



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER RESOURCES

Corps/Levee Safety

The Army Corps of Engineers (Corps) has extended the comment period for its draft agency guidance, Engineer Circular (EC) 1165-2-218: U.S. Army Corps of Engineers Levee Safety Program, through July 27. It establishes internal policy for understanding, prioritizing, and managing flood risks. "Most levees in the USACE Levee Safety Program are operated and maintained by non-federal levee sponsors.... This guidance lays a path forward for USACE and levee sponsors to partner in managing levee-related flood risks." The EC will be temporary. "After two years, the Engineer Circular will either be revised, rescinded, or converted to an Engineer Regulation, which does not expire." The EC has four parts: (1) levee safety overview; (2) levee sponsor activities; (3) Corps Levee Safety Program policies and procedures; and (4) a summary of how the program can be used by the Corps, levee sponsors, and others to make decisions. Direct comments to www.regulations.gov, Docket #COE-2020-0003. See <https://www.usace.army.mil/Missions/Civil-Works/Levee-Safety-Program/>.

CONGRESS/WATER RESOURCES

Great American Outdoors Act/Infrastructure

On June 10, the WSWC wrote Senate Majority Leader Mitch McConnell (R-KY), Senate Minority Leader Charles Schumer (D-NY), Senate Energy and Natural Resources Committee (ENR) Chair Lisa Murkowski (R-AK) and ENR Ranking Member Joe Manchin (D-WV), supporting multiple infrastructure bills consistent with current Council positions. Specifically, the Council expressed support for the Water Supply Infrastructure Rehabilitation and Utilization Act (S. 2044) and the Aquifer Recharge Flexibility Act (S. 1570), both now pending on the Senate Legislative Calendar; Senator Martha McSally's (R-AZ) proposed amendment to H.R. 1957 and the Great American Outdoors Act (S. 3422), to provide for the establishment of an Aging Infrastructure Account; as well as the goals and objectives of the Drought Resiliency and Water Supply Infrastructure Act (S. 1932) and Western Water Security Act (S. 2718).

H.R. 1957, the Tax Payers First Act, is on the Senate floor and the vehicle for consideration of the Great American Outdoors Act (introduced by Senator Cory

Gardner (R-CO) on March 9, with 57 cosponsors), which would create a National Parks and Public Land Legacy Restoration Fund to support deferred maintenance projects on federal lands. For FY2021-FY2025, an amount equal to 50% of all federal revenues from the development of oil, gas, coal, or alternative or renewable energy on federal lands and waters would be deposited into the fund. Deposited amounts would be limited to no more than \$1.9 billion for any fiscal year. Senator McSally's amendment (S. Amdt 1608), submitted on June 9, would add up to \$400M each year for major repair and replacement projects undertaken by non-federal entities with responsibility for operation and maintenance of federal Reclamation works and extend applicable repayment contracts. Dozens of controversial amendments led McConnell to seek closure on Gardner's S. Amdt. 1617 (in the nature of a substitute) but some senators drew the debate on closure out until 1:00 am on June 12, when it was approved by a 65-19 vote. Consideration of H.R. 1957 will continue on Monday.

The Council letter highlighted "...provisions that authorize programs, projects and funding for: (1) the maintenance or replacement of aging water infrastructure, including systems for drinking water, stormwater, wastewater, and water supply; (2) dam and levee safety; (3) surface and groundwater storage, including aquifer storage and recovery (ASR) projects; (4) water recycling, reuse, and desalination projects; (5) watershed and wetlands rehabilitation and recovery, taking advantage of natural ecological services; (6) forecast informed reservoir operation (FIRO) pilot studies and revised project rule curves and operating manuals; and (7) WaterSMART projects and programs. We welcome and applaud these efforts to improve our Nation's water infrastructure." It also emphasized the federal role in authorizing and appropriating funds to share in the cost of water infrastructure, the importance of interagency coordination, and recommended that investments in water data be considered part of water infrastructure needs. See <http://www.westernstateswater.org/letters/>.

CONGRESS/WATER RIGHTS

Indian Water Rights

On June 4, the Senate passed an amended version of S. 886 by voice vote, after omitting language that

would have authorized transfers of \$120M from the Reclamation Fund to the Reclamation Water Settlements Fund (43 U.S.C. 407) through FY2039. In its place, the Senate packaged the Navajo Utah Water Rights Settlement Act, the Aamodt Litigation Settlement Completion Act, and the Kickapoo Tribe Water Project Study. The Kickapoo Tribe Water Project Study directs the U.S. Department of Agriculture to conduct a study of the Upper Delaware and Tributaries Watershed Plan, in order to advance water rights settlement discussions involving the Tribe and the State of Kansas. The Aamodt Litigation Settlement Completion Act allows for the completion of the Pojoaque Basin Regional Water System, increases the federal cost ceiling by \$137M, and extends the completion date to 2028.

The Navajo Utah Water Rights Settlement Act authorizes \$210M in funding for water infrastructure and quantifies the right to deplete 81,500 acre-feet of water per year from Utah's Colorado River Basin apportionment. It settles current and future reserved water rights claims by the Navajo Nation in Utah, and requires the State of Utah to contribute \$8M toward the settlement, which has already been approved by the Utah legislature and Governor Gary Herbert (R-UT). Governor Herbert said: "This agreement is the result of more than 15 years of good faith work between Utah leaders, the U.S. Department of Interior, and the Navajo Nation. It will create clean drinking water projects for our Navajo friends and certainty for Utah's future water needs." Navajo Nation President Jonathan Nez said: "As the Navajo Nation continues to struggle to address COVID-19, we welcome the passage by the United States Senate of the Navajo Utah Water Rights Settlement Act, which would provide desperately needed funding for clean drinking water to our members.... [W]e ask our friends in the House to pass the legislation without delay."

LITIGATION/WATER QUALITY ***Colorado v. EPA /WOTUS***

On June 1, Colorado filed a motion for preliminary injunction in *Colorado v. EPA et al.* (#20-cv-01461, U.S. District Court for Colorado). Colorado argues that the 2020 Navigable Waters Protection Rule restricts and limits protections for wetlands, ephemeral features, and tributaries that contribute perennial or uncertain levels of intermittent flow to a traditional navigable water in a typical year. The motion emphasizes the "...significantly narrower definition of 'waters of the United States' than any prior definition in the history of the Clean Water Act...." In addition to important wetland functions, "...ephemeral and intermittent waters comprise at least 68% of Colorado's stream miles...." The 2020 rule creates a permitting gap that will halt important economic projects in the state and "...imposes an immediate compliance and enforcement burden on Colorado, which does not currently have dedicated funding or staffing resources to undertake enforcement against illegal fill

activities...." Colorado argues that the injunction would preserve the relative position of the parties, ensuring that the 2008 guidance and existing definitions continue to be implemented until the merits of the case are resolved.

WATER RESOURCES **Idaho**

Idaho passed several water resource bills during the 2020 Legislative Session. H-382 authorizes the commencement of the Bear River general water rights adjudication, as many "beneficial use" water rights exist in the basin that have never been recorded. The Bear River Adjudication "...will accurately record all existing water rights to resolve uncertainty and help ensure fair and accurate water administration." SCR-137 authorizes the Idaho Water Resources Board to collaboratively work with stakeholders in the Lemhi River Basin to develop a settlement that "resolves current tensions and conflict that are the result of competing water supply demands in [the Basin] and that the comprehensive settlement, to the best of the abilities of the participating parties and in the spirit of compromise and resolution, is consistent with past practices, future needs, and Idaho law."

H-592 establishes a procedure for forfeiting stockwater rights that have not been put to beneficial use for a period of over five or more years, prohibits a permittee from acquiring stockwater rights as an agent of the federal government, and clarifies that a stockwater right on a federal grazing allotment may not be used in another place or for another purpose. H-615 amends existing law to require a party claiming that a water right has been forfeited to provide "clear and convincing" proof of forfeiture, specifies that certain water rights shall not be forfeited for non-use, and provides for third party claims of right. S-1273 removes the date restriction associated with certain water rights, which removes the requirement for anyone to claim a water right pursuant to Idaho Code 42-243 if the water right is filed as part of a water rights adjudication.

H-366 amends the law regarding water district meetings and budgets, watermasters, and general issues with the distribution of water; H-565 creates a process to annex lands into flood control districts; H-646 supports flood management grants and water quality monitoring; S-1217 allows for the diversion or use of water to address hazardous waste or petroleum emergency clean-up with or without a specific water right; S-1289 amends acre groupings for small tract assessments in irrigation districts; and S-1290 allows irrigation districts of less than 15,000 people to combine polling locations. SJM-110 recognizes the Columbia-Snake River System and its tributaries for the many social, economic and environmental benefits it provides; recognizes the importance of the Port of Lewiston for trade and the local economy; and opposes the removal or breach of the dams on any portion of the Columbia-Snake River system.

The WESTERN STATES WATER COUNCIL is an organization of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.