



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/CONGRESS**

#### **EPA/Nominations**

In June 16, the Senate confirmed Acting Assistant Administrator for the Environmental Protection Agency (EPA) Office of Water, Radhika Fox, with a bipartisan vote of 55-43. All Democrats and seven Republicans, including Kevin Cramer (R-ND) and Lisa Murkowski (R-AK), supported her nomination.

During Fox's confirmation hearing May 12, she highlighted the importance of water: "This is water's moment – it can unite the country and help us address the compounding challenges of a global pandemic, economic recession, longstanding racial inequities, and the climate crisis. Water is a great uniter. It brings us together – across society and across the aisle."

She also highlighted her prior experience bringing people together to address challenges across the water sector as CEO of the US Water Alliance and working in policy and government affairs for the San Francisco Public Utilities Commission. "Throughout my career, I have been guided by one foundational principle – listen to all sides to find enduring solutions, rooted in common ground. If confirmed, I will manage the Office of Water in a manner that is grounded in the wisdom, voice, and lived experience of those impacted by our decisions...We must actively engage with all who are impacted by our decisions – water utilities, farmers and ranchers, community organizations, environmental organizations, states, tribes, local officials, and many others. By working together, we can forge more durable outcomes for our communities."

### **CONGRESS/WATER RESOURCES**

#### **Infrastructure/Water Reuse**

On June 29, the House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a legislative hearing on several bills. The Subcommittee considered the St. Mary's Reinvestment Act (H.R. 1851), the Large Scale Water Recycling Project Investment Act (H.R. 4099), the Salton Sea Projects Improvement Act (H.R. 3877), and the Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act (H.R. 1869).

David Raff, Chief Engineer, Department of the Interior (DOI), testified about Bureau of Reclamation concerns or support for three of the bills. H.R. 1851 addresses affordability concerns related to Milk River Project beneficiaries, and would authorize a minimum 26% non-reimbursable federal cost for Phase I. It also directs Reclamation to conduct an ability-to-pay study to determine the non-federal cost share, including terms of repayment for any federal cost share above 26% of the total project costs. Raff noted that DOI testified on a previous iteration of this bill, and that they appreciated the Subcommittee's work to address cost share concerns and other issues.

Raff expressed DOI support for H.R. 3877, which increases Reclamation's flexibility to work with California, local communities, tribes, and other federal and non-federal partners to address Salton Sea issues. Reclamation has provided \$14M since 2016 for "dust suppression, wetland restoration, water quality improvements, environmental compliance, and land use authorizations at the Salton Sea." DOI has an agreement with the California Natural Resources Agency, recognizing the State's lead responsibility in efforts to restore the Salton Sea. Reclamation also meets regularly with other federal agencies, including the Bureau of Land Management, the U.S. Fish and Wildlife Service, the U.S. Geological Survey and the U.S. Army Corps of Engineers to coordinate activities and secure funding to support state-led activities.

H.R. 4099 would establish a new competitive grant program for projects in Reclamation states that cost \$500M or more, and that "reclaim and reuse municipal, industrial, domestic, and agriculture wastewater or impaired ground or surface waters..." Under the WaterSMART Program, the Title XVI Water Reclamation and Reuse Program has two separate funding opportunities, "...one open to congressionally authorized projects and another open to projects eligible under the WIIN Act..." Raff noted that in recent years, demand for funding has shifted toward the WIIN Act projects. Raff expressed DOI concerns about the "total dollar cap, and the long-term impacts on Reclamation's future budget given the proposed federal cost share of up to 75% for projects. Additionally, the bill represents a significant departure from the current scale of the federal government's involvement in recycling and reuse

projects, which relies on a majority of project funding from non-federal partners.”

Chairman Brian Thomas of the Shoshone-Paiute Tribes of the Duck Valley Reservation testified in support of the technical correction to the water rights settlement enacted in 2009. H.R. 1869 would amend the authorized settlement to clarify the Tribes’ understanding that interest income earned on the project and maintenance funds would transfer back to the tribal trust funds rather than be returned to the Treasury, which has been DOI’s alternate interpretation. It would resolve the ambiguity in the 2009 Settlement Act by interpreting the language in the way most favorable to the Tribes, “consistent with the federal trust responsibility to Tribes...” Thomas noted that the Reservation has significant land suitable for its primary economic activity of agriculture, but inconsistent natural flows and non-Indian settlements surrounding the Reservation had led to “chronic water stress and conflict” prior to settlement. Additionally, Reclamation’s Owyhee Project blocked fish passage, ending a valuable on-reservation fishery.

Thomas testified, “The Settlement Act put an end to decades of tension over water rights between the Tribes and their non-Indian neighbors. In addition to providing certainty regarding the Tribes’ water right, the Act resolved tribal claims against the United States for its failure to protect the Tribes’ water rights and natural resources, claims which the Tribe estimated could lead to the federal government having to pay significantly more than the \$60 million federal contribution authorized in the 2009 Settlement Act. Due to the settlement, both Indian and non-Indian farmers and ranchers in the area around the reservation now have certainty regarding water allocations available to them for crops and grazing, and the Tribes have much-needed funds to... accomplish the goals of the Settlement Act, which include rehabilitation of the Duck Valley Indian Irrigation Project, provision of a municipal water supplies, and other critical water related projects.” The Tribes counted on the investment revenues, nearly \$5M, as essential to the settlement projects.

## **WATER QUALITY** **Clean Water Act/§401/EPA**

On June 23, the WSWC hosted a listening session with the EPA regarding the Clean Water Act (CWA) §401 Certification Rule. EPA announced its intention to reconsider and revise the 2020 Rule and is looking for input on several issues flagged during EPA’s review (see WSW #2454).

States that provided substantive comments during the listening session about their concerns with the implementation of the 2020 Rule included: Colorado, Montana, Nebraska, Nevada, North Dakota, South

Dakota, Utah, Washington and Wyoming. Other states joined to listen. EPA representatives asked that states also submit their comments in writing. They expressed appreciation for the states’ input, improving their understanding the breadth of the issues states are facing with §401 certifications under the 2020 Rule. A transcript of the session is available from WSWC.

## **Water Reuse**

On June 18, the WSWC published its report, *Water Reuse in the West: Western State Water Reuse Governance and Programs*. This report is the result of an effort begun in 2019, when WSWC partnered with the Association of Clean Water Administrators (ACWA) to develop a survey of states regarding water reuse laws, regulations and practices. It also coincides with Action 2.1 of the National Water Reuse Action Plan.

The report updates and builds upon the WSWC’s 2011 report, *Water Reuse in the West: State Programs and Institutional Issues*. Ten years later, water reuse across the west has grown and continues to mature. Some states have practiced various forms of water reuse for decades, whereas others are beginning to explore implementation of new reuse regulations and guidance. Some have robust legal and regulatory frameworks, whereas others have not yet defined reuse or water reuse practices within their statutes and regulations. Regardless of where individual states are along this spectrum, most western states recognize the potential of water reuse to contribute additional water resources, not only to meet growing urban and rural demands, but also as the West experiences continued drought and as climate and weather patterns become increasingly variable and extreme.

The report details water reuse definitions, laws, regulations, and programs, and identifies opportunities and challenges of reuse within each state. This report is intended to be a resource for states to learn from each other as they continue to navigate the complexities of water quality and quantity as water resources become increasingly scarce. See <https://westernstateswater.org/publications/other-reports/2021/2021-water-reuse-report/>.

## **PEOPLE**

In June, **Steve Wolff**, Interstate Streams Administrator, Wyoming State Engineer’s Office, accepted a position with the State of Colorado as General Manager, Southwestern Water Conservation District. Steve was appointed to the WSWC in May 2018 and served on the Executive and Water Resources Committees. We thank Steve for his many years of dedicated service and wish him the best in his future endeavors.

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