WSWC Policy Position No. 447, Abandoned Hardrock Mine Cleanup.

In the letter, WSWC recommends that a formal consultation process with states be established as part of the EPA pilot program. WSWC also recommends that states be protected from liabilities alongside federal agencies. Upon successful implementation of the pilot program, WSWC suggests that states that have Clean Water Act authority be given a permanent program under which to administer Good Samaritan permits. WSWC suggests that Congress allow more flexibility with respect to long-term maintenance commitments. WSWC also recommends flexibility for states when sourcing financing, such as allowing the use of Supplemental Environmental Project funds. See <https://westernstateswater>.

## **LITIGATION/WATER QUALITY**

### **Alaska/Pebble Mine**

On January 8, the U.S. Supreme Court declined to hear Alaska's challenge to EPA's veto of the Pebble Mine project Clean Water Act (CWA) permit (*Alaska v. U.S.*, #22O157 ). Last January, EPA invoked its preemptive CWA section 404(c) veto authority in its Final Determination, blocking the use of the Bristol Bay watershed where the Pebble Mine would have been located. Alaska's petition, filed in July 2023, challenged EPA's veto decision. The State argued that the United States and EPA had violated the Statehood Act and the Cook Inlet Land Exchange Act, and interfered in Alaska's sovereignty. "The EPA veto completely disregards Alaska's sovereign choices. Inherent in the EPA's decision is the notion that Alaska will not adequately protect its lands, waters, and other natural resources. That is false." The State also argued that EPA's Final Determination is arbitrary and capricious, not in accordance with the Administrative Procedure Act, and constitutes an uncompensated regulatory taking under the 5th Amendment. See WSW #2507, and #2574.

The Supreme Court denied the petition, stating that "other forums are available for all of Alaska's claims" and that Alaska's suit involves complaints that are the "routine business of lower courts."

Governor Dunleavy said: "At a time when federal administrations are fast-tracking renewable energy development, the careful production of copper and other rare minerals, like those found in the Pebble area, is more important than ever. The Supreme Court's decision to not hear the State's case directly is disappointing, but the State is confident that the lower courts will find that EPA violated the law with its prohibition and restrictions against any mining activity within the 309-square mile

area surrounding the Pebble deposit. The State will continue to fight against this flagrant overreach."

## **WATER RESOURCES**

### **Colorado/Climate Change**

On January 8, the Colorado Climate Center (CCC) published the third edition of the Climate Change in Colorado report. The report synthesizes climate trends in Colorado and future conditions based on climate model projections. Previous editions of the report were among the first state-level climate change assessments ever conducted in the U.S.

The report indicates significant warming throughout the State with an annual average temperature increase of 2.3°F from 1980 to 2022. CCC models project continued increase in temperature and nonstationarity for the state of Colorado, with higher rates of increase in southern regions. Drying trends have been observed throughout the state in spring, summer, and fall seasons. The projections for precipitation are less clear, projecting a 2050 average within -7% to +7% of the late 20th century average (1971-2000). Snowpack has reduced and is expected to continue to decline. Peak snowpack is expected to shift days to weeks earlier by 2050. The researchers observed 3-19% reductions in annual streamflow and expect reductions of 5%-30% compared to the late 20th century average. The seasonal peak runoff is expected to shift 1-4 weeks earlier by 2050.

This is the first of the Climate Change in Colorado reports to address climate extremes and hazards. The report notes that warming temperatures have increased the frequency and severity of climate hazards such as heat waves, drought and wildfires. This trend is expected to continue regardless of changes in precipitation. See <https://climatechange.colostate.edu/>.

## **PEOPLE**

On January 10, EPA Assistant Administrator for the Office of Water **Radhika Fox** announced that she will depart the agency at the end of February 2024. Fox has directed EPA's Office of Water since 2021. She said: "It has been the greatest honor of my career to lead the Office of Water under the incredible leadership of Administrator Regan and with a talented team of career leaders here in Washington and across our 10 EPA regions. I am proud of the work we've accomplished to ensure that every American can rely on clean and safe water, which provides a foundation for healthy communities and thriving economies. The partnerships we've established, the science-based regulations we've issued, and the federal funding we've invested will benefit generations to come."

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