



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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CONGRESS/WATER QUALITY PFAS/Western Attorneys General

On October 5, twenty state attorneys general (AGs), including Philip J. Weiser (D-CO), Hector Balderas (D-NM), Ellen Rosenbom (D-OR), and Bob Ferguson (D-WA), sent a letter to leadership of the House Armed Services Committee and the U.S. Senate Committee on Armed Services urging them to include provisions on per- and polyfluoroalkyl substances (PFAS) in the FY21 National Defense Authorization Act (NDAA - H.R. 6395), to build on the progress made in the FY20 NDAA and “help safeguard the public and environment against the highly persistent and toxic class of chemical compounds....”

Section §332, Standards for Removal or Remediation Actions with Respect to PFOS or PFOA, would require the Department of Defense (DOD), during clean-up at their sites relating to PFAS, to meet the PFAS standards in the state in which a military installation is located if they are more strict than federal standards. The AGs stated that there are “at least 678 active or closed military installations with known or suspected PFAS contamination on- or off-site, requiring prompt attention to protect military personnel and surrounding communities.”

They encourage the Committees to include provisions “that provide DOD with the tools necessary to conduct appropriately protective remediation and removal of PFAS contamination.” These include additional funding and authorization for PFAS clean-up, resources for research and development of PFAS disposal mechanisms, and alternatives to firefighting foam that contains PFAS. They support resources for robust engagement with communities and stakeholders and publication of results of drinking, surface and groundwater PFAS testing. The letter also supports inclusion of resources for community testing for PFAS and a requirement to offer this testing to service members and their families.

The AGs applaud a provision directing DOD to finalize or amend cooperative agreements (CA) with states to address actions related to PFAS cleanup, and suggest that the CAs meet or exceed the most stringent state or federal standard for waters or a health advisory

under the Safe Water Drinking Act. Regardless of the ability to develop a CA, they ask for these standards to be met during site remediation.

Finally, the attorneys general encourage Congress to create more stringent federal standards and believe that PFOA, PFOS and other forms of PFAS, including GenX PFAS, should be designated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

CONGRESS/WATER RESOURCES Salton Sea/California

On September 24, the House Natural Resources Committee Subcommittee on Water, Oceans and Wildlife held a hearing on “Federal and State Efforts to Restore the Salton Sea.” Witnesses included Wade Crowfoot, Secretary, State of California Natural Resources Agency; E. Joaquin Esquivel, Chair, California State Water Resources Control Board; and Thomas Tortez, Jr., Tribal Council Chairman, Torres Martinez Desert Cahuilla Indians. Members from the Department of the Interior were invited but did not participate in this hearing, the first on state-federal efforts related to the Salton Sea since 1997.

Crowfoot’s written testimony provided background on the Salton Sea, with an overview of the ecological importance of the region and ongoing challenges: “As California’s largest body of water, the Salton Sea has served as a critical wildlife habitat for nearly 100 years, providing a key stopover spot for many special species of resident and migratory birds along the Pacific Flyway. Flows into the Salton Sea have declined in recent years, and the result is a shrinking, increasingly saline lake. As the Sea recedes, previously submerged lakebed is being exposed, reducing habitat and creating dust that can be hazardous as it dries and becomes airborne. These dust emissions present air quality issues that exacerbate public health challenges experienced by local communities in the region, which already has some of the highest childhood asthma rates.”

Issues related to the Salton Sea have been connected to the Quantification Settlement Agreement (QSA), a series of agreements signed in 2003 apportioning Colorado River water between the federal

government, the State of California, and local water districts. The QSA authorized the contracting parties to pursue water transfers and has resulted in over 300,000 acre-feet being transferred from the district around the Salton Sea to urban areas to the west.

Crowfoot focused on collaboration between California and multiple federal agencies, as well as the Salton Sea Management Program (SSMP) that has been responsible for implementation of many projects. The SSMP is also involved with the Salton Sea Authority, a Joint Powers Authority made up of tribes and water districts to collaborate with state and federal agencies. Crowfoot highlighted the funding California has contributed, and concluded: "The need is great at the Salton Sea, and California needs the partnership and investments from the federal government to improve conditions at the Sea for local communities and the environment. As a major landowner at the Salton Sea, the federal government's investments in the Sea can help ameliorate the continued challenges experienced in the area, as a result of lakebed exposure on federal land as the Sea continues to decline, contributing to further public health and ecosystem risks. Without effective action and investment, the ongoing changes to the Salton Sea will likely contribute to air quality challenges and further reduce habitat for fish and wildlife in the region."

Esquivel discussed the involvement of the State Water Resources Control Board in Salton Sea efforts, especially regarding water quality, and offered recommendations on how the federal government can support ongoing efforts: (1) Provide additional funding for local, state, or federal projects, either short-term funding or more importantly longer-term operation and maintenance funding; (2) Increase federal engagement on the Salton Sea Management Program, including continued participation of United States Bureau of Reclamation staff who provided a presentation at the Board's most recent workshop last month; (3) Provide clear direction on what the federal government plans to do, or what projects they will implement or support, on the land they own (land that is both currently exposed and under water); and (4) Continue federal engagement and support for transnational water quality efforts focused on the New River Improvement Project in Calexico.

Tortez testified on behalf of the tribal council as well as the Salton Sea Authority. He highlighted three points: "First, the federal government has key interests and responsibilities at the Salton Sea. Second, local strategies to mobilize state action provide Congress with a roadmap for mobilizing federal action. And third - in view of the repeated failures by the federal government to take an active role at the Salton Sea - Congress should more directly require federal action." He emphasized the important role of the federal government due to their large ownership stake in the Sea and

recommended that they use a proven model of adopting firm commitments and mandates to drive action to protect the Sea. Testimony can be found at: <https://naturalresources.house.gov/hearings/federal-an-d-state-efforts-to-restore-the-salton-sea>.

CWA Jurisdictional Determinations/NWPR/WOTUS

On October 1, Rep. Peter DeFazio (D-OR), Chair of the House Committee on Transportation and Infrastructure, and Rep. Grace Napolitano (D-CA), Chair of the House Subcommittee on Water Resources and Environment sent a letter to Assistant Secretary of the Army (Civil Works), R.D. James, requesting that the Army Corps of Engineers (Corps) provide a comprehensive list of jurisdictional and non-jurisdictional determinations from June 22, 2020 (the effective date of the Navigable Waters Protection Rule (NWPR) that changed the definition of Waters of the United States (WOTUS)) to September 30, 2020, as well as from the same period in 2019. They ask the Corps to include their justification, data sources used in the determination, and for non-jurisdictional determinations, a description of whether jurisdiction would have been asserted under the previous 1986 regulations. They request a cumulative calculation for each Corps district of total acreage of jurisdictional and non-jurisdictional wetlands, ponds and lakes, and total linear feet of perennial streams, intermittent streams and ephemeral streams determined since June 22, 2020. Additionally, the request asks the Corps to include policy references for each determination, a legal and scientific rationale for the new process that the Corps and EPA have issued for elevating certain determinations related to traditionally navigable waters, and related information.

The letter expresses frustration with the lack of information available regarding waterbodies that may no longer be covered by the NWPR, as well as the legal and scientific basis for the rule. "The rule misinterprets the legal standards for asserting Clean Water Act jurisdiction announced in the three U.S. Supreme Court decisions relevant to Clean Water Act jurisdiction, ignores the peer-reviewed science on the chemical, physical, and biological connections among waters and wetlands, as well as on the protection of water quality, and fails to demonstrate the economic burden the rule imposes on everyday American families, municipalities, and small businesses, including hard-working family farms." DeFazio and Napolitano requested the information be provided by November 1. See <https://transportation.house.gov/news/press-releases>.

MEETINGS

The WSWC Fall virtual meetings will be held on October 13-15, and will include a NWPR/WOTUS mapping session. See westernstateswater.org to register for the Committee and WOTUS mapping meetings.

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.