



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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LITIGATION

Agriculture/NPDES Permits

On March 4, the Association of California Water Agencies (ACWA) led an agricultural coalition amicus curiae brief, filed in *Pacific Coast Federation of Fishermen's Associations, Inc., et al. v. Ernest Conant, et al.* (9th Circuit, #23-15599). The underlying case, filed in 2011, arises from water discharges from the Grasslands Bypass Project in California's Central Valley. The project was created as a result of a previous lawsuit for the purpose of preventing irrigation water from leaching selenium and salt from the agricultural soil into the groundwater. The project collects water used to irrigate agricultural land through an underground perforated tile drainage system, moving "the collected drainage water through a concrete-lined conveyance for many miles before it dispenses into a wetland." The plaintiffs alleged that the Bureau of Reclamation (USBR) and the Grasslands Water District are discharging pollutants, without a National Pollutant Discharge Elimination System (NPDES) permit, which made their way into the San Joaquin River and San Francisco Bay Delta in violation of the Clean Water Act (CWA). The defendants argued that the agricultural land is exempt from CWA permitting under 33 U.S.C. §1342(1)(1). (See WSW #2367.)

In 2017, the U.S. District Court for the Eastern District of California (2:11-cv-02980) held that, because the majority of the water came from agricultural lands, the exemption applied. In 2019, the 9th Circuit reversed and remanded that decision, noting that the CWA exemption language is "for discharges composed entirely of return flows from irrigated agriculture." On remand, the lower court again held that the exemption applied, because the water was either from the agricultural lands or from other nonpoint sources that are exempt. The plaintiffs appealed.

In the amicus brief, the Agriculture Coalition noted that the Grasslands Bypass Project drainage infrastructure is not unique, and "this case may have far-reaching impacts on farmlands that utilize and rely on irrigation drainage facilities essential to maintaining crop production." The CWA exemption for agricultural return flows applies to "millions of acres of farmland" and a

ruling rendering that exemption essentially nonexistent "would broadly affect western agriculture, forcing thousands of farmers and operators of agricultural drainage systems across the western United States to immediately apply for and operate under onerous NPDES permits or face liability under the CWA." They emphasized the lower court's determination that the exemption "cannot be defeated merely because additional nonpoint sources of pollution may enter into agricultural drains that convey agricultural return flows to waters of the United States."

WATER RESOURCES

USBR/Colorado River Interim Operations

On March 5, the USBR published its final Supplemental Environmental Impact Statement (SEIS) for near-term (through 2026) Colorado River Operations. USBR's proposed action "provides modified operational guidelines to protect the infrastructure at Glen Canyon and Hoover Dams, while increasing certainty in operations, system integrity, and public health and safety...." It includes assumptions for 3.0 million acre-feet (maf) of voluntary conservation through 2026, with a minimum of 1.5 maf physically conserved by December 2024. "This additional conservation would be added onto 2007 Interim Guidelines shortages and [Drought Contingency Plan (DCP)] contributions and would be implemented across a range of elevations in Lake Mead. Under the Proposed Action, tier-based reductions and contributions would be limited to the existing 2007 Interim Guidelines, Lower Basin DCP, and Minute 323." Minute 323 is a 2017 binational agreement between Mexico and the U.S. to expand collaboration and conservation opportunities, while sharing shortage risks. USBR noted that intensive efforts and programs to facilitate conservation are already underway, and the success of "these efforts will help determine the degree to which revised operations will be implemented." The SEIS conservation up to 2.3 maf is anticipated to be federally-compensated, with remaining conservation efforts compensated by state or local entities, or being uncompensated.

On the same day, Arizona, California, and Nevada issued a joint statement on the SEIS, noting that USBR's preferred alternative features their May 2023 Lower

Basin Plan to conserve 3.0 maf by 2026, beyond reductions previously agreed to under the 2007 Interim Guidelines and DCP. “The plan for additional near-term water use reductions released today provides the stability we need to fully focus on long-term solutions to challenges ahead on the Colorado River. We are grateful to our federal partners at the Bureau of Reclamation for recognizing that the consensus approach proposed by the Lower Basin States last year for these near-term operations is the best way to protect the Colorado River system through 2026. . . . In 2023, Arizona, California and Nevada already took a significant step toward fulfilling our conservation commitment through 2026 made under the Lower Basin Plan – together conserving more than 1.1 [maf] of water that has been left in Lake Mead, in addition to more than 600,000 acre-feet contributed under previous commitments. Our use of Colorado River water last year was the lowest since 1983. This accomplishment was achieved not through litigation, but through collective recognition that the river’s health is the responsibility of everyone who relies on it.” (See WSW #2582, #2571, #2559, and #2552.)

MEETINGS

ICWP-WSWC Roundtable

On March 13, WSWC and the Interstate Council on Water Policy (ICWP) held a Joint Roundtable in Washington, D.C. The meeting began with introductory statements by WSWC Chair Jon Niermann and Executive Director Tony Willardson, and ICWP Chair Heidi Moltz and Executive Director Beth Callaway. Josh Mahan, Director of Internal Affairs for the Reservoir Center where the meeting was held, added his welcome. The Roundtable featured four panels on: (1) infrastructure (natural and built); (2) disaster resilience, mitigation and recovery; (3) water data, modeling, and forecasting; and (4) Congressional topics.

Julie Cunningham, Oklahoma Water Resources Board, moderated the infrastructure panel. Panelists included federal partners: Robyn Colosimo, Department of the Army; Zach Schafer, Environmental Protection Agency; Michael Brain, Department of the Interior (DOI); and John Watts, USBR. The discussion centered around high-impact investments and optimizing funding from the Infrastructure Investment and Jobs Act (IIJA), State Revolving Funds (SRFs), and loan programs now and into the future. Panelists also discussed data improvements, and noted that interagency collaboration was key to success.

Matt Unruh, Kansas Water Office, moderated the disaster resilience panel. Panelists included: Jainey Bavishi, National Oceanic Atmospheric Administration (NOAA); Robert Harper, U.S. Forest Service (USFS); Aster Boozer and Tom O’Halloran, Natural Resources

Conservation Service (NRCS); Dr. Dorothy Koch, Department of Energy (DOE); and Veva DeHeza, National Integrated Drought Information System (NIDIS). Koch discussed DOE’s multi-sector approach to water quality and quantity. Bavishi emphasized long-term wildfire mitigation and data initiatives such as NIDIS, subseasonal to seasonal (S2S) forecasting, Forecast Informed Reservoir Operations (FIRO), flood inundation mapping, and LiDAR smoke observation. Harper noted that 23 million people depend on National Forest lands for water, and emphasized the importance of funding in protecting public water supplies. O’Halloran and others discussed the need for both funding and collaboration. Boozer highlighted an NRCS/USBR MOU. DeHeza emphasized the need for the Weather Act reauthorization and a need for NIDIS, probabilistic forecasting, state MesoNet programs, and improvements to state drought plans.

Randy Hadland, Xylem, moderated the panel discussion on water data, modeling, and forecasting. Panelists included Emily Sylak-Glassman, National Aeronautics and Space Administration (NASA); Dr. Koch, DOE; Joanne Neukirchen, Federal Emergency Management Agency (FEMA); Mindi Dalton, Timothy Newman, and Stephen Aichele, USGS. Koch discussed important modeling and machine learning programs including those developed by the National Center for Atmospheric Research (NCAR), NVIDIA AI models, the Global Change Analysis Model (GCAM), and Irrigation VIZ. Sylak-Glassman discussed the Surface Water Ocean Topography program. Dalton discussed the FY25 congressional directive to expand OpenET and other programs. Newman discussed the value of Landsat to water data programs and provided details on the 2030 transition to Landsat Next. Aichele discussed the USGS focus on moving to electronic maps, emergency management, and 3D hydrography. Panelists acknowledged the impacts of reduced funding on data.

Geoff Bowman, Van Scoyoc Associates, moderated a panel discussion between congressional staffers: Callie Eideberg, Senate Agriculture, Nutrition, and Forestry; Joe Brown, Senate Environment and Public Works; Annick Miller, House Natural Resources - Water, Wildlife and Fisheries; Logan Ferree and Tim Petty, House Transportation and Infrastructure - Water, Resources, and Environment; Daniel Dziadon, House Science, Space, and Technology - Environment; and Ari Perlmutter, House Agriculture. Panelists discussed the bills their committees and members were working on and recommended best practices for supporting bills and making programmatic requests. They emphasized the distinct authorities between committees, and discussed the challenges and opportunities of working across committees to address needs that fall under their different jurisdictions.

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