



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/CONGRESS Reclamation/Corps/Appropriations

On May 24, the House Committee on Appropriations, Subcommittee on Energy and Water Development, held a hearing on the FY2022 Budget Request for the U.S. Army Corps of Engineers (Corps) and Bureau of Reclamation. Witnesses included David Palumbo, Reclamation Deputy Commissioner of Operations; Jaime Pinkham, Acting Assistant Secretary, Army (Civil Works); and Lieutenant General Scott Spellmon, Corps Chief of Engineers and Commanding General.

Palumbo's written testimony noted that: "Reclamation's activities, including recreation benefits, support economic activity valued at \$66.63 billion, and support approximately 472,000 jobs. Reclamation delivers 10 trillion gallons of water to more than 31 million people each year, and provides water for irrigation of 10 million acres, which yields approximately 25 percent of the Nation's fruit and nut crops, and 60 percent of the vegetable harvest." He said the FY22 budget addressed: "Water management, improving and modernizing infrastructure, using sound science to support critical decision-making, finding opportunities to expand capacity, reducing conflict, and meeting environmental responsibilities..."

Palumbo said Reclamation's budget supports prioritization of Indian water rights settlements and funding projects to meet tribal trust and treaty obligations. "The FY2022 budget request includes funding for Indian water rights settlements consistent with settlement dates required by statute. In addition to requesting discretionary funding, these settlements will draw on available mandatory funding to support current settlement implementation activities." He added that funding for the Native American Affairs program would improve the capacity to support tribes in resolving water rights claims and other water related technical activities. "This funding will also strengthen Department-wide capabilities to achieve an integrated and systematic approach to Indian water rights negotiations to consider the full range of economic, legal, and technical attributes of proposed settlements." Reclamation is also establishing and rebuilding clean water infrastructure through its Rural Water Program.

Palumbo acknowledged the general impacts of drought, including decreased snowpack and early spring runoff, and specific measures that have been taken this year when every state west of the 100th meridian is experiencing drought. WaterSMART program funding enables Reclamation to "improve water conservation and energy efficiency as well as proactive efforts to provide sound climate science, research and development, and clean energy. We will continue to seek to optimize non-Federal contributions to accomplish more with our Federal dollars.... Projects funded through WaterSMART since 2010, including WaterSMART Grants and Title XVI projects, are expected to save more than one million acre-feet of water each year, once completed." He also said funding would focus on innovation strategies needed to address hydrologic changes, and briefly discussed the Desalination Program and the Science and Technology Program.

He emphasized the need to modernize and maintain water infrastructure. "Reclamation's dams and reservoirs, water conveyance systems, and power generating facilities serve as the water and power infrastructure backbone of the American West.... Funding is provided for dam safety and Extraordinary Maintenance of Reclamation facilities. Reclamation manages 491 dams throughout the 17 Western States. Reclamation's Dam Safety Program has identified 364 high and significant hazard dams." He noted that Reclamation's 78 hydroelectric power plants generate about 40 million megawatt hours of electricity, produce \$1B in revenues, and displace over 18 million tons of CO2 that would otherwise be emitted by traditional fossil fuel power plants. The FY22 budget includes funds to support energy initiatives for additional value and revenue, and to reduce project operating costs, facilitating non-federal hydropower development on Reclamation projects.

Pinkham said: "The President's topline discretionary funding request for FY2022 includes \$6.8B for the Army Civil Works program to develop, manage, restore, and protect water resources primarily through the construction, operation and maintenance, and study of water-related infrastructure projects, as well as to regulate development in waters of the United States, and to work with other Federal agencies to help communities respond to, and recover from, floods and other natural

disasters. This funding request is the highest annual Budget ever requested for the Civil Works program. It supports significant investments to improve the condition of existing water infrastructure, including U.S. coastal ports, while incorporating climate resilience efforts into the commercial navigation, flood and storm damage reduction, and aquatic ecosystem restoration work...” During the hearing, he responded to questions about coordination between the Corps leadership and the different levels of the Civil Works program, noting that they are working together to improve communication and coordination of policy and decisionmaking.

Spellmon briefly addressed various Corps programs, including: investigations; construction; operations and maintenance; protecting the Nation’s waters by regulating wetlands; and assisting other federal agencies, state, and tribal governments through its Interagency and International Services Reimbursable Program, providing technical oversight and management of engineering, environmental, and construction projects. Throughout the hearing he responded to questions about specific projects in need of funding and expedited completion, and about the environmental expertise of the Corps.

ADMINISTRATION/WATER QUALITY **EPA/CWA §401**

On May 27, the Environmental Protection Agency (EPA) announced its intent “...to reconsider and revise the 2020 CWA §401 Certification Rule to restore the balance of state, Tribal, and federal authorities while retaining elements that support efficient and effective implementation of §401. Congress provided authority to states and Tribes under CWA §401 to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects. Under §401, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into navigable waters unless the affected state or Tribe certifies that the discharge is in compliance with the Clean Water Act and state law, or waives certification.”

The pre-publication version of the review announcement said, “EPA has completed its initial review of the 401 Certification Rule and determined that it will propose revisions to the rule through a new rulemaking effort. The agency has considered the following factors in making this determination, including but not limited to: the text of CWA §401; Congressional intent and the cooperative federalism framework of CWA §401; concerns raised by stakeholders about the 401 Certification Rule, including implementation related feedback; the principles outlined in Executive Order [13990]; and issues raised in ongoing litigation challenges to the 401 Certification Rule.”

EPA Administrator Michael Regan said: “We have serious water challenges to address as a nation and as EPA Administrator, I will not hesitate to correct decisions that weakened the authority of states and Tribes to protect their waters. We need all state, Tribal, local, and federal partners working in collaboration to protect clean water, which underpins sustainable economic development and vibrant communities. Today, we take an important step to realize this commitment and reaffirm the authority of states and Tribes.”

EPA is not going to revert back to the former rule, originally published in 1971, but is considering specific provisions within the 2020 rule for revision. These include: (1) the effectiveness of pre-filing meeting requests; (2) constraints associated with certification requests and if they limit the ability of the state to get the necessary information to make a certification decision; (3) provisions around defining a “reasonable period of time” for states to certify; (4) the scope of certification; (5) certification actions and the federal agency review process; (6) enforcement; (7) the lack of ability to modify certifications if the certifying authority, federal agency and EPA agree; (8) the timeframe for notifying and receiving feedback from neighboring jurisdictions; (9) the general impacts of the rule on the certification process and project development; and (10) coordinating implementation of rule revisions and whether other relevant federal agencies, such as the Army Corps of Engineers, should propose and finalize concomitant regulatory changes for consistency.

EPA will open an ongoing dialogue with states and tribal partners, with initial listening sessions for certifying authorities on June 14, 23 and 24. Written input can be submitted at www.regulations.gov under Docket No. EPA-HQ-OW-2021-0302. More information available at: www.epa.gov/cwa-401.

PEOPLE

Shaun McGrath has been named as Director of Environmental Health and Protection at the Colorado Department of Public Health and Environment (CDPHE), replacing John Putnam. Shaun was most recently Director of the Montana Department of Environmental Quality, served as EPA Region 8 Administrator, spent two years as Deputy Director of the White House Office of Intergovernmental Affairs, and worked for nearly 14 years as a program director for the Western Governors Association. Jill Hunsaker Ryan, CDPHE Executive Director, said: “Shaun possesses a unique level of experience in environmental public policy. He’s worked at the local, state and federal levels of government, and he knows how to navigate this complicated terrain to get things done for the people he serves.... I am confident that Shaun is the right choice to advance our ambitious environmental agenda....”

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