



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/CONGRESS

Great Basin/Great Salt Lake

On December 27, President Joe Biden signed into law the Saline Lake Ecosystems in the Great Basin States Program Act (S. 1466). The bipartisan legislation was introduced by Senator Jeff Merkley (D-OR), with co-sponsor Senators Dianne Feinstein (D-CA), Catherine Cortez Masto (D-NV), Jacky Rosen (D-NV), Ron Wyden (D-OR), and Mitt Romney (R-UT). Rep. Blake Moore (R-UT) introduced an identical bill (H.R. 5345), co-sponsored by Representatives Jared Huffman (D-CA), Jay Obernolte (R-CA), Jim Costa (D-CA), Mike Thompson (D-CA), Mark Amodei (R-NV), Susie Lee (D-NV), Burgess Owens (R-UT), John Curtis (R-UT), and Chris Stewart (R-UT). The new law will establish a program to help save the Great Salt Lake and other saline lakes in the Great Basin.

The broadly supported law will provide the U.S. Geological Survey — in coordination with the U.S. Fish and Wildlife Service and tribal, state, academic, and nonprofit organizations — resources to conduct scientific monitoring and assessments to establish effective management and conservation efforts to preserve essential saline lake habitats.

As directed, the Secretary of the Interior “shall establish a multiyear work and implementation plan to assess, monitor, and conserve saline lake ecosystems in the Great Basin and the migratory birds and other wildlife that depend on those ecosystems.” The plan shall include a synthesis of available information, literature, and data, and an assessment of scientific and informational needs, relating to: (1) water quantity, water quality, water use, and water demand; (2) migratory bird and other wildlife populations, habitats, and ecology; (3) annual lifecycle needs of migratory birds; and (4) environmental changes and other stressors, including climatic stressors.

The plan is to include proposed activities, such as monitoring, data infrastructure needs, and development of tools necessary to implement the program; recommendations and a cost assessment for the

implementation of the plan; and such other matters as the Secretary determines to be appropriate. The law authorizes the appropriation of \$5M annually through FY27.

Of note, the Bear River is a primary source of water for the Great Salt Lake, and the use of its waters is subject to a compact between the States of Idaho, Utah, and Wyoming. The law explicitly states that it shall not affect: (1) any interstate water compacts in existence on the date of enactment, including full development of any apportionment made in accordance with those compacts; (2) valid and existing water rights in any State located wholly or partially within the Great Basin; (3) water rights held by the United States in the Great Basin; and (4) the management and operation of Bear Lake or Stewart Dam, including the storage, management, and release of water. For more information, see <https://blakemoore.house.gov/media/press-releases>

ADMINISTRATION/WATER QUALITY

WOTUS Rule

On December 29, Environmental Protection Agency (EPA) Administrator Michael Regan and Assistant Secretary of the Army (Civil Works) Michael Connor, signed the final rule defining “waters of the United States” (WOTUS). The 514-page pre-publication draft of the final rule provides a legal background and discussion of Congressional authority for the new rule; the objectives and scope of the rule; alternatives in the form of past rules; and explanations of this rule's jurisdictional waters, exclusions, and definitions of other terms, and how the agencies intent to implement them. The regulatory language in Title 33 Part 328 and Title 40 Part 120 of the Code of Federal Regulations is presented on the last ten pages of the rule.

The agencies simultaneously released: (1) a five-page summary of the ten regional community roundtables that focused on geographic similarities and differences across the nation; (2) a six-page joint memo to coordinate jurisdictional determinations under the final rule; and (3) an eleven-page joint memo with the U.S. Department of Agriculture to provide clarity on the

programs under the Clean Water Act and Food Security Act. On December 30, the Department of Justice sent a letter to the U.S. Supreme Court with the pre-publication version of the rule, in response to Justice Kagan's question during oral argument in *Sackett v. EPA* (#21-454) on whether the forthcoming rule would provide additional guidance on which adjacent wetlands qualify as WOTUS.

The *Summary: Regional Roundtables on Implementation of "Waters of the United States"* provided some background for the roundtables, common themes identified in the meetings, and feedback on improving implementation. Five common themes included: (1) the need for consistency and clarity in the interpretation and application of the WOTUS rule, including the exemptions and exclusions, particularly with different Army Corps of Engineers districts taking different approaches; (2) the need to consider regional differences in implementation, including concerns about ephemeral waters, closed basins, acequias, karst topography, algal blooms, vernal pools, intermittent streams, and the challenges of small communities; (3) the role of state, federal, and tribal governments in protecting water; (4) the impact of a changing climate on water resources; and (5) the need for increased public education and outreach, and incentives for voluntary efforts to protect water quality and wetlands. Two of the suggested actions included (a) better coordination between agencies for implementation, including a guidebook on jurisdictional determinations; and (b) enhancing consideration of regional differences by (i) providing training on the national manual for determining the ordinary high water mark, and (ii) developing regional Streamflow Duration Assessment Methods (SDAMs) for the Arid West, the Great Plains and Western Mountains, and the Northeast and Southeast.

ADMINISTRATION/WATER RESOURCES **Bipartisan Infrastructure Law/Drought**

On December 22, the Administration announced a \$84.7M investment to help 36 communities in western states prepare and respond to drought. The spending by state includes: Arizona (\$5.84M); California (\$36.2M); Colorado (\$5.85M); Idaho (\$5.42M); Nevada (\$1.75M); New Mexico (\$6.47M); Utah (\$22.5M); and Washington (\$1.69M). Recipients include cities and towns, acequias, irrigation and municipal water districts and agencies, environmental, land and wildlife conservation entities.

Plans, projects and programs to be funded cover drought resiliency and water augmentation including: (1) aquifer storage and recovery, as well as a conjunctive use modeling tool; (2) groundwater wells and treatment; (3) canal, conduit, lateral, pipeline, storage and ion

exchange treatment improvements; (4) produced and water reuse opportunities; (5) rainwater harvesting; (6) septic system conversion; (7) water banking; (8) water use efficiency improvements; (9) water management and decision support; and (10) water rate and demand studies. The project descriptions and information about the program are available at www.usbr.gov/drought.

"As climate change exacerbates drought impacts throughout the Western United States, the Bipartisan Infrastructure Law is advancing our work to invest in innovative, locally-led water infrastructure projects and provide clean, reliable water to families and communities across the country," said Assistant Secretary of the Interior, Tanya Trujillo.

"Drought resilience is more important now than ever as the West is experiencing more severe and longer droughts," added Bureau of Reclamation Commissioner Camille Touton. "This investment from the Bipartisan Infrastructure Law in locally-led projects will help solidify community's water supplies and allow families and farmers to respond to the challenges posed by drought." The funding is part of the WaterSMART grant program. See <https://www.usbr.gov/newsroom/news-release/4395>

Bureau of Reclamation/River Basin Studies

On December 22, Reclamation announced it will spend \$4.6M to partner on four river basin studies in Colorado, Idaho, Oregon, Utah and Washington. The Basin Study Program is part of the WaterSMART Program. Basin studies are collaborative studies, cost-shared with non-Federal partners, to evaluate water supply and demand and help ensure reliable water supplies by identifying strategies to address imbalances. See <https://www.usbr.gov/watersmart/bsp/>.

The four basin studies include: (1) the Big Wood River, Columbia-Pacific Northwest (\$494,000 each); (2) Dolores Water Conservancy Project Plan of Study, Upper Colorado River Basin (\$100,000 each); (3) Great Salt Lake Basin, Upper Colorado River Basin (\$3.17M federal/\$3.32M non-federal); and (4) Walla Walla River, Columbia-Pacific Northwest (\$500,000 each).

Trujillo said: "Reclamation is working to address widening imbalances between demand and supply in basins throughout the West. Working collaboratively with stakeholders within each respective basin, we can develop options that will achieve a sustainable water supply." Touton said: "These studies will help ensure reliable water supplies in communities affected by the impacts of drought. Each of these programs will use the latest science and data available to develop strategies that meet current and future water demands."

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.