



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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

On December 7, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) published their proposed rule, Revised Definition of the “Waters of the United States” (WOTUS) in the *Federal Register* (86 FR 69372). Public comments are due February 7, 2022 (See WSW #2479). “In this proposed rule the agencies are exercising their discretionary authority to interpret [WOTUS] to mean the waters defined by the longstanding 1986 regulations, with amendments to certain parts of those rules to reflect the agencies’ interpretation of the statutory limits on the scope of [WOTUS] and informed by Supreme Court case law. Thus, in the proposed rule, the agencies interpret the term ‘waters of the United States’ to include: Traditional navigable waters, interstate waters, and the territorial seas, and their adjacent wetlands; most impoundments of ‘waters of the United States’; tributaries to traditional navigable waters, interstate waters, the territorial seas, and impoundments that meet either the relatively permanent standard or the significant nexus standard; wetlands adjacent to impoundments and tributaries, that meet either the relatively permanent standard or the significant nexus standard; and ‘other waters’ that meet either the relatively permanent standard or the significant nexus standard.”

The proposed rule adds, “The ‘relatively permanent standard’ means waters that are relatively permanent, standing or continuously flowing and waters with a continuous surface connection to such waters. The ‘significant nexus standard’ means waters that either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of traditional navigable waters, interstate waters, or the territorial seas (the ‘foundational waters’). With these amendments to the 1986 regulations, the proposed rule is within the proper scope of the agencies’ statutory authority and would restore and maintain the chemical, physical, and biological integrity of the nation’s waters.”

The proposed rule would replace the Navigable Waters Protection Rule (NWPR), vacated by a federal district court on August 30. The agencies found that the NWPR’s test for jurisdiction on the basis of the “relatively

permanent” standard “did not adequately address the impacts of degradation of upstream waters on downstream waters,” and while easier to administer, did not meet the Clean Water Act’s objectives. “The proposed rule’s limits appropriately draw the boundary of waters subject to federal protection by ensuring that where upstream waters significantly affect the integrity of waters and the federal interest is indisputable – the traditional navigable waters, interstate waters, and territorial seas – Clean Water Act programs would apply to ensure that those downstream waters are protected. And where they do not, the agencies would leave regulation to the states and tribes. The proposed rule’s relatively permanent and significant nexus limitations are thus based on the agencies’ conclusion that together, those standards are consistent with the statutory text, advance the objective of the Act, are supported by the scientific record and Supreme Court case law, and appropriately consider the policies of the Act. In addition, because the proposed rule reflects consideration of the agencies’ experience and expertise, as well as updates in implementation tools and resources, it is familiar and implementable.”

### **ADMINISTRATION/WATER RESOURCES** **Bureau of Reclamation/Water Supply Forecasts**

The Bureau of Reclamation (USBR) is launching a prize competition to improve snowpack and water supply forecast techniques throughout the West. Developing better techniques to determine the amount of water stored as snowpack provides water managers more accurate information to make better water management decisions. This competition is divided into two tracks. In track one, participants develop a model and calibrate it using historical information. The effectiveness and accuracy of the test model will be evaluated during the winter and spring using real-time snowpack measurements. For track two, models in the first track are eligible to submit a report that discusses their solution and approaches to solving the problem in track one. Reclamation is partnering with the Bonneville Power Administration, NASA - Goddard Space Flight Center, Corps of Engineers, USDA - Natural Resources Conservation Service, U.S. Geological Survey, National Center for Atmospheric Research, DrivenData, HeroX, Ensemble and NASA Tournament Lab. <https://www.usbr.gov/research/challenges/swe.html>

## National Levee Safety Program

The Corps and Federal Emergency Management Agency (FEMA) have initiated a partnership to develop a new National Levee Safety Program and to lead a national discussion and develop an integrated framework for managing reliable levee systems and improving community resiliency in areas behind all levees throughout the Nation. According to Phoebe Percell, Chief of the Corps' Dam & Levee Safety Branch, "Over the next two years as we develop the major components of this program, collaboration with stakeholders will be key to the program's continued success. The list of stakeholders for this program is long and includes states, tribes, local communities, emergency managers, and flood plain managers. The goals for our stakeholder engagement process include: (1) understanding the needs of the stakeholders; (2) providing opportunities for meaningful input to shape decisions and outcomes on program design, components, and products; and (3) ensuring that the unique challenges of disadvantaged communities and tribes are well understood and incorporated into solutions."

Stakeholder engagement activities will be conducted in three phases. Phase one lasts from now until March 31, 2022, and will be focused on understanding stakeholder needs and best practices for levee design, management, community resiliency, etc. Further, it will consider different roles and responsibilities, as well as what data and resources will be needed to build a common understanding of levee benefits and risks. This initial scoping phase will collect and analyze the feedback received, before developing additional options and approaches for the program's key components, including: (1) National Levee Safety Guidelines; (2) a National Levee Database and Data Collection; and (3) Integrated Levee Management.

This is an opportunity to make progress in promoting consistent national approaches for flood risk management across the country. In-person meetings in the West will be held on: January 18, 2022 in Portland, Oregon; January 20, in Sacramento, California; and on February 3, in Houston, Texas. All the meetings will be from noon until 5:00 pm (local time). Virtual webinars will begin in February. For further information please see: [www.leveesafety.org](http://www.leveesafety.org).

## WATER RESOURCES/WATER RIGHTS

### **New Mexico/Pecos River/Priority Administration**

On December 3, New Mexico State Engineer John D'Antonio ordered priority administration of groundwater and surface water in the Lower Pecos River Basin Water Management District. The order notes that the Pecos River Stream Adjudication is progressing slowly, but with ongoing drought, the need for administration of water rights is urgent. The Office of the State Engineer (OSE)

received a call by an irrigation company to administer rights by priority in March 2021, and the 7-page order lays out the procedures for administering rights by priority in the Pecos River Basin. The order notes that the OSE "encourages alternative administration or shortage sharing agreements in lieu of strict curtailment..." The order also provides for the development of a generalized hydrologic analysis to facilitate approval of water replacement plans that are available for temporary approval of water transfers during priority administration to offset depletions from out-of-priority diversions to prevent impairment of senior water rights. The order provides for expedited application reviews for marketing or leasing of water rights. <https://www.ose.state.nm.us/Orders/SO/SE%20ORDER%20191%20PRIORITY%20ADM%20%2012%203%2021.pdf>

## PEOPLE

Montana Governor Greg Gianforte has appointed **Anna Pakenham Stevenson**, Administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), and **Amy Steinmetz**, Administrator, Water Quality Division, to the WSWC. **Jay Weiner**, Administrative Law Judge, (DNRC), will continue to serve as alternate member. We welcome Anna and Amy and look forward to working with them.

## Wyoming

Wyoming Governor Mark Gordon has appointed **Jeff Cowley**, Administrator, Interstate Streams, OSE, to the WSWC. He also appointed **Jennifer Zygmunt**, Interim Administrator, Water Quality Division, Department of Environmental Quality, as an alternate member. **Chris Brown**, Senior Assistant Attorney General, Attorney General's Office, and **Todd Parfitt**, Director, Department of Environmental Quality will continue to serve on the WSWC as full members. Welcome Jeff and Jennifer.

Governor Gordon also announced the appointment of **Brandon Gebhart** as Interim State Engineer, following the resignation of **Greg Lanning** after serving two years. Brandon is currently the Director of the Wyoming Water Development Commission (WWDC). **Jason Mead** will assume Gebhart's duties as Interim WWDC Director. Jason was the Deputy Director of the Dam and Reservoir Division at the WWDC.

## Upper Colorado River Commission

The Upper Colorado River Commission (UCRC) has named **Chuck Cullom** as its new Executive Director and Secretary. Chuck will be responsible for leading UCRC staff in carrying out the policies, directives, and authorizations of the UCRC Commissioners. Chuck replaces **Amy Haas**, who accepted an Executive Director position with the Colorado River Authority of Utah.

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**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.**