



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION UPDATE**

#### **Office of Management and Budget**

President Obama has announced that he will nominate Jacob "Jack" Lew to replace outgoing Office of Management and Budget (OMB) Chief Peter Orazag. Lew served as President Clinton's OMB Director and has been the State Department's Deputy Secretary for Management and Resources and the Department's Chief Operating Officer. "As the budget director who left the next administration a \$237B surplus when he worked for President Clinton, I have no doubt that Jack has proven himself equal to this extraordinary task," said Obama. "I am grateful he has agreed to serve in this critical role, and I look forward to working with him in the weeks and months ahead." Please see: <http://whitehouse.gov>.

#### **EPA/WaterSense/Water Use Efficiency**

On July 14, the Environmental Protection Agency's (EPA) WaterSense program kicked off its national "We're for Water" campaign to encourage Americans to make choices that save water. The program, in collaboration with its partner, American Water, will spread the word about saving water by traveling cross-country, stopping at national landmarks, and educating consumers about WaterSense-labeled products, which use about 20% less water than standard models. WaterSense is an EPA-sponsored partnership program that seeks to protect the nation's water supply by offering ways to use less water with water-efficient products, new homes, and services. Please see: <http://www.epa.gov/watersense/wereforwater>.

### **WATER QUALITY/CONGRESSIONAL UPDATE**

#### **Clean Water Infrastructure/Stimulus**

The House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment held an oversight hearing on July 15, to discuss the importance of continued investments in the nation's clean water infrastructure and the impact of that investment on jobs. "The Recovery Act appropriated \$4B for clean water infrastructure," said Committee Chair James Oberstar (D-MN). "As of May 31, 2010, 100 percent of these funds had been put out to bid for 1,962 projects.... Contracts had been signed for 1,957 projects, and work was underway for 1,884 projects

(totaling \$3.8B). Oberstar also said these projects created or sustained 26,075 jobs and expressed support for investing more funds into the Clean Water State Revolving Fund (SRF) program, urging his colleagues in the House and Senate to re-authorize the Clean Water SRF. He also cited the House's passage of the Water Quality Investment Act of 2009 (H.R. 1262) last March, which would authorize \$13.8B in federal grants over five years to capitalize the Clean Water SRF.

Subcommittee Chair Eddie Bernice Johnson (D-TX) noted that the House Energy and Commerce Committee has reported the Assistance, Quality, and Affordability Act of 2009 (H.R. 5320), which would reauthorize the Safe Drinking Water SRF. "The Senate has also moved their legislation the Water Infrastructure Financing Act (S. 1005), to reauthorize both the Clean Water SRF and the Drinking Water SRF out of the Environmental and Public Works Committee," she said. "It is my sincere wish that both Chambers will meet in conference so that we can finally get this vital legislation signed into law. We need to do this so that these important programs can continue to fund this critical infrastructure, and provide more good jobs for working Americans."

Of note, Committee Ranking Member John Mica (R-FL) criticized the Stimulus for wasting money and not wisely investing in water infrastructure. "Given the fact that the transportation projects and other infrastructure projects like flood damage reduction projects and wastewater treatment projects provide economic benefits to the nation, the Administration and Congress should have placed a higher priority on the work of the Army Corps of Engineers and EPA's Clean Water State revolving loan fund and Brownfields program." See: <http://transportation.house.gov/hearings/>. (WSW # 1880)

### **WATER QUALITY/LITIGATION**

#### **Safe Drinking Water Act/Tribal Lands/New Mexico**

On July 15, the 10th Circuit Court of Appeals issued an opinion that held that private lands intermixed with federal and Indian lands are subject to state jurisdiction for the Safe Drinking Water Act (SDWA). The opinion focused on whether a mining company needed to obtain a Safe Drinking Water Act underground injection control (UIC) permit from EPA or the New Mexico Environment Department (NMED) to mine for uranium on property it owned near the Navajo Reservation. The uninhabited

land was located in a “checkerboard area” where federal, state, Indian, and private lands are intermixed. In 2007, EPA determined that it had jurisdiction to issue the permit because the property qualified as “Indian land” under its UIC program regulations. Per these regulations, the term “Indian land” is synonymous with the definition of “Indian Country” as defined in 18 U.S.C. § 1151, which provides primary federal criminal jurisdiction over certain territories, including “dependent Indian communities.” EPA reasoned that the land was within a “dependent Indian community” because a high percentage of the surrounding land was set aside for Indian use and federally superintended.

The company appealed the decision and a three judge panel from the 10<sup>th</sup> Circuit upheld EPA’s determination, prompting the company to petition the court for an en banc review. Sitting en banc, the court reversed its prior holding in a 6-5 decision, noting, “In *Alaska v. Native Village of Venetie Tribal Government*, the Supreme Court identified two requirements of all dependent Indian communities. First, the land in question must be an Indian community in the sense that it has been explicitly set aside by Congress (or the Executive, acting under delegated authority) for the use of the Indians as Indian land. Second, the land in question must be dependent in the sense that it is under federal superintendence.” The court reasoned that the land in question failed this test because the parties agreed that it did not satisfy either element. It also rejected EPA’s argument that it had jurisdiction over the land because a significant percentage of the neighboring lands - what EPA called the “community of reference” - was “Indian Country.” The court said this test was incompatible with the “history and structure” of the MCA and noted that *Venetie* “explicitly rejected” a Ninth Circuit test. As opposing parties, EPA and the Navajo Nation have 90 days to appeal the ruling. See: <http://www.ca10.uscourts.gov/opinions/07/07-9506.pdf>.

## **WATER RESOURCES/CONGRESSIONAL UPDATE** **Reclamation/Stimulus**

On July 15, the House Committee on Natural Resources’ Subcommittee on Water and Power held an oversight hearing to discuss how the Bureau of Reclamation is implementing the Stimulus funding it has received, as well as how the funding will shape the agency’s mission and priorities in the future. In her opening statements, Chairwoman Grace Napolitano (D-CA) said, “I would like to request a [Government Accountability Office] report to examine the legacy costs associated with federally funded Reclamation projects, including dams, Title XVI projects, and other programs. It is important that we have an accounting of the full costs being born by taxpayers, evaluating whether these projects are being reimbursed to the Treasury and determining what is the best deal for taxpayers.” She

also praised Reclamation for obligating funds for 27 Title XVI water reuse projects, which she said are projected to create 270,000 acre-feet of water in FY2010-FY2011.

Reclamation Commissioner Mike Connor testified that as of June 30, his agency had obligated more than \$774,414,000 of the \$950M in Stimulus funding it received for projects and programs in the 17 western states. He also said allocations for Stimulus-funded projects fell into the following investment areas: (1) “meeting future water supply needs” - \$442.57M; (2) “infrastructure reliability and safety” - \$167.25M; (3) “environmental/ecosystem restoration” - \$218.45M; (4) “green buildings” - \$13.5M; (5) “water conservation initiative” (WaterSMART grants) - \$40M; and (6) “emergency drought relief” - \$42.48M. Within these amounts, Connor said Reclamation has provided over \$400M in Stimulus funds for projects in California and has allocated \$135.79M to Title XVI projects, of which \$122.3M has been obligated. Connor further said his agency has established plans to obligate approximately 95% of the Stimulus project funds by September.

Family Farm Alliance Executive Director Dan Keppen said Reclamation’s Stimulus package “...clearly emphasizes environmental restoration projects and new urban, tribal and rural domestic and water programs as priorities of this Administration.... The Alliance believes the Congress must refocus Reclamation’s priorities back to its core mission beginning with the appropriations process. Reclamation must ensure continued operation of federally-owned water management and delivery facilities into the future by investing federal dollars in rehabilitation of aging facilities and in environmental restoration that directly supports and results in more reliable water deliveries to agriculture and municipal water users.” For more information, please see: [http://resourcescommittee.house.gov/index.php?option=com\\_jcalpro&Itemid=54&extmode=view&extid=373](http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=54&extmode=view&extid=373).

## **LITIGATION/WATER RIGHTS** **Colorado/Kansas/Nebraska/Republican River**

The Colorado Attorney General’s office has filed a response to a Kansas petition before the Supreme Court that alleges that Nebraska has exceeded its Republican River Compact allocation. Kansas’ suit does not make any direct claims against Colorado and Colorado’s brief takes no position on Kansas’ petition. However, Colorado Attorney General John Suthers has issued a statement, saying, “Though the U.S. Supreme Court ultimately will decide whether to take this case, I continue to believe that here, as with all interstate disputes, Nebraska and Kansas can resolve their disagreements without subjecting all of the states to the costs and uncertainties of litigation.” For more information, see: <http://www.coloradoattorneygeneral.gov/press/news>. (WSW #1877 & # #1834)

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