



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATIVE UPDATE

Environmental Protection Agency

On January 12, Environmental Protection Agency (EPA) Administrator Lisa Jackson issued a memorandum to EPA employees that outlined a set of new priorities to guide the agency's work in 2010 and beyond. "[The priorities] are built around the challenges and opportunities inherent in our mission to protect human health and environment for all Americans," she said. "We will carry our mission by respecting our core values of science, transparency and the rule of law."

One priority is "Protecting America's Waters," which Jackson explained, saying, "America's water bodies are imperiled as never before. Water quality and enforcement programs face complex challenges, from nutrient loadings and stormwater runoff, to invasive species and drinking water contaminants. These challenges demand both traditional and innovative strategies.... We will initiate measures to address post-production runoff, water quality impairment from surface mining, and stronger drinking water protection. Recovery Act funding will expand construction of water infrastructure, and we will work with states to develop nutrient limits and launch an Urban Waters initiative. We will also revamp enforcement strategies to achieve greater compliance across the board."

Jackson also identified "Building Strong State and Tribal Partnerships" as another priority. She said, "States and tribal nations bear important responsibilities for the day-to-day mission of environmental protection, but declining tax revenues and fiscal challenges are pressuring state agencies and tribal governments to do more with fewer resources. Strong partnerships and accountability are more important than ever. EPA must do its part to support state and tribal capacity, and through strengthened oversight, ensure that programs are consistently delivered nationwide. Where appropriate, we will use our own expertise and capacity to bolster state and tribal efforts."

Of note, Jackson listed "Taking Action on Climate Change" as another priority. "We will continue to support the President and Congress in enacting clean energy and climate legislation," she said. "In all of this, we must also recognize that climate change will affect other parts of our core mission, such as protecting air

and water quality, and we must include those considerations in our future plans." Other priorities included, "Improving Air Quality," "Assuring the Safety of Chemicals," "Cleaning Up Our Communities," and "Expanding the Conversation on Environmentalism and Working for Environmental Justice. Please see: <http://blog.epa.gov/administrator/2010/01/12/seven-priorities-for-epas-future/>.

LITIGATION/WATER RESOURCES

Colorado River/California

A California judge has invalidated a set of 2003 agreements (the Quantification Settlement Agreement and related agreements) regarding rights to the use of Colorado River water within California and transfers of Colorado River water among California local agencies. At issue is a provision that gives California an "unconditional contractual obligation" to mitigate impacts of the Imperial Irrigation District-San Diego County Water Authority water transfer on the Salton Sea in excess of a specified financial cap that is not subject to the appropriation of funds by the state Legislature.

In a January 13 decision that largely affirmed a prior tentative ruling, Sacramento County Superior Court Judge Roland Candee held that one of the interlinked agreements violates the California Constitution, which prohibits the state from incurring debt above \$300,000 without Legislative appropriation. In particular, he found that going forward with the agreement would mean that "...executive agencies of the state can contract for amounts well over the constitutional debt limit where some amount is contingent but everyone knows there is a very real possibility that the debt limit amount will be exceeded by simply adding language saying the obligation is an unconditional contractual obligation of the State not conditioned upon an appropriation by the Legislature, contractually binding future legislators' hands in contravention of our Constitution."

Candee issued the decision after holding a hearing on December 17 for parties to express their views on the tentative ruling. The California Attorney General's Office, the Imperial Irrigation District (IID), and others argued that the tentative ruling failed to consider appropriated money that is currently spent elsewhere. Conversely, supporters of the tentative ruling argued that the agreement creates a blank check and that there is no

way for California to know whether the necessary funds can be found in the state budget.

Although the ruling would only apply within California, it could cause a reopening of competing intrastate claims over rights to the use of Colorado River water that were settled by the QSA's execution, thereby creating uncertainties for the other Colorado River Basin states. "Unless this holds, they can't make the commitments that they made, said Patricia Mulroy, General Manager of the Southern Nevada Water Authority, discussing the prior tentative ruling. "It just causes so much uncertainty and it destabilizes everything at a time when having stability among states is critically important." Appeals are almost certain. Please contact the WSWC offices for copies of the final and tentative rulings.

WATER RESOURCES

Corps of Engineers/Water Planning Initiative

The American Water Resources Association (AWRA) has started a blog to discuss whether a national water vision is needed. "We seek the broadest possible involvement from the water resources community and others who are interested in and/or affected by water resources management decisions in the U.S.," said past AWRA President Jerry Sehkle in a posting. "We have no preconceived notions as to what the final answer will or should be; we simply believe that it is in the best interest of the U.S. water community and the nation as a whole to have this conversation."

Sehkle also explained some of the arguments for and against a national vision. "One argument is that a national water vision is necessary to develop our water resources in a systematic, efficient, sustainable, and cost-effective manner. A counter-argument is that water resources are the purview of the states and no national water vision or policy is needed. Another argument promotes a hybrid approach, e.g., a national vision relative to federal interests and independent visions or plans for each state, territory and tribe relative to the resources within its domain." Sehkle said the results of the discussion will be summarized, made available online, and sent to the President and Congress.

Of note, the U.S. Army Corps of Engineers released a draft report last month as part of its "Building Strong Collaborative Relationships for a Sustainable Water Resources Future" initiative, which recommended that AWRA "...should initiate an outreach effort for the development of a national water vision and policy, and proposals, tapping the sentiment of the water resources community at large." The report also said AWRA offered to build a blog "to collect proposals for a national water vision" during the initiative's National Conference, held in Washington, D.C. in August 2009. Please see: <http://awramedia.org/vision/?p=7>. (WSW #1859)

Klamath River Basin-Restoration Agreement

On January 8, the parties involved in the Klamath River Basin negotiations released the final draft of the Klamath Basin Restoration Agreement (KBRA). The Basin's water and fisheries resources have been the subject of decades of negotiations between California, Oregon, federal agencies, tribes, environmental groups, agricultural interests, and others over the water available for irrigation, national wildlife refuges, fish and wildlife, and other uses within the Basin.

The KBRA is intended "...to result in effective and durable solutions which: (1) restore and sustain natural production and provide for Full Participation in Harvest Opportunities of Fish Species throughout the Klamath Basin; (2) establish reliable water and power supplies which sustain agricultural uses and communities and National Wildlife Refuges; and (3) contribute to the public welfare and the sustainability of all Klamath Basin communities [to resolve disputes]." As for funding, estimated costs to implement the agreement in its first year total about \$41M, while long-term costs would run about \$97M per year. Of the total, over 90 percent is budgeted for fisheries restoration and reintroduction and actions to enhance the amount of water for fish.

To accomplish the KBRA's goals, the agreement would create a number of programs, including a water resources program of schedules, plans, and other provisions to change the management of delivered water supply for irrigation and related uses in the Klamath Reclamation Project, upper Klamath Basin, and the National Wildlife Refuges. The KBRA also contains a fisheries program that would, among other things, reintroduce anadromous fish, establish conditions to contribute to fishery sustainability, assess the effectiveness of actions, and provide for adaptive management. The KBRA would further establish the Klamath Basin Coordinating Council to facilitate coordination, cooperation, collaboration, and accountability by the parties to ensure that elements of the agreement are carried out effectively.

The agreement is also meant to complement the Klamath Hydroelectric Settlement Agreement (KHSA) released in September 2009, which establishes a process for the potential removal of four PacifiCorp dams on the Klamath River to allow salmon and steelhead trout greater access to spawning habitat. The governing bodies of the participating organizations will now decide whether or not to sign both agreements concurrently, which is scheduled to happen in February. Moreover, federal authorizing legislation is needed before the federal government and its agencies can become parties to the KBRA and be required to implement any of its provisions. To read the agreements, please see: <http://www.edsheets.com>. (WSW #1847)

The WESTERN STATES WATER COUNCIL is an organization 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.