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Sent: Wed 1/15/2014 4:33:00 PM
Subject: Water Law News for January 15, 2014

Water Law News

for January 15, 2014

Bloomberg BNA Daily Environment Report™

Budget

Omnibus Legislation Increases Funding For Energy, Water Programs in Fiscal 2014

An omnibus funding bill would appropriate $34.1 billion funding for energy and water programs in the remainder of fiscal year 2014, a $777 million increase from current funding levels....

Drilling

EU Plans Shale Drilling Guidelines That Could Facilitate Fracking Operations

The European Union plans guidelines for shale drilling under proposals that may facilitate oil and gas extraction using the technique that's brought the U.S. toward energy independence....

Energy

Maine Utilities Commission Approves Pilot Floating Wind Power Project Off Coast

The Maine Public Utilities Commission approved a 12-megawatt, floating offshore wind project Jan. 14 to sell electricity in the state. ...

Water Pollution

Arizona Makes Water General Permit Available

A new streamlined general permit is available for Arizona wastewater treatment facilities that process sewage sludge for application as fertilizer, the state Department of Environmental Quality announced Jan. 13. The department said...

Water Pollution

Chicago Water District to Spend $3.7 Billion To Resolve Violations, Upgrade Infrastructure

A federal judge has given final approval to a consent decree between the Environmental Protection Agency and the Metropolitan Water Reclamation District of Greater Chicago (MWRD) that requires the district to address untreated sewage discharges...

Water Pollution

Judge Vacates Own Ruling on Water Testing Around Former Steel Plant Near Baltimore

A plan to investigate contamination in waterways around Sparrows Point, a former industrial site near Baltimore, was vacated Jan. 13 by the same federal judge who approved it in 2012, and the environmental groups that had appealed the original...

Water Pollution

Manchin Plans Chemical Spill Legislation, Environment Committee to Hold Hearings

Sen. Joe Manchin (D-W.Va.) said Jan. 14 he plans to introduce legislation related to the chemical spill that fouled the Elk River in West Virginia, and the chairman of the Senate environment committee said hearings on the incident are planned...

Water Pollution

West Virginia Legislative Committee Launches Investigation Into Elk River Chemical Spill

West Virginia lawmakers have launched an investigation into the Elk River chemical spill that triggered a "do not use" order for 300,000 water consumers. ...

Water Resources

Stormwater Capture Imperative to Address California Water Challenges, Speakers Say

Weaving the pressing needs of global warming impacts into their comments, speakers on the looming water crisis in Southern California said stormwater capture policies can alleviate supply and environmental problems if the money and institutional...

Wetlands

China's Wetlands Falling Victim to Urban Encroachment, State Forestry Agency Says

China's total wetlands area has decreased 8.82 percent compared to 10 years ago, largely due to rapid urbanization in its now well-developed eastern coastal provinces, according to a five-year study released Jan. 13 by the State Forestry...

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an online news service from the publishers of Inside EPA

Chicago Sewer Pact's Entry Highlights High Bar In Miami-Dade Climate Suit

A federal judge has approved a stormwater and sewer control agreement between EPA and Chicago's water district, frustrating environmentalists' push for stricter green infrastructure measures and underscoring the high bar advocates face as they challenge a similar decree governing a Florida county's sewer system over climate change concerns.

FY14 Omnibus Bill Boosts EPA Funding But Bars Revising 'Fill' Water Rule

A bipartisan omnibus bill to fund the federal government in fiscal year 2014 would boost EPA's budget by $300 million from its existing $7.9 billion to $8.2 billion overall, but the bill also bars the Obama administration from revising the definition of "fill" material that advocates say will exacerbate inadequate protection of water quality.

Water Sector Seeks Host Of Flexibilities In EPA Climate Enforcement Pilot

Wastewater and drinking water utilities are urging EPA to test a host of potential regulatory and enforcement flexibilities in a pilot project the agency has suggested creating to work through potential legal issues regulators and utilities may face as they seek to address climate risks.

Industry Urges EPA To Expand Use Of Cleanup Waivers In Groundwater Plan

Industry groups say EPA's draft groundwater remedy completion strategy falls far short of recognizing and addressing the technical and cost impracticalities of cleaning up many groundwater contamination sites, and urge the agency to expand the use of technical impracticability (TI) waivers from cleanup standards when addressing the sites.

Greenwire

WATER POLLUTION:

Clean Water Act goals won't be met

without new regulation -- GAO

Annie Snider, E&E reporter

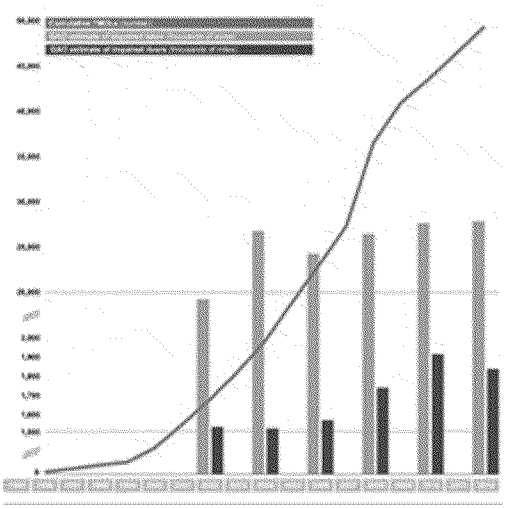
Published: Tuesday, January 14, 2014

More than four decades after Congress passed the nation's landmark clean water law, progress toward cleaning up the nation's rivers, lakes and creeks has stalled, largely due to uncontrolled pollution running off farms, parking lots and suburban lawns, a government watchdog said yesterday.

Without a new, nonvoluntary approach to controlling such nonpoint source pollution, the Clean Water Act's goals of restoring and maintaining the health of the country's waters "are likely to remain unfulfilled," the Government Accountability Office found.

U.S. EPA's budget has been cut by 20 percent since the 2010 congressional elections, and the agency must decide whether to use its limited staff and resources to create pollution diets for more waterways or focus on implementing the diets that have already been set. In that context, Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) and Water and Wildlife Subcommittee Chairman Ben Cardin (D-Md.) asked GAO to study the progress that has been made so far.

Under the Clean Water Act, the federal government and the states share responsibility for cleaning up waters. The states designate how a water body should be able to be used (for example, for fishing or for drinking water), and then sets criteria to protect these uses. EPA then signs off on those standards.



Some 50,000 TMDLs have been set for polluted lakes and rivers since the mid-1990s, but GAO found that these "pollution diets" are resulting in few healthy waters. Click the image to enlarge. Graphic courtesy of GAO analysis of EPA data.

If a water body fails to meet these standards, it is deemed "impaired," and the state and EPA work together to develop a pollution diet, called a total maximum daily load (TMDL), for the water. That TMDL identifies the sources of pollution, determines a limit for how much pollution the waterway can handle, and then divides that total among different sources.

But in looking at 35,000 TMDLs that have been on the books for more than five years, GAO found that few of the impaired water bodies had been fully cleaned up. This follows an August report from EPA that found that more than

half of the nation's waters don't meet their designated uses.

GAO found that there was a big difference, though, between how effectively TMDLs were implemented for point sources of pollution, like wastewater treatment plants and factories, versus nonpoint sources like farms and parking lots. Eighty-three percent of the TMDLs the office reviewed that were focused on point sources had water bodies meeting their limits, whereas only 20 percent of those focused on nonpoint sources did.

One of the main problems, the office found, was that regulators can only use voluntary measures to clean up nonpoint source pollution, and landowners' willingness to participate can vary widely.

For instance, the report describes the challenges that Idaho's Department of Environmental Quality faced in trying to carry out a restoration project aimed at decreasing erosion and sediment in a particular creek. The department put its funds into building a gate that would redirect water flow in a positive way because the agency was able to get the sign-off of the landowner, whereas other landowners whose participation would have been much more helpful to the project refused. In the end, the gate that was installed did little to improve the health of the watershed, GAO reported.

In only 1 percent of the older TMDLs reviewed by GAO had landowners implemented all of the best management practices needed, and in 19 percent of the TMDLs, landowners had implemented more than half.

EPA has estimated that, at historical funding levels and restoration rates, it would take more than 1,000 years to restore all the waters currently impaired by nonpoint source pollution, GAO said.

"Few TMDLs have been implemented for nonpoint source pollution, and for those that have been implemented, progress has generally been incremental, in large part because of long-recognized limits to nonpoint source authority and funding," the report said. "Without changes to the program's voluntary approach to implement projects in waters impaired by nonpoint source pollution, the act's goals are likely to remain unfulfilled."

The GAO report called on Congress to consider revising the act's voluntary approach to nonpoint source water pollution.

The report also found major data and administrative problems with TMDLs.

EPA generally has little information about how well TMDLs have been implemented or have improved the quality of impaired waters, GAO found. That's because of data system limitations and lack of data from the Department of Agriculture, it said.

State coordinators, too, have little information on TMDL implementation, interviews conducted by GAO found.

And these TMDLs often lacked key features that EPA and a National Academy of Sciences panel found were important for successfully cleaning up waterways.

"Long-established TMDLs often do not contain key features that would help water bodies attain water quality standards, in part because EPA's regulations and guidance do not direct TMDLs to contain them," the report states. That left water resource experts with little confidence that, even if the TMDLs were implemented, they would lead to the waters reaching their standards.

WATER POLLUTION:

Boehner faults lax regulators -- not a

lack of regulation -- in W.Va. chemical spill

Elana Schor, E&E reporter

Published: Tuesday, January 14, 2014

House Speaker John Boehner (R-Ohio) today dismissed calls for stricter regulations of chemical storage facilities in the wake of a hazardous leak that left 300,000 West Virginians without drinking water for five days.

The West Virginia site that spilled an estimated 7,500 gallons of 4-methylcyclohexane methanol (MCHM), a coal processing chemical, was exempt from U.S. EPA requirements that certain facilities develop emergency plans for spills and also appears to have fallen through cracks in the state regulatory process. Boehner told reporters, however, that "we have enough regulations on the books" already to address the risk of further incidents.

"What the administration ought to be doing is actually doing their jobs," he added. "Why wasn't this plant inspected since 1991?"

Officials at the state's Department of Environmental Protection have affirmed to *The Charleston Gazette* the decades-long gap in inspections at the storage plant owned by Freedom Industries, formed less than a month ago from the merger of several other chemical holding companies. The Freedom site was not overseen more closely, officials said, because it did not produce emissions and MCHM was not on a federal list of particularly hazardous substances.

Sen. Joe Manchin (D-W.Va.) said yesterday that, in addition to potential state-level action to regulate chemical storage plants more closely, he sees an opening for federal legislation to increase research into the health effects of MCHM (*E&E Daily*, Jan. 14).

After describing himself as "entirely confident" that existing regulations are sufficient to safeguard against future spills, Boehner said that "somebody ought to be held accountable here."

Independent investigators at the U.S. Chemical Safety Board (CSB) have long urged West Virginia to develop its own plan to regulate and manage environmental threats posed by the chemicals that help drive its economy. In the wake of the state's water crisis, Sen. Jay Rockefeller (D-W.Va.) pressed for a $1 million funding boost to the CSB in the massive 2014 spending bill unveiled by congressional appropriators late yesterday.

The final version of the bill included an extra $500,000 for the CSB, which Rockefeller's office cheered in a statement today.

CALIFORNIA:

Gov. Brown's water plan helps, but long-term funding is a problem -- watchdog

Anne C. Mulkern, E&E reporter

Published: Tuesday, January 14, 2014

Gov. Jerry Brown's (D) budget proposal to bolster California's water management will benefit the parched state, but many of his priorities lack long-term funding, a legislative watchdog said yesterday.

The Legislative Analyst's Office (LAO) in a critique of Brown's draft $154.9 billion budget praised the governor's goal of having state and local agencies coordinate oversight of water.

"Traditionally, individual areas of water policy have been treated as largely unconnected, with responsibilities spread across numerous departments," LAO said. "Considering the diverse areas of water policy together in a consolidated manner would be a more effective approach, particularly since these areas are highly interconnected."

But LAO cautioned that some key details were absent, and the Legislature might need to seek more information from the governor's office before deciding whether to accept the proposal.

Brown is requesting $618 million to carry out a five-year blueprint for managing water supplies. Released in draft form last year and expected to be finalized in the next few weeks, the Water Action Plan listed 10 goals for all levels of government, including expanding water storage capacity, improving flood protection and increasing regional self-reliance and conservation (*E&ENews PM*, Oct. 31, 2013).

The largest share of the money -- $472.5 million -- would be directed toward ways of encouraging local and regional agencies to work together on water governance. The money is the last of a 2006 voter-approved bond that authorized $5.4 billion for water projects, and is a significant increase from last year, officials said.

Other expenditures include $77 million on flood protection and $7.8 million on groundwater monitoring and management.

But LAO noted that "the budget proposal does not include funding for all activities described in the Water Action Plan. In proposing the specific expenditures ... the administration has implicitly identified certain activities as priorities and as needing to be implemented in the near term."

If the Legislature agrees with the policy goals, LAO said, it might ask the Brown administration "(1) for a long-term implementation and expenditure plan that describes how the plan will be carried out over the next several years and (2) why these specific expenditures were prioritized for 2014-15 over other elements of the plan."

Richard Stapler, deputy secretary for communications at the California Natural Resources Agency, said that "it is important to note that the Water Action Plan is still in draft form, though we anticipate the final to be released in the coming weeks.

"The Water Action Plan itself will greatly assist in highlighting the state of California's budget priorities for future years. Currently, we are working with the funding that is available to address some of our most pressing needs."

LAO described the problem with lack of future funding as expansive, however.

"Nearly 90 percent of the expenditures proposed for 2014-15 are supported by one-time bond funds," LAO said. "However, unappropriated bond funding is limited and is likely to be exhausted in the next few years.

"Accordingly, implementing the Water Action Plan in future years would require new funding sources," it added. Although the water plan describes a need to identify long-term funding sources for many of the programs and includes some specific funding recommendations, "the budget does not propose any specific new funding sources."

LAO additionally said that the Legislature might want to look at the Water Action Plan and whether it conflicts with a water bond on the November 2014 ballot.

Brown has a plan to overhaul the Sacramento-San Joaquin River Delta, which supplies 25 million Californians and 3 million acres of farmland with water. The development would build two 30-mile tunnels beneath the delta's peaty soil (*Greenwire*, Dec. 16. 2013). It would be funded largely by a bond measure that will appear on November ballots.

"Finally, the Legislature may want to consider whether some activities should be funded by other sources, such as user fees or charges on polluters," LAO said.

An environmentalist said LAO made important points, like noting that the state, cities and counties need to integrate water management.

"California manages groundwater separately from surface water," said Doug Obegi, an attorney with the Natural Resources Defense Council's water program. That's a problem in some locations where people are overpumping wells, causing the ground to sink. "It's sort of a race to bottom where everyone has to drill deeper and deeper to get access to the groundwater that's the only groundwater remaining," he said.

The Water Action Plan and the budget devote more resources to managing groundwater on a statewide level, Obegi said.

"We agree with the LAO's assessment that the integrated approach to water resources called for in the governor's Water Action Plan has merit," he said.

But LAO also is right, he said, that "there is also significant work to be done to prioritize actions and develop sustainable funding sources to implement these investments in local water supplies."

"Funding for water-use efficiency, water recycling, stormwater capture and local storage projects called for in the Water Action Plan," he added, "are a sound investment in a drought-resistant water supply for California."

AGRICULTURE:

Marijuana farms could harm Calif. salmon runs -- critics

Published: Tuesday, January 14, 2014

California's growing marijuana industry may threaten salmon populations in the region, according to critics.

Pesticides, fertilizers and sediments from pot farms are spilling into streams that have historically been home to salmon runs, such as the Klamath and Eel rivers.

The plantations also use up large amounts of water. Scott Bauer, a fisheries biologist with the California Department of Fish and Wildlife, said marijuana growers use up to 6 gallons per day per plant.

Dave Bitts, a commercial fisherman and president of the Pacific Coast Federation of Fishermen's Associations, said

the entire region is being affected by the industry.

"I have nothing against people growing dope, but if you do, we want you to grow your crop in a way that doesn't screw up fish habitat," he said. "There is no salmon-bearing watershed at this point that we can afford to sacrifice."

But marijuana growers said everyone on California's North Coast is to blame, not just the industry.

"It's just so easy to point a finger at cannabis growers because it's a federally prohibited substance," said Kristin Nevedal, chairwoman of the Emerald Growers Association. "The truth is, if you flush a toilet in the hills, you're a part of the problem" (Alistair Bland, NPR, Jan. 13). **-- JE**

UTILITIES:

EPA to miss deadline again on cooling water intake rule

Annie Snider, E&E reporter

Published: Tuesday, January 14, 2014

U.S. EPA will miss its deadline today for releasing a final rule aimed at reducing the number of fish, larvae and other aquatic organisms that are vacuumed into cooling water intakes at power plants and factories, the agency and attorneys representing environmental groups said.

The agency has received multiple extensions, to the frustration of the green groups that had sued to force the rule. The parties are now in talks about setting a new deadline, which is expected to be by the end of the month.

"EPA is working to complete the final rule for cooling water intakes as soon as possible, but will not complete the rule by the settlement deadline of January 14, 2014," agency spokeswoman Alisha Johnson said by email. "EPA is in discussions with the parties to the settlement agreement about the timing for completing the rule."

Environmental groups and the electric utility industry have kept a close eye on the rule, which would set new technological requirements for power plant cooling towers to prevent aquatic organisms from being sucked in and killed by being pinned against screens -- called "impingement" -- or boiled in extremely hot water -- called "entrainment."

Environmental groups have blasted the rule the agency proposed in 2011 for leaving case-by-case decisions on how to prevent entrainment up to state regulators that they say lack the resources, expertise and will to force meaningful changes (*E&ENews PM*, Oct. 2, 2013).

"Environmental groups are deeply troubled by the continued delays," said Reed Super, the attorney representing environmental groups in the suit, by email.

OCEANS:

Judge slaps biologist who fed whales with fine, probation

Published: Tuesday, January 14, 2014

A marine biologist yesterday was sentenced to three years' probation for illegally feeding killer whales in a California sanctuary.

For her violation of the Marine Mammal Protection Act, Nancy Black also will pay a $12,500 fine and perform 300 hours of community service.

The 50-year-old woman pleaded guilty last year to feeding a killer whale in April 2004 and April 2005. In the 2004 incident, Black led a team of researchers to haul the blubber of a dead gray whale onto a research boat, tie it to a rope and film a pod of killer whales eating the blubber (*Greenwire*, April 24, 2013).

Christopher Hale, a lawyer for the U.S. attorney's office, said Black "should have known better."

"The illegal collection of killer whales' food while they were actively feeding and then utilizing that food as bait showed a disrespect for both the wildlife and the law," he said in a statement.

Black said she was relieved the case is coming to an end.

"My work is very important to me, and I look forward to returning to my passion of studying marine mammals without the distractions that I have had during this case," she said (Henry Lee, *San Francisco Chronicle*, Jan. 14). -- **JE**

DRINKING WATER:

Schools shut down as Texas city, school district fight over surcharge

Published: Tuesday, January 14, 2014

Schools in a South Texas town have been shut down because of a water billing battle between the town and the school district.

The city of La Villa increased a water surcharge, and the La Villa Independent School District refused to pay it. That resulted in the city shutting down the water and sewer service for schools after the district's 625 students went on holiday break.

Schools were supposed to reopen Monday but were unable to do so because of the dispute.

"All La Villa I.S.D. schools will be closed until further notice," a message on the school district's website reads.

The issue has been ongoing for more than two years. In December 2011, the city approved a $10-per-person surcharge for the school district. The district fought to have it lowered to $6, and the two signed an agreement in November 2012. But the following month, city commissioners raised it to $14.

Parents expressed dismay over how the dispute is now affecting students.

"It's a really sad situation knowing they can't come to terms," said Angie Reyna, whose daughter is a senior at the local high school (Christopher Sherman, Associated Press, Jan. 14). -- **JE**

ClimateWire -- Wed., January 15, 2014 -- **Read the full edition**

1. POLITICS: Senators form new group to support climate action as administration stresses better preparedness

Eighteen senators opened a campaign yesterday to highlight the science of climate change and defend the president's actions to reduce carbon dioxide emissions.

2. RESEARCH: An interview with NASA's man in charge of taking 'selfies' of the Earth

NASA is well-known for its lunar landings and missions to Mars. But the agency makes major use of its space expertise running satellites that monitor the Earth, its climate and its weather.

TODAY'S STORIES

3. ELECTRICITY: Polar vortex caused extreme swings in energy prices, strained U.S. power grids

4. ADVOCACY: Female finance leaders call for more climate-related investments

5. AUTOS: Plug-in truck company secures $80M purchase agreement

6. BUDGET: Omnibus bill leaves out rider to block EPA power plant rules

7. NEGOTIATIONS: Events of 2014 will decide the shape of a future climate treaty

8. STATES: Mass. releases $50M plan to battle climate change

9. RENEWABLE ENERGY: Maine regulators give thumbs up to offshore floating wind project

10. ELECTRIC VEHICLES: Tesla Motors sets new sales record; company also hit with recall

11. CHINA: U.N. official says nation is helping fight climate change

12. COAL: Largest Japanese power utility doubled coal burning in 2013

13. RENEWABLE ENERGY: Mo. utility to boost solar power capacity

E&ETV's OnPoint

14. ENERGY POLICY: U.S. Chamber's Harbert pitches new policy framework

EnergyWire -- Wed., January 15, 2014 -- **Read the full edition**

1. EAGLE FORD SHALE: Rising ozone levels point to tangled web of Texas permitting

KARNES CITY, Texas -- For four months, Jeanne Shepherd took notes daily on the sounds and smells coming from a natural gas compressor station near her home here. The plant, the Patton Trust South Production facility, gathers and processes natural gas from wells drilled in the Eagle Ford Shale field. Shepherd said it made noises like howitzer fire when its flares lit and it gave off a low-level vibration that kept her from sleeping. The noise has decreased some since state inspectors visited the site in 2012. "Now it sounds like very distant artillery," she said in an interview. She continues to document noises and odors from other drilling sites around her 16-acre property almost daily. But the real bombshell may land in San Antonio, 50 miles to the north.

THIS MORNING'S STORIES

2. NORTH DAKOTA: Dems call for shakeup of state regulator after accidents

3. EPA: Obama admin reassures greens on drilling oversight

4. PEOPLE: Ohio utilities chief will not seek reappointment

5. CALIFORNIA: 50 groups press governor to ban fracking

6. OUTLOOK: S&P sees stable year for public power driven by cheap, abundant gas

6. SECURITY: Biggest U.S. public power utility aims to shore up cyberdefenses

8. ELECTRICITY: Mexico gets international partner to help bolster power supply

9. BAKKEN SHALE: 'Man camp' operator, county officials compromise on $2.6M fine

10. OIL AND GAS: 'Enormous binge' of energy in U.S. benefits Asia -- experts

11. HYDRAULIC FRACTURING: Colo. town's fracking ban changes company's relocation plans

12. BUSINESS: Shell's new CEO plans massive asset sale

13. REGULATION: E.U. set to unveil nonbinding fracking guidelines

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