



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY

Clean Water Act – Section 401 State Certifications

On August 19, EPA Assistant Administrator Radhika Fox and Acting Assistant Secretary of the Army (Civil Works) Jaime Pinkham issued a memorandum to EPA Regional Administrators in Regions 1-10, addressing implementation of the 2020 Clean Water Act Section 401 Certification Rule (85 FR 42210). “States, tribes and stakeholders have expressed significant concerns over implementation of the 2020 Rule as applied to the Corps’ Section 404 permits, including but not limited to: the length of the reasonable period of time; procedural deficiencies identified in federal agency review; and the length of the neighboring jurisdiction process. Additionally, EPA and Army have highlighted a need for national direction on various implementation topics and challenges.”

The memorandum focuses on concerns related to nationwide permits (NWP). With regard to the 41 NWPs proposed in September 2020 and not yet finalized, “...the Corps will extend the reasonable period of time to the one-year statutory maximum for certification on the remaining 41 NWPs. Although the Corps’ regulatory default 60-day reasonable period of time has passed...neither the Corps’ nor EPA’s regulations limit the Corps to granting extensions only before the end of the regulatory default reasonable period of time.”

The Corps will send notifications to certifying authorities with the new certification deadline, anticipating that the extension will provide further opportunities for cooperation. “During the extended reasonable period of time, certifying authorities may clarify conditions and/or remedy any procedural deficiencies in their certifications previously identified by the Corps that might have resulted in a waiver of a condition(s) or the certification itself, or a determination to decline to rely on the certification by the Corps. Certifying authorities that do not want to take the opportunity to issue a new or revised certification during the extended reasonable period of time may confirm their earlier certification affirmatively by sending confirmation to the Corps prior to the expiration of the extended reasonable period of time. The previous certification decisions will govern in the absence of an updated

certification or affirmative confirmation; inaction will not waive certification.”

The memorandum acknowledges prior implementation issues with the application of 33 CFR 330.4(c)(2), and notes that Corps field staff should contact Corps headquarters, which “will coordinate any issues which require policy-level decisions or interpretations with Army and EPA HQ.”

ADMINISTRATION/WATER RESOURCES

Bureau of Reclamation - Applied Science Grants

On September 2, the Bureau of Reclamation (USBR) announced the selection of 20 projects to share \$3.1M in applied science grants to develop tools and information to support water management decisions. These projects include improved water data, modeling and forecasting capabilities. The Western States Water Council was selected for a \$200,000 grant to continue developing its Western Water Rights and Aggregate Water Use Data Access and Analysis Tool (WestDAAT), moving it from a prototype to full functionality.

The other selected projects and anticipated grants are as follows: (1) \$155,015 for the Salt River Project Agricultural Improvement and Power District to develop a real time reservoir operations model for the Salt and Verde Rivers in Arizona; (2) \$200,000 for the California Water Data Consortium to enhance and expand an open-source water accounting platform to serve as a baseline groundwater accounting and tracking tool available to groundwater sustainability agencies across California; (3) \$200,000 for the Lawrence Livermore National Laboratory to improve recharge monitoring for enhanced conjunctive management of ground and surface water in California; (4) \$200,000 for the Grand Mesa Water Users Association to produce digitized capacity surveys for 50 reservoirs in Colorado; (5) \$97,822 for the University of Kansas to develop a procedure for incorporating climate uncertainty into the water allocation process; (6) \$119,009 for the Montana Department of Natural Resources and Conservation to develop a modern hydrologic toolset to forecast water supply conditions, enhance water management decisionmaking, and inform drought planning efforts; (7) \$200,000 for the Nebraska Department of Natural

Resources to implement the fourth phase of the development for Platte River Decision Support System (DSS) to better utilize unappropriated water given increasing climate variability; (8) \$199,985 for the Southern Nevada Water Authority to create a Quantitative Microbial Risk Assessment (QMRA) model that pathogen exposure in municipal drinking water; and (9) \$195,050 for the New Mexico Bureau of Geology to improve water data access in the middle Rio Grande region of New Mexico.

The remaining projects and funding include: (10) \$154,781 for the Norman Utilities Authority to develop a Predictive Lake Level Optimization Tool (PLOT) for the Lake Thunderbird watershed in Oklahoma; (11) \$135,469 for Oklahoma State University to quantify agricultural water use across the Upper Red River Basin by combining geospatial analyses, remote sensing techniques, and ground truthing; (12) \$48,000 for the Big Bend Conservation Alliance to establish a common data management software platform in the region enabling them to share data on shared aquifers and to provide for better coordination of region-wide water management goals in Texas; (13) \$107,497 for Texas A&M University-Kingsville to develop an intuitive web-based tool for efficient simulation of post-wildfire hydrologic changes by integrating remotely sensed data in a hydrologic model; (14) \$199,656 for the University of Texas at Arlington to adapt and assess ensemble forecast products from the National Weather Service to support operational decisions at a system of reservoirs in the Brazos River Basin; (15) \$134,518 for the Utah Geological Survey to establish a network of high-quality eddy covariance flux stations in Utah, including new and existing stations to provide ground-based evapotranspiration estimates; and (16) \$129,675 for the Utah State University to develop an improved seasonal forecast that will be disseminated via a web interface supported by the Utah Climate Center; (17) \$199,977 to Social and Environmental Entrepreneurs, a nonprofit organization that sponsors the California Data Collaborative, to develop the California Urban Water Efficiency Data Platform in collaboration with its member agencies, which include local and regional municipal water suppliers; (18) \$58,000 for the Stockton East Water District, Eastside Groundwater Use Measurement Project, to develop groundwater pumping and recharge volumes using proven, remote sensing techniques, based on evapotranspiration (ET) estimation from NASA's Landsat satellite imagery; and (19) \$200,000 for the Southwest Research Institute, located in San Antonio, Texas, to work with the Middle Pecos Groundwater Conservation District and Reeves County Groundwater Conservation District to conduct a geochemical and statistical analysis to improve understanding of the hydrology of two interconnected spring systems in west Texas, the San Solomon Springs in Balmorhea, and Comanche Springs in Fort Stockton. To view a complete description of all the selected

projects, see: <https://www.usbr.gov/watersmart/applied-science/docs/2021/fy21-applied-science-grants-project-descriptions.pdf>.

LITIGATION/WATER QUALITY **Arizona/WOTUS**

On August 30, the Arizona U.S. District Court vacated the 2020 Navigable Waters Protection Rule and remanded the rule to the Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) for reconsideration. (*Pasqua Yaqui Tribe, et al., v. EPA et al.*, 20-cv-00266.) The EPA and the Corps requested voluntary remand consistent with Executive Order 13990, which directed the agencies to review recent regulations to ensure they are consistent with the new Administration's policies. "Courts generally grant a voluntarily requested remand unless 'the agency's request is frivolous or made in bad faith.' Here, there is no indication in the record that the Agency Defendants' request for voluntary remand is frivolous or made in bad faith." While the agencies did not request vacatur of the 2020 rule, the plaintiffs argued that the remand must "include the usual remedy of vacatur to prevent significant, irreversible harms." The court weighed the seriousness of the possible environmental harm and the consequences of an interim return to the pre-2015 regulatory regime, and determined that remand with vacatur was the appropriate remedy. The decision marks a difference from the remand without vacatur ordered by the South Carolina U.S. District Court on July 15. (*South Carolina Coastal Conservation League, et al., v. EPA et al.*, 20-cv-01687.)

MEETINGS

WGA - Working Lands, Working Communities

A series of workshops on Western Governors' Association (WGA) Chair and Idaho Governor Brad Little's initiative, *Working Lands, Working Communities*, will be held beginning in Utah on September 29-30, hosted by Governor Spencer Cox, and in Colorado on October 7-8, hosted by Governor Jared Polis. WGA will convene federal, state and local policymakers and stakeholders at the workshops to discuss emerging issues, share success stories, and provide a forum for the development of bipartisan strategies to support western communities seeking to improve cross-boundary management of lands, mitigate wildfire risk and restore ecosystems.

Due to ongoing COVID-19 concerns, the workshops will not be open to the general public for in-person attendance. Instead, they will be live streamed by WGA. For further information, including how to register for the live stream, see: <https://westgov.org/news/article/register-to-watch-livestream-of-working-lands-working-communities-workshops-in-utah-colorado>.

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.