



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION UPDATE **NOAA/S2S Forecasting**

The National Oceanic and Atmospheric Administration (NOAA) has prepared a draft report to be submitted to Congress on sub-seasonal and seasonal (S2S) forecasting innovation. The report will serve as a guidepost for NOAA's planning and execution, and to track and inform the public and stakeholders on NOAA's efforts and progress. The two primary goals of the report are to: (1) improve the skill of the S2S forecasts; and (2) enhancing the value of S2S products for stakeholders. The National Weather Service has prepared an annotated outline of the draft S2S report, and is soliciting comments from relevant federal, regional, state, tribal and local government agencies, as well as research institutions and the private sector, on the scope and potential utility of the report. The annotated outline is available at: https://www.weather.gov/sti/stimodeling_s2s_report. Comments and feedback on the outline may be emailed to NOAA at S2SReport.Reply@noaa.gov.

CONGRESSIONAL UPDATE **Reclamation/Title Transfers**

On July 12, the House passed the Reclamation Title Transfer and Non-Federal Infrastructure Incentivization Act (H.R. 3281) by a vote of 233-184, largely along party lines. The bill authorizes transfers of Reclamation projects to eligible entities with the capacity to continue to manage the property for the same purposes it has been managed by the Department of the Interior. The bill lays out the conveyance procedure, criteria for eligibility, a right of first refusal for an entity currently operating and maintaining an eligible facility, and protections for power rates and repayment obligations. It allows the Administration to develop title transfer agreements with utilities and authorize the transfer administratively, while still retaining Congressional oversight over each transfer. See WSW #2247.

Rep. Doug Lamborn (R-CO), who introduced the bill, said: "This Act will streamline the administrative process and remove cumbersome, bureaucratic hurdles for the Interior Department. Federal water projects have been a critical asset to many Colorado farmers for generations. The Bureau of Reclamation has played an

essential role in constructing many of these facilities. However, over the years, populations in the West have continued to grow while the infrastructure aged. Many facilities are in disrepair and require new investment. Uncertain federal funding and burdensome regulation cripple development of critical water resources. This Act maintains congressional oversight while granting local water districts the flexibility to fulfill the needs of their communities. H.R. 3281 allows districts to leverage local investment and encourages local control."

House Natural Resources Committee Chair Rob Bishop (R-UT) said: "Our communities can't flourish without access to water. That's why this bill provides needed reforms that give localities more control over their own water resources. We need to bring our nation's water infrastructure into the 21st century. This bill does that while saving money for taxpayers and providing the flexibility needed for water users in our western states."

CONGRESSIONAL UPDATE/WATER RIGHTS **Senate Indian Affairs/Indian Water Rights**

On July 18, the Senate Indian Affairs Committee, Chaired by Senator John Hoeven (R-ND), held a hearing on S. 3168, amending the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent, as well as S. 2154, to codify the a water rights settlement agreement between the State of Kansas and the Kickapoo Tribe. John Tubbs, Director, Montana Department of Natural Resources and Conservation, testified on behalf of the State and the WSWC. Other witnesses included Lester Randall, Kickapoo Chairman, and Alan Mikkelsen, Senior Advisor to the Secretary of the Interior Ryan Zinke.

Mikkelsen expressed the Department's continuing support as; "...negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements can resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users within a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve environmental and health conditions on reservations." However, he explained Interior can't support the bill as the settlement agreement only resolves the Tribe's water

rights, while leaving unresolved a waiver of claims against the United States, anticipated federal funding, and State and local cost sharing.

Regarding S. 3168, Mikkelsen testified, "One of the key factors in making settlements meaningful to the health and welfare of tribes and non-Indian communities, and to creating water certainty and economic-development opportunities in the West, has been funding. Funding is needed to secure new water supplies, build or rehabilitate infrastructure required to deliver water, and protect resources such as treaty fishing rights that are of critical importance to tribes.... Indian water rights settlements can however be costly, and costs have increased over the years." He did not express support or opposition to S. 3168. In response to questions he noted the \$1.2B to be made available under the current Settlement Fund authority had already been committed, and estimated another \$5B in settlements were "in the pipeline," emphasizing the need for funding. The President's FY2019 Budget request included \$173M for Indian water rights settlements.

Tubbs declared, "The State of Montana and Western States support any effort to provide a stable and appropriate funding source for water settlements. Of course, you are aware that previously Western States asked the Administration and the Congress to fully appropriate the receipts and collections accruing to the Reclamation Fund subsequent to the Reclamation Act and other acts for their intended purpose of continuing conservation, development and wise use of resources to meet western water-related needs. In regard to S. 3168, Montana and Western States support this effort to make the Reclamation Water Settlement Fund permanent." John expressed pride in the eighteen compacts settling reserved water rights claims negotiated through Montana's Reserved Water Rights Compact Commission adding, "Just last month, Secretary Zinke and Blackfeet Tribal Chairman Barnes executed the Blackfeet Water Settlement that will enable clean drinking water and irrigation projects to go forward. As you know, the Confederated and Salish and Kootenai Tribes have a water settlement bill that is on deck." WSWC positions on Indian water rights settlements and use of Reclamation Fund receipts were appended. All the testimony is available at www.indian.senate.gov.

LITIGATION/WATER RIGHTS

Interstate Groundwater/Mississippi v. Tennessee

On July 6, the State of Mississippi filed its response to Tennessee's Motion for Summary Judgment in the Supreme Court case on interstate groundwater, *Mississippi v. Tennessee* (#220143). Mississippi requested that the motion be denied. "This is a matter of first impression for which a full record of scientific literature and expert testimony should be developed for the Supreme Court." Mississippi disagreed with Tennessee's characterization of the aquifer as a

continuously flowing interstate resource that naturally crosses state boundaries. Mississippi noted that the subsurface geology is complex and diverse, with discontinuous deposits creating heterogenous and anisotropic formations. Rather than a single multi-state aquifer, the variations in natural flow velocity, flow direction, groundwater residence times, water quality, specific yield, and aquifer thickness and permeability, make the interrelated aquifers distinct and separable, the response argues. Under natural conditions, Mississippi's groundwater flow is measured in inches or feet per day, remaining in storage at constant volumes and pressures for thousands of years. The groundwater at issue would remain within Mississippi's confined aquifer "...but for the introduction of [Tennessee's] massive groundwater pumping operations near the Mississippi border."

Tennessee's pumping from the confined aquifer has drawn "much younger groundwater in shallower aquifer formations downward into the older, higher quality water...;" has caused a significant loss in Mississippi's natural groundwater storage (an estimated 412 billion gallons since 1965); and "...has increased the costs of producing Mississippi groundwater within the cone of depression." Mississippi argues that these losses were avoidable, that the Memphis Light, Gas, and Water Division (MLGW) could have: (1) placed their wellfields in the same formation further north and east; (2) increased the spacing between the commercial wells; and (3) limited "the duration of pumping from individual wells on a rotating cycle in accordance with good groundwater development practices..."

Rejecting Tennessee's arguments that equitable apportionment is the exclusive remedy, Mississippi distinguished their groundwater from past cases addressing surface water: "The Court's water cases do not limit its authority to fashion remedies appropriate for the facts in each case. This case is not about water rapidly flowing through and temporarily residing in multiple States on a journey to the sea. It is about Mississippi's sovereign authority under the Constitution to manage, preserve, protect, and control the taking of high quality groundwater naturally occurring and residing in Mississippi for hundreds and thousands of years. [Tennessee's] argument that groundwater pumping by MLGW is an 'agency of natural laws' is convoluted and absurd. Such groundwater pumping is an 'unnatural' force disrupting the natural forces under which the Mississippi groundwater was naturally stored and resided. The fact that the natural geology that kept the naturally occurring groundwater within Mississippi could be utilized as a conduit for [MLGW's] pumping because there is not a 'barrier' beneath the ground to counteract [Tennessee and MLGW's] technological manipulation of the natural conditions does not change Mississippi's rights in and sovereignty over the naturally occurring groundwater residing only within its territory under natural conditions."