



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION UPDATE/WATER RESOURCES

Interior/Cooperative Watershed Management Act

The Department of Interior is moving forward with the implementation of the Cooperative Watershed Management Act, which was signed into law last year as part of the Omnibus Public Lands Act. The Act authorized Interior to establish a new grant program to support locally-led watershed groups and watershed management projects. It aims to promote conservation and the sustainable use of water resources, improve water quality and ecological resiliency, and facilitate coordination with local watershed groups to reduce conflicts over water.

As part of this effort, Interior Secretary Ken Salazar sent a letter to the governors of all 50 states, seeking their engagement. "We need help in identifying [state] efforts and plans to restore our Nation's waterways and water resources," he wrote. "The intent of the Act is to build capacity at the watershed level and for the Department to support the good work that is already underway.... As a beginning point, I have directed my staff to inventory the investments that states are already making in watersheds, specifically in river restoration activities, and their plans for the future." Salazar also named Deputy Assistant Secretary for Water and Science John Tubbs, a former WSWC member, as Interior's point person for this effort.

NOAA Climate Service/Climate Change

On February 8, the National Oceanic and Atmospheric Administration (NOAA) announced its intent to create a new Climate Service office that would integrate the agency's climate sciences and services to make them more accessible. The reorganization effort is aimed at providing long-range assessments of climate change, sea-level rise, and severe weather to assist state governments, water managers, farmers, and others. Thomas Karl, the head of NOAA's National Climatic Data Center, will be the office's transitional director, which will also have six regional directors.

"This will provide a single point of contact, a one-stop shop for businesses and government that need NOAA's high quality forecasting for making predictions," said U.S. Commerce Secretary Gary Locke. "They turn to the Weather Service for making predictions in the

short range, now we need the climate service...because increasingly climate change is affecting everyone's bottom line." Locke would like to fully implement the reorganization by the beginning of FY 2011.

NOAA Administrator Jane Lubchenco said the office will work closely with state and local government, academic, regional, federal, and other public and private partners. To pay for the Climate Service, NOAA will need to shift some of its funds into a new Climate Service fund, which will require Congressional approval in the Commerce Department's spending bill.

Locke and Lubchenco also unveiled the "NOAA Climate Service Portal," a new website that will serve as a single point-of-entry for NOAA's climate information, data, products and services. Highlights of the site include an interactive "climate dashboard" that allows users to see a range of constantly updating climate datasets over adjustable time scales, and an array of data products and educational resources. The portal is available at: <http://www.climate.gov>.

ENVIRONMENT/LITIGATION

Endangered Species Act/California Bay Delta

This week, Judge Oliver Wanger of the U.S. District Court for the Eastern District of California denied a request by the Westlands Water District and other water agencies to temporarily postpone new pumping restrictions for the San Joaquin-Sacramento Delta. The U.S. Fish and Wildlife Service (FWS) ordered the restrictions under a standing federal biological opinion (BiOp) designed to protect the endangered Delta smelt pursuant to the Endangered Species Act (ESA).

Interestingly, last week Wanger issued a decision that temporarily suspended another BiOp aimed at protecting migrating salmon in the Delta. However, that decision led to an increase in pumping that entrained smelt, thereby prompting FWS to impose the new restrictions. Since the smelt BiOp requires lower pumping rates than the salmon BiOp, Wanger's decision this week renders moot his prior decision to suspend the salmon BiOp. San Joaquin Valley water agency representatives say the restrictions will result in the loss of 90,000 acre-feet of water. They also indicated that they will try again to get Wanger to lift the restrictions next week. (WSW #1808, #1821, and #1830)

Endangered Species Act/Columbia River/Salmon

The federal judge overseeing efforts to make the Columbia River Basin's hydroelectric dams safer for salmon has given NOAA Fisheries until February 19 to decide whether to voluntarily take back its proposed improvements to a George W. Bush-era biological opinion. In litigation stretching back over 15 years, the federal government has attempted to determine how to balance water needs for hydroelectric power and wild salmon in the Columbia Basin. In September, the Obama Administration set forth a conservation plan, known as the "Adaptive Management Implementation Plan," which included climate change monitoring and proposed removing dams as a "last resort."

However, Judge James Redden of the U.S. District Court for the District of Oregon said he cannot consider the revisions until they are formally included in the overall biological opinion. He also urged the agency to produce a stronger plan, saying: "I will not sign an order of voluntary remand that effectively relieves Federal Defendants of their obligation to use the best available science and consider all important aspects of the problem. This court will not dictate the scope or substance of Federal Defendant's remand, but Federal Defendants must comply with the ESA in preparing any amended/supplemental biological opinion."

Redden has found twice before that federal plans violated the ESA for not adequately protecting salmon, thereby forcing the government to devote more water to fish and less to power production. He has also urged NOAA Fisheries to work with Oregon and the other parties in the case. (WSW #1804 and #1785)

WATER RIGHTS/WATER RESOURCES Snake Valley Aquifer/Nevada/Utah/Ground Water

Last month, the Nevada Supreme Court issued a decision that could delay or upend a Southern Nevada Water Authority (SNWA) proposal to pump 50,000 acre-feet of water per year from the Snake Valley aquifer on the Nevada-Utah border to Las Vegas via a 285-mile, \$3.5B pipeline. In turn, the decision could impact a related, possible agreement between Nevada and Utah over how to divide groundwater in the aquifer.

At issue is the timing of the Nevada State Engineer's approval of the water rights applications that SNWA filed for the pipeline in 1989. When SNWA filed its applications, Nevada law required the State Engineer to process water right applications no later than one year after the end of a formal protest period. The State Engineer did not process the applications within the necessary time period. In 2003, the Nevada Legislature amended the law to let him postpone action on water-rights applications for municipal use. However, the Legislature did not make its changes retroactive, raising legal questions as to the status of SNWA's filings.

In a unanimous decision, the court stated, "Because we determine that the 1989 water appropriation applications were not pending in 2003, we conclude that the (Nevada) State Engineer violated his statutory duty by failing to take action within one year after the final protest date. Thus, we reverse the order of the district court and remand for a determination of whether SNWA must file new groundwater appropriation applications or whether the State Engineer must re-notice SNWA's 1989 applications and reopen the period which appellants must file protests."

As a result of the ruling, Utah Governor Gary Herbert (R) has put the Snake Valley negotiations on hold. "This ruling significantly changes the landscape upon which our ongoing discussions have been based," he said. "It also allows us to revisit the proposed agreement with the state of Nevada and ensure that our continued desire to protect Utah's water interests and the environment is met." He further stated, "Based on the additional requirements imposed by the Nevada Supreme Court, an agreement, at this time, is premature."

Of note, SNWA has spent millions on studies, preliminary designs, and legal work for the pipeline project, which is expected to supply enough water for more than 250,000 homes and reduce Las Vegas' reliance on the Colorado River. Nevada Department of Conservation and Natural Resources Director Allen Biaggi, a WSWC member, has expressed concern that the ruling could call into question water permits issued before 2002 and could impact hundreds of pending applications. Allen has further confirmed that he is crafting a legislative fix for state lawmakers to consider during a special session set to start on February 23. Nevada Governor Jim Gibbons (R) will determine whether or not to add the bill to the session's agenda. (WSW #1840 and #1837)

PEOPLE

Duane Smith, Director of the Oklahoma Water Resources Board (OWRB) and a WSWC member has taken a six-month leave of absence to work in Afghanistan as a consultant on water and infrastructure issues at the request of the U.S. Army Corps of Engineers. He will deploy to Kabul and will return to his OWRB duties on August 1. In the meantime, the OWRB has appointed Oklahoma Secretary of the Environment J.D. Strong, a fellow WSWC member, as Duane's interim replacement. We wish Duane the best in Afghanistan and look forward to his safe return.

Joshua Svaty was unanimously confirmed by the Kansas Senate as the new Secretary of Agriculture on January 21. He has been acting in the position for sometime, and as such was appointed by Governor Mark Parkinson (D) to the WSWC. We congratulate Joshua on his confirmation and look forward to working with him on water resources issues facing Kansas and the West.