



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY

Clean Water Act – Section 401 Rule

On July 15, the Western Governors' and National Governors' Associations and WSWC staff joined a dialogue with the Environmental Protection Agency (EPA) on plans to revise the Clean Water Act (CWA) Section 401 Rule. EPA's Casey Katims, Deputy Associate Administrator for Intergovernmental Relations, and John Goodin, Director of the Office of Wetlands, Oceans and Watersheds, spoke as well as Brian Frazer and Lauren Kasperek. WestFAST EPA representative Roger Gorke facilitated a June 23 listening session with WSWC members, and examples of the impact of the new rule from that meeting were shared.

EPA is soliciting written comments of the following key issues: (1) pre-filing meeting requests (40 CFR 121.4); (2) certification requests (40 CFR 121.5); (3) a reasonable period of time to act (40 CFR 121.6); (4) the scope of certification (40 CFR 121.2); (5) federal agency review of certification actions (40 CFR 121.7-121/9); (6) enforcement (40 CFR 121.11); (7) modifications of certification; (8) neighboring jurisdictions (40 CFR 121.12); (9) data and other information; and (10) coordination of implementation. Written feedback will be accepted through August 2, and may be submitted to the docket online at <https://www.regulations.gov>, Docket ID No. EPA-HQ-OW-2021-0302.

CONGRESS/WATER RESOURCES

Abandoned Mine Land Reclamation Fund

On July 14, the Senate Energy and Natural Resources Committee, by a 13-7 vote, reported the Energy Infrastructure Act after approving 48 bi-partisan amendments. The draft bill addresses grid infrastructure resilience and reliability, cybersecurity, clean energy technologies and supply chains, fuels and technology infrastructure investments (including carbon capture, carbon dioxide transportation and carbon storage, hydrogen research and development, nuclear energy and hydropower). There are hydroelectric production and efficiency incentives, as well as integration of pumped storage hydropower, wind and solar for system reliability initiatives.

As reported, the bill would authorize over \$11B for deposit into the Abandoned Mine Land Reclamation

Fund to be used as "expeditiously as practicable" for annual grants to States and Tribes for abandoned mine land and water reclamation projects. It revises past abandoned mine reclamation fees, and includes an unprecedented \$3 billion authorization to clean up hardrock mines. The money would be split evenly between Interior and grants to States and Tribes. While tonnage fees from private companies have funded reclamation of abandoned coal mines since 1977, there has been no such program to address the thousands of abandoned copper, gold and other hardrock operations. Senators Martin Heinrich (D-NM), Steve Daines (R-MT) and Mark Kelly (D-AZ) provided bipartisan support for the amendment. Priority is to be given to reclaim mines "based on conditions including need, public safety and health, potential environmental harm, and other land use priorities."

Heinrich said, "Communities across the West deserve water that does not make them sick and land that is free from toxic waste. Establishing this new program will help clean up abandoned hardrock mines that are still polluting our lands and waters and harming our communities." He added that there are at least 140,000 abandoned hardrock mine features across the western U.S., with at least 22,500 known to pose an environmental hazard.

Bureau of Reclamation

Under Title IX, the bill would authorize \$1.15B for the Department of the Interior and Bureau of Reclamation for surface and ground water storage and conveyance projects, of which \$100M would be made available to provide grants to plan and construct small surface water and groundwater storage projects. It would authorize \$3.2B for a recently created Aging Infrastructure Account for major rehabilitation and replacement projects, as identified in Reclamation's Asset Management Report, with \$100M to address critical failure of reserved or transferred works (federal projects operated by non-federal entities). There is \$1B for authorized rural water projects under the Reclamation Rural Water Supply Act of 2006. Another \$1B is authorized for water recycling and reuse projects, of which \$550M is for projects authorized under the Reclamation Wastewater and Groundwater Study and Facilities Act, with \$450M for large-scale projects. There is \$250M for water desalination projects and studies, \$500M for

Reclamation's safety of dams program, and \$400M for WaterSMART grants, of which \$100M is for projects that would "improve the condition of a natural feature."

The bill authorizes \$300M to implement the Colorado River Basin Drought Contingency Plan, including \$50M to be made available for use under the Upper Colorado River Basin Drought Contingency Plan. There is \$100M authorized for financial assistance for watershed management projects, \$250M for design, study and construction of aquatic ecosystem restoration and protection projects, and another \$100M for multi-benefit projects to improve watershed health. Lastly, there is \$50M for endangered species recovery and conservation programs in the Colorado River Basin.

Nominations/Army Corps of Engineers/WOTUS

On July 14, Michael Connor, President Biden's nominee for Assistant Secretary of the Army (Civil Works), appeared before the Senate Energy and Natural Resources Committee. In his opening statement, Senator Tom Carper (D-DE), Chair, declared, "Mr. Connor has the experience and character to be successful in this role.... He has proven himself to be a capable leader and is more than ready to meet the robust and varied responsibilities of this position to which he has been nominated. If confirmed, Mr. Connor will lead efforts that dramatically impact every corner of this country – from coastal to inland to rural communities. All of these regions have unique water challenges – from navigation, to flood control, to ecosystem restoration – managed by the Corps. If confirmed, Mr. Connor will also have to balance a wide range of complex and critical interests.... And, he must meet all those demands with limited resources. Due to the persistent underfunding in recent years, the backlog of authorized – but not completed projects – has grown to \$109 billion. That is more than 15 times the agency's annual operating budget, and that should concern all of us. The Corps shares the responsibility for water infrastructure investments with state and local governments, and this shortfall is clear evidence that the federal government has not been holding up our end of the bargain for some time."

In her opening remarks, Ranking Member Shelley Moore Capito (R-WV) stated that she was "very concerned about this administration's recent decision to repeal and replace the 2020 Navigable Waters Protection Rule, as well as the lack of transparency in the decision-making process and the rationale provided by the Corps and the EPA. Underpinning the administration's decision were several assertions that have yet to be substantiated by evidence of practical environmental harm. Instead, the absence of federal jurisdiction is cited as de facto evidence of environmental harm. It also remains unclear which stakeholders were consulted prior to making this decision."

Connor echoed statements by EPA officials that the "...goal would be to have a clear rule that has enough level of input that hopefully we can get out of this litigation cycle and move on with a rule that will be in place for a number of years."

ORGANIZATIONS/WATER RESOURCES **Instream Flow Council/Water Levels**

For nearly two decades, instream flow conservation principles were provided under the direction of the federal Cooperative Instream Flow Service Group (CIFSG) in Fort Collins, Colorado. Since that group ceased to exist in 2001, no substitute centralized source of training and support services for instream flow and water level conservation studies has been readily available. As a result this interdisciplinary water conservation field has been losing focus, potentially leading to diminished credibility when it comes to quantifying the effects of water uses, management and research on instream flows and water levels to protect fish, wildlife, and habitat.

The Instream Flow Council and American Fisheries Society are addressing his concern through a multi-state conservation grant project that will determine the need for, feasibility of, and path forward for establishing a new instream flow and water level conservation training center (National Center). A questionnaire to identify interest in and the level of support for such a National Center is being circulated, and WSWC members are encouraged to participate and share the survey. It should take about 10 minutes to complete and will remain open and active until Friday, August 6. Please note you have a choice to self-identify as a representative of an agency, business, organization, or just as a individual. You may find that you fall into more than one of the categories, and you may choose to repeat the survey from another position or perspectives, but please do not repeat responses under the same category. See questionnaire: <https://www.surveymonkey.com/r/InstreamFlowLevelsTrainingCenter>.

MEETINGS

WestFAST Webinar - Forest Resilience Bond

On Thursday, July 22 at 10:00 am (MDT), WestFAST will host a webinar entitled: "Forest Resilience Bond." The focus is on the use of a bond to fund a forest restoration project on the Tahoe National Forest in California's North Yuba River watershed. Presenters will include: Jim Gebhardt, Director, Environmental Protection Agency's Water Infrastructure and Resiliency Finance Center; Zach Knight, co-Founder and CEO, Blue Forest; and Willie Whittlesey, General Manager, Yuba Water Agency. For further information see: <https://westernstateswater.org/upcoming-westfast-webinars/>.

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.