



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/WATER QUALITY** **EPA/PFAS/Drinking Water**

On February 24, the Environmental Protection Agency (EPA) will host a virtual briefing with national governmental organization staff regarding the forthcoming proposed National Primary Drinking Water Regulation (NPDWR) for per- and polyfluoroalkyl substances (PFAS). The proposed rule would impact owners and operators of public water systems (PWS) and primacy agencies that enforce drinking water regulations under the Safe Drinking Water Act. The proposed rule may require some systems to monitor, implement treatment or take other actions to reduce PFAS levels, and notify customers of about PFAS levels in their drinking water. EPA notes that federalism consultation is requested under Executive Order 13132, "which directs federal agencies to consult with elected state and local government officials, or their representative national organizations, when developing regulations and policies that impose substantial compliance costs on state and local governments." EPA requests input on this rulemaking during the briefing, as well as written input within 60-days of the meeting. EPA anticipates publication of the proposed rule in Fall 2022, with a final regulation in Fall 2023. See [www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas](http://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas).

### **WOTUS/Rule 1**

On February 7, WSWC and several member states submitted comments on the, "Revised Definition of the Waters of the United States" (86 FR 69372). The intent of the rule is to restore the pre-2015 regulations and guidance. It includes references to both the "significant nexus" and "relatively permanent" standards for determining whether tributaries, wetlands, or other waters are jurisdictional under the Clean Water Act. EPA received over 88,000 comments.

WSWC said: "A one-size-fits-all national approach does not recognize specific conditions and needs in the West, where water can be scarce and a variety of unique waterbodies exist. A rule that is more regional in nature, or that allows flexibility in implementation, appears more appropriate. As co-regulators, the states would like to work together with the agencies to develop

and implement a rule that seeks to strike a balance between the critical importance of protecting the quality of the nation's waters and preserving the sovereignty of states over their land and water resources." Our states have not reached a consensus on how to implement a regional approach, but have discussed ideas for delineating regions.

Utah's letter encouraged: (1) paring back the scope of the WOTUS definition to more closely match the common meaning of "navigable" for clarity and predictability; (2) an application of "significant nexus" that does not apply to waters with a speculative, insubstantial, or *de minimis* connection to jurisdictional waters; (3) accurate online, interactive tools for the purpose of mapping jurisdictional waters; (4) a delayed rulemaking for the phase 2 rule until after the U.S. Supreme Court has made a decision in *Sackett v. EPA*; and (5) a regional approach that could be based on EPA's Level II or Level III Ecoregions, or EPA's Streamflow Duration Assessment Method (SDAM).

Utah said: "An early investment of EPA and USACE resources to create region-specific rules, though surely complicated and time consuming, could pay tremendous benefits in the future. The very concept of waters that are 'relatively permanent' differs greatly in different parts of the United States, and indeed within different states. Even within Utah, the standard for a 'relatively permanent' stream in Utah's arid Great Basin region looks very different than a relatively permanent stream in the high-elevation Uintah Mountains. Average flow duration in streams varies widely due to differences in snowpack, precipitation, evaporation, and geology. The creation of region-specific rules, using the best available scientific data, will allow the EPA and USACE to minimize much of the subjectivity that has plagued previous iterations of WOTUS and establish objective measures that offer much greater certainty to States, Tribes, local governments, and other parties impacted by the proposed rulemaking." Utah encouraged EPA to work with states to find a regional approach that offers "the needed flexibility and specificity without creating an unduly complicated process." Other state comments are available at <https://westernstateswater.org/policy-letters/2022/wotus-2022-rule-1/>.

## **ADMINISTRATION/WATER RESOURCES**

### **USBR/WaterSMART/Drought**

On February 2, the Bureau of Reclamation (USBR) announced \$20.5M for 13 projects in five western states for WaterSMART grants to build long-term drought resiliency. USBR's Drought Response Program helps water managers to modernize existing infrastructure. Projects in California include: the Bella Vista Water District (\$2M); Casitas Municipal Water District (\$2M); City of Fresno (\$293,450); Delano-Earlimart Irrigation District (\$2M); North Kern Water Storage District (\$500,000); Rancho California Water District (\$2M); San Bernardino Valley Municipal Water District (\$2M); South Coast Water District (\$2M); and South San Joaquin Municipal Utility District (\$2M). Others include: the City of Gallup, New Mexico (\$2M); City of Grand Junction, Colorado (\$300,000); Deschutes Irrigation District, Oregon (\$1.4M); and Bear River Water Conservancy District, Utah (\$2M). See <https://www.usbr.gov/newsroom/#/news-release/4089>.

### **USBR/Title Transfer**

On February 2, the USBR announced the transfer of federal water facilities to two irrigation districts in the State of Washington, under the 2019 Dingell Conservation, Management and Recreation Act (P.L. 116-9). USBR Commissioner Camille Calimlim Touton said: "The 2019 title transfer process has given Reclamation a new tool that benefits both water users and the federal government."

The Greater Wanatchee Irrigation District (GWID) transfer includes 82 acres of buildings, pumps, diversions, control structures, fixtures, improvements, drains, laterals, pipelines, waste ways, wells, ponds, and roads. The Kennewick Irrigation District (KID) includes approximately 100 miles of canals, a 46-acre parcel, and 971 acres of easements. Gene Huffman, KID Board President, said: "The benefits of title transfer to Kennewick Irrigation District and our local community will be substantial because it gives KID the flexibility needed to engage our community on the best use of our infrastructure, including the potential for linear parks and walking paths. KID thanks Rep. Dan Newhouse, the Confederated Tribes of the Umatilla Indian Reservation, the Yakama Nation, and Reclamation for their commitment to this project." See <https://www.usbr.gov/newsroom/#/news-release/4090>.

## **CONGRESS/WATER RESOURCES**

### **Water Resources Development Act of 2022**

On February 8, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment held a hearing on stakeholder priorities for

the Water Resources Development Act (WRDA) of 2022. Witnesses included: Wade Crowfoot, Secretary, California Natural Resources Agency; Peter Yucupicio, Pascua Yaqui Tribe; Darrell Seki, Red Lake Band of Chippewa Indians; Michel Bechtel, Gulf Coast Protection District; Mario Cordero, Port of Long Beach; Jim Middaugh, Multnomah County Drainage District; and Julie Hill-Gabriel, National Audubon Society.

Secretary Crowfoot noted the need for state and federal investments in drought resilience, coastal resilience, flood protection, and dredging projects. He provided numbers for recent investments that have been made by California and the Army Corps of Engineers (Corps), but acknowledged that those "billions of dollars are still just a down payment. The need is vast."

He also offered testimony regarding the Corps' crucial work to update water control manuals and on forecast informed reservoir operations. "Many Corps water control manuals have not been updated in more than a generation. Meanwhile climate change and new forecasting technology create a need and opportunity for more flexibility in reservoir operations. In California, we especially appreciate the way the Corps is aligning its updates of water control manuals with use of forecast-informed reservoir operations (FIRO). FIRO is a strategy that integrates flexibility in reservoir rules of operations and enhanced forecast skill, to potentially improve operations for flood control and water supply. DWR and the Corps continue to seek state and federal funding to support FIRO; the 2021-22 state budget included \$10 million for FIRO. The research arm of the Corps has continued funding to engage in FIRO projects (about \$5 million this year) which includes the Yuba, Feather, Russian, and Santa Ana rivers in California and the Howard Hansen dam in Washington state. Together, updated water control manuals and FIRO can give California reservoir operators the information and flexibility they need to adjust to warmer, flashier storms and reduced snowpack. This will help save lives in wet years and conserve water for dry years. It is, in other words, a great tool for climate adaptation."

### **MEETINGS**

#### **Western States Water Council**

The WSWC Spring (198th) Meetings and joint ICWP NWSA Washington, D.C., Roundtable will be held at the Doubletree Hotel in Crystal City, Virginia on April 5-7, 2022. **The hotel room block cut-off date for reservations is March 7.** Any reservations requested after the cut-off date shall be accepted, based on availability and at prevailing rates. For room reservations and registration information, see <https://westernstateswater.org/events/2022-wswc-spring-198th-meetings-and-washington-roundtable/>.

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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.**