



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

Bureau of Reclamation/Colorado River

On February 8, the Bureau of Reclamation published a report on historical natural losses along the Colorado River, including mainstream reservoirs. The Mainstream Evapotranspiration and Riparian Evapotranspiration report examines water surface evaporation, soil moisture evaporation, and plant transpiration. In December, inter-state discussions at the Colorado River Water Users Association (CRWUA) annual meetings centered heavily around these structural deficits, their total volume, and which parties would compensate for them in final post-2026 agreements. (WSW #2589)

Approximately 1.3 million acre-feet (MAF) is lost annually along the lower Colorado River mainstream. Approximately 860,000 AF is lost annually from Lake Mead to the Mexican border. An additional 445,000 AF is lost from natural vegetation and habitats. The majority of estimated system losses come from the major reservoirs, contributing almost 520,000 AF annually. Average mainstream evaporation accounts for less than 8% of the total estimated average system losses. <https://www.usbr.gov/newsroom/news-release/4735>

CONGRESS

House/Farm Bill

On February 14, the House Committee on Agriculture held a hearing to receive testimony from U.S. Department of Agriculture Secretary Tom Vilsack. The Agriculture Improvement Act of 2018 was extended through September 2024 by a continuing resolution (H.R.6363) in November 2023. Vilsack urged Congress to pass an appropriations package to fully fund a new farm bill for FY2023. He highlighted the challenges American farmers are facing such as fractured supply chains, input costs, inflation, natural disasters, volatile markets, and labor shortages. He focused on the wide income disparity between small and large farm operations caused by corporate farm consolidation. Vilsack detailed the work USDA is doing to address those challenges, using funds from the American Rescue Plan Act (ARPA), the Bipartisan Infrastructure Law (BIL), the Inflation Reduction Act (IRA), and the Commodity

Credit Corporation (CCC). These investments help lower input costs for producers, provide conservation options for land managers, increase processing capacity for small- and mid-sized meat and poultry operations, and increase access to high speed internet. He highlighted the revolving impact of modernized infrastructure, Local Food Procurement Agreements, and the Rural Partners Network on rural communities and producers.

Vilsack urged lawmakers to use the market, climate-based tools, and food systems to continue creating opportunities for producers and rural communities. He said: "At this critical moment, are you okay with losing another 400,000 farms in the next 30 years? What would it take to ensure our young people can see a future for themselves in agriculture and in rural America? I worry that turning back will further entrench consolidation, fragile food supply chains, nutrition insecurity, and high barriers to entry into agriculture. It will also likely perpetuate trends we are already seeing, including loss of farmland, and generational poverty.... Together, we can tackle these critical issues and create a healthy, equitable, and sustainable food system that strengthens our farms and our rural communities for generations to come."

He continued: "I think it's fair to say that every farmer, every rancher, and everyone who lives in rural America, depends in large part on the farm bill programs. The farm bill is more than that. It's a rural development bill, it's a conservation bill, it's a nutrition bill, it's a research bill, it's a trade bill, it is a risk management bill. It is a broad opportunity to say to rural America and to American agriculture that we care that we're investing in their future and their economic stability. The failure to have a farm bill creates uncertainty and that uncertainty makes it very difficult for producers to make decisions about their operations... The bottom line is, we have got to get it done." <https://agriculture.house.gov/calendar/eventsingle.aspx?EventID=7723>

Senate Indian Affairs/Clean Water Infrastructure

On February 8, the Senate Committee on Indian Affairs held a legislative hearing on the Tribal Access to Clean Water Act of 2023 (S.2385). The bill would

authorize funding for Indian Health Service (IHS) to provide tribes with technical assistance, operation and management (O&M) for existing sanitation facilities, as well as rural grants and loans. (WSW #2566)

Senator Michael Bennet (D-CO) discussed the lack of clean water and adequate sanitation in many tribal communities. He noted that funding was provided through the BIL to secure clean water for tribes, including \$3.5B for the Indian Health Service and \$1B to the Bureau of Reclamation for rural water supply. However, tribes have not been able to access funding because their projects require pre-construction work before being considered shovel-ready. S. 2385 addresses these challenges by providing access to technical assistance for tribes in project planning and design. He reminded the committee of the federal government's promise: "When the federal government established reservations for Native American tribes it promised a permanent and livable homeland for those it had displaced from their ancestral lands. When access to clean and safe water – a human right – is being denied, this promise clearly has been betrayed.... With this bill we have an opportunity to ensure more native communities have access to clean water—the same way every Senator does, and every senator's family does"

Committee Vice Chair Lisa Murkowski (R-AK) discussed the responsibility to deliver clean affordable water to native communities. She said: "[Indian Health Service] estimates that one in ten tribal households lacks access to water or indoor plumbing. This is 2024. To know that statistic is still one so many are living with is really very troubling." She emphasized the importance of supporting O&M solutions as well as construction when fulfilling the federal trust responsibility.

Manuel Heart, Chairman of the Ute Mountain Ute Tribe, discussed the challenges faced by his communities including poor quality groundwater pumped from an aquifer shared with a uranium mill and an aging water line. He noted that S.2385 fills gaps left by the BIL and IRA and ensures those investments are fully realized. He highlighted important components of the Act such as providing technical assistance, connecting essential community facilities to IHS projects, and continued operation and maintenance funding. He said: "Access to clean water is a basic human right. It is essential for people to live with dignity and foundational for human health, growing economies, and a basic level of existence for communities. It is unacceptable that in the 21st Century, many Native Americans must travel for miles to collect water that is safe for drinking and everyday use.... Failure to provide basic water service cannot be reconciled with the general trust responsibility of providing a permanent homeland to Tribes and promoting the survival and welfare of their communities."

LITIGATION

Texas v. EPA/WOTUS

On February 2, the States of Texas and Idaho filed a motion for summary judgment in the district court case *Texas et al. v. EPA et al.* (U.S. District Court for the Southern District of Texas, #3:3-cv-00017). The underlying complaint challenged the legality of the EPA's "2023 Revised Definition of 'Waters of the United States' Rule" (88 FR 3004) (2023 Rule) and the "Revised Definition of 'Waters of the United States,' Conforming" (88 FR 61964) (Amended 2023 Rule), and petitioned the court to vacate both rules.

In the underlying complaint, the States alleged that the 2023 Rule would burden state agencies and violate state sovereignty under the Administrative Procedure Act and the Tenth Amendment of the Constitution. In March 2023, the court granted a preliminary injunction to the States, preventing the 2023 Rule from taking effect in the States of Texas and Idaho (WSW #2549). In August 2023, the EPA announced amendments in response to the Supreme Court decision in *Sackett v. EPA*. In turn, Texas and Idaho amended their complaint to include the changes. "The Amended 2023 Rule maintains the ambiguity of the 2023 Rule, leaving those wishing to identify the ambit of federal power over dry land or minor water features at the mercy of an expensive, vague, and arbitrary analysis, lest they face a staggering criminal or civil penalty." Plaintiffs added new allegations that the federal agencies promulgated the 2023 Rule in the midst of the Supreme Court's consideration of *Sackett v. EPA*, and used the *Sackett* opinion to justify depriving the public of a notice and comment opportunity, thus violating APA rulemaking requirements.

On February 2, the plaintiffs filed a motion for summary judgment. They argued that the Amended 2023 Rule is unconstitutionally vague in its definitions of "every jurisdictional category," including its definitions of Traditional Waters, Impoundments, Tributaries, Wetlands, and Other Jurisdictional State Waters. Additionally, the Relatively Permanent Standard is broader and vaguer than the standard described in *Sackett* and *Rapanos*. Plaintiffs also argued that the Amended 2023 Rule exceeds the CWA, is contrary to the States' sovereignty, violates due process afforded by the Constitution, and was adopted through unlawful procedure under ADA. They conclude: "It cannot be supported by the plain language of the Clean Water Act, it is inconsistent with Supreme Court precedent, it cannot be justified as a valid exercise of congressional authority under the Commerce Clause, it cannot be excused in the face of the Tenth Amendment, and it infringes on the due process rights afforded under the Fifth Amendment. And even if it were not substantially unlawful, it was adopted through unlawful procedure."

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.