



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY

Groundwater/Maui Guidance

On July 19, the National Groundwater Association (NGWA) wrote Environmental Protection Agency (EPA) Assistant Administrator for Water Radhika Fox urging EPA to rescind the January 2021 post-*Maui* guidance regarding National Pollutant Discharge Elimination System (NPDES) permits for discharges to groundwater. "Rescinding the guidance memorandum will eliminate the challenges and possible confusion created now for states that already have dischargers applying for permits and renewals based on the guidance memorandum."

The letter reiterates NGWA's previous comments on EPA's guidance memorandum, finding the guidance too vague to implement and lacking sufficient input from stakeholders: "As a statement of EPA policy, EPA's memorandum falls well short of providing 'focused guidance' to the states, industries that generate point source pollutants that may be discharged to groundwater and travel to waters of the United States, and consultants who may assist states and industry in addressing this pollution. No guidance, focused or otherwise, is provided for a point source discharger or its regulatory authority to determine whether a consistent and predictable pollutant discharge through groundwater and reaching waters of the United States should initiate permit action. Thus, through this guidance memorandum, EPA maintains the status quo, and potentially creates confusion amongst stakeholders, to the detriment of state water managers needing to deal with situations in which groundwater serves as a conduit for surface-water pollution. As guidance, no useful direction is provided to potential dischargers or to state regulators on how to evaluate their individual sites and implement consistent decisions that are protective of the environment and aligned with the intent of the guidance. Decisions about applicability of the Supreme Court decision should be based on the pollutants of the wastewaters involved and the science and engineering principles for pollutant fate and transport applied to individual sites, regardless of the facility type."

NGWA invited EPA to participate in its Annual Forum on September 27-29 in Salt Lake City, Utah, as well as its virtual Groundwater Summit on December 7-8. Sessions will include discussions with state regulators on

(functional equivalence) determinations, technical and science-based factors, and practical tools. <https://smartwaterpolicies.com/npdes-permitting>

CONGRESS/ADMINISTRATION

Nominations/Corps of Engineers

On July 14, the Senate Environment and Public Works Committee held a hearing on the nomination of Michael Connor to be Assistant Secretary of the Army for Civil Works at the Department of Defense. Connor, both an engineer and a lawyer, noted that his personal background would also inform his views in his responsibilities at the Corps. "I grew up in New Mexico, a state rich in natural resources, with the exception of water." He noted the importance of water infrastructure in agricultural areas and protecting tribal water rights as well as cultural and recreational resources. He said: "Of course, the Corps cannot be successful on its own, and my years of public service have reinforced the importance of collaboration. I commit to this task with a sense of humility and a keen understanding of the need to work with state and local leaders, the public, affected stakeholders, and members of Congress to most effectively carry out the Corps' mission. I am equally committed to increasing coordination within the federal government, a whole of government approach that is more effective and efficient in addressing the effects of a changing landscape across the country."

Senator Shelley Capito (R-WV) asked Connor what challenges the Corps faces with regard to the Waters of the U.S. regulation. Connor said: "Well, the rule...has changed so many times over the years that I am not sure the challenges are going to be any different. We need to have a clear definition of waters of the U.S., one that is protective, as it should be, under the Clean Water Act, but one that provides clarity..." He said the current goal was to work closely with the affected parties, with stakeholders, and to have sufficient input and collaboration to get out of the litigation cycle. He said that would do the most "to help the Corps in its permitting ability and its responsibilities for making jurisdictional determinations if we have some clarity and we have some longevity to the next rule."

Senator Kevin Cramer (R-ND) asked about the Corps' withdrawal of the Water Supply rule, noting that

“...when it comes...to messing with States’ water rights, we in the west get pretty serious and pretty united.” He mentioned Section 1 of the Flood Control Act of 1944 and Section 301 of the Water Supply Act of 1958, “which expressly reinforced States’ rights and reinforced historic policy of deferring to State water rights.”

Connor responded that he was not familiar yet with the specifics of the withdrawn Water Supply Rule, but said, “...the acts you just referenced are the same as Section 8 of the Reclamation Act. So I am used to working under that regime.” He said he’s very sensitive to the concerns raised and that there can’t be progress on something already rejected. He agreed to work with Cramer on ensuring that Corps facilities have the “maximum multiple beneficial purposes” and finding support for solutions that allow water resources to be allocated, particularly in light of the west-wide drought.

Senator Alex Padilla (D-CA) asked about forecast informed reservoir operation and the need to update water control manuals in light of the increasing variability in precipitation and drought. Connor said: “I absolutely agree that looking at resiliency, looking at a changing environment, that improved forecasting, monitoring, operations, is absolutely critical. We have been operating under rules that were developed in a time where the environment no longer reflects the assumptions that were made in putting together those rules. This was a discussion that we had with the Corps when I was at the Bureau of Reclamation, Department of the Interior. It is obviously continuing. I think this is a great place to get the most bang for the buck, making the investments in those technologies, forecasting and monitoring, so that we can integrate those in operations, improve water supply or protection of communities, if we can better forecast those extreme events, and make progress while we are looking through the whole array of solutions that have to be in place. Some of those are infrastructure; a lot of them are natural infrastructure. But we can’t forget technology and our ability to manage water using information.”

CONGRESS/WATER QUALITY **PFAS**

On July 21, the House passed the PFAS Action Act (H.R. 2467) by a vote of 241-183, with 23 Republicans joining the Democrats in support of the bill. The bill directs the EPA to designate certain per- and polyfluoroalkyl substances (PFAS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), with a five-year timeframe to evaluate all other PFAS. The bill also directs EPA to determine whether PFAS should be designated as toxic pollutants under the Clean Water Act, and if so, to establish standards to limit PFAS discharges from industrial sources into waters of the United States. The bill authorizes \$200M a year for

FY2022-26 to develop CWA guidelines and standards. It also directs other PFAS-related actions, including national drinking water regulations, adding them to the list of hazardous air pollutants, testing them for toxicity to human health, and regulating disposal of PFAS materials. It provides cost-share grants to assist eligible community water systems treat PFAS-contaminated waters, and authorizes \$500M a year for FY2022-26 to carry out the grant program. The bill directs EPA to establish a household well water testing website to assist home owners, and authorizes \$1M for FY2022. The bill also directs EPA to require covered PFAS manufacturers to submit analytical reference standards.

MEETINGS

WestFAST Webinar - Wild and Scenic Rivers

On August 11, at 10:00 am (MDT), WestFAST will host a webinar on the Wild and Scenic River Act. The National Wild and Scenic Rivers (WSR) System was created by Congress in 1968 (Public Law 90-542; 16 U.S.C. 1271 et seq.) to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. The Act is notable for safeguarding the special character of these rivers, while also recognizing the potential for their appropriate use and development. It encourages river management that crosses political boundaries and promotes public participation in developing goals for river protection. This webinar will focus on the Act itself and the role of the WSR Coordinating Council. Steve Chesterton, Wild and Scenic Rivers Program Manager, USDA Forest Service will present. For further information see: <https://westernstateswater.org/events/wild-and-scenic-river-act/>.

PEOPLE

On July 26, Governor Doug Burgum appointed **Andrea Travnicek** to lead North Dakota’s Department of Water Resources. The state legislature passed HB1353 earlier this year making the Department of Water Resources the primary state water agency, replacing the State Water Commission on August 1. The legislation also reorganized the Office of State Engineer, which will be overseen by the Department of Water Resources. Travnicek previously worked at the Department of the Interior as the Principal Deputy Assistant Secretary of Water and Science, overseeing the Bureau of Reclamation, as well as a senior policy advisor for natural resources in the North Dakota Governor’s Office from 2010 to 2016 under then-Governors John Hoeven and Jack Dalrymple. Most recently, she served as the Parks and Recreation Director. Burgum said: “Andrea’s deep background in natural resources and broad experience as an agency leader at the state, federal and international levels will serve the water stakeholders and citizens of North Dakota well.”

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.