

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

August 20, 2021

Drought in the West Leads to Cut in Water Delivered to States from the Colorado River, Giving Smart-Mouthed Newsletters Everywhere Excuse to Refer to Old Movies Yet Again

The water level in Lake Mead has been going down, down, down for quite some time now. As that's been happening, it's signaled the need for Western states to reduce their water consumption. That has happened, but not enough to halt the fall of the amount of water in the reservoir held back by the Hoover Dam. So now, the imbalanced water budget of this vastly changed system has reached the point where, for the first time, the Bureau of Reclamation (reclamation of what? Reclaiming arid lands from their very aridity.) has declared a shortage for the Colorado River Basin.

So, under the doctrine of prior appropriation that everyone learned while studying for the SAT, less water available in the West means whoever is the single most-junior holder of water rights in the entire Basin loses all their water, right? Nope. Because this water is delivered to states by this federal government project as negotiated among the parties by the Colorado River Compact, federal law is where we start with figuring out who will be affected by these cuts. Well, under the compact, the parties had already negotiated who would feel cuts first. And these "tier 1" cuts affect the lower basin states (and Mexico), but mostly Arizona. Specifically, it is most severely going to affect farmers who get water delivered through the Central Arizona Project. Those farmers have been encouraged to stop using groundwater unsustainably; we'll just have to wait and see if they go back to leaning more heavily on it to grow crops native to the desert, like cotton and alfalfa. What's also "wait and see" is whether or not this is just the first cut of many for the Colorado River Basin. It all depends on whether the water consumption of the economy of 40 million or so people can reach a balance with a climate that seems bent on the actual reclamation of the aridity of the West.

Just a Little Reminder that the Clean Water Act and the National Environmental Policy Act Still Matter, Even in the Era of Regulatory Whiplash

If you've got indomitable spirit and will, you can still get the application of environmental regulations in the same spirit as Congress loftily intentioned them back in the late 1960s and early 1970s. What are we talking about? We're talking about the Corps of Engineers ordering a full Environmental Impact Statement on the massive Formosa Plastics facility planned for St. James Parish, Louisiana. Back in 2019, the Corps granted the permit for the plant under its duty as the regulator for Section 404 of the Clean Water

The **Tulane Institute on Water Resources Law and Policy** is a program of the Tulane University Law School.

The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

Coming up:

[Mississippi River Commission: Public Hearings Aboard the MV Mississippi](#); August 23: Caruthersville, MO; August 24: Memphis, TN; August 25: Greenville, MS; August 27: Morgan City, LA

[18th Annual EPA Drinking Water Workshop: Small System Challenges and Solutions](#); August 30-September 2

[ESG and the Global Plastics Supply Chain](#); Sept. 14

[Eighth Biennial University of Florida Water Institute Symposium Abstract Deadline](#); October 6

[Eighth Annual HBCU Climate Change Conference](#); Oct 6-10

[The Seminar Group: Coastal Law in Louisiana](#); October 21-22

Water jobs:

[Summer Associate and Associate Attorney](#); Sher Edling LLP; San Francisco, CA

[Policy Analyst/Economist on Water](#); Organization for Economic Cooperation and Development; Paris, France

[TMDL and Water Quality Improvement Lead](#); State of Washington Water Quality Program; Lacey, WA

[Program Operations Associate](#); The Ocean Foundation; Washington, DC

[Associate Attorney](#); The Wilderness Society; Denver, CO and Washington, D.C, and other locations

[Assistant or Associate Scientist in Hydrogeology](#); The Jones Center at Ichauway; Newton, GA

[Senior Attorney, Fossil Fuels Program](#); Earthjustice; New Orleans or Texas

[Water Policy Manager](#); Conservancy of Southwest Florida; Naples, FL

[Water Policy Advisor](#); Tuvli; Washington, DC

[Senior Manager, Environmental Policy \(EMEA\)](#); Amazon; Brussels, Belgium

[ELI Jim Rubin International Fellowship](#); Washington, D.C.

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Act. However, it turns out that they granted that permit without reviewing the application as fully as they should have. So, what spurred the Corps to take another look at this? The never-ending work done by the community organization RISE St. James and their allies. Well done!

What's this? Another community organization and their allies forcing another, better(?) Environmental Impact Statement for a project several thousand miles away from St. James Parish? Yup. A district court judge in Alaska threw out the reviews made by the Bureau of Land Management and the Fish and Wildlife Service in approving a permit for a massive oil and gas project by ConocoPhillips on the North Slope of Alaska. Perhaps most interestingly, in the “big picture going forward” sense, is that the judge ruled arbitrary and capricious the BLM’s decision not to consider the foreign greenhouse emissions caused by the project. If it stands up under appeal (and this project was supported by both Trump and Biden administrations, so it’s no guarantee), it could signal a new wrinkle in the NEPA process in the time of climate change.