

Currents February 14, 2019
By Ron Stork, Policy Director

Newsom speaks

When Gavin Newsom took over the California governorship from termed-out Jerry Brown, some changes were expected — and continuity too. After his state-of-the-state message, let's take a quick inventory.



- Downsizing the twin tunnels? — During the campaign, he said he preferred one Delta water tunnel rather than two. That hasn't changed. No one is sure what that will mean.
- Can't we all just get along? — Late in the Jerry Brown Administration, the Natural Resources Agency renewed a push to reach agreements with Central Valley water purveyors on how much water would reach the San Joaquin/Sacramento River Delta and San Francisco Bay. That push continues. The leverage for good agreements may not be there, though. See next bullet.
- Making the State Water Resources Control Board less scary for San Francisco and agricultural water users — With Delta fisheries in big trouble, the Board seemed poised to do something about it. The water districts counter-organized big time. Their first big victory was the December 2018 presentation of some partial voluntary settlements to the Board. The second, Board chair Felicia Marcus was not reappointed. The details of the "Grand Deal" organized by the Governor Brown and Newsom's people are due by March 1. Whether it will be a good deal is still unknown.
- Tackling the easier water job — Farm-worker communities tend to be small, use poor groundwater, and lack the economies of scale to make their water safe. These are problems that can be tackled with money, something that Newsom would like to do. His pick to replace Felicia Marcus on the Board, Laurel Firestone, has been a champion of finding the resources for these communities.
- Two new important cabinet secretaries — Wade Crowfoot at the Natural Resources Agency and Jered Blumenfeld at Cal EPA have some environmental experience and a lot of energy.

Cruising for a bruising?

The largest irrigation district in the country, the Westlands Water District, is rich, powerful, and well connected, so we were pretty interested in what some state agencies would say in response to the District starting to prepare an environmental impact report (EIR) for what it described as the Shasta Dam Raise Project.

Last year, Jerry Brown's Natural Resources Agency secretary told Congressional leaders that the proposed dam raise violated the California Wild & Scenic Rivers Act.

http://www.friendsoftheriver.org/wp-content/uploads/2018/03/Shasta-Dam-letter-3.13.18_LLM.pdf

This year the California Department of Fish and Wildlife said the same thing and made a couple of findings necessary to make it illegal for Westlands and state agencies to cooperate with the U.S. Department of the Interior's Bureau of Reclamation in planning for and raising the height of Reclamation's giant dam.

https://www.friendsoftheriver.org/wp-content/uploads/2019/01/CEQA-2018-0321_SHA_TEH_WWD_Shasta-Dam-Raise-Project_NOP-ocr.pdf

The State Water Resources Control Board told Westlands that state law makes it unlawful to embark on an EIR to justify partnering with Reclamation's dam raise or for use by state agencies when considering issuing permits to Reclamation. It also told Westlands that modifying the dam would trigger the need for Reclamation to renew its state water-right permits for Reclamation's Central Valley project, the largest water project in the state. Those permits expired many years ago and, as is common, by Board and permittee inaction continued to be in effect.

https://www.friendsoftheriver.org/wp-content/uploads/2019/01/WQC_NFisch.JKSahota.-Comments-on-Shasta-Dam-Raise-Project.pdf

Of course Friends of the River et al. also took a firm tone with Westlands, reminding them of their responsibilities to follow state law.

<https://www.friendsoftheriver.org/wp-content/uploads/2019/01/FOR-et-al-scoping-comments-SDRP-rev2.pdf>

Reclamation cruising for a bruising too?

Of course the U.S. Bureau of Reclamation and the Department of the Interior are not exactly innocent bystanders in this Shasta Dam raise.

Back in 2014, Reclamation's final environmental impact statement (EIS) concluded that its proposed expansion of Shasta Reservoir (already the largest in the golden state) conflicted with state law and made the findings to make Westlands' participation unlawful and state permits illegal.



Fast forward to the Trumpian era. Using a provision of California's U.S. Senator Feinstein's Water Infrastructure Improvements for the Nation Act of 2016 (WIIN), Interior announced it had authorized the Shasta Dam raise. Of course this "determination of readiness for construction" was done in violation of the provisions of the WIIN, but such niceties don't seem to trouble Washington, D.C. nowadays.

<https://www.friendsoftheriver.org/wp-content/uploads/2019/01/Shasta-Dam-raise-referenced-fact-sheet-1-5-2019.pdf>

According to Interior, they intend to issue a Record of Decision (ROD) for the EIS, issue construction contracts, and begin construction toward the end of 2019. Not on their schedule is asking the state for required permits. According to a press interview with Reclamation area manager Don Bader with KQED, that may not be an oversight.

“We’re proceeding along the federal route here,” says Bader. “If California does not participate in this process, we’ll move along forward by getting the federal approval.”

Some might interpret that as saying they're going through with this regardless of what California thinks.

“That's one way to say it,” says Bader.

<https://www.friendsoftheriver.org/wp-content/uploads/2019/01/Dam-raise-sets-up-showdown-KQED-Jan-28-2019.pdf>

Not apparently on their radar screen is that the WIIN requires Reclamation to comply with state law. But with Westlands’ former outside attorney, David Bernhardt, as acting head of Interior and the President’s nominee for Secretary of the Interior, we can expect an aggressive fight against the rule of law from the Westlands/Interior team.

Another pending Wild & Scenic Rivers Act fracas brewing?

Attentive readers of Currents will no doubt remember Representatives Denham and McClintock’s successful efforts to induce the U.S. House of Representatives to gnaw off a piece of the Merced national wild and scenic river to plop a reservoir onto it. Fortunately, the Senate never took the matter up.



<https://www.friendsoftheriver.org/wp-content/uploads/2018/09/Merced-R-ws-threat-fact-sheet-5-9-15-2018.pdf>

Well, there’s two big rivers that flow out of Yosemite National Park. Both are National Wild and Scenic Rivers that end in giant reservoirs downstream. Enter, the “Grand Deal.”

The “Grand Deal” are the presently inchoate deals between the California Natural Resources Agency, U.S. Bureau of Reclamation, and California’s big water agencies. The deal on the Tuolumne River mentions a potential four- to eight-foot reservoir elevation project. It’s not too likely that the higher-elevation versions of such a project could be approved by federal agencies without some successful Congressional and Presidential gnawing.

<https://www.friendsoftheriver.org/wp-content/uploads/2019/02/SFPUC-VSA-Doc.-12-11-19092-ocr-highlighted.pdf>

<https://www.friendsoftheriver.org/wp-content/uploads/2018/11/Open-Closed-Doors-de-designate-Merced-Tuolumne-ws-rivers-Mod-Bee-ed-11-18-2014.pdf>

Respect for state or federal wild and scenic rivers acts doesn't run very strong in Reclamation or Interior nowadays. It never did among California water agencies. But the California Natural Resources Agency?

Somebody over there has some 'splaining to do.

The President exercises more control over the “deep state.”

The President and his men have long been troubled by the existence of natural resources and land-management agencies of the U.S. government that do their jobs — and thus become obstacles to making America great again.

I have previously reported how the Bureau of Land Management (BLM) partially caved in to the powerful Modesto and Turlock Irrigation Districts when they challenged the recreation facility improvements on BLM land in Don Pedro Reservoir that had been prescribed in the once-every-two-generations relicensing of the Districts' Don Pedro Dam project.

I've also reported how the U.S. Fish and Wildlife Service was made to recant its expert recommendations to improve fishery conditions below Don Pedro Dam.

Not all federal agencies have been “green” agencies, of course. The Federal Energy Regulatory Commission (FERC) has always looked after the interests of its hydroelectric dam licensees. It just issued a draft EIS for its proposed relicensing of the Don Pedro Dam, largely taking the Districts' view that fishery flows are not in the interest of the licensees and that take-out recreation facilities on BLM land in *Don Pedro Reservoir* are somehow not related to the Districts' Don Pedro Dam project.

Sheesh.

The states and tribes take some blows in the courts

Deep state “green” agencies are not the only ones losing influence over at FERC. States and tribes have the power to play an influential role in licensing and relicensing of dams regulated by FERC if they choose not to



waive authority delegated to them to protect water quality by the federal Clean Water Act during dam licensing and relicensing.

If they waive that authority, then they leave all the decisions up to FERC — at least until the next relicensing or amendment proceeding. Licenses can run as long as a half a century.

In a case in the Washington, D.C. federal court of appeals, California's largest Indian tribe asserted that the universally used way the states and jurisdictional tribes use to handle typical water-quality proceedings was actually a waiver of authority. (Yes, I know it's strange that a plaintiff like this would bring such a case.) Since the case was brought against FERC, which has long opposed state influence in its licensing proceedings, the defense wasn't very good and the appeals court adopted the plaintiff's and defendant's similar positions.

The consequences of the ruling have yet play out. But I can guess that some dam licensees are going to be knocking on federal appeals courts' doors claiming that the states have waived the authority to use the Clean Water Act to influentially partner with FERC to help mitigate water-quality problems caused by hydroelectric dams and reservoirs.

And back in California, in spite of an *amicus curiae* brief from Friends of the River and the California Sportfishing Protection Alliance, a state appeals court has ruled that challenges to EIRs that support California's long-standing water-quality decision-making procedures are out of bounds.

<http://www.friendsoftheriver.org/wp-content/uploads/2016/01/FOR-and-CSPA-Amicus-Brief-401-cert.pdf>

Double Sheesh.

Extending the WIIN?

Back in December, U.S. Senator Feinstein was working to extend the Water Infrastructure Improvements for the Nation Act of 2106 (WIIN). The legislative vehicle was the must-pass appropriations "mini-bus" bill to fund part of the federal government.

<https://www.friendsoftheriver.org/wp-content/uploads/2018/12/Feinstein-McCarthy-push-rider-for-CA-storage-EE-News-Dec-3-2018.pdf>

Fortunately, the standoff over "wall" funding ran out the clock for the last Congress, the one with the Republicans in the majority in both chambers of Congress.

In response to letters from constituents, Senator Feinstein is reporting that there are no current proposals to extend the WIIN.

Senator Feinstein's interest in extending the WIIN is the direction in the WIIN to the U.S. Bureau of Reclamation to maximize Delta pumping and deliveries to Reclamation's mostly agricultural customers south of the San Joaquin/Sacramento River Delta (consistent with law). Reclamation and the Department of the Interior are taking that direction seriously (well, the first direction, not the law part) and are releasing documents ("re-initiation of consultation") meant to justify moving more water south.

It's an ugly business, and I don't think a federal employee with environmental responsibilities would take much satisfaction in their work anymore.

Of course there will be an election in 2020.

News from the Sites Project Authority

The big winner in harvesting taxpayer money from the 2014 California Water Bond was the Sites Project Authority. They got \$818 million allocated to that project. Of course one problem is that the Sites dam project is a \$5.8 billion dollar dam, canal, pumps, and power project.



They're now asking for potential project beneficiaries to put some more earnest money for the second phase of project planning. The Metropolitan Water District of Southern California is reported to have responded favorably in order to protect its 50,000 acre-foot annual delivery expectation from the project.

The Authority also managed to score 5% of their allocation for planning and environmental reviews. So with \$40 million to play with, the Authority has now moved in with their consulting team. Staff and consultants are now 30 people strong.

Life is good for them right now.

The current plan for all those consultants has also changed. Rather than circulating a new draft EIR or supplemental EIR (their original draft seemed pretty incomplete), they are now planning to finalize the EIR. That way they escape any public comments that they have to respond to. Might be quicker too, although it's not the safe legal play.

Now the Authority just has to find \$5 billion. Maybe there's some loose change beneath the couch cushions.

Reflections on saving rivers

The foothill shooting stars are in bloom, and a lot of manzanita have already bloomed. But the great bulk of the California spring wildflower season is in front of us.

I know you've heard this before, but images and videos can be powerful. And creating them doesn't require public speaking. This is the beginning of our wildflower season and cold, clean snowmelt runoff. Share your photo library, and include Friends of the River, there too. We need a much larger photo library here for many purposes.

Fortunately, in the digital age this is easy to do. You can send us an email at <mailto:info@friendsoftheriver.org>

And I betcha that you can come up with other ways to make California rivers better by lending a hand. Don't assume that someone else is doing it. It's your shoulder to the wheel that may make the difference.

