



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **WESTERN GOVERNORS**

#### **California/Wildfires**

On September 6, Governor Gavin Newsom (D-CA) issued an emergency proclamation due to fires burning across California, adding three new fires in Madera, San Bernardino, and San Diego counties. He noted that "...the Creek, El Dorado, and Valley Fires have collectively burned tens of thousands of acres, destroyed homes and other structures, forced the evacuation of thousands of residents, and continue to threaten homes and critical infrastructure." He issued a statewide emergency declaration on August 18, for hundreds of other fires exacerbated by extreme heat and lightning.

In a press release, the Governor said: "California and its federal and local partners are working in lockstep to meet the challenge and remain vigilant in the face of continued dangerous weather conditions." The proclamations acknowledge the difficulty in moving resources on the scale needed to fight these fires: "the number of fires actively burning statewide, as well as throughout other Western states, has resulted in a strain on California's mutual aid system, making it increasingly difficult for jurisdictions to obtain the necessary in-state and out-of-state firefighting resources to respond to these fires." See <https://www.gov.ca.gov/newsroom/>.

On September 8, the National Interagency Fire Center reported 87 active large fires that have burned more than 2.7 million acres, primarily across the western states. The total number of fires for the year is 41,051, burning more than 4.7 million acres, still slightly less than the numbers from the most recent ten-year average. States currently reporting large fires include: Alaska (4); Arizona (8); California (23); Colorado (6); Florida (1); Idaho (8); Montana (9); Nevada (1); New Mexico (1); Oregon (7); Texas (1); Utah (5); Washington (10); and Wyoming (3). See <https://www.nifc.gov/fireInfo/nfn.htm>.

### **ADMINISTRATION/WATER QUALITY**

#### **EPA/Abandoned Mines**

On September 1, Environmental Protection Agency (EPA) Deputy Administrator Doug Benevento announced the creation of a new office that will focus solely on mine clean up in the West. Benevento said: "The Office of Mountains, Deserts and Plains will ensure we are

making progress cleaning up mining sites across the West, promote Good Samaritan projects, identify innovative cleanup technologies, and oversee the cleanup of abandoned uranium mines in the Navajo Nation. This uniquely western work needs an integrated western presence, and Administrator Wheeler should be commended for recognizing this and creating this new geographic program in Colorado. Addressing these issues requires an office with a singular focus and senior leadership who don't see these issues in the abstract, but are actually located in the West and accessible to the communities impacted by them."

The press release stated: "The Office of Mountains, Deserts and Plains will assume oversight responsibilities for federal hardrock mining cleanup sites west of the Mississippi River; serve as a central contact for other federal agencies, states and tribes with responsibility for or impacted by these sites; and develop innovative technologies and adaptive management approaches to address legacy pollution. Additionally, the office will support efforts of conservation organizations to voluntarily undertake projects to improve conditions at abandoned mines (Good Samaritan projects)." Good Samaritan projects are meant to encourage restoration of old mines by waiving or limiting their liability under the Clean Water Act and Superfund laws. See <https://www.epa.gov/newsreleases/trump-epa-launches-office-mountains-deserts-and-plains-effectively-address-abandonedEPA>.

### **WATER RESOURCES**

#### **Utah/Great Salt Lake/Water Conservation**

On September 7, the Great Salt Lake Advisory Council (GSLAC), a legislatively-created advisory body of diverse stakeholders, released a report titled "*Water Strategies for Great Salt Lake: Legal Analysis and Review of Select Water Strategies for Great Salt Lake*" (GSL). The GSL water level has declined by eleven feet in the past ten years due to human development, use, and drought. Given the economic and environmental importance of the GSL to Utah, the GSLAC "sought to proactively understand if and how lake water levels could be maintained to protect the resources of [GSL] and the environment, industries, and communities that rely upon the lake." The report identified twelve high priority strategies organized into foundational, operational and

statistical approaches. Each of the strategies alone can improve water management, but “each strategy has a unique and essential function that, if implemented in concert with the others, could achieve the goal of increasing water deliveries to [GSL].”

The foundational strategies include recognizing the right to conserved water; quantifying the conserved water; and shepherding water. These would help to “remove important constraints and provide motivated water users with the required legal framework to deliver their own conserved water to [GSL]... Additional strategies are needed to incentivize and facilitate new waters to be appropriated for beneficial use at [GSL].”

The operational strategies include developing evidence-based policy for watershed-scale best practices, including creating an integrated resource management plan; allowing split-season leasing to improve flexibility; expanding the ability for stakeholders other than the State to acquire water for instream flows; and expanding the ability of the State to acquire water rights with appropriated funds or through gifts, donations, leases or other arrangements. While some require legislative changes, these strategies would “inform decision and policy makers, water users, and managers...[which can] lead to better results and stimulate innovation that optimizes available water supplies and improves the sustainability of Utah’s water supply and [GSL].”

The tactical strategies include groundwater management and protection; secondary water metering or management; municipal and industrial water conservation, ideally as part of a larger integrated resource management plan; and developing a legal and policy framework that incentivizes agricultural water users to conserve while maintaining their full allocation. The tactical strategies are “the point at which the strategy framework is put to a practical test to determine if there is enough social and economic incentive for water users and managers to conserve and deliver additional water to [GSL]. These strategies serve to work with the individual or assembly of water users to achieve this goal.”

Finally, “coordinating and integrating complex and interdependent strategies such as these will require strong leadership and synergy around a common goal.” Another strategy encourages better agency coordination, including developing a collective policy for the GSL watershed, creating a clear authority structure to implement the policy, securing funding for implementation, and creating mechanisms to work with existing water rights, water management, and community stakeholders. “A new Great Salt Lake Watershed Council could be an effective means to connect the stakeholders directly affiliated with the lake with the numerous stakeholders within the lake’s watershed.”

The report recommended the GSLAC consider supporting water banking efforts in the GSL watershed as a first step to implementing many of the twelve strategies. Utah’s water banking law “facilitates, enables, and incentivizes water users to conserve and deliver water to a bank located downstream.” At the same time, the GSLAC should develop a plan to implement the twelve strategies in concert with the water users, managers and organizations that have been working on these strategies at the local or basin level. “With these [strategies] in place, the State of Utah will enable the growth that is envisioned and protect the livelihood we enjoy.”

### Utah/Lake Powell Pipeline

On September 8, the Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, and Wyoming wrote a letter to Secretary David Bernhardt, Department of the Interior (DOI) requesting DOI “refrain from issuing a Final Environmental Impact Statement (FEIS) or Record of Decision (ROD) regarding the Lake Powell Pipeline until such time as the seven Basin States and [DOI] are able to reach consensus regarding outstanding legal and operational concerns raised by the proposed Lake Powell Pipeline project.” The project will divert water from the Upper Basin to serve communities located in the Lower Basin in Utah, which “raises significant questions under the 1922 and 1948 Compacts, including questions regarding the accounting of such diversion and use, as well as operational issues under the Law of the River.” Utah and the other six states have met multiple times, but the issues remain unresolved.

The letter emphasizes past management of the Colorado River by consensus and collaboration, including the 2007 Interim Guidelines for managing operations for Lake Powell and Lake Mead, Minutes 319 and 323 to the 1944 Water Treaty with Mexico, the Drought Contingency Plans in 2019, and support for the Navajo-Gallup Water Supply Project, a transbasin diversion similar to the Lake Powell Pipeline. The letter expresses concern should the states be compelled to address remaining issues through the NEPA process or unpredictable, multi-year litigation. The states committed “to act in good faith to identify consensus solutions to the interstate questions the Lake Powell Pipeline raises for the entire basin.”

The letter was signed by Thomas Buschatzke, Arizona Department of Water Resources; Peter Nelson, Colorado River Board of California; Rebecca Mitchell, Colorado Water Conservation Board; John D’Antonio, New Mexico Office of the State Engineer; John Entsminger, Southern Nevada Water Authority; Eric Witkoski, Colorado River Commission of Nevada; and Patrick Tyrrell, State of Wyoming.