



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION**

#### **Water Data**

On January 12, The National Weather Service (NWS) unveiled a preview of the National Water Prediction Service (NWPS), a new water resources display, to be completed in the spring. NWPS will replace the Advanced Hydrologic Prediction Service (AHPS) and the National Water Center website as the agency's water data and forecast portal. NWPS is a hydrologic modeling framework that simulates and forecasts streamflow conditions. Updates to the system include flexible geographic rendering, on demand hydrograph generation, National Water Model (NWM) integration, mobile device accessibility, and a new NWPS data Application Programming Interface (API).

The new map will have more layers and features allowing for more flexible rendering of real time river observations and forecasts, precipitation estimates, and improved meteorological and hydrological data. Users will be able to generate hydrographs of a given time period upon request. They will also be able to access the NWM on the scale of individual gages and stream reaches throughout the nation. Additionally, all NWPS data will be available to developers via API to include directly into their own products. The NWPS also features active advisory laying options, Flood Inundation Mapping covering 10% of the U.S., and downloadable GIS data. <https://www.weather.gov/owp/operations>

### **CONGRESS**

#### **Appropriations/Continuing Resolution**

On January 19, President Biden signed a third continuing resolution (CR) (H.R. 2872) into law. The CR passed the Senate on January 18 in a 77-18 vote. The House approved the two-tiered CR on the same day in a 314-108 vote.

The stopgap measure maintains the two-tiered continuations passed in November, pushing the deadline for agencies under four FY23 appropriations bills (Agriculture-Rural Development, Energy-Water, Military Construction-Veterans Affairs, and Transportation-Housing and Urban Development) from January 19 to

March 1. The funding deadline for the remaining eight appropriations bills is extended from February 2 to March 8. (WSW #2583)

#### **Abandoned Mines/Good Samaritan**

On January 18, the Senate Environment and Public Works Committee unanimously approved the Good Samaritan Remediation of Abandoned Hardrock Mines Act, introduced by U.S. Senators Jim Risch (R-Idaho) and Martin Heinrich (D-NM). WSWC wrote a letter to the Committee in support of the bill on January 10. (WSW #2591)

In his opening remarks, Chairman Tom Carper (D-DE) said: "Today more than one quarter of all senators have signed onto this bill, evenly split between democrats and republicans. The Good Samaritan Act, known to some as 'Good Sam,' aims to eliminate a longstanding barrier to the cleanup of abandoned mine sites. Federal agencies have identified over 140,000 remnants of advanced hardrock mines of which more than 60% pose safety and environmental hazards. Fortunately, organizations that have no legal or financial ties to these abandoned mines, true good samaritans, want to volunteer to clean up these sites.... I want to thank our colleagues. I especially want to thank Senator Heinrich and Senator Risch for their efforts in crafting this legislation and working with our committee to improve it over the last two sessions."

Senator Risch said: "Today's committee passage of the Good Samaritan Remediation of Abandoned Hardrock Mines Act puts us one step closer to cleaning up long-abandoned hardrock mines. I encourage the full Senate to pass Senator Heinrich and my commonsense legislation to allow Good Samaritans to conduct this important remediation work."

Senator Heinrich said: "Gaining the bipartisan support of the Environment and Public Works Committee on our Good Samaritan Act is a major milestone. Our bipartisan legislation will allow Good Samaritan groups to clean up the abandoned mines that are threatening our communities in New Mexico and the land, water, fish, and wildlife we rely on. This bill is commonsense and

now it's ready for Senate passage so these Good Samaritans can get to work."

## **CONGRESS/WATER QUALITY**

### **Water Quality Criteria Development Act**

On January 18, Representatives Burgess Owens (R-UT) and David Rouzer (R-NC) introduced the Water Quality Criteria Development and Transparency Act (H.R. 7021). The act aims to establish more transparent procedures for the Environmental Protection Agency's (EPA) development of water quality criteria. It would amend Clean Water Act (CWA) §304(a) to subject those criteria to notice-and-comment rulemaking procedures. It would also allow courts to consider challenges to the criteria under the Administrative Procedures Act.

Owens said: "[EPA's] water quality criteria development for National Pollutant Discharge Elimination System (NPDES) permits lacks transparency and often ignores stakeholder input. [H.R. 7021] tackles that issue by ensuring that outside comments are not just heard but legitimately considered, fostering a collaborative approach to water quality management."

On the same day, Representatives John Duarte (R-CA) and Rouzer introduced the Confidence in Clean Water Act (H.R. 7013). The act also aims to clarify permitting reviews for permit seekers and holders. The act would amend CWA §402 to require NPDES permit writers to outline concrete limits on specific pollutants or waterbody conditions. The act would also protect permittees from legal liability so long as permit holders comply with their permits.

Duarte said: "I am proud to introduce [H.R. 7013] which cuts red tape and brings greater regulatory certainty to the Clean Water Act's permitting processes. This is a commonsense bill ensuring that the NPDES permits clearly and reliably list their regulations for ease of use by permit holders, while also safeguarding permit holders who act in good faith."

## **LITIGATION**

### **Louisiana v. EPA/CWA Section 401**

On January 12, 18 states jointly filed a motion for leave to intervene in *State of Louisiana et al. v. U.S. Environmental Protection Agency et al.*, U.S. District Court for the Western District of Louisiana (# 2:23-cv-01714), for the purpose of defending the challenged CWA §401 Water Quality Certification Improvement Rule (2023 Rule) (88 FR 66558). The Western intervenor defendant states include CA, NM, OR, and WA, and the plaintiff states include AK, MT, OK, and WY.

The plaintiff states and regulated entities challenged the 2023 Rule, arguing that it expands the states' authority beyond the scope of the CWA by: (1) allowing states to establish additional requirements for a complete certification request; (2) directing states to evaluate all potential water quality-related effects of a proposed activity (rather than evaluating the point source discharge only) under all types of state water quality requirements; (3) retroactively applying the rule to pending requests; and (4) failing to adequately carry out APA notice-and-comment procedures. The petitioners requested an order declaring that the 2023 Rule violates the CWA and the APA; vacating and setting aside the 2023 Rule; and enjoining EPA from applying or enforcing the 2023 Rule. Since filing the complaint on December 4, the plaintiffs also petitioned for preliminary injunctive relief to stay the 2023 Rule in states bringing the lawsuit.

The intervenor defendant states argued that they have a "clear and direct interest in upholding the 2023 Rule to preserve their sovereign authority over water quality within their respective states under section 401 of the CWA." They argued that their interests are not adequately represented by either the plaintiff states or EPA. They noted that the plaintiff's plea to invalidate the 2023 Rule and return to the 2020 Rule may impair intervenor defendant states' ability to protect their interests. They disagreed with the plaintiffs' allegations that the 2023 Rule is overly broad or burdensome, stating: "Placing the ultimate authority to ensure proposed projects comply with state water quality requirements in the hands of states is the core reason Congress included the section 401 certification requirement in the first place." They pointed out that the nature of cooperative federalism as mandated by the CWA requires independent state representation, and that EPA's interests in this case diverge from their own.

## **MEETINGS**

### **Western States Water Council**

The WSWC Spring (203rd) Meetings and Washington Roundtable will be held in Washington, DC on March 13-14, at the Xylem Reservoir Center. This event is sponsored jointly by the Interstate Council on Water Policy (ICWP). Registration will be handled separately for the Joint ICWP/WSWC Roundtable and reception on Wednesday, March 13, and the WSWC Committee and Full Council Meetings on Thursday, March 14. A block of rooms is being held at the Cambria Hotel Washington, D.C., which is under two miles away from the Xylem Center, and will be held through February 17. For further information on the meetings, registration, and Cambria Hotel see: <https://westernstateswater.org/events/2024-wswc-spring-203rd-meetings-and-washington-roundtable/>.

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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.**