

GOVERNMENT

IBWC Commissioner Resigns Amid Turmoil

Arturo Duran, commissioner of the U.S. Section of the International Boundary and Water Commission (IBWC), resigned from his post at the end of August following a 20-month tenure marked by controversy, reported the *Houston Chronicle*. Duran was appointed in January 2004 by President Bush, succeeding former El Paso Mayor Carlos Ramirez, who resigned for health reasons. Duran left his position as general manager of the Lower Valley Water District in El Paso County to accept the IBWC lead. In the past he worked for the U.S. EPA and as a private environmental consultant. Duran told the *El Paso Times* that the White House had asked for his resignation.

Duran's tenure was marked by numerous firings and resignations of high-level employees. The U.S. State Department investigated Duran's actions earlier this year, reported the *Chronicle*, and in a 60-page report, "concluded that the agency might fail in its basic mission because it was so deficient." Much of that deficiency was attributed to "a hemorrhage of qualified personnel," the report said, according to the *Chronicle*.

Duran's actions were so controversial that critics created a Web site, IBWC Anonymous (www.ibwcanonymous.org) "dedicated to exposing the incompetence, mismanagement, abuse of power, and bizarre behavior of [Duran]..., supported with information from current and former employees of the IBWC..."

The Houston paper reported that Carlos Merin replaced Duran as the acting director of the agency. He had been the principal engineer in the operations department of IBWC and, according to the newspaper, twice previously applied for the commissioner position.

IBWC is responsible for administering the boundary and water treaties between the United States and Mexico and settling differences that arise from them. Much

of the work focuses on distributing, managing, and conserving the waters of the Colorado River and the Rio Grande, including operating international storage dams and hydroelectric plants and protecting land adjacent to these rivers from floods. In addition, the agency works to address border water quality and sanitation problems. IBWC is an international body composed of U.S. and Mexican sections, each funded and operated by their respective government.

Visit www.ibwc.state.gov, www.chron.com and www.elpasotimes.com.

Colorado River Management Ideas Presented

The U.S. Bureau of Reclamation (Reclamation) has been seeking new ideas for managing Lake Powell and Lake Mead, particularly during drought years. Among plans submitted last summer were draining Lake Powell and the concept of "interruptable supply agreements."

Living Rivers, an organization based in Moab, Utah, presented a proposal to decommission Glen Canyon Dam and drain Lake Powell, which, the group argued, would conserve the water now evaporated from the lake and restore flows in the lower Colorado River, and through Grand Canyon, to a more natural state. However, a Reclamation representative at a July hearing in Salt Lake City said draining Lake Powell is not an option, reported the *Salt Lake Tribune*, since the last two administrations have been firm in their support for both reservoirs.

Another plan was presented to Reclamation jointly by Environmental Defense, the Pacific Institute, the Sierra Club, the Defenders of Wildlife, the National Wildlife Federation, and the Sonoran Institute. Their "Conservation Before Shortage" proposal was designed to address shortages before they occur by establishing requirements for water conservation in the Lower Colorado Basin that become more stringent as the water level of Lake Mead declines

below certain "trigger" elevations. The required amount of water would be conserved by offering to pay Colorado River water users anywhere in the Lower Basin or in Mexico to voluntarily relinquish water use. Funds to pay for forbearance would come from federal appropriations and a surcharge applied to Lower Basin water users and consumers of power generated at Hoover Dam.

Visit www.satrib.com, www.livingrivers.org, and www.environmentaldefense.org.

All-American Canal Conflict Heads to Court

The lining of the All-American Canal continues to be a contentious issue. In August, a lawsuit was filed against the United States on behalf of Consejo de Desarrollo Económico de Mexicali (Mexicali's economic development corporation) and two California nonprofit organizations, Citizens United for Resources and the Environment (CURE) and Desert Citizens Against Pollution, alleging "unconstitutional takings of international groundwater, as well as violations of the National Environmental Policy Act, the Endangered Species Act, and the U.S.-Mexico Migratory Bird Treaty," according to a news release from Lewis Brisbois Bisgaard & Smith LLP, lead counsel for the plaintiffs. The release said the plaintiffs would argue that since residents of the Mexicali Valley have been using water from the aquifer for the past century, they have a right to it under the rules of prior appropriation.

As reported in *Southwest Hydrology* (Sept/Oct 2005), lining a 23-mile section of the canal has been proposed so that Southern California would lose less of the water that is being diverted through the canal to seepage. However, communities and ecosystems in Mexico have become dependent on the seepage, estimated to be about 70,000 acre-feet per year.

The lawsuit "was filed in the U.S. District Court in Las Vegas because the Bureau

of Reclamation's Lower Colorado Region is located in Boulder City, and the Lower Colorado Region is responsible for the canal," said Malissa McKeith, president of CURE, according to the *Las Vegas Sun*.

Visit www.lbbslaw.com and www.lasvegassun.com.

Yucca Mountain May Need to Be Proved Safe for 1M Years

The U.S. EPA is proposing public health standards for the planned high-level radioactive waste disposal facility at Yucca Mountain, Nevada, that would protect public health for 1 million years. Under the standards, radiation levels for those living close to the facility could not be higher than natural levels people experience routinely in other areas of the country.

The proposed standards set a maximum dose level for the first 10,000 years, more than twice as long as recorded human history. To provide safety beyond 10,000 years to 1 million years, EPA is proposing a separate, higher-dose limit based on natural background radiation levels that people currently experience in the United States. The proposed standards also require the facility to be able to withstand the effects of earthquakes, volcanoes, and significantly increased rainfall, while safely containing the waste during the 1 million-year period.

Congress authorized various federal agencies to perform different functions related to Yucca Mountain. EPA sets standards to protect human health and safety. The Nuclear Regulatory Commission is responsible for implementing EPA's standards and determining if the Yucca Mountain facility can be made sufficiently safe to contain nuclear waste. The Department of Energy owns, constructs, applies for licenses, and will operate the facility, should it be approved. The Yucca Mountain facility will open only if it meets EPA's standards to protect human health and the environment.

The proposed standards supplement those originally issued in 2001 for the facility. EPA planned to accept written public comments on them until Nov. 1.

Visit www.epa.gov/radiation/yucca.

Human Error Cause for Phoenix Water Plant Scare

An investigation into the cause of two-day "boil water" alert for 1.5 million Phoenix residents last January revealed that "severe understaffing and poor equipment maintenance" were the major culprits, according to the *Arizona Republic*. The investigation was performed by the consulting firm Metcalf & Eddy, hired by the city to review the incident, the paper said. The consultant inspected operations at the Val Vista Water Treatment Plant, the source of the scare.

Metcalf & Eddy's review determined that no mechanical failure occurred at the treatment plant, reported the *Republic*, but a number of human factors contributed to the plant's output of cloudy water last January, including:

- Filters had not been cleaned and thus became overloaded, flooding the facility;
- The plant was brought online too quickly after being shut down due to the flooding;
- Proper logs of chemicals added to the water were not kept by employees, causing improper amounts of some chemicals to be used;
- The effectiveness of treatments could not be monitored because maintenance was being performed on equipment;
- Automated equipment was not used because it had been poorly maintained and employees didn't trust it.

Shortly after the water scare, the city's water services director was fired (*Southwest Hydrology*, Jul/Aug 2005). Acting water services director Danny Murphy said the city has been implementing the recommendations of

the audit, said the *Republic*, by holding emergency preparedness training sessions for workers, among other actions. The consultant was retained to audit the city's remaining five water treatment plants, according to the paper.

Visit www.azcentral.com.

Friant Dam Diversions Violated Endangered Species Act

The U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) violated the federal Endangered Species Act in 2001 by approving 25-year contracts to sell up to 2.1 million acre-feet (maf) of water per year from the San Joaquin River behind the Friant Dam, U.S. District Court Judge Lawrence Karlton ruled in July. As a result, endangered and protected species and their habitats downstream of the dam are threatened.

According to the *Ventura County Star*, the opinion issued by FWS on the possible impacts of the diversions was based on less than 2.1 maf/year because "delivery of full contract quantities is unrealistic," the agency wrote in its report. Thus, the judge ruled that the agency was at fault for not issuing an opinion consistent with the action to be authorized and that Reclamation was at fault for accepting the evaluation knowing it did not consider the full amount. NMFS was also at fault because that agency's "biological opinion has no meaningful discussion of impact on critical habitat for winter-run Chinook salmon," said the *Star*.

Based on the newspaper's account of the judge's comments, the biological opinion was prepared very quickly by FWS and the agency knew it was flawed. An e-mail written by a FWS senior biologist the day his agency's biological opinion was issued, cited by the judge, and quoted in the *Star*, discussed "possible holes and weaknesses in our crash [biological opinion], including inadequate time to do a consultation,

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inadequate biological assessments, a track record of lack of compliance by the Bureau of Reclamation, concern that the contracts are inconsistent with the Central Valley Project Improvement Act, and lack of coordination with the National Marine Fisheries Service.”

This is the second ruling in recent times that has found Reclamation’s operations of the Friant Dam to be at fault. In August 2004, the same judge ruled “that the bureau’s operation of the dam had dried up miles of the river, destroying fish populations, the *Star* wrote. A trial is set for February to determine what actions are needed to restore the river and its species, according to the newspaper.

Visit www.venturacountystar.com.

Lower Owens Restoration Delays Evoke Penalties

The largest river restoration effort ever attempted is now two years behind schedule, and Inyo County Superior Court Judge Lee E. Cooper is losing patience. In 1997, the Los Angeles Department of Water and Power (DWP) entered a legal agreement to “create and sustain healthy and diverse habitat for fish, waterfowl, and shorebirds, as well as stands of cottonwood and willows [along a 62-mile stretch of the Lower Owens River] by mid-2003,” according to the *Los Angeles Times*.

The project was originally developed in 1991 to restore 100 acres of habitat destroyed by DWP groundwater pumping from 1970 to 1990. This past July, Cooper imposed daily fines and penalties on DWP, which were to take effect Sept. 5 and last until the restoration plan is completed, the paper said.

The *Times* reported the following penalties for DWP:

- A fine of \$5,000 per day until the river is flowing at the planned discharge of 40 cubic feet per second. “No excuses

will be accepted,” the judge said;

- Groundwater pumping in the Owens Valley is limited to about 57,400 acre-feet per year, roughly 60 percent of the amount planned for this year;
- If the penalty conditions are not met, DWP will be permanently barred from using the Second Los Angeles Aqueduct, which transports water from just south of the Owens dry lakebed 200 miles to the San Fernando Valley.

According to the *Times*, DWP has cited “circumstances beyond their control” as the reason for the delays. In a prepared statement received by the newspaper, DWP General Manager Ronald F. Deaton said his agency planned to comply with the judge’s ruling, and that the additional water needed to offset the imposed pumping restrictions would be purchased from Metropolitan Water District, with costs passed on to customers.

Visit www.latimes.com.

CA’s MTBE Ban Survives NAFTA-Related Challenge

A Canadian manufacturer of methanol, the primary ingredient in the gasoline additive MTBE (methyl tertiary-butyl ether), lost a lawsuit challenging California’s ban on use of the substance. The company, Methanex Corp., argued that California violated the North American Free Trade Agreement (NAFTA) by instituting a ban against MTBE, in effect discriminating against a foreign investor, rather than just requiring stricter environmental controls on its use to prevent leaks that could impact water supplies, according to the *San Francisco Chronicle*.

This was the second recent blow to MTBE manufacturers, said the paper. Earlier, Congress changed the language of the federal energy bill, effectively removing protection from damage suits against the manufacturers.

In 1999, California mandated a phase-

out on the use of MTBE culminating in a complete ban last year. It was used in gasoline to reduce air pollution, but was subsequently listed by the U.S. EPA as a suspected carcinogen and has been found to have leaked from underground storage tanks to water supplies, said the *Chronicle*. Ethanol, a different additive, was to be used instead. But ethanol is produced primarily in the United States, thus Methanex claimed discrimination.

Methanex originally filed the \$970 million lawsuit in 2000, according to the *Chronicle*, and a three-member NAFTA tribunal wrestled with the case for five years.

The ruling was seen as a victory for California’s environmental laws, for had the decision gone the other way, the federal government could have either fined California or overturned the state law, said the paper. Instead, Methanex must now reimburse the United States \$4 million for legal fees.

Some viewed the victory with caution, however. Attorney Martin Wagner from Earthjustice told the *Chronicle* that he thinks “we will see many other challenges because these trade agreements stack the deck so strongly in favor of corporate interests and trade away from the sovereign ability of the government to protect the public interest.”

Visit www.sfgate.com.

Meth Lab Waste Impacts Wastewater Treatment

Waste products from methamphetamine labs poured down the drain in a single slug may be responsible for killing off microorganisms used in the Angels Camp, California, wastewater treatment plant, reported *The [Stockton] Record*. Several times this year, Carol Woolf, the plant’s chief operator, told the newspaper something has either come into the plant or been trapped in sludge that prevents the city from adequately treating its

wastewater. In June the plant received a violation notice from the Central Valley Regional Water Quality Control Board, according to the *Record*. The problem can be solved by bringing in new microorganisms, but the agency wants the city to solve the problem permanently.

Meth labs have not been proved unequivocally to be the source of the problem at the treatment plant, but Woolf thinks it's highly likely, said the *Record*, because meth lab waste has been found to impact the operations of other facilities in the area and because toluene – believed to be one chemical causing the problem – can be used in meth production. In addition, she noted that one of the slugs had a particularly strong impact because it came through at night when wastewater flows are lower, in effect concentrating the contaminants.

The paper said the city mailed fliers to residents describing the damage to the plant and asking people to report unusual odors or suspicious dumping of liquids into drains and sewers.

Visit www.recordnet.com.

New Mexico Holds Pecos Water Credit at Mid-Year

At midyear, the New Mexico Interstate Stream Commission (ISC) was cautiously optimistic that the state would make it through another year without requiring a priority call on the Pecos River, reported the *Carlsbad Current-Argus*. Such a call would cause water to be involuntarily curtailed to New Mexico water rights holders until the state's obligations to Texas were met under the 1948 Pecos River Compact and subsequent decrees.

In recent years, with drought impacting runoff in the Pecos, New Mexico has come dangerously close to a shortfall in its Pecos River deliveries to Texas. However, farmers are helping meet delivery requirements by leasing their water back to the state. In 2004, reported

the *Current-Argus*, farmers in the Carlsbad Irrigation District leased 25,000 acre-feet of water back to the state for \$100 per acre-foot, and that volume made the difference between the state facing a deficit or a credit at the end of the year. In fact, New Mexico delivered 8,300 extra acre-feet to Texas last year, ISC Commissioner Jim Wilcox told the paper.

As of mid-July, New Mexico's 2005 credit was 17,200 acre-feet, according to the newspaper, thanks to heavy winter precipitation and additional forbearances from farmers. But where that amount will stand by year's end again depends on the farmers, as the summer monsoon proved largely disappointing.

Visit www.currentargus.com.

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