



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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CONGRESS/WATER RESOURCES/WATER QUALITY

Fracking

On March 5, Representative Jared Huffman (D-CA) introduced the Oil and Water Don't Mix Act (H.R. 6112) to protect water resources from impacts of the oil and gas industry. The bill would: (1) require oil and gas operators to replace any contaminated ground or surface water resulting from drilling, fracking or other production operations; (2) require operators to submit a proposed water management plan that includes provisions to protect water quantity and quality, protect the existing water rights that could be affected by operations, and identify agreements with other parties regarding the beneficial use of produced waters; (3) direct the Bureau of Land Management (BLM) to issue rules governing the use of hydraulic fracturing on public lands, to include baseline water testing and public disclosure of the chemicals used in fracking operations; (4) require full public disclosure of fracking chemicals; and (5) remove the Clean Water Act (CWA) Section 402 permitting exemption for stormwater runoff from oil, gas and mining operations.

Huffman said: "[This] bill closes loopholes and ensures that America's water resources, especially drinking water resources, aren't contaminated by harmful oil and gas development. Every community has a right to safe, clean water, and should be protected from the impacts of fossil fuel operations."

The bill would also temporarily reinstate the 2015 BLM rule titled "Oil and Gas: Hydraulic Fracturing on Federal and Indian Lands" (80 FR 16577), until BLM completes the promulgation of new rules as required (WSW #2132). Wyoming, Colorado, and North Dakota were involved in litigation prior to the BLM withdrawing their 2015 rule, arguing that Congress had not granted or delegated BLM the necessary authority or jurisdiction to regulate fracking on federal, state or tribal lands (WSW #2142, #2162).

Infrastructure

On March 6, Representatives John Katko (R-NY) and Dan Kildee (D-MI) introduced the Advanced Research Projects Agency Water Act of 2020 (H.R. 6113). The bill would establish a new agency within EPA

to support private companies in research and development of innovative solutions to water resources and water quality challenges.

Katko said: "Aging water infrastructure poses a serious threat to our drinking water...the ARPA-H2O Act will establish an agency within [EPA] dedicated to developing innovative technology that improves water treatment, modernizes water management systems, and reduces the cost burden on local municipalities and ratepayers."

Drought/WaterSMART/Desalination

On March 11, the House Natural Resources Committee held a markup of eleven bills, including the Water Recycling Investment and Improvement Act (H.R. 1162), the Securing Access for the [C]entral Valley and Enhancing (SAVE) Water Resources Act (H.R. 2473), the Desalination Development Act (H.R. 3723), and the Western Water Security Act (H.R. 4891). All four were reported out of Committee, largely along party lines.

H.R. 1162 would modify the competitive grant program for water recycling and reuse projects contained in the Reclamation Wastewater and Groundwater Study and Facilities Act (43 USC §390h). The proposed amendment to the program would remove the priority for projects in areas that are experiencing drought or some other state-designated disaster. It retains the criteria prioritizing projects that are regional, have multiple stakeholders, provide multiple benefits, create a more reliable water supply for States and local governments, increase water management flexibility, and reduce impacts on environmental resources from State/Federal projects. It would also increase authorized funds from \$50M to \$500M until expended. The Committee approved the amended bill by a vote of 19-12.

H.R. 2473 would establish a Water Infrastructure and Drought Solutions Fund. It directs the Secretary of the Interior to evaluate potential beneficial groundwater storage and recharge opportunities, with associated infrastructure needs, in overdrafted basins within the Reclamation States in coordination with state agencies. It establishes a pilot program under a Reclamation Infrastructure Finance and Innovation Act (RIFIA) providing financial assistance for eligible projects. It

reauthorizes the expired 2006 Rural Water Supply Act through 2026. Identical to H.R. 1162, it modifies the competitive grant program for water recycling and reuse. It establishes a prize competition for water technology advancements, and a program for investing in the expanded use of technology that improves the availability and resiliency of water supplies and power deliveries. The Committee approved the amended bill by a vote of 19-12.

H.R. 3723 would promote eligible ocean or brackish water desalination facilities, in Reclamation States, constructed, operated, and maintained by a State, Indian Tribe, irrigation district, water district, or other organization with water or power delivery authority, or funded by States or their subdivisions, offering a 25% federal cost share. The bill authorizes \$260M through FY2024. The bill was approved by a 13-10 vote.

H.R. 4891 would reauthorize the WaterSMART program and expand it to include groundwater storage projects, create a new program for desalination projects, and authorize emergency drought funding for water management entities in the West. The Committee approved the bill by a vote of 14-11 (see WSW #2372).

ENVIRONMENT/WATER RESOURCES **Infrastructure/Washington**

On March 12, the Lower Snake River Dams Stakeholder Engagement Study published its report, concluding that people in Washington remain sharply divided on the issue of whether or not remove the four dams that provide hydropower and navigation services from Lewiston, Idaho to Seattle, Washington. The report was prepared at the recommendation of Washington Governor Jay Inslee's (D) Southern Resident Orca Task Force and funded by a \$750,000 appropriation by the Washington legislature in 2019. At issue is the health of threatened salmon and orca populations that have declined since the dams were built in the late 1970s, harming tribal and fishing communities. On the other hand, many local communities have been able to thrive because of the low-cost power that is produced by the dams and the access that the river provides for inland farming communities to west coast ports.

Recently, Oregon Governor Kate Brown (D) wrote a letter to Inslee urging him to consider breaching the dams for the health of the salmon and orca populations (See WSW #2389).

Stakeholders on both sides of the issue agreed that the cycle of study, litigation and court actions are no longer useful to resolve the problems. Salmon, orca, agriculture, and energy are all complex in their own right and decisions need to consider the broader system and context for each. They also expressed a desire for better access to information, more informed and

respectful conversations, and opportunities for collaborative problem-solving, shared learning, and a new dialogue. <https://www.governor.wa.gov/sites/default/files/Final%20Draft%20LSRD%20Report.pdf>.

LITIGATION/WATER RESOURCES **Arizona/Groundwater**

On March 13, the Center for Biological Diversity and Maricopa Audubon Society sued the Department of the Interior and the U.S. Army (U.S. District Court in Arizona, 4:20-cv-00106) over groundwater pumping for use by Fort Huachuca and its contractors near the San Pedro River. The Fish and Wildlife Service's 2014 biological opinion found groundwater pumping would not harm threatened species that rely on the river, and authorized use of the water for the operation through 2024. A previously-undisclosed report from 2010 commissioned by the Army had concluded that groundwater pumping by the Fort was already harming riparian habitat and endangered and threatened species, including the southwestern willow flycatcher and desert pupfish.

The lawsuit challenges the assumptions of the biological opinion, including reliance on speculative water savings from agricultural water easements that hadn't been used for years, ignoring the effects of pumping on river base flows over an extended period of time, failure to analyze the effects of climate change, and alleges various other (ESA) violations. The lawsuit seeks to vacate the 2014 biological opinion and order the defendants to reinstate consultation on the effects of continued groundwater pumping associated with the Fort on listed species.

The Center for Biological Diversity's press release notes: "This is the ninth challenge since 1994 to Fort Huachuca and its threat to the San Pedro River in violation of environmental laws. All the court challenges have been successful." <https://biologicaldiversity.org/w/news/press-releases/lawsuit-aims-save-san-pedro-river-slow-groundwater-pumping-tied-arizona-military-base-2020-03-13/>.

MEETINGS **WSWC Spring Meetings and Roundtable**

The health and safety of our members and guests is paramount during these difficult times. Given the current and anticipated COVID19 restrictions on travel and meetings, the 2020 WSWC Spring Meeting and Joint WSWC/ICWP/NWSA Washington DC Roundtable are canceled. For anyone who made a hotel reservation, please call the Crystal City Doubletree at your earliest convenience to cancel. The main front desk number at the hotel is (703) 416-4100. We will be working to refund meeting registration fees soon. We hope all of you and your family and friends are safe and healthy and hope to see you at our Summer meetings in Cody, Wyoming.

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.