



Legislation/Litigation Update

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Notable Legislation 118th Congress

- ▶ **WOTUS Saga 3.0:** Joint Resolution to disapprove 2023 WOTUS Rule (HJRes 27/SJRes 7 – passed, veto), Define WOTUS Act (H.R. 1556, S. 1022 - R), Farmer-Informed WOTUS Act (S. 1022 - R)
- ▶ **CWA §401:** Limit, Save, Grow Act (H.R. 2811), Water Quality Certification and Energy Project Improvement Act (H.R. 1152), Lower Energy Costs Act (H.R. 1)
- ▶ **Tribal settlements**
 - ▶ Tule River Reserved Water Rights Settlement Act (S. 306)
 - ▶ San Juan Southern Paiute Tribal Homelands Act (NM) (H.R. 2461)
 - ▶ Rio San Jose and Rio Jemez Water Settlements Act (NM) (H.R. 1304/S. 595)
 - ▶ Modifications to the Duck Valley Reservation Settlement (NV) (S. 950/H.R. 1738)
- ▶ **PFAS:** Farmers (S. 747/H.R. 1517), Research (S. 466)
- ▶ **Farm Bill, USDA:** Collaborative Forest Landscape Restoration Program Reauth. (S. 202), Water Supply Permitting Coordination Act (H.R. 186), CRP (S. 174), Rural Water Systems (S. 1079, S. 1233/H.R. 2787), CREP (S. 1224)
- ▶ **Water Data:** OpenET (H.R. 2429/S. 1118)
- ▶ **Reclamation:** Climate Change and Water Program Reauthorization Act (H.R. 3027)
- ▶ Regulations from the Executive in Need of [Congressional] Scrutiny (REINS) Act (H.R. 277/S. 184)



Notable Litigation

- ▶ WOTUS Saga 3.0
 - ▶ TX v. EPA (S. TX Dist. Ct.) – 3/19/23 Preliminary injunction in TX, ID, no Chevron deference due to criminal penalties and federalism issues, likely merits include the use of the significant nexus test and assertion of regulation over all waters regardless of navigability
 - ▶ WV v. EPA (ND Dist. Ct.) – 4/12/23 Preliminary injunction in AK, KS, MT, ND, NE, OK, SD, UT, WY (24 states total), likely merits include overly broad inclusion of waters and acting beyond EPA's statutory authority
 - ▶ Sackett v. EPA (S. Ct.) – 10/3/22 Oral Arguments; waiting for decision (by June?)

Notable Litigation

- DOI v. Navajo Nation/AZ v. NN – whether the federal trustee has an affirmative duty to assess tribal water needs; AZ concern about potential claim for unquantified rights to the Colorado River (extension of reservation land to touch the river; previously excluded as tributary water tribe)
- Yurok Tribe v. Reclamation – ESA preemption of state water law (state water right allocation of Klamath Project water to irrigators, Reclamation use of water for fish under BiOp)
- Indian Wells Valley Water District (groundwater basin adjudication) – jurisdictional issue raised whether it qualifies as basin-wide adjudication if the *de minimus* water users are not included.
- Save the Colorado v. DOI – NEPA consideration of dam removal, etc. in the EIS for future Colorado River operations; summary judgment for D's, P's appealed
- TX v. NM (Rio Grande Compact) – States settlement proposal