



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/WATER RESOURCES** **Corps/Western Water Cooperative Committee**

On May 18, the WSWC and CWAG sent a joint letter to Assistant Secretary Michael Connor, Army Corps of Engineers (Civil Works) regarding the newly authorized Western Water Cooperative Committee (WWCC). They included letters from the western state governors and attorneys general, appointing members to the WWCC.

The letter noted that the Corps had raised questions about whether the WWCC is subject to the Federal Advisory Committee Act (FACA) (5a USC §§3-4). The organizations wrote: "The provisions under the Unfunded Mandates Reform Act (UMRA) regarding state, local, and tribal government input (2 USC § 1534) clearly exempt the Committee from the FACA requirements. Notably, the UMRA applies where: (1) meetings are held exclusively between federal officials and elected state officials, or their designated employees with authority to act on their behalf; and (2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration. However, we understand that the Corps still has Committee funding concerns to address, as Congress directed the Corps to cover travel expenses for the members of the Committee, including per diem in lieu of subsistence (WRDA §8158(a)(7)(B))."

The letter concluded: "The Cooperative Committee is required to meet at least once a year in one of the Western States at a place accessible to the public. We offer our assistance in planning, organizing, and communicating information about this meeting with our members and the state appointees. We see great benefit in meeting in the near future due to the ongoing water supply issues in Western States."

### **CONGRESS/WATER QUALITY** **House/Clean Water Act**

On May 16, the House Committee on Transportation and Infrastructure held a hearing on "The Next Fifty

Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion." Witnesses included Andrea Travnicek, North Dakota; Serena McIlwain, Maryland Secretary of the Environment; Mickey Conway, National Association of Clean Water Agencies; and Brandon Farris, National Association of Manufacturers.

Travnicek talked about the impact of the Waters of the United States (WOTUS) regulations and CWA §404 permitting delays in North Dakota, particularly on the Northwest Area Water Supply (NAWS) project. "North Dakota has a significant interest both in the proper management and protection of its state waters and in improving its infrastructure to support public health, safety, and the economy. We appreciate the partnership of the federal agencies in achieving these goals, but our federal partners must respect states' rights. EPA and the Corps should work with states to reduce uncertainties and inconsistencies in Section 404 permitting and other Clean Water Act [CWA] programs to improve the ability of states to timely complete important infrastructure projects."

McIlwain noted that, while we have made progress under the CWA such that our rivers are no longer catching on fire, there is still work to do to ensure the nation's waters are fishable and swimmable. "In fact, according to EPA's own data, only 30% of our rivers and streams are healthy, 40% of our nation's lakes have excess nutrients that help fuel harmful algae blooms, only 71% of our estuaries and 31% of our great lakes and nearshore environments have healthy aquatic communities, and only 48% of our national wetlands have healthy biology." She pointed to the importance of the Water Quality State Revolving Funds (SRFs), and the recent infusion of infrastructure funding from Congress, but noted that there is still significant work to be done.

Conway said, "Replacing aging infrastructure, increasing system resiliency in the face of climate change, addressing emerging contaminants including per- and polyfluoroalkyl substances, or PFAS, developing and maintaining a strong workforce, and protecting against increasing threats to cyber-security are just a few of the critical issues utilities must manage every day." In

addition, he noted the stewardship responsibility to keep rates affordable for everyone. He noted the importance to utilities of the NPDES “permit shield” in CWA §402(k) that insulates permit holders from changing regulations during the period of the permit. This security is being threatened as permits are challenged by lawsuits for not including requirements for emerging contaminants, and for containing vague boilerplate permit language. He also emphasized the need for transparency as EPA establishes water quality criteria.

Farris provided examples of unduly cumbersome regulations and permitting processes that draw out infrastructure projects for many years, and impact manufacturing companies that rely on that infrastructure.

## **CONGRESS/WATER RESOURCES** **Senate/Corps/Drought**

On May 16, the Senate Environment and Public Works Subcommittee on Transportation and Infrastructure held a hearing on “Perspectives on New and Existing U.S. Army Corps of Engineers Authorities to Respond to Water Management Issues Including Drought and Water Conservation.” Witnesses included Governor Stephen Roe Lewis, Gila River Indian Community (GRIC); Leslie Meyers, Salt River Project; Christy Plumer, Theodore Roosevelt Conservation Partnership; Andrea Travnicsek, North Dakota Department of Water Resources; and Jennifer Verleger, Chair of the WSWC.

Lewis expressed appreciation for the Corps’ diligent efforts and improved communication, but said: “To be frank, unlike many other federal agencies, USACE has not in the past had a reputation within Indian Country of being an easy agency with which to deal.” He noted that a current Corps-GRIC partnership on a canal solar panel project to reduce evaporation has taken longer than it should have, in part because the Corps does not believe it has authority to contract directly with the tribe, despite the fact that many other federal agencies do so.

Meyers testified regarding the dual authority of Reclamation and the Corps over the Roosevelt Dam in Arizona. “Both agencies have similar, yet distinct missions that are not always in alignment. In addition, their authorities do not always mesh to facilitate effective management of western river systems.” SRP has been working with the Corps, together with tribes, and other local partners, on updating the Water Control Manual (WCM) to make better use of the Flood Control Space (FCS) to provide water supplies through drought. Currently, the WCM requires SRP to evacuate the FCS within 20 days, and they’ve been working to extend that to 120 days. “If approved, the proposal will allow SRP to...use up-to 109,000 AF of flood water through calendar year 2029. Put into perspective, such use has

the potential to support the annual needs of roughly 330,000 households in the Phoenix Metropolitan area.”

Despite those efforts, they were not able to take advantage of the recent 2023 run-off season, where the Salt and Verde Rivers produced 400% above normal inflows, causing Roosevelt Dam to enter the FCS in mid-March. “SRP evacuated the FCS within 20 days in accordance with the existing flood control plan causing 318,887 AF of water from the Salt River to be evacuated and go unused – that’s more water than the total combined run-off observed on the Verde and Salt rivers in the 2022 run-off season.”

Plumer shared thoughts on properly accounting for the costs and benefits of natural infrastructure projects, on fully funding drought resilience projects, continuing to improve interagency partnerships and planning, and strengthening technical assistance programs for entities struggling to navigate federal opportunities.

Travnicsek talked about the Corps management of the Garrison Dam on the Missouri River, its failure to consider all project purposes in a holistic way, and decisions that have interfered with North Dakota’s ability to put its natural flows to beneficial use, and have hindered federal promises to compensate the State for land inundated by the construction of the dam.

Verleger testified on the Corps water supply policies and the infringement on the authority of the western states to allocate water resources, using an analogy of the Corps plugging one side of a kitchen sink and the States allocating the water that comes out of Nature’s faucet. For a copy of Jennifer’s testimony see: <https://westernstateswater.org/testimony/2023/senate-epw-subcommittee-on-transportation-and-infrastructure-hearing/>.

## **PEOPLE**

Nevada Governor Joe Lombardo has appointed the following WSWC members: **Adam Sullivan**, State Engineer, Nevada Division of Water Resources (DWR), Executive, and Water Resources Committees; **Jennifer Carr**, Administrator, Nevada Division of Environmental Protection (NDEP), Water Quality Committee; and **Melissa Flatley**, Chief of Hearing Section, DWR, Legal Committee. Alternates include: **James Settelmeyer**, Director, Nevada Department of Conservation and Natural Resources (DCNR); **Chad Stephens**, Deputy Director, DCNR; **Chris Thorson**, Deputy Administrator, DWR; **John Guillory**, Deputy Administrator, DWR; **James Bolotin**, Deputy Attorney General, Nevada Attorney General’s Office; and **Cathy Erskine**, Sr. Policy Advisor, DCNR. We look forward to working with all of them.

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**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.**