



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

682 East Vine Street / Suite 7 / Murray, UT 84107 / (801) 685-2555 / Fax 685-2559 / www.westernstateswater.org

Chair - Jennifer Verleger; Executive Director - Tony Willardson; Editor - Michelle Bushman; Subscriptions - Julie Groat

ADMINISTRATION/WATER QUALITY **EPA/Corps/WOTUS**

On June 9, the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) announced their intent to revise the definition of “waters of the United States” (WOTUS) to better protect water quality and water resources across the country. The decision was based on the agencies’ review of the Navigable Waters Protection Rule (NWPR), pursuant to President Biden’s Executive Order #13990, which found “that the rule is significantly reducing clean water protections.” Additionally, the Department of Justice (DOJ) filed a motion for remand of the NWPR in the District Court of Massachusetts (*Conservation Law Foundation et al. v. EPA* (#20-cv-10820), WSW #2398). DOJ intends to file similar motions to remand in the several other lawsuits challenging the NWPR.

EPA Administrator Michael Regan said: “After reviewing the Navigable Waters Protection Rule as directed by President Biden, the EPA and Department of the Army have determined that this rule is leading to significant environmental degradation. We are committed to establishing a durable definition of ‘waters of the United States’ based on Supreme Court precedent and drawing from the lessons learned from the current and previous regulations, as well as input from a wide array of stakeholders, so we can better protect our nation’s waters, foster economic growth, and support thriving communities.”

Acting Assistant Secretary of the Army for Civil Works Jaime Pinkham said: “Communities deserve to have our nation’s waters protected. However, the Navigable Waters Protection Rule has resulted in a 25 percentage point reduction in determinations of waters that would otherwise be afforded protection. Together, the Department of the Army and EPA will develop a rule that is informed by our technical expertise, is straightforward to implement by our agencies and our state and Tribal co-regulators, and is shaped by the lived experience of local communities.”

On June 9, Radhika Fox, Acting Assistant Administrator for the EPA Office of Water, and Pinkham

held a call with representatives from states to discuss the announcement. Fox reiterated the agencies’ determination that the NWPR’s definition of WOTUS was causing significant, ongoing environmental damage inconsistent with the Biden-Harris Administration’s priorities. She also stated that they would work to re-establish the protections in place prior to the 2015 Clean Water Rule and develop a new, durable definition of WOTUS. Pinkham highlighted the importance of creating a rule that was implementable and straightforward. During the call Q&A, several states and state organizations asked about the timeline going forward, whether any implementation changes would occur immediately, and how this rulemaking process would be different than the past in terms of overcoming obstacles. Fox said that additional information on the upcoming rulemaking and engagement will be announced later this summer, and that for now the NWPR remains in place. She also agreed with commenters who pointed out that states are co-regulators and any proposed rule should be developed in tandem with states prior to publication of the proposed rule.

According to the press release, the agencies’ rulemaking will be guided by four considerations: (1) protecting water resources and our communities consistent with the Clean Water Act; (2) the latest science and the effects of climate change on our waters; (3) emphasizing a rule with a practical implementation approach for state and tribal partners; and (4) reflecting the experience of and input received from landowners, the agricultural community, states, tribes, local governments, community organizations, environmental groups, and disadvantaged communities with environmental justice concerns. www.epa.gov/wotus

CONGRESS/WATER QUALITY **Appropriations/EPA**

On June 9, EPA Administrator Michael Regan testified before the Senate Appropriations Committee’s Interior and Environment Subcommittee on the FY2022 EPA budget request of \$11.2B to advance key priorities, including tackling the climate crisis, delivering environmental justice, and rebuilding core functions. The

FY2022 request prioritizes working with and supporting state, local and tribal leaders and expanding community development, cleaning up toxic waste, and investing in water infrastructure projects. Almost half, or \$5.1B, is specifically requested for EPA's State and Tribal Assistance Grants (STAG), including \$1.242B to support state and tribal categorical grants, a \$142M increase above the FY2021 enacted level. EPA recognizes the important role federal assistance provides in protecting water bodies of special ecological and economic importance to our Nation through EPA's Geographic Water programs, and the FY2022 request is \$36.4 million above the FY 2021 enacted level to accelerate projects that target the most significant environmental.

Regan emphasized President Biden's American Jobs Plan, which proposes a \$111B investment in water infrastructure, including \$45B to replace 100% of lead service lines and pipes through the Drinking Water State Revolving Fund and Water Infrastructure Improvements for the Nation (WIIN) Act grants. The Plan also provides \$10B to monitor and remediate PFAS (per- and polyfluoroalkyl substances) in drinking water and to invest in rural small water systems, and household well and wastewater systems. EPA will receive \$3.5B dedicated toward PFAS in drinking water.

CONGRESS/WATER RESOURCES **Appropriations/USDA**

On June 1, WSWC submitted written testimony to the House Appropriations Committee Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies. The testimony focused on general support for several water-focused programs within the U.S. Department of Agriculture (USDA) that benefit small, rural and tribal communities, as well as important data collection programs that inform water management. "Agriculture sustains many rural economies, provides important employment opportunities, and is a vital national industry. Federal funding is critically important for many agricultural communities, and USDA plays a crucial role in implementing programs that deliver assistance. USDA programs help to provide water and wastewater infrastructure, technical assistance, financial assistance, and conservation measures that ensure water is an available resource and that allow the agricultural industry to thrive."

The testimony said, "The Council urges the Subcommittee to carefully consider the needs of small, rural and tribal communities and businesses and provide or otherwise ensure they have access to financial and technical assistance sufficient to guarantee they can meet federal water quality and drinking water mandates,

as well as achieve public health goals. The WSWC supports funding to implement rural water supply projects and programs that enhance water supplies and promote economic development, and the use of appropriate financing instruments, while protecting taxpayers."

Rural Development's Water and Environment Program "provides water and waste disposal grants, loans, loan guarantees, predevelopment planning grants, revolving loan funds, technical assistance and training grants, emergency community water assistance grants, and a circuit rider program, as well as individual water and wastewater grants and household water well system grants. The circuit rider program has been especially important for delivering technical assistance to rural communities who otherwise would not have access to critical knowledge and resources."

In addition, "The Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS) and its National Water and Climate Center (NWCC) administer many water-related programs. The latter manages the Snow Survey and Water Supply Forecasting Program, which is instrumental in predicting snow melt runoff and water supplies for crop irrigation, stockwater and municipal drinking water supplies, as well as managing springtime flooding. USDA conservation programs also focus on conservation of ground and surface water resources, as well as reducing nonpoint source pollution, including nutrients, sediment, pesticides and salinity."

"The Council supports the role of Conservation Title Programs in providing solutions to resolve water supply reliability, water quality impairments, groundwater recharge, and other water resource concerns facing agricultural water users and agricultural producers. These programs provide financial assistance that is particularly important to producers and rural communities, water users and water quality managers." These include the Conservation Reserve Program (CRP), Environmental Quality Improvement Program (EQIP) and its Conservation Innovation Grants (CIG) and Colorado River Basin Salinity Control Program (CRBSCP), Conservation Reserve Enhancement Program (CREP), Conservation Stewardship Program (CSP), Emergency Watershed Protection Program (EWPP), and Regional Conservation Partnership Program (RCPP), as well as other watershed protection and planning programs."

The testimony ended with, "Finally, the Council believes it is important that rural water project development and USDA conservation program implementation should recognize and ensure consistency with state water law and regulatory authority."

The WESTERN STATES WATER COUNCIL is a government entity 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.