



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **CONGRESS/ADMINISTRATION**

#### **117<sup>th</sup> Congress/Biden Administration**

On January 3, the 117<sup>th</sup> Congress was gaveled into session. The U.S. House of Representatives re-elected Representative Nancy Pelosi (D-CA) as the Speaker, with Representative Steny Hoyer (D-MD) as the Majority Leader and Representative Kevin McCarthy (D-CA) as the Minority Leader. Members were sworn in, including 59 new freshmen.

On January 5, the State of Georgia held its Senate runoff election. Georgia will be represented by two new Democratic Senators Jon Ossoff and Raphael Warnock. The shift in Georgia's Senate seats from Republican to Democrat created a balanced 50-50 Senate. Vice President-elect Kamala Harris will become the tie-breaking vote following the inauguration on January 20, and the Democrats will control the Senate. A similar split occurred in the 107<sup>th</sup> Congress in 2001. The Senate will need 60 votes to pass most legislation, but confirming President-elect Joe Biden's judicial and executive branch nominees only requires 51 votes.

On January 6, a joint session of Congress met to formally affirm President-elect Biden's Electoral College victory. The proceedings were disrupted by rioters breaking into the Capitol building. Congress reconvened, and following lengthy proceedings through the night to consider objections to various electoral votes, the House and Senate rejected those objections. In the early hours of January 7, Vice President Mike Pence reported the results of the electoral votes: Biden-Harris received 306 votes, Trump-Pence received 232 votes. He said: "The announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration as persons elected President and Vice President of the United States...."

### **WATER QUALITY**

#### **Montana/§401 Certification**

On January 4, the Montana Department of Environmental Quality (MDEQ) issued a Clean Water Act (CWA) §401 Water Quality Certification for the U.S. Army Corps of Engineers (Corps) approval of the Keystone XL Pipeline project. The pipeline would run through the eastern part of the state and requires a §401

certification due to crossing 201 wetland and water features that are regulated under the CWA.

As stated in a press release, "The conditions of the issuance include protections such as spill prevention and a reopener clause, which allows the certification to be reopened and modified to ensure ongoing compliance with applicable water quality standards. The conditions also set forth an oversight role for the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation Office of Environmental Protection to enable the Tribes to ensure compliance with their applicable water quality standards."

Due to strict deadlines set by the Corps, MDEQ acknowledged they were not able to fully complete their public review process. After receiving a complete application from the applicant in June and issuing a 67-day public comment period, MDEQ received 650 comments. They requested multiple deadline extensions in order to meaningfully respond to and consider all of the comments as required by state law prior to issuing the certification. However, after receiving extensions only until Jan 5, 2021 and Jan 11, 2021, MDEQ realized they were at risk of waiving certification if they completed their public process, and decided to issue a certification.

MDEQ Director Shaun McGrath said: "Public participation is an important part of the certification process under Montana law. DEQ was not given adequate time to meaningfully review the comments before the decision was due to the U.S. Army Corps of Engineers. However, if Montana were to miss the deadline, that could be considered a waiver of certification. In order to ensure Montana's water quality is protected, DEQ decided to issue a certification with conditions that address at least some of the public's concerns."

In June 2020, the Corps finalized a new CWA §401 Certification Rule to "...implement the water quality certification process consistent with the text and structure of the Clean Water Act" (see WSW #2403). One of the concerns voiced by States has been the potential impacts of changes to the timeline they have for issuing certifications for projects that could impact state water quality. <http://deq.mt.gov/Public/PressRelease>.

## Oklahoma/Water Quality Standards

On January 7, the Oklahoma Water Resources Board (OWRB) held a public hearing on the revisions to the total phosphorus criterion for the Illinois River watershed, located in northeastern Oklahoma and northwestern Arkansas. Oklahoma's Water Quality Standards (WQS) designate the following beneficial uses: public water supply, aquatic life, aesthetics, body contact recreation, and agriculture. Within the watershed, the Illinois River, Flint Creek, and Barren Fork Creek are protected as Scenic Rivers by the Oklahoma 1970 Scenic Rivers Act (82 O.S. §§1451-1471).

Oklahoma and Arkansas entered into their Second Statement of Joint Principles and Actions in February 2013, and completed a joint study between 2014-2016. The study report recommended draft criterion language: "The total phosphorus six month rolling average of 0.037 mg/L shall not be exceeded more than once in a one-year period and not more than three times in a five-year period."

The report also introduced a new term, "critical condition," defined as "conditions where surface runoff is not the dominant influence of total flow and stream ecosystem processes." OWRB noted: "Implementing this new term would limit the data used for assessment of the aesthetics beneficial use to those data values collected when the critical condition was satisfied. This is a transition away from the present inclusive use of data for beneficial use assessment." The new term was translated into an operational definition that could be consistently implemented by multiple agencies across both states: "The critical condition is when baseflow is fifty-five percent (55%) or greater of the total daily average flow calculated by the USGS hydrograph separation method sliding-interval. Measurements of total daily average flow must be obtained from a permanent continuous streamflow gage."

Oklahoma's public comment period will continue through February 15. OWRB expects to take action on the proposed rule in March, followed by review by Oklahoma's legislature and Governor Kevin Stitt (R-OK). OWRB anticipates submitting the rule to EPA for final review and approval sometime in Fall 2021. <https://www.owrb.ok.gov/rules/wqs/revisions/totalphosphorous.php>

## **WATER RESOURCES** **Arizona/Groundwater**

On January 4, the Arizona Department of Water Resources (ADWR) began a survey of water levels in hundreds of wells in the southeast part of the state. It is the first basin survey since 2015, and the data collected "will be analyzed and used to obtain a comprehensive overview of the groundwater conditions and to support

scientific and water management planning efforts" including: (1) analysis of water-level trends; (2) groundwater modeling; (3) water-level change maps; (4) hydrologic reports; and (4) water resource planning and management. <https://azwaternews.com>

## **Bear River Basin/Idaho/Utah/Wyoming**

On December 22, a technical report titled, "Impacts on Bear Lake Storage under Alternative High-Runoff Management Operations" was published, examining whether adjusting flood control operations could increase the amount of water stored in Bear Lake. The States of Idaho and Utah together with Pacificorp worked with researchers at the University of Colorado to develop a new model, the Joint Bear River Planning Model, that would ensure they are all using the same data for operations and management planning and modeling. Wyoming will also be able to use the model for planning purposes. Pacificorp owns and operates the Bear River Project, a series of dams and water infrastructure that provide recreation, irrigation, flood control, and hydroelectricity benefits. As noted in the press release on the report, this is likely the first of several studies that the model will be used for in the Bear River Basin.

The press release stated, "The study found that changes to flood operations at Bear Lake could increase reservoir storage in the lake, especially, at the beginning of a drought cycle. The study indicated that the additional storage gained would be roughly equal to the amount of water released from Bear Lake and used for irrigation in one year. In addition to increasing storage, the proposed changes would also increase lake levels. To increase storage in Bear Lake, it would be necessary to accommodate increased flows through flood-prone sections of the Bear River like Gentile Valley."

David Hoekema, lead hydrologist for Idaho on the modeling effort, said: "We understand the concerns of the property owners in flood-prone areas. It's critical that we solve the problem of accommodating increased flows through these parts of the river for the project to go forward." Jake Serago, senior engineer with the Utah Division of Water Resources, said: "The Joint Bear River Planning Model will increase our ability to study ways to improve the health of Great Salt Lake. Increasing upstream storage could affect the lake and we need to find that balance of upstream and downstream needs. One of the ways to keep lake levels up is water conservation. As people reduce water use, more water can stay in streams and lakes."

Bear Lake operations are not currently changing, but the States and Pacificorp will work together to determine how to best manage the Bear River System. See <https://water.utah.gov/wp-content/uploads/2020/12/BearLakeReport.pdf>.

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