



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ENVIRONMENT/WATER RESOURCES

Klamath River Basin/Oregon

On October 16, the Oregon Department of Fish and Wildlife (ODFW) observed Klamath River Chinook salmon in Oregon for the first time since 1912. ODFW Director Debbie Colbert said: "This is an exciting and historic development in the Klamath Basin that demonstrates the resiliency of salmon and steelhead. It also inspires us to continue restoration work in the upper basin. I want to thank everyone that has contributed to this effort over the last two decades." Natalie Ball, Klamath Tribes Council Woman said: "c'iyaaal's are culture carriers. I'm excited for their return home and for us to be in relation with them again." The deconstruction of the four private power project dams was officially completed on October 2 (See WSW #2625).

WATER QUALITY

Colorado/State Dredge and Fill Program

On November 20, Kaplan Kirsch, a law firm, hosted a webinar on Wetlands Regulation: A Discussion on Colorado's New Dredge and Fill Program. Panel speakers included Annette Quill, Senior Policy Advisor, Water Quality Control Division, Colorado Department of Public Health and Environment (CDPHE); Aaron Eilers, biologist, Army Corps of Engineers Omaha District, Denver Regulatory Office; and Noah Greenberg, Whitewater Engineers, ecologist/regulatory specialist..

Quill provided an overview of Colorado's new dredge and fill program. The state legislation authorizing the program (HB24-1379) was signed into law on May 30, with the intent to protect state waters from the impacts of dredge and fill activities after the U.S. Supreme Court decision in *Sackett v. EPA*. The legislation identified certain activities exempted from the state program (e.g., normal farming and ranching activities, maintenance or construction of certain water and transportation structures, activities related to ditches and agricultural ponds, emergency response, wildlife habitat management activities, and more.)

It also identified eleven water features that are otherwise considered state waters, but are exempted

from the dredge and fill program, including: (1) upland ditches and canals; (2) upland stormwater control features; (3) artificially irrigated areas that would otherwise revert to uplands; (4) artificial lakes, lagoons, or ponds created in uplands used for stock watering, etc.; (5) wetlands adjacent to and supported by a ditch or canal; (6) upland recharge ponds; (7) upland artificial reflecting or swimming pools; (8) upland water-filled depressions incidental to mining or construction activities (gravel pits), until abandoned; (9) swales and erosional features, such as gullies, small washes, and rills, that do not contain wetlands or an ordinary high water mark; (10) groundwater; and (11) prior converted cropland. Quill noted that Colorado chose to incorporate the definition of prior converted cropland that was in the preamble of the 2020 Navigable Waters Protection Rule.

The CDPHE website notes: "In anticipation of the Sackett decision, Governor Polis [D-CO] convened a task force in January 2023 to explore options to ensure continued protection for Colorado's waterways from the impacts of dredge and fill activities. Stakeholders continued to meet in 2023 and the first part of 2024 to discuss a regulatory framework that made sense for the protection of Colorado's water resources... These efforts culminated in the passage of HB24-1379." The legislation "...directs the Water Quality Control Division to develop a dredge and fill authorization program and the Water Quality Control Commission to establish permitting and mitigation rules by December 31, 2025. The outcome will be Regulation No. 87, a control regulation for avoiding, minimizing, and mitigating the impacts of dredge and fill activity."

The program is being implemented in three phases. The first phase includes the implementation of Clean Water Policy 17, an enforcement discretion policy which went into effect about a month after the *Sackett* decision, and will continue through January 2025. Existing projects discharging dredge and fill materials into state waters, regardless of whether they have a Corps permit, have been allowed to continue after they self-report under a set of guidelines and best management practices. This has allowed Colorado to gather information about how many projects are out there.

The second phase begins in January 2025, where Temporary Authorizations (rather than calling them “permits”) will act in tandem with the existing Corps nationwide permits (NWPs) and regional general permits (RGPs). The Temporary Authorizations include conditions essential to protect public health and the environment to align with the intent of HB24-1379. The Water Quality Control Division will also issue a General Authorization. Quill said: “This is kind of a unique thing that we decided to do in this transition process. The bill requires the Water Quality Control Division to essentially recognize Corps [existing NWPs and RGPs] that are relevant to Colorado, and we’re recognizing those terms and administering them for non-WOTUS state waters. And we’re administering those as the Corps would...” She noted that it would be a little clunky through the transition, but it maintained some consistency with what permittees are used to until the Water Quality Control Commission finishes its rulemaking process and adopts its own rules.

In phase three, after Regulation No. 87 becomes effective in early 2026, the Water Quality Control Division will begin issuing Individual Authorizations, as well as General Authorizations modeled after the NWPs and RGPs. For isolated state waters, the General Authorization will limit discharges to five years, incorporate best practices for environmental protection, exempt the project from preconstruction notification requirements, require the project stay within the “unavoidable impact” thresholds for streams and wetlands or provide Colorado-specific compensatory mitigation, and will exclude certain waters from coverage.

EPA/State Revolving Funds

On October 17, the Environmental Protection Agency (EPA) released its 2023 Drinking Water State Revolving Fund Annual Report. The Report summarizes programmatic and financial successes of the Drinking Water State Revolving Fund (DWSRF) program in protecting public health through 2023. It outlines the amount of loans, assistance provided to communities, set-aside totals, and savings to the communities. In 2023, the DWSRF program provided \$4.35B in assistance with an average loan interest rate of 1.47%. Of the 1,195 assistance agreements made in FY23, 66% went to communities serving 10,000 or fewer. The program provided \$604M of set-aside funding, \$14M of which went to technical assistance for small systems, and \$110M went to planning and design assistance. Since 1997, the program has provided \$57.3B of assistance, with \$28.6B in federal investments. <https://www.epa.gov/dwsrf>

WATER RESOURCES

Colorado-Wyoming Climate Resilience Engine

On October 22, Governors Jared Polis (D-CO) and Mark Gordon (R-WY) collaborated to announce the recipients of the inaugural grant program by the CO-WY Climate Resilience Engine. The announcement initiates the partnership’s first round of investments in research and development and translation/startup projects and uses funding from the U.S. National Science Foundation Regional Innovation Engines program. Selected projects address issues such as water security, wildfire prediction and response, and extreme weather modeling. Projects include: (1) weather extremes and water resource climate transitions in Colorado and Wyoming, University of Wyoming; (2) mapping vulnerability - Assessing the Built Environment’s Susceptibility to Wildfires through AI and Big Data, University of Colorado Boulder; and (3) Predicting Regional Wildfire Risk through Climate-Wildfire-Power-System Interactions, Colorado School of Mines. Polis said: “These projects will help secure our water future, protect Coloradans from wildfire dangers, and protect our air, and I am excited to see them in action.” <https://www.co-wyengine.org/news>

WATER RESOURCES/LITIGATION

Texas v. New Mexico and Colorado

On Nov 15, 2024 Senators Martin Heinrich (D-NM) and Ben Ray Lujan (D-NM) and Representatives Teresa Leger Fernández (D-NM), Melanie Stansbury (D-NM), and Gabe Vasquez (D-NM) wrote a letter to the Departments of the Interior and Justice urging them to resolve *Texas v. New Mexico and Colorado* before the end of the year. The U.S. Supreme Court denied approval of a settlement to the case in June (#22O141). See WSW #2545, Special Report #2616.

The lawmakers wrote: “The Rio Grande is of regional, national, and international importance. The river and its tributaries provide drinking water for approximately 13 million people in the United States and Mexico. The Rio Grande Basin is also critical to agriculture, industry, and the environment, providing irrigation water for an estimated 1.8 million acres of crop and pasture land, supporting a growing outdoor recreation economy, and providing habitat for fish and wildlife.... In times of worsening drought and precipitation out of line with historical patterns, it is imperative that our communities, municipalities, farmers, ranchers, and businesses have as much clarity about their future water supplies as possible. A delayed resolution to the issues posed in the Supreme Court’s decision in *Texas v. New Mexico* and *Colorado* imperils the ability of water users to prepare for more common and more extreme droughts in the Rio Grande Basin. We urge you to resolve this long-standing litigation before the end of the year.” <https://www.lujan.senate.gov/newsroom/>

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.