



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

Department of Agriculture

On February 11, U.S. Department of Agriculture (USDA) Secretary Tom Vilsack announced the swearing-in of Dr. Homer Wilkes as Under Secretary for Natural Resources and Environment, with responsibility over the health, diversity, and productivity of the Nation's forests and grasslands in partnership with States, Tribes, and local communities across the country. "I am pleased with the Senate's confirmation of Dr. Homer Wilkes.... An incredible public servant, Dr. Wilkes has worked with USDA for more than 41 years heavily contributing to engineering, natural resource, and watershed projects, as well as forestry and working lands. His leadership as the Director of the Gulf of Mexico Ecosystem Restoration Division, where he was responsible for the restoration of the coastal ecosystem after the BP oil spill of 2010, has prepared him well for this role. Dr. Wilkes' confirmation is also historic, as he will be the first African American to hold the position.... I look forward to working alongside him as we continue to work to increase climate resilience and advance climate-smart practices in agriculture and forestry."

U.S. Supreme Court

On February 25, President Joe Biden announced Ketanji Brown Jackson will be his nominee to replace retiring U.S. Supreme Court Justice Stephen Breyer. Jackson is currently on the D.C. Court of Appeals. Jackson was once a clerk for Justice Breyer. From 2013 to 2021, she served as a federal judge for the District of Columbia. She was born in Washington, D.C., and raised in Miami, Florida. She is expected to be confirmed in time to hear *Sackett v. EPA*, related to the federal government's jurisdiction over the Nation's waters and wetlands.

ADMINISTRATION/WATER QUALITY

EPA/PFAS Rulemaking

On February 24, the Environmental Protection Agency (EPA) hosted a federalism consultation webinar to discuss plans to develop a regulation under the Safe Drinking Water Act (SDWA) to monitor and treat per- and poly-fluoroalkyl substances (PFAS). The regulation

would primarily impact public water systems (PWSs). EPA would propose a non-enforceable Maximum Contaminant Level Goal (MCLG) that would protect health regardless of the technological limits of detection or treatment. They would set an enforceable Maximum Contaminant Level (MCL) as close as feasible to the MCLG, taking costs and benefits into consideration. If it is not technologically or economically feasible, EPA may propose a Treatment Technique (TT) in lieu of an MCL, or may set the MCL at a level that maximizes the health risk reduction benefits at a cost justified by those benefits. EPA solicited input from State and local government associations on practical monitoring options, treatment technology, public notification requirements, and other implementation challenges.

EPA acknowledged that some states already have data collection programs to monitor PFAS, and recent PFAS drinking water data was collected under the Unregulated Contaminant Monitoring Rule (UCMR). EPA is considering provisions for initial monitoring of PFAS concentrations, with sample frequency based on the size of the PWS, and composite sample analysis for systems with multiple entry points to reduce analytical costs. For ongoing monitoring, EPA is considering provisions similar to current regulations for Synthetic Organic Contaminants under the Standardized Monitoring Framework. Under that Framework, trigger levels relative to the MCL establish the monitoring frequency, and primacy agencies may grant monitoring waivers to PWS located in areas that don't use PFAS, or that are not vulnerable to PFAS contamination, with updated vulnerability assessments every three years. EPA was interested in input on: (1) how previous data collected under the UCMR or state programs should be considered in the initial monitoring requirements; (2) whether the PFAS regulation should incorporate the Standardized Monitoring Framework provisions for Synthetic Organic Contaminants; and (3) whether other drinking water monitoring data should be considered.

EPA noted that traditional treatment technologies are largely ineffective at removing PFOA and PFOS, and that some PWSs with PFAS contamination would be required to install new treatment technologies, such as activated carbon, ion exchange, nanofiltration and reverse osmosis. EPA was interested in: (1) the selection and

operation of treatment technologies that remove PFAS from drinking water; (2) the effectiveness of identified technologies in reducing PFAS levels; (3) alternative treatment technologies that have been effective; (4) non-treatment options for reducing PFAS levels, such as developing a new water source without PFAS contaminants; and (5) other methods to reduce public health risks from PFAS in drinking water.

Under the Public Notification Rule, PWSs would be subject to one of three tiers of notification if PFAS levels exceeded regulatory standards, and PFAS information would also be included in the Consumer Confidence Report. EPA was interested in input on: (1) how quickly PWSs should be required to notify the public following a violation of the PFAS standard; and (2) what information should be included in the Consumer Confidence Reports.

EPA noted that costs for PWSs would vary significantly depending on the monitoring results and the need to install new treatment technologies. EPA is considering multiple monitoring-related flexibilities to help reduce the burden. Treatment technology costs in the range of five to seven figures (depending on the system size) may be defrayed by specific federal funds set aside in the Investments in Infrastructure and Jobs Act (IIJA) to address drinking water PFAS contaminants. The \$11.7B for the Drinking Water State Revolving Fund (DWSRF) may be used for eligible projects and activities, which include upgrading treatment technologies. Another \$4B specifically addresses emerging contaminants, which can be used to remediate PFAS in drinking water. And \$5B was set aside for the Small, Underserved, and Disadvantaged Communities Grants to address emerging contaminants, including PFAS, and could be used to upgrade treatment technologies and provide assistance to increase technical, managerial, and financial capacity.

During the discussion, several organization representatives suggested that EPA grandfather in the monitoring from existing state programs, particularly their waivers for systems with low or no detections. EPA noted that detection technology has been improving in recent years, and this will likely impact what can be regulated. Participants discussed the high costs relative to minimal expected benefits in some situations, and concerns about costs for secondary water quality impacts, such as corrosion control treatments for membrane filtration. Participants also noted that the IIJA funding, as substantial and unprecedented as it is, would barely make a dent in the magnitude of PWS retrofitting that might have to be undertaken to comply with the new regulation. EPA is consulting with the Science Advisory Board on approaches to the PFAS MCLG and health risks from PFAS, and the draft documents being reviewed are available at: <https://sab.epa.gov/ords/sab/>

f?p=100:19:15313245454826:::19:P19_ID:963. EPA requests any written comments or recommendations by April 25. They may be submitted to www.regulations.gov docket # EPA-HQ-OW-2022-0114, or by email to PFASNPDWR@epa.gov. EPA anticipates that it will publish a proposed rule for public comment in Fall 2022, aiming to publish the final rule in Fall 2023.

EPA/Corps/WOTUS Roundtables

On February 23, the EPA and Army Corps of Engineers (Corps) announced the selection of ten geographic roundtables to facilitate discussion on regional variations in the implementation of the proposed rule defining the jurisdictional boundaries of “waters of the United States” (WOTUS). The regions are broken into the West, Southwest, Midwest, Northeast and Southeast, and the hosts selected include: (1) Amigos Bravos (Southwest); (2) Arizona Farm Bureau (Southwest); (3) Cahaba Brewing (Southeast); (4) California Farm Bureau (West); (5) Kansas Livestock Association (Midwest); (6) Natural Resources Defense Council (Northeast); (7) National Parks Conservation Association (Midwest); (8) North Carolina Farm Bureau (Southeast); (9) Regenerative Agriculture Foundation (Midwest); and (10) Wyoming County Commissioners Association/Montana Association of Counties/Idaho Association of Counties (West). Each roundtable will highlight a range of perspectives – including agriculture, conservation groups, developers, drinking water and wastewater managers, environmental organizations, communities with environmental justice concerns, industry, Tribal nations, and state and local governments. The agencies anticipate holding these regional roundtables virtually over the spring and summer, but have not scheduled any dates yet.

EPA Assistant Administrator for Water Radhika Fox said: “EPA and Army are committed to listening to all sides and working to foster a common-ground approach to WOTUS that protects our environment and is informed by the experience of those who steward our waters day-in and day-out. Through these regional roundtables, we will work toward a shared understanding of the challenges and opportunities to enhance WOTUS implementation to support public health, environmental protection, agricultural activity, and economic growth.”

Assistant Secretary of the Army for Civil Works Michael Connor said: “The Department of the Army...is committed to gaining a better understanding of the various regional perspectives...to develop an implementation approach that accounts for these diverse voices and regional variations. In addition, the Army hopes to identify...tools that could assist in effective, consistent, and efficient implementation across the nation.”

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.