



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS/WATER RESOURCES

Colorado/Drought/Wildfire

On January 7, President Joe Biden visited Colorado to view the devastation from the Marshall fire. On December 30, Governor Jared Polis (D-CO) declared a state of emergency as grass fires in Boulder County driven by hurricane force wind gusts eventually burned some 6200 acres and destroyed around 1000 structures. The Governor's declaration provided access to state disaster emergency funds. On December 31, President Biden ordered the Federal Emergency Management Agency (FEMA) to supplement state and local recovery efforts. On January 3, the National Interagency Fire Center (NIFC) reported that the Marshall Fire was 74% contained. On January 5, Governor Polis' administration provided a joint update on the fire recovery efforts, emphasizing resources available to tens of thousands of Coloradans impacted by the loss of homes, businesses, and community gathering places. See <https://www.colorado.gov/governor/news>; <https://www.whitehouse.gov/briefing-room/statements-releases>.

Residents were advised to boil water, as water utilities lost water pressure and power and are investigating whether the water system was damaged and contaminated by the fire. (*E&E News* 1/6/21) Ironically, investigation and recovery efforts have subsequently been hampered by several inches of snow. In addition to high winds, dry conditions contributed to the grass fire's spread. Front Range precipitation over the last half of 2021, measured at Denver International Airport, was 1.2 inches (less than the 1.91 inches at Death Valley National Park). The recent snows have done little to change the current drought outlook.

ADMINISTRATION EPA/WOTUS

On January 4, the WSWC and Association of State Wetland Managers (ASWM) sent a joint letter to Environmental Protection Agency (EPA) Administrator Michael Regan, Assistant Administrator Radhika Fox, and Assistant Secretary of the Army (Civil Works) Michael Connor requesting co-regulator meetings in the development of the second rulemaking to define the "Waters of the United States" (WOTUS). The letter

notes that WOTUS "is a significant water policy issue that affects our member states and members in diverse ways, raising unique concerns in arid states where water is scarce." The letter acknowledged that the agencies previously expressed interest in such co-regulator meetings with the states. "We would like to propose that EPA and the Corps reach out to the governors to invite them or their designees to participate in a future workshop or workshops focused on regional challenges given the differences in climate, geography, hydrology, and legal doctrines that are constraints to water, wetlands, and water quality administration, in advance of initiating the second rulemaking process." The letter noted that, at a similar meeting held with the agencies in 2018, "...those designated to participate by the governors included not only state water quality and wetlands managers but also representatives from state departments of agriculture, and agencies responsible for allocating and administering water rights, which in the West are often vested property rights." The WSWC and ASWM expressed their willingness to assist in organizing co-regulator meetings. "We appreciate your consideration and outreach to the States as co-regulators and sovereigns, and not simply as stakeholders or members of the general public."

Infrastructure

On January 4, White House Infrastructure Coordinator Mitch Landrieu wrote governors encouraging them to appoint their own infrastructure implementation coordinators and create infrastructure task forces modeled after the federal task force. "We know that needs, capacity, and challenges can vary widely by locality. We need to make sure our programs reflect these realities across your state and our country, and having a senior, single point of contact in your office will help ensure that issues get elevated appropriately and rapidly." The Office of Management and Budget (OMB) and federal task force will be releasing formal guidance and policies later this month. They are also preparing a guidebook for state and local governments. "The President has been clear in his charge to me: make sure these programs get implemented without unnecessary bureaucracy and delay to rebuild America's infrastructure - while at the same time being good stewards of taxpayer dollars and working to achieve goals around creating

good middle-class jobs, supporting disadvantaged and underserved communities, advancing climate resilience and sustainability, and investing in American manufacturers.” See WSW #2479; CNN 1/4/22.

Land and Water Conservation/30x30

On January 4, the Department of the Interior (DOI) published in the *Federal Register* (87 FR 235) a Request for Information to guide Interagency Efforts to Develop the American Conservation and Stewardship Atlas (Atlas). President Biden's Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, included a provision for the conservation of “at least 30 percent of U.S. lands and waters by 2030.” Last May, the DOI, U.S. Department of Agriculture (USDA), the National Oceanic and Atmospheric Administration (NOAA), and the Council on Environmental Quality (CEQ), developed and released a report, *Conserving and Restoring America the Beautiful*, with eight core principles and six areas of focus for locally-led collaborative efforts. The *Federal Register* notice said: “The report specifies that an interagency working group will develop an Atlas through interagency collaboration to develop and track a clear baseline of information on lands and waters that are conserved or restored. The Atlas is intended to be an accessible, updated, and comprehensive tool through which to measure the progress of conservation, stewardship, and restoration efforts in a manner that reflects the goals and principles of the initiative.”

The agencies are requesting input on: (1) data sources and standards that would ensure the Atlas is an authoritative and useful tool; (2) stewardship activities beyond permanent protections to reflect an accurate picture of conservation; (3) attributes of lands and waters that should be included (e.g., clearly defined boundaries, status of ecological functions, representation of species and habitats, extent of disturbance, expected future risks from climate change or other human stressors, ecosystem connectivity, or durability of management status); (4) how the Atlas can best reflect the contributions of state, local, tribal, territorial, and private lands; and (5) how the Atlas can best reflect land and water contributions to biodiversity, climate change mitigation and resilience, and equitable access to nature and its benefits. The interagency group will host virtual public listening sessions on January 13, 19, and 21. Comments are due March 7. <https://www.doi.gov/news>

CONGRESS/WATER RESOURCES **Corps of Engineers/WRDA 2022**

On January 12, the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment will host a hearing on

Proposals for a Water Resources Development Act (WRDA) of 2022: Administration Priorities. Witnesses will include Michael L. Connor, Assistant Secretary of the Army (Civil Works) and Lieutenant General Scott A. Spellmon, U.S. Army Corps Chief of Engineers. Committee staff have proactively reached out through bipartisan discussions on project priorities and policy proposals, while recognizing ongoing implementation WRDA 2020 policy changes. On January 4, WSWC staff and other state and local government representatives which indicated that they would leave specific project recommendations to their respective members. Among the policy considerations raised by the participants were: (1) expanding the Army Corps of Engineers (Corps) Water Infrastructure Financing Program (CWIFP) beyond dam safety - as already authorized; (2) directing the Corps to work more closely with the western states on water supply and prior appropriation considerations; and (3) continuing work on data needs and forecast informed reservoir operations with more flexible rule curves.

WATER QUALITY **Abandoned Mines**

On December 9, the Arizona Department of Environmental Quality (ADEQ) completed a report on how other western states are dealing with legacy hardrock mining operations, in order to understand and learn from their experiences. ADEQ surveyed its sister state agencies in Colorado, Idaho, New Mexico, Nevada, Oregon, and Utah to understand: (1) how they identify and rank abandoned mine land (AML) sites for public health and the environmental risk factors; (2) the state and federal funding mechanisms in place to develop the tools, personnel, and engineering services needed to implement and sustain remediation efforts; and (3) efforts to coordinate between state and federal agencies, and private sector stakeholders.

ADEQ has identified several sites impacting surface water quality and has been strategically working to remediate the effects. The report noted the great interest among the surveyed states, but found a “dramatic variation to the structure of the organizations addressing AML sites, the number of employees and their responsibilities, as well as the activities accomplished internally with staff and externally with vendors, state and federal partners and other stakeholders.” Typical challenges to remediation included: weather; site access; Endangered Species Act considerations; Clean Water Act permitting; limited funding; collaboration among private and government property owners with varying priorities; potential liabilities and lack of good Samaritan protections; realistic load reduction targets in highly mineralized and mined areas; and a lack of dedicated staff. For a copy of the report contact the Council's office.

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.