



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION **NEPA**

On April 20, the White House Council on Environmental Quality issued its final rule amending certain provisions of its regulations to implement the National Environmental Policy Act (NEPA) (87 FR 23453). The revisions: (1) clarify that agencies have discretion to consider a variety of factors when assessing an application for an authorization, removing the requirement that an agency base the purpose and need on the goals of an applicant and the agency's statutory authority; (2) remove language that could be construed to limit agencies' flexibility to develop or revise procedures to implement NEPA specific to their programs and functions that may go beyond the CEQ regulatory requirements; and (3) revise the definition of "effects" to include direct, indirect, and cumulative effects. The changes are intended to restore provisions in effect prior to the 2020 modifications.

ADMINISTRATION/WATER RESOURCES **Watershed-Restoration**

On April 18, the U.S. Forest Service, Department of Agriculture, announced \$31.1 million in funding for 15 projects through the Collaborative Forest Landscape Restoration Program (CFLRP). CFLRP supports partnerships to "reduce the risk of severe wildfires, support local economies, create jobs and enhance forest and watershed health." The Bipartisan Infrastructure Law and annual appropriations are the source of funding. "Programs like this show just how much we can accomplish across a shared landscape, when we work together," said Agriculture Secretary Tom Vilsack. "Under President Biden's Leadership, the Department of Agriculture is leveraging partnerships and seeking new opportunities to protect our communities, natural resources, and support and create jobs where they are needed most."

"The selected projects will enhance the work already accomplished through the program. Together, they highlight the widespread support of the work to improve the nation's natural resources for the benefit of everyone," said Forest Service Chief Randy Moore. "The infusion of funding augments the work we do with other

governments and partners around other important work such as improvements to infrastructure and the 10-year wildfire strategy. The Collaborative Forest Restoration Program is working for all Americans." Since 2009, CFLRP has funded landscape restoration activities such as "planting, seeding, and natural regeneration while also reducing or eradicating invasive plants" to reduce the risk of catastrophic wildfire, as well as stream habitat restoration. Collaboration with other forest management interests and multi-year funding commitments have been key to the success of the program.

The Fiscal Year 2022 selected projects are in California, Colorado, New Mexico, Oklahoma, Oregon and Washington, as well as Arkansas and Missouri, including \$757,000 for the Dinkey Collaborative, a 154,000-acre project in California to reduce unprecedented fuel loading due to the Southern Sierra tree mortality that to date has received \$7.6 million. In Oregon, \$3 million for Northern Blues Forest Restoration, a 10.4-million-acre project to reduce wildfire risk and prepare the landscape to safely manage fire; and \$673,000 for the Deschutes Collaborative Forest Project in addition to \$6.7 million previous provided to enhance 258,000 acres of high-value landscape focused on reducing high-severity wildfire in the wildland-urban interface, protecting watersheds, preserving recreation areas, and providing jobs and wood products.

The 12 newly funded projects include: Arkansas and Oklahoma – \$1.1 million on 569,000 acres for the large-scale restoration of the shortleaf pine- bluestem grass communities thinning and prescribed burns to promote healthier growth, improving habitat for federally listed species such as the Red-cockaded Woodpecker and economic benefits to the community; Colorado – \$3 million to the Southwest Colorado Restoration Initiative, a 1.9-million-acre project that spans private, municipal, state and federal lands to enhance the resilience of critical watersheds, wildlife and aquatic habitats, community infrastructure, economic drivers and forest conditions; Colorado and New Mexico, \$3 million to Rio Chama, a 3.8-million-acre project that spans lands managed by tribes, states, the Bureau of Land Management and private landowners to reduce wildfire risk and increase resilience; and New Mexico – \$1 million to the Zuni Mountains to extend a project on

253,000 acres to increase resilience to climate change, uncharacteristic crown fires, and support healthy communities and wildlife.

On the West Coast, in California, projects include: \$3 million to the Western Klamath Mountains Fire and Fire Resiliency Project, a 1.2-million-acre project to prepare the landscape for frequent, yet smaller, lower-intensity wildfires to protect communities and critical transportation routes, as well as improve watershed health and ecosystem resilience that includes areas traditionally managed by the Karuk Tribe with traditional burning; and \$3 million in the North Yuba River watershed across 356,000 acres that provides clean water for homes, communities, businesses and ecosystems, by restoring watershed health and native biodiversity.

Oregon projects include: \$2 million to the Lakeview Stewardship project on 859,000 acres important to rural communities for recreation and forestry sector jobs creating a healthy, resilient and functional forest landscape to mitigate the threat of high-severity wildfires, protecting water quality and communities; \$3 million to the Southern Blues Restoration Coalition for a million acres species composition and forest stand densities that threaten to destroy key habitat, old growth, important aquatic resources and private property due to uncharacteristic wildfire regimes; and \$3 million to the Rogue Basin Landscape Restoration Project across 4.6 million acres to accelerate urgently needed restoration treatments to meet long-term, collaboratively developed strategic goals of wildfire risk reduction, landscape resiliency, improved wildlife habitat, watershed protection, adaptation, and social and economic resilience.

In Washington State, CFLRP will provide \$1.4 million across 1.1 million acres for strategic treatments to reduce wildfire risk for some of the most vulnerable cities and communities in the Pacific Northwest consistent with the State's 20-year Forest Health Action Plan, as well as stream, fisheries and wildlife habitat restoration; and \$3 million to Northeast Washington Forest Vision 2020 on 916,000 acres to restore forested landscapes and watersheds and prepare for future wildfires and the effects of climate change with overarching goals to reduce hazardous fuels, use woody biomass and small-diameter trees, and reduce the costs of treatments and wildfire management. <https://www.usda.gov/media/press-releases/2022/04/18/biden-harris-administration-usda-forest-service-invest-more-31>

LITIGATION/WATER QUALITY

Sackett v. EPA/Clean Water Act

On April 14, House Representatives Dan Newhouse (WA), Mariannette Miller-Meeks (IA), and Rodney Davis

(IL) filed an amicus brief in *Sackett v. EPA*. They urged the Supreme Court to reject the 9th Circuit's decision, which they said would "allow a federal agency to make every puddle, ditch, and creek in the United States subject to overbearing regulation," inconsistent with the text of the Clean Water Act. They argued that affirming the 9th Circuit would eviscerate any limit on the meaning of "navigable waters" and would render the term "navigable" a nullity.

On April 18, eleven WSWC member-state Attorneys General joined fourteen others in signing an amicus brief led by West Virginia Attorney General Patrick Morrisey (R). The attorneys general warned that the 9th Circuit decision would undermine congressional intent and urged the Supreme Court to reverse. Joining West Virginia on the brief are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming.

The brief reads: "By construing the Clean Water Act to reach places with only tenuous connections to navigable, interstate waters, the Ninth Circuit's approach would saddle States with implementing a vast scheme of federal water regulation. States' own efforts at conservation, tailored to local needs, would fall by the wayside. Federalism would become an afterthought, too, even though Congress wrote the CWA to 'recognize, preserve, and protect the primary responsibilities and rights of States' to mitigate pollution and 'develop and use' water resources. If the CWA applies to any damp piece of land with an indeterminate 'nexus' to interstate waters, then the Constitution's and the statute's balance among the sovereigns will come askew. The Court should restore the CWA to its proper position – complementing States' water-conservation efforts instead of displacing them."

The brief's introduction notes: "When Michael and Chantell Sackett set out to build a house on a piece of land in Idaho's panhandle, they probably could not have imagined that they were igniting a decade-plus power struggle with the federal government. Back in 2004, the Sacketts had secured necessary local permits and were ready to start construction when federal regulators descended on their property. The land, officials told the Sacketts, might contain 'wetlands' regulated under the CWA. These wetlands could be 'waters' – not 'of Bonner County' or 'of Idaho – but 'of the United States.' So even though the property didn't contain or connect with any interstate, navigable waters, the Sacketts needed to go through the long and expensive process of obtaining a federal permit. Otherwise, they would risk the 'criminal penalties and steep civil fines' for which the CWA's 'regime of strict liability' is known."