



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **CONGRESS**

#### **Senate Confirmations**

On October 11, the Senate confirmed 15 federal judges, including Ryan Nelson to be a Ninth Circuit Judge. In addition to his years in private practice, his federal service included Special Counsel to the Senate Judiciary Committee, Deputy General Counsel to the White House Office of Management and Budget, and Deputy Assistant Attorney General in the Environment and Natural Resources Division (ENRD) at the U.S. Department of Justice. The Senate voted 51-44 to confirm Nelson, mostly along party lines.

Nelson is a native of Idaho, and Senators Mike Crapo (R-ID) and James Risch (R-ID) supported the nomination. Senator Crapo said: "In his new position, Ryan will respect and be a servant of the law. He understands that a judge is responsible for interpreting and applying the Constitution and laws of the land as they are written, and not to be a maker of laws from the bench." Senator Risch said: "Throughout his diverse legal career, Ryan Nelson developed the necessary tools to serve the U.S. Ninth Circuit Court of Appeals as a sound and principled jurist... Ryan will bring a valuable perspective to the Court—upholding our way of life, respecting the rule of law, and rejecting judicial activism."

The Senate also confirmed Jeffrey Clark by a vote of 52-45 to be an Assistant Attorney General at the U.S. Department of Justice, replacing John Cruden as the head of the ENRD. Clark previously served in the ENRD during the Bush Administration as a Deputy Assistant Attorney General, where he oversaw the Appellate Section and Indian Resources Section. Attorney General Jeff Sessions welcomed his confirmation, saying: "Jeff Clark is one of the leading environmental litigators in the country, and has been counsel in many of the most significant environmental and natural resource cases of the past two decades, both here at the Department of Justice and in private practice."

### **CONGRESS/WATER RIGHTS**

#### **Senate/Indian Self Determination**

On September 28, the Senate passed S. 2515, a bill to reform the Indian Self-Determination and Education

Assistance Act of 1975 (P.L. 93-638). The Senate Indian Affairs Committee, which has considered various iterations of this new bill since 2004, reported (S. Rept. 115-335) that the legislation is needed to correct the Department of the Interior's procedures, which have "...hindered negotiations between the Department and Indian tribes for renewing compacts or annual funding agreements."

The agreements, referred to as "638 contracts," allow the tribes to receive federal funds and manage programs that would otherwise be managed by the Department of the Interior, the Bureau of Indian Affairs, and the Indian Health Service. In the past, each agency has approached expansion of tribal administration differently. The tribes contend that the agencies have resisted efforts to streamline the process, and have sometimes held back transfers of authorized funds as leverage in negotiating agreements. The provisions of S. 2515 are intended to "...provide greater certainty and more guidance from Congress on issues relating to decision-making timeframes, re-assumption of programs by the Department, construction projects, and timing of funding transfers."

Notably, Section 101 clarifies that the bill would not affect Congressionally-approved Indian water rights settlements, or state authority to manage, control, or regulate fish and wildlife under state law. The federal agencies have entered into past 638 contracts with tribes for negotiating and implementing water rights settlements, from gathering technical information to constructing water infrastructure.

### **WATER QUALITY**

#### **EPA/WIFIA**

On October 13, the Environmental Protection Agency (EPA) announced plans to hold information sessions to provide prospective borrowers a better understanding of the Water Infrastructure Finance and Information Act (WIFIA) program requirements. EPA will also offer 30-minute individual meetings with participants to learn more about projects and answer specific questions. The sessions will be held in: Chicago, IL on November 13; in Boston, MA on December 11; and in Atlanta, GA on January 15. EPA anticipates holding

additional information sessions and webinars. See <https://www.epa.gov/wifia>.

## **WATER RESOURCES**

### **Reclamation/WaterSMART**

On October 10, the Bureau of Reclamation opened a WaterSMART funding opportunity through the Cooperative Watershed Management Program, to help local communities develop solutions to improve water reliability, stretch limited water supplies, address complex issues, and reduce conflict. A 50% cost-share project may receive up to \$300,000 in federal funds, and Reclamation anticipates awarding up to ten projects.

Eligible watershed groups must make decisions on a consensus basis and be composed of diverse stakeholder interests, such as irrigated agriculture, the environment, municipal water suppliers, hydroelectric producers, livestock grazing, timber production, land development, recreation or tourism, private property owners, and state, tribal, local, and federal governments. Applications are due January 30, 2019. See <https://www.usbr.gov/watersmart/cwmp/>.

### **Colorado River Basin**

On October 10, the Bureau of Reclamation released a draft agreement between the seven Colorado River Basin states to implement drought contingency plans (DCPs) for the Upper and Lower Basins. The agreement would pursue additional actions beyond the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, "...to reduce the likelihood of reaching critical elevation levels in Lake Powell and Lake Mead..." The agreement would need to be signed by all seven states, Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and then ratified by Congress to take effect.

The draft agreement notes that operating experience since 2007 and emerging scientific information about the variability and decline in flow volumes led the states to recognize that those relying on the river system "...face increased individual and collective risk of temporary or prolonged interruptions in water supplies, with associated adverse impacts on the society, environment, and economy of the Colorado River Basin." Additionally, the recent modifications in Minute 323 to the 1944 Mexico Water Treaty include a Binational Water Scarcity Contingency Plan for Mexico to participate in an equivalent DCP if the Lower Basin DCP is implemented.

Reclamation said the Upper Basin DCP would protect Lake Powell elevations and authorize storage of conserved water to establish a foundation for a future Demand Management Program. The Lower Basin DCP

would require Arizona, California, and Nevada to contribute additional water to Lake Mead storage, and create flexibility to incentivize further voluntary conservation.

For more information, the draft agreement is available at <https://www.usbr.gov/dcp/>.

## **WATER RIGHTS/WATER RESOURCES**

### **Colorado - City of Aspen**

On October 11, the City of Aspen, Colorado announced that it had reached settlement agreements with those opposing Aspen's conditional water storage rights for future reservoirs. The water rights were decreed in 1971 with a 1965 priority date, and are part of an integrated water supply system that includes an operational reservoir and other infrastructure. The city's long-range plans include the need to maintain a reliable water supply to meet future industrial, irrigation, and drinking water demands. Although Aspen has focused its efforts on conservation, wells, and water reuse to meet current water needs, the diminishing snowpack and population projections require that the city diligently preserve its Castle Creek and Maroon Creek storage rights.

After Aspen filed its 2016 Application for Finding of Reasonable Diligence to continue the conditional decree for the next six years, several parties opposed the application, including the U.S. Forest Service and private landowners whose lands would be affected if the reservoirs were built. Environmental groups, including Trout Unlimited, American Wilderness, Western Resource Advocates, and Wilderness Workshop, also opposed the continuation of the conditional decree.

The parties were able to negotiate an agreement to protect the city's water rights and safeguard sensitive wilderness areas. The city will file an application with the water court to transfer the location of the future reservoir away from the wilderness areas, and will limit annual diversions to the proposed reservoir to 8,500 acre-feet.

Aspen's Utilities Portfolio Manager, Margaret Medellin, said: "This is a great example illustrating that collaboration and working toward common goals created a water storage solution that is better for all parties involved. There is great reason to celebrate when you begin a process at opposite ends of the spectrum and end the process in agreement. This is a big win for our community." Mayor Steve Skadron expressed pride in the city's prudent water management while engaging in the collaboration to protect the environment. "The City of Aspen has always had the interest of its water customers and community in the forefront of its goals to ensure Aspen could deliver adequate and safe water to its residents and visitors." See <https://www.cityofaspen.com/CivicAlerts.aspx?AID=94>.

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**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.**