To: Allnutt, David[Allnutt.David@epa.gov]; Bogoshian, Matthew[Bogoshian.Matt@epa.gov]; Brown, Samuel[BROWN.SAMUEL@EPA.GOV]; Chester, Steven[Chester.Steven@epa.gov]; Cozad, David[Cozad.David@epa.gov]; Dierker, Carl[Dierker.Carl@epa.gov]; Dolph, Becky[Dolph.Becky@epa.gov]; Field, Stephen[Field.Stephen@epa.gov]; Frankenthaler, Douglas[Frankenthaler.Douglas@epa.gov]; Frey, Bert[frey.bertram@epa.gov]; Gable, Kelly[Gable.Kelly@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]; Harrison, Ben[Harrison.Ben@epa.gov]; Helwig, Amanda[Helwig.Amanda@epa.gov]; Isales, Lydia[Isales.Lydia@epa.gov]; Jackson, Brooke-Sidney[Jackson.Brooke-Sidney@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Morgan, Jeanette[Morgan.Jeanette@epa.gov]; Moyer, Robert[Moyer.Robert@epa.gov]; Mulkey, Marcia[Mulkey.Marcia@epa.gov]; Muller, Sheldon[Muller.Sheldon@epa.gov]; Murray, Suzanne[Murray.Suzanne@epa.gov]; Nalven, Heidi[Nalven.Heidi@epa.gov]; Rodrigues, Cecil[rodrigues.cecil@epa.gov]; Ryan, Mark[Ryan.Mark@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Shepherdson, Melanie[Shepherdson.Melanie@epa.gov]; Siegal, Tod[Siegal.Tod@epa.gov]; Silver, Meg[Silver.Meg@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Walker, Mike[Walker.Mike@epa.gov]; Ward, W. Robert[Ward.Robert@epa.gov]; Yager, Scott[Yager.Scott@epa.gov]; OGC WLO[OGC_WLO@epa.gov]; Conger, Nick[Conger.Nick@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]
From: Turley, Jennifer
Sent: Thur 2/27/2014 3:22:15 PM
Subject: Water Law News for February 27, 2014

Water Law News

for February 27, 2014

Bloomberg BNA Daily Environment Report™

Climate Change

Infrastructure Needs to Be Able to Withstand Extreme Weather, Climate Leaders Say

Electric grids, natural gas pipelines and water systems must be designed to withstand the extreme weather events scientists say are coming with climate change, representatives from utilities, governments and corporations said....

Drilling

BLM Revising Resource Management Plan For New Mexico Basin as Drilling Expands

The Bureau of Land Management has filed a notice of intent to prepare a revised resource management plan (RMP) for the Farmington, N.M., area, with an associated environmental impact statement that would take into account an anticipated boom...

Drilling

Republican Senators Question Integrity Of Investigation of Range Resources Order

Six Republican senators said an investigation by the Environmental Protection Agency's inspector general into why the agency issued an emergency order to Range Resources Corp. for water contamination was "seriously deficient"...

Great Lakes

Major Cut in Nutrient Pollution Needed To Shrink Lake Erie 'Dead Zone,' Study Says

A 46 percent reduction in phosphorus pollution would be needed to shrink Lake Erie's "dead zone," an oxygen-starved area in the middle of the lake, to the size it was in the early 1990s, according to a report released Feb. 26 by the...

Mining

Ohio Supreme Court Hears Arguments On State, Local Authority Over Drilling

In oral arguments before the Ohio Supreme Court, an attorney representing Munroe Falls said state law giving the natural resources department "sole and exclusive authority" to regulate drilling should not apply to areas protected...

Mining

WildEarth Petitions Surface Mining Office To Restrict Coal Mining Near Sage Grouse

An environmental group filed a petition with the nation's surface mining regulatory agency Feb. 26 to restrict coal mining in areas designated critical greater sage grouse habitat....

Storage Tanks

Citizen Suit Over Groundwater Pollution At Illinois Gas Station Allowed to Proceed

A Resource Conservation and Recovery Act citizen suit over groundwater contamination beneath a former gas station may proceed, the U.S. District Court for the Northern District of Illinois has ruled, finding the plaintiff alleged facts...

Water Pollution

North Carolina Governor Requests Plans For Coal Ash Ponds From Duke Energy

Duke Energy should provide North Carolina regulators with plans for the coal ash ponds at all of its facilities in the state by March 15, according to Gov. Pat McCrory (R). ...

Water Resources

Staff Work Accelerates in Conference On Water Resources Development Bill

Staff work for the House-Senate conference committee on the Water Resources Reform and Development Act (H.R. 3080) is picking up speed again after the conference leaders reached a compromise on the scope of project authorizations, sources...

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Inside EPA's **Weekly Report**, 02/28/2014

http://insideepa.com/Inside-EPA/Inside-EPA-02/28/2014/menu-id-67.html

Utility Group Seeks EPA Backing For New Stormwater Technology Test Plan

The Water Environment Federation (WEF), a wastewater technology and educational group, is seeking EPA support for a new private stormwater technology testing and verification program after the agency recently discontinued its own program that tested pollution control products in a range of sectors.

EPA Eyes Upcoming Conference To Boost 'Deep' Groundwater Research

EPA officials, water regulators and others are looking to an upcoming conference as a key forum for working on developing tools to better characterize "deep" groundwater resources, which have previously been seen as unavailable for use but are now being looked at as potential venues for underground injection operations.

As Concern Grows, Some Seek Climate Resiliency Mandate In EPA's SRFs

Some state officials and environmentalists are urging policymakers to include a climate change resiliency mandate in all federal infrastructure programs, including EPA's state revolving funds (SRFs) for water infrastructure, arguing that only projects designed to withstand the more extreme weather associated with climate change should be funded.

Greenwire

FLOOD INSURANCE:

House leaders pull bill amid political uncertainty

Evan Lehmann, E&E reporter

Published: Wednesday, February 26, 2014

Republican House leaders delayed a vote on flood insurance today after facing opposition from Democrats and conservative groups. A vote is expected next week.

The bill, H.R. 3370, seeks to dismantle many of the rate increases required by the Biggert-Waters Flood Insurance Reform Act of 2012. It would eliminate a major provision in the 2012 law that phases out discounts for grandfathered homeowners whose rates are below those specified by updated flood maps.

The measure, sponsored by Reps. Michael Grimm (R-N.Y.) and Bill Cassidy (R-La.), was scheduled to receive a vote on today's suspension calendar. It was pulled when Democrats expressed reservations about small details of the bill, preventing Republicans from mustering the two-thirds necessary for passage.

Critics say the measure is uncharacteristic for the conservative House, because it protects discounts more aggressively than a Senate bill passed last month. The Senate measure would delay most rate increases under Biggert-Waters for four years, rather than eliminate them.

"We see this as an opportunity" to reshape the bill with "responsible reform," Steve Ellis, vice president of Taxpayers for Common Sense, said today of the delayed vote.

Conservative groups are also opposed to the measure. They include FreedomWorks, the Club for Growth and the Heritage Foundation. They say the bill will exacerbate the program's debt of $24 billion.

"This bill would delay much-needed reforms to the National Flood Insurance Program and inevitably result in a taxpayer bailout of that program," Matt Kibbe, president of FreedomWorks, said in a blog post yesterday.

Supporters say the bill would protect homeowners from unanticipated rate hikes that could complicate home sales and drive policyholders to flee the program.

DROUGHT:

Senate sends bill reauthorizing information system to Obama

Annie Snider, E&E reporter

Published: Wednesday, February 26, 2014

The Senate yesterday approved the House's version of a bill reauthorizing a drought information program, sending the measure to President Obama's desk.

The chamber approved H.R. 2431 by unanimous consent. The bill would extend the National Integrated Drought Information System (NIDIS) through 2018.

The program was created in 2006 to provide a national warning system for drought. NIDIS operates the U.S. Drought Portal, a hub for drought-related information, such as maps and tools to help people prepare for and mitigate the impacts of drought.

The House measure authorizes a $13.5 million annual budget for the program, a slight increase over the $12 million a year authorized by the Senate's bill (S. 376).

SALMON:

Changing water discharges at hydroelectric dam aided spawning -- study

Jessica Estepa, E&E reporter

Published: Wednesday, February 26, 2014

Officials at a hydroelectric dam in the Pacific Northwest were able to triple salmon populations by changing the dam's water discharges, according to a new study.

Researchers studied data gathered from 1975 to 2009 from a 50-mile stretch downstream of the Priest Rapids Dam, a hydroelectric dam on the Columbia River in central Washington. This part of the river, known as the Hanford Reach, is one of the longest free-flowing areas for salmon, and it's there that the upriver bright fall chinook salmon spawn.

The team focused on this area because of two agreements made to boost salmon productivity.

The first came in 1988, after low water levels throughout the previous decade resulted in big juvenile salmon losses. Known as the 1988 Vernita Bar Settlement Agreement, it required the dam to alter the timing of water discharges in the fall. This would ensure that adults wouldn't spawn at high elevations and that minimum water levels were maintained for salmon in the early development stages.

Researchers found this led to a 217 percent increase of the population, lead study author Ryan Harnish said.

A second agreement in 2004, the Hanford Reach Fall Chinook Protection Program Agreement, limited the magnitude of flow fluctuations during the salmon's juvenile period. According to Harnish, the juveniles are vulnerable to large, rapid fluctuations, becoming either stranded in channel margins or entrapped in pools.

This resulted in a population boost of 130 percent, said Harnish, a fish ecologist with the Energy Department's Pacific Northwest National Laboratory.

His team's findings were published yesterday in the *Canadian Journal of Fisheries and Aquatic Sciences*.

Only one other dam in the Pacific Northwest operates under similar agreements as the Priest Rapids Dam, Harnish said. He believes this kind of data should help officials consider how dams and water discharges can be used to boost downstream populations of all kinds of fish, not just salmon.

"The take-home message: The timing and magnitude of discharge fluctuations can be altered to minimize the negative effects of operating hydroelectric dams on the productivity of downstream fish populations," Harnish said in an email.

ENDANGERED SPECIES:

Group petitions administration to protect grouse from mining

Manuel Quiñones, E&E reporter

Published: Wednesday, February 26, 2014

The group WildEarth Guardians is petitioning the Obama administration to initiate rulemaking to protect the imperiled sage grouse from surface and underground coal mines.

The Interior Department's Bureau of Land Management is updating numerous land use plans in an effort to prevent the sage grouse from being listed under the Endangered Species Act.

WildEarth Guardians' petition stems from the group's belief that Interior's Office of Surface Mining should also be involved in the effort under the Surface Mining Control and Reclamation Act.

The group points to existing rules under SMCRA calling for the protecting of certain species. "However," the petition says, "these rules do not expressly protect sage grouse."

"This Petition calls on OSM to promulgate explicit and enforceable standards of protection requiring the use of the best technology available to minimize disturbances and adverse impacts wherever coal mining and coal exploration occur within the range of the greater sage grouse," it says.

Lobbying groups for the mining industry have taken issue with Obama administration efforts aimed at protecting the sage grouse. They see an Interior 2011 National Technical Team report, cited in the WildEarth petition, as flawed and say recommended protections go too far.

Instead, groups like the National Mining Association and the American Exploration and Mining Association want the Obama administration to have states take the lead in sage grouse protection and oversight.

One recent comment letter from pro-mining groups said, "The NTT Report creates policies that assume [sage grouse] conservation is the highest and best use of the land, while subordinating other interests, like energy and mineral exploration and development."

If WildEarth Guardians had its way, companies would only be able to conduct coal exploration activities by helicopter and with portable drills in priority sage grouse areas. They wouldn't be able to strip-mine in those areas, among numerous other stipulations.

"The need for the proposed rules is underscored by the overlap between coal and grouse in the western United States," the petition says. "Much of the current range of the greater sage grouse overlies large coalfields in Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming."

This is the second such petition by WildEarth Guardians to OSM in recent weeks. Earlier this month, the group asked the agency to improve National Environmental Policy Act coal mining reviews.

Last year WildEarth Guardians sued OSM in Colorado U.S. District Court over its approvals of mines around the West.

In December a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit upheld BLM's decision to lease more than 400 million tons of coal in the Powder River Basin in Wyoming. Groups including WildEarth Guardians have not appealed.

Environmentalists focused on coal mining in Eastern states have also been pressing OSM for more involvement and are planning to rally at the agency's Washington, D.C., headquarters tomorrow.

Click here to read the WildEarth Guardians petition.

COAL ASH:

N.C. weighs order that would force utility to move wastes to lined landfill

Manuel Quiñones, E&E reporter

Published: Wednesday, February 26, 2014

North Carolina officials asked Duke Energy Corp. yesterday for the company's plans to deal with coal ash dumps in the wake of a spill at the company's impoundment near the state's border with Virginia.

Gov. Pat McCrory (R) and Department of Environment and Natural Resources Secretary John Skvarla sent an "urgent" request to Duke in a letter, amid ongoing concerns about this month's ash spill into the Dan River in Eden.

Concerning the Eden dumps, associated with a retired coal-fired power plant, state regulators said they are reopening the permitting process for wastewater released into the Dan River, which might require Duke to move the ash away from the river.

"Based on our investigation of this spill, one option under consideration right now is to eliminate all coal ash waste discharges coming from this facility and require that Duke Energy move the coal ash waste stored on site to a lined landfill away from any waterways," Tom Reeder, director of the state Division of Water Resources, said in a statement.

Environmental advocates have spent years calling on companies like Duke and states like North Carolina to move shut-down wet ash impoundments. The industry and many regulators have resisted such a wholesale and expensive change in the way ash from many plants is stored (*Greenwire*, Feb. 25).

Now state leaders have tapped a task force to evaluate the safety of dozens of ponds around the state. They are giving Duke 60 days to respond to reopening permitting at the Eden site.

"More broadly," McCrory and Skvarla wrote, "we have expressed our primary desire that coal ash ponds

be moved away from these essential resources."

This week, in a separate action, the state Environment and Natural Resources Department said scientists had begun testing fish tissue near the spill site to determine their safety. Last week, the agency said aluminum and iron levels remained elevated.

Yesterday, several environmental groups, including the Sierra Club, Appalachian Voices and Greenpeace, delivered petitions to Duke Energy, calling on the company to take more responsibility for the spill. Duke has apologized.

FLORIDA:

Lawmakers postpone water policy debate

Published: Wednesday, February 26, 2014

Florida lawmakers are postponing a debate on water policy until next year, frustrating environmental groups that claim the state's polluted lakes and rivers require immediate attention.

Florida House Majority Leader Steve Crisafulli (R) said the state Legislature will address funding for water projects but won't tackle policy changes in the legislative session that starts next month.

"Most of what we're looking at right now is project-related, not policy-related," Crisafulli said.

Possible projects include a cleanup of Indian River Lagoon and a new water storage system north of Lake Okeechobee. Elevated water levels last year in the 730-square-mile lake led the Army Corps of Engineers to release fresh water that damaged nearby waterways.

Environmental groups said waiting another year would only make things worse.

"During this legislative session or any other legislative session, if we do not make the elected officials do what we demand, then they won't," said Cris Costello, a regional organizer for the Sierra Club (Jennifer Kay, Associated Press, Feb. 25). **-- DB**

WEST VIRGINIA:

State attempts to rehab tourism industry after spill

Published: Wednesday, February 26, 2014

West Virginia officials are struggling to rehabilitate the state's image a month after a chemical spill

contaminated the tap water of thousands of residents.

State Tourism Commissioner Betty Carver said Gov. Earl Ray Tomlin (D) is talking with Commerce Secretary Keith Burdette and other officials about launching a rebranding campaign after a coal-cleaning chemical spilled into the Elk River on Jan. 9.

There aren't yet many details about the campaign, but it would supplement the state's current tourism promotion spending. Officials also aren't considering abandoning the "Wild and Wonderful West Virginia" brand the state has been using since the 1970s; they're just trying to figure out if the brand has been tainted as badly as the river.

The state government spends about $3 million every year on tourism promotion, focusing on popular attractions like whitewater rafting and casinos. The plight of rafting advertising exposes how difficult it might be for the state to convince the rest of the country, largely unfamiliar with West Virginia, that it's safe to visit.

The most popular rafting spot, the New River, flows into the Gauley River to form the Kanawha River. The contaminated Elk River meets the Kanawha River farther downstream, leaving the prime rafting area unaffected.

"People from Charlotte or Cincinnati, they don't know if the Elk is upriver or downriver from the Gauley," said Dave Arnold, a member of the state Tourism Commission. "There are some people who don't understand that water moves downstream" (John Raby, AP/*Seattle Post-Intelligencer*, Feb. 26). **-- HG**

BRISTOL BAY:

NRDC's Reynolds discusses lobbying battle following release of EPA's watershed assessment

Published: Wednesday, February 26, 2014

With U.S. EPA completing its final assessment of large-scale mining's impacts on the Bristol Bay watershed, lobbying efforts surrounding the Pebble mine's future are intensifying in Washington, D.C. During today's OnPoint, Joel Reynolds, Western director at the Natural Resources Defense Council, discusses the likelihood EPA will pre-emptively veto the mine and the role of politics in the final decision.

Click here to watch today's OnPoint.

ClimateWire -- Thu., February 27, 2014 -- **Read the full edition**

1. NATIONS: Legislation to control climate change begins to circle the globe

A global groundswell is rising from Beijing to Berlin, according to a new study Senate Democrats will release today that indicates nations are establishing domestic climate legislation at a rapid pace.

2. AUTOS: Tesla lays out details for massive proposed battery factory

Following a wave of good news for the company, Tesla Motors yesterday released details for its plans to build a massive battery manufacturing facility in the United States.

TODAY'S STORIES

3. INSURANCE: In flood risk debate, politics and one-upmanship appear to swamp reform

4. POLITICS: New moderate-to-conservative coalition tries to re-engage the right on climate change

5. REGULATION: Group promotes new plan for emissions trading among power plants to comply with EPA's pending rule

6. TRANSPORTATION: Lawmakers struggle to save a Highway Trust Fund on the brink of extinction

7. RENEWABLE ENERGY: Offshore wind leaders heartened by natural gas price spike in Northeast

8. SCIENCE: Aerosol discovery clarifies relationship between forests and climate

9. STATES: NASA uses Earth-monitoring technology to probe impacts of Calif. drought

10. BUSINESS: Steyer calls for connecting climate to people and commerce as key to congressional action

11. TECHNOLOGY: Danish, German companies team up to compete with Asian makers of solar electronics

12. AGRICULTURE: Changing the diet of grass-fed cows could reduce emissions -- study

13. OFFSHORE WIND: Cape Wind wins approval for $600M loan

14. CARBON MARKETS: E.U. measure to boost carbon prices becomes law

15. CITIES: Vancouver, British Columbia's shift to low-carbon utilities may cost taxpayers

16. NATIONS: South Africa postpones carbon tax but plans levies on acid mine water

17. COAL: Chinese company may build plant in protected area to support Jamaican port plan

E&ETV's OnPoint

18. GRID: ELPC's Learner discusses challenges to expanding transmission for renewable energy sources

EnergyWire -- Thu., February 27, 2014 -- **Read the full edition**

1. CAMPAIGN 2014: In Texas, a 'primary on steroids' avoids discussing energy

WEATHERFORD, Texas -- Dan Patrick bowed his head and opened the meeting of the Parker County Tea Party with a prayer. Then he segued into the stump speech he's given throughout his campaign for lieutenant governor: "I'm a Christian first, a conservative second and a Republican third." Welcome to one of the hottest political races in Texas. Patrick, a two-term state senator from Houston, is one of three candidates trying to wrest the Republican nomination for lieutenant governor from 11-year incumbent David Dewhurst.

2. RAIL: Combative oil, ethanol industries find common ground over tank cars

Orlando, Fla., was home to a rare occurrence last week: The oil and ethanol industries, usually at each other's throats, publicly agreed on something.

ELECTRIC UTILITIES

3. GRID: Enviro leader questions Texas regulator's plan to defer to legislators

4. SECURITY: Cyberdefense addresses 'fourth great American lie'

5. RENEWABLES: Energy agency sees room for global optimism when it comes to solar and wind

OIL, GAS AND COAL

6. FINANCE: Tax wrangling lets driller bring home billions from overseas

7. TRANSPORT: Regulatory uncertainty clouds rail safety hearing

8. NORTH DAKOTA: Bakken postal workers get pay bump in bid to improve recruitment

9. ENFORCEMENT: Oil company to pay $60K fine in Calif. fracking case

10. PEOPLE: Williams agrees to 2 board additions to avoid proxy battle

11. EARNINGS: Chesapeake Energy's asset sales mask revenue growth

12. PENNSYLVANIA: Officials defend gas leasing plan on state parkland

13. TRANSPORT: Calif. poised to get more domestic oil by rail

14. NATIONS: Ukraine political crisis threatens billions of dollars in drilling projects

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