



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS **WOTUS**

On January 30, the Republican governors of 25 states (including AK, ID, MT, NE, NV, ND, OK, SD, TX, UT, and WY) sent a joint letter to President Biden requesting that implementation of the new Waters of the United States (WOTUS) rule be delayed until the U.S. Supreme Court issues its ruling in *Sackett v. EPA*. The governors wrote: "We call into question the timing and necessity of the rule with the Court's upcoming *Sackett* decision which is expected by June of this year. That opinion could significantly impact the final rule and its implementation. To change the rule multiple times in six months is an inefficient and wasteful use of State and federal resources and will impose an unnecessary strain on farmers, builders, and every other impacted sector of the American economy. The substance of the rule hinders State governments as we seek to give clarity and consistency to businesses, farms, and individuals regarding the regulatory framework for water. The broad definitions used in the 514-page document only add to the confusing and complicated history of WOTUS. In fact, it appears that the EPA is seeking to regulate private ponds, ditches, and other small water features. Understanding the final WOTUS rule will require States and the regulated community to wade through an extensive and unclear web of interpretations. Given the many outstanding issues the recent WOTUS rule generates, particularly in rural America, we ask that you delay implementation of the rule until the Court decides *Sackett*. Small businesses, farmers, and communities across America simply cannot afford another costly revision."

ADMINISTRATION/CONGRESS **State of the Union**

On February 7, President Joe Biden delivered his State of the Union address to Congress. Among other topics, he talked about infrastructure, clean drinking water, and climate challenges including floods, wildfires, and drought. He shared some of the climate-related benefits of the 2022 Inflation Reduction Act (P.L. 117-169). "Look, the Inflation Reduction Act is also the most significant investment ever to tackle the climate

crisis.... I've visited the devastating aftermaths of record floods and droughts, storms and wildfires. In addition to emergency recovery from Puerto Rico to Florida to Idaho, we are rebuilding for the long term. New electric grids able to weather the next major storm. Roads and water systems to withstand the next big flood. Clean energy to cut pollution and create jobs in communities too often left behind.... Historic conservation efforts to be responsible stewards of our lands. Let's face reality. The climate crisis doesn't care if your state is red or blue. It is an existential threat. We have an obligation to our children and grandchildren to confront it. I'm proud of how America is at last stepping up to the challenge. But there's so much more to do."

He pointed to the ongoing implementation of the 2021 Investments in Infrastructure and Jobs Act (P.L. 117-58). "But to maintain the strongest economy in the world, we also need the best infrastructure in the world. We used to be #1 in the world in infrastructure, then we fell to #13th. Now we're coming back because we came together to pass the Bipartisan Infrastructure Law, the largest investment in infrastructure since President Eisenhower's Interstate Highway System. Already, we've funded over 20,000 projects....These projects will put hundreds of thousands of people to work rebuilding our highways, bridges, railroads, tunnels, ports and airports, clean water, and high-speed internet across America. Urban. Suburban. Rural. Tribal.... We're also replacing poisonous lead pipes that go into 10 million homes and 400,000 schools and childcare centers, so every child in America can drink clean water."

He also talked about strengthening the Buy America requirements for federal funding of projects. "And when we do these projects, we're going to Buy American." See <https://www.whitehouse.gov/>.

CONGRESS/WATER QUALITY **CWA/WOTUS**

On February 2, Republican Senators and Representatives introduced joint resolutions (S.J. Res. 7, H.J. Res. 47) disapproving of the Biden Administration's Waters of the United States (WOTUS) rule under the Congressional Review Act. The Senate resolution was

introduced by Senator Shelley Moore Capito (R-WV) with 48 Republican co-sponsors. The House resolution was introduced by Rep. Sam Graves (R-MO) with 147 Republican co-sponsors.

Capito, Ranking Member of the Senate Environment and Public Works Committee, said: “With its overreaching navigable waters rule, the Biden administration upended regulatory certainty and placed unnecessary burdens directly on millions of Americans. This Congressional Review Act resolution of disapproval will give every member of Congress the chance to stand with farmers, ranchers, landowners, and builders, and protect future transportation, infrastructure, and energy projects of all kinds in their states. I appreciate the widespread support we’ve received in both the Senate and House, and across the country, as we fight to place an important check on this misguided overreach from the Biden administration.”

Graves, Chairman of the House Committee on Transportation and Infrastructure, said: “As American families and businesses continue suffering under the economic crises caused by the disastrous Biden policies of the last two years, this Administration has inexplicably decided to move the country back toward the costly and burdensome WOTUS regulations of the past. In an unnecessary drain on federal resources, the Administration clumsily put forward its rule before the Supreme Court has issued a ruling in the *Sackett* case, which will affect and alter what the Administration has put forward. Congress has the authority and responsibility to review onerous rules like this one handed down from the Executive Branch, and I hope our colleagues on both sides of the aisle will join in this effort to preserve regulatory clarity and prevent overzealous, unnecessary, and broadly defined federal power.”

WATER RESOURCES **California/Colorado River**

On January 31, the Colorado River Board (CRB) of California submitted a proposal for the Bureau of Reclamation’s consideration as it prepares its Supplemental Environmental Impact Statement (SEIS) for potential modifications to the 2007 Colorado River Operations Interim Guidelines. “Since Reclamation published the [Notice of Intent to prepare the SEIS] in November, California has worked with the other Colorado River Basin States in an attempt to develop a joint Framework Agreement Alternative. Unfortunately, despite numerous meetings and intensive good-faith efforts, a seven-state consensus was not reached. Therefore, California respectfully submits the attached alternative for Reclamation’s consideration, modeling, and analysis. The development of alternatives is the first step of the SEIS process. California looks forward to continuing collaborative work with the Basin States,

Reclamation, and the Interior Department to develop consensus-based approaches.... Our state’s proposed alternative makes a constructive effort to uphold the Law of the River while making substantial efforts to protect the Colorado River system with voluntary reductions far beyond California’s legal obligations. The 40 million people, nearly 6,000,000 acres of agriculture, and 30 Indian tribes that rely on the Colorado River require us to be successful in this effort.”

The seven-page letter notes that California’s alternative proposes to “protect Lake Mead elevation of 1,000 feet and Lake Powell elevation of 3,500 feet by discontinuing the use of operational neutrality described in the May 3, 2022 letter regarding actions to protect Lake Powell, making changes to Lake Powell operational tiers and releases, modifying shortage conditions, and other changes described in the attachment. This alternative provides a realistic and implementable framework to address reduced inflows and declining reservoir elevations by building on voluntary agreements and past collaborative efforts in order to minimize the risk of legal challenge or implementation delay. California’s alternative uses adaptive management to protect critical reservoir elevations through the interim period.” California’s contractors are committed to “conserving up to an additional 1,600,000 acre-feet of Colorado River water starting in 2023 and continuing until 2026,” which is facilitated by the “Interior Department’s collaboration and partnership at the Salton Sea.”

The letter touched on the difficult process California went through in 2003 to reach shortage sharing agreements between various water providers when surplus Colorado River water was no longer available for California to put to beneficial use, stating, “...California was able to complete the [Quantification Settlement Agreement (QSA)] only after a highly contentious legal, political, and policy process between various parties driven by the threat of unilateral federal action. Twenty years later the QSA serves as an example of temporary conflict caused by scarcity leading to long-term cooperation for sustainability – a model that other basin states and Reclamation should strongly consider.”

The CRB concluded: “In the absence of a seven-state consensus proposal, the SEIS process and the preferred alternative should maintain existing protections to California’s senior entitlements, protect stored [Intentionally Created Surplus (ICS)], and protect public health, safety, and welfare as determined by each state (and particularly for disadvantaged communities with no alternative water supplies) through the interim period. The SEIS documents should address the manner in which the water demands within the states affected by a shortage declaration will be managed pursuant to the 1968 Colorado River Basin Project Act and the *Arizona v. California* consolidated decree.” See WSW #2542.

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.