



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS **Cooperative Federalism**

On November 16, the House Speaker's Task Force on Intergovernmental Affairs held a hearing on "Federalism Fixes: Legislative Concepts to Improve Intergovernmental Affairs." Witnesses included Britta Beckstead, Policy Advisor for the Western Governors' Association (WGA); Beth Pearce, Vermont Treasurer and President of the National Association of State Treasurers; and David Hemingway, Re-Empowerment of the States Amendment.

Chairman Rob Bishop (R-UT) noted that the testimony of the three witnesses would be key to developing the Task Force's final report with specific recommendations. Bishop noted that there are always things Congress has done in the past that could be revisited, and issues that change over time. He is particularly interested in structural changes to the interface between the federal government and state, tribal, and local governments to enable flexibility to deal with those issues.

Beckstead addressed the co-sovereign status of states, and discussed past experiences with agencies and administrations treating states as members of the public, relegated to offering input during the notice-and-comment period of the rulemaking process. This does not provide the benefits of genuine consultation. In a dual system of sovereignty with shared constituents, a good faith partnership would result in more efficient, economic, and effective policies. Instead, there is a "...profound misunderstanding throughout the federal government regarding the role and legal status of states."

She said clarification of existing law would improve these intergovernmental relationships. "In states' experiences, federal agencies have suggested that there are legal barriers to consultation, such as internal agency prohibitions on *ex parte* communications, unsupported concerns regarding applicability of the Federal Advisory Committee Act, and subjection to the requirements of the Freedom of Information Act. The agencies have not provided any analysis regarding these alleged barriers, despite WGA's repeated requests. According to our

analysis...such barriers either do not exist or could be addressed through legislative clarification."

The states are not asking Congress to require a consensus or a particular outcome, she said, but an established process so that states' voices are "...heard, considered, and respected in accordance with their status as co-sovereigns." She noted that Congress could direct the federal agencies to codify their consultation processes, to report on their implementation of those processes, to publicly identify the individual responsible for implementing the process, and to provide a remedy for an agency's failure to consult with states. She said "...existing law does not hold federal agencies accountable for meaningful state consultation."

WATER RESOURCES **Colorado/Republican River Compact**

On November 6, the Republican River Compact Administration extended the deadline for Colorado to retire 25,000 acres from irrigation. The retirement of agricultural land is part of the long-term resolution passed by Colorado, Kansas, and Nebraska in 2016, intended to increase stream flow in the South Fork Republican River for delivery to Kansas under the Compact.

Colorado requested the two-year extension for the compliance activities because the modifications to its Conservation Reserve Enhancement Program (CREP) agreement took longer than anticipated. The federal Farm Service Agency (FSA) had to complete interagency consultations and the public review and comment period before the modifications could be approved. The revised CREP agreement was signed by U.S. Department of Agriculture Under Secretary Bill Northey and Colorado Department of Natural Resources Director Bob Randall on September 25.

CREP is a voluntary program for removing land from agricultural production and devoting it to a permanent conservation for controlling erosion, improving water quality, and enhancing wildlife habitat. In particular, Colorado's goals are to reduce agricultural use of the Ogallala Aquifer, meet Compact obligations, restore and enhance wetlands, and increase stream flows. Colorado

requested that the existing CREP agreement be expanded from 35,000 acres to 60,000 acres. Because local interest in the current CREP has lagged and the project is not meeting its enrollment goals, Colorado also requested additional changes to help stimulate interest, to meet the intended conservation metrics, and to allay landowner concerns about permanently relinquishing access to water from wells used for irrigation.

Colorado River Basin/Drought Contingency Plans

On November 15, the Colorado Water Conservation Board (CWCB) endorsed the Colorado River Drought Contingency Plan (DCP) and expressed its support for finalizing the DCP documents. CWCB staff spent most of 2018 conducting outreach presentations across the state regarding the DCP and soliciting feedback from water rights holders and other interested stakeholders regarding tools to address drought.

The CWCB also developed a policy statement on how Colorado will proceed on the development of any Upper Basin Demand Management Program. The Program is a non-mandatory opportunity for Colorado, New Mexico, Utah, and Wyoming to use available storage space at Glen Canyon Dam, Flaming Gorge, Aspinall Unit reservoirs, and Navajo Reservoir to store conserved water for compact purposes at no additional charge.

Also on November 15, the Southern Nevada Water Authority Board voted unanimously to authorize the General Manager, John Entsminger, to execute the DCP agreements.

The Central Arizona Project (CAP) Board voted on November 15 to approve a proposal for recommendation to the Arizona DCP Steering Committee, which is scheduled to meet again on November 29. The proposal includes the utilization and storage of CAP water resources that would maximize opportunities to maintain CAP water in Lake Mead, with a conservation and mitigation program for up to 250,000 acre-feet and a cost of up to \$60M included in CAP fixed annual maintenance and repair rates. The CAP Board also supported the development of a separate groundwater infrastructure and system efficiency program in CAP Agricultural Districts, in cooperation with the state, tribes, federal government and others.

On November 9, the Colorado River Indian Tribes (CRIT), a tribal council that includes the Mohave, Chemehuevi, Hopi, and Navajo tribes, sent a letter to the Arizona Department of Water Resources and CAP, offering to store 50,000 acre-feet of water a year in Lake Mead for three years beginning in January 2020. The proposal seeks \$250 per acre-foot of water. The CRIT reservations are located along the Colorado River in both Arizona and California, and have already been part of a

Reclamation conservation pilot program since 2016. The CRIT proposal would build on the success of the pilot program using the same methods.

CRIT Chairman Dennis Patch said: “We have been working with the state for the past two years to help protect the River and to help the State of Arizona to deal with the drought and shortages. The proposal we delivered today puts real numbers to that offer that are significant to getting the necessary approvals for DCP.” Vice Chairman Keith Moses said: “We know our water is worth more than \$250 an acre-foot. We are making this proposal at this price for the benefit of the River and to move the process forward in Arizona for approval of the Drought Contingency Plan.”

Governor Doug Ducey (R-AZ) said in a recent opinion piece: “Implementing DCP in Arizona will require compromise from every stakeholder. This means setting aside narrow special interests and working for the good of the entire state.” He called recent proposals short-sighted, with demands for water and money to mitigate reductions growing to insurmountable proportions. Conservation, augmentation, and innovation must be prioritized, he said, keeping in mind that drought may be the new normal. (*AZ Capitol Times*, 11/13/18)

For additional information, see www.crit-nsn.gov/; www.cap-az.com/board/meetings/meeting/1729; <http://cwcb.state.co.us/Pages/CWCBHome.aspx> and www.snwa.com/apps/snwa-agendas/index.cfm.

MEETINGS/WATER RESOURCES

Corps/Infrastructure

On November 27 and 29, the U.S. Army Corps of Engineers (Corps) will host two webinars for the Infrastructure Team to provide an update on recent activities under the Trump Administration’s February 12, 2018 Infrastructure Initiative and the Corp’s “Revolutionize USACE Civil Works” effort.

The President’s Initiative is an opportunity for the Corps to apply new financing approaches and streamline business processes. The Corps has been working on improvements that can be resolved through policy or administrative changes. The Corps is transforming how they deliver infrastructure through Congressionally-authorized projects and permitting non-USACE projects. Their efforts are organized around three broad principles: (1) accelerate project delivery, (2) transform project financing and budgeting, and (3) improve permitting and regulatory reform.

Infrastructure stakeholders are invited to attend the webinars from 2:00 – 3:30 EST. Further information is available at <https://www.usace.army.mil/Missions/Civil-Works/Infrastructure/>.

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.