



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

682 East Vine Street / Suite 7 / Murray, UT 84107 / (801) 685-2555 / Fax 685-2559 / www.westernstateswater.org

Chair - Jon Niermann; Executive Director - Tony Willardson; Editor - Michelle Bushman; Subscriptions - Julie Groat

ADMINISTRATION **EPA/WIFIA**

On November 14, the Environmental Protection Agency (EPA) announced a \$45M Water Infrastructure Finance and Innovation Act (WIFIA) loan to the Sarpy County and Cities Wastewater Agency in eastern Nebraska. The project will connect Sarpy County to Omaha's central wastewater system, providing nearly 200,000 residents with reliable wastewater treatment at a reduced cost.

Since the start of the WIFIA program, EPA has closed 119 loans totaling \$19B in credit assistance to help finance \$43B for water infrastructure projects and create 143,000 jobs. EPA initiated its 7th round of WIFIA financing in September, with \$6.5B in matching funds available through WIFIA and \$1B through State WIFIA (SWIFIA), to support approximately \$15B in water infrastructure projects. EPA is currently accepting letters of interest for both WIFIA and SWIFIA loans, emphasizing the following priorities: (1) increasing investment in economically stressed communities; (2) making rapid progress on lead service line replacement; (3) addressing PFAS and emerging contaminants; and (4) mitigating the impacts of drought and supporting water innovation and resilience.

Since the 6th round of financing in June 2022, EPA has made WIFIA applications available on a rolling basis, and now reports on project loans as pending or closed. In 2023, the EPA closed 15 loans to western states including: California, Kansas, Nebraska, and Oregon. California WIFIA loans include: (1) \$41M to Santa Clara Valley Water District for the Safe, Clean and Natural Flood Protection Program; (2) \$74M to the Santa Clara Valley Water District for the Anderson Dam Seismic Retrofit Project; (3) \$170M to Poseidon Resources for the Carlsbad Desalination Plant Intake Modification and Wetlands Project; \$110M to the City of Ventura for the VenturaWaterPure (Wastewater) project; \$63M to the City of Ventura for the VenturaWaterPure (Water) project; \$369M to the San Francisco Public Utilities Commission for its Water Resilience Program; \$128M to the City of Santa Cruz for the Santa Cruz Water Program; \$70M to the Upper Santa Ana River

Watershed Infrastructure Financing Authority for the Water Connect project; \$76M to Monterey One Water for the Pure Water Monterey Groundwater Replenishment Project; \$13M to the United Water Conservation District for the Santa Felicia Safety Improvement Project; \$92M to the Santa Clara Valley Water District for the Pacheco Reservoir Expansion Planning and Design Project. EPA has closed a \$191M loan to the City of Wichita, Kansas for the Wastewater Reclamation Facilities Biological Nutrient Removal Improvements Project, a \$16M loan to Oregon City, Oregon for the Water Rehabilitation, Resiliency, and Improvements Project, and as stated above, \$45M to the Sarpy County and Cities Wastewater Agency for the Unified Souther Sarpy Wastewater System in Nebraska.

EPA also has 39 pending projects in 7 Western States in addition to the closed loans listed above. The status of Western States pending loans are as follows: (1) California, 19 total, 9 applied, 7 invitations, 3 paused; (2) Colorado, 4 total, 1 applied, 3 invited; (3) Kansas, 1 paused; (4) Nebraska, 1 invited; (5) Oregon, 1 applied, 4 invited, 1 paused; (6) Texas, 1 applied, 3 invited; (7) Utah, 3 invited; and (8) Washington, 1 applied.

NIDIS/USDA/Drought

On November 29, the National Integrated Drought Information System (NIDIS) released a technical memorandum titled Drought Assessment in a Changing Climate: Priority Actions and Research Needs. The report was developed as part of a technical workshop hosted early this year where more than 100 subject matter experts from over 44 institutions addressed the issue of how to better incorporate non-stationarity into drought assessments. Non-stationarity refers to time series data with statistical properties that change over time, or the phenomenon of how a changing climate impacts the probability of how and when extreme events might occur. The workshop also addressed how changes to our underlying assumptions impact our planning, governance, and communications.

The report said: "Traditional drought assessment methods based on assumptions of a stationary climate may underestimate current and future drought risks,

thereby posing challenges to agricultural producers, water managers, businesses, and decision-makers in planning and allocating resources effectively for a changing climate. Long-standing drought assessment challenges are exacerbated by climate non-stationarity, including drought monitoring, observation, research, prediction, knowledge-sharing, and communication. Drought assessment in a changing climate will require significant adjustments in approaches to address non-stationarity.”

The report emphasizes a need for protocol development in selecting a specific time period to reference when assessing drought, noting that the term “drought” is relative to the time, space, and water demand in question. Previously, it has been common to use either a 30-year reference period or the full record of observed data. Recent research has advocated for shorter reference periods, finding that they better reflect present drought risk in a non-stationary climate. A 30-year reference period may not capture the full range of normal variability for a region, and cannot determine whether events and trends are permanent or temporary. Recent research proposes maintaining a dataset that includes the full reference period but truncating it to include the most recent past. However, different locations experience different rates of change and may warrant shorter or longer reference periods. The report recommends the community develop guidance as to which reference periods are most appropriate for various applications. Because regional trends often counter each other, and dilute trends in broader observations, it is also necessary to develop a systematic accounting for regional to sub-regional differences in non-stationarity. This would enable accurate modeling which addresses variability in economies, cultures, and ecosystems in different areas.

Other areas of focus included: (1) using precipitation effectiveness more broadly to capture rainfall variability; (2) quantifying water demand in a changing climate; (3) evaluating drought impacts and how they are changing; (4) assessing drought in terms of risk; (5) assessing policy through the lens of non-stationarity; (6) strengthening planning, management, and adaptation; and (7) improving communication and collaborative knowledge exchange.

EPA/Tribal Water Rights

On December 7, the EPA released the revised Policy on Consultation with Indian Tribes and the companion Guidance for Discussing Tribal Treaty or Similar Rights. The finalized policy and guidance reflect input from Tribal officials and Tribal partnership groups. It affirms the importance of indigenous knowledge and sacred sites, specifies consultation processes and timelines, provides

a mechanism for tribal officials to raise concerns with EPA, and expands Guidance for Discussing Tribal Treaty Rights to include additional instruments of federal law and EPA actions.

The EPA Policy on Consultation with Indian Tribes was established in 2011. Its companion guidance document was issued in 2016. Both documents constitute the EPA’s policy to consult with federally recognized Tribal governments when its actions may affect them. It is revised in response to the Biden Administration’s 2021 Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships and Executive Order 13175.

The revisions address timeliness, notification, coordination, participants, and follow-up. When a tribe requests consultation, EPA is directed to (1) conduct identification analysis as soon as possible, (2) provide notification of consultation opportunities early in the process to allow for meaningful input by the tribe(s); (3) be responsive and accommodating of tribal consultation procedures during the input phase; (4) provide feedback to the tribe(s) involved and report how their input was considered in the final decision; and (5) respond to input with formal, written communication from a senior EPA official.

The revisions also outline a Consultation Process Review. Tribal officials may identify instances where they believe the policy has not been properly implemented. Concerns may be regarding sufficiency, timing, or agency implementation of the consultation process. Concerns regarding the substance of the action or decisions are not addressed by the review process. The companion guidance document expands its consideration of affect on tribes, no longer limiting it to specific geographic connections. The revisions recognize that EPA’s most significant actions are national in scope and may affect tribal treaty or similar rights. It also expands EPA’s consideration of rights beyond “treaty rights” to include those expressed or implied through all federal laws, such as treaties, statutes, and executive orders.

PEOPLE

Washington Governor Jay Inslee has appointed **Leslie Connelly**, Water Quality Strategic Planning Manager, Department of Ecology (DOE), as an alternate member to the WSWC. **Laura Watson**, Director, and **Ria Berns**, Deputy Program Manager, DOE, and **Alan Reichman**, Assistant Attorney General, Washington Attorney General’s Office will continue to serve as full members. We congratulate Leslie on her appointment and look forward to working with her.

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.