



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION **Department of the Interior**

David Bernhardt, Acting Secretary of the U.S. Department of the Interior (DOI), has appointed William Werkheiser as the Science Advisor to the Deputy Secretary where he will advise and coordinate activities on science issues affecting bureaus across the department. Mr. Werkheiser began his 30-year Federal career with the U.S. Geological Survey (USGS) as a scientist investigating issues ranging from the impacts of development on water supplies, the movement and fate of pollutants, and the effects of rising sea level on coastal aquifers. He has held a number of leadership positions, including USGS Deputy Director, Associate Director for Water, USGS Pennsylvania Water Science Center Director, and lead of the Natural Hazards Initiative leading the Hurricane Katrina Response and Recovery Team.

Bernhardt also announced that Alan Mikkelsen, Senior Advisor to the Secretary for Water and Western Resource Issues, will continue with an expanded portfolio that includes all departmental water issues. "Alan has decades of experience handling this subject, and recently he served as Deputy Commissioner of the Bureau of Reclamation," Bernhardt stated. "He knows water as well as anyone." Bernhardt added that Mikkelsen "will continue coordinating" with the Assistant Secretary for Water and Science, Tim Petty, as well as Brenda Burman, Commissioner of the Bureau of Reclamation, on "priority water matters."

"I am committed to using the best science in our policy making process," Bernhardt declared, adding, "I will depend on Bill and Alan to help meet this objective." (E&E News, 2/5/19)

Department of the Interior/Reorganization

On January 22, the Interstate Council on Water Policy (ICWP) sent a letter to DOI Acting Secretary David Bernhardt regarding DOI's planned reorganization. The letter expresses concerns about how the reorganization will impact interstate waters, as well as federal programs, projects, and obligations, and points to "reorganization fatigue" leading to uncertainty, frustration,

and "inefficient use of resources." ICWP applauds DOI's efforts to enhance integrated management among its agencies and bureaus, recognizing the impact of interconnected federal decisions and the value of leveraging information.

ICWP requests that DOI postpone its planned reorganization start date of July 1, 2019, "...until there is sufficient consultation with the states." A strategic communications effort would ensure that all relevant federal, state, and tribal agencies understand the reorganization and its implications, "...and have the ability to provide input and adapt effectively." The current proposed boundaries are "based on geopolitical boundaries and divide important watersheds" into multiple regions, and ICWP recommends the creation of inter-district memorandums to clarify obligations that transcend two or more regions. The states "...can provide valuable insights as to how various management actions and knowledge can be effectively leveraged."

Interior/Reclamation/Colorado River

On February 6, DOI and the Bureau of Reclamation (USBR) published a notice in the *Federal Register* (84 FR 2244) requesting input from the Governors of the seven Colorado River Basin States seeking specific recommendations to reduce the risks from drought on the Colorado River System. Input will be accepted for a 15-day period beginning March 4-19.

In response to declining reservoir storage, USBR and the Basin States have worked for several years across multiple administrations toward Drought Contingency Plans (DCPs), and made significant progress in 2018. "While unfinished, the Department takes particular cognizance of the fact that on January 31, 2019, the Arizona Legislature passed legislation authorizing the Arizona Department of Water Resources Director to execute the relevant interstate DCP agreements. Arizona is unique in the need for state legislative action to approve the DCPs, and this important step may indicate that finalization of the DCPs is imminent. While the Department supports the ongoing efforts of the Basin States and remains cautiously optimistic that the Basin States will successfully complete their efforts promptly in early 2019, the Department is

highly concerned that continued delays regarding adoption of the DCPs inappropriately increases risk for all that rely on the waters of the Colorado River.”

In the absence of completed DCPs, DOI will incorporate its own actions to ensure stability of water supplies into the August 2019 determination of operations for Lakes Powell and Mead for 2020. However, further consultation and engagement with the Governors and their designated state representatives is appropriate. “The Department’s history and actions in recent decades fully reflect and underscore the importance of working closely with the Basin States in developing operational tools for management of the Colorado River.” DOI intends to share input from the Governors with tribes, interested parties, and the general public for review. In the event DOI proposes further action, it will provide an opportunity for input from tribes, interested parties, and the general public.

USBR Commissioner Brenda Burman said: “Nobody questions the growing risk and urgent need for action along the Colorado River. Completion of drought contingency plans is long overdue. Action is needed now. In the absence of consensus plans from the Basin states, the federal government must take action to protect the river and all who depend on it – farmers and cities across seven states.”

CONGRESS/WATER RIGHTS

Indian Water Rights Settlements

On January 28, the Native American Rights Fund (Fund) and Western States Water Council (WSWC) wrote Senate Indian Affairs, Senate Energy and Natural Resources, and House Natural Resources Committee leaders declaring: “[W]e are writing to express our strong support for legislation securing future funding for tribal water rights settlements through a permanent extension of the transfer of dedicated revenues from the Reclamation Fund. Representing States and Tribes, we have a long history of working together to support the settlement of disputes that could otherwise lead to lengthy and unproductive litigation. Settlement of tribal water right claims is in the long-term interest of tribal and neighboring non-tribal communities, as well as the American taxpayers.”

“Water in the West is often contentious, and competing claims to a limited resource create uncertainty that stands in the way of economic development in both tribal and non-tribal communities. The United States has developed many major water projects that compete for use of waters claimed by Indians and non-Indians and has a responsibility to assist in resolving such conflicts. The settlement of Native American water and land claims is a federal trust obligation of vital importance, which can bring lasting ‘peace to the valley.’”

“The Reclamation Fund is one authorized source of money to finance negotiated agreements through which Tribes waive water right claims and tribal breach of trust claims that otherwise could result in court-ordered judgments against the United States. Funding settlements is an obligation of the United States analogous to paying judgments rendered against it, and failure to fund settlements could lead to new or renewed litigation and increased costs for American taxpayers.”

“We strongly support negotiated settlements of disputed Indian reserved water rights claims as the best solution to a critical problem that affects almost all Western States. We encourage you to support a strong fiscal commitment to these settlements. We also urge you to support extending the current authorization to use revenues accruing to the Reclamation Fund for the Bureau of Reclamation to undertake project construction related to settlements. Thank you for your consideration.”

WATER RESOURCES

WaDE/Water Data

On January 28-29, the Aspen Institute and Duke University’s Nicholas Institute convened a stakeholder meeting focused on water data sharing initiatives within the Colorado River Basin. Presentations included information on the WSWC’s Water Data Exchange (WaDE) program, Duke University’s Internet of Water (IOW) start-up, and the NASA-DRI OpenET project. Each of the project proponents described the status and goals of their respective programs and invited feedback from the attendees.

Participants had an in-depth, open conversation on how data collected by different organizations, for different purposes, and at different scales across the basin might be better integrated. They addressed how doing so can provide value to decision-makers, important stakeholders, and the public, when working to address emerging issues in the basin.

A significant point of discussion was the difficulty in adopting methodologies and best practices for water use data (e.g., remote-sensing, real-time metering, water withdrawals, consumptive use, deliveries, interbasin transfers, etc.), and data standards and definitions that cross state and basin boundaries. Legal and regulatory hurdles and precedents dating back to the earliest compacts on the river may preclude the adoption of newer methods, or at least make their integration into operations extremely difficult. Participants agreed, however, that progress is underway on data-sharing, and that there is potential for increased management efficiencies with interoperable and accessible data. Ultimately, data-sharing and data-related issues are a critical part of resolving future water management issues and river negotiations. The stakeholders will continue the conversation by convening via email/webinar.