



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

USBR/Colorado River

On March 28, the Bureau of Reclamation (USBR) announced a \$30M investment through the Inflation Reduction Act (IRA) for 114 projects in the Upper Colorado River Basin. The selected projects will collectively conserve approximately 66,400 acre-feet of Colorado River water in the Upper Basin as part of the Colorado River 2024 Conservation Pilot Program.

The Upper Basin System Conservation Pilot Program (SCPP) is cooperatively managed by USBR and the Upper Division States of Colorado, New Mexico, Utah, and Wyoming acting through the Upper Colorado River Commission. First implemented in 2015-2018, and again in 2023, the pilot program has explored potential solutions to address declining water levels in Lake Mead and Lake Powell due to long-term drought. The program tests and implements temporary, voluntary, and compensated conservation activities such as full or partial season fallowing, crop changes, or implementation of other operational changes that result in a quantifiable consumptive use reduction. Projects were selected based on the Upper Colorado River Commission's focus on projects that support innovations in water conservation, local drought resiliency, and those that inform a potential demand management program. In response to lessons learned from the previous year, SCPP 2024 will use a new compensation approach based on project type and by state. See www.usbr.gov/newsroom/news-release/4788

USBR/Tribes/Infrastructure

On April 2, the USBR announced \$320M through the IRA is available to assist federally recognized tribes and tribal organizations as they plan and construct domestic water infrastructure. Projects funded under this announcement may be eligible for up to 100% of the cost of planning, design, or construction. This funding opportunity is open to tribes in the 17 western states served by the USBR. Phase one funding will be for planning, design, or construction in FY2024. Phase two will be for construction in FY2027 and 2028. Proposals will be accepted until August 4, 2024.

Deb Haaland, DOI Secretary, said: "Investing in water infrastructure projects is crucial to ensuring the health, safety and prosperity of Indigenous communities. Through President Biden's Investing in America agenda, we are making targeted investments throughout Indian Country to repair and revitalize key infrastructure facilities, which will help support our trust responsibilities, advance economic opportunities and expand access to clean, reliable drinking water for Indigenous communities."

USBR/Wetlands

On April 3, USBR announced \$25M in funding through the Investment in Infrastructure and Jobs Act (IIJA) to protect two wetlands used for recreation and wildlife habitat in Arizona. The Yuma East Wetlands (\$5M) will upgrade infrastructure and technology used to move water around the wetlands. The Topock Marsh in the Havasu National Wildlife Refuge (\$20M) will upgrade infrastructure to increase water delivery system efficiency. www.usbr.gov/newsroom/news-release/4790

CONGRESS

Weather Act Reauthorization Act

On March 4, WSWC submitted a letter to the House leadership, expressing support for the Weather Act Reauthorization Act (H.R. 6093), and emphasized provisions to improve National Oceanic and Atmospheric Association (NOAA) weather research and weather forecasting. The letter noted that collection, analysis, and open sharing of water availability and water quantity data should be a governmental priority to support water management and state preparedness for weather extremes. The letter also advocated reauthorization and increased funding for the National Integrated Drought Information System (NIDIS), as well as measures to improve sub-seasonal to seasonal (S2S) forecasting. The letter included WSWC Policy Position No. 500, which acknowledges the importance of NOAA line agencies including the National Weather Service (NWS) Office of Atmospheric Research (OAR), the National Environmental Satellite Data and Information Service (NESDIS), and National Centers for Environmental Information (NCEI). WSWC urged the full authorization

of H.R. 6093 measures to reauthorize, expand, and modernize these programs. See <https://westernstateswater.org/policy-letters/2024/weather-act-reauthorization/>.

LITIGATION

Alaska v. U.S./CWA §404 Veto

On March 14, the State of Alaska filed a complaint with the U.S. Court of Federal Claims (*State of Alaska v. United States* 1:24-cv-00396), petitioning for \$700B in compensation for the Environmental Protection Agency's (EPA) 2023 veto action (Final Determination) that blocked the development of the Pebble Mine (WSW #2507). The complaint was filed after the U.S. Supreme Court's decision to reject the State's motion to file an original jurisdiction complaint in January. (WSW #2591)

Alaska noted that, in authorizing the Statehood Act and Cook Inlet Land Exchange, Congress explicitly recognized that Alaska would develop its mineral resources. The State alleged that these agreements constitute contracts, under which the State would receive land, associated mining rights (subject to lease by the State), and regulatory authority over its lands. They claimed that EPA's Final Determination decision is a breach of contract by the federal government, as well as a breach of the covenant of good faith and fair dealing.

The State further alleged multiple takings counts (permanent categorical taking, permanent non-categorical taking, and temporary taking) stating that EPA's Final Determination denies all economically beneficial or productive use of the land. They asserted that a finding of either type of permanent taking should entitle them to compensation exceeding \$700B, the 100-year value of Pebble Mine estimated by EPA in 2010. The State argued that even if the EPA were to withdraw its Final Determination or it were to be vacated, the Determination has blocked the U.S. Army Corps of Engineers (Corps) from issuing a Clean Water Act (CWA) permit for the Pebble Mine. This would constitute a temporary taking, entitling the State to just compensation in an amount that exceeds \$10,000.

"No land-use project in recent memory was more important to the State than the Pebble Deposit. Alaska received the Pebble Deposit and the other restricted lands with the express understanding that the State would be able to lease them to mining companies that would pay taxes and royalties to financially support the State. Indeed, the State relinquished its own land rights to obtain the property, expecting that it would be a long-term financial investment. But the Final Determination effectively prevents any mining from ever occurring on the Pebble Deposit and the surrounding area. The Final Determination wipes away all the value of the Pebble Deposit and the other lands covered by the EPA's restriction.... Due to Alaska's climate and barren

landscape, these lands cannot support crops, timber, or other agricultural uses. Simply put, there is nothing the State can do with these lands for economic purposes because of the Final Determination. By making it impossible for the State to utilize the lands' mineral resources, the United States has effectively confiscated the land and created a *de facto* national park."

In a press release, Governor Mike Dunleavy (R-AK) said: "No other State in the union relies on its mineral riches as intensely as Alaska does. At statehood, the United States conveyed to Alaska title to the minerals in over 100 million acres of the new state's land, with the expectation that the State would develop these mineral resources to support its economy and the wellbeing of its citizens. The Alaska Constitution requires that the State manage its resources for the maximum benefit of its people, and reliance on our natural resources is the cornerstone of Alaska's statehood promise. Yet, the federal government would turn these State lands – these lands conveyed to us specifically because of their mineral value – into a *de facto* national park. It is wrong, and Alaska will challenge it." Treg Taylor, Alaska Attorney General, added: "We don't think they have the authority to do this period – to shut down 309 square miles to any possible development.... That's counter to everything we know regarding State sovereignty and state authority under the U.S. Constitution. But if a court finds that they do have the authority then Alaska must be compensated for the inability to use and develop its own resources, which was the foundational basis for Alaska even becoming a state."

WATER RESOURCES

Texas/Infrastructure

On February 28, the Texas Water Development Board (TWDB) announced it was seeking public input through April on the implementation of the Texas Water Fund, ratified by 77% of voters last November. Rather than acting as a financial assistance program itself, the Texas Water Fund allows the TWDB to provide funding through existing financial assistance programs, such as the Clean Water and Drinking Water State Revolving Funds, the Rural Water Assistance Fund, the State Water Implementation Fund, the Texas Water Development Fund, as well as the newly created statewide water public awareness account and New Water Supply for Texas Fund. Authorized with an initial legislative appropriation of \$1B in 2023, the Texas Water Fund will support water infrastructure upgrades, water conservation strategies, water loss mitigation projects, innovative water supply projects, projects for which all state and federal permitting is completed, and a statewide public awareness program. TWDB must allocate \$250M of the appropriation to the New Water Supply for Texas Fund. (See WSW #2561).

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.