



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS Gubernatorial Elections

In the four gubernatorial races in the West, incumbents Doug Burgum (R-ND) and Jay Inslee (D-WA) both won re-election. In Montana, where term-limited Governor Steve Bullock (D-MT) ran for the U.S. Senate, U.S. House Representative Greg Gianforte (R-MT) won the open seat. Gianforte was for many years a successful Bozeman entrepreneur. In Utah, Governor Gary Herbert (R-UT) retired, and his Lieutenant Governor Spencer Cox (R-UT) won the election. Cox, a Utah native and lawyer, had a successful career in telecommunications before teaming up with Herbert. He defeated former governor and U.S. Ambassador Jon Huntsman in the primary race. WSWC member states include thirteen Republican and five Democrat governors.

ADMINISTRATION USDA/Reclamation/EQIP/WaterSMART

On November 5, the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) announced the selection of 31 priority areas in ten states to receive \$13M in Environmental Quality Incentives Program (EQIP) funding as part of the WaterSMART Initiative (WSI).

Under the WSI, the NRCS works with the Bureau of Reclamation to coordinate investments in priority areas for improving the cumulative impact in water conservation and drought resilience. EQIP funds are used to help eligible farmers and ranchers make improvements that align with a paired Reclamation WaterSMART project. The funds provide additional resources and tools needed to manage soil moisture, improve irrigation water use efficiency in crop and pasture lands, and protect irrigation water sources from depletion. Water conserved can be used by the farmers and ranchers during drought, or used by others in the community for clean drinking water or energy, industry, or management of wetlands, streams, rivers, and lakes. This federal collaboration is a priority of the National Drought Resilience Partnership. <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/newsroom/releases/?cid=NRCSEPRD1688015>

The FY2021 priority areas are located in Arizona, California, Colorado, Kansas, Nebraska, New Mexico, Nevada, Texas, Utah, and Wyoming.

CONGRESS Elections/Senate

While control of the Senate remains undecided, incumbent western senators who won re-election include: Senators John Cornyn (R-TX), Steve Daines (R-MT), Jim Inhofe (R-OK), Jeff Merkley (D-OR), Jim Risch (R-ID), Mike Rounds (R-SD), and Ben Sasse (R-NE). In Arizona, Mark Kelly (D-AZ), the husband of former Arizona Rep. Gabby Gifford, beat incumbent Martha McSally (R-AZ). McSally was appointed to fill the remaining term of the late John McCain. Colorado's former Governor John Hickenlooper (D-CO) beat incumbent Senator Cory Gardner (R-CO). Retiring Senators included Mike Enzi (R-WY), Pat Roberts (R-KS), and Tom Udall (D-NM). Their vacant seats were won by former U.S. House Rep. Cynthia Lummis (R-WY), the first woman to represent Wyoming in the Senate, Roger Marshall (R-KS), and Ben Ray Lujan (D-NM), a current U.S. House Representative.

Notably, Udall leaves as Vice Chair of the Committee on Indian Affairs, and an open seat on the Appropriations Committee, where he was the Ranking Member of the Interior, Environment and Related Agencies Subcommittee, as well as a member of the Agriculture and the Energy and Water Subcommittees. Roberts currently chairs the Agriculture Committee and is a member of the Finance Committee. Enzi leaves as Chair of the Budget Committee and a member of the Finance Committee, Subcommittee on Energy, Natural Resources and Infrastructure. McSally is the chair of the Energy and Natural Resources Committee's Subcommittee on Water and Power, and serves on the Indian Affairs Committee. Gardner is chair of the Science, Oceans, Fisheries and Weather Subcommittee of the Commerce, Science and Transportation Committee.

ENVIRONMENT/CONGRESSIONAL UPDATE America's Conservation Enhancement Act

On October 30, President Trump signed S. 3051, the America's Conservation Enhancement Act (P.L.

116-188). The bill passed the House by voice vote on October 1, under suspension of the rules, after Senate passage on September 16, also by voice vote. Sponsored by John Barrasso (R-WY), Chair of the Senate Environment and Public Works Committee, the bill had bipartisan support including Tom Carper (D-DE), the ranking minority member of the committee, as well as western co-sponsors Kevin Cramer (R-ND), James Inhofe (R-OK) and Martin Heinrich (D-NM).

Title I authorizes spending under the North American Wetlands Conservation Act at \$60M/year through 2025. It also amends the National Fish and Wildlife Foundation Establishment Act to provide for the appointment of 28 directors with experience in fish and wildlife or other natural resources conservation. Each director will serve a 6-year term. The board is to appoint an Executive Director. Authorized appropriations to carry out provisions include \$15M to Interior, \$5M to Agriculture and \$5M to Commerce annually. Additionally, federal financial assistance grants and cooperative agreements may provide funds to the Foundation if used for purposes consistent with the Act. Further, it raises authorized spending for invasive species programs under the Department of the Interior and the U.S. Army Corps of Engineers by \$2.5 million each and calls for consultation between the relevant federal agencies and stakeholders, including non-governmental organizations and industry.

Title II codifies the National Fish Habitat Conservation Through Partnerships program in order to achieve measurable results through strategic actions to improve ecological conditions, restore natural processes, or prevent the decline of intact and healthy systems. It seeks to establish a consensus set of national conservation strategies, broaden community support, fill gaps in the National Fish Habitat Assessment database and integrate consistent socioeconomic data in analysis. It establishes a board to coordinate implementation, establish national goals and priorities, recommend to Congress designation of entities as partners, and review recommendations for fish habitat conservation projects. Board membership is to include the Departments of Agriculture, Commerce and the Interior, as well as the U.S. Geological Survey. Other members include representatives of state fish and wildlife agencies, the Association of Fish and Wildlife Agencies (serving as Chair), Indian Tribes, Regional Fishery Management Councils, the Sport Fishing and Boating Partnership Council, as well as the commercial fishing industry, marine and recreational anglers, habitat conservation organizations, science-based fishery organizations, a national private landowner organization, an agricultural production organization, local government interests, and different corporate industry sectors. Board members serve without compensation, other than per diem.

The Board has authority to review and recommend that Congress designate Fish Habitat Partnerships to

engage local and regional communities, involving diverse groups, to develop a scientifically sound strategic plan and achievable implementation plan as well as leverage sources of funding. This includes selecting and prioritizing fish habitat conservation projects based on specific criteria listed in the Act. There is \$7.2M/year authorized for projects, with 5% reserved for Indian Tribes' projects.

Of note, only a State, local government, or other non-federal entity may acquire, under state law, water rights or rights to property with these funds. The Act clearly states that nothing in this title: (1) establishes any express or implied reserved water right for any purpose; (2) affects any water right in existence on the date of enactment; (3) preempts or affects any state water law or interstate compact governing water; or (4) affects any federal or state law in existence on the date of enactment regarding water quality or water quantity. Similarly, nothing in this title: (1) affect the authority, jurisdiction, or responsibility of a State to manage, control, or regulate fish and wildlife under the laws and regulations of the State; or (2) authorizes the Secretary [of the Interior] to control or regulate within a State the fishing or hunting of fish and wildlife. It similarly protects tribal treaty rights. Moreover, it protects private property declaring: "Nothing in this title permits the use of funds made available to carry out this title to acquire real property or a real property interest without the written consent of each owner of the real property or real property interest, respectively." This includes any property interest in land or water (including water rights).

The Federal Advisory Committee Act (FACA) does not apply to the board or any partnership. Further, nothing in this title affects any provisions of the Clean Water Act including any definitions.

WATER QUALITY **Washington/PFAS**

On October 29, the Washington Department of Ecology announced the completion of the Toxic Studies Unit's first round of sampling as part of a new study of per- and poly-fluoroalkyl substances (PFAS) in Lake Washington and its tributaries. Washington carried out its first statewide PFAS testing in 2008, and again in 2016. Although there was a general decrease of PFAS in surface water samples during that time, likely due to shifts in manufacturing, there was no apparent change in freshwater fish tissue or osprey eggs. The urban lake samples contained the highest PFAS concentrations in both studies. The lake Phase 1 study is focused on characterizing contaminant pathways and the Phase 2 study will identify and prioritize potential sources to the lake, with the ultimate goal of reducing external contributions and applying what they learn to other urban waterbodies. <https://ecology.wa.gov/Blog/Posts/October-2020/PFAS-Sampling-in-Lake-Washington>.

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.