



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY **EPA/WOTUS**

On June 26, the Environmental Protection Agency (EPA) and Department of the Army announced that they are developing a rule to amend the 2023 Revised Definition of “Waters of the United States” (WOTUS) rule (88 FR 3004). They noted that they are interpreting WOTUS jurisdiction consistent with the Supreme Court decision in *Sackett v. EPA*, and that they intend to issue a final rule by September 1, 2023.

Infrastructure

On June 26, EPA announced \$50.4M in annual grant funding to States to assist communities in accessing clean and safe drinking water. The grant program was established under the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act, and is awarded to States based on an allocation formula that includes factors for small water systems, poverty levels, and underserved communities. Eligible activities include household testing, monitoring contaminants, infrastructure projects, and technical and financial support for small water system operations.

CONGRESS

Congressional Review

On June 14, the House passed the Regulations from the Executive in Need of Scrutiny (REINS) Act (H.R. 277) by a partisan vote of 221-210. The bill would require any new “major rule” proposed by federal agencies to be approved by the House and Senate before going into effect. A major rule would result in (1) an annual effect on the economy of \$100M or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The bill also preserves the current congressional review process for disapproval of nonmajor rules.

On June 15, the House passed the Separation of Powers Restoration Act (SOPRA) (H.R. 288) by a partisan vote of 220-211. The bill would modify the scope of judicial review of federal agency actions. It would authorize courts to decide questions of law without giving *Chevron* deference to the federal agency’s interpretation of (1) constitutional and statutory provisions; (2) rules made by agencies; (3) interpretative rules; (4) general statements of policy; and (5) all other agency guidance documents.

CONGRESS/WATER RESOURCES

Legislative Hearing/Bureau of Reclamation

On June 14, the House Natural Resources Subcommittee on Water, Wildlife, and Fisheries held a legislative hearing on three water-related bills. The untitled H.R. 1607 would enable the exploration of adding pumped-storage hydropower facilities to the Salt River reservoir system. The Reclamation Climate Change and Water Program Reauthorization Act (H.R. 3027) would reauthorize the Bureau of Reclamation’s WaterSMART Basin Studies program (authorized in 2009 as part of P.L. 111-11) until FY2033. The Western Water Accelerated Revenue Repayment Act (H.R. 3675) would permanently extend authorities that allow Reclamation project water users (agricultural and municipal) to prepay what they owe on outstanding construction costs to the federal government.

Reclamation Deputy Commissioner Michael Brain testified on the three bills. He expressed the Department of the Interior’s (DOI) support for H.R. 1607 and for the development of pumped storage projects as an efficient means to store energy and improve grid reliability. Regarding support for H.R. 3027, Brain said: “The American West faces serious water challenges.... Changes to temperature, precipitation (rainfall and snowfall), and the timing and quantity of snowpack and runoff pose a significant challenge to the protection and use of water resources. Ensuring a safe and secure water supply remains a fundamental pursuit for life in the West.... With our Federal, State, Tribal, and local partners, the Basin Study Program addresses challenges resulting from climate change and shifting demographics.... Implementing the SECURE Water Act

has served as a catalyst for collaboration and innovation, improving our understanding of climate change impacts to water resources and our ability to provide a way for water users to collaboratively address those impacts. Given the historic drought conditions experienced over the past decade, the authorities provided by the Section 9503 of the SECURE Water Act remain an important tool for Reclamation's mission."

Oregon/Water Conservation

On June 21, Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR) reintroduced their Water for Conservation and Farming Act. Introduced in the previous Congress as S. 963, it would establish a \$300M fund for water recycling, efficiency and dam safety projects under the Bureau of Reclamation. It would also authorize \$40M for the DOI's Cooperative Watershed Management Program to support water and conservation projects in disadvantaged communities, as well as benefitting fish and wildlife habitat. There is \$25M for fish passage projects through 2029 under the Fisheries Restoration and Irrigation Mitigation Act for projects in California, Idaho, Montana, Oregon and Washington. It also directs federal agencies to prepare drought mitigation plans for critically important fisheries. Further, it expands the WaterSMART program by funding projects that improve natural water recharge.

Wyden said: "On this first day of summer and at a time when the nation – especially Oregon and the entire West – is suffering increased droughts, when farmers and ranchers are asked to feed more with less water, and critical habitats are drying up, more must be done to align water availability with water needs."

The legislation incorporates S. 2020, the Deschutes River Conservancy Reauthorization Act, with up to \$2M a year for 10 years for water quality and conservation projects. Merkley said: "Passing this bill will help ensure crucial investments for environmental protections are available and put safe water access within reach for everyone, regardless of where they live."

S2S Forecasting

On June 9, Rep. Mike Garcia (R-CA) introduced a bill to accelerate subseasonal to seasonal (S2S) prediction skills related to precipitation forecasts for water management in the western United States (H.R. 3966). The bill would direct the National Oceanic and Atmospheric Administration (NOAA) to establish at least one pilot project within the Oceanic and Atmospheric Research Office's U.S. Weather Research Program. The pilot project would carry out activities that implement the recommendations in the 2019 National Weather Service report on "Subseasonal and Seasonal Forecasting Innovation: Plans for the 21st Century."

WATER RESOURCES

New Mexico/Rio Grande

On June 27, the New Mexico Legislative Finance Committee met to discuss the implications and opportunities presented by the proposed consent decree in *Texas v. New Mexico*. The legislators heard from the New Mexico State Engineer's Office, local water managers, the Bureau of Reclamation, the Water Resources Research Institute, and the Interstate Stream Commission (ISC). They talked about current conditions, local perspectives on agriculture and municipal growth, rethinking water supply, plans for major infrastructure appropriations, federal funding opportunities, and the long-term role for the State of New Mexico.

Elephant Butte Irrigation District (EBID) Manager Gary Esslinger noted that farmers have long supplemented surface water supply from the reservoir with groundwater pumping, enabling them to benefit from a full supply of water even through drought. EBID Engineering Consultant Phil King said: "We've got this impending settlement which is going to put a new set of constraints on the way we operate. Because now not only do we have to get our water to the farmers, and to Texas and Mexico to meet their Rio Grande Project orders, but we also will have to meet this new state line index, which is a bit trickier than meeting the index at Elephant Butte." King said that infrastructure will be key to meeting that index, particularly improving stormwater flood control, but that alone will be insufficient and will be the low-hanging fruit. He said: "We're definitely going to have to change the way we administer our water." (*NM Political Report*, 6/28/23)

ISC Interim Director Hannah Riseley-White said they have a plan to reduce water use through efforts such as fallowing farmland, paying farmers not to pump groundwater, leasing surface water, and making infrastructure improvements. (*E&E News*, 6/28/23).

Further details of the ISC FY2024 Lower Rio Grande (LRG) Work Plan are available at https://www.ose.state.nm.us/ISC/isc_meetings.php.

PEOPLE

Nebraska Governor Jim Pillen appointed **Justin Lavene**, Bureau Chief, Agriculture, Environment and Natural Resources, Nebraska Attorney General's Office to the WSWC. **Tom Riley**, Director, Department of Natural Resources (DNR), and **James Macy**, Director, Department of Environment and Energy will continue to serve as full members, with **Jesse Bradley**, DNR Deputy Director, as an alternate. We congratulate Justin on his appointment and look forward to working with him.

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.