



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS

Oklahoma/State of the State Address

On February 5, Governor Kevin Stitt (R-OK) gave his State of the State Address. He discussed fiscal policy, education, reinforcing public safety, and attracting entrepreneurship to the State. He said: "In the last five years, we've had record revenue growth, the lowest unemployment, and record savings. We are top ten in Real GDP growth. We are number six in lowest cost of living and number eight in energy affordability... If we are a top ten state, all boats will rise - education, infrastructure, health outcomes, and quality of life."

He also expressed concerns about the lingering impacts of the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). "Many Oklahomans I talk to want clarity about who has authority to do what in our state. That's because today, our state is still dealing with the fallout from the *McGirt* decision. It's a decision that has rocked our state and caused division where previously there was none. But I know there is a path forward because of the success we've found negotiating compacts with the Chickasaw, the Apache, the Citizen Potawatomie, and the Wyandotte tribal governments over the past few weeks. But we still need clarity. Three years ago, in my state of the state, I asked a few questions stemming from the Supreme Court's decision.... Three years after *McGirt*, we are still operating under a confusing and conflicting patchwork of jurisdiction across our state...."

Wyoming/State of the State Address

On February 12, Governor Mark Gordon (R-WY) discussed Wyoming's fiscal policy, education, workforce participation, mental health funding, law enforcement, immigration, and energy. He touted the establishment of the Rock Springs Resource Management Plan (RMP) Task Force, and Wyoming's work to seek legal relief of federal regulation. He said: "Wyoming fights back to preserve our rights and our way of life using every legal and political resource available to us. I will never shy away from our responsibility to stand up to the federal government. It was about taking the lead. We put

together a group of stakeholders who work to identify appropriate remedies for Wyoming to use in reforming unwarranted and unprecedented federal action. It is only our first step but it is an effective one. Our work on the Rock Springs RMP is ongoing and critical to everyone in Wyoming... But to members of this legislature, I want you to know that the Attorney General and I appreciate your support for the resources you provide so we can protect the rights of Wyoming's people."

ADMINISTRATION/WATER QUALITY

EPA/Lead and Copper Rule

On February 5, fifteen Attorneys General (AGs), including representatives for Idaho, Kansas, Montana, Nebraska, South Dakota, Texas, Utah and Wyoming submitted public comments on the Environmental Protection Agency's (EPA) proposed rule entitled "National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI)" (88 FR 84878). The rule would require water systems to replace lead service lines, remove the lead trigger level, reduce the lead action level to 0.010 mg/L, and strengthen tap sampling procedures. EPA anticipates that the proposed rule will be final in October 2024.

The AGs argued that the proposed rule is unlawful because it: (1) implicates the major questions doctrine by requiring activities that are expected to cost \$28-47B; (2) violates the Commerce Clause by compelling homeowners to pay for pipe replacement; and (3) is arbitrary and capricious for requiring activities which will cost states, public water systems, and individual households billions of dollars without demonstrating measured benefit. They expressed doubt that the federal government's appropriations would cover the lead pipe replacements required by the proposed rule. They argued that communities will bear the burden of funding and repaying federal loans, and that homeowners will suffer untenable increases in utilities. They pointed to EPA's 2021 Lead and Copper Rule Revisions, which require replacement only if the amount of lead in the water exceeds a specified level, as a sufficient measure of lead pipe regulation.

The letter states: “Ultimately, this proposed rule is unworkable, underfunded, and unnecessary. It creates an almost impossible burden for each state and its citizens without evidence of a tangible benefit over the 2021 rule that was already set to go into effect... All of the undersigned states want clean water for their citizens and are taking steps to ensure that will happen. The proposed rule is not only heavy handed but also an unreasonable way to achieve this goal. It sets an almost impossible timeline, will cost billions, and will infringe on the rights of the States and their residents – all for benefits that may be entirely speculative. The EPA should withdraw the rule.” <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0801-1132>

ADMINISTRATION/WATER RESOURCES **Klamath River Basin/Dam Removal**

On February 15, the Klamath River Renewal Corporation (KRRC) announced the completion of the initial drawdown phase in the timeline for the Klamath Dam removal. The draining process for the Iron Gate, Copco, and JC Boyle reservoirs has allowed restoration crews to begin revegetation seeding work on the 2200 acres of exposed reservoir area. The facilities are expected to refill during spring runoff as the river retraces a path through the reservoir footprints. KRRC plans to begin demolition of Iron Gate, Copco, and J.C. Boyle Dams in May. They plan to breach the cofferdams for each dam in August, reconnecting Klamath river flows permanently.

Mark Branson, CEO of KRRC, said: “Seeing the river reemerge is inspiring. The Klamath is now reconnected for the first time in a century. While we are in the very earliest stages of restoring this important waterway, we can envision a bright future for what was once the third most productive salmon bearing river on the West Coast of the lower 48 states.”

Dave Coffman, Klamath Restoration Program Manager for RES, said: “We contracted with the Yurok Tribe to perform the initial revegetation work, and they literally could not wait to begin. Crews were planting acorns and broadcasting seed by hand the day after the first reservoir started to drain. We have billions of seeds in storage so the disturbed areas can be fully treated.” <https://klamathrenewal.org/initial-phase-of-drawdown-complete-restoration-underway/>

CONGRESS **Appropriations/SRFs**

On February 15, the Council of Infrastructure Financing Authorities (CIFA), with WSWC and other cosigning organizations, sent a letter to the House and Senate Appropriations Committee leadership. CIFA

urged full funding of the Clean Water and Drinking Water State Revolving Funds (SRFs) at congressionally-authorized levels of \$3B each for fiscal year 2024. They noted that water infrastructure costs have risen with inflation, interest rates, and water quality standards. Annual federal funding is necessary to complete current and projected SRF-funded projects. “The SRFs initially expanded their project portfolio based on supplemental appropriations provided in the Infrastructure Investment and Jobs Act (IIJA). However, the SRFs have had to scale back the project pipeline because the one-time funds in the IIJA were needed to backfill significant cuts to annual federal funding. Additionally, more than half of the federal funding in the IIJA can’t be used to repair, replace or improve aging infrastructure which is desperately needed and nearly half of the funding available for those projects must be used as grants or principal forgiveness, which limits eligibility.” They concluded that fully funding the SRFs will restore and increase access to affordable financing for water infrastructure that protects public health.

Wildfires/Watershed Recovery

On February 8, Senators Mitt Romney (R-UT) and Michael Bennet (D-CO), along with Representatives Celeste Maloy (R-UT), John Curtis (R-UT), Joe Neguse (D-CO) and Yadira Caraveo (D-CO), introduced the Watershed Protection and Forest Recovery Act (S. 3760 and H.R. 7294). The bill would help communities protect their water supply after natural disasters on U.S. Forest Service (USFS) lands. The bill directs the creation of a new Emergency Forest Watershed Program, a dedicated funding source for the protection of downstream water resources. It authorizes USFS agreements with project sponsors who would assume the risks, waives matching requirements, and classifies the work as emergency response actions under NEPA.

Senator Romney said: “Over the last several years in Utah, we have seen the need for a program to streamline the funding process that restores water resources on [USFS] land. This was evidenced during recovery efforts from the Dollar Ridge Fire in 2018 when the Central Utah Water Conservancy District faced major obstacles in repairing its facilities. I’m pleased to team up with my colleagues to introduce the Watershed Protection and Forest Recovery Act to help our communities more efficiently recover from wildfires.”

Senator Bennet said: “We need to make it easier for local water managers and the [USFS] to collaborate to restore the health of our watersheds following a natural disaster. This common-sense bill cuts red tape and helps ensure that communities and landscapes recovering from wildfires don’t face unnecessary hurdles in their efforts to protect their drinking water.”

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.