



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION UPDATE/WATER QUALITY** **EPA/Hydraulic Fracturing**

The U.S. Environmental Protection Agency (EPA) will host four public information meetings on the scope and design of its proposed study of the relationship between hydraulic fracturing and drinking water. Hydraulic fracturing is a process that pumps water, sand, and chemicals into rock formations to aid in the extraction of oil and natural gas. EPA's Office of Research and Development (ORD) will conduct the study. EPA will use information from the study to identify potential risks associated with hydraulic fracturing. In the West, the meetings will take place on July 8, in Fort Worth, Texas, and on July 13, in Denver, Colorado. ORD hopes to complete the study design process by September 2010 and to make initial study results available in late 2012. For information on the EPA meetings and the study, please see: [http://www.epa.gov/safewater/uic/wells\\_hydrofrac.html](http://www.epa.gov/safewater/uic/wells_hydrofrac.html). (WSW #1882 and #1870)

### **EPA 2011-2015 Strategic Plan**

The EPA is also seeking public comment on its draft FY 2011-2015 strategic plan, which is intended to advance seven priorities that Administrator Lisa Jackson identified in a January 12 memorandum to guide the agency's work. The plan lists "Protecting America's Waters" as one of the priorities and states: "Over the next five years, EPA will work with states, territories, and tribes to safeguard public health, make America's water systems sustainable and secure, strengthen the protection of our aquatic ecosystems, improve watershed-based approaches, focus efforts in key geographical areas, and take action on climate change." The public comment period begins June 18 and closes July 30. A final plan will be released by September 30. For more information, please see: <http://www.epa.gov/ocfo/plan/plan.htm>. (WSW #1861)

### **U.S. Forest Service/Forest Restoration**

On June 18, Secretary of Agriculture Tom Vilsack announced the selection of fifteen advisory committee members to evaluate proposals submitted under the Collaborative Forest Landscape Restoration (CFLR) Program. The committee, which was authorized by the Forest Landscape Restoration Act, will establish a

collaborative process that relies on the best available science to plan and prioritize landscape-scale forest restoration projects that benefit local economies. To make large-scale, long-term restoration projects feasible, Congress appropriated \$10M this year that will supplement local resources and leverage non-federal support for carrying out projects under the CFLR Program. The Committee will evaluate 31 proposals that the Forest Service received from across the country, including proposals designed to maintain and improve water quality. Of note, 11 of the 15 committee members hail from western states, including Alaska, Arizona, California, Colorado, Montana, New Mexico, and Oregon. The Committee is expected to make its final recommendations by August 2010. Please see: <http://www.fs.fed.us/news/2010/releases.shtml>.

### **CONGRESSIONAL UPDATE/WATER RESOURCES** **Border Water Issues/Water Resources Research**

On June 17, the House Natural Resources Committee's Subcommittee on Water and Power held a hearing on two water resources bills. The first bill (H.R. 4719) would establish a Southwest Border Region Water Task Force to assess the water needs of communities in Arizona, California, New Mexico, and Texas, and determine the relative priority of projects in the region. It would submit regular reports to Congress and the public regarding the execution of the Task Force's duties. The Task Force would also be comprised of representatives from at least seven federal agencies including EPA, the Bureau of Reclamation, the Department of Agriculture, the U.S. Army Corps of Engineers, and others.

In her opening statement, Subcommittee Chair Grace Napolitano (D-CA) said, "Although other issues such as immigration are a concern to the region, we should not lose sight of an equally important issue - the right of American citizens to have access to clean water on this side of the border." Ranking member Tom McClintock (R-CA) also said he will seek to amend the bill to focus more on protecting water infrastructure located on the border, citing a recent plot by a Mexican drug cartel to blow up Falcon Dam on the Rio Grande River between Texas and Mexico. Department of Interior Deputy Assistant Secretary for Water and Science John Tubbs, a former WSWC member, testified on behalf of Interior, saying "...we believe the legislation is unnecessary given existing authorities, is potentially

problematic to implement, and it would have to compete for funds with ongoing operations, maintenance and construction obligations of the Department and its bureaus.”

The second bill, the Water Resources Research Amendments Act of 2010 (H.R. 5487), would reauthorize grants for FY 2012 through 2016 for water supply research undertaken by state water resources research institutes established pursuant to the Water Resources Research Act of 1984 (WRRRA). “As we move forward with this bill, I’d like to stress the importance of having better access to the results of these studies,” said Napolitano, who introduced the bill. “Our goal should be to make all of the research easily available...” Tubbs also spoke in favor of the bill, saying, “The Department strongly supports H.R. 5487 to reauthorize grants for applied water supply research. This program has proven to be a success and continues to make valuable contributions.”

On the other hand, McClintock questioned the value of a number of studies produced under WRRRA and said the bill “...moves these institutes farther from their purported mission: to produce more water resources - to what it euphemistically calls ‘non-structural’ measures. Translated from bureaucratese, that means the creation of more wetlands...and associated farmland retirement at a time when we need more food production not less.” To listen to the hearing, see: [http://resourcescommittee.house.gov/index.php?option=com\\_jcalpro&Itemid=27&extmode=view&extid=367](http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=27&extmode=view&extid=367).

#### **LITIGATION/WATER RIGHTS/WATER RESOURCES** **Snake Valley Aquifer/Nevada/Utah/Groundwater**

A June 17 Nevada Supreme Court decision will lead to the reopening of the protest periods for ground water applications associated with the Southern Nevada Water Authority’s (SNWA) proposal to pump 50,000 acre-feet of water per year from the Snake Valley Aquifer on the Nevada-Utah border via a 285-mile, \$3.5B pipeline. The case focuses on the process for acting on the 1989 applications and a state law that required the State Engineer to deny or approve such applications no later than one year after the end of a formal protest period. The Nevada State Engineer did not rule on the applications within the time limit, and subsequently the Nevada Legislature amended the law in 2003 to allow him to postpone action on applications for municipal use.

In 2006, a number of parties in Nevada and Utah petitioned the State Engineer to re-notice SNWA’s applications and to re-open the protest period. The State Engineer denied the request and the parties filed a petition for judicial review, which the district court denied. The parties then appealed and the Nevada Supreme Court has reversed the district court, finding

that the 2003 amendment did not apply retroactively and that the State Engineer had not acted within the one-year time period as required by law. The court also remanded the case to the district court for further consideration as to whether SNWA needed to re-file its applications or if the State Engineer need only re-open the protest period. SNWA and the State Engineer subsequently filed petitions with the Nevada Supreme Court for a rehearing.

On rehearing, the court reaffirmed that the 2003 amendment is not retroactive and that the State Engineer did not act in a timely manner. However, it clarified that the “proper and most equitable remedy” is for the State Engineer to re-notice the applications and re-open the protest period. “Voiding the State Engineer’s ruling and preventing him from taking further action would be inequitable to SNWA and future similarly situated applicants. And applicants cannot be punished for the State Engineer’s failure to follow his statutory duty,” it said. “Similarly, it would be inequitable to the original and subsequent protestants to conclude that the State Engineer’s failure to take action results in approval of the applications over 14 years after their protests were filed.” The Supreme Court opinion is available online at: <http://www.nevadajudiciary.us/images/advanceopinion/s/126nevadvopno20.pdf>. (WSW #1870 and #1865)

#### **MEETINGS**

##### **WSWC Summer Meetings - Lake Tahoe, Nevada**

The 163<sup>rd</sup> Council meetings will take place July 21-23 in Stateline, Nevada at the MontBleu Resort on Lake Tahoe. Anne Castle, U.S. Department of the Interior Assistant Secretary for Water and Science, and Acting U.S. Fish and Wildlife Service Director Rowan Gould will speak to the Full Council Meeting on July 23. Nevada will also host a half-day field trip on July 21 that will include a number of stops around the area to learn about Lake Tahoe’s operations, Truckee River water rights, effluent treatment and export, the U.S. Geological Survey’s streamgage program, and water rights issues in the Carson Valley. For further meeting details see: <http://www.westgov.org/wswc/163mtg.html>.

#### **Schedule of Meetings**

##### **Wednesday, July 21**

12:30 pm WSWC Field Trip

##### **Thursday, July 22**

8:00 am Water Resources Committee  
12:00 pm Executive Committee (over lunch)  
1:30 pm Legal/Water Quality Committees  
6:00 pm Social Hour (hosted by Former Nevada State Engineers)

##### **Friday, July 23**

8:30 am Full Council Meeting

**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.**