



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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

On January 11, the Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) announced two webinars specifically for state and local officials and association staff, on January 24 and 27. The agencies will provide an overview of the proposed rule to codify the pre-2015 definition of "Waters of the United States," updated to reflect their interpretation of Supreme Court decisions, also known as Rule 1. This will be followed by their findings from the federalism consultation in 2021. The agencies will then host regional breakout rooms to discuss details of the proposed rule and areas of interest. Specific topics for discussion include: (1) implementation of the relatively permanent standard; (2) implementation of the significant nexus standard; (3) how to delineate the extent of interstate waters; (4) whether interstate waters should include waters that cross or form tribal boundaries; (5) implementation of jurisdiction over "other waters," and what "other waters" are commonly found in each state/region; (6) exclusions; and (7) whether any NPDES permits, TMDLs, 303(d) listings, or water quality standard revisions occurred as a result of the 2020 Navigable Waters Protection Rule, for purposes of the economic assessment.  
<https://www.epa.gov/wotus/federalism-consultation-pre-proposal-revised-definition-waters-us>

### **EPA/Groundwater**

On January 11, EPA announced several actions to advance its commitment to protect groundwater from coal combustion residuals (CCR) contamination. A 2015 rule that allowed unlined impoundments to continue receiving coal ash unless they leak and classified clay-lined impoundments as lined and able to operate indefinitely, was partially vacated by the D.C. Circuit Court in 2018. In 2020, EPA published a final rule (85 FR 53516) establishing closure dates for unlined surface impoundments, and amending the annual groundwater monitoring requirements. The regulations required approximately 500 unlined impoundments to stop receiving waste in April 2021. EPA received and reviewed 57 applications from facilities requesting deadline extensions, including facilities in Arizona, Nebraska, Texas, Utah, and Wyoming.

"Today's actions advance the agency's commitment to protecting groundwater from coal ash contamination and include: (1) proposing decisions on requests for extensions to the current deadline for initiating closure of unlined CCR surface impoundments; (2) putting several facilities on notice regarding their obligations to comply with CCR regulations; and (3) laying out plans for future regulatory actions to ensure coal ash impoundments meet strong environmental and safety standards. EPA is committed to working with states to ensure robust protections for communities." EPA said it would continue to review state-level CCR program applications to ensure they are as protective of federal regulations. See <https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation>.

### **CONGRESS/WATER RESOURCES** **WRDA 2022**

On January 12, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment and the Senate Committee on Environment and Public Works both held hearings regarding the Administration's priorities and proposals for the 2022 Water Resources Development Act (WRDA), and the implementation of water infrastructure projects. Witnesses included Michael Connor, Assistant Secretary of the Army for Civil Works; and Lieutenant General Scott Spellmon, Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers (Corps).

Connor said: "The infrastructure that the Army maintains includes 13,000 miles of coastal navigation channels (including the channels of the Great Lakes), 12,000 miles of inland waterways, 715 dams, 241 locks at 195 navigation sites, 14,700 miles of levees, and hydropower plants at 75 locations with 353 generating units. These projects help provide risk reduction from flooding in our river valleys and along our coasts, facilitate the movement of approximately two billion tons of waterborne commerce, and provide up to 24% of the Nation's hydropower. Much of the water resources infrastructure that the Army Corps owns and operates was constructed over 75 years ago and will require significant investments to maintain." Connor said the Corps is working with the Office of Management and Budget to finalize a proposed rule to implement the Water Infrastructure Finance and Innovation Act (WIFIA)

program to support investment in maintaining, repairing, and upgrading non-federal dam safety projects. "The FY2021 Appropriations Act included \$12M for a credit subsidy, and \$2.2M for program administration and a loan volume limit of \$950M."

Connor described progress on developing a durable definition of "Waters of the United States" with EPA. He noted that in November 2021, the Corps lifted its temporary pause on finalizing Clean Water Act (CWA) §404 permit decisions, and is working on the backlog of jurisdictional determinations. "The Army will also coordinate with certifying authorities on water quality certifications that are potentially impacted by the recent vacatur of the 2020 CWA §401 rule by the United States District Court for the Northern District of California."

Spellmon acknowledged: "Less than four years ago, the Army received a significant infusion of capital from the 2018 Bipartisan Budget Act (\$17.4B), which was followed 16 months later by the 2019 Disaster Relief Act (\$3.26B). These supplemental appropriations will allow the Army to help reduce flood and coastal storm risks in communities across the Nation, as well as address damages to existing projects. The program has also received several consecutive years of record-high annual appropriations in FY2018-21 (spanning from \$6.830B to \$7.795B). Within the past several months, the Congress also passed the Disaster Relief Supplemental Appropriations Act of 2022 (\$5.711B) and the Infrastructure Investment & Jobs Act (\$17.089B), representing well over \$22B for additional Corps investments. This funding provides the Army with a once-in-a-generation window of opportunity to deliver water resource infrastructure programs and projects that will positively impact the lives of our communities across the Nation. Additionally, these funds will be used to maintain our existing Corps infrastructure to ensure that its key features remain operational while continuing to provide benefits to the Nation."

During the Senate Environment and Public Works hearing, Senator Kevin Cramer (R-ND) thanked Spellmon for the rescission of both the Surplus Water Rule and the Real Estate Policy Guidance #26, noting that both infringed on states' rights and authority to appropriate water. "With that in mind, as we pursue a new WRDA, I think we should consider setting up some sort of a venue or a commission that would allow states to have a platform to discuss and sort these issues out with the Corps. It would provide North Dakota and other Western States with a forum to bring localized problems that they may be experiencing directly to you."

Spellmon welcomed feedback from and engagement with the states, and noted that he has worked to remove obstacles to those conversations. "From a purely

technical perspective, I would like to keep this at the local/regional level.... If I were to bring three states into this room today, I don't think I could get three states to agree on Congressional terms like 'surplus water' or 'natural flows.' But I can get to solutions at the local level." He said they would follow the direction of Congress and respect state water rights, but he didn't want to return to a centralized committee with a person like him at the head of the room.

Connor said: "We need to look at every tool that we have with respect to water supply to address some of the challenges, particularly out West, where there is water scarcity across many basins. And so from that standpoint, how do we best figure out, you know, we did this a long time ago with the Bureau of Reclamation, we set it up from the beginning, in Section 8 of the Reclamation Act. Go to the states, get your permits, and work it out from there. That's not how the Corps developed its water resources projects because they weren't built for supply. So how do we get back to having that analysis to move forward and figure out how we can use these facilities, or manage or operate these facilities in a way that enhances water supply, that's in watersheds, that's with the relevant states involved, because they'll be driven by the need for solutions. I completely support what General Spellmon said about the watershed and the local level, but there's an urgent need, I think, that you're trying to get at, and I think we could figure out how to meld the two to have the dialogue with the appropriate folks in the room."

## **MEETINGS** **WESTFAST/Wildfires**

On January 5, the Western Federal Agency Support Team (WestFAST) hosted a webinar on The Relationship Between Wildfires, Geologic Hazards, and Climate Change. Lynne Carpenter, Geologic Hazards Coordinator, U.S. Forest Service, talked about post-fire landscapes and interagency coordination for disaster response and restoration. See: <https://westernstateswater.org/events/the-relationship-between-wildfires-geologic-hazards-and-climate-change/>.

## **Corps/Levees**

On January 11, the Corps canceled all in-person stakeholder meetings and shifted to virtual stakeholder workshops for the National Levee Safety Program. The program is a joint Corps-FEMA effort to develop an integrated framework for managing reliable levee systems, promoting consistent approaches for flood risk management, and improving community resiliency. Nine virtual workshops are scheduled between January 18 and February 24. See: <https://www.leveesafety.org/>.