



NORTH DAKOTA

2024
WSWC
Meeting

Western States Water Council
(204th Meeting)
West Fargo, North Dakota
July 25-26, 2024



WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westernstateswater.org

MEMORANDUM

TO: Western States Water Council Members and Others

FROM: Tony Willardson, Executive Director

DATE: July 18, 2024

RE: Briefing Materials for the Summer 2024 (204th) WSWC Meetings

This is to advise you that briefing materials for our 2024 Summer meetings being held in West Fargo, North Dakota (a hybrid in-person and virtual event) on July 25-26, may be downloaded on our [meetings webpage](#). The minutes from the March 2024 Spring meetings will be available on our website (under Past Meetings) for your review. Please bring any necessary changes to the attention of staff.

The meeting schedule and agenda are posted on our meetings webpage. As a reminder, in order to participate, whether in-person or virtually, all must register. Please visit our [meetings webpage](#) and when registering for virtual attendance, please mark each day you wish to attend. A confirmation email will be sent containing directions to join the meetings via Zoom webinar. The Zoom link provided will be unique to each individual registrant and should not be shared. However, the meetings are open to the public and you are free to direct others to the webpage to register.

Our North Dakota hosts have arranged a full day field trip on Wednesday, July 24, which will include lunch. Members and guests will depart the DoubleTree hotel at 9:30 am. Field trip stops will include: Fargo Regional Water Reclamation Facility; Grand Farm; and Fargo-Moorhead Diversion. ***The field trip is being sponsored by Advanced Engineering and Environmental Services (AE2S), Moore Engineering, Inc. and the North Dakota Rural Water Systems Association.***

On Thursday, July 25, the Council meetings will begin with the North Dakota State Presentation at 8:00 am, followed by our regular committee meetings. ***A reception, sponsored by SWCA Environmental Consultants***, will be held for all WSWC members and guests from 6:30 – 8:30 pm on Thursday evening.

The Full Council meeting will be held on Friday morning, July 26, from 8:00 am to noon. In keeping with our usual practice, a group photo is scheduled to be taken for the annual report.

We look forward to seeing most of you in person! Please contact me with any questions at twillardson@wswc.utah.gov.

WESTERN STATES WATER COUNCIL
204th COUNCIL MEETING
West Fargo, North Dakota
July 25-26, 2024

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- WQ Position #469 - Water Transfers and NPDES Discharge Permits
- L Position #470 - Endangered Species and State Water Rights

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- I. New Mexico Integrated Water Financing Plan
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Tab A – Schedule of Meetings – Agenda –
30-day Notice



SCHEDULE OF MEETINGS

WESTERN STATES WATER COUNCIL

DoubleTree by Hilton
West Fargo, North Dakota

July 24-26, 2024

<u>Date/Time</u>	<u>Meeting</u>	<u>Room</u>	<u>Adjournment</u>
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(Central Daylight Time)

Wednesday, July 24

9:30 am	Field Trip: Stops will include: Fargo Regional Water Reclamation Facility; Grand Farm; and Fargo-Moorhead Diversion. Sponsors: <i>Advanced Engineering and Environmental Services (AE2S), Moore Engineering, Inc., and the North Dakota Rural Water Systems Association (NDRWSA).</i>		
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Thursday, July 25

8:00 am	Host State Presentation	Ballroom A&B	8:45 am
8:45 am	Water Resources Committee Meeting	Ballroom A&B	11:45 am
12:00 pm	Executive Committee (over lunch)	Elm Room	1:15 pm
1:30 pm	Water Quality Committee Meeting	Ballroom A&B	3:30 pm
3:30 pm	Legal Committee Meeting	Ballroom A&B	5:30 pm
6:30 pm	Reception Sponsor: <i>SWCA Environmental Consultants</i>	Dogwood Room	8:30 pm

Friday, July 26

8:00 am	WSWC Full Council (204 th) Meeting (including a photo session)	Ballroom A&B	Noon
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AGENDA

WATER RESOURCES COMMITTEE

DoubleTree by Hilton
West Fargo, North Dakota

July 25, 2024

Call to Order at: 8:45 a.m. (Central Daylight Time)
Conducting: Andrea Travnicek, North Dakota

Ballroom A&B

TABS

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Resolutions –**
Position #468 - Rural Water Supply Project/Infrastructure Needs
4. **Energy-Water Resilience Strategy –** Michael Rinker, Department of Energy
- H 5. **Corps Water Infrastructure Financing Program –** Aaron Snyder, Director, Water Infrastructure Financing Program, U.S. Army Corps of Engineers
- I 6. **New Mexico Integrated Water Financing Plan –** Erica Gaddis, Senior Water Resources Director, SWCA Environmental Consultants
7. **Precision Agriculture Solutions –** Aubrey Bettencourt, Global Director of Government Relations and External Affairs, Netafim
- J 8. **North Dakota Water Data Survey Status Report –** Andrea Travnicek
- K 9. **WaDE/WestDAAT/WestCAT Update –** Ryan James
10. **Red River Valley Water Supply Project–** Duane DeKrey, General Manager, Garrison Diversion Conservancy District
- L 11. **Roundtable: Water Supply and Conservation as a Primary Purpose of Corps Projects**
12. **Roundtable Discussion: Challenges of Small and Rural Water Systems**
- G 13. **FY2024-2025 Committee Work Plan**
- XYZ 14. **Sunsetting Positions for Fall 2024 Meetings – #459-#464**
15. **Other Matters**

Adjourn by 11:45 a.m.

AGENDA
EXECUTIVE COMMITTEE

DoubleTree by Hilton
West Fargo, North Dakota

July 25, 2024

Call to Order at: 12:00 p.m. (Central Daylight Time)
Conducting: Jon Niermann, Chair

Elm Room

TAB

1. **Welcome and Introductions**
 2. **Approval of Minutes**
 - D 3. **Report on Budget and Finances** – Tony Willardson
 - C 4. **Sunsetting Positions** – Jon Niermann
Position #468 - Rural Water Supply Project/Infrastructure Needs
Position #469 - Water Transfers and NPDES Discharge Permits
Position #470 - Endangered Species and State Water Rights
 - E 5. **Executive Director’s Report/WSWC Activities and Events** – Tony Willardson
 - F 6. **Future WSWC Meetings** – Jon Niermann
 - B 7. **Council Membership Update** – Tony Willardson
 - G 8. **Draft FY2024-2025 Committee Work Plan**
 - XYZ 9. **Sunsetting Positions for Fall 2024 Meetings** – #471-#477
Position #471 - supporting State CWA Section 401 Certification Authority
Position #473 - regarding Federal Water & Climate Data Collection & Analysis Programs
Position #474 - regarding Drought Preparedness, Prediction and Early Warning Programs
Position #475 - regarding Bureau of Reclamation Drought Response Program
Position #476 - regarding States’ Water Rights and Natural Flows
Position #477 - regarding Abandoned Hardrock Mine Cleanup
 10. **Other Matters**
- 1:15 p.m. **Adjourn**

WATER QUALITY COMMITTEE MEETING

DoubleTree by Hilton
West Fargo, North Dakota

July 25, 2024

Call to Order at: 1:30 p.m. (Central Daylight Time)
Conducting: Jennifer Zygmunt, Wyoming

Ballroom A&B

TAB

1. **Welcome and Introductions**
 2. **Approval of Minutes**
 - C 3. **Positions – Proposed/Sunsetting**
Proposed Position on Nutrients
Position #469 - Water Transfers and NPDES Discharge Permits
 4. **North Dakota Water Quality Issues** – Peter Wax, Scientist, North Dakota
Department of Environmental Quality
 - M 5. **Lengthening NPDES Permit Terms** – Mark Mayer, Director, Office of Water,
South Dakota Department of Agriculture and Natural Resources
 6. **Mapping Wetlands** – Stacey Jensen, Director, Oceans, Wetlands, and
Communities Division, EPA
 - N 7. **CWA Human Health Criteria** - Christina Carpenter (AK) and Leslie Connelly
(WA)
 - O 8. **PFAS and the Woodbury Water Treatment Project** – Aaron Vollmer, Client
Program Leader, AE2S
 9. **Staff Updates**
 - a. Federal Mining Dialogue
 - b. Good Sam Meeting with EPA’s Office of Mountains, Deserts, and Plains
 - G 10. **FY2024-2025 Committee Work Plan**
 - XYZ 11. **Sunsetting Positions for Fall 2024 Meetings** –
Position #471 supporting State CWA Section 401 Certification Authority
Position #477 regarding Abandoned Hardrock Mine Cleanup
 12. **Other Matters**
- 3:30 pm Adjourn

LEGAL COMMITTEE MEETING

DoubleTree by Hilton
West Fargo, North Dakota

July 25, 2024

Call to Order at: 3:30 pm (Central Daylight Time)

Ballroom A & B

Conducting: Chris Brown, Wyoming

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Positions –**
Position #470 - Endangered Species and State Water Rights
4. **North Dakota Sovereign Lands** – Aaron Carranza, P.E., Regulatory Division
Director, North Dakota Department of Water Resources
- P 5. **Legal Challenges to Florida’s CWA §404 Assumption** – Justin Wolfe, General
Counsel, Florida Dept. of Environmental Quality, and Jeffrey Wood, Partner, Baker
Botts
6. **Colorado River Operations Update** – Nicole Klobas, Chief Counsel, Arizona
Department of Water Resources
7. **Northeastern Arizona Indian Water Rights Settlement** – Ryan Smith,
Shareholder, Brownstein Hyatt Farber Schreck, LLP
- Q 8. **U.S. Supreme Court Rio Grande Decision** – Jon Neirmann, Tanya Trujillo
- R 9. **Roundtable Discussion: National Groundwater Use**
- G 10. **Draft FY2024-2025 Committee Work Plan**
11. **Staff Updates** – Michelle Bushman
 - S a. Legislation and Litigation Update
 - T b. Indian Water Rights Settlement Completion Fund
- XYZ 12. **Sunsetting Positions for Fall 2024 Meetings - #476**
Position #476 - regarding States’ Water Rights and Natural Flows
13. **Other Matters**
- 5:30 pm Adjourn

AGENDA
204th COUNCIL MEETING

DoubleTree by Hilton
West Fargo, North Dakota

July 26, 2024

Call to Order at: 8:00 a.m. (Central Daylight Time)
Conducting: Jon Niermann, Texas, WSWC Chair

Ballroom A & B

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
3. **Committee Reports – Action Items**
 - a. Water Resources Committee – Andrea Travnicek
 - b. Water Quality Committee – Jennifer Zygmunt
 - c. Legal Committee – Chris Brown
 - d. Executive Committee – Jon Niermann
4. **WestFAST Report** – Michael Eberle, Water Rights and Uses Program Manager, USDA Forest Service (WestFAST)

BREAK Photo Session

5. **International Boundary Water Challenges & Opportunities** – Panel Discussion

Luévano Grano José de Jesús, Comisión Internacional de Límites y Aguas
Lance Yohe, U.S. Commissioner, International Joint Commission
Raquel Rancier, Deputy Director, Oregon Department of Water Resources
John Simpson, Partner, Marten Law, LLP, Boise, Idaho
Anna Pakenham Stevenson, Administrator, Water Resources Division, Montana
Tanya Trujillo, Deputy State Engineer, New Mexico
Jeanine Jones, Interstate Resources Manager, California DWR
Nicole Klobas, Chief Counsel, Arizona Department of Water Resources

F 6. **Future Council Meetings** – Jon Niermann

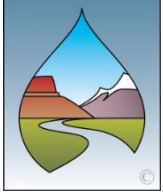
U 7. **State Reports**

XYZ 8. **Sunsetting Positions for Fall 2024 Meetings** – #459-#467

Position #471 - supporting State CWA Section 401 Certification Authority
Position #473 - regarding Federal Water & Climate Data Collection & Analysis Programs
Position #474 - regarding Drought Preparedness, Prediction and Early Warning Programs
Position #475 - regarding Bureau of Reclamation Drought Response Program
Position #476 - regarding States' Water Rights and Natural Flows
Position #477 - regarding Abandoned Hardrock Mine Cleanup

9. **Other Matters**

Noon **Adjourn**



WESTERN STATES WATER COUNCIL

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Web Page: www.westernstateswater.org

MEMORANDUM

TO: Council Members

FROM: Tony Willardson, Executive Director

DATE: June 26, 2024

RE: **30-Day Notice of Summer 2024 (204th) WSWC Meetings**

This memorandum is notice that the 204th meetings of the Western States Water Council (WSWC) will be held July 24-26, at the DoubleTree by Hilton West Fargo located at 825 E Beaton Drive, West Fargo, ND 58078. Virtual meeting attendance will likewise be accommodated. Consistent with our rules of organization, any external policy positions to be proposed for Council consideration must be included with the 30-day notice

One new proposed position regarding State Nutrient Reduction Strategies has been proposed by the Water Quality Committee's Nutrient Subcommittee. Three positions adopted on June 25, 2021, are scheduled to sunset at this meeting unless readopted:

- [Position #468](#) – Rural Water Supply Project/Infrastructure Needs
- [Position #469](#) – Water Transfers and NPDES Discharge Permits
- [Position #470](#) – Endangered Species and State Water Rights

The sunsetting positions are available for review on our [website](#). In keeping with our usual practice, we encourage you to consult with your respective Governor's office and Western Governors' Association Staff Advisory Council (SAC) member regarding the proposed and sunsetting positions. Any recommended changes will be considered during the Full Council meeting on July 26.

Please note that the Executive Committee will meet virtually to discuss these policy resolutions and any recommended revisions on Tuesday, July 2, at 8:30 a.m. Mountain Daylight Time (7:30 a.m. Pacific; 9:30 a.m. Central). Committee Chairs are also invited to participate. Zoom meeting information will be provided separately. In the event an Executive Committee member is unable to join the call, they may designate an alternate to participate and engage in the discussion by so advising via email.

For those attending the West Fargo meetings in person, please register no later than July 12. All meeting participants, whether attending in-person or virtually, must register in advance on our [meetings webpage](#). There is no registration fee to attend our meetings. For virtual participants, please note that on the Zoom registration form you will need to mark each session that you plan to attend, and you will receive an email confirmation for the meetings that contains a link to join. Do not share the link received in the email, as it will be unique to you. If you are aware of anyone else wishing to participate remotely, please advise them to go to our meetings webpage to register for themselves.

Our North Dakota hosts have arranged a full day field trip on Wednesday, July 24, which will include lunch. Members and guests will depart the DoubleTree hotel at 9:00 am. Field trip stops will include: Fargo Regional Water Reclamation Facility; Grand Farm; and Fargo-Moorhead Diversion. ***The field trip is being sponsored by Advanced Engineering and Environmental Services (AE2S), and the North Dakota Rural Water Systems Association.***

On Thursday, July 25, the Council meetings will begin with the North Dakota State Presentation at 8:00 am, followed by our regular committee meetings. Attached is a draft schedule of meetings for your reference. ***A reception, sponsored by SWCA Environmental Consultants,*** will be held for all WSWC members and guests from 6:30 – 8:30 pm on Thursday evening.

The Full Council meeting will be held on Friday morning, July 26 from 8:00 am to noon.

For spouses, and others who will not be attending the meetings, TedTalk tickets are available through our North Dakota hosts. Those who are interested may contact Julie Groat at jgroat@swc.utah.gov. For further information, please see: <https://tedxfargo.com/event-overview/>.

Additional meeting information and agenda details as they are available will be posted online at <https://westernstateswater.org/events/2024-wswc-summer-204th-meetings-in-west-fargo-north-dakota/>.

We look forward to seeing most of you in person! Please contact me with any questions at twillardson@swc.utah.gov.

Tab B – Membership List

WESTERN STATES WATER COUNCIL

MEMBERSHIP LIST

July 18, 2024

OFFICERS

Chair - **Jon Niermann**
Vice-Chair - **Julie Cunningham**
Secretary-Treasurer - **Earl Lewis**

STAFF

Executive Director - **Tony Willardson**
Deputy Director/General Counsel - **Michelle Bushman**
Policy Analyst - **Elysse Campbell**
Data Analyst/Hydroinformatics Specialist - **Ryan James**
Office Manager - **Julie Groat**
WestFAST Federal Liaison - **Madeline Franklin**

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ALASKA

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*Ex-Officio Member

**Executive Committee Member

†Council members denoted by this symbol are listed by virtue of their office, pending receipt of a letter of appointment by their Governor.

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KANSAS

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MONTANA

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NEVADA

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Lauren Ris - Colorado
Mat Weaver - Idaho
Jerry Rigby - Idaho
(Alternate)
Earl Lewis - Kansas
Anna Pakenham Stevenson - Montana
Tom Riley - Nebraska
Adam Sullivan - Nevada
Tanya Trujillo - New Mexico
Andrea Travnicek - North Dakota
Julie Cunningham - Oklahoma
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Sara Gibson - Oklahoma
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Doug Woodcock - Oregon
Hunter Roberts - South Dakota
Nakaila Steen- South Dakota
(Alternate)*
Jon Niermann - Texas
(Chair)
Candice Hasenyager - Utah
Ria Berns - Washington
Brandon Gebhart - Wyoming
Jeff Cowley - Wyoming
(Alternate)*

Management Subcommittee

Jon Niermann
(Chair)
Julie Cunningham
(Vice-Chair)
Earl Lewis
(Secretary/Treasurer)
Tony Willardson
(Executive Director)
Jeanine Jones
(Former Chair)

Ex-Officio Representatives

*For purposes of Committee rosters, the designation as an "alternate" only reflect the person's function on the Committee.

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Kelly Brown - Arizona
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Jeanine Jones - California
Tracy Kosloff - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho
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Vacant - Kansas
Jay Weiner - Montana
Justin Lavene - Nebraska
Melissa Flatley - Nevada
Nathaniel Chakeres - New Mexico
Vacant - North Dakota
Sara Gibson - Oklahoma
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Hunter Roberts - South Dakota
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Sarah Shechter - Utah
(Alternate)*
Stephen North - Washington
Chris Brown - Wyoming
(Chair)

Clean Water Act Jurisdiction

Julie Pack - Alaska

Non-Tribal Federal Water Needs Subcommittee

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Jay Weiner - Montana
Melissa Flatly - Nevada
Adam Sullivan - Nevada
Kathy Alexander - Texas
Buck Smith - Washington
Chris Brown - Wyoming

Micheline Fairbanks (ex-officio member)

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David Hu
Paula Cutillo
BOR - Arthur Coykendall
DOD - Lauren Dempsey
DOJ - Stephen Bartell
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USFWS - Michael Higgins
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Betty Olson - California
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Jojo La - Colorado
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Tim Davis - Utah
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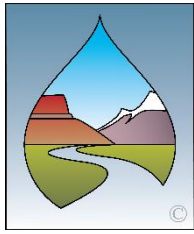
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Tab C – WSWC Policy Positions



DRAFT
RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Regarding
STATE NUTRIENT REDUCTION STRATEGIES
Fargo, North Dakota
July 26, 2024

WHEREAS, the Clean Water Act (CWA) establishes individual States as co-regulators, responsible for establishing comprehensive water quality standards and nutrient reduction strategies for waters within their borders; and

WHEREAS, the west includes diverse and unique physiographic, hydrologic, geologic and climatic conditions, and water supply infrastructure, with significant implications for nutrient management; and

WHEREAS, States are primarily responsible and accountable for their own water development, management, and protection challenges, and are in the best position to identify, evaluate, and prioritize their needs, and plan and implement strategies to meet those needs; and

WHEREAS, CWA Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" and "to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution;" and

WHEREAS, Congress established a national policy in CWA Section 101(a)(7) supporting the development and implementation of programs for the control of nonpoint sources of pollution "in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution;" and

WHEREAS, most States have authority over the regulation of discharges of pollutants, including excess nutrients, for waters within their borders, and are primarily responsible for managing and otherwise controlling such discharges; and

WHEREAS, nitrogen and phosphorus pollutants are the cause of water quality impairment to thousands of water bodies in the U.S., resulting in hypoxia, harmful algal blooms, and groundwater nitrate contamination, and thereby threatening the availability of water for designated uses including domestic supply, recreation, aquatic wildlife habitat, and agricultural use; and

WHEREAS, nutrient issues are typically the result of excess availability, manifesting as drinking water compliance problems and impacts to desirable aquatic life; and

WHEREAS, most States have unique reduction strategies based on narrative criteria, which express and address the impact of excess nutrients, and result in demonstrable positive environmental

responses that decrease the frequency, size, and severity of low dissolved oxygen occurrences [and other water quality issues, including those](#) caused by harmful algal blooms; and

WHEREAS, the Environmental Protection Agency (EPA) has promoted the position that numeric nutrient criteria are necessary to provide measurable water quality-based goals and are easier and more efficient than the narrative criteria statements in many state water quality standards; and

WHEREAS, nutrient reduction requires a combination of natural and social sciences to create and implement standards which are achievable, economically feasible and sociologically appropriate, and support desired outcomes for designated uses; and

WHEREAS, EPA provides information, methods, tools, evaluation techniques, and best practices to address problems associated with excess nutrients; and

WHEREAS, EPA seeks to support the efforts of states and tribes to reduce nutrient loading by facilitating water quality modeling and monitoring; and

WHEREAS, baseflow conditions can be predominantly influenced by wastewater from NPDES permitted facilities, and technology-based controls for point sources may be more physically and fiscally achievable than achieving water quality based effluent limitations; and

WHEREAS, reductions of wet weather nutrient loading require control efforts among both point and non-point sources in both urban and rural landscapes, and states have different approaches to controlling nonpoint sources, which are [spatially](#)-widespread, challenging to control and maintain, and largely subject to only voluntary authority under the Clean Water Act; and

WHEREAS, Congress has authorized funding for programs that are crucial to nutrient reduction such as Clean Water State Revolving Funds (Clean Water SRFs), Section 106 Grants for water pollution control programs, Section 319 Grants for nonpoint management programs, and National Resources Conservation Service (NRCS) programs such as the Environmental Quality Incentives Program (EQIP).

NOW, THEREFORE, BE IT RESOLVED, that any EPA nutrient reduction strategy must recognize and respect state primacy, reflect a true state-federal partnership, and provide adequate funding consistent with current federal statutory authorities and regulatory mandates.

BE IT FURTHER RESOLVED, the Western States Water Council supports the ability of each State to [choose how it](#) leverages [the its full](#) portfolio of reduction strategies in determining nutrient reduction regulations, including narrative criteria, technology-based criteria, market-based efforts, state regulated alterations to the landscape, as well as long recognized strategies such as numeric criteria, TMDLs, facility optimization, and NPDES permitting.

BE IT FURTHER RESOLVED, the Western States Water Council supports the ability of each State to implement reduction strategies that focus on state-selected priorities, [appropriate documentation and public outreach](#), and achievable improvement goals and that consider the severity of impairments, the impacts to drinking water, the need to protect unimpaired waterbodies, the implementation challenges and impacts to downstream waters as understood through both natural and social sciences.

BE IT FURTHER RESOLVED, that effective nutrient reduction requires engagement

and coordination among all levels of government, each fulfilling their role in scientific investigation, technical and financial assistance, strategic prioritization, tactical regulation, resource delivery, on-site implementation, and adaptive management.

BE IT FURTHER RESOLVED, that the Western States Water Council encourages the EPA to work with its federal partners such as NRCS to form a coordinated federal response with state input to support customized state nutrient reduction strategies ~~that supports states efforts and the achievement of water quality standards.~~

BE IT FURTHER RESOLVED, the Western States Water Council supports funding at levels needed for states to fully implement federal programs that facilitate the development and implementation of science-backed state-led nutrient reduction strategies, including Clean Water SRFs, Section 319 & 106 grants, and NRCS programs such as EQIP.

BE IT FURTHER RESOLVED, the Western States Water Council supports the collection, analysis, and open sharing of reliable water quality data at all levels of government to support sound decision-making, including development of models, tools, and resources that are adaptable to unique hydrologic conditions.

~~**BE IT FURTHER RESOLVED**, that State programs should commit to providing transparent documentation of the efforts to effectively direct action, note challenges, and assemble successful environmental outcomes.~~



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RURAL WATER SUPPLY PROJECT/INFRASTRUCTURE NEEDS
Cody, Wyoming West Fargo, North Dakota
June 25, 2021 July 26, 2024

WHEREAS, in the West, water is indeed our “life blood,” a vital and scarce resource the availability of which has and continues to circumscribe growth, development, our economic and environmental well-being and quality of life; and

WHEREAS, across the West, rural and tribal communities are experiencing water supply shortages due to drought, declining streamflows and groundwater supplies, and inadequate infrastructure, with some communities hauling water over substantial distances to satisfy their potable water needs; and

WHEREAS, often water supplies that are available to these communities are of poor quality and may be impaired by naturally occurring and man-made contaminants, including arsenic and carcinogens, which impact communities’ health and their ability to comply with increasingly stringent federal water quality and drinking water mandates; and

WHEREAS, at the same time, many rural and tribal communities in the West are suffering from significant levels of unemployment and simply lack the financial capacity and expertise to finance and construct needed drinking water system improvements; and

WHEREAS, there are ~~six~~seven authorized and active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota of which ~~five~~6 have yet to be completed at an estimated federal cost of around \$~~893~~58 million – while costs continue to increase due to delays, inflation and the rising costs of materials and labor – and at current levels of funding completion of some project could be delayed by decades; and

WHEREAS, there is a Federal responsibility to complete authorized rural water projects, particularly those intended to fulfill in part a solemn Federal promise and trust responsibility to compensate States and federally recognized Indian Tribes for lost resources as a result of the construction of Federal flood control projects and other actions; and

WHEREAS, in section 40901 of the Investment in Infrastructure and Jobs Act (IIJA), Congress authorized \$1B for Reclamation’s rural water projects from FY22-26 for projects authorized before July 2021 and in accordance with the Reclamation Rural Water Supply Act of 2006 (43 U.S.C. §§2401 et seq.), intending to address the federal backlog for these projects; and

WHEREAS, between FY22-24, Reclamation allocated IJA funding for construction of the authorized rural water projects, intending to allocate another \$82M in FY25; and

WHEREAS, recognizing Federal budget constraints, a modest increase in Federal expenditures would expedite completion of authorized projects and in the long run save taxpayer money while inadequate funding levels, and untimely appropriations only increase delays and Federal costs and perpetuates rural and tribal communities' hardships; and

WHEREAS, authorizing the increased use of Reclamation Fund revenues to expedite completion of these projects fulfills both financial and moral obligations that some beneficiaries have waited decades to see honored; and

WHEREAS, the Congress enacted the Rural Water Supply Act of 2006 (P. L. 109-451) and established the Bureau of Reclamation's Rural Water Supply Program authorizing the agency to work with rural communities, states and tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies; and

WHEREAS, federal expenditures for rural water projects actually generate significant returns on the investment through increased national and local economic benefits, as well as improvements in quality of life; and

WHEREAS, Reclamation Fund receipts are largely derived from water and power sales, project repayments, and receipts from public land sales and leases, as well as oil and mineral-leasing and related royalties, from western lands adjacent to rural and tribal communities; and

WHEREAS, western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet rural water needs in the West for present and future generations, within the framework of state water law, as envisioned in the Reclamation Act of 1902; and

WHEREAS, under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principal means for financing federal western water and power projects with revenues from western resources – but these receipts are only available for expenditure pursuant to annual appropriation acts; and

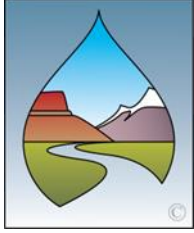
WHEREAS, with growing receipts – in part due to energy development across the rural West – and limited federal appropriations for Reclamation Act purposes, the unobligated balance grows larger and larger (and is expected to soon exceed ~~\$18~~25.2 billion), while the money is actually spent elsewhere for other federal purposes contrary to the Congress' original intent; and

WHEREAS, the Western States Water Council (WSWC) has a long-standing policy in support of using receipts accruing to the Reclamation Fund for authorized projects, including rural and tribal water supply projects.

NOW THEREFORE BE IT RESOLVED, that the WSWC strongly supports Administrative and Congressional action to expedite construction of authorized rural water supply projects in a timely manner, including projects that meet tribal trust and other federal responsibilities – recognizing and continuing to defer to the primacy of western water laws and tribal settlements in allocating water among users.

BE IT FURTHER RESOLVED, that the WSWC recommend that the Administration and the Congress investigate the advantages of converting the Reclamation Fund from a special account to a true revolving trust fund with annual receipts to be appropriated for authorized purposes in the year following their deposit (similar to some other federal authorities and trust accounts).

Revised and Readopted
(See Position No. 343, June 8, 2012; No. 381, July 10, 2015; and No. 423, August 3, 2018)



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
WATER TRANSFERS
and
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE PERMITS

Cody, Wyoming West Fargo, North Dakota
June 25, 2021 July 26, 2024
(revised and reaffirmed)

WHEREAS, the Western States Water Council has long declared its position that the transport of water through constructed conveyances to supply beneficial uses should not trigger federal National Pollutant Discharge Elimination System (NPDES) permit requirements, simply because the transported water contains different chemical concentrations and physical constituents; and

WHEREAS, the Western States Water Council supports the ability of each Western State to use available authorities to place appropriate conditions on water transfers to protect water quality; and

WHEREAS, the Environmental Protection Agency (EPA) published 40 CFR Part 122.3(i), expressly excluding water transfers from regulation under the NPDES permitting program, and defining water transfers as an activity that conveys or connects waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use; and

WHEREAS, the final rule relies on EPA's interpretation of the federal Clean Water Act and does not limit any ability of a State to use any available authority, including authority regarding nonpoint sources of pollution, to protect the water quality of the receiving water body in a water transfer;

WHEREAS, water transfers and water quality are essential to the social, economic and environmental well-being of the Western States; and

WHEREAS, the United States Court of Appeals, in the cases of *Friends of the Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009), and *New York State et al. v. Environmental Protection Agency*, 846 F.3d 492 (2nd Cir. 2017), upheld EPA's Water Transfer Rule, holding it to be a reasonable construction of the Clean Water Act and therefore entitled to deference by the Federal Courts and on which decisions the United States Supreme Court subsequently denied Petitions for Writ of Certiorari.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council generally supports EPA's amendment to its Clean Water Act regulations as codified in 40 CFR 122.3(i).

BE IT FURTHER RESOLVED that the Western States Water Council supports the use by a State of available authorities to protect the water quality of the receiving water body in a water transfer.

BE IT FURTHER RESOLVED that the Western States Water Council supports the codification of 40 CFR 122.3(i) into statute by the Congress.

*Revised and Readopted
(See also Position No. 424, August 13, 2018; No. 382, July 10, 2015;
No. 342, June 8, 2012; No. 316, July 17, 2009, and No. 278, July 21, 2006)*



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
ENDANGERED SPECIES AND STATE WATER RIGHTS
Cody, Wyoming West Fargo, North Dakota
June 25, 2021 July 26, 2024

WHEREAS, Section 2(c)(2) of the Endangered Species Act declares it is the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species (16 U.S.C. 1531); and

WHEREAS, water in the West is often a scarce resource critical for both a healthy economy and healthy environment, including protected endangered and threatened species; and

WHEREAS, water is ~~both a public and a private~~ resource, with ~~some the rights to~~ uses ~~it generally reserved for the public good, while others are~~ recognized as protected private property rights; and

WHEREAS, the States are primarily responsible for the allocation, administration, management, and protection of the water resources and rights to the use of water within their borders, as well as the management and protection of diverse fish and wildlife species and the aquatic and terrestrial environments upon which they depend; and

WHEREAS, many, if not most, of the senior state-granted rights to the use of waters in western rivers and streams predate federal environmental protections by decades, and the certainty provided by early water rights continues to be the foundation for past, present and future investments; and

WHEREAS, the West and its flora and fauna, including protected species, are part of a unique and unparalleled heritage reflecting the Nation's value for wild and open spaces, as well as a western conservation ethic; and

WHEREAS, western States and many western water uses are also committed to the preservation of western species through reasonable, transparent and effective regulatory protections and restrictions, as well as conservation incentives for private property owners; and

WHEREAS, opportunities exist for greater collaboration and cooperation to conserve threatened and endangered species, while recognizing state-granted water rights and addressing western water issues, without unmitigated or uncompensated "takings" of either water rights or threatened and endangered species where provided for under state or federal law.

NOW, THEREFORE, BE IT RESOLVED that the Council calls upon federal agencies to engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress' intent to resolve water and species protection issues.

WSWC POLICY STATEMENTS

Position Number	Committee Oversight	Date Adopted	POSITIONS (Policy positions will be deactivated three (3) years after their adoption, unless extended by formal action of the Council.)
467	L	3/14/2024	regarding the Dividing the Waters program
466	L	3/14/2024	on State primacy over groundwater
465	L	3/14/2024	supporting universal access to reliable, clean drinking water for federally recognized Indian tribes and Alaska native communities
464	WR	3/14/2024	supporting federal research on climate adaptation
463	WR	3/14/2024	regarding water and energy planning and policy
462	WR	3/14/2024	supporting water infrastructure funding
461	WR	3/14/2024	supporting weather station networks
460	WR	3/14/2024	supporting the use of Forecast Informed Reservoir Operations and Innovations
508	WR	3/14/2024	regarding probable maximum precipitation standards
507	L	9/14/2023	outlining actions Federal agencies should take to expedite State General Stream Adjudications
506	WQ	9/14/2023	asserting state primacy on Protecting Ground Water Quality
505	WR	9/14/2023	supporting U.S. Department of Agriculture (USDA) Conservation Programs and Water Resources
504	L	9/14/2023	supporting Indian Water Rights Settlements
503	WR/E	5/24/2023	regarding water-related federal rules, regulations, directives, orders and policies
502	WR	5/24/2023	support federal authorization and financial support through the U.S. Geological Survey (USGS) for State Water Resources Research Institutes
501	WR	5/24/2023	requests Congress fully appropriate receipts accruing to the Reclamation Fund for their intended purpose
500	WR	5/24/2023	supporting NOAA data, forecasting, and research programs
499	L	5/24/2023	opposes any federal legislation intended to preempt state water law
498	WR	5/24/2023	supporting national dam safety programs
497	WR	5/24/2023	regarding the rural water and wastewater project/infrastructure needs and U.S. Department of Agriculture programs
496	WQ	5/24/2023	regarding the clean and drinking water state revolving funds and state and tribal assistance grants
495	WR	5/24/2023	regarding the National Levee Safety Act of 2007, levees and canal structures
494	WR	5/24/2023	regarding the transfer of federal water and power projects and related facilities
493	WR	5/24/2023	regarding the Reclamation Safety of Dams Act of 1978
492	WR	5/24/2023	regarding the Bureau of Reclamation's maintenance, repair and rehabilitation needs
491	WR	5/24/2023	urging Congress to support subseasonal to seasonal weather research, forecasting, and innovation
490	WQ	5/24/2023	water quality standards and federal reserved treaty rights for tribes
489	L	10/21/2022	supporting legislation requiring the federal government to pay state filing fees in state general stream adjudications
488	WR	10/21/2022	expressing support for implementation of the SECURE Water Act
487	WR	10/21/2022	urges the Administration and NASA to enhance focus on research for water resources applications and promote long term engagement with the WSWC
486	WQ	10/21/2022	related to EPA exercise of authority under Section 404(c) of the Clean Water Act,
485	WR	8/5/2022	urging the Administration and Congress to Support Water Research and Development Programs at the Department of Energy National Laboratories
484	WQ	8/5/2022	regarding Hydraulic Fracturing
483	WR	8/5/2022	supporting Strengthening the Resiliency of Our Nation to the Impacts of Extreme Weather Events
482	WR	8/5/2022	on the Preservation of Radio Frequencies necessary for Weather forecasting and Water Management
481	WQ	4/6/2022	regarding Clean Water Act Jurisdiction
480	L	4/6/2022	regarding Migratory Birds and the Management of State Water Rights and Resources
479	WR	4/6/2022	supporting Renewable Hydropower Development
478	WR	4/6/2022	supporting Rural Water Infrastructure Needs & Projects
477	WQ	9/16/2021	regarding Abandoned Hardrock Mine Cleanup
476	L	9/16/2021	regarding States' Water Rights and Natural Flows
475	WR	9/16/2021	regarding Bureau of Reclamation Drought Response Program
474	WR	9/16/2021	regarding Drought Preparedness, Prediction and Early Warning Programs
473	WR	9/16/2021	regarding Federal Water and Climate Data Collection and Analysis Programs
472	WQ	9/16/2021	<i>regarding Clean Water Act Jurisdiction</i> >Past Position - replaced by Position #481<
471	WQ	9/16/2021	supporting State Clean Water Act Section 401 Certification Authority
470	L	6/25/2021	regarding Endangered Species and State Water Rights
469	WQ	6/25/2021	regarding Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
468	WR	6/25/2021	regarding the Rural Water Supply Project/Infrastructure Needs

Sunsetted Positions

2022

#472 Regarding Clean Water Act Jurisdiction (*superseded by more recent position*)

2020

#410 Acknowledges state authority over “waters of the State” and called for recognizable limits to federal Clean Water Act jurisdiction. (*superseded by more recent position*)

2019

#394 Urging Congress to authorize and the Administration to complete a comprehensive study of the Missouri River Mainstem Reservoir System’s authorized purposes and related benefits before addressing an appropriate balance and mix of uses. (*outdated*)

#389 Urging Congress and the Administration to prioritize federal programs that provide the translation function between basic scientific research on climate and weather extremes to water resources management actions. (*positions more recently adopted*)

2017

#373 Letter commenting on the proposed rule developed by the EPA and the USACE to clarify the scope of Clean Water Act jurisdiction. (*proposed rule became the 2015 Clean Water Rule*)

#372 Letter sending comments on the USFS Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560. (*Forest Service has withdrawn their activity*)

#370 The Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices. (*proposed rule was withdrawn*)

2016

#359 Opposing requiring pesticide applications for National Pollutant Discharge Elimination System (NPDES) discharge permits. (*outdated*)

2015

#338 Energy and Water Integration Act of 2011. (*outdated*)

#341 Letter regarding concerns with the Bureau of Reclamation’s proposed changes to the Reclamation Manual. (*outdated*)

2013

#323 A Shared Vision on Water Planning and Policy. (*superceded by a permanent mission statement, A Vision of Water*)

2012

- #313 Letter Regarding National Water Research and Development Initiative Act. *(There is no current legislation)*
- #315 Letter to House Transportation and Infrastructure Committee leaders raising concerns regarding a draft bill entitled the Sustainable Watershed Planning Act. *(outdated, not reintroduced)*
- #317 Supporting the Bureau of Reclamation’s Field Services Program. *(outdated)*
- #318 Offering general comments to CEQ on the Principles and Guidelines. *(outdated)*
- #319 Describing principles that are important to the Western states in considering a “national vision” for water policy. *(superceded by more recent position)*

2011

- #297 Strong support for legislation to establish a National Drought Council to improve national drought preparedness, mitigation, and response efforts. *(There is no current legislation)*
- #298 In cooperation with the Interstate Council on Water Policy expressing strong support for increased funding for the Cooperative Water Program and the National Streamflow Information Program. *(superceded by more recent position statements and letters)*
- #299 Supporting S. 2842, the Aging Water Infrastructure and Maintenance Act. *(enacted)*
- #300 Regarding introduction of the Cooperative Watershed Management Act of 2008 (S. 3085). *(enacted)*
- #301 Commenting on H.R. 135, the “21st Century Water Commission,” specifically declaring that the WSWC be involved in the selection of members and that it include State and Native American involvement. *(Bill has not been reintroduced)*
- #302 Supporting the enactment of S. 895 to provide the Bureau of Reclamation with authority to assess rural water supply needs and for sufficient funding. *(enacted)*
- #303 Revised resolution in support of the Weather Modification Research and Technology Transfer Act. *(No federal research program or legislation has been reintroduced)*
- #306 Urging support for full funding of the USGS National Streamflow Information Program (NSIP) and sufficient funding for the Cooperative Water Program to match non-USGS contributions. *(outdated)*
- #307 Letter to Senator Bingaman, Senate Energy and Natural Resources Committee, expressing interest in S. 3231, the Omnibus Public Lands Management Act. *(outdated)*
- #311 Letter to Steve Stockton offering assistance to the Corps in their water planning initiative. *(outdated)*

2010

- #287 Setting forth the Council’s past perspectives on a proposed “Twenty-First Century Water Commission.” *(outdated - see #301 above)*

- #289 Support of the proposed Water Conservation, Efficiency and Management Act, to specifically authorize the Bureau of Reclamation’s water conservation programs. (*separately authorized*)
- #290 Concern over the Administration’s decision to zero out funding for the U.S. Bureau of Reclamation’s Technical Assistance to States (TATS) Program. (*outdated*)
- #291/#292 Regarding the proposed Agricultural Water Enhancement Program. (*enacted*)
- #295 Concern over budget request for federal funding for water and wastewater treatment, specifically EPA’s State Revolving Fund (SRF) Capitalization Grants. (*combined with #296 and replaced with #330 – Apr 15, 2011*)
- #296 Concern with OMB directive to EPA disallowing the use of SRF revenues to repay bonds. (*combined with #295 and replaced with #330 – Apr 15, 2011*)

2009

- #276 Urging the Congress and Administration to Continue to Recognize State Primacy Regarding Water Rights and Water Quality Certification in the Federal Licensing of Hydroelectric Projects. (*supplanted by WGA resolution*)
- #277 Letter commending the American Indian Environmental Office of EPA for its efforts in establishing the Tribal Water Program Council and expressing a hope that it would “offer an ongoing opportunity for state-tribal cooperation on issues of mutual interest.” (*outdated*)
- #279 Support for legislation (S. 2751 and H.R. 5136) to create a National Integrated Drought Information System within the National Oceanic and Atmospheric Administration. (*authority enacted*)
- #280 Strong support for federal legislation, the National Drought Preparedness Act, to establish a national policy for drought and coordinate “proactive measures at all levels of government to plan, prepare and mitigate the serious impacts of drought.” (*deferred to WGA resolution*)
- #281 Support for Reclamation’s Water Conservation Field Services Program and “Bridging-the-Headgate” Partnerships. (*outdated*)
- #282 Regarding Federal Non-Tribal Fees in General Adjudications asking the Congress to pass legislation requiring the Federal government, when a party to a general water rights adjudication, to pay fees for costs imposed by the state to conduct the proceedings to the same extent as all other users. (*deferred to WGA resolution*)
- #283 Reiterating strong support for maintaining a thermal band as part of the Landsat Data Continuity Mission, and the necessary funding. (*separately updated*)

2008

- #262 Support for the U.S. Geological Survey’s Cooperative Water Program (CWP) and opposes any effort to force the privatization of related USGS services. (*separately updated*)
- #268 The WSWC endorses policy resolutions adopted by the Western Governors’ Association, and will allow these policies to guide the Council in matters relevant to implementation and potential reauthorization of the Clean Water Act. (*deferred to WGA resolution*)
- #269 Water Efficiency Standards for Plumbing Products. (*subsequently enacted*)

- #270 Reauthorization of the Farm Bill. (*reauthorized*)
- #271 Support for the National Aeronautics and Space Administration's Landsat Data Continuity Mission and calling for continued funding to include a thermal infrared sensor. (*superseded by 2009 WSWC Position No. 283*)
- #273 Support for the Nonpoint Source Grant program administered by the U. S. Environmental Protection Agency under Section 319 of the Clean Water Act. (*outdated*)

Tab D – Budget

Western States Water Council

Balance Sheet

As of June 30, 2024

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
1000 Cash	
1030 Wells Fargo	311,729.02
1050 Petty Cash	0.00
1130 Investments Assess	902,718.96
1140 Leave Payout Sinking Fund	165,932.69
1150 Equip Replacement Fund	35,784.10
Total 1000 Cash	1,416,164.77
Total Bank Accounts	\$1,416,164.77
Accounts Receivable	
1200 Accounts Receivable	0.00
Total Accounts Receivable	\$0.00
Other Current Assets	
12000 Undeposited Funds	0.00
1300 Prepaid Expenses	
1310 Insurance	0.00
1320 Postage	0.00
1350 Meeting deposits	0.00
Total 1300 Prepaid Expenses	0.00
Total Other Current Assets	\$0.00
Total Current Assets	\$1,416,164.77
Fixed Assets	
1500 Fixed Assets	
1505 Purchase amount	355,420.54
1510 Accumulated Depreciation	-84,163.06
Total 1500 Fixed Assets	271,257.48
Total Fixed Assets	\$271,257.48
Other Assets	
1800 Deposits	0.00
1900 Amt for Compensated Absences	162,395.61
Total Other Assets	\$162,395.61
TOTAL ASSETS	\$1,849,817.86

Western States Water Council

Balance Sheet

As of June 30, 2024

	TOTAL
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2000 Accounts Payable	321.92
Total Accounts Payable	\$321.92
Credit Cards	
2080 OfficeMax	0.00
2100 Wells Fargo Credit Cards	1,452.06
2110 TW 6653	755.00
2120 1004 1129 / CR	0.00
2130 8520 7761 / MB	545.26
2140 8529 3696 / JG	120.00
2150 8535 8051 / AA	0.00
Total 2100 Wells Fargo Credit Cards	2,872.32
Total Credit Cards	\$2,872.32
Other Current Liabilities	\$9,433.94
Total Current Liabilities	\$12,628.18
Long-Term Liabilities	
2500 Oblig for Compensated Absences	162,395.61
2520 Current Yr Budget Offset / Comp	0.00
2545 HRA / Redding	22,949.31
2550 HRA - Willardson	0.00
2600 Investment in Fixed Asset	
2605 Current value	355,420.54
2610 Adjust for depreciation	-84,163.06
Total 2600 Investment in Fixed Asset	271,257.48
2670 Current Yr Budget Offset / F/A	6,000.00
2900 SUSPENSE	0.00
2930 Suspense - Expense Reports	0.00
Total Long-Term Liabilities	\$462,602.40
Total Liabilities	\$475,230.58
Equity	
3000 Opening Bal Equity	0.00
3900 Retained Earnings	971,756.80
Net Income	402,830.48
Total Equity	\$1,374,587.28
TOTAL LIABILITIES AND EQUITY	\$1,849,817.86

FY2024-2025 MEMBER ASSESSMENTS

STATE (18 states)	Date of Payment	Amount Paid	Date Received	Received From	Check # or Warrant #
Alaska -Div. of Mining, Land and Water	5/24/2024	\$12,000	6/4/2024	Dept. of Natural Resources	21148194
Alaska - Dept. of Law	5/21/2024	\$12,000	5/28/2024	Alaska Dept. of Law	21146340
Alaska - Dept. of Environmental Conservation					
Arizona	5/21/2024	\$36,000	5/28/2024	State of Arizona	211156137
California	7/8/2024	\$36,000	7/16/2024	State of California	417-642476
Colorado					
Idaho					
Kansas - Dept of Agriculture					
Kansas - Office of Water	7/8/2024	\$18,000	7/16/2024	State of Kansas	2006466509
Montana - DNRC					
Montana - DEQ					
Nebraska	5/30/2024	\$36,000	5/30/2024	State of Nebraska	ACH
Nevada - Division of Environmental Protection					
Nevada - Division of Water Resources					
New Mexico	6/26/2024	\$36,000	6/26/2024	State of New Mexico	ACH
ND - Dept. of Water Resources	7/2/2024	\$18,000	7/2/2024	Water Resources	ACH
ND - Environmental Quality	6/4/2024	\$18,000	6/4/2024	NE Dept. of Environmental Quality	ACH
OK - Water Resources Board					
OK - Environmental Quality					
Oregon	05/30/2024	\$36,000	6/4/2024	State of Oregon	127047549
South Dakota	6/5/2024	\$36,000	6/26/2024	State of South Dakota	100915625
Texas - Water Development Board					
Texas - Environmental Quality					
Utah - Division of Water Quality					
Utah - Division of Water Resources					
Washington	7/2/2024	\$36,000	7/5/2024	State of Washington - Ecology	ACH
Wyoming -	5/22/2024	\$36,000	5/22/2024	State of Wyoming	4562832
Total		\$366,000			

Tab E – WSWC Activities and Events

Western States Water Council Summary of Activities

March 2024 – July 2024

ADMINISTRATION/CONGRESSIONAL OUTREACH

During March-April, the WSWC sent support requests asking for a \$15 million National Weather Service FY25 increase to begin a western S2S precipitation pilot for improving sub-seasonal to seasonal (S2S) precipitation forecasting to 15 Senators and 21 members of the House Representatives. WSWC staff followed up with several in person meetings and calls with Congressional staff.

On March 4, the WSWC sent a letter of support and recommendations for the Weather Act Reauthorization Act of 2023 (H.R. 6093) to House Leadership, and to the House Committee on Science, Space and Technology to improve the National Oceanic and Atmospheric Administration's weather research, and support improvements in weather forecasting and prediction.

On April 18, the WSWC sent a letter to the House Leadership of the Committee on Transportation and Infrastructure expressing an interest in H.R. 7065. Including water supply and water conservation as part of the U.S. Army Corps of Engineers mission offers opportunities for greater federal-state cooperation and collaboration, something the WSWC strongly supports.

On April 23-24, WSWC Executive Director met with staff from several congressional offices.

On July 1, the WSWC sent a letter to the White House President's Council of Advisors on Science and Technology (PCAST) regarding state groundwater management and protection.

WESTERN GOVERNORS' ASSOCIATION COORDINATION

June 10-12, WSWC Executive Director and Deputy Director/General Counsel attended WGA Annual Meeting in Olympic Valley, California.

WSWC members helped review of WGA's positions of water and water quality adopted at the meeting.

WSWC staff also coordinate with WGA staff on policy letters, positions, statements, and testimony.

WSWC staff have regular monthly calls with the WGA's Water Policy Advisor.

The WSWC is a member of the Western Policy Network, led by WGA, and participates in quarterly calls and provides information for the Network's Roundup Monthly Newsletter.

WSWC CALLS, MEETINGS, SURVEYS, SYMPOSIA AND WORKSHOPS

On March 13-15, the WSWC held its Spring Meetings in Washington, D.C., as well as a Joint Roundtable with the Interstate Council on Water Policy (ICWP).

The WSWC staff participated in various calls and virtual workshops with New Mexico agencies, WestFAST agencies, and SWCA in support of the NM Integrated Water Financing Plan project.

May 29 and July 8, the Water Quality Nutrients Subcommittee met to discuss the proposed draft position on Nutrient Reduction Strategies

On May 9, the WSWC distributed a North Dakota Department of Water Resources survey of the 17 western states to provide a comprehensive summary of data collection activities and current methods and infrastructure used to collect, store, and manage data.

COORDINATION with WESTFAST AGENCIES

WSWC and WestFAST leadership communicate weekly and via monthly WestFAST calls as needed.

EPA has also invited the WSWC to join their Dialogue with Intergovernmental Associations (monthly).

Under a WaterSMART grant from the U.S. Bureau of Reclamation, WSWC staff have helped identify and characterize Reclamation's water rights across the West.

WSWC staff are also working with the Lincoln Institute for Land Policy's Center for Geospatial Solutions and Reclamation to identify and improve access to data via an interoperable western water data hub, as well as design and build visualization tools for decisionmakers.

On April 24, WSWC Executive Director met with Dr. Karen St. Germaine at NASA HQ in Washington, D.C. to discuss Landsat NEXT and western water management using NASA data.

On April 25, WSWC Executive Director co-chaired the meeting of National Integrated Drought Information System's Executive Council, under NOAA, in Washington, D.C.

On May 16, WSWC Deputy Director/General Counsel participated in a Federal Mining Dialogue Quarterly Meeting along with the Interstate Technology and Regulatory Council, the Interstate Mining Compact Commission, and the National Association of Abandoned Mined Land Programs.

WestFAST WEBINARS

May 8 – Introducing the 3D Hydrography Program.

June 25 – Building a Water Rights Database: The Bureau of Reclamation and WestDAAT.

COORDINATION WITH OTHER ORGANIZATIONS

On March 26-27, the WSWC Executive Director attended and participated on a panel at the Association of Clean Water Administrators mid-year meeting in Washington, D.C.

April 22, WSWC Deputy Director/General Counsel attended the Navigating Western Waters: Addressing Water Challenges Symposium in Laramie, Wyoming.

May 1-2, WSWC Deputy Director/General Counsel presented on a state-federal water security panel at the Western Regional Partnership Principles Meeting in Beaver Creek, Colorado.

July 9-12, WSWC Executive Director attended the annual meetings of the Council of State Governments – West in Portland, Oregon.

WaDE DEVELOPMENT AND OUTREACH (Ongoing)

WaDE/WestDAAT Demos

WSWC Executive Director and WaDE Program Manager demonstrated WestDAAT and WaDE to staff at the following agencies and organizations: Aqaix Nimbus; Audubon; Bureau of Land Management; Department of Justice; Forest Service National Water Rights and Uses Program; Great Salt Lake Commission, WaterCard; METER Group, Inc. USA; Montana Fish, Wildlife, & Parks; Northern Arizona University; Pennsylvania State University; Vibrant Planet, Virginia Tech; Walton Foundation; and the Wright-Ingraham Institute.

Internet of Water (IoW) Coalition

WSWC Executive Director and WaDE Program Manager shared updates and participated in IoW bimonthly check-in calls related to WaDE progress as a major IoW data hub, and IoW Coalition Steering Committee Meeting.

Coordination and Participation Calls

WSWC staff conducted the following coordination calls with different agencies and organizations: Bureau of Reclamation - Upper Colorado River Basin; National Aeronautics and Space Administration (NASA) Western Water Applications Office (WWAO); Oak Ridge and Pacific Northwest National Laboratories; OpenET; United States Geological Survey (USGS) Water-Use Data and Research (WUDR) program; Upper Colorado River Commission; USGS National Ground-Water Monitoring Network; National Integrated Drought Information System (NIDIS); University Corporation for Atmospheric Research (UCAR); and Utah Water Research Laboratory.

Data Sharing Calls

WSWC staff also conducted the calls related to WaDE water data sharing requests with representatives of the California State Water Resources Control Board; Delaware River Basin Commission; Great Lakes Commission; Minnesota Department of Natural Resources; Oklahoma Water Resources Board; and the Utah Division of Water Rights.

Western Water Data Hub for the Bureau of Reclamation

WSWC staff participated several significant calls related to developing a Stakeholder Engagement Plan for the Western Water Data Hub funded by the Bureau of Reclamation: (1) WaDE and Internet of Water coordination call to discuss outreach plans; (2) WaDE and Internet of Water coordination call with the Bureau of Reclamation's Implementation Team leading the Hydrology and Hydraulics Community of Practice (H&H CoP) community; and (3) WaDE and Internet of Water team webinar to introduce the Western Water Data Hub project and distribute a survey to the H&H CoP members soliciting their input and suggestions for the Hub.

Other Calls

Numerous other calls related to WaDE, WestDAAT and development of a proposed Western States Water Conservation Application Tool (WestCAT).

COMMITTEES, TASK FORCES AND WORKGROUPS

Ad Hoc Group on Indian Water Rights Settlements – WSWC Executive Director/Deputy Director

American Water Resources Association (AWRA) – WSWC Executive Director

Internet of Water (IOW) Coalition Steering Group – WSWC Executive Director

National Integrated Drought Information System (NIDIS) Executive Council – WSWC Executive Director, Co-Chair

USGS Water Use Data and Research (WUDR) Open Forum

Western Association of Fish and Wildlife Agencies (WAFWA) – WSWC Executive Director (liaison)

Western Policy Network – WSWC Executive Director

Western Regional Partnership – WSWC Executive Director/Deputy Director

Tab F – Future WSWC Meetings

WESTERN STATES WATER COUNCIL

FUTURE MEETINGS

Upcoming Council Meetings/Host States

Fall – Kansas
October 2024 (TBD)
Venue (TBD)

2025 Meetings Projections

Spring –	Nebraska	last held 4/14/2017 in Nebraska City
Summer –	Utah	last held 9/30/2016 in St. George
Fall –	California	last held 6/29/2017 in Rohnert Park

2026 Meetings Projections

Spring –	New Mexico	last held 10/20/2017 in Albuquerque
Summer –	Oregon	last held 8/3/2018 in Newport
Fall –	Idaho	last held 10/26/2018 in Coeur d’Alene

MEETING SCHEDULE

	Alaska	Arizona	California	Colorado	Idaho	Kansas	Montana	Nebraska	Nevada	New Mexico	North Dakota	Oklahoma	Oregon	South Dakota	Texas	Utah	Washington	Wyoming	Other
165										Santa Fe 4/15/11									
166													Bend 7/29/11						
167					Idaho Falls 10/7/11														
168																			Wash. DC 3/15/12
169																	Seattle 6/8/12		
170															San Antonio 10/12/12				
171				Denver 4/5/13															
172																			Casper 6/26/13
173														Deadwood 10/4/13					
174																			Wash. DC 4/3/14
175							Helena 7/18/14												
176		Scottsdale 10/10/14																	
177												Tulsa 4/17/15							
178									50 th Anniversary Stateline 7/10/15										
179						Manhattan 10/9/15													
180																			Wash. DC 3/22/16
181											Bismarck 7/15/16								
182																St. George 9/30/16			

	Alaska	Arizona	California	Colorado	Idaho	Kansas	Montana	Nebraska	Nevada	New Mexico	North Dakota	Oklahoma	Oregon	South Dakota	Texas	Utah	Washington	Wyoming	Other
183								Nebraska City 4/14/17											
184			Rohnert Park 6/29/17																
185										Albuquerque 10/20/17									
186																			Wash. DC 3/14/18
187													Newport 8/3/18						
188					Coeur d'Alene 10/26/18														
189		Chandler 3/22/19																	
190																	Leavenworth 7/18/19		
191				Breckenridge 10/18/19															
192																			Cancelled - Wash. DC 4/1/20 COVID-19
193																			No Host 7/22/20
194																			No Host 10/15/20
195															Virtual Texas 3/25/21				
196																			Cody 6/25/21
197														Deadwood 9/16/21					
198																			Arlington, VA 4/6/22
199							Polson 8/5/22												
200												Sulphur 10/21/22							
201									Reno 5/24/23										
202	Anchorage 9/14/23																		
203																			Wash. DC 3/14/24

Tab G – Draft FY24-25 Committee Workplans
Water Resources
Executive
Water Quality
Legal

**WATER RESOURCES COMMITTEE
WORK PLAN
2024/2025**

1. WATER AVAILABILITY & USE - WATER DATA EXCHANGE (WaDE)

Background/Work-to-date: The Council continues to work with member states and federal agencies through the Western States Federal Agency Support Team (WestFAST) to build a robust and performant architecture for accessing and sharing water data – Phase 2. WaDE 2.0 is a cloud-based schema centered around supporting use cases for data queries to support decision making within and across state boundaries. Along with the development of the WaDE 2.0 system, WSWC have been working on connecting publicly available water rights and water use datasets as published by our member state agencies into the WaDE SQL database. WSWC is working towards a user-friendly portal to access, filter, and analyze water rights and water use data.

With WSWC assistance, Member States are developing WaDE-compliant data services that will feed directly into the new WaDE platform. Some eastern states have expressed interest in deploying to the WaDE platform also, with a proto-type completed for New Jersey. WSWC will work with ICWP and through the USGS Water Use Data and Research (WUDR) program to engage states and other entities that wish to serve data in the WaDE platform.

WaDE is collaborating with and seeking to help integrate other national efforts, including the Water Availability and Use Program (WAUSP), which is led by the U.S. Geological Survey (USGS), as well as federal and non-federal open water data initiatives. WaDE supports these efforts by laying the groundwork for exchanging the core state data. The WSWC serves as a foundational hub for the Internet of Water, and promotes related FAIR data standards (Findable, Accessible, Interoperable and Reproducible). Greater interoperability and consistent data standards to facilitate decisionmaking are goals of the program.

The WSWC co-hosted a Water Information Management System (WIMS) workshop with NASA's Western Water Applications Office (WWAO) in 2018 and in September 2019 cohosted a WIMS workshop with USGS. Other events were planned, before meeting and travel restrictions were imposed due to the Covid-19 pandemic. In August 2023, the WSWC hosted a National Water Use Data Workshop in Salt Lake City, Utah.

On April 25, 2023, the WSWC publicly released its Western States Water Data Access and Analysis Tool (WestDAAT) with data for over 1.7 million water rights, including where available, in a machine-readable format, ownership, point of diversion, place of use, purpose of use, and priority date. For the first time, such information was presented in a user-friendly format across state lines. Work continues to add data to the tool, including state time series data related to state streamgages, wells and reservoirs. A significant amount of outreach with various state and federal agencies, and public and private stakeholders was involved in the development and production phases of WestDAAT's release. Such outreach continues.

2023/2024: WSWC is working to support specific use cases of the data, including a streamlined, spatially and temporally consistent water budget implementation for selected states. WSWC will

also continue assisting participating member states to refine their data, find optimal ways to publish those data that are compatible with WaDE.

The Council will also continue working with member states, USGS, NASA and various federal agencies to gather and disseminate water resources data using WaDE and other resources. The Council continues to discuss with USGS ways of facilitating funding to states for water data through the WUDR program.

The Committee, through the Water Information and Data Subcommittee (WIDS) and various other work groups, will continue to gather information on state water availability and use data and summarize existing state capabilities. Work to help states develop, disseminate, visualize and review data on water availability will continue. The WSWC is seeking resources to maintain current efforts. A number of philanthropic foundations have provided support, as has the U.S. Bureau of Reclamation through its WaterSMART program

The WSWC working with an IT contractor has also completed scoping the effort and resources needed to incorporate OpenET (evapotranspiration data) into WestDAAT in order to tie measurable consumptive use with water rights and field boundaries. Such capabilities would help facilitate efforts to conserve water for various private and public purposes. The WSWC is working with the Upper Colorado River Commission and other interests to help expedite and simplify initiatives such as the UCRC's System Conservation Pilot Program.

Subcommittee: Sam Hermitte (TX), Lisa Williams, Natalie Mast (AZ), Mat Weaver, Linda Davis (ID), Ken Stahr (OR), Julie Cunningham, Kent Wilkins (OK), Gary Darling (CA), Todd Adams, Candice Hasenyager (UT), Lane Letourneau, Ginger Pugh (KS), Nancy Barber (USGS), Allison Danner (USBOR), Dwane Young (USEPA), Forrest Melton (NASA)

Timeframe: Ongoing

2. WESTERN WATER OBSERVING SYSTEMS

Background/Work-to-date: The Council has a long history of working to support federal programs to maintain and improve the observation, measurement, monitoring and management of western water resources and related data, including related Interior, NASA, NOAA and USDA programs (see Positions #473 Sept. 2021; #487 Oct. 2022; and #500 May 2023). Such programs include but are not limited to USGS cooperative streamgaging and groundwater monitoring, NRCS snow survey and water supply forecasting, NASA/USGS Landsat, and EPA water quality monitoring. These data are important for a number of applications. Some examples include, but are certainly not limited to: (a) state and regional water planning and water rights administration; (b) local watershed and urban planning and development; (c) analyzing water balances and water budgets; (c) siting of electric power generation and other energy production facilities; and (d) enabling a better understanding of the links between energy, water quantity, and water quality.

2024/2025: The WSWC will communicate the critical need for federal water data related programs and will revise and renew its message to better bring attention to water data needs and

develop strategies to meet those needs. Consistent reliable future funding will be one major focus. There are a number of items under this functional area. Part of this effort will be to highlight critical measuring and monitoring “tools” for any water management “toolbox,” and communicating their value for enhancing our ability to wisely manage water resources. This includes working with Congress on authorizations and appropriations, as well as with the Administration on budget requests and program implementation.

Subcommittee:

Timeframe: Ongoing

3. SUB-SEASONAL to SEASONAL PRECIPITATION FORECASTING

Work to date: The Western States Water Council (WSWC) and California Department of Water Resources (CDWR) have entered into a number of agreements to assist with efforts to improve sub-seasonal to seasonal (S2S) forecasting skill (2 weeks to one year). Several workshops were held in between 2015 and 2019. The Council prepared a report on these meetings and an outreach publication with recommendations to NOAA on improvements regarding sub-seasonal to seasonal precipitation forecasting. Additional workshops in 2020 were precluded by the pandemic.

In 2020, NOAA released a report to Congress on efforts to improve S2S forecasting, as required by the Weather Research Act of 2017. The report recommendations included developing four pilot projects. In 2022, the WSWC worked with its members and congressional staff to encourage support for appropriations to initiate work on a western pilot project.

2024/2025: Additional S2S workshops have and will be held, and the Council will otherwise work to support federal efforts to improve our predictive capabilities and skill. The Council will support efforts to acquire sufficient federal appropriations for appropriate programs. The WSWC will also work to promote federal funding to implement the 2017 Act, and the recommended S2S pilot projects in the West. (Position #491, May 2023)

Subcommittee:

Timeframe:

4. RESEARCH to OPERATIONS (R2O)/TECHNOLOGY TRANSFER

Background: Too often promising water resources related discoveries and scientific advances fail to lead to widespread improvements, for a variety of reasons, some technical, but often institutional, financial, economic or political. Research to Operations (R2O) and technology transfer success requires advance planning and effective partnerships that are often lacking. Academic and government research agencies may focus on important basic research, but even applied research organizations are generally not designed and staffed to bridge the so-called “valley of death” between researchers and those entities and individuals that can successfully

envision and leverage resources to add value to that research through management, policy and operational changes.

Work to date: In August 2019, in cooperation with NASA’s Western Water Applications Office (WWAO), the Council sponsored a workshop intended to identify and begin to address the challenges inherent in effectively moving research advances towards improvements in water resources management and project operations. The workshop brought together partners from federal and state agencies that have experience with technology transfer, or that have programs that could be adopters of new technology and remotely sensed information products. Next steps were outlined in the workshop summary report.

A second planned WSWC/NASA workshop was postponed due to the pandemic. Future workshops would build upon the insights identified and connections established to: (1) strengthen agency partnerships and continue building an inter-agency community to facilitate R2O in water resource management; (2) develop WSWC’s WestFAST network to help transition new technologies and information products for water resources management to operational federal programs, including, but not limited to, remote sensing-based measurement technologies and sub-seasonal to seasonal (S2S) weather forecasting; and (3) develop a strategy for raising awareness and support within state and federal government agencies for R2O.

2024/2025: The Committee will consider holding another workshop to identify best practices to transfer applied research to operational programs working with western federal, state, and local water agencies and tribes.

5. DROUGHT, NIDIS and EXTREME WEATHER EVENTS

Work to Date: Drought is a recurring natural phenomenon, the effects of which can be minimized through appropriate planning and preparedness activities. The Council has expressed its support for federal applied research and hydroclimate data collection programs to assist water agencies at all levels of government in adapting to weather extremes and climate variability and change (Positions #500 May 2023 and #473 September 2021). The Council also supports development of an improved western observing system for extreme precipitation events and research to better understand hydroclimate processes (Position #483 Aug. 2022). The Council’s Executive Director serves as Co-Chair of the National Integrated Drought Information System (NIDIS) Executive Council with NOAA and USDA.

2024/2025: The Committee will continue working to improve preparedness and response to drought, floods and other extreme events in cooperation with member states, the WGA and WestFAST. The Council will also continue to support and advise WGA and NOAA with respect to NIDIS, and other weather/climate monitoring and adaptation efforts (including RISAs work). The Council will work to evaluate proposed climate, drought and weather legislation and drought related authorities and programs of federal agencies, and support appropriate authorizing legislation and appropriations.

Subcommittee:

Time Frame: Ongoing

6. GROUNDWATER RECHARGE PROJECT PROGRAMS & POLICIES

Work to Date: The Council has in the past addressed groundwater management programs and policies, including recharge and aquifer storage and recovery projects. The Council prepared a number of reports covering financial feasibility, legal and institutional issues, and water reuse for recharge (1990-2012). Much of the work is now dated, and many changes have taken place.

2024/2025: Working with the Legal Committee and the Council, the Committee will update past reports on state groundwater management programs and especially efforts to promote conjunctive use of surface and groundwater resources through artificial aquifer storage and recovery projects. This may include the use or reuse of waters of impaired quality.

Subcommittee:

Timeframe:

7. WESTERN WATER INFRASTRUCTURE PROJECTS AND PROGRAM FUNDING

Work to date: Many western states face overwhelming infrastructure financing needs, as well as declining budgets for ongoing services. The Council's origins are associated with challenges to augment and better manage the West's water supply, which continues to be a priority. The Council has in the past prepared reports on state water resources programs and project cost sharing and financing and analyzed state water use fees. The Council has also convened symposia and workshops and summarized the proceedings. Further, the Council has compiled summaries of western state infrastructure financing authorities, funding sources, policies and programs. Further, the Council has supported expenditures from the Reclamation Fund for authorized project purposes, including specifically authorized rural water supply projects and authorized projects as part of negotiated Indian water rights settlements.

2024/2025: The Council will continue to call on the Congress to ensure that revenues raised from the development of western resources, specifically revenues accruing to the Reclamation Fund, are appropriated and expended as intended for the development and management of western water resources (consistent with Position #501, May 2023). The Council will otherwise support efforts to secure adequate federal funding to meet growing western water demands, and work to develop a strategy to communicate important infrastructure needs. The Council will promote development of public-private partnerships to support this effort. As conditions permit, the Council will sponsor a symposium on infrastructure needs, strategies, and federal and state programs, under the direction of the Executive Committee, with WestFAST's assistance and in cooperation with other non-federal and federal interests. Regulatory streamlining is also important for water resource projects. The Council will work with the Administration and Congress towards successful water project development. Finally, the Council will provide a summary of western state water financing authorities and programs, as time and resources permit.

Subcommittee:

Time Frame:

8. ENERGY & WATER RESOURCES – INTEGRATED MANAGEMENT

Work to date: The increase in demands for water to meet energy needs is raising interest in the interrelationship between water and power resources, including opportunities to better understand the energy-water nexus and maximize efficiencies. The Council has addressed various aspects of energy issues as they relate to water resources as part of its regular meetings, including the demand for water resources created by new energy development. Hydraulic fracturing has been an issue and long standing practice with which the states have considerable experience. The use of water produced by energy development has also been discussed. The Council has also urged the Administration and Congress to support Department of Energy hosted energy-water programs conducted at national laboratories (Position #485, Aug. 2022). The Council has in the past participated with the Western Electric Coordinating Council (WECC) and related State Provincial Steering Group and Environmental Data Work Group.

2024/2025: As resources permit, the Council will continue to compile existing information through WaDE addressing water availability and anticipated demands for energy resources development (and the implications for water use in the West). Further, the Council will consider and evaluate any federal legislation and other potential collaborative efforts in addressing energy and water needs, as well as related water quality concerns. The Council will evaluate as appropriate specific energy and water-related issues as they arise, such as hydraulic fracturing, hydropower licensing, pumped hydropower projects, Clean Water Act Section 401 certification, and other practices.

Subcommittee:

Timeframe: Ongoing

**EXECUTIVE COMMITTEE
WORK PLAN
2024/2025**

1. WGA/WSWC COORDINATION and COLLABORATION

Work to date: The Western Governors’ Association (WGA) has adopted two comprehensive policy statements, one Water Resource Management in the West (2021-08) and the other Water Quality in the West (2021-10), as well as other policy statements with water-related implications.

The Council has worked closely with WGA on various regulatory and other issues, especially the Corp’s Water Supply Rule, EPA’s proposed and final rules related to Clean Water Act (CWA) jurisdiction and the definition of Waters of the United States, as well as the CWA 401 State Water Quality Certification.

WGA has taken the lead on some issues and deferred to the Council on other issues, such as tribal water rights settlements.

2023/24: The Council and the Committee will continue to coordinate and consult with the WGA on matters that come before the Council and assist as requested in the development and implementation of WGA water-related policies. WGA staff are invited to attend and participate in our meetings, workshops and symposia. WGA and WSWC staff collaborate on a continuing basis.

As in the past, the Council may propose policy resolutions for WGA consideration. Further, the WSWC Chair and/or Executive Director will participate in WGA meetings as appropriate. Working with the WGA, the Council will also coordinate Western Federal Agency Support Team (WestFAST) activities and needs. WGA and WSWC will also work together as part of the Western Policy Network.

Subcommittee: Management Subcommittee

Time Frame: ongoing

2. WESTFAST

Work to date: The creation in 2008 of our Western States Federal Agency Support Team (WestFAST) has had many benefits. It is a unique forum for addressing western (and national) water issues that has brought together fifteen separate federal agencies to collaborate with each other and state agencies with water-related responsibilities. WestFAST addresses issues raised with the Council and WGA (which in turn support development and implementation of related federal policies and programs). WestFAST and the Council have also discussed collaborative federalism principles to guide federal/state working relationships.

2023/25: The Executive Committee will continue to oversee the Council’s work with WestFAST. Further, the Committee will work to ensure participating agencies realize the real and

potential benefits of WestFAST, helping to build a sound foundation for continuing collaboration. The WSWC will meet regularly with WestFAST representatives and will continue building and maintaining closer ties with WestFAST principals. The Council will also advocate for continued WestFAST funding.

Time Frame: Ongoing

3. FEDERAL ADMINISTRATION and CONGRESSIONAL VISITS/CONTACTS

Work to date: In an ongoing effort to promote WSWC and WGA positions and priorities, Council officers, members and staff often travel to Washington, D.C. to visit with Administration officials and Congressional members and staff. WSWC members and staff have also previously hosted or presented at briefings for congressional staff on the importance of federal data gathering activities, including Landsat thermal data, U.S. Geological Survey streamgaging programs, USDA's National Weather and Climate Center and its snow survey activities, National Oceanic and Atmospheric Administration programs (including the National Integrated Drought Information System and improving subseasonal to seasonal (S2S) precipitation forecasting), as well as Indian water rights settlements. Some of the feedback from these meetings has suggested a need for greater contact and communication between the Council and federal and congressional policymakers.

Of note, the Council is often invited to testify on proposed legislation. Further, the Council also distributes policy positions adopted at its meetings to House and Senate members of western state delegations, key Congressional leadership and staff, and senior Administration officials.

2024/25: The Council will continue to communicate our positions with the Administration and the Congress. Future meetings when appropriate will be scheduled with Administration and Congressional contacts and advise them on major national water issues from the perspective of western states. The WestFAST Liaison Officer and WestFAST members will assist with and participate in visits with Executive Branch agencies. The WSWC will meet with WestFAST principals. Other trips and visits may be made as needed. The Council staff and members will also communicate our external positions as the need arises and continue to respond to requests for testimony, briefings and information from the Congress and the Administration.

Subcommittee: Management Subcommittee

Time frame: Ongoing

4. REGULAR COUNCIL MEETINGS

Work to date: The first meeting of the Council was held in Stateline, Nevada in 1965, and regular meetings have been held since. Currently, the Council meets three times per year, rotating among the member states, which host the meetings at a location of their choice. During the pandemic, meetings were held virtually. One benefit of virtual and now hybrid meetings has been expanded participation and reduced meeting and travel costs. Guest speakers and topics for discussion are scheduled according to members' interests and needs. External policy positions for consideration

are noticed 30-days before the Council meets and are distributed not only to members, but also to WGA staff and the Governors' staff. Any position statement not noticed may be brought before the Council for consideration at a meeting by unanimous consent, but if approved, must be sent to WGA for review prior to distribution consistent with mutually agreed upon WGA and WSWC procedures for policy coordination.

2024/25: The Spring 2023 meetings were held in Reno, Nevada late in May, and the Fall meetings scheduled in mid-September, in Anchorage, Alaska. Therefore, it was determined there would be no Summer 2023 meetings, nor would there be an attempt to schedule a winter meeting. Rather, the WSWC will meet in March 2024 in Washington, D.C. in collaboration with the Interstate Council on Water Policy (ICWP), with a joint roundtable meeting. Unlike past roundtables, the National Water Supply Association (NWSA) will not be joining us.

5. NEWSLETTER

Work to date: *Western States Water* provides members and others with accurate and timely information on various water resources topics, activities and events at state, regional and national levels. It has been provided as a free service to members, governors and their staff, member state water resource agencies, state water users associations, selected multi-state organizations, key congressmen and their staffs, and top federal administration officials. A subscription fee for others has been discontinued. It is primarily distributed via email, and is posted on our website.

2024/25: Along with the Council's regular meetings, the newsletter requires our most significant commitment of staff resources, though that is usually ancillary to other efforts. The response from members and others receiving the newsletter has been consistently positive. The Council will continue to provide this service weekly via email, except for those who request a hard copy.

Time Frame: Ongoing

6. WATER MANAGEMENT SYMPOSIA

Work to date: An annual WSWC Water Management Symposium has traditionally been held under the auspices of the Executive Committee. However, the Committee has usually asked one of the other committees to take the lead. This includes a biennial Indian Water Rights Settlement Symposia cosponsored with the Native American Rights Fund. The last WSWC/NARF Symposium was held virtually in August 2023. The Executive Committee considers hosting symposia on any topic and issues as their importance merits.

In 2022-23, the Council held a number of meetings and webinars in collaboration with relevant federal agencies, multiple stakeholders, and public and private experts. This included exploring a potential regional approach to defining "Waters of the United States" (WOTUS), and a technical white paper summarizing the discussions was drafted. Further, a National Water Use Data Workshop was held. One goal is identifying common interests and promoting partnerships.

2024/25 The Legal Committee, under the direction of the Executive Committee, coordinated with NARF in sponsoring the 2023 Indian Water Rights Settlement Symposium, and in 2024 may consider other topics

Time Frame –2023-24

7. ANNUAL REPORT

Work to date: Since its organization in 1965, the Council has prepared and published an annual report, with a brief discussion of the Council’s formation and a detailed summary of its current membership and activities. It is a report of the Council’s meetings and provides an explanation of resolutions and positions and other actions taken by the Council. Further, it includes a description of workshops, seminars and symposia sponsored by the Council, as well as other important activities and events. It also describes the Council’s involvement in major current water policy issues. Lastly, biennially, it includes an audit of the Council’s finances, and current rules of organization. Recently, electronic copies have been distributed.

2024/25: The staff will work on the current backlog of annual reports.

Time frame: October 2023-June 2024

8. HISTORICAL REVIEW: ISSUES & OUTCOMES

Background: The Council has positions addressing numerous issues and has taken various actions and invested significant resources in attempting to influence outcomes. While the annual report, newsletter, meeting minutes and other sources document such work, there has never been a comprehensive review of some of the major topics addressed and outcomes achieved. Such a summary evaluating the influence the Council has had on outcomes would be useful. The Council has been active in both administrative and congressional affairs, including federal regulatory matters and federal budgeting and appropriations processes. The Council has also provided a forum for states to learn from each other, as well as serving as a resource and catalyst for innovation, such as the WSWC Water Data Exchange. Selecting appropriate metrics for measuring results could be challenging.

2024/25: The Committee will consider the best means of undertaking such a review and metrics for evaluating the Council’s influence on matters that have been brought before the Council. The Committee, given its oversight functions, will use the results of any summary to guide the investment of Council staff and budgetary resources.

Subcommittee:

Time frame:

9. STATE WATER AGENCY STAFFING AND RETENTION CONCERNS

Background: During the Deadwood, South Dakota meeting in September 2021, various WSWC members raised concerns about hiring, training, and retaining technical and professional staff to carry out essential agency functions. Some turnover or lack of new applicants may be attributable to: (1) high specialization of western water challenges; (2) shuffling among state/federal agencies; (3) smaller salaries compared to the private sector; (4) limited advancement opportunities for mid-level staff; and (5) retirements, pandemic-related adjustments, and younger generation career-culture shifts. On October 22, 2021 and January 24, 2022, various WSWC members discussed challenges and potential solutions that the WSWC might work together to be able to accomplish.

2024/25: The Committee will consider: (1) a brief survey of states to identify obstacles, with the intent to create a report that may be utilized to demonstrate the staffing needs of state water agencies across the West; (2) a mechanism for sharing job postings at state water agencies across the West that is cost-effective; and (3) developing a pipeline of incoming staff by introducing a younger generation of potential employees to day-to-day work of technical and professional staff, complex western water challenges, and benefits beyond salaries (e.g., through webinar series, cooperation with universities or other organizations).

Subcommittee: Henry Brooks, Jerry Rigby, Mary Anne Nelson, Connie Owen, Earl Lewis, Matt Unruh, Jesse Bradley, Sara Gibson, Jeanne Goodman, Kathy Alexander, Kim Nygren, Jeff Cowley

Time frame:

**WATER QUALITY COMMITTEE
WORK PLAN
July 1, 2024 to June 30, 2025**

1. WATER QUALITY/QUANTITY NEXUS

Background: Western Governors’ Association (WGA) Policy Resolution ~~2021~~2024-0807, Water Resource Management in the West, states: “Western Governors believe effective solutions to water resource challenges require an integrated approach among states and with federal, tribal and local partners. Federal investments should assist states in implementing state water plans designed to provide water for municipal, rural, agricultural, industrial and habitat needs, and should ~~provide~~offer financial and technical support for development of watershed and river basin water management plans when requested by states. Integrated water management planning should also account for flood control, water quality protection, and regional water supply systems. Water resource planning must preserve state authority to manage water through policies which recognize state law and the financial, environmental, and social values of water to citizens of western states today and in the future.” (Paragraph (B)(3), emphasis added)

Work-to-Date: On October 6-7, 2015, the Water Quality Committee held a workshop in conjunction with the WSWC’s 2015 fall meetings in Manhattan, Kansas. The workshop provided insights on: (1) how state water quantity and quality (WQ2) regulations interact with each other; (2) how states can protect water quality within the existing framework of the prior appropriation doctrine; and (3) the proper relationship between federal environmental protections and the states’ primary and exclusive authority over the allocation of water resources. WSWC staff prepared a preliminary report of the meeting, which included recommendations for WSWC next steps.

During the WSWC October 2019 meeting in Breckenridge, Colorado the Committee heard a presentation from Alex Davis, Deputy Director of Water Resources for the City of Aurora about the city’s challenges related to the water quantity-quality nexus and the complex efforts to ensure adequate source water protection across several water basins.

Beginning January 2022, WestFAST held a monthly Wildfire Webinar Series. The series continued for a full year and covered topics regarding science, policy, and outreach. Technical topics explored include wildfire prediction, restoration and resilience-building, and the relationship of wildfire to water quality and water availability. Other policy topics explored the intersection of wildfire with property insurability and public health. WestFAST also covered engagement topics such as community planning, investment in watershed health, NASA’s FireSense strategy, and available risk reduction tools.

From February to May 2023, WestFAST held a three part webinar series on Pumped Storage Hydropower. The first in this series gave an overview of types of pumped storage systems, and their benefits and challenges. The following two installments covered various permitting processes for new pumped storage hydropower projects, including the Federal Energy Regulatory Commission licensing process, compliance requirements, and Reclamation’s lease of power privilege process.

From July to December 2023, WestFAST held a four part Stream Restoration webinar series. They covered introductory concepts, the science of stream restoration, as well as stream restoration and water rights in Utah, Colorado, Nebraska and California.

2024-2025: The Committee supports WGA Resolution ~~2021-2024-0807~~, and directs staff to follow up on the next steps recommended in the 2015 WQ2 workshop, including: (1) create a nexus Toolbox of useful and accessible information, including interagency MOUs, instream flow legislation, case studies, and reports of additional workshops, to provide a resource for the states seeking to learn from each other's experiences; (2) identify and coordinate with federal agencies and other technical or national organizations with common interests to co-host educational workshops or symposia on relevant nexus topics, both to develop better relationships and to find additional potential solutions to nexus problems; and (3) provide updated information from states on current water quality-water quantity issues at Council meetings. Initial conversations with the subcommittee have occurred.

Time Frame: Ongoing

WQ2 Nexus Workgroup – goal to re-establish in 2024

2. CLEAN WATER ACT ISSUES

There are several ongoing Clean Water Act (CWA) issues that pertain to WSWC policies or are otherwise of interest that the Committee will monitor and address on an as-needed basis. These issues are listed below in order of priority.

a. CWA Jurisdiction*

Background: In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S. Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006). This was followed by the Clean Water Rule (2015 WOTUS Rule), finalized on June 29, 2015 (80 FR 37054). Many of our member states filed lawsuits challenging the 2015 WOTUS Rule in federal court. The 2015 WOTUS Rule was rescinded, and was replaced by the Navigable Waters Protection Rule (2020 WOTUS Rule), finalized on April 21, 2020 (85 FR 22250). Several of our member states filed lawsuits challenging the 2020 WOTUS Rule in federal court. The 2020 WOTUS Rule was vacated, and was replaced by the Revised Definition of the "Waters of the United States" Rule (2023 WOTUS Rule), finalized on January 18, 2023 (88 FR 3004). On May 25, 2023, the U.S. Supreme Court issued its decision in *Sackett v. EPA* (#21-454). Citing the Justice Scalia plurality opinion in *Rapanos*, the five-Justice majority Court concluded that the definition of WOTUS in Clean Water Act (CWA) §1362(7) "encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes." The Court held that WOTUS does not apply to all wetlands, but extends only to those wetlands with a continuous surface connection to bodies of water that are WOTUS in their own right, so that they are indistinguishable from those waters. The Court

acknowledged that “temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells.” In footnote 16, the Court said: “Although a barrier separating a wetland from a water of the United States would ordinarily remove a wetland from federal jurisdiction, a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier’s removal because it violates the Act...that unlawful barrier poses no bar to its jurisdiction.” On August 29, 2023, the EPA and Corps issued an Amended 2023 Rule to conform key aspects of the regulatory text to the *Sackett* decision.

On August 29, 2023, the EPA and Corps issued an Amended 2023 Rule (88 FR 61964) to conform key aspects of the regulatory text to the Sackett decision. Two state lawsuits have challenged the Amended 2023 Rule: Texas v. EPA (TX, ID), and West Virginia v. EPA (AK, AL, AR, FL, GA, IA, IN, KS, LA, MI, MO, MT, ND, NE, NH, OH, OK, SC, SD, TN, UT, VA, WV, and WY). Both cases issued preliminary injunctions on the 2023 WOTUS Rule. A third case, Kentucky v. EPA, did not issue an injunction, but the rule is stayed while the decision is on appeal. The agencies are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime and the Supreme Court’s decision in *Sackett* for these 27 states until further notice. For the remaining 23 states, the District of Columbia, and the Territories, the agencies are implementing the Amended 2023 Rule.

Work-to-Date: WSWC adopted positions #369 and #373 regarding CWA rulemaking efforts and state-federal collaboration. Position #369 was revised and readopted as Position #410, while Position #373 was allowed to sunset and acknowledged as a letter with continued historical value. At the October 2018 meeting in Coeur d’Alene, Idaho, Position #410 was revised and readopted as #427, with the State of Washington abstaining from the vote. At the September 2021 meeting in Deadwood, South Dakota, Position #472 was again revised and adopted, with the understanding that further efforts would be made to improve the position the following Spring. WSWC sent various letters and comments to EPA and the Corps. At the April 2022 meeting in Arlington, Virginia, Position #481 was revised and adopted, replacing #472.

In the Summer of 2022, WSWC hosted a series of workshops to consider the technical and policy implications of a regional approach to WOTUS implementation, and prepared a white paper to document this effort for future use: https://westernstateswater.org/wp-content/uploads/2022/10/WSWC-WOTUS_RegionalConcepts_Technical_Whitepaper_Final.pdf

2024-2025: The Committee will continue to work with the Water Resources and Legal Committees through the Workgroup to understand and share how states are affected by and dealing with the changes to the “waters of the United States” definition. Staff will track any developments in agency actions regarding the WOTUS definition, and report on potential impacts to states.

Time Frame: Ongoing

CWA Rulemaking Workgroup: Tom Stiles (KS), Jennifer Carr (NV), [Jojo La \(CO\)](#), [Julie Pack \(AK\)](#)

*See Item 2 of the Legal Committee Workplan

b. Water Reuse

Background: In 2011, the WSWC prepared a report summarizing state responses to survey questions on water reuse standards, regulations, issues, projects and funding titled “Water Reuse in the West: State Programs and Institutional Issues.” Given that it has been nearly a decade since those responses were compiled, the Committee decided to update the report. At the October 2019 meeting in Breckenridge, the Committee expressed interest in coordinating survey responses with the Association of Clean Water Administrators (ACWA) and other organizations. Additionally, the Environmental Protection Agency recently unveiled their Water Reuse Action Plan (WRAP), a collaborative effort across federal agencies, water organizations and the private water sector. This is the first of its magnitude, intended to innovate, scale and implement water reuse technologies and policies. The WRAP identifies 37 actions and 200 implementation milestones. WSWC’s and ACWA’s survey update will help implement action 2.2.1: Compile Existing State Policies and Approaches to Water Reuse.

Work-to-Date: From November 2019 – January 2020, WSWC staff and council members worked with ACWA and other organizations to update survey questions. These questions were somewhat different from the 2011 questions and provided a comprehensive picture of what is happening in water reuse across the states. States submitted responses to the survey in mid-2020, and staff compiled these into a final report. This report is available at: <https://westernstateswater.org/publications/other-reports/2021/2021-water-reuse-report/>

2024-2025: With the report finalized, staff will work with ACWA to determine next steps, including potential publication in a national water policy or law journal.

Time Frame: 2021-2022

c. State Revolving Funds (SRFs) and Infrastructure Financing

Background: The Clean Water and Drinking Water SRFs provide states with capitalization grants that are leveraged with state contributions to offer financial assistance to cities, towns, communities and others to improve and construct water quality infrastructure. These programs are widely used and have been critically important for improving and maintaining water infrastructure at the local level. Over the years, some budget requests from the Administration have proposed cuts to the SRF programs. Various acts of Congress have also authorized or retained a number of limitations on the use of SRF funds, including: (1) “Buy American” provisions for iron and steel; (2) requirements that between 20% and 30% of SRF funds be used for principal forgiveness, negative interest loans, or grants subject to additional provisions; and (3) requirements that states use at least 10% of their SRF funds for green infrastructure, water or energy efficiency improvements, or other “environmentally innovative” activities.

When Congress enacted the Water Infrastructure Finance and Innovation Act (WIFIA) in 2014, there was some concern that the subsequent WIFIA loan and guarantee program would redirect critical funds from the SRF programs. Thus far, this has not been the case (see table below). Since 2017, the WIFIA program has invited a total of 89 projects to apply for funding, with over \$13B in financing requests. SRFs have access to this funding and are also able to jointly fund projects in conjunction with WIFIA loans. In 2019, both types of funding mechanisms were used by projects. To date, 16 WIFIA loans have been closed totaling over \$3.5B in credit assistance to help finance \$8B for water infrastructure projects and create 16,000 jobs.

Congressional Appropriations for Water Infrastructure (FY2017-19), in millions

	Clean Water SRF & Title II	Drinking Water SRF	WIFIA
FY2017	\$1,393.9	\$863.2	\$30.0
FY2018	\$1,696.9	\$1,163.2	\$63.0
FY2019	\$1,694.0	\$1,164.0	\$68.0

Source: Congressional Research Service Report R43871

When Congress enacted the 2022 Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58) it authorized significant but short-term federal funding for SRFs. However, a substantial portion of those increases were earmarked for Congressionally-directed spending on earmarked projects.

Work-to-Date: During the July 2018 meeting in Newport, Oregon, the Committee heard reports from Kansas and Washington on the process they went through to apply for WIFIA loans during the first round, and on the water projects that were built with these low-interest loans. Since then, projects in member states Arizona, California, Nebraska, North Dakota, Oklahoma, Oregon and Utah have been funded. Overall, WIFIA funded projects are larger than typical SRF-funded projects, while both programs prioritize those that are shovel-ready and credit-worthy.

WSWC Position #496 urges the Administration and Congress to provide greater flexibility and fewer restrictions on state SRF management, to provide stable and continuing appropriations to the SRF capitalization grants at adequate funding levels, and to ensure that states' allocations are not reduced or harmed by directed congressional earmarks. Appropriations should be adequate to help states address their water infrastructure needs and meet federal mandates. WGA Policy Resolution 2021-10, Water Quality in the West, also supports the SRFs as "important tools" and requests greater flexibility and fewer restrictions on state SRF management.

On August 21, 2023, WSWC joined a coalition of organizations led by the Council of Infrastructure Financing Authorities (CIFA) urging Congressional leaders to fund the CW and DW SRFs to their maximum authorized amount of \$3B each for FY2024, and noting concerns with Congressional earmarks. WSWC joined a letter of similar language, urging continued funding and protections through FY2025, which CIFA sent to the House and Senate Appropriations Committee on December 14, 2023. In February of 2024, WSWC joined a CIFA-led letter to the House Committee on Appropriations, again urging full

funding for FY2024 (which had not yet been appropriated due to a series of continuing resolutions which extended into March).

2024-2025: The Committee will continue to support the WGA and WSWC positions. WSWC staff will update the Committee on developments within Congress and the Administration that have potential to impact SRFs. As needed, Committee members and WSWC staff will meet with the Administration and Congress officials to further the objectives of the WGA and WSWC positions. Some topics for discussion include state experiences with Buy American and Davis-Bacon, whether there are otherwise eligible entities, but for the limitations, and how many are walking away from SRFs because of these restrictions, as well as options for a right of first refusal by the SRFs prior to funding projects through WIFIA.

Time Frame: Ongoing

d. EPA's Water Transfers Rule

Background: On January 18, 2017, the 2nd Circuit upheld the EPA's Water Transfers Rule, 40 CFR §122.3(i), in *Catskills Mountains Chapter of Trout Unlimited v. EPA*, No. 14-01991. The Court of Appeals reversed the decision of the U.S. District Court for the Southern District of New York, which previously vacated the EPA's rule. On February 26, 2018, the Supreme Court denied the petition for certiorari, allowing the Water Transfers Rule to stand.

WGA Policy Resolution 2021-10 (paragraph B(2)(c)) and WSWC Position #469 support EPA's Water Transfers Rule, which clarifies that water transfers from one "navigable" water to another are exempt from National Pollutant Discharge Elimination System (NPDES) permitting under Section 402 of the CWA. The rule states that transfers do not require NPDES permits if they do not add pollutants and if there is no intervening municipal, industrial, or commercial use between the diversion and the discharge of the transferred water.

On February 18, 2020, WGA sent a letter to the Committee on Energy and Natural Resources in support of the Drought Resiliency and Water Supply Infrastructure Act (S. 1932), in which it suggested including language to affirm the rule in federal statute in order to "add a needed measure of stability and certainty to western water planning and drought mitigation efforts." WSWC and other state organizations also signed onto this letter.

2024-2025: The Committee and WSWC staff will: (1) continue to support the WGA and WSWC positions; (2) monitor any and all activities impacting EPA's rule, including but not limited to future litigation and possible efforts by EPA to reconsider the rule; (3) inform the WSWC of ongoing developments; and (4) take any other actions needed to support the WGA/WSWC positions regarding the rule.

Time Frame: Ongoing

e. Nutrients

Background: EPA’s Office of Water released the Joel Beauvais memo *Renewed Call to Action to Reduce Nutrient Pollution and Support for Incremental Actions to Protect Water Quality and Public Health* on September 22, 2016, and the Radhika Fox memo *Accelerating Nutrient Pollution Reductions in the Nation’s Waters* on April 5, 2022.

The Beauvais memo highlights the continued need for action by states and other stakeholders to reduce the threat of nutrients to water quality and public health by:

- Reducing nitrates in sources of drinking water and nitrogen and phosphorus pollution contributing to harmful algal blooms;
- Reducing nutrients from point and nonpoint sources;
- Prioritizing watersheds and setting load reductions;
- Strengthening water quality standards;
- Highlighting high priority incremental actions of states;
- Issuing biennial reports that assess progress and provide accountability, and
- Encouraging EPA to continue to provide support and financial assistance.

The Fox memo sets forth five “governing principles” to guide the EPA Office of Water as it works with states, tribes, and local partners to reduce nutrient pollution. The guiding principles are: (1) Advance equity and environmental justice; (2) Build and foster partnerships; (3) Follow the science and invest in data-driven solutions; (4) Support innovation; (5) Scale successful initiatives.

The memo also outlines EPA’s primary strategies and secondary strategies to drive reductions in nutrient pollution.

- **Deepen collaborative partnerships with agriculture.** Secondary strategies to this end include collaboration with USDA, engagements with agricultural stakeholders, and improving on-the-ground collaboration between USDA, states, territories, tribes, and stakeholders.
- **Redouble our efforts to support states, tribes, and territories to achieve nutrient pollution reductions from all sources.** Secondary strategies include encouraging states to use One Water approach, championing innovative financing and use of CWA flexibility for implementing market-based approaches, and prioritizing support to disadvantaged communities.
- **Utilize EPA’s Clean Water Act authorities to drive progress, innovation, and collaboration.** Secondary strategies include urging adoption of numeric nutrient criteria into Water Quality Standards, more fully using the Clean Water Act assessment and listing process, supporting development of TMDLs for nutrient pollution, and further reducing nutrient loads from point sources.

Work-to-Date: The Committee and WSWC staff continue to follow and update the WSWC on EPA efforts involving nutrients. Various Committee meetings have featured presentations from EPA and state officials on federal and state nutrient management efforts. At the October 2019 meeting in Breckenridge, the Committee heard from Jennifer Carr, Deputy Administrator of the Nevada Division on Environmental Protection, on multi-agency coordination on harmful algal blooms in several water bodies in Nevada.

Remote sensing is also becoming an increasingly important method for monitoring water quality and water supplies. Landsat 8 can provide images in near-real time that provide water quality managers with information on where harmful algal blooms may be forming and allows them to rapidly respond. WSWC was instrumental in ensuring Landsat 8 was equipped with the data collection tools needed for these assessments.

On August 14, 2019, EPA and USDA co-hosted a workshop titled Innovative Financing Strategies for Reducing Nutrients. The workshop explored private, state, and federal funds that could be combined and leveraged for nutrient reduction projects, and ways that the agencies could increase funding opportunities and awareness of innovative funding approaches.

On March 14, 2024 Tom Stiles provided an overview of the Association of Clean Water Administrators' (ACWA) 11 standing principles on nutrients policy as a preamble to Council discussions on a possible position. On March 15, the Committee established a Nutrients subcommittee for further discussion. The subcommittee met in Spring 2024 and prepared a position for full council review and input.

2024-2025: The Committee and WSWC staff will monitor and update the Council on any changes to EPA's nutrient efforts, including those related to Harmful Algal Blooms (HABs) and cyanotoxin criteria. Each state is encouraged to develop its own strategy to control nutrient pollution. The Committee will ask states with a strategy to share highlights from their nutrient and HABs strategies and efforts that they think could benefit other Council member states. The Association of Clean Water Administrators has a Nutrients Reduction Progress Tracker that has some state strategies that the Committee can use as a starting point.

Time Frame: Ongoing

Nutrients Subcommittee: Jojo La (CO), John Mackey (UT), Tom Stiles (KS), Jennifer Zygmunt (WY)

f. Section 401 Certifications

Background:

In 2019, the Trump administration issued Executive Order 13868, leading to EPA's issuance of the 2020 CWA Section 401 Certification Rule (2020 Rule)(85 FR 42210). The 2020 rule narrowed the authority of states to determine certification timeframes, application materials requirements, and the scope of certifications. WSWC and WGA submitted comments and letters to the administration, congress, and EPA prior to Executive Order 13868 and throughout the rulemaking process, opposing changes which may diminish state authority. In January 2021, the Biden administration issued Executive Order 13990, directing agencies to review and address regulations promulgated under the Trump administration. On April 21, 2022, WSWC sent a letter to the Administration encouraging the accelerated review of the CWA 401 Certification Final Rule and requesting the involvement of states as co-regulators.

In June 2022, the Environmental Protection Agency (EPA) released a pre-publication version of a revised rule for CWA (Clean Water Act) §401 certification. In August, the Council of State Governments-West (CSG-West) and the WSWC submitted a comment letter to EPA, commending the proposed rule’s cooperative elements, but criticizing its provision that a pre-filing meeting cannot occur until the federal agency has drafted the license. They argued that it placed states at the end of the federal permitting process and limited collaboration. They expressed support for early substantive consultation with states.

On September 14, 2023 the Environmental Protection Agency (EPA) announced the final *Clean Water Act Section 401 Water Quality Certification Improvement Rule* (2023 Rule) (88 FR 66558), which went into effect in November 2023 (WSW #2575). The rule provides the following: (1) allows states to specify additional application requirements, beyond EPA baselines; (2) maintains the 30-day pre-filing meeting time period; (3) limits the scope of state certifications to the water quality impacts of the “activity as a whole”, rather than point source only; and (4) limits EPA’s certification review to only the timeliness of action, rather than the substance of the determination.

On December 4, 2023 a coalition of states (including AK, MT, OK, and WY) and regulated entities challenged the 2023 Rule in the U.S. District Court of the Western District of Louisiana (*State of Louisiana et al. v. U.S. Environmental Protection Agency et al.*, case No. 2:23-cv-01714). The petitioners requested an order declaring that the 2023 Rule violates the CWA and the Administrative Procedure Act (APA); vacating and setting aside the 2023 Rule; and enjoining EPA from applying or enforcing the 2023 Rule. In January 2024, 18 states including California, New Mexico, Oregon, and Washington jointly filed a motion for leave to intervene for the purpose of defending the 2023 Rule (WSW #2592). 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.”

Work-to-Date: In 2020, the Committee formed a workgroup to explore the possibility of developing a template for Memorandums of Understanding between states and federal agencies that will be implementing the new 401 certification rule. The new rule expands the number of federal agencies responsible for obtaining 401 certifications, many of which have not previously engaged in this process. States are concerned about maintaining and opening lines of communication regarding project activities so that they can conduct their process to certify projects without waiving their ability to do so due to the strict time constraints. This workgroup has created a list of needs and wants from such a document, and are now moving towards determining what outputs would be most helpful.

2024-2025: Staff will continue to facilitate the 401 MOU workgroup, track the implementation of the rule, and report on challenges or experiences that states have had regarding how the changes are working on-the-ground.

Timeframe:

g. Tribal Treatment as States

Background: In 2016, EPA finalized two separate but related rulemaking efforts regarding the tribes' ability to obtain "treatment as states" (TAS) status under CWA Section 518, necessary for delegation of regulatory programs to the tribes. The first involved an interpretive rule regarding inherent authority of tribes, considering CWA Section 518 an express delegation of authority from Congress. The second rule sets forth a regulatory process for TAS status to operate impaired listing and total maximum daily load (TMDL) programs. WSWC and various states sent letters commenting on concerns with how the programs would be implemented.

EPA also engaged in a pre-rulemaking outreach to states, tribes, and other stakeholders, soliciting input on setting federal baseline water quality standards for tribes without TAS status. WSWC submitted comments in December 2016. EPA heard from 12 tribal governments and associations and 11 state officials, agencies and associations, among others, and reported that most tribes were largely supportive while most states raised concerns. In 2023, EPA published its proposed rule, Federal Baseline Water Quality Standards for Indian Reservations (88 FR 29496). At least 12 of our member states provided substantive comments. See [WSW Special Report #2571](#).

In December 2022, EPA issued a proposed rule, Water Quality Standards Regulatory Revisions To Protect Tribal Reserved Rights (87 FR 74361). At least 10 of our member states provided substantive comments. See [WSW Special Report #2548](#).

Work-to-Date: In December 2016, the WSWC submitted a [letter](#) commenting on the ANPR proposing federal baseline WQS for tribes. In May 2023, the WSWC approved a new policy position #490 regarding Water Quality Standards, Protecting Tribal Reserved Rights, and Federal Baseline Water Quality Standards for Indian Reservations. In August 2023, the WSWC submitted a [comment](#) on EPA's proposed rule for federal baseline WQS for tribes.

2024-2025: The Committee will continue to monitor the potential rulemakings and their implementation and engage with EPA as appropriate.

Time Frame: Ongoing

h. Abandoned Hardrock Mine Remediation

Background: The West has an undetermined number of abandoned hardrock mines that have the potential to or unknowingly already do affect water quality. "Good Samaritan" bills have been introduced in Congress over the years to protect public entities that are willing to voluntarily clean up these sites from legal liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the CWA. These bills have been unsuccessful due to concerns about the potential impacts of amending the CWA and perceptions that sufficient protections already exist under CERCLA. However, considerable uncertainty exists as to whether CERCLA and other existing authorities provide Good Samaritans with sufficient protection.

In December 2012, EPA issued a memorandum to clarify administrative protections for Good Samaritans. It clarified that Good Samaritans who complete cleanup efforts pursuant to EPA policies will not be considered "operators" responsible for obtaining

NPDES permits if they lack: (1) access and authority to enter the site; (2) an ongoing contractual agreement or relationship with the site owner to control discharges; (3) power or responsibility to make timely discovery of changes to the discharges; (4) power or responsibility to direct persons who control the mechanisms, if any, causing the discharges; and (5) power or responsibility to prevent and abate the environmental damage caused by the discharges. Nevertheless, the memorandum states that it “...does not address or resolve all potential liability associated with discharges from abandoned mines.”

In September 2020, EPA announced a new office, the Office of Mountains, Deserts, and Plains, to primarily work with Good Samaritan organizations and tribes, and ensure more efficient clean-up of both Superfund and non-Superfund sites in the West, including abandoned mines.

In September 2021, the WSWC passed Position #477 regarding Abandoned Hard Rock Mine Cleanup. On February 3, 2022, Senator Martin Heinrich (D-NM) introduced the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571). On July 28, 2022, WSWC sent letters to Congress and to the Administration regarding the Good Samaritan bill and joint efforts to address abandoned hardrock mine cleanup.

On September 13, 2023 Senators Martin Heinrich (D-NM) and Jim Risch (R-ID) reintroduced the bipartisan Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2781)(WSW #2577). On January 10, 2024 the WSWC sent a letter to the Senate leadership and the Environment and Public Works Committee, supporting and making recommendations on the bill. The letter included WSWC Policy Position No. 447 and recommended financial flexibility for states, the establishment of a formal consultation process under the bill’s pilot program, and the establishment of a permanent program through which states can administer Good Samaritan permits (WSW #2591). In January 2024, the bill was reported favorably by the Senate Environment and Public Works Committee and placed on Senate Legislative Calendar No. 312.

Work-to-Date: The WGA and WSWC have long supported legislation to amend the CWA to protect Good Samaritans from inheriting perpetual liability for the site under the CWA (WGA Policy Resolution [2021-2024-0908](#)). Over the past several years, the Committee has worked to support Good Samaritan legislation and other efforts to clean up abandoned hardrock mines, including multiple visits with Congress and the Administration, Congressional testimony in support of such legislation, and involvement in a former WGA-organized Task Force focused on crafting an exemption for Good Samaritan activities by state governments.

At the Fall 2020 WSWC meeting, Roger Gorke presented an update on the creation of the new Office, including that it will be lead by Shamid Mahmud. Mahmud has decades of experience leading the Good Samaritan Abandoned Mine Internal Working Group.

2024-2025: The Committee will continue to coordinate with the WGA and encourage efforts to clean up abandoned hardrock mines, including but not limited to enactment of Good Samaritan legislation and efforts to support utilization of EPA’s 2012 memorandum. The Committee will work with key Congressional members/staff, Administration officials, and other stakeholders to develop and support efforts to clean up

abandoned hardrock mines in accordance with the WGA’s policies, including the possible reactivation of a workgroup and/or developing a workshop to bring together interested stakeholders to identify ways to facilitate abandoned hardrock mine remediation. Staff will also track activities of the Office of Mountains, Deserts, and Plains and report back to the Committee any developments of interest.

Time Frame: Ongoing

i. Per- and Polyfluoroalkyl Substances (PFAS)

Background: The widespread use and persistent nature of PFAS chemicals presents a complex environmental problem that affects water quality, human health, and ecosystems in varying degrees around the nation. Water sources with high levels of contamination in some instances must be replaced by alternative water sources, which can be costly and difficult in the arid west. Additionally, cleanup efforts may require coordination between state, federal, tribal, and local authorities.

Work-to-Date: In 2022-23, the Subcommittee explored the possibility of WSWC position and actions that might be taken to address PFAS water contamination in a collaborative way. The WSWC hosted a States-only PFAS Roundtable and prepared a summary of the meeting: <https://westernstateswater.org/events/states-only-pfas-roundtable/> In May 2023, the Committee determined not to pursue a PFAS policy position at this time, but to continue to keep an eye on PFAS developments.

2024-2025: The Committee will continue to monitor PFAS developments and revisit this issue as needed..

Subcommittee: Buck Smith (WA), Jennifer Zygmunt (WY), Julie Pack (AK),

j. NPDES Permits/Quality Assurance Project Plans QAQC/Other?

Background:

On March 14, 2024 Jennifer Zygmunt reiterated South Dakota’s interest in proposing a new resolution on NPDES, with particular interest on whether to support legislation that would extend NPDES permit terms from five years to ten.

On March 21, 2024 the House passed H.R. 7023, the Creating Confidence in Clean Water Permitting Act which would allow the term extension. OMB has issued a statement in opposition to the bill.

k. Maui and Groundwater

Background: The U.S. Supreme Court issued a ruling in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), holding that the provisions of the Clean Water Act require a National Pollution Discharge Elimination System (NPDES) permit when there is a “functional equivalent of a direct discharge,” which may include some discharges through groundwater. The Court noted that many factors may be relevant in determining whether a pollutant discharged through groundwater is a functional equivalent of a direct discharge to navigable waters. Time and distance will be the most important factors in

most cases. The Court offered the examples of: (1) a 100-year migration of pollutants through 250 miles of groundwater to a river, which would not ordinarily require a permit; (2) where a pipe ends 50 miles from navigable waters and the pollutants mix with groundwater and other materials in the aquifer, ending up in navigable waters many years later, in which case permitting requirements likely would not apply; and (3) where a pipe emits pollutants only a few feet through groundwater before discharging into a navigable water. Other relevant factors might include the nature of the aquifer material, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount discharged at the point source, how or where the pollutant enters the navigable waters, and the degree to which the pollution has maintained its specific identity.

In January 2021, EPA issued a notice of implementation guidance (86 FR 6321) which was rescinded in September 2021 (86 FR 53653). EPA issued a new draft guidance in November 2023 (88 FR 82891). Several WSWC member states submitted comments on the proposed guidance (WSW Special Report #2591). Two federal cases have analyzed the application of the “functional equivalent” standard: Cottonwood Environmental Law Center v. Edwards, 86 F.4th 1255 (9th Cir. 2023) (over-irrigation of golf course leaching nutrients into groundwater) and Stone v. High Mountain Mining Company, #22-1340 (10th Cir. 2024) (discharge from unlined settling ponds seeping into groundwater). 2024-2025: The Committee will work with the Water Quality Committee through the Workgroup to follow and comment on federal actions regarding Maui guidance in accordance with the WSWC’s and WGA’s positions, as well as consider the impacts of any guidance or rules on state policies, programs and regulations.

Time Frame: Ongoing

Maui Workgroup: Jennifer Zygmunt (WY), John Mackey (UT), Julie Pack (AK)

3. — **HYDRAULIC FRACTURING**

Background: In June 2015, the Environmental Protection Agency (EPA) published a study on the relationship between hydraulic fracturing and drinking water, titled “Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources.” In March 2015, the Bureau of Land Management (BLM) issued a final rule for hydraulic fracturing on public lands, which includes a variance process that would allow states to propose their own standards if they can prove that their regulations meet or exceed the requirements in BLM’s rule. In addition, EPA, the Department of Energy (DOE), and the Department of the Interior (DOI) agreed in April 2012 to develop a “Multi Agency Unconventional Oil and Gas Research Program” to support policy decision by relevant state and federal agencies. The effort is intended to help support the White House’s March 2011 “Blueprint for a Secure Energy Future.”

In December 2016, EPA published its report, Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States, available at <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990>

On December 28, 2017, BLM rescinded the 2015 hydraulic fracturing rule, noting that “all 32 of the 32 states with federal oil and gas leases have regulations that address hydraulic fracturing”

and that “since the 2015 final rule was published, more companies are using state regulatory agencies and/or databases such as FracFocus to disclose the chemical content of hydraulic fracturing fluids.” Litigation pending in the U.S. District Court for the Northern District of California (*California v. Bureau of Land Mgmt.*, #18-521) seeks to vacate the rescission and reinstate all of the 2015 rule’s provisions. The Court heard arguments on motions for summary judgment in February 2020, and a decision is still pending.

~~The Western Governors’ Association (WGA) Resolution #2021-10 and WSWC Position #436 state that: (1) federal efforts involving hydraulic fracturing should leverage state knowledge, experience, policies, and regulations; (2) such efforts should be limited, based upon sound science, and driven by states; and (3) that both organizations oppose any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.~~

~~**2023-2024:** The Committee will work with the Water Resources and Legal Committees to support the WGA and WSWC positions, and will continue to monitor and update the WSWC on developments involving hydraulic fracturing, including but not limited to EPA’s study, BLM’s rule, and the EPA/DOE/DOI research program.~~

~~The Committee will also work in collaboration with the Water Resources and Legal Committees to prepare a summary of the applicable WSWC states’ experiences with hydraulic fracturing. The summary will complement previous reports by the Groundwater Protection Council and others that describe how state programmatic elements and regulations ensure that hydraulic fracturing does not impair water resources and environmental values. Examples of the types of information sought for the summary include but are not limited to: (1) the impacts of hydraulic fracturing on water quality, if any; (2) examples of how state regulations and other efforts protect water quality; (3) the economic benefits of hydraulic fracturing; (4) water supplies and amounts used for hydraulic fracturing; (5) state interaction with federal agencies involving hydraulic fracturing; and (6) the degree to which states use oil and gas taxes and other revenue related to hydraulic fracturing to fund water-related efforts, including but not limited to water planning, water management, and water regulation and protection. WSWC staff will prepare the summary under the direction of the Committees and will gather the necessary information through independent research and focused telephone interviews with select staff from the applicable WSWC state agencies. WSWC staff will also coordinate with other relevant state associations and organizations to avoid duplicating prior efforts. It is envisioned that the full WSWC will review the summary.~~

~~**Time Frame:** 2016-2024, pending available staff time and resources.~~

**LEGAL COMMITTEE
WORK PLAN
July 1, 2024 to June 30, 2025**

1. STATE AND FEDERAL COLLABORATION REGARDING THE ADJUDICATION OF FEDERAL NON-TRIBAL WATER RIGHTS

Background: On July 15-16, 2014, the WSWC and WestFAST held a workshop in Helena, Montana to discuss ways to improve the resolution of federal non-tribal water rights claims and to begin the process of developing a clearinghouse of information that states and tribes can use to resolve these claims. The WSWC and WestFAST subsequently created a joint state-federal workgroup to help develop the clearinghouse and implement the other recommendations that emerged from the workshop.

Work-to-Date: The Committee created a Federal Non-Tribal Water Claims Subcommittee to evaluate ways the WSWC and WestFAST can improve the effective resolution of federal non-tribal water rights claims. The Subcommittee consists of WSWC members and WestFAST members, who serve in an *ex officio* capacity. Past webinars and workshops include:

November 10, 2015	McCarran Amendment – state and federal perspectives	
July 13, 2016	Groundwater and Meeting Federal Water Needs (ND)	
October 18, 2017	Continuing State-Federal Relationships through the Implementation Phase of Decreed and Adjudicated Water Rights (NM)	
October 24, 2018	State and Federal Agencies’ Approach to Grazing Water Rights (ID)	
October 15, 2019	Grazing Water Rights (CO)	https://westernstateswater.org/publications/2021/stock-water-rights-for-grazing-livestock-on-federal-lands/
September, 2021	Wild and Scenic Rivers (SD)	https://westernstateswater.org/publications/seminars-workshops/2021/wild-scenic-rivers-workshop/

2024-2025: The Committee will work to carry out the recommendations and next steps that emerged from the workshops and webinar. Under the direction of the Committee, the workgroup

will hold calls on a quarterly basis to discuss the development of the clearinghouse and to serve as a forum for information sharing and relationship building. The Workgroup will also advise the Committee about potential future actions the WSWC and WestFAST may take to address federal water needs and may hold webinars on specific topics of interest. The workgroup will continue to hold workshops. Additional topics to pursue include identifying useful principles for state-federal memoranda of understanding (MOUs) to develop a useful framework and recommended approaches.

Time Frame: Ongoing

Federal Non-Tribal Water Claims Subcommittee: Jay Weiner (MT), Jennifer Verleger (ND), Buck Smith (WA), and Chris Brown (WY). WestFAST members and agency staff participating in the Subcommittee in an *ex officio* capacity include: Michael Higgins (U.S. Fish and Wildlife Service), Donald Anderson (Bureau of Reclamation), Stephen Bartell (Department of Justice), Lauren Dempsey (Air Force) and Chris Carlson (U.S. Forest Service).

2. CLEAN WATER ACT ISSUES*

a. CWA Jurisdiction*

Background: In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S. Supreme Court’s decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006). This was followed by the Clean Water Rule (2015 WOTUS Rule), finalized on June 29, 2015 (80 FR 37054). Many of our member states filed lawsuits challenging the 2015 WOTUS Rule in federal court. The 2015 WOTUS Rule was rescinded, and was replaced by the Navigable Waters Protection Rule (2020 WOTUS Rule), finalized on April 21, 2020 (85 FR 22250). Several of our member states filed lawsuits challenging the 2020 WOTUS Rule in federal court. The 2020 WOTUS Rule was vacated, and was replaced by the Revised Definition of the “Waters of the United States” Rule (2023 WOTUS Rule), finalized on January 18, 2023 (88 FR 3004). On May 25, 2023, the U.S. Supreme Court issued its decision in *Sackett v. EPA* (#21-454). Citing the Justice Scalia plurality opinion in *Rapanos*, the five-Justice majority Court concluded that the definition of WOTUS in Clean Water Act (CWA) §1362(7) “encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes.” The Court held that WOTUS does not apply to all wetlands, but extends only to those wetlands with a continuous surface connection to bodies of water that are WOTUS in their own right, so that they are indistinguishable from those waters. The Court acknowledged that “temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells.” In footnote 16, the Court said: “Although a barrier separating a wetland from a water of the United States would ordinarily remove a wetland from federal jurisdiction, a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier’s removal because it violates the Act...that unlawful barrier poses no bar to its jurisdiction.” On August 29, 2023, the EPA and Corps issued an Amended 2023 Rule ([88 FR 61964](#)) to conform key aspects of the regulatory text to the *Sackett* decision. [Two state lawsuits](#)

have challenged the Amended 2023 Rule: *Texas v. EPA* (TX, ID), and *West Virginia v. EPA* (AK, AL, AR, FL, GA, IA, IN, KS, LA, MI, MO, MT, ND, NE, NH, OH, OK, SC, SD, TN, UT, VA, WV, and WY). Both cases issued preliminary injunctions on the 2023 WOTUS Rule. A third case, *Kentucky v. EPA*, did not issue an injunction, but the rule is stayed while the decision is on appeal. The agencies are interpreting "waters of the United States" consistent with the pre-2015 regulatory regime and the Supreme Court's decision in *Sackett* for these 27 states until further notice. For the remaining 23 states, the District of Columbia, and the Territories, the agencies are implementing the Amended 2023 Rule.

Work-to-Date: WSWC adopted positions #369 and #373 regarding CWA rulemaking efforts and state-federal collaboration. Position #369 was revised and readopted as Position #410, while Position #373 was allowed to sunset and acknowledged as a letter with continued historical value. At the October 2018 meeting in Coeur d'Alene, Idaho, Position #410 was revised and readopted as #427, with the State of Washington abstaining from the vote. At the September 2021 meeting in Deadwood, South Dakota, Position #472 was again revised and adopted, with the understanding that further efforts would be made to improve the position the following Spring. WSWC sent various letters and comments to EPA and the Corps. At the April 2022 meeting in Arlington, Virginia, Position #481 was revised and adopted, replacing #472.

In the Summer of 2022, WSWC hosted a series of workshops to consider the technical and policy implications of a regional approach to WOTUS implementation, and prepared a draft white paper to document this effort for future use.

2024-2025: The Committee will continue to work with the Water Resources and Water Quality Committees through the Workgroup to follow and comment on federal actions regarding CWA jurisdiction in accordance with the WSWC's and WGA's positions, as well as consider the impacts of the new rule(s) on state policies, programs and regulations.

Time Frame: Ongoing

CWA Rulemaking Workgroup: Jennifer Zygmunt (WY), Tom Stiles (KS), and Julie Cunningham (OK).

*See Item 2(a) of the Water Quality Committee Workplan

b. Maui and Groundwater

Background: The U.S. Supreme Court issued a ruling in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), holding that the provisions of the Clean Water Act require a National Pollution Discharge Elimination System (NPDES) permit when there is a "functional equivalent of a direct discharge," which may include some discharges through groundwater. The Court noted that many factors may be relevant in determining whether a pollutant discharged through groundwater is a functional equivalent of a direct discharge to navigable waters. Time and distance will be the most important factors in most cases. The Court offered the examples of: (1) a 100-year migration of pollutants through 250 miles of groundwater to a river, which would not ordinarily require a permit; (2) where a pipe ends 50 miles from navigable waters and the pollutants mix with groundwater and other materials in the aquifer, ending up in navigable waters many years later, in which case permitting requirements likely would not apply; and (3) where a pipe emits pollutants only a few

feet through groundwater before discharging into a navigable water. Other relevant factors might include the nature of the aquifer material, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount discharged at the point source, how or where the pollutant enters the navigable waters, and the degree to which the pollution has maintained its specific identity.

In January 2021, EPA issued a notice of implementation guidance (86 FR 6321) which was rescinded in September 2021 (86 FR 53653). EPA issued a new draft guidance in November 2023 (88 FR 82891). Several WSWC member states submitted comments on the proposed guidance (WSW Special Report #2591).

Two federal cases have analyzed the application of the “functional equivalent” standard: *Cottonwood Environmental Law Center v. Edwards*, 86 F.4th 1255 (9th Cir. 2023) (over-irrigation of golf course leaching nutrients into groundwater) and *Stone v. High Mountain Mining Company*, #22-1340 (10th Cir. 2024) (discharge from unlined settling ponds seeping into groundwater).

2024-2025: The Committee will work with the Water Quality Committee through the Workgroup to follow and comment on federal actions regarding *Maui* guidance in accordance with the WSWC’s and WGA’s positions, as well as consider the impacts of any guidance or rules on state policies, programs and regulations.

Time Frame: Ongoing

Maui Workgroup: Jennifer Zygmunt (WY), John Mackey (UT), Julie Pack (AK)

*See Item 2(j) of the Water Quality Committee Workplan

3. AD HOC GROUP ON RESERVED INDIAN WATER RIGHTS

Work-to-Date: The Western Governors’ Association (WGA) and WSWC have long supported the negotiated resolution of Indian water rights claims (WSWC Position #504). As a result, the WGA and WSWC have worked with the Native American Rights Fund (NARF) for over forty years as part of an Ad Hoc Group on Reserved Indian Water Rights to promote negotiated settlements.

Over the years, the Ad Hoc Group has carried out a number of activities to support the negotiated settlement of Indian reserved water rights claims, including frequent trips to Washington, D.C. to support policies and legislation that facilitate settlements. A biennial symposium on settlements is held by the WSWC and NARF every odd year. The Group has also worked to highlight the need to secure a permanent funding mechanism for authorized settlements and to identify alternative funding sources to help ensure that settlements authorized by Congress and approved by the President will be implemented.

In recent years, the WSWC and NARF have established regular meetings with the Deputy Secretary of the Interior’s Office, the Secretary of the Interior’s Indian Water Rights Office, and other Interior and Department of Justice officials engaged in Indian water rights settlement efforts. The WSWC and NARF have also held regular meetings with the White House Office of Management and Budget and other White House officials to support the WSWC’s settlement policies.

On August 8-9, 2023, the WSWC and NARF co-hosted the 18th Biennial Symposium on the Settlement of Reserved Water Rights, highlighting the Hualapai Tribe's settlement authorized by the 117th Congress. The Symposium also provided a forum to discuss the Biden Administration's settlement and negotiation policies, Congressional outlooks for pending settlement bills and permanent funding mechanisms, and water leasing of reserved water rights. Recordings and presentation materials are available at: <https://westernstateswater.org/events/wswc-narf-18th-biennial-indian-reserved-water-rights-symposium/>

2024-2025: The Committee will oversee WSWC's Ad Hoc Group efforts in the following areas: (1) activities to gather support for an appropriate remedy to settlement funding issues, including the development of a permanent settlement funding mechanism, the identification of other possible funding sources, and funding for federal assessment, negotiation, and implementation teams; (2) continue meeting with the Administration via quarterly conference calls and other face-to-face opportunities to discuss key issues associated with Indian water rights settlements, including possible modifications to the Criteria & Procedures; (3) discuss potential adjustments to the long-time support of the Reclamation Water Settlement Fund in light of new Congressionally-authorized funds and the mix of both project-based and fund-based settlements; and (4) prepare to hold the 2025 Symposium on the Settlement of Indian Reserved Water Rights Claims in partnership with the Native American Rights Fund.

Time Frame: Ongoing

Reserved Rights Subcommittee: Jay Weiner (MT), Teresa Wilhelmson (UT). NARF members participating in the Subcommittee in an *ex officio* capacity include: John Echohawk, Dan Lewerenz, and David Gover. Other *ex officio* members include:

4. WRDA/CORPS POLICIES

Work to date: The Council has in the past supported regular passage of a Water Resources Development Act (WRDA), and has addressed a number of specific policy issues, while not taking any position on specific project authorizations. The Council has raised concerns with the U.S. Army Corps of Engineers' approach to identifying and regulating the use of "surplus waters," and Corps drought authorities related to Corps projects. The Council also worked successfully to exclude irrigation water supply canals from federal levee safety program, and to encourage the Corps to withdraw the Surplus Water Supply rulemaking.

On May 10, 2022, the Council sent a letter in support of Senator Cramer's proposed legislation to create a committee with the Corps of Engineers and the States focused on cooperative federalism concerns surrounding the management of water resources, which passed as §8158 of WRDA 2022. The purpose of the Western Water Cooperative Committee (WWCC) is to ensure that U.S. Army Corps of Engineers (Corps) "flood control projects in Western States are operated consistent with congressional directives by identifying opportunities to avoid or minimize conflicts between the operation of the [Corps] projects and water rights and water laws in such States." The membership of the Cooperative Committee includes the Assistant Secretary of the Army for Civil Works, the Chief of Engineers, two representatives from each Western State appointed by the governor and the attorney general, and one employee from each of the impacted regional offices of the Bureau of Indian Affairs. On March 17, 2023, the WSWC co-hosted a briefing for our western states on the

WWCC with the Conference of Western Attorneys General (CWAG) and WGA, and encouraged our Governors and Attorneys General to prepare appointment letters to the Committee. The briefing materials are available at: <https://westernstateswater.org/events/wswc-cwag-briefing-wwcc/>

On May 18, 2023, the WSWC and CWAG sent a group of 25 appointment letters to Assistant Secretary Mike Connor, with some Governors and Attorneys General sending letters directly to the Army Corps of Engineers. On August 29, 2023, the Corps reached out to verify contact information for each of the current appointees, and WSWC assisted with outreach and filling in the gaps. The Corps indicated that they were nearing a point where they would be able to stand up the WWCC, but were still waiting for approval on funding to facilitate efficient operation of the committee and to determine whether FACA rules apply. In December 2023, the Army determined that FACA rules apply.

2023-2024: The Council will continue to work with the Congress and Corps on WRDA and Corps-related issues, to ensure that state water rights and prerogatives are protected, specifically as it relates to natural flows, Corps storage and other issues.

Subcommittee:

5. GROUNDWATER

There are a number of ongoing groundwater issues that pertain to WSWC policies or are otherwise of interest that the Committee will monitor and address on an as-needed basis.

A. Reserved Water Rights

Background: On March 7, 2017, the 9th Circuit (849 F.3d 1262) upheld the California District Court's summary judgment from Phase I of the trifurcated case, *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (No. 15-55896). The 9th Circuit decision holds that the United States implicitly reserved a right to water when it created the Agua Caliente Reservation, and that the Tribe's reserved water right extends to the groundwater underlying the Reservation. The court acknowledged that it was unable to find any controlling federal appellate authority explicitly holding that the federal reserved water rights doctrine in *Winters v. United States*, 207 U.S. 564 (1908), extends to groundwater. Instead, it pointed to *United States v. Cappaert*, 426 U.S. 128 (1976) and *In re General Adjudication of All Rights to Use Water in Gila River System and Source*, 989 P.2d 739 (Ariz. 1999) as persuasive and implied authority for its decision, emphasizing that *Winters* does not distinguish between surface and groundwater or prohibit the inclusion of groundwater.

Given that the federal agencies have relied on tribal water rights cases in the past to press for reserved water rights to groundwater, the implications of the 9th Circuit decision could be far reaching, not only for states and tribes outside the 9th Circuit's jurisdiction, but also for federal agencies seeking to control groundwater appurtenant to federal lands.

As one example, the Forest Service issued a proposed groundwater directive May 6, 2014. Although the Forest Service asserted that the directive would not infringe on state-issued water rights or change how state groundwater and surface water quality regulations affect federal lands,

the proposed directive would have: (1) required application of “...the Reservation or Winters Doctrine to groundwater, as well as surface water, consistent with the purposes of the Organic Administration Act, the Wild and Scenic Rivers Act, and the Wilderness Act;” (2) required the Forest Service to evaluate all applications to states for water rights on lands adjacent to NFS lands; and (3) would have presumed that groundwater and surface water are connected unless proven otherwise. Western Governors strongly objected to the directive, as did the WSWC, which worked with the Forest Service to modify it. The Forest Service later withdrew this proposed directive.

WSWC position #466 notes that no federal statute has addressed any federal property or other rights to groundwater, and opposes “...efforts that would establish a federal ownership interest in groundwater or diminish the primary and exclusive authority of States over groundwater.”

Subsequent court decisions that have cited to *Agua Caliente*’s groundwater holding include: (1) *Silver v. Pueblo Del Sol Water Co.*, 423 P.3d 348, 353 (Ariz. 2018); (2) *State ex rel. State Eng’r v. United States*, 425 P.3d 723, 733-734 (N.M. Ct. App. 2018) (oblique reference, as the settlement at issue included reserved groundwater); (3) *United States v. State (In re CSRBA Case No. 49576 Subcase No. 91-7755)*, 448 P.3d 322, 350-351 (Idaho 2019); (4) *Baley v. United States*, 942 F.3d 1312, 1338, (Fed Cir. 2019) (although for the discussion on groundwater this case cites to *Cappaert v. United States*, 426 U.S. 128, 142-43 (1976)); (5) *United States v. Walker River Irrigation Dist.*, 473 F. Supp. 3d 1150, 1156-1157 (D. Nev. 2020).

Additionally, the Department of Defense is considering reserved water rights claims to the use of groundwater for Naval Air Weapons Station China Lake in the groundwater basin adjudication *Indian Wells Valley Water District v. All Persons Who Claim a Right to Extract Groundwater in the Indian Wells Valley Groundwater Basin, etc., et al.* (Orange County Superior Court, California, 30-2021-01187275-CU-OR-CJC).

On January 31, 2024, the U.S. Fish and Wildlife Service submitted a letter asserting federal reserved water rights to groundwater that could be negatively impacted by a proposed permit from the Georgia Environmental Protection Division (GEPD) for a mining company that seeks to withdraw 1.4 million gallons a day to mine titanium dioxide three miles from the Okefenokee National Wildlife Refuge. The letter noted the risk to the refuge, despite GEPD’s conclusion that there would be a minimal impact.

2023-2024: The Committee will continue to work to ensure that state water rights and prerogatives are protected, specifically as they relate to tribal and non-tribal federal water rights and state authority over groundwater.

B. Groundwater Storage Projects

Background: In 1983, Congress passed the High Plains States Ground Water Demonstration Project Act, authorizing the Bureau of Reclamation to undertake a westwide groundwater recharge program. In 1989, WSWC and Reclamation entered a cooperative agreement to prepare a number of case studies to evaluate project effectiveness, identify economic and institutional problems such as the allocation of project costs and requisite legal authorities, and recommend alternative solutions to improve public policymaking with respect to future groundwater programs and projects. As a result of this agreement, WSWC prepared two reports in 1991 and 1998, titled *Ground Water Recharge Projects in the Western United States*. Among other recommendations to

encourage recharge opportunities, the 1998 report suggested that each state examine its own legal and institutional systems to assure that they adequately address groundwater recharge, amending statutes as necessary to recognize it as a beneficial use, and reasonably protect the right to recover recharged waters.

2024-2025: In coordination with the Water Resources Committee, the Legal Committee will work on updating the information in the old reports, and prepare a new summary report. The Committee will query the states to review and update their relevant laws on groundwater storage, particularly as they relate to groundwater banking or Aquifer Storage and Recovery (ASR) projects.

6. WATER RIGHTS

Some of our states have expressed interest in understanding how other states approach different aspects of the management and administration of water rights, including what qualifies as beneficial uses, extensions of time to prove beneficial use to perfect a water right application, and statutes or rules or court procedures governing curtailments in times of scarce water resources, and regulation of water wells. In December 2020, Council staff began distributing a series of survey questions to member states to facilitate this understanding. In 2021, WSWC members responded to the survey questions, and WSWC staff began compiling the responses into four separate reports.

A. State Water Well Construction Rules and Regulations

Background: The State Engineer, or other state official, is required to make rules regarding well construction and related regulated activities and the licensing of water well drillers and pump installers. Various states have varying requirements, which may change from time to time. The purpose of these rules is to: (1) assist in the orderly development of underground water; (2) insure that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells; (3) prevent pollution of aquifers within the state; (4) prevent wasting of water from flowing wells; (5) obtain accurate records of well construction operations; and (6) insure compliance with the state's authority for appropriating water. The rules establish administrative procedures for applications, approvals, hearings, notices, revocations, orders and their judicial review, as well as requirements related to well construction standards, such as casing, and procedures for monitoring, reporting and criteria for the waivers of certain requirements.

2024-2025: Council staff will prepare a report of the 2021 responses to the survey questions. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

B. Proof of Beneficial Use of Water and Extension Criteria

Background: Beneficial use is the measure of any right to the use of water in the West. The State Engineer, or other state official, on behalf of the State, may grant a permit to put water to beneficial use but evidence or proof of completion of the work necessary to then actually put the water to use

is also required. Only after development is done and the water is being fully put to beneficial use, will a water right be granted, which will be limited to the extent and nature of use in the accepted proof. This also applies to requests to change the use of a water rights, whether changing the point of diversion, use or purpose of use, or location water is returned to a natural source. Generally, some specific period of time will be allowed to complete the work, and if needed applicants may request an extension of time. The specific criteria for proof of beneficial use and extending timelines may vary by state.

2024-2025: Council staff will compile responses to the 2021 survey questions and report on the results. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

C. Calls and Curtailments

Background. Droughts in many areas of the West have highlighted state procedures and methods of enforcing curtailment of water uses and administration of water rights in a priority system, particularly where junior groundwater pumping, insufficient carriage water, instream flow for fish and wildlife, junior municipal supply, and federal reserved rights are at issue.

2024-2025: Council staff will prepare a report on the 2021 survey responses. The Committee and Council will also provide a forum for a discussion of water rights enforcement.

Subcommittee:

Timeframe:

Tab H – Corps Water Infrastructure Financing Program



Corps Water Infrastructure

FINANCING PROGRAM

LOW COST, FLEXIBLE, LONG-TERM LOANS

AN INNOVATIVE APPROACH TO PROJECT FINANCING: The Corps Water Infrastructure Financing Program (CWIFP) enables local investment in infrastructure projects that enhance community resilience to flooding, promote economic prosperity, and improve environmental quality. Through CWIFP, USACE will accelerate non-Federal investments in water resources infrastructure by providing long-term, low-cost loans to creditworthy borrowers.

PROGRAM FEATURES	PROGRAM BENEFITS	CURRENT RESTRICTIONS
<ul style="list-style-type: none"> ● Funding of up to 49% of project costs, up to 80% of project costs for projects that serve economically disadvantaged communities ● Available to projects or group of projects with eligible costs in excess of \$20 million ● Long-term, low-cost credit assistance for water resource infrastructure projects ● Requires a dedicated source of repayment (i.e. state or local taxes, user fees, etc.) 	<ul style="list-style-type: none"> ● Low, fixed interest rates near U.S. Treasury rates ● Interest accrues only once funds have been disbursed ● Customized repayment schedules ● Long repayment periods (up to 35 years after completion) ● Deferred payments during construction and up to 5 years after completion ● No prepayment penalties 	<ul style="list-style-type: none"> ● Projects must be non-Federally owned, operated, and maintained ● Projects must be dam safety projects included in the National Inventory of Dams ● Projects must meet statutory eligibility requirements, including creditworthiness



CWIFP TIMELINE	CURRENT FUNDING ROUND	FUTURE FUNDING AVAILABILITY
	<p>The Application Period for the FY2023 Notice of Funding Availability closed on December 19, 2023. Additional funding rounds are dependent on future appropriations.</p>	<p>We are no longer accepting applications. Information on future funding availability will be posted to our program website as well as provided to interested parties via email notification. If you wish to be included please reach out to us at cwifp@usace.army.mil.</p>



www.usace.army.mil/CWIFP
cwifp@usace.army.mil



U.S. ARMY

US Army Corps of Engineers®

Corps Water Infrastructure Financing Program (CWIFP)

Updated June 20, 2024

The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA 2014, Title V, Subtitle C, of P.L. 113-121; [33 U.S.C. §§3901-3915, as amended](#)) authorized the U.S. Army Corps of Engineers (USACE) to provide credit assistance—direct loans or loan guarantees—to [eligible entities](#) for water resource projects. USACE’s program is called the [Corps Water Infrastructure Financing Program \(CWIFP\)](#). WIFIA 2014 also authorized an analogous [Environmental Protection Agency \(EPA\) program](#) for water projects outside of USACE mission areas.

CWIFP Authority, Implementation, and Funding

WIFIA 2014 authorized USACE credit assistance for projects with the following purposes:

- reduction of riverine or coastal storm flood damage,
- restoration of aquatic ecosystems,
- improvement of the inland and intracoastal waterways navigation system,
- improvement of navigation at a U.S. harbor, or
- a combination of purposes supported by USACE and EPA WIFIA authorities (e.g., drinking water, wastewater, and/or stormwater system improvements).

[USACE describes](#) some CWIFP benefits for borrowers as interest rates near U.S. Treasury rates, possible matching of repayment schedules with anticipated cash flows, and repayment periods up to 35 years after construction completion. In FY2021, Congress created a USACE Water Infrastructure Finance and Innovation Program (WIFIP) account and first funded the CWIFP to provide credit assistance. Of the \$110.8 million in enacted funding to date, Congress has indicated (see [Table 1](#)) that

- \$81.0 million supports credit assistance for [dam safety](#) projects,
- \$2.2 million supports credit assistance for dam safety and levee projects, and
- \$27.6 million supports program administration.

Eligible dams are those identified as nonfederally owned in the [National Inventory of Dams](#).

Congressional Research Service

<https://crsreports.congress.gov>

IN12021

Table I. Water Infrastructure Finance and Innovation Program (WIFIP) Account
(dollars in millions, nominal)

Public Law Funding WIFIP Account and FY2025 Request	Support for Credit Assistance	Program Administration	Project Type Statutory Limitations for Credit Assistance
P.L. 116-260	\$12.0	\$2.2	Nonfederal dam safety projects ^a
P.L. 117-58	\$64.0	\$11.0	Nonfederal dam safety projects
P.L. 117-103	\$5.0	\$2.2	Nonfederal dam safety projects ^a
P.L. 117-328	\$0	\$7.2	—
P.L. 118-42	\$2.2	\$5.0	Nonfederal dam safety and levee projects ^a
<i>FY2025 Budget request</i>	<i>\$2.0</i>	<i>\$5.0</i>	<i>Nonfederal dam safety projects</i>

Source: CRS.

a. Congressional direction specifies credit in accordance with [85 Federal Register 39189](#).

In May 2023, USACE published a final CWIFP implementation rule that reflected enacted appropriations through FY2023, which limited lending to nonfederal dam safety projects ([88 Federal Register 32661](#)). In September 2023, USACE solicited preliminary applications from prospective CWIFP borrowers for nonfederal dam safety projects ([88 Federal Register 64892](#)). After evaluating the preliminary applications, which were due in December 2023, USACE plans to invite selected prospective borrowers to complete their applications. Applicants are responsible for application fees and fees for processing CWIFP credit assistance.

According to the 2023 rule, CWIFP-eligible entities include state, local, and tribal government entities and various private entities (e.g., corporations, partnerships, and trusts) that are publicly sponsored ([33 U.S.C. §3907\(a\)\(4\)](#)); federal entities are ineligible. An eligible project needs to cost more than \$20 million and be creditworthy, technically sound, economically justified, and environmentally acceptable. USACE's rule identifies dam removal as eligible. The final rule added selection criteria to the [statutory criteria](#) (e.g., the extent that a project serves and spurs economic opportunity for economically disadvantaged communities and their populations). For a project, the maximum CWIFP credit assistance is 49% of eligible project costs, or up to 80% for projects serving economically disadvantaged communities.

Loan Volume

The volume of loans and loan guarantees that CWIFP can provide is determined primarily by the appropriated amount for credit assistance and the subsidy rate for each loan. Under the [Federal Credit Reform Act of 1990](#) (P.L. 101-508), appropriations for federal credit programs primarily cover long-term credit subsidy costs ([2 U.S.C. §661a](#)). Subsidy costs reflect potential losses to the government from loan defaults. Projects with lower credit risk would consume less credit subsidy than higher credit risk projects. The subsidy cost typically is presented as a percentage (i.e., a subsidy rate). [USACE calculates](#) subsidy costs on a project-by-project basis at the time of loan obligation. USACE may support up to [\\$7.5 billion in loans](#) with the appropriations available through FY2023. Actual total CWIFP loan volume may differ, given each project's subsidy rate and other factors affecting loan amounts.

Issues for Congress

Policy issues shaping CWIFP include how future congressional direction may determine eligible project types and at what level Congress appropriates for CWIFP credit assistance. With FY2024 appropriations,

Congress expanded the scope of eligible projects to include nonfederal levee projects. P.L. 118-42 specified that to be eligible for CWIFP’s FY2024 credit assistance, a levee must be [certified as not being federally owned by the Secretary of the Army](#). Implementation of this provision may clarify whether new nonfederal work on levees originally constructed by USACE and operated by a nonfederal entity is CWIFP eligible. The House Appropriations Committee, in [explanatory text](#) accompanying P.L. 116-260, had encouraged the Secretary of the Army to issue “guidance to clarify, as Congress intended ... that the financial assistance program authorized in WIFIA applies to all non-Federal projects and any authorized project that is non-federally owned, operated, and maintained.” A related question is the CWIFP eligibility of nonfederal costs of authorized USACE construction projects. Many [congressionally authorized USACE projects](#) have purposes that are CWIFP eligible pursuant to WIFIA 2014. Congress has [required that nonfederal sponsors share in the cost](#) of many USACE projects and assume responsibility for the projects and their costs after construction. A June 30, 2020, *Federal Register* notice—“Water Infrastructure Finance and Innovation Act Program (WIFIA) Criteria Pursuant to the Further Consolidated Appropriations Act, 2020” ([85 Federal Register 39189](#))—identified congressionally authorized USACE (and [Bureau of Reclamation](#)) projects as federal assets and as ineligible for WIFIA assistance. As noted in **Table 1**, Congress has often referenced the 2020 *Federal Register* notice when funding USACE’s WIFIP account. The discussion in USACE’s 2023 final rule references the applicability of the 2020 *Federal Register* notice, thereby maintaining that congressionally authorized USACE projects are federal assets. Thus, the 2023 final rule indicates that nonfederal costs associated with congressionally authorized USACE projects are ineligible for CWIFP assistance.

Author Information

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Specialist in Natural Resources Policy

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Tab I – New Mexico Integrated Water Financing Plan

New Mexico Integrated Water Financing Plan

<https://westernstateswater.org/topical-resources/state-federal-funding-mechanisms/nm-integrated-water-financing-plan/>

In 2023, former New Mexico-appointed member Rebecca Roose reached out to the WSWC staff to consider the idea of building on previous western state-federal collaborations between WestFAST and state agencies, by developing an Integrated Water Financing Plan in New Mexico.

Background

In 2022, Governor Michelle Lujan Grisham's Water Policy and Infrastructure Task Force, composed of senior state agency staff and water and natural resources experts, representing diverse expertise, geographies, and community interests, published a report on [Facing New Mexico's 21st Century Water Challenges](#). The report identified numerous water management challenges and opportunities. On January 30, 2024, Governor Lujan Grisham released New Mexico's [50-Year Water Action Plan](#), which took into consideration vital input from nations, tribes, pueblos, acequias, farmers, and other stakeholders. The Plan focuses on expanding water conservation in cities and on farms, developing new water supplies and enhancing water quality protections.

In the meantime, Congress authorized unprecedented levels of funding for water projects and initiatives through the 2021 Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), and the 2022 Inflation Reduction Act (IRA). Although the federal funding combined with state funding has been critical to meet state water needs in the West, many state agencies found a limited capacity to access and utilize those funds within a short timeframe. Previous state-federal collaborations facilitated by WSWC and WestFAST presented an opportunity to increase that capacity.

With the generous support of the Thornburg Foundation, the Water Foundation, and the Walton Family Foundation, the WSWC was able to contract with SWCA Environmental Consultants to help develop an Integrated Water Financing Plan, to facilitate meetings and information sharing between state agencies, federal agencies, tribes, and local entities, and to ultimately move forward with some of the recommendations in the Water Task Force report.

Project

This project builds on the recommendations in New Mexico's 50-Year Water Action Plan (2024) and the Water Task Force report (2022). The Integrated Water Financing Plan aims to accelerate progress on these recommendations by:

- Securing more one-time federal funding for water projects and initiatives.
- Connecting federal funds to existing and new tribal and state water programs.
- Developing innovative financing approaches leveraging state, federal, and local resources.

Integrated Water Financing Plan elements:

- Build on previous efforts, compile water resources activities from relevant state plans and survey results.
- Identify candidate activities for financing strategy workshops in partnership with state and federal agencies.
- Collaboratively develop a financing plan for selected activities with a focus on maximizing federal funds.
- Identify barriers to accessing funds and recommend solutions along with resources for implementation.

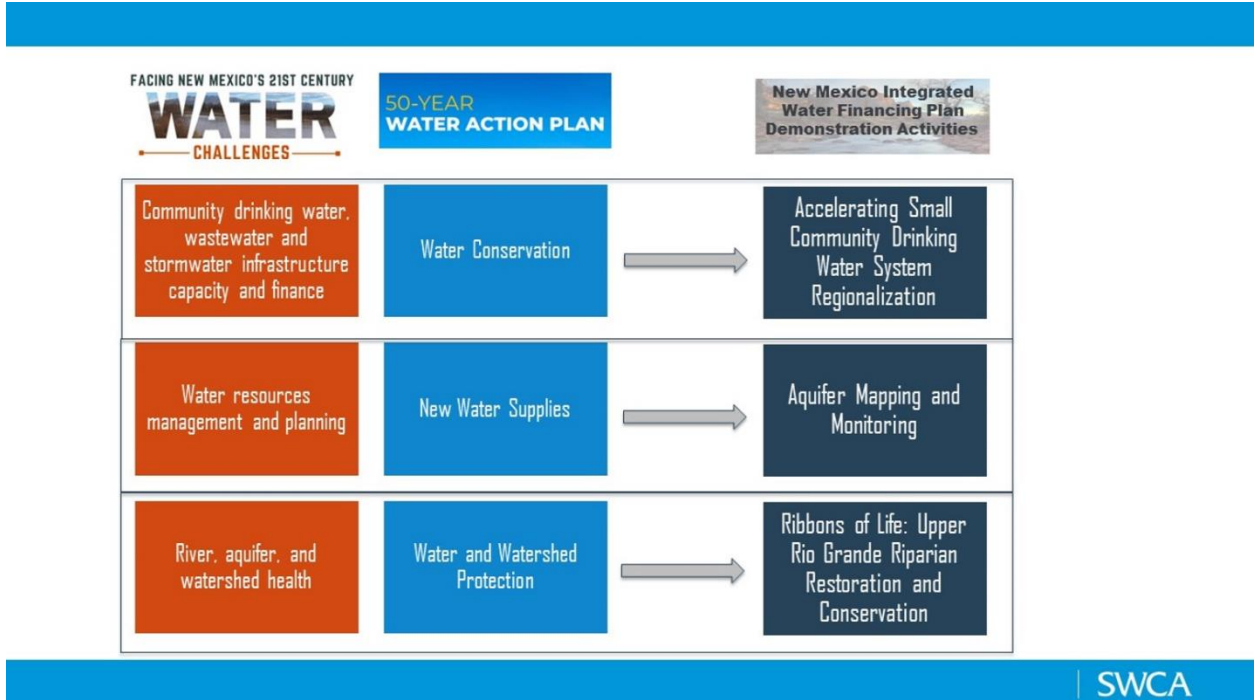
Survey

A survey was designed to inventory water resource projects, programs, and initiatives that could benefit from federal funding, assess new federal funds already secured in New Mexico, and understand lessons learned from previous efforts to secure federal funding.

Demonstration Projects

Based on the survey and meetings with state and federal agencies, the project executive committee narrowed the focus to three demonstration projects most suitable to the scope of this effort. The demonstration projects each represent one of the primary themes from the Water Task Force December 2022 Report and also reflect priorities identified in the Governor's 50-Year Water Action Plan.

- Water Infrastructure: The *Accelerating small community drinking water system regionalization* demonstration project will focus on accelerating regionalization of small public water systems. Regionalization for the purposes of this effort is defined as 'consolidation of water infrastructure or administrative functions across jurisdictions/existing drinking water facilities to improve quality and cost efficiencies.'
- Water Resources Management and Planning: The *Aquifer mapping and monitoring* demonstration project will focus on securing one-time funds for drilling of new monitoring wells necessary to characterize and monitor critical aquifers in New Mexico.
- Watershed Health: Based on the considerations for selection, the *Upper Rio Grande Basin Riparian Conservation, Restoration, and Watershed Health Initiative* was identified as the watershed health demonstration project. Riparian corridors provide visible representation of the ribbons of life they sustain, and the inspiration for the common name of the Upper Rio Grande Basin Riparian Conservation, Restoration, and Watershed Health Initiative 'Ribbons of Life'. The goal is to protect and restore "crucial habitat connectivity, with a focus on riparian networks and watersheds, for the well being of people, plants and wildlife" through a robust and effective coalition of partners.



Meetings

[Introductory Webinar](#)

[Update and Feedback Session](#)

A series of virtual workshops were held in June and July, bringing together various state and federal agencies and a limited number of stakeholders to discuss the needs and funding opportunities across the three demonstration projects. Building on the lessons from these virtual workshops, New Mexico and WSWC will host an in-person meeting for a larger number of stakeholders in the Fall of 2024.

Reports

TBD

NEW MEXICO INTEGRATED WATER FINANCING PLAN

PROJECT BACKGROUND

This project builds on the recommendations in the recently released [50-year Water Action Plan](#) and in the 2022 Water Task Force report [Facing New Mexico's 21st Century Water Challenges: A Report of the New Mexico Water Policy and Infrastructure Task Force](#). The plan aims to accelerate progress on these recommendations by:

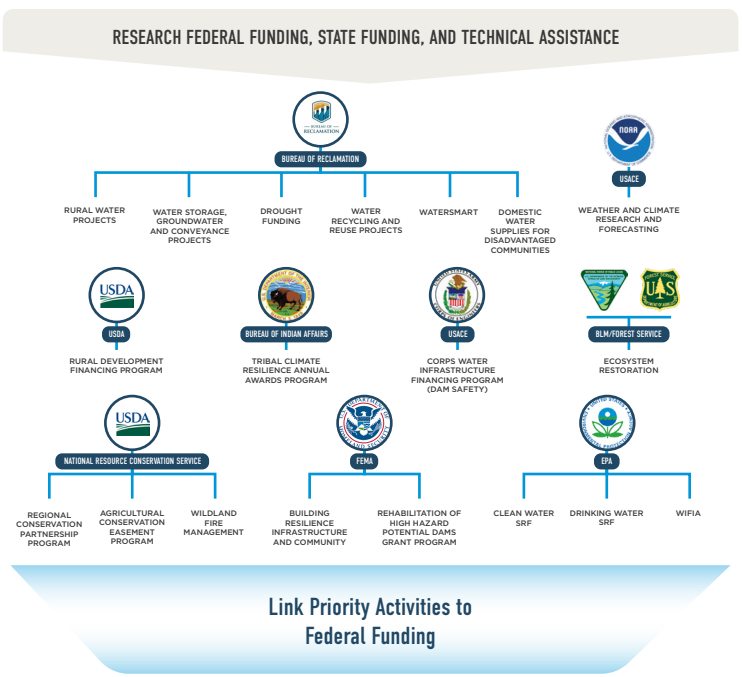
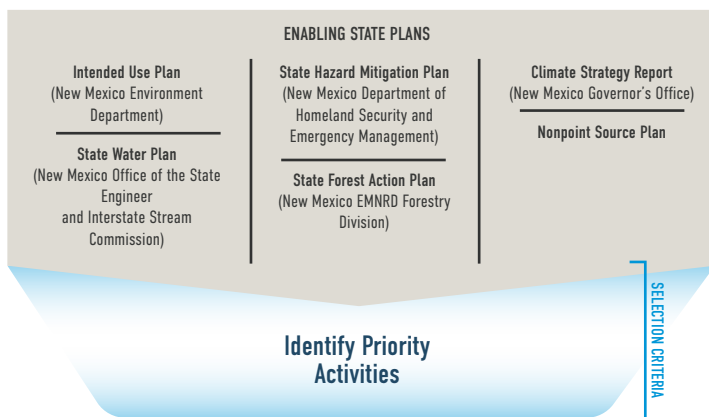
- Securing more one-time federal funding for water projects and initiatives.
- Connect federal funds to existing and new tribal and state water programs.
- Develop innovative financing approaches leveraging state, federal, and local resources.

PROJECT ELEMENTS

- Building on previous efforts, compile water resources activities from relevant state plans and survey results.
- Identify candidate activities for financing strategy workshops in partnership with state and federal agencies.
- Collaboratively develop a financing plan for selected activities with a focus on maximizing federal funds.
- Identify barriers to accessing funds and recommend solutions along with resources for implementation.



17 Water Task Force Recommendations



FOR QUESTIONS OR FEEDBACK, CONTACT:

Tanya Trujillo, Deputy State Engineer and Governor's Water Policy Advisor, 505-487-6083 or Tanya.Trujillo@OSE.NM.gov

Wendy Blackwell, Coordination and Facilitation Lead, 505-469-8683 or Wendy.Blackwell@SWCA.com



Tab J – North Dakota Water Data Survey

Dear Participant:

The North Dakota Department of Water Resources (DWR) is seeking to engage with water resource agencies regarding the data collection methodology and practices each state deploys for water resource monitoring and water use.

The DWR is conducting a survey of the 17 western states of the continental U.S. to provide a comprehensive summary of data collection activities and current methods and infrastructure used to collect, store, and manage data. A primary focus for this survey will be to identify real-time and near real-time data and the technology platforms that are currently being developed and deployed to address respective initiatives. Additionally, it will be important to understand processes that are incorporated to ensure the accuracy and integrity of the data collection efforts, particularly the efforts surrounding the collection of water use data and pumping activities.

The intent of the survey is to collect this information for the purpose of exploring what methodologies other states implement to ensure reliable and accurate data collection. Additionally, it would be advantageous to better understand what challenges other states face and how they are currently or are planning to address.

The results of the survey will enable North Dakota to better understand other methodologies and practices utilized for data collection with the goal of improving the management of the State's water resources. The results of the survey will be shared with all western states in order to provide benefits to all. The 17 western states to be targeted by this survey include Washington, Oregon, California, Nevada, Arizona, Utah, Idaho, Montana, Wyoming, Colorado, New Mexico, Texas, Oklahoma, Kansas, Nebraska, South Dakota, and North Dakota.

The DWR has contracted with HDR Engineering, Inc. (HDR) for this survey effort. HDR will be contacting your organization with a questionnaire developed using JotForm. Once data has been collected from all 17 western states, it will be collated and summarized in a report to present the results and then shared with all western states.

Any and all questions and comments can be directed to Chris Korkowski, PE. He can be reached via phone at 701-557-9734 or email at christopher.korkowski@hdrinc.com. We thank you in advance for your participation as we believe this effort will be beneficial to all states in understanding current best practices.

Sincerely,



Andrea Travnicek, PhD
Director, North Dakota Department of Water Resources



NDDWR Western States Water Survey

The North Dakota Department of Water Resources (DWR) is seeking to engage with water resource agencies in the 17 western states regarding the data collection methodology and practices each state deploys for water resource monitoring and water use. A primary focus for this survey will be to identify real-time and near real-time data and the technology platforms that are currently being developed and deployed to address respective initiatives, particularly the efforts surrounding the collection of water use data and pumping activities. Additionally, it would be advantageous to better understand what challenges other states face and how they currently or plan to address them. The results of the survey will be shared with all western states in order to provide benefits to all. We thank you in advance for your participation as we believe this effort will be beneficial to all states in understanding current best practices.

1. What state are you responding on behalf of?

Please Select



Contact Information

a. Name *

b. Organization Represented *



c. Phone Number *

d. Email Address *

Water Use

The goal of this section of the survey is to document and understand the methodologies used to collect, validate, and store surface and groundwater use data within each state.

1.) Does your state currently collect water use data?

Yes

No

a.) How many surface water sites/points of diversion/locations are monitored for water withdrawals?

e.g., 23

b.) How many groundwater sites/points of diversion/locations are monitored for water withdrawals?

e.g., 23

c.) Are automatic (remote data collection) or manual (self-reporting, meter readers, etc.) collection methods used?

- Automatic
- Manual
- Both
- None

2. How does your state currently store and manage the collected water use data?

- Propriety Software
- Cloud Storage
- State Servers
- Other

3. What is your state considering for future storage and management of water use data?

- Proprietary Software
- Cloud Storage
- State Servers
- Other

4. Is collected water use date information publicly available?

Yes

No

5. What are the current advantages and challenges associated with the current data storage and management practices in your state, regarding water use data?

6. What would your state change about your data collection for more accurate and reliable information, regarding water use data?

Water Chemistry

The goal of this section of the survey is to document and understand the methodologies used to collect, validate, and store surface and groundwater chemistry data within each state.

7. Does your state currently collect water chemistry data?

Yes

No

a.) What types of surface water chemistry data does your state collect?

- How many surface water chemistry monitoring sites does your state currently have?

e.g., 23

- How many are solely operated by the USGS?

e.g., 23

How many are cooperatively or completely funded by state entities?

e.g., 23

b.) What types of groundwater chemistry data does your state collect?

- How many groundwater chemistry monitoring sites does your state currently have?

e.g., 23

- How many are solely operated by the USGS?

e.g., 23

How many are cooperatively or completely funded by state entities?

e.g., 23

8. What methodologies are used to collect water chemistry data in your state?

a.) What automatic technologies (remote data collection) does your state use for water chemistry data collection?

- What are the advantages and challenges associated with each technology?

- How does your state ensure accuracy and integrity of the collected data?

9. What data collection methods are you considering for future use?

10. How does your state currently store and manage the collected water chemistry data?

- Proprietary Software
- Cloud Storage
- State Servers
- Other

11. What is your state considering for future data storage and management of water chemistry?

- Proprietary Software
- Cloud Storage
- State Servers
- Other

12. Is collected water chemistry data information publicly available?

- Yes
- No

13. What are the current advantages and challenges associated with the current data storage and management practices in your state, regarding water chemistry data?

14. What would your state change about your data collection for more accurate and reliable information, regarding water chemistry data?

Atmospheric/Climatic/Soil Data

The goal of this section of the survey is to document and understand the methodologies used to collect, validate, and store atmospheric, climatic, and soil

data within each state.

Atmospheric Data Collection

e.g. temperature, precipitation, barometric pressure

15. Does your state currently collect atmospheric data?

Yes

No

a.) What atmospheric data do you collect? Please check all that apply.

Temperature

Precipitation

Barometric Pressure

Windspeed

Humidity

Snow Depth

Snow Water Equivalent

PET

Wind Direction

Other

b.) What methodologies are used to collect atmospheric data in your state?

c.) How many atmospheric data collection sites does your state currently have?

e.g., 23

- How many are solely operated by the USGS?

e.g., 23

How many are cooperatively or completely funded by state entities?

e.g., 23

d.) What automatic technologies (remote data collection) does your state use?

- What are the advantages and challenges associated with each technology?

- How does your state ensure accuracy and integrity of the collected data?

e.) What data collection methods are you considering for future use?

Soil Data Collection

16. Does your state currently collect soil moisture data?

- Yes
- No

a.) What methodologies are used to collect soil data in your state?

b.) How many soil data collection sites does your state currently have?

e.g., 23

- How many are solely operated by the USGS?

e.g., 23

How many are cooperatively or completely funded by state entities?

e.g., 23

c.) What automatic technologies (remote data collection) does your state use?

- What are the advantages and challenges associated with each technology?

- How does your state ensure accuracy and integrity of the collected data?

d.) What data collection methods are you considering for future use?

17. How does your state currently store and manage the collected atmospheric/climatic/soil data?

- Proprietary Software
- Cloud Storage
- State Servers
- Other

18. What is your state considering for future storage and management of atmospheric/climatic/soil data?

- Proprietary software
- Cloud storage
- State servers
- Other

19. Is collected atmospheric/climatic/soil data information publicly available?

Yes

No

20. What are the current advantages and challenges associated with the current data storage and management practices in your state, regarding atmospheric/climatic/soil data?

21. What would your state change about your data collection for more accurate and reliable information, regarding atmospheric/climatic/soil data?

Water Flow and Stage Data

The goal of this section of the survey is to document and understand the methodologies used to collect, validate, and store surface and groundwater flow and stage data within each state.

Surface Water Flow Data Collection

22. Does your state currently collect flow data?

Yes

No

a.) What methodologies are used to collect flow data in your state?

- How many flow data collection sites does your state currently have?

e.g., 23

- How many are operated solely by the USGS?

e.g., 23

How many are cooperatively or completely funded by state entities?

e.g., 23

- What automatic technologies (remote data collection) does your state use?

What are the advantages and challenges associated with each technology?

How does your state ensure accuracy and integrity of the collected data?

b.) What data collection methods are you considering for future use?

Surface Water Stage Data Collection

23. Does your state currently collect stage data?

- Yes
- No

a.) What methodologies are used to collect stage data in your state?

- How many stage data collection sites does your state currently have?

e.g., 23

- How many are solely operated by the USGS?

e.g., 23

How many are cooperatively or completely funded by state entities?

e.g., 23

- What automatic technologies (remote data collection) does your state use?

What are the advantages and challenges associated with each technology?

How does your state ensure accuracy and integrity of the collected data

b.) What data collection methods are you considering for future use?

Groundwater Data Collection

24. Does your state currently collect groundwater levels?

Yes

No

a.) What methodologies are used to collect groundwater levels in your state?

- How many groundwater collection sites does your state currently have?

e.g., 23

- How many are solely operated by the USGS?

e.g., 23

How many are cooperatively or completely funded by state entities?

e.g., 23

- What automatic technologies (remote data collection) does your state use?

What are the advantages and challenges associated with each technology?

How does your state ensure accuracy and integrity of the collected data?

b.) What data collection methods are you considering for future use?

25. How does your state currently store and manage the collected water flow, stage, and groundwater level data?

- Proprietary Software
- Cloud Storage
- State Servers
- Other

26. What is your state considering for future storage and management of water flow, stage, and groundwater level data?

- Proprietary Software
- Cloud Storage
- State Servers
- Other

27. Is collected water flow, stage, and groundwater level data information publicly available?

- Yes
- No

28. What are the current advantages and challenges associated with the current data storage and management practices in your state, regarding water flow and stage data?

29. What would your state change about your data collection for more accurate and reliable information, regarding water flow, stage, and groundwater level data?

Artificial Intelligence (AI) and Predictive Modeling

The goal of this section of the survey is to document and understand the current and future use of artificial intelligence and predictive modeling to enhance water resource data collection practices within each state.

30. Please describe if your state has been implementing, is in the process of, or plans to implement AI as it relates to leveraging the state's data collection activities in making water resource management decisions.

31. Please describe any advances your state has made as it relates to water resources predictive modeling capabilities as a result of the water-related data collection efforts.

Additional Comments

32. Does your state have any additional water-related data collection efforts that have not been covered by the survey?

33. Do you have any comments related to this survey?

34. Do you have anything else you would like to inform us about related to your state's water resource efforts?

Comments or Questions

If you have any comments or questions, please reach out to Chris Korkowski, PE via phone at 701-557-9734 or email at christopher.korkowski@hdrinc.com.

Tab K – WaDE/WestDAAT/WestCAT Update

Western States Water Council

Water Data Exchange (WaDE) Program Update

Ryan James, WaDE Data Analyst / Hydroinformatics Specialist

Tony Willardson, Executive Director

The Water Data Exchange (WaDE) Program is committed to assisting the Western States Water Council (WSWC) member states in publicly sharing water rights, allocation, supply, and use data through a streamlined and standardized service that enables regional analyses to inform water resources planning and policies¹. Since 2011, the WSWC has nurtured the WaDE Program development with financial support from federal agencies and philanthropic organizations. The WaDE Program's overarching goal is to provide a standardized water data-sharing platform for state and other public agencies that makes data findable, accessible, interoperable, and reusable (FAIR).

This report provides a brief update of the WaDE Program's status over the period from January through June 2024 in the following areas: (1) Staff changes; (2) WestDAAT user traffic update; (3) WaDE data technical activities; (4) WaDE/WestDAAT future objectives; (5) Western Water Data Hub; (6) Western States Water Conservation Application Tool (WestCAT); and (7) Key outreach and coordination activities.

Of note, WaDE is currently funded by three grants to assist in modernizing western water data and infrastructure as an Internet of Water Coalition hub. The funds come from: (1) a Broken Hill Proprietary (BHP) Foundation grant through Duke University; (2) a subcontract with the Center for Geospatial Solutions at the Lincoln Institute of Land Policy funded by the Bureau of Reclamation; and (3) a Bureau of Reclamation Applied Science WaterSmart grant and financial assistance agreement.

1. Staff Changes

After nearly seven years with the WSWC, Adel Abdallah left WSWC employment in early May 2024. He worked 1.5 years as an intern before serving in the WaDE Program Manager position for the next 5.5 years. He oversaw the WaDE 2.0 rework and the development of the Western States Water Data Access and Analysis Tool (WestDAAT) as the front-end application for WaDE. Adel worked diligently and enthusiastically to make water use and water right information throughout the West FAIR. Adel has joined the Utah Division of Water Rights, as an Environmental Data Manager, within the Data Services Section. The WSWC thanks Adel for his years of hard work and wishes him the best in his new position.

¹ WaDE: <https://westernstateswater.org/wade>

2. WestDAAT User Traffic Update

WestDAAT uses Google Analytics to anonymously measure users' interest in WestDAAT over time. Since the soft release in September 2022, WestDAAT has had 3,649 visitors from the United States, 116 international visitors (Figure 1). Since its public release in April 25, 2023, WestDAAT has had an average of roughly 48 active users per week (Figure 2).

While WestDAAT offers free access, analysis, and visualization for any user, it also provides a data download feature. The feature requires users to create a free WestDAAT account to help the WaDE team understand who uses the data. Out of WestDAAT active users, 66 accounts have been made to use the download feature. The account users come from Arizona, California, Illinois, Colorado, Maryland, Massachusetts, North Dakota, Nebraska, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, Virginia, Washington, and West Virginia. Users come from cities, consulting firms, federal agencies, non-profit organizations, States, and university. WestDAAT has facilitated widening use of WaDE program data as it allowed visualization and query of water rights data across the West in an unprecedented way.

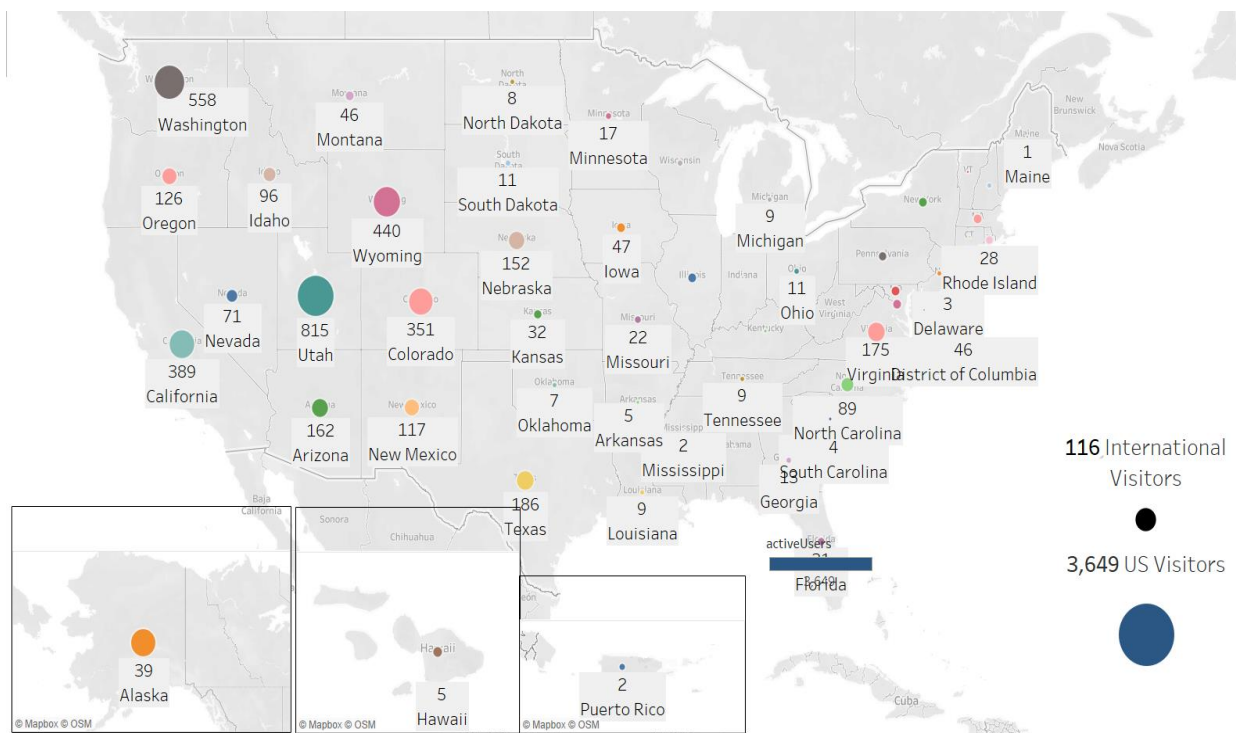


Figure 1: Geographic distribution of WestDAAT active visitors across the US from September 1, 2022, through June 19, 2024.

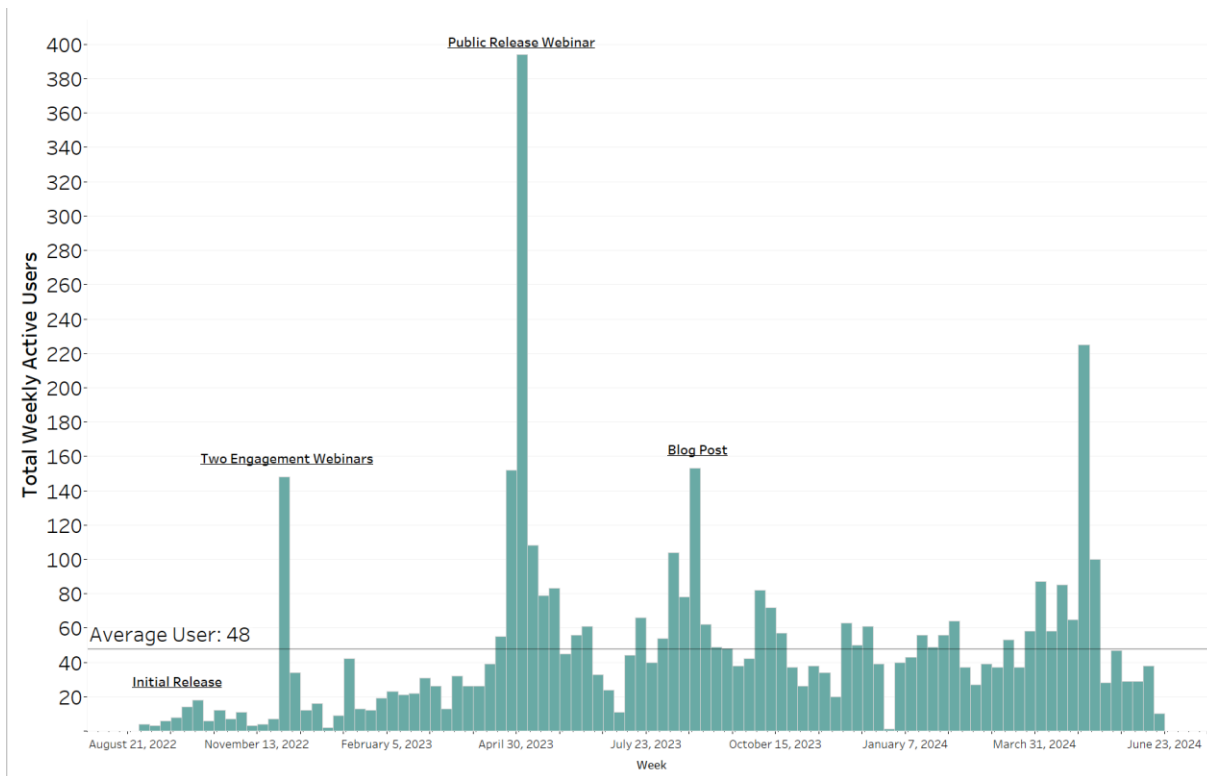


Figure 2: Distribution of WestDAAT active weekly visitors from September 1, 2022, through June 19, 2024. Spikes in visitor activity during key engagement events are labeled. The last six months show 48 visitors per week.

3. WaDE Data Technical Activities

Current Water Data Sharing

The WaDE Program’s database offers data access originating from 94 unique datasets across the Western 18 states for the following three categories of western water data in a consistent format and terminology where one state may have multiple datasets: (1) administrative data which includes water rights and regulatory overlays; (2) water supply data, which includes (a) site-specific historical reservoir and streamgauge data, (b) data on groundwater pumping, and (c) available aggregated water supply estimates at a watershed scale; and lastly (3) water use data, including (a) historical site-specific withdrawals related to water rights, (b) site-specific state public-supply water use, and (c) aggregated withdrawal, demand, delivered water, and consumptive use at a watershed scale (Table 1).

Currently, only water rights data are accessible through WestDAAT.

See **Appendix A** for more information on WaDE infrastructure.

Table 1: Summary of WaDE-supported datasets that are shared through the APIs and WestDAAT

#	Data Type	Data and key metadata	# States Sharing	# Datasets Shared	WaDE Database / API	WestDAAT
1	Water Rights	Water Rights: Point of diversion, purpose of use, owner, permitted flow or volume, place of use, water source name and type, and priority date.	18	31*	Yes	Yes
		Administrative & Regulatory Overlays	17	26	Yes	No
2	Water Supply	Site-specific historical reservoir and streamgages or groundwater pumping	12	12	Yes	No
		Aggregated water supply, such as runoff in streams, reservoirs, or groundwater	3	3	Yes	No
3	Water Use	Site-specific historical withdrawals related to water rights	4	4	Yes	No
		Site-specific state public-supply water use	4	4	Yes	No
		Aggregate withdrawal, demand, delivered water, consumptive use	10	10	Yes	No

*The total number of datasets available in the WaDE database in each state across the data categories and types supported in WaDE are shown below in Figure 3. The large number of datasets shared in California, Idaho, Nebraska, and Texas reflect the publicly available data in machine-readable formats.

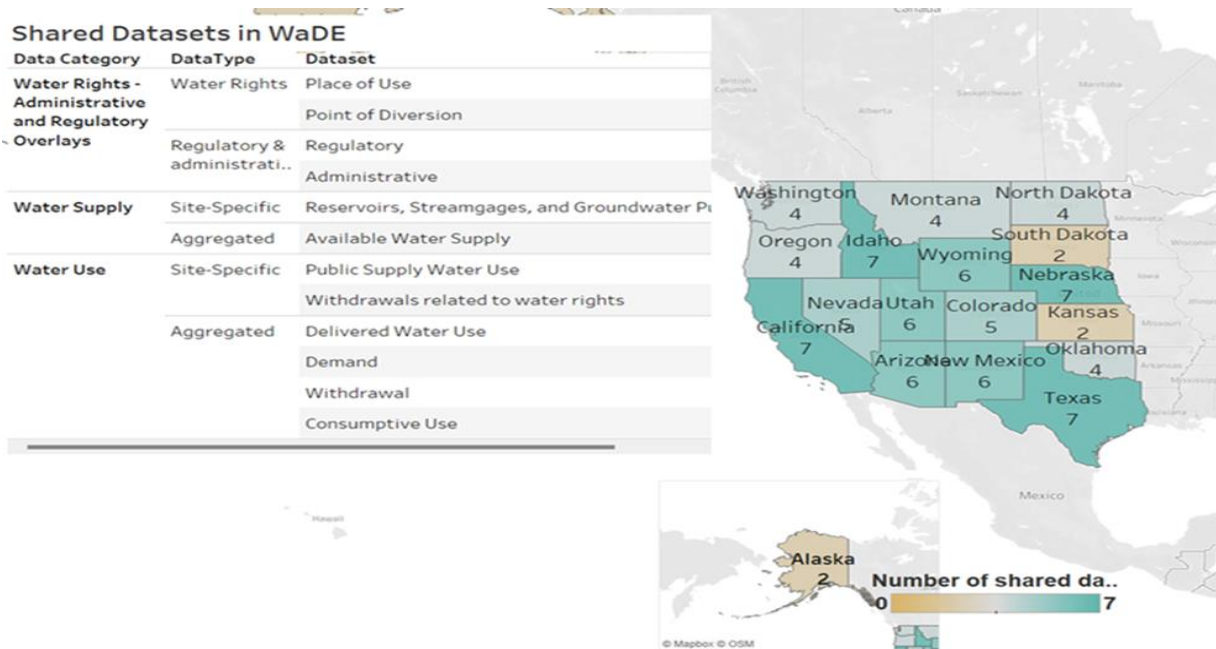


Figure 3: Screenshot of an interactive Tableau dashboard showing the distribution of 95 unique water datasets in WaDE across the Western 18 states.²

Use of Well Completion Reports

At present, water well completion reports are excluded from WaDE and WestDAAT. Many States require a well drilling permit and drillers must submit well log reports. Obviously, the purpose of the well is to enable use of groundwater and logs may serve to identify possible groundwater points-of-diversion. However, the use of water from a well may or may not require a water right under state law. Domestic wells are general exempt. To avoid confusion, California groundwater Well Completion Reports³ data has been removed from WaDE, as the data did not match the defined terminology for a water right. These were self-reported drillers’ well logs that don’t provide any water priority, withdrawal or use information. Under California water law the State has no statutory authority to regulate groundwater use which is governed by the Correlative Rights Doctrine, under which each overlying landowner has a right to reasonable, beneficial use of the underlying aquifer. In times of shortage, water use may be apportioned by a court decree, but there is no priority recognized among overlying pumpers.

In 2014, California’s Sustainable Groundwater Management Act (SGMA) entrusted local, public Groundwater Sustainability Agencies (GSA) with new authorities and local control. The State of California

² Tableau Dashboard on WaDE State Data sets:

https://public.tableau.com/app/profile/wswc/viz/WaDE2_0_Shared_Datasets/Number_of_Shared_Datasets

³ CA Well Completion Reports: <https://data.cnra.ca.gov/dataset/well-completion-reports>

does not regulate groundwater other than the use of deep wells for oil and gas or geothermal power production, which involve produced waters.⁴

Removing the Well Completion Reports from WaDE eliminated roughly 290,777 point-of-diversion sites, and 807,118 records (specific to California). The WaDE team will continue to work with the California State Water Resources Control Board on importing publicly accessible digital machine-readable permit information. Point of diversion records from the State Water Resources Control Board's "Electronic Water Rights Information Management System" (EWRIMS) database and water used reports are included as water right records (Figure 4).⁵

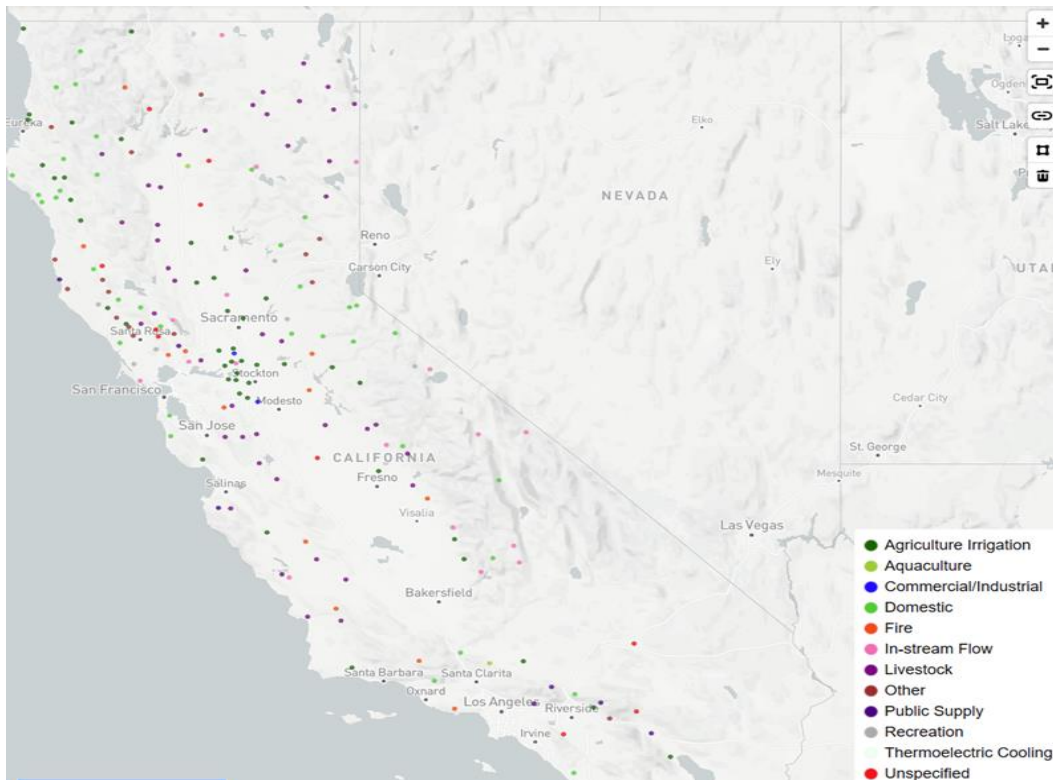


Figure 4: Geospatial summary of remaining 47,786 points-of-diversions for 41,342 water right records for California from State Water Resources Control Board EWRIMS data in WaDE

⁴ CA Water Rights FAQ:

https://www.waterboards.ca.gov/waterrights/board_info/faqs.html#:~:text=If%20you%20already%20have%20a,it%20for%20a%20beneficial%20purpose.

⁵ CA water right and water use data within WaDE:

https://github.com/WSWCWaterDataExchange/MappingStatesDataToWaDE2.0/tree/master/California/Water_Allocation_WaterUse_CSWRCB

4. WaDE/WestDAAT Future Objectives

Administrative and Regulatory Overlays

WestDAAT is capable of displaying geospatial overlays paired to water right site information. The two types of overlays envisioned are administrative and regulatory. Regulatory overlays are geographic areas that may follow basin or aquifer boundaries where specific rules or requirements apply to water use. Administrative overlays are boundaries of districts or offices with authority over water. A total of 26 overlays have been already imported into WaDE (Table 1), and the WaDE team will continue to explore and incorporate more overlays. Each overlay has a geospatial boundary, name, whether it is regulatory or administrative, the water source type it applies to, an oversight agency, and a hyperlink that points to online documentation provided by the oversight agency. In the WaDE database, each overlay is mapped to water rights. Thus, administrative and regulatory overlays are geospatial metadata related to water rights that provide context to surface and groundwater water rights and water use across the West.

When funding allows overlay data may be shared via WestDAAT. Users would be able to answer questions like the following: (1) What are the administrative or regulatory agencies or districts with authority over groundwater or surface water across the West? (2) What local or regional regulations exist in an area of interest? and (3) What water rights or water uses could be impacted by an administrative or regulatory decision? Filters could be used to identify an individual water right or water rights in a particular watershed, river basin, or special management area and subject to regulatory requirements such as water right calls, compact administration, conservation, and curtailment.

Thanks to work done by Joseph Wirthlin (an independent contractor that WSWC hired during the Summer and Fall of 2023), WaDE now has a new prototype R-Shiny web application⁶ visualizing regulatory and administrative overlays across the West (Figure 5).

Each overlay has a landing page with its metadata and a hyperlink to the oversight agency (Figure 6).

Time Series Data

WaDE/WestDAAT may showcase state agency sourced water supply and use times series records and site information, alongside the existing water right site information (and listed geospatial overlay data mentioned above). Such water supply records include site-specific historical reservoir releases, streamgauge flow, and groundwater level or pumping measurements. Water use records include site-specific historical withdrawals related to an existing water right, and public-supply use related to geospatial areas.

A total of 12 water supply and 8 water use records have already been imported into WaDE. WaDE will continue to explore and incorporate more site-specific data as it becomes more readily available in machine-readable formats.

⁶ DEMO: WaDE Overlay Data: https://waterdataexchangewswc.shinyapps.io/Rshiny_RO_Map/

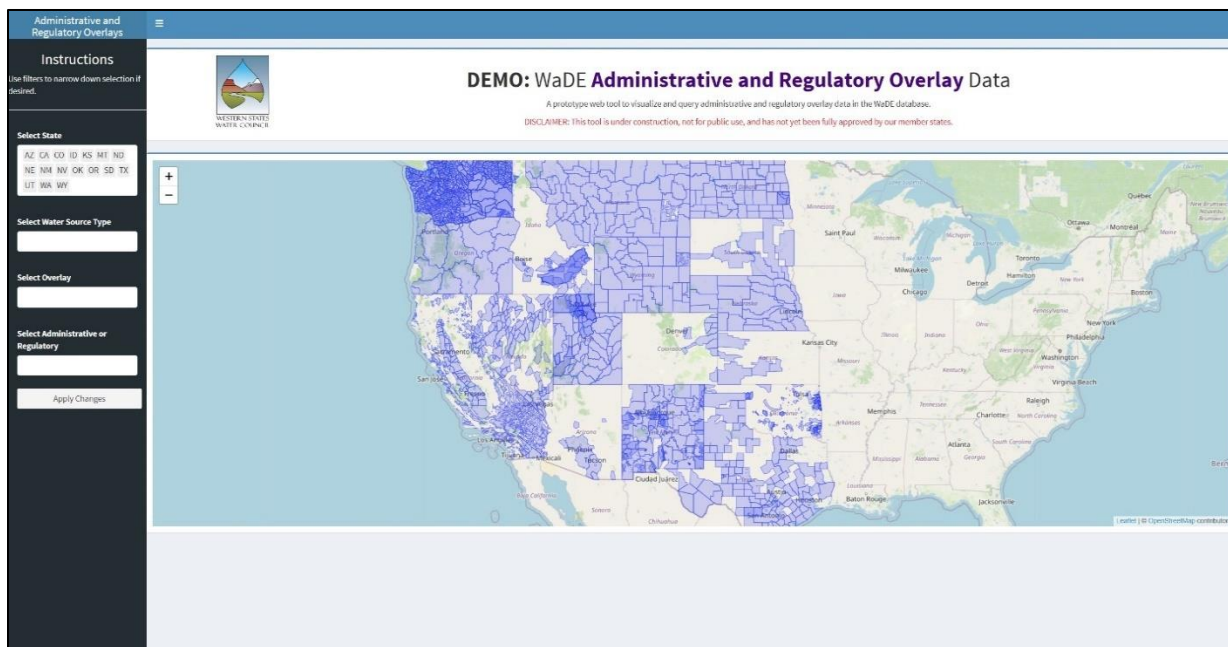


Figure 5: Screenshot of the prototype R-Shiny application homepage view for administrative and regulatory overlays.

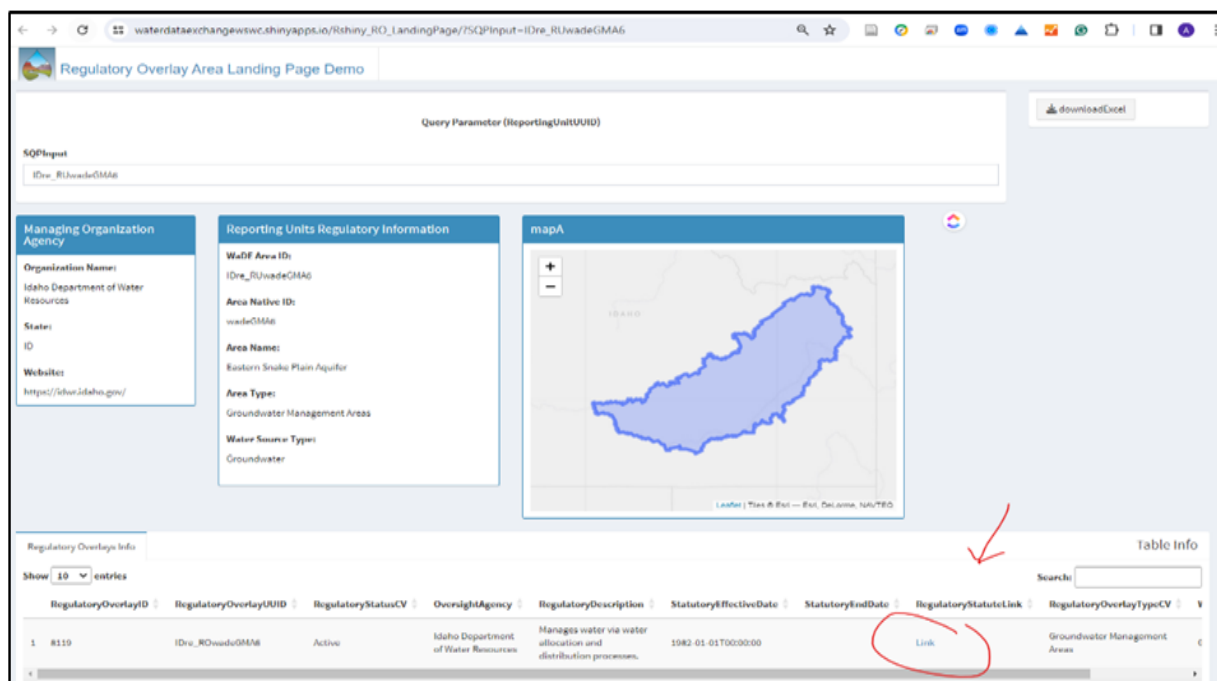


Figure 6: Prototype R-Shiny Application for regulatory and administrative overlay landing page showing specific metadata and providing an external link (when available) to each state of the agency.

When funding allows the sharing of site-specific data in WestDAAT, users will be able to more easily answer questions like the following: (1) Where are related points of diversion/return and their actual volume or flow values in a hydrologic system? (2) What is the annual time series for a given set of sites with known beneficial use categories, water source types, and/or methodologies? and (3) What responses may be appropriate given real-time changes to reservoir levels, streamgage heights, or longer-term changes such as groundwater levels.

Thanks to work done by the WaDE team and Andrew Campbell (an independent contractor that WSWC hired during the Summer and Fall of 2023), WaDE now has a new prototype application visualizing non-federal water supply and water use site-specific historical data for the Western United States (Figure 7~~Error! Reference source not found.~~). This prototype application is based on WestDAAT infrastructure and is available online.⁷

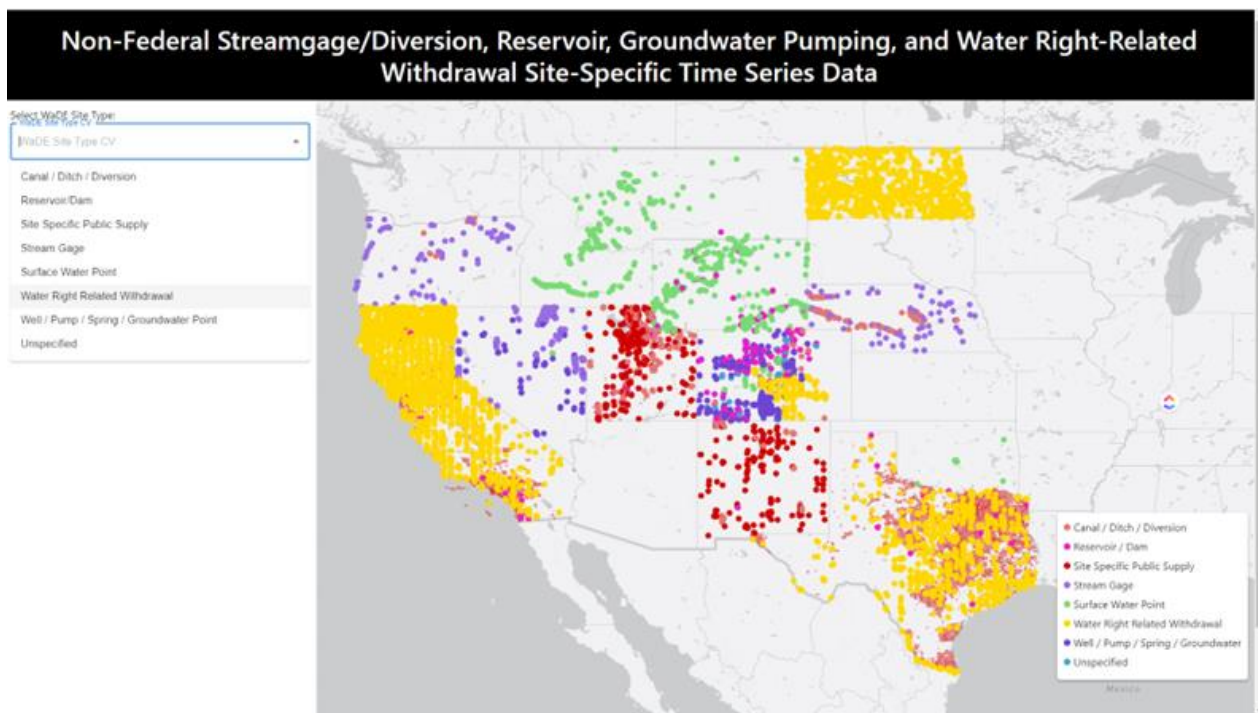


Figure 7: Non-Federal Western States Water Use and Supply Time Series Data

⁷ Demo: WestDAAT on non-federal water supply and water use site-specific historical data: <https://wswcwaterdataexchange.github.io/demo-westdaat-ss/>

5. Interoperable Western Water Data Hub

In October 2023, WSWC entered into a two-year agreement with the Center for Geospatial Solutions at the Lincoln Institute (Lincoln-CGS) to develop an Interoperable Western Water Data Hub (Hub) for the Bureau of Reclamation (Reclamation). The project will streamline access to diverse water data sources to support Reclamation’s mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner (Figure 8).

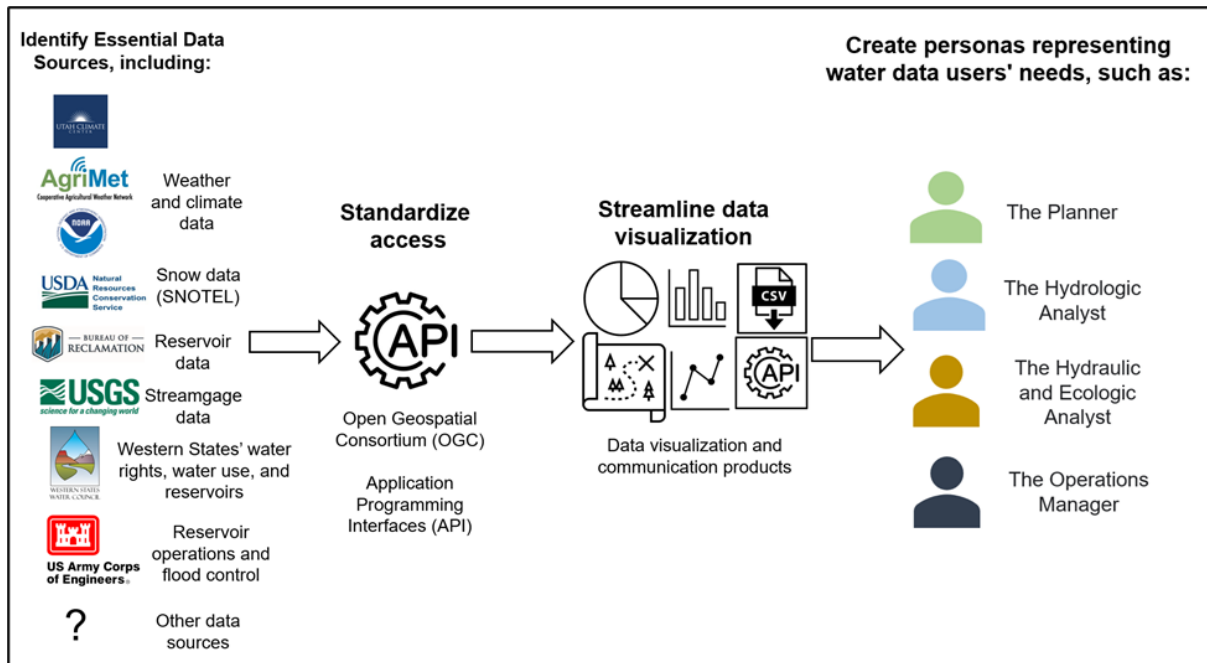


Figure 8: The Hub will streamline data access and visualizations across disparate data sources based on the needs of different user groups at Reclamation.

The Lincoln-CGS and WaDE team (the Hub team) will take advantage of a mixture of open-source and proprietary technologies to develop a modernized data infrastructure for sharing the identified datasets along with data visualization and communication products to address questions of importance to Reclamation.

The development of the hub includes the following tasks: (1) identify relevant representative stakeholders and determine formats for engagement; (2) create and document personas and use cases for API, data visualizations, and dynamic data tools; (3) work with stakeholders to evaluate functional drafts of data visualizations and dynamic data tool; (4) support the development of a common API; (5) determine datasets which will be integrated and served by WaDE; (6) advise CGS in the creation of a

catalog of variable and search terms; (7) incorporate geographical and hydrological index information for stations with data mediated by WaDE; and (8) support CGS in the development of data visualization and communication products.

Tasks (1) Milestone 1 has been completed. The Hub team identified stakeholders and developed an engagement plan in collaboration with Reclamation advisors, including the Open Water Data and the Hydrology and Hydraulics Community of Practice (H&H CoP) coordinators. For the purposes of this stakeholder engagement plan, whose goal was to develop personas to help guide the design of the Hub, engaged stakeholders will consist of internal Reclamation staff who have various analytical, engineering, and operations roles. The representative stakeholders were drawn from the H&H CoP, which included about 250 Reclamation employees with expertise in one or more of the following subcommunities: (1) Planning; (2) Hydrologic Analyses; (3) Hydraulic & Ecologic Analyses; and (4) Operations. The engagement plan was based on agile project management, enabling expedient iterative feedback.

Task (2) Milestone 1 has also been completed. The Hub team coordinated with Reclamation and held four separate 1.5-hour virtual group calls (plus 1 make-up session call for those that could not attend) to support development of personas representing real-world water data users that will guide design of the Hub and identified datasets for inclusion in the Hub. Focus groups specifically addressed the type of information required for the Hub, the underlying data sources, how decision-makers prefer information to be presented, and how to interact with the Hub and data.

The focus group audience and virtual call dates were as follows: (1) Mar 01, 2024 - Operations focus group; (2) Mar 07, 2024 - Hydrologic Analysis focus group; (3) Mar 15, 2024 - Hydraulic and Ecologic Analysis focus group - (4) Mar 25, 2024 - Planning focus group; (5) May 16, 2024 - Make-Up call.

6. Western States Water Conservation Application Tool

In October 2023, WSWC submitted a grant application to the Applied Science Grants WaterSmart program at the Bureau of Reclamation to develop a new Westwide Western Water Conservation Application Tool (WestCAT) to streamline implementation of voluntary compensated, in-state, and temporary water conservation measures. Our application was accepted for funding and a financial assistance agreement is being drafted (Figure 9). WSWC staff and the WaDE team appreciate the dozen support letters from our member states and other organizations. Conservation measures might include full-season fallow, alternative irrigation strategies, and crop switching. WestCAT will integrate two foundational data sets for water conservation: WestDAAT water rights data and evapotranspiration (ET) data as a proxy for consumptive use estimates relying on OpenET.

The WaDE team is coordinating with its IT contractor (Don't Panic Labs) to review the scope of the project and estimate the cost of building WestCAT. An earlier scoping effort helped narrow down critical design decisions and showcase how the user experience would operate. Depending on the IT

contractor’s schedule, the tool could be operational within six months if required matching funding is available.

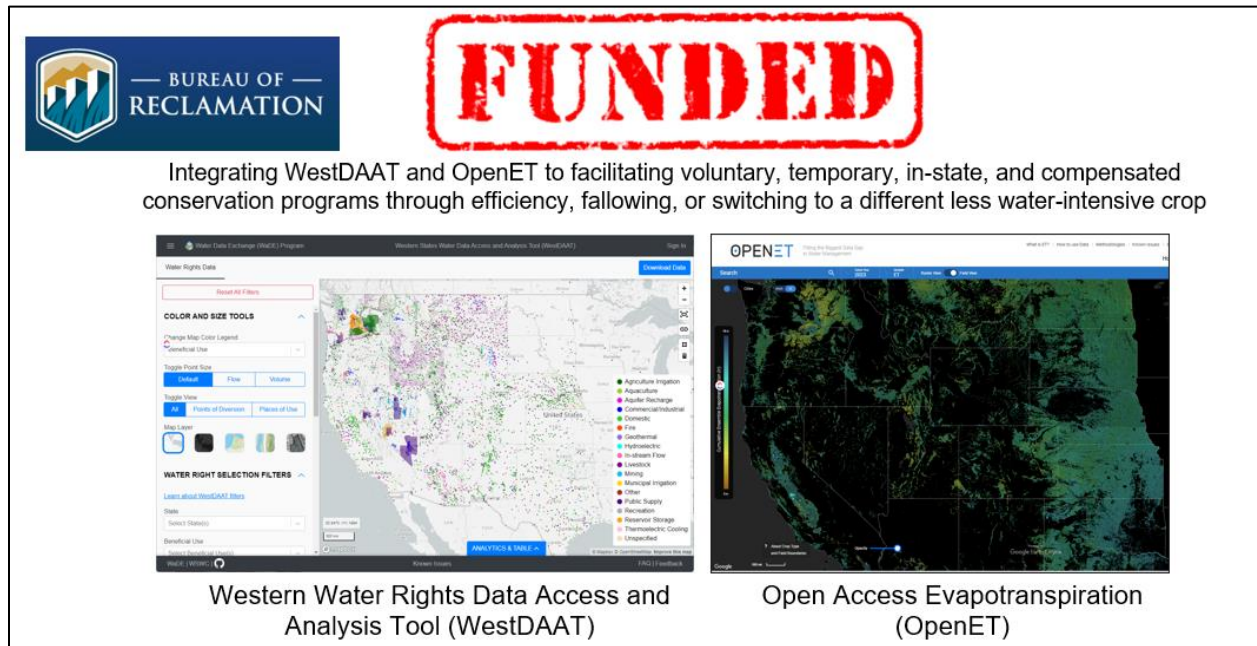


Figure 9: WestCAT mockup

7. Key Outreach and Coordination Activities

The following is a brief summary on the outreach and coordination the WSWC staff and the WaDE team have completed.

2024 WestFAST Webinar

WSWC Executive Director and WaDE Data Analyst participated in a Western States Federal Agency Support Team (WestFAST) webinar in June 2024 to learn about the Bureau of Reclamation’s recent effort to build an internal water rights database.⁸ The WSWC's release of WestDAAT and supporting use cases has provided a consistent picture of regional water rights data for Reclamation, who has identified and verified over 1,350 water rights in four regional offices using WSWC data and mapping tools. The WestDAAT team has worked closely with Reclamation to coordinate and enhance its exiting water rights database as part of a 2022 WaterSMART grant that helped support WestDAAT development.

⁸ YouTube WestFAST Webinar: Building a Water Rights Database The Bureau of Reclamation and WestDAAT: <https://www.youtube.com/watch?v=hdo7veYPp3s>

Western Water Data Hub

WSWC Executive Director and WaDE Data Analyst participated in the following main calls related to developing a Western Water Data Hub funded by the Bureau of Reclamation: (1) monthly recurring calls to discuss results and progress; (2) virtual calls with the Data Hub development team to coordinate on technical advancements needed for WaDE's data to be more accessible for the Data Hub; and (3) virtual group calls to support development of personas representing real-world water data users that will guide the design of the Hub and selection of datasets for inclusion in the Hub (see Western Water Data Hub above).

2024 AWRA Utah Section 51st Annual Conference

WaDE Data Analyst participated in the 2024 American Water Resources Association (AWRA) conference for the Utah chapter, in Salt Lake City, Utah.⁹ The agenda of the conference focused on water conservation and reuse, where participants reported on projects throughout Utah to meet these goals. WaDE Data Analyst gave a presentation on the upcoming WestCAT tool, how the project was funded, how it will be incorporated into WestDAAT, and what it means for water conservation and water rights.

2024 OpenET Applications Conference

WSWC Executive Director and WaDE Data Analyst attended the 2024 OpenET Applications Conference in Santa Ana Pueblo, New Mexico.¹⁰ The conference was a three-day event to showcase water and land management successes, foster collaboration and shared learning, and continue building a community of practice around the use of evapotranspiration (ET) data. The conference highlighted applications using ET data from a variety of agencies and groups.

For more information, contact Ryan James, WADE Data Analyst, rjames@swrc.utah.gov

⁹ 2024 Utah Chapter AWRA Conference: <https://www.awrautah.org/event-info/2024-awra-utah-section-51st-annual-conference>

¹⁰ Blog Post on OpenET Applications Conference: <https://blogs.edf.org/waterfront/2024/05/31/openet/>

Appendix A: WaDE Infrastructure

The WaDE 2.0 Data System is a centralized cloud-based system where the WaDE team maps and imports Western States' water data into a SQL Server Database hosted in Microsoft Azure web services. The WaDE database is based on a standardized and scalable data dictionary for water rights, water supply, and water use data in the Western U.S. The WaDE data dictionary has the following seven fundamental metadata elements.

- Water right metadata - priority date, owner name, and permitted diversions by flow or volume
- Sites are the spatial location of a point of diversion or place of use associated with water data
- Variables reported or measured – water source, water use, beneficial use, and units
- Water source types - generally surface or groundwater
- Beneficial use includes agricultural, municipal, industrial, etc.
- Methods used to estimate or model the data value
- Organizations or data providers

WestDAAT, as a front-end user-friendly tool, is deployed as part of the WaDE system in three independent environments, which also include the Microsoft SQL Server database, APIs, and the web-browser-based front-end dashboard (i.e., WestDAAT). These separate environments allow the WaDE team to test any changes or data updates before going into the final product. First, the Quality Assurance (QA) or development environment is used to test how the system performs following new design changes using a sample of data. Second, the User Acceptance Testing (UAT) or staging environment is used to test the quality of data and user experience. Finally, the third or Production environment is the live service that is available to users (Figure A1).

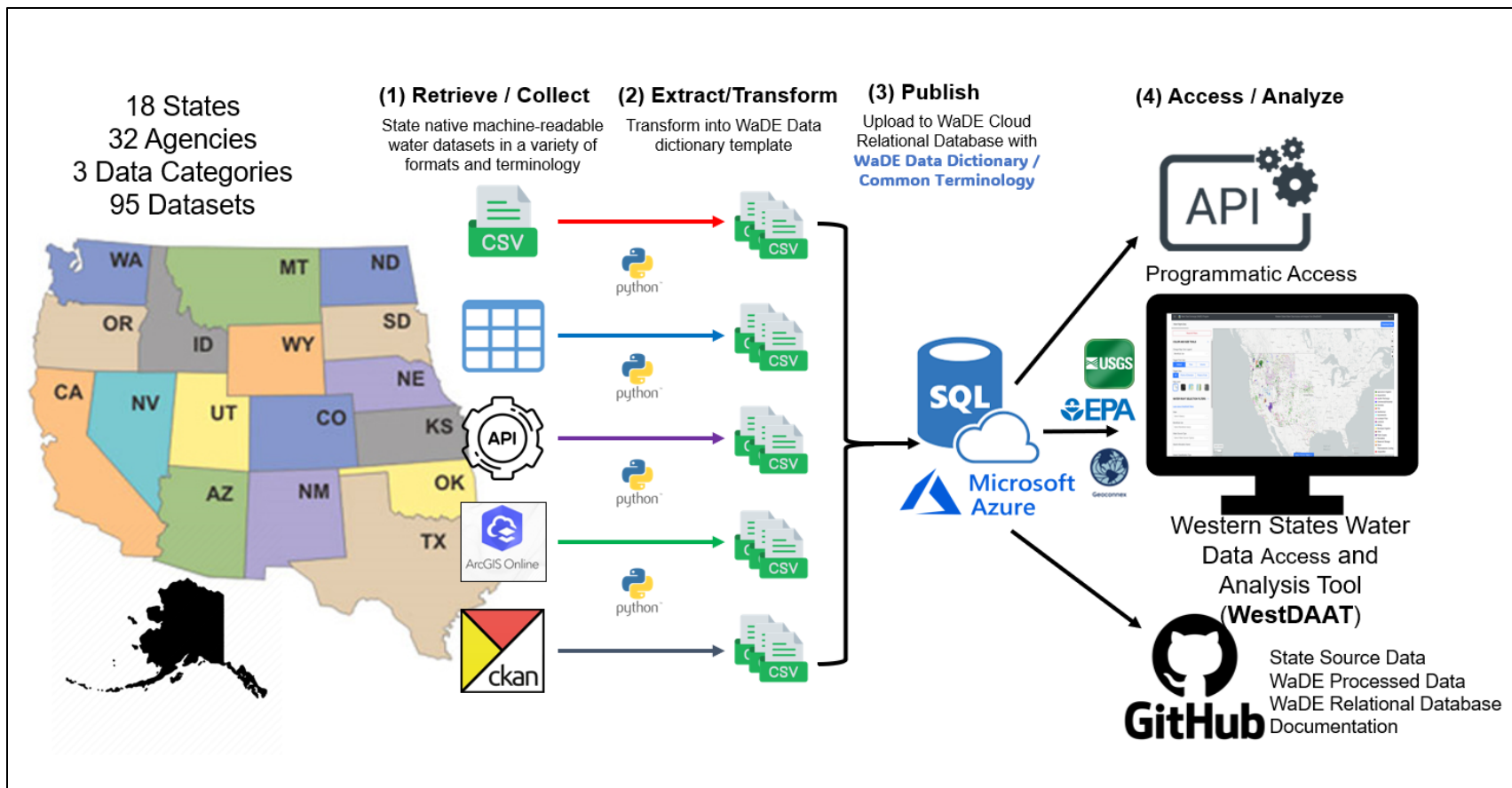


Figure A1: WaDE 2.0 architecture to streamline access to western states water rights, water use, and water supply data as FAIR through a streamlined and standardized service.

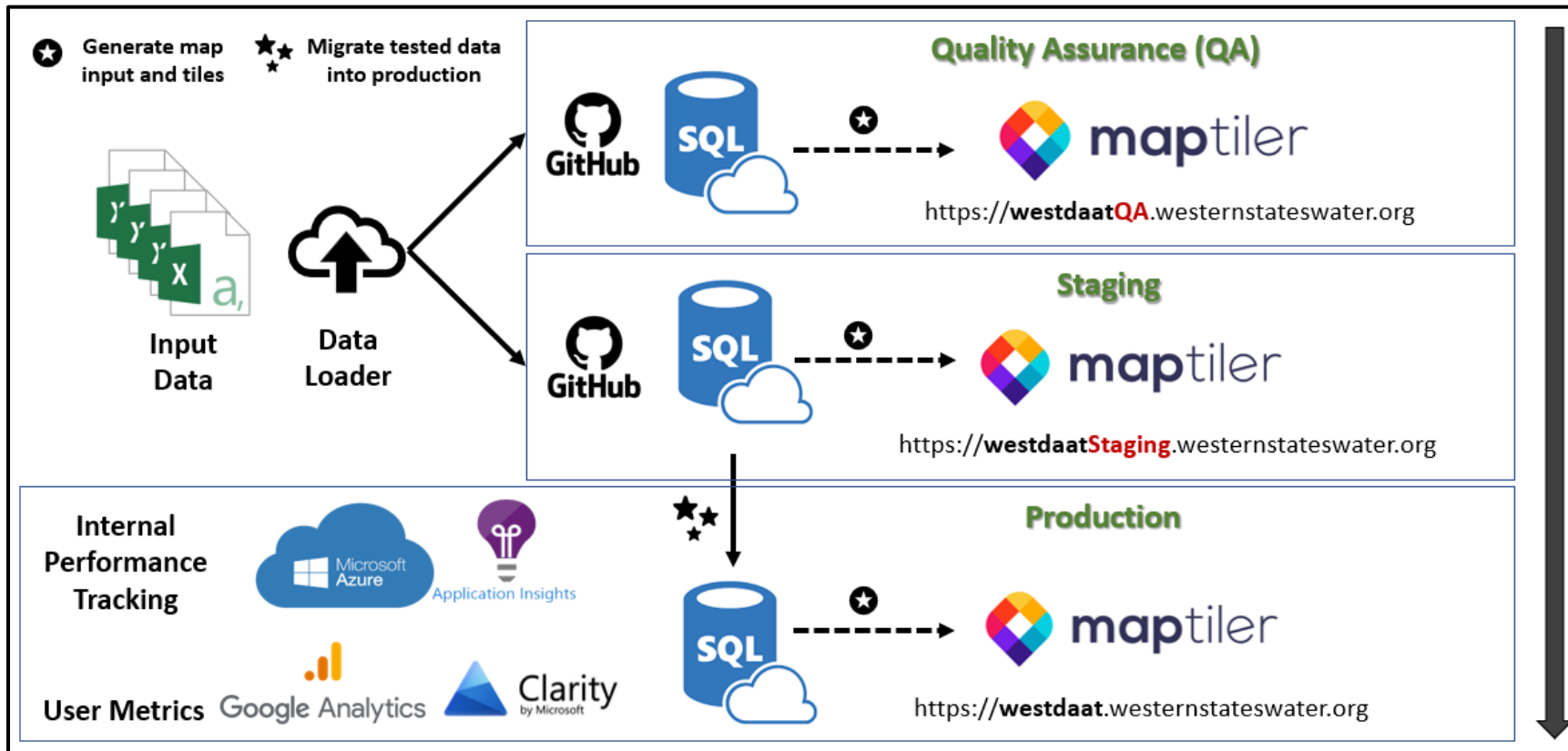


Figure A2: State-of-the-art scalable WaDE Data System based on the best IT practices deployed in three environments: Quality Assurance; Staging; and Production with open-source code tracked in GitHub at <https://github.com/WSWCWaterDataExchange>

**Tab L – Water Supply and Conservation as a
Primary Purpose of Corps Projects**

118TH CONGRESS
2D SESSION

H. R. 7065

To include water supply and water conservation as a primary mission of the Corps of Engineers in planning, designing, constructing, modifying, operating, and maintaining water resources development projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2024

Mrs. NAPOLITANO (for herself and Mr. LAMALFA) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To include water supply and water conservation as a primary mission of the Corps of Engineers in planning, designing, constructing, modifying, operating, and maintaining water resources development projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Priority for Water
5 Supply and Conservation Act of 2024”.

1 **SEC. 2. WATER SUPPLY AND WATER CONSERVATION MIS-**
2 **SION.**

3 (a) **IN GENERAL.**—The Secretary of the Army, acting
4 through the Chief of Engineers, shall include water supply
5 and water conservation as a primary mission of the Corps
6 of Engineers in planning, designing, constructing, modi-
7 fying, operating, and maintaining water resources develop-
8 ment projects.

9 (b) **LIMITATION.**—Nothing in this section affects—

10 (1) existing Corps of Engineers' authorities, in-
11 cluding its authorities with respect to navigation,
12 flood control, and environmental protection and res-
13 toration;

14 (2) pending Corps of Engineers permit applica-
15 tions or pending lawsuits involving permits or water
16 resources projects;

17 (3) the application of public interest review pro-
18 cedures for Corps of Engineers permits; or

19 (4) any authority of a State to manage, use, or
20 allocate the water resources of that State.



H.R.8812 - Water Resources Development Act of 2024

SEC. 121. WATER SUPPLY MISSION.

(a) IN GENERAL.—The Secretary shall—

(1) include water supply as a primary mission of the Corps of Engineers in planning, prioritization, designing, constructing, modifying, operating, and maintaining water resources development projects; and

(2) give equal consideration to the water supply mission in the planning, prioritization, designing, constructing, modifying, operating, and maintaining of water resources development projects.

(b) LIMITATIONS.—

(1) NO NEW AUTHORITY.—Nothing in subsection (a) authorizes the Secretary to initiate a water resources development project or modify an authorized water resources development project.

(2) LIMITATIONS.—Nothing in subsection (a) affects—

(A) any existing authority of the Secretary, including—

(i) authorities of the Secretary with respect to navigation, flood control, and environmental protection and restoration;

(ii) the authority of the Secretary under section 6 of the Flood Control Act of 1944 ([33 U.S.C. 708](#)); and

(iii) the authority of the Secretary under section 301 of the Water Supply Act of 1958 ([43 U.S.C. 390b](#));

(B) any applications for permits under the jurisdiction of the Secretary, or lawsuits relating to such permits or water resources development projects, pending as of the date of enactment of this Act;

(C) the application of any procedures to assure public notice and an opportunity for public hearing for such permits; or

(D) the authority of a State to manage, use, or allocate the water resources of that State.

(c) WATER STORAGE AT CORPS RESERVOIRS.—Section 301(b) of the Water Supply Act of 1958 ([43 U.S.C. 390b\(b\)](#)) is amended by striking “for Corps of Engineers projects, not to exceed 30 percent” and replacing it with “for Corps of Engineers projects, not to exceed 100 percent”.

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than one year after the date of enactment of this section, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report detailing—

(A) the steps taken to comply with subsection (a); and

(B) actions identified by non-Federal interests that may be taken, consistent with existing authorized purposes of the applicable water resources development projects, to—

(i) reallocate storage space in existing water resources development projects for municipal and industrial water supply purposes pursuant to section 301 of the Water Supply Act of 1958 ([43 U.S.C. 390b](#));

(ii) enter into surplus water supply contracts pursuant to section 6 of the Flood Control Act of 1944 ([33 U.S.C. 708](#));

(iii) modify the operations of an existing water resources development project to produce water supply benefits incidental to, and consistent with, the authorized purposes of the project, including by—

(I) adjusting the timing of releases for other authorized purposes to create opportunities for water supply conservation, use, and storage;

(II) capturing stormwater;

(III) releasing water from storage to replenish aquifer storage and recovery; and

(IV) carrying out other conservation measures that enhance the use of a project for water supply; and

(iv) cooperate with State, regional, and local governments and planning authorities to identify strategies to augment water supply, enhance drought resiliency, promote contingency planning, and assist in the planning and development of alternative water sources.

(2) FINAL REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that includes—

(A) identification of—

(i) the steps taken to comply with subsection (a); and

(ii) the specific actions identified under paragraph (1)(B) that were taken; and

(B) an assessment of the results of such steps and actions.

Tab M – Lengthening NPDES Permit Terms

Draft Policy Resolution XXXX-XX
Increase the Length of Federally Delegated Environmental Permits
to a Maximum of Ten Years

CLEAN WATER ACT

WHEREAS, the federal Clean Water Act created the National Pollutant Discharge Elimination System (NPDES) in 1972, addressing water pollution by regulating point sources that discharge pollutants to waters of the United States; and,

WHEREAS, the federal Clean Water Act 33 U.S.C. 1342(b)(1)(B) indicates NPDES permits “are for fixed terms not exceeding five years”; and,

WHEREAS, most states have been delegated the authority to implement all or part of the NPDES program (<https://www.epa.gov/npdes/npdes-state-program-authority>),

WHEREAS, the NPDES permit program, number and type of sources needing permits, the complexity of those permits, and the NPDES permit issuance/reissuance process has significantly increased since 1972. EPA does not have a focus on core program activities but instead has a priority of increasing the complexity of the NPDES program through Executive Order and policy inclusion of Environmental Justice and Climate; and,

WHEREAS, during the 20th Anniversary of the Clean Water Act celebrated as the 1992 Year of Clean Water, the Association of State and Interstate Water Pollution Control Administrators, currently the Association of Clean Water Administrators, prepared the *Clean Water Act Thirty-Year Retrospective*. Part IV of the document included specific Clean Water Act Recommendations. The National Pollutant Discharge Elimination System (NPDES) Permit Program section included a recommendation that the act should allow for ten-year permits (p. 426); and,

WHEREAS, 42 U.S.C. §6925 (c)(3) requires RCRA permits for the treatment, storage, or disposal of hazardous waste to be for a “fixed term, not to exceed 10 years . . . Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term”. Solid waste permits normally have a term of at least 10 years. Some states have created 10-year state water pollution control permit programs for CAFOs where 5-year NPDES permits are not required; and,

WHEREAS, although states continue to have a focus on reducing permit backlogs, states are doomed to fail as federal funding for the program is not keeping up with inflation and states are having difficulty in recruiting and retaining staff; and,

WHEREAS, NPDES permits contain clauses to reopen, amend and/or modify permits following proper administrative procedures to update the appropriate requirements (40 CFR 122.62 and 124.5); and,

NOW, THEREFORE, BE IT RESOLVED THAT THE **INSERT ASSOCIATION NAME:**

Supports AMENDING the federal Clean Water Act 33 U.S.C. 1342(b)(1)(B) to indicate NPDES permits “are for fixed terms not exceeding 10 years”. This would allow states flexibility to set an appropriate permit length up to 10 years and which would allow states to be more efficient with their limited resources.

33 USC §1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control

agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

United States Code, 2022 Edition
Title 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL
SUBCHAPTER IV - PERMITS AND LICENSES
Sec. 1342 - National pollutant discharge elimination system
From the U.S. Government Publishing Office, www.gpo.gov

Active Congressional Efforts Toward 10-Year NPDES Permit Terms

On March 21, 2024, the House passed H.R. 7023, the Creating Confidence in Clean Water Permitting Act, introduced by Rep. David Rouzer (R-NC). Among other modifications to Clean Water Act requirements, the bill would extend the maximum term for NPDES permits issued to states or municipalities from five to ten years. Section 4 (included below) uses language from marker bill H.R. 1181, which was introduced by Rep. John Garamendi (D-CA) and has bipartisan co-sponsorship from five Representatives (two from California).

The White House OMB has issued a statement in opposition to the bill: “The Administration strongly opposes H.R. 7023, which would weaken the Clean Water Act, remove protections for waterways that are vital to the well-being of American families, and undermine ongoing, bipartisan efforts to improve the efficiency and effectiveness of infrastructure permitting processes.... H.R. 7023 would create uncertainty, confusion, and conflict in permitting processes by: restricting community input and environmental analysis and information that is needed to inform Federal decisions to protect the public; curtailing the Environmental Protection Agency’s ability to keep pollutants out of water supplies upon which communities rely; and weakening bedrock environmental protections. H.R. 7023 is out of step with the type of bipartisan permitting reforms that the Administration supports and that Congress should pass.

Provisions regarding NPDES Permit Terms from H.R. 7023

SEC. 4. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) TERMS

Section 402(b)(1)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1342(b)(1)(B)) is amended to read as follows:

“(B) are for fixed terms—

 “(i) not exceeding 10 years, for a permit issued to a State or municipality; and

 “(ii) not exceeding 5 years, for a permit issued to any person not described in clause (i); and”

SEC. 7. NATIONWIDE PERMITTING IMPROVEMENT

(a) In General.--Section 404(e) of the Federal Water Pollution Control Act (33 U.S.C. 1344) is amended....

(2) in paragraph (2)....

(B) by striking “five years” and inserting “ten years”....

Tab N – CWA Human Health Criteria



Alaska Department of Environmental Conservation
DIVISION OF WATER

HUMAN HEALTH CRITERIA AND WATER QUALITY STANDARDS

Background

The Alaska Department of Environmental Conservation (DEC) is committed to protecting human health and the environment through regular updates to our water quality standards (WQS). DEC has been engaged in the revision to Human Health Criteria (HHC) WQS since 2013 and recently committed to finalizing that rulemaking.

HHC is the maximum concentration of a pollutant in a waterbody considered to be protective of human health. DEC HHC are adopted via the Alaska Water Quality Criteria Manual for Toxic or Other Deleterious Organic or Inorganic Substances (2022) or based on values promulgated by U.S. Environmental Protection Agency (EPA) for several states, including Alaska, in 1992 as part of the National Toxics Rule (NTR).

HHC can be derived using EPA-recommended equations with general and pollutant-specific inputs. There are approximately 116 pollutants that are being considered as part of this HHC rulemaking. These pollutants are classified as inorganic pollutants (e.g., methylmercury), pesticides (e.g., chlordane, DDT), and volatile organic carbons (components of petroleum fuels, hydraulic fluids, paint thinners, and dry-cleaning agents). Revising these HHC WQS may impact wastewater dischargers by requiring more rigorous sampling methods and potentially require treatment.

Current Status: The U.S. Environmental Protection Agency and DEC have determined that formal rulemaking is required to update Alaska's HHC to reflect current science and science policies pertaining to the protection of human health in state water quality standards and applicable in Waters of the U.S.

DEC initiated a [public scoping](#) effort on February 10, 2023, to collect and evaluate information and hear from stakeholders to determine what revisions are most appropriate. This will ultimately lead to a more informed rulemaking.

RULEMAKING PROCESS

1. Research and Review Issue.

DEC has researched available information and science, considered different options, and evaluated how implementation may affect water quality, water users, and regulated industries. DEC has taken the following actions:

- [Held a public workshop on the HHC development process in 2015 \(PDF\)](#)
- Established a Human Health Technical Workgroup that met between 2015 and 2018
 - Engaged with the Alaska Department of Fish and Game to develop and publish Regional and Statewide Fish Consumption Rates for Rural Alaska populations (2019)
 - Published the [DEC Human Health Criteria Workgroup Final Report \(2018\) That presents the different inputs of the HHC formula, Alaska-specific issues, and Workgroup recommendations and dissenting opinions. \(PDF\)](#)
- Published [Alaska Statewide and Regional Estimates of Consumption Rates in Rural Communities for Salmon, Halibut, Herring, Non-marine Fish, and Marine Invertebrates \(EPA-contracted report\) \(2019\) \(PDF\)](#)
- [2023 Forum on the Environment Human Health Criteria Workshop Presentation \(February 2023\) \(PDF\)](#)
- [2023 Human Health Criteria Public Scoping Factsheet \(PDF\)](#)

2. Solicit pre-draft regulation comments on HHC formula inputs.

DEC conducted a public scoping effort from February 10 – March 31, 2023 to collect and evaluate information and hear from stakeholders to determine what revisions are most appropriate. This will ultimately lead to a more informed rulemaking. DEC provided outreach about the scoping process during the public notice period at several stakeholder-specific events.

3. Prepare draft Water Quality Standards (WQS) Rulemaking Documentation

DEC will prepare draft proposed regulation revisions, technical and policy explanations, and similar rulemaking documentation. The draft proposed regulations will represent Alaska-specific research, data, and science policy.

4. Public notice of draft proposed WQS revisions.

DEC will issue a public notice and hold a public hearing for the draft proposed HHC rulemaking package consistent with AS 44.62, the Administrative Procedures Act and the federal Clean Water Act. DEC will make copies of the proposed rulemaking available on its website and accept comments electronically via the DEC public comment webpage or in writing via email or delivery to the DEC-Juneau office. The full contents of all submitted comments are **considered public records** and will be posted online in full during the public comment period.

5. Amend and adopt new WQS.

Following the public notice period, DEC will develop a formal Response to Comments document, final regulations, and technical documentation for adoption by the DEC Commissioner and Lieutenant Governor. Adopted WQS are subject to approval by EPA for use under the Clean Water Act.

Department of Environmental Conservation

Mailing Address: P.O. Box 111800
Juneau, Alaska 99811

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Ste 800, State Office Building, Juneau



OFFICE OF WATER
WASHINGTON, D.C. 20460

June 5, 2024

Ms. Emma Pokon
Commissioner-Designee
Alaska Department of Environmental Conservation
P.O. Box 111800
Juneau, Alaska 99811

Dear Commissioner-Designee Pokon:

This letter constitutes the U.S. Environmental Protection Agency's Administrator's Determination, pursuant to *Clean Water Act* Section 303(c)(4)(B), that new and revised water quality standards in Alaska are necessary to meet the requirements of the CWA.¹ Specifically, the EPA has determined that new and revised human health criteria, or HHC, are needed to protect against adverse human health effects related to pollutants in Alaska's surface waters. As explained further below, this Determination is based on information indicating that Alaska's current HHC do not protect the state's designated uses and that additional HHC are needed for certain toxic pollutants for which Alaska currently lacks any HHC.

Alaska's CWA-effective WQS include HHC for a total of 107 pollutants,² consisting of both priority toxic pollutants (i.e., toxic pollutants listed pursuant to CWA Section 307(a)(1))³ and nonpriority toxic pollutants (i.e., toxic pollutants not included on the 307(a)(1) list). The majority of the state's existing HHC were established through a combination of the federally promulgated 1992 National Toxics Rule⁴ and a 2003 state rulemaking, which the EPA approved in 2004.⁵ Alaska's state-adopted and federally promulgated HHC are based on a fish consumption rate, or FCR, of 6.5 grams per day, which was the EPA's national default rate for the general population in 1992. Since then, national, regional, and local data have become available which indicate rates of fish consumption higher than 6.5 g/day, particularly among residents of coastal states and states with residents who rely on subsistence fishing. In considering these studies, the Alaska Department of Environmental Conservation has recognized

¹ 33 U.S.C. 1313(c); see 40 CFR 131.22(b).

² Alaska's HHC include criteria for the consumption of Water and Aquatic Organisms, the consumption of Aquatic Organisms, and drinking water.

³ See 40 CFR part 423, Appendix A – 126 Priority Pollutants.

⁴ 40 CFR 131.36(d)(12)

⁵ Letter from Randall F. Smith, Director, Office of Water, EPA Region 10, to Ernesta Ballard, Commissioner, Alaska DEC, dated February 27, 2004.

that the 6.5 g/day FCR used to derive the state's existing HHC is not reflective of actual fish consumption by residents in the state.⁶ New and revised HHC that more accurately represent actual fish consumption will better protect the health of Alaska's residents.

DEC has identified revisions to Alaska's HHC as a priority action for more than a decade but has yet to propose new and revised HHC for adoption into Alaska's WQS. This Determination makes clear that new and revised HHC are necessary in Alaska to meet CWA requirements and that the EPA is prepared to promulgate such criteria unless the state adopts new and revised HHC that meet CWA requirements.

I. Statutory and Regulatory Background

CWA Section 101(a)(2) establishes a national goal of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water," wherever attainable. See also 40 CFR 131.2. The EPA interprets "fishable" to mean that, at a minimum, the designated uses promote the protection of fish and shellfish communities and that, when caught, these can be safely consumed by humans.⁷

Under the CWA, states have the primary responsibility for reviewing, establishing, and revising WQS applicable to their waters (CWA Section 303(c)). WQS define the desired condition of a water body, in part, by designating the use or uses to be made of the water (40 CFR 131.2 and 131.10) and by setting the numeric or narrative water quality criteria to protect those uses (40 CFR 131.2 and 131.11). There are two primary categories of water quality criteria: HHC and aquatic life criteria. HHC protect designated uses targeted toward human health, such as public water supply, recreation, and fish and shellfish consumption. Aquatic life criteria protect designated uses targeted toward aquatic life, such as survival, growth, and reproduction of fish, invertebrates, and other aquatic species. Water quality criteria "must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use" (40 CFR 131.11(a)(1)).

Section 304(a) of the CWA directs the EPA to periodically develop and publish recommended water quality criteria "accurately reflecting the latest scientific knowledge" on the effects of pollutants on human health and welfare, including effects on aquatic life, as well as information on those pollutants, including their concentration and dispersal and how pollutants affect receiving waters (CWA Section 304(a)(1)). Those recommendations are available to states for use in developing their own water quality criteria (CWA Section 304(a)(3)). In 2015, the EPA updated its CWA Section 304(a) national recommended criteria for human health for 94 pollutants.⁸ When states establish criteria, the EPA's regulation at 40 CFR 131.11(b)(1) specifies that they should establish numeric criteria based on: (1) the

⁶ Letter from Michelle Hale, Division of Water Director, DEC, to Emily Ferry, Deputy Director, Southeast Alaska Conservation Council, dated July 22, 2016.

⁷ U.S. EPA, Office of Water. (2000). Memorandum #WQSP-00-03. http://water.epa.gov/scitech/swguidance/standards/upload/2000_10_31_standards_shellfish.pdf.

⁸ U.S. EPA. (June 29, 2015). *Final Updated Ambient Water Quality Criteria for the Protection of Human Health*, 80 FR 36986. See also U.S. EPA. (2015). *Final 2015 Updated National Recommended Human Health Criteria*. <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>.

EPA's CWA Section 304(a) recommended criteria, (2) modified 304(a) recommended criteria that reflect site-specific conditions or (3) other scientifically defensible methods.

CWA Section 303(c)(2)(B), added to the CWA in the 1987 amendments to the Act,⁹ requires states to adopt numeric criteria, where available, for all toxic pollutants listed pursuant to CWA Section 307(a)(1) (i.e., priority toxic pollutants)¹⁰ for which the EPA has published CWA Section 304(a) recommended criteria, the discharge or presence of which could reasonably be expected to interfere with the states' designated uses. As articulated in the EPA's December 12, 1988, *Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)* ("1988 Guidance"), the EPA identified three options that states could use to meet the requirements of CWA Section 303(c)(2)(B).¹¹ Option 1 is to adopt statewide numeric water quality criteria for all priority toxic pollutants for which the EPA has issued CWA Section 304(a) recommendations, regardless of whether those pollutants are known to be present in a state's waters.¹² Option 2 is to adopt chemical-specific numeric water quality criteria for those priority toxic pollutants for which the EPA has issued CWA Section 304(a) recommendations, and "where the state determines based on available information that the pollutants are present or discharged and can reasonably be expected to interfere with designated uses."¹³ Option 3 is to adopt a procedure to be applied to a narrative WQS to be used in calculating derived numeric criteria.¹⁴ In the 1992 NTR, the EPA promulgated water quality criteria for priority toxic pollutants for 14 states, including Alaska, based on a Determination that new or revised criteria were needed to bring those states into compliance with the requirements of CWA Section 303(c)(2)(B).¹⁵

States are required to hold a public hearing to review applicable WQS at least once every three years and, if appropriate, revise or adopt new standards (CWA Section 303(c)(1); 40 CFR 131.20(a)). This includes adopting criteria for additional toxic pollutants and revising existing criteria as appropriate to protect applicable designated uses (40 CFR 131.11(a)).¹⁶ Any new or revised WQS must be submitted to the EPA for review and approval or disapproval (CWA Section 303(c)(2)(A) and (c)(3)). CWA Section 303(c)(4)(B) independently authorizes the Administrator to determine that a new or revised standard is necessary to meet CWA requirements. The authority to make a Determination under CWA Section 303(c)(4)(B) is discretionary and resides with the Administrator, unless delegated by the Administrator (40 CFR 131.22(b)). For the purposes of this Determination, the Administrator has delegated this authority to the EPA's Acting Assistant Administrator for the Office of Water.

⁹ Water Quality Act Amendments of 1987, Pub. L. 100-4, 101 Stat. 7.

¹⁰ See 40 CFR part 423, Appendix A – 126 Priority Pollutants.

¹¹ U.S. EPA. (December 1988). Transmittal of Final "Guidance for State Implementation for Water Quality Standards under CWA Section 303(c)(2)(B)," <https://www.epa.gov/sites/production/files/2014-10/documents/cwa303c-hanmer-memo.pdf>; see also U.S. EPA, *Establishment of Numeric Criteria for Priority Toxic Pollutants*, 57 FR 60848, 60853 (Dec. 22, 1992).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 60857.

¹⁶ *Id.* at 60873 (Explaining that the "EPA expects to request states to continue to focus on adopting criteria for additional toxic pollutants and revising existing criteria in future triennial reviews which new information indicates is appropriate.").

II. History of Alaska's Water Quality Standards Subject to this Determination

Alaska's Existing HHC

Alaska elected to comply with CWA section 303(c)(2)(B) by following Option 1 in the EPA's 1988 Guidance.¹⁷ In accordance with Option 1, Alaska adopted statewide numeric HHC for all priority and nonpriority toxic pollutants for which the EPA had issued CWA Section 304(a) HHC recommendations at that time. Alaska elected to adopt criteria based on the 304(a) recommendations rather than modifying them to reflect site-specific conditions or establishing criteria using other scientifically defensible methods. Specifically, Alaska incorporated all of the EPA's CWA Section 304(a) HHC recommendations available in 1987 and 1989 by reference.¹⁸ However, because Alaska's incorporation by reference did not specify a cancer risk level with which to calculate HHC for carcinogenic pollutants, the EPA promulgated HHC for Alaska in the 1992 NTR for 59 priority toxic pollutants for which the EPA had CWA Section 304(a) HHC recommendations. When promulgating the NTR, the EPA asked Alaska to select a cancer risk level of either 1 in 1,000,000 (10^{-6}) or 1 in 100,000 (10^{-5});¹⁹ Alaska selected 10^{-5} .²⁰ Therefore, the EPA promulgated HHC using Alaska's selected cancer risk level of 10^{-5} and a 6.5 g/day FCR which reflected the EPA's national recommended default rate for the general population at the time, discussed further below.²¹ The EPA withdrew the arsenic criteria promulgated for Alaska in 1998 citing the state's adoption of an arsenic criterion.²² In 1996, Alaska adopted a cancer risk level of 10^{-5} into the state's WQS; however, the state did not adopt HHC for carcinogenic toxic pollutants at the time.²³ The NTR criteria for 58 priority toxic pollutants remain in effect for the surface waters of the state.

In 2003, Alaska adopted new or revised HHC for the consumption of water and aquatic organisms and aquatic organisms for priority and nonpriority toxic pollutants,²⁴ consistent with the EPA's 1999 CWA Section 304(a) criteria recommendations, along with drinking water criteria consistent with the EPA's National Primary Drinking Water Regulations.²⁵ Alaska's state-adopted HHC are included in the *Alaska Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances* ("Toxics Manual") which is adopted by reference in Alaska's WQS at 18 AAC 70.020(b)(11) and 18 AAC

¹⁷ U.S. EPA. (December 1988). Transmittal of Final "Guidance for State Implementation for Water Quality Standards under CWA Section 303(c)(2)(B)." <https://www.epa.gov/sites/production/files/2014-10/documents/cwa303c-hanmer-memo.pdf>.

¹⁸ The state adopted by reference all the water quality criteria included in 45 FR 79318 in Alaska's 1987 WQS and 50 FR 30784 in Alaska's 1989 WQS.

¹⁹ Letter from Charles E. Findley, Director, Water Division, EPA Region 10, to John Sandor, Commissioner, Alaska DEC, dated November 9, 1992.

²⁰ 57 FR at 60897 (Noting that the risk level of 1 in 100,000 was "to reflect the State's July 1992 proposal to amend its water quality standards and to reflect an indication of State policy preference received on November 16, 1992.").

²¹ 40 CFR 131.36.

²² U.S. EPA, Withdrawal From Federal Regulations of the Applicability to Alaska's Waters of Arsenic Human Health Criteria, 63 FR 10140 (March 2, 1998).

²³ The EPA approved the state's adoption of a cancer risk level by letter from Philip G. Millam, Director, Office of Water, EPA Region 10, to Michele Brown, Commissioner, Alaska DEC, dated April 7, 1997.

²⁴ There are nine pollutants for which Alaska has both state-adopted and EPA-promulgated criteria. These include: 1,3-Dichloropropene, 2,4-Dichlorophenol, chlorobenzene, cyanide, endrin, endrin aldehyde, hexachlorocyclopentadiene, nitrobenzene, and phenol.

²⁵ More information about the National Primary Drinking Water Regulations are available at <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.

70.020(b)(23). Alaska derived the 2003 criteria using the 1992 national default 6.5 g/day FCR – rather than Alaska-specific consumption data – and has not revised those HHC since.²⁶

Alaska’s existing HHC apply to the designated fresh water uses listed below (18 AAC 70.020(b)(11)). These designated uses apply to all fresh waters in the state, except for waters with approved use changes (18 AAC 70.050(1)).

- (A) Water supply
 - (i) Drinking, culinary, and food processing
 - (iii) Aquaculture
- (B) Water Recreation
 - (i) Contact recreation
 - (ii) Secondary recreation
- (C) Growth and propagation of fish, shellfish, other aquatic life, and wildlife

Alaska’s existing HHC apply to the designated marine uses listed below (18 AAC 70.020(b)(23)). These designated uses apply to all marine waters, except for waters with approved use changes (18 AAC 70.050(3)).

- (A) Water supply
 - (i) Aquaculture
- (B) Water Recreation
 - (i) Contact recreation
 - (ii) Secondary recreation
- (C) Growth and propagation of fish, shellfish, other aquatic life, and wildlife
- (D) Harvesting for consumption of raw mollusks or other raw aquatic life

Updates to the EPA’s National Default FCR Recommendation

In 1992, the EPA recommended a national default general population FCR of 6.5 g/day, based on the average per-capita consumption rate of fish from inland and nearshore waters for the U.S. population, for states to consider inputting into their calculation of HHC. In 2000, the EPA published its *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (“2000 Methodology”).²⁷ The 2000 Methodology encourages the use of an upper percentile of fish consumption data for the target general population rather than an average.²⁸ Consistent with that approach, the EPA updated its national default general population recommended FCR to 17.5 g/day, based on the 90th percentile of national survey data from 1994-1996.²⁹ The 2000 Methodology also recommended a default FCR of 142.2 g/day for subsistence fishers, based on the 99th percentile of the same national survey data. The EPA updated its national default general population recommended FCR

²⁶ The EPA approved the state’s 2003 WQS submittal by letter from Randall F. Smith, Director, Office of Water, EPA Region 10, to Ernesta Ballard, Commissioner, Alaska DEC, dated February 27, 2004.

²⁷ U.S. EPA. (2000). *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*. U.S. Environmental Protection Agency, EPA-822-B-00-004. <https://www.epa.gov/sites/default/files/2018-10/documents/methodology-wqc-protection-hh-2000.pdf>.

²⁸ *Id.* at 4-24.

²⁹ *Id.* (“[The] EPA recommends a default fish intake rate of 17.5 grams/day to adequately protect the general population of fish consumers[.]”).

again in 2014 to 22 g/day, which represents the 90th percentile consumption rate of fish and shellfish from inland and nearshore waters for the U.S. adult population 21 years of age and older.³⁰ The EPA based the 2014 national default general population recommended FCR on National Health and Nutrition Examination Survey, or NHANES, data from 2003 to 2010.³¹ In addition, the EPA's national default general population FCR is based on the total rate of consumption of fish and shellfish from inland and nearshore waters (including fish and shellfish from local, commercial, aquaculture, interstate, and international sources). This is consistent with a principle that each state does its share to protect people who consume fish and shellfish that originate from multiple jurisdictions.³²

Alaska's Identification of New and Revised HHC as a Priority Action

In accordance with CWA Section 303(c)(1) and 40 CFR 131.20, Alaska is required to review all of its applicable WQS, including its existing HHC, at least once every three years and, if appropriate, revise those WQS or adopt new WQS. This includes evaluating whether Alaska's existing HHC should be updated to account for more recent data on FCRs and evaluating available information on the presence or discharge of pollutants in Alaska's waters for which there are no criteria such that new HHC for those pollutants are warranted.³³ Alaska has identified adopting new and revised HHC as a priority in the state's triennial reviews for over ten years, including in its current 2024-26 triennial review.³⁴ However, the state has neither adopted nor proposed new and revised HHC to address this identified priority.

DEC initiated two efforts to address the state's HHC with a state-led rulemaking. In 2015, DEC convened a technical workgroup to review the EPA's 2000 Methodology, which met monthly from August 2015 to November 2018. In 2018, the workgroup produced a technical report to guide DEC in establishing HHC based on Alaska-specific data.³⁵ At the time, DEC also conducted public outreach, in the form of workshops, to inform the public about the state's efforts. In 2019, the Alaska Department of Fish and Game published a report analyzing regional fish harvest data collected between 2009 and 2016 to estimate FCRs for Alaska populations.³⁶ The report and other readily available data clearly establishes that Alaska-specific FCRs far exceed the current 6.5 g/day FCR used to derive the state's existing HHC, yet the state's rulemaking efforts to adopt HHC that more accurately account for actual consumption stalled for several years.

³⁰ U.S. EPA. (2014). *Estimated Fish Consumption Rates for the U.S. Population and Selected Subpopulations* (NHANES 2003-2010), EPA 820-R-14-002. <https://www.epa.gov/sites/default/files/2015-01/documents/fish-consumption-rates-2014.pdf>.

³¹ *Id.*

³² U.S. EPA. (January 2013). *Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions*. <https://www.epa.gov/sites/default/files/2015-12/documents/hh-fish-consumption-faqs.pdf>.

³³ See 40 CFR 131.20 ("state review and revision of water quality standards"); 40 CFR 131.11(a)(2) ("states must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use.")

³⁴ <https://dec.alaska.gov/water/water-quality/triennial-review>.

³⁵ ADEC. (2018). *Evaluation of Key Elements and Options for Development of Human Health Criteria*. Technical Workgroup Report. November 13, 2018. FINAL DRAFT. Prepared by Alaska Department of Environmental Conservation, Division of Water.

³⁶ ADF&G. (2019). *Regional Analysis of Fish Consumption Rate Estimates for Rural Alaska Populations*. Prepared by Alaska Department of Fish & Game, Division of Subsistence, for the Human Health Criteria Technical Workgroup discussion, January 2019.

Following several years without meaningful progress to update the state’s HHC, the EPA sent DEC a letter in September 2022 suggesting a path forward for addressing the state’s HHC within a two-year timeline.³⁷ In response, DEC confirmed that revising the state’s HHC remains a high priority and committed to a 24-month rulemaking timeline, with a proposed rule in “Winter 2023-2024” and a final rule in “Fall-Winter 2024-2025.”³⁸ In February 2023, the state reinitiated its HHC public outreach efforts with informational webinars at multiple conferences in Alaska and accepted public scoping comments from Alaska residents from February 10, 2023, to March 31, 2023.³⁹ Through the state’s process, the EPA has maintained close coordination with the state and engaged in several letter exchanges with DEC to provide technical assistance on questions related to HHC development and implementation.⁴⁰ Based on the schedule that DEC provided to the EPA in its written commitment, the EPA expected to receive the state’s draft rulemaking for informal review in Fall 2023.⁴¹ Despite its written commitment, DEC did not propose revised HHC in Winter 2023-2024, nor has DEC provided an updated timeline for a proposed rule that demonstrates continued and expeditious progress to adopt new and revised HHC.

III. Alaska’s Current Human Health Criteria Do Not Protect Alaska’s Designated Uses

As explained above, the EPA’s regulation at 40 CFR 131.11(a)(1) requires that water quality criteria contain sufficient parameters or constituents to protect the most sensitive designated use. Alaska has acknowledged that “formal rulemaking is required to update Alaska’s HHC to reflect current science and science policies pertaining to the protection of human health...”⁴² Alaska’s existing HHC rely on the national default general population FCR that the EPA recommended in 1992, which, as recognized by the state, “is not reflective of the actual fish consumption rate by the general or certain sub-populations of Alaskans.”⁴³ There are multiple sources of fish consumption information that are currently available for Alaska, all of which point to an FCR – whether derived as a mean or upper percentile – well above the 6.5 g/day rate that is used in Alaska’s existing HHC. Accordingly, Alaska’s HHC that are derived using this FCR are not protecting Alaska’s designated uses.

FCRs are typically reported for studied populations in terms of either “consumers plus non-consumers” or “consumers only,” mean values and percentiles of the overall distribution, and for combinations of aquatic species. As described previously, in 2014 the EPA updated its recommended national default FCR value to 22.0 g/day for fish and shellfish from inland and nearshore waters (generally freshwater

³⁷ Letter from Casey Sixkiller, Regional Administrator, EPA Region 10, to Jason W. Brune, Commissioner, Alaska Department of Environmental Conservation. (September 6, 2022). <https://www.epa.gov/ak/alaska-human-health-water-quality-criteria>.

³⁸ Letter from Jason W. Brune, Commissioner, Alaska Department of Environmental Conservation, to Casey Sixkiller, Regional Administrator, EPA Region 10. (September 30, 2022). <https://www.epa.gov/ak/alaska-human-health-water-quality-criteria>.

³⁹ <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=209875>

⁴⁰ The EPA responded to DEC’s requests for technical support by letters, dated November 1, 2022, July 3, 2023, and October 30, 2023. The letter exchanges between the EPA and DEC are available for reference at <https://www.epa.gov/ak/alaska-human-health-water-quality-criteria> and <https://dec.alaska.gov/water/water-quality/human-health-criteria/>.

⁴¹ Letter from Jason W. Brune, Commissioner, Alaska Department of Environmental Conservation, to Casey Sixkiller, Regional Administrator, EPA Region 10. (September 30, 2022). <https://www.epa.gov/ak/alaska-human-health-water-quality-criteria>.

⁴² <https://dec.alaska.gov/water/water-quality/human-health-criteria/>.

⁴³ Letter from Michelle Hale, Division of Water Director, DEC, to Emily Ferry, Deputy Director, Southeast Alaska Conservation Council, dated July 22, 2016.

and estuarine species) based on the 90th percentile for consumers plus non-consumers, and reported a comparable value of 27.3 g/day for the Coastal Pacific area.⁴⁴ Using the same methodology, the comparable 90th percentile for all fish species was 52.8 g/day nationwide, with 61.2 g/day for the Coastal Pacific area.⁴⁵

In addition to national datasets, there are multiple state-specific fish consumption studies available for Alaska. In 2019, the EPA funded a report that included a review of the community harvest data collected by the Alaska Department of Fish and Game which reported a statewide rural consumers plus non-consumers 90th percentile rate for a combined consumption of salmon, halibut, herring, nonmarine fish, and marine invertebrates of 302 g/day, and a mean rate of 141 g/day.⁴⁶ The species included in the rate calculation were informed by DEC's Technical Workgroup supporting HHC development.⁴⁷ In coordination with DEC, the Alaska Department of Fish and Game finalized a separate report on those data in 2019 and identified a statewide "rural/subsistence" area consumers plus non-consumers 90th percentile rate of 327.4 g/day, with a mean of 152.9 g/day.^{48,49} In addition to the statewide reports, the Seldovia Village Tribe and Sun'aq Tribe of Kodiak led the development and implementation of two total seafood consumption surveys for the Cook Inlet Tribes and Kodiak Tribes, respectively.⁵⁰ The Cook Inlet study reported a 95th percentile total seafood consumption rate of 267.6 g/day and a mean total seafood consumption rate of 108 g/day.⁵¹ The Kodiak study reported a 90th percentile total seafood consumption rate of 528 g/day and a mean total seafood consumption rate of 233 g/day.⁵²

Available state-specific fish consumption data confirms that Alaska's HHC do not represent consumption rates of Alaska residents, who are eating far more fish than the 6.5 g/day FCR indicates. Moreover, the EPA has placed an emphasis on increased consumption of healthy fish for its human health benefits and is particularly concerned that people eating fish they catch for sustenance are being disproportionately impacted by toxic pollutants that may cause adverse human health effects. The available Alaska-specific fish consumption data provide sufficient evidence to determine an appropriate FCR for Alaska to derive HHC that more accurately reflect actual consumption.

⁴⁴ The Coastal Pacific area includes coastal counties in California, Oregon, Washington, Alaska, and Hawaii.

⁴⁵ U.S. EPA. (2014). Estimated Fish Consumption Rates for the U.S. Population and Selected Subpopulations (NHANES 2003-2010), EPA 820-R-14-002. <https://www.epa.gov/sites/default/files/2015-01/documents/fish-consumption-rates-2014.pdf>.

⁴⁶ Polissar, N. and Neradilek, M. (2019). Alaska Statewide and Regional Estimates of Consumption Rates in Rural Communities for Salmon, Halibut, Herring, Non-Marine fish, and Marine Invertebrates. Final Report. March 20, 2019

⁴⁷ Other Pacific Northwest states (Washington and Oregon) have included species beyond freshwater and estuarine species, such as salmon, in their FCRs.

⁴⁸ ADF&G. (2019). *Regional Analysis of Fish Consumption Rate Estimates for Rural Alaska Populations*. Prepared by Alaska Department of Fish & Game, Division of Subsistence, for the Human Health Criteria Technical Workgroup discussion, January 2019.

⁴⁹ These FCRs are based on the per capita consumption of salmon, nonmarine fish, halibut, herring, and marine invertebrates. See table 4 of ADF&G (2019). These species were identified for inclusion in the FCR by DEC's HHC Technical Workgroup.

⁵⁰ The total seafood consumption reports analyzed the consumption of all seafood species combined. Both the EPA-funded and Alaska Department of Fish and Game reports included resource use rates that were calculated based on smaller subsets of species (e.g., salmon, halibut, herring, nonmarine fish, and marine invertebrates).

⁵¹ Merrill, Tracie, and Michael Opheim, 2013. *Assessment of Cook Inlet Tribes Subsistence Consumption*, Seldovia Village Tribe, Environmental Department, Seldovia, Alaska. The Seldovia Village Tribe's report did not provide a 90th percentile rate.

⁵² Lance, T. A., K. Brown, K. Drabek, K. Krueger, and S. Hales. 2019. *Kodiak Tribes Seafood Consumption Assessment: Draft Final Report*, Sun'aq Tribe of Kodiak, Kodiak, AK.

As described above, Alaska currently has HHC for a total of 107 toxic pollutants, including 97 priority toxic pollutants and 10 nonpriority toxic pollutants.⁵³ For the 99 of those pollutants for which the HHC are based on an FCR of 6.5 g/day and for which available toxicological data are sufficiently certain to support the development of revised HHC, including methylmercury, the EPA has determined that revised HHC are necessary.⁵⁴ In addition, as described further below, the EPA has determined that new HHC are necessary for eight toxic pollutants for which Alaska currently lacks HHC.

Alaska's current WQS include HHC for total mercury that were developed using the EPA 1980 Ambient Water Quality Criteria National Guidelines.⁵⁵ In 2001, the EPA published a fish tissue-based CWA Section 304(a) HHC recommendation for methylmercury.⁵⁶ The fish tissue methylmercury criterion reflects the EPA's 2000 Methodology and the best available science, and supersedes all previous 304(a) HHC recommendations for mercury published by the EPA (except for the waters of the Great Lakes System), including the 1980 total mercury HHC recommendation. The EPA recommends a fish tissue criterion for methylmercury for many reasons, including that it is more closely tied to the goal of protecting human health because it is based directly on the dominant human exposure route for methylmercury in the U.S., which is consumption of fish and shellfish. According to DEC's Fish Monitoring Program – which is used to inform fish consumption advisories in the state – various forms of mercury were detected between 2001 and 2013 among over 53 species of fish sampled from Alaska waters.⁵⁷ Additionally, Alaska's 2022 Integrated Report indicates that multiple waterbodies in the state are impaired for total mercury and there are multiple state and federal National Pollutant Discharge Elimination System permits with limits or monitoring requirements for mercury.⁵⁸ Given the presence of mercury detected in fish that people consume in Alaska, and since the vast majority of the mercury in fish is expected to be in the methylmercury form, the EPA has determined that HHC for methylmercury are needed in Alaska.

There are eight priority and nonpriority toxic pollutants for which the EPA has CWA Section 304(a) HHC recommendations and for which Alaska does not have existing HHC.⁵⁹ Alaska has not identified whether new or revised HHC are needed for these additional toxic pollutants; however, DEC's public scoping factsheet indicates the state is considering "approximately 116 pollutants" as part of its HHC rulemaking,⁶⁰ i.e., all pollutants for which the EPA has CWA Section 304(a) HHC recommendations.

⁵³ These 10 nonpriority toxic pollutants are: 1,2,4,5-Tetrachlorobenzene, 2,4,5-Trichlorophenol, barium, bis(chloromethyl) ether, chlorophenoxy herbicide (2,4,5-TP) (silvex), chlorophenoxy herbicide (2,4-D), manganese, methoxychlor, nitrates, and pentachlorobenzene.

⁵⁴ At this time, the EPA has identified outstanding technical issues with arsenic, dioxin, and thallium. Therefore, the EPA is not making a Determination whether revised HHC are necessary for these pollutants. In addition, the CWA Section 304(a) HHC recommendations for asbestos, barium, copper, manganese, and nitrates do not rely on the FCR input and are therefore excluded from this Determination.

⁵⁵ U.S. EPA. 1980. Guidelines and methodology used in the preparation of health effect assessment chapters of the consent decree water criteria documents. Federal Register 45:79347, Appendix C.

⁵⁶ U.S. EPA. (January 8, 2001) Water Quality Criterion for the Protection of Human Health: Methylmercury. 66 FR 1344-1359 <https://www.govinfo.gov/content/pkg/FR-2001-01-08/html/01-217.htm>.

⁵⁷ <https://dhss.alaska.gov/health/dph/Epi/eph/Pages/fish/default.aspx>.

⁵⁸ <https://dec.alaska.gov/water/water-quality/integrated-report>.

⁵⁹ These eight toxic pollutants are: 3-methyl-4-chlorophenol, dinitrophenols, hexachlorocyclohexane – technical, n-nitrosodi-n-propylamine, nitrosamines, nitrosodibutylamine, nitrosodiethylamine, and nitrosopyrrolidine.

⁶⁰ DEC. 2023. Proposed Updates to Human Health Criteria. Department of Environmental Conservation Division of Water. February 10, 2023. <https://dec.alaska.gov/water/water-quality/human-health-criteria/>.

Given that Alaska's approach has been to adopt numeric HHC for all toxic pollutants for which the EPA has CWA Section 304(a) HHC recommendations, the EPA evaluated whether available information indicates that these additional eight pollutants are present in, or discharged to, Alaska's waters and can reasonably be expected to interfere with the state's designated uses. Since Alaska does not currently have HHC for these toxic pollutants, they are less likely to be captured in the state's water quality assessments and in data from permitted dischargers. Therefore, the EPA's review included any evidence of the presence of these toxic pollutants in surface waters, groundwater, and soil in Alaska, taking into consideration common contaminants⁶¹ and industries in Alaska. The EPA views any evidence of the historical or current presence of these pollutants as an indicator of their presence in state waters.

Based on monitoring data from the Water Quality Portal, Toxic Release Inventory data, Alaska's CWA Section 303(d) Impaired Waters Report, discharge monitoring reports, data from contaminated sites, and scientific publications, all eight toxic pollutants were detected in surface waters, groundwater, or soil in Alaska. Based on their presence in Alaska and available toxicological data indicating potential effects to human health, the EPA has determined that new HHC are needed for the following eight toxic pollutants: 3-methyl-4-chlorophenol, dinitrophenols, hexachlorocyclohexane – Technical, n-nitrosodi-n-propylamine, nitrosamines, nitrosodibutylamine, nitrosodiethylamine, and nitrosopyrrolidine.

- 3-methyl-4-chlorophenol – which is used as a disinfectant, preservative, and antimicrobial pesticide – was found in the soil at a site operated as a gas station and automotive repair shop.⁶²
- Dinitrophenols, which are semi-volatile organic compounds, were found in the soil near the abandoned Salt Chuck Mine Superfund site.⁶³
- Hexachlorocyclohexane – Technical is an insecticide that was detected in surface water and soil in the Jarvis Glacier, Interior Alaska Eastern Range, and the Joint Base Elmendorf-Richardson clean-up site.⁶⁴ Hexachlorocyclohexanes were also detected in blubber and fat samples of ringed seal and polar bear near Barrow, Alaska, and the Canadian Arctic⁶⁵ and in mussel tissue

⁶¹ According to DEC's Division of Spill and Response, common contaminants in Alaska include petroleum products, solvents, PCBs, metals, and some pesticides and insecticides, among others. <https://dec.alaska.gov/spar/csp/FAQ/contaminants#tab-1>.

⁶² Friedman & Bruya, Inc. (2018). "Results from the Analysis of Soil Samples for Total Petroleum Hydrocarbons as Gasoline using Method AK101." Available at: <https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/26418>.

⁶³ CH2MHILL. "Remedial Investigation Report Salt Chuck Mine Superfund Site Prince of Wales Island, Alaska." US EPA. Available at: <https://semspub.epa.gov/work/10/100089093.pdf>.

⁶⁴ Miner, Kimberley R., et al. "Organochlorine Pollutants within a Polythermal Glacier in the Interior Eastern Alaska Range." *Water*, vol. 10, no. 9, 2018, p. 1157. MDPI. Available at: <https://doi.org/10.3390/w10091157> (Accessed 10 March 2024). Alaska Department of Environmental Conservation. (2018). Decision Document: JBER-Ft. Rich SS119 Bldg 791 Cleanup Complete Determination. DEC Alaska. Available at: https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/Download?documentID=30287&fileName=26522_2018.04.02%20SS119%20CC_Ltrr.pdf (Accessed 10 March 2024).

⁶⁵ Kucklick, J. R., Struntz, W. D., Becker, P. R., York, G. W., O'Hara, T. M., & Bohonowych, J. E. (2002). Persistent organochlorine pollutants in ringed seals and polar bears collected from northern Alaska. *Science of the Total Environment*, 287(1-2), 45-59. [https://doi.org/10.1016/S0048-9697\(01\)00997-4](https://doi.org/10.1016/S0048-9697(01)00997-4).

sampled from National Parks in southeast and southwest Alaska.⁶⁶

- N-nitrosodi-n-propylamine is a research chemical that was found at the site of the former Joseph Guy Community Center in Kwethluk.⁶⁷
- Nitrosamines are organic compounds that are present in tobacco and food products. Though the EPA did not find data characterizing the presence of nitrosamines in Alaska, nitrosamines are a byproduct of wastewater treatment, other industrial processes, and food processing.⁶⁸ Therefore, it is likely that nitrosamines (including nitrosodibutylamine, nitrosodiethylamine, and nitrosopyrrolidine) are present in the environment of Alaska.

IV. Clean Water Act Section 303(c)(4)(B) Determination

The EPA has reviewed the available fish consumption data and information regarding the need for new or revised HHC for priority and nonpriority toxic pollutants in Alaska and concluded that many of Alaska's existing HHC are no longer protective of the applicable designated uses in accordance with the CWA and the EPA's regulations at 40 CFR 131.11. Specifically, Alaska's existing HHC for 99 toxic pollutants do not reflect the latest scientific knowledge and are based on a FCR that is not representative of the actual fish consumption patterns of Alaska residents. In addition, Alaska has no HHC for eight toxic pollutants where available information indicates that those toxic pollutants are discharged or are present in the state's waters and could reasonably be expected to interfere with applicable designated uses and available toxicological data support the development of risk-based HHC. Therefore, the EPA is determining, pursuant to CWA Section 303(c)(4)(B) and 40 CFR 131.22(b), that in Alaska, new HHC are needed for eight toxic pollutants and revised HHC are needed for 99 toxic pollutants. A list of pollutants subject to this Determination is provided in the appendix.

V. Next Steps

The EPA acknowledges and appreciates Alaska's commitment to developing and adopting new and revised HHC for the state. This Determination does not preclude Alaska from proceeding with its own rulemaking effort. However, following a Determination that new or revised WQS are necessary, CWA Section 303(c)(4) requires that the Administrator promptly prepare and publish proposed regulations setting forth new or revised WQS to meet the requirements of the CWA. In the event that Alaska adopts, and the EPA approves, new or revised WQS that sufficiently address this Determination before the EPA proposes or promulgates federal WQS, then the EPA would no longer be obligated to propose or promulgate those federal WQS.

In this particular case, given the readily available fish consumption information that the EPA, state, and Tribes in Alaska have collected and the data that the EPA published in its most recent national

⁶⁶ Rider, Mary, et al. A Synthesis of Ten Years of Chemical Contaminant Monitoring Data in National Park Service - Southeast and Southwest Alaska Networks. July 2020. NOAA, Silver Spring, NOAA Technical Memorandum NOS NCCOS 227. Available at: <https://repository.library.noaa.gov/view/noaa/25520> (Accessed 10 March 2024).

⁶⁷ Alaska Department of Environmental Conservation (Alaska DEC). 2023. SITE REPORT: KWETHLUK FORMER JOSEPH GUY COMMUNITY CENTER. Available at: <https://dec.alaska.gov/Applications/SPAR/PublicMVC/CSP/SiteReport/25663>.

⁶⁸ Venkatsean, A.K., B.F.G. Pycke, and R.U. Halden. 2014. Detection and Occurrence of N-Nitrosamines in Archived Biosolids from the Targeted National Sewage Sludge Survey of the U.S. Environmental Protection Agency. *Environmental Science & Technology* (48).

recommendations,⁶⁹ the EPA believes that 6-12 months is a reasonable timeframe for the agency to develop proposed federal regulations establishing HHC for Alaska that meet the requirements of the CWA. The EPA will seek input from Alaska, Tribes, and interested stakeholders on the EPA's proposed rulemaking in accordance with 40 CFR 131.22(c) and 131.20(b). In addition to engaging with Alaska on this effort, as an initial step in the process, the EPA will invite Tribal consultation. After a federal rule is proposed, the EPA will consider all comments received before proceeding to the final rule stage.

The EPA is committed to working closely and collaboratively with Alaska to ensure that the HHC are protective of applicable designated uses, based on sound scientific rationale, and responsive to the needs of Alaska's residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruno Pigott", with a stylized flourish at the end.

Bruno Pigott
Acting Assistant Administrator

cc: Casey Sixkiller, Regional Administrator, EPA Region 10
Caleb Shaffer, Acting Director, Water Division, EPA Region 10
Christina Carpenter, Deputy Commissioner, DEC
Gene McCabe, Director, Division of Water, DEC

⁶⁹ U.S. EPA. (June 29, 2015). *Final Updated Ambient Water Quality Criteria for the Protection of Human Health*, 80 FR 36986. See also U.S. EPA. (2015). *Final 2015 Updated National Recommended Human Health Criteria*. <https://www.epa.gov/wqc/national-recommended-water-quality-criteria-human-health-criteria-table>.

Appendix – Pollutants Requiring New or Revised Human Health Criteria

Toxic Pollutants Requiring New Human Health Criteria

Chemical Name	CAS Number
3-Methyl-4-Chlorophenol	59507
Dinitrophenols	25550587
Hexachlorocyclohexane (HCH) – Technical	608731
N-Nitrosodi-n-Propylamine	621647
Nitrosamines	---
Nitrosodibutylamine	924163
Nitrosodiethylamine	55185
Nitrosopyrrolidine	930552

Toxic Pollutants Requiring Revised Human Health Criteria

Chemical Name	CAS Number
1,1,1-Trichloroethane	71556
1,1,2,2-Tetrachloroethane	79345
1,1,2-Trichloroethane	79005
1,1-Dichloroethylene	75354
1,2- Trans-Dichloroethylene (DCE)	156605
1,2,4,5-Tetrachlorobenzene	95943
1,2,4-Trichlorobenzene	120821
1,2-Dichlorobenzene	95501
1,2-Dichloroethane	107062
1,2-Dichloropropane	78875
1,2-Diphenylhydrazine	122667
1,3-Dichlorobenzene	541731
1,3-Dichloropropene	542756
1,4-Dichlorobenzene	106467
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
2,4-Dichlorophenol	120832
2,4-Dimethylphenol	105679
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
2-Chloronaphthalene	91587
2-Chlorophenol	95578
2-Methyl-4,6-Dinitrophenol	534521
3,3'-Dichlorobenzidine	91941
Acenaphthene	83329
Acrolein	107028
Acrylonitrile	107131
Aldrin	309002
Alpha-Endosulfan	959988

alpha-Hexachlorocyclohexane (HCH)	319846
Anthracene	120127
Antimony	7440360
Benzene	71432
Benzidine	92875
Benzo(a)anthracene	56553
Benzo(a)pyrene	50328
Benzo(b)fluoranthene	205992
Benzo(k)fluoranthene	207089
Beta-Endosulfan	33213659
beta-Hexachlorocyclohexane (HCH)	319857
Bis(2-Chloro-1-Methylethyl) Ether	108601
Bis(2-Chloroethyl) Ether	111444
Bis(2-Ethylhexyl) Phthalate	117817
Bis(Chloromethyl) Ether	542881
Bromoform	75252
Butylbenzyl Phthalate	85687
Carbon Tetrachloride	56235
Chlordane	57749
Chlorobenzene	108907
Chlorodibromomethane	124481
Chloroform	67663
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93721
Chlorophenoxy Herbicide (2,4-D)	94757
Chrysene	218019
Cyanide	57125
Dibenzo(a,h)anthracene	53703
Dichlorobromomethane	75274
Dieldrin	60571
Diethyl Phthalate	84662
Dimethyl Phthalate	131113
Di-n-Butyl Phthalate	84742
Endosulfan Sulfate	1031078
Endrin	72208
Endrin Aldehyde	7421934
Ethylbenzene	100414
Fluoranthene	206440
Fluorene	86737
gamma-Hexachlorocyclohexane (HCH) [Lindane]	58899
Heptachlor	76448
Heptachlor Epoxide	1024573
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachlorocyclopentadiene	77474
Hexachloroethane	67721

Indeno(1,2,3-cd)pyrene	193395
Isophorone	78591
Methoxychlor	72435
Methyl Bromide	74839
Methylene Chloride (Dichloromethane)	75092
Methylmercury	22967926
Nickel	7440020
Nitrobenzene	98953
N-Nitrosodimethylamine	62759
N-Nitrosodiphenylamine	86306
p,p'- Dichlorodiphenyltrichloroethane (DDT)	50293
p,p'-Dichlorodipenyldichloroethane (DDD)	72548
p,p'-Dichlorodipenyldichloroethylene (DDE)	72559
Pentachlorobenzene	608935
Pentachlorophenol	87865
Phenol	108952
Polychlorinated Biphenyls (PCBs)	1336363
Pyrene	129000
Selenium	7782492
Tetrachloroethylene	127184
Toluene	108883
Toxaphene	8001352
Trichloroethylene	79016
Vinyl Chloride	75014
Zinc	7440666

State of Washington

Updates to the surface water quality standards

We update the surface water quality standards to incorporate the latest science and to meet our priorities and commitments regarding the standards.

I want to...

- › Learn about water quality standards rulemakings
- › Read about the 2021 Triennial Review of our water quality standards
- › Find out more information about the human health criteria

Current actions

The following information highlights the most recent actions related to the water quality standards in Washington.

EPA disapproves portions of our water quality standards

On Nov. 19, 2021, [EPA notified Ecology](#) of a disapproval on our previously approved natural condition provisions in our Surface Water Quality Standards. The natural conditions provisions recognize that some water bodies have poorer water quality due to natural (not human caused) conditions like climate or landscape. Although these provisions have been a part of state water quality standards since 1967, EPA agreed to reconsider whether this part of our standards are currently sufficient. As a result, EPA disapproved the following sections of our surface water quality standards:

A general provision that allows a water body's natural conditions to serve as the water quality standard. [WAC 173-201A-260(1)(a)]

A specific provision that sets the temperature requirement of how cool a water body would be without human alterations. This provision also limits temperature increases caused by human activity to less than 0.3 degrees Celsius. [WAC 173-201A-200(1)(c)(i); -210(1)(c)(i)]

A specific provision that sets the dissolved oxygen requirement to be at the highest levels a water body can achieve without human alterations. This provision also states that human activity cannot cumulatively cause dissolved oxygen in a water body to decrease more than 0.2 mg/L. [WAC 173-201A-200(1)(d)(i); -210(1)(d)(i)]

The numeric water quality criteria for temperature, dissolved oxygen, and all other parameters still remain in place. This disapproval only removes our ability to include the natural variations of water conditions in some of our water quality decisions.

We are [considering revisions](#) to address EPA's 2021 disapproval of Washington's natural condition provisions in our standards, including for fresh and marine dissolved oxygen and temperature (excluding lakes).

In addition, on Sept. 30, 2021, [EPA notified Ecology](#) of a disapproval on our previously approved water quality standards provision that allows short-term modifications of the standards for some qualifying activities in WAC 173-201A-410. In 2006, we added additional options to allow the standards to be modified during major watershed restoration activities that may take a longer amount of time than previously defined as short-term, this is no longer allowed using the short-term modification provision.

In this action, EPA also disapproved water quality temperature limits on discharges that create a thermal plume in the receiving water body [WAC 173-201A-200(1)(c)(vii)(C); -200(1)(c)(v)(C)]. Although this limit is used for some discharges, protective numeric temperature limits still apply.

Human health criteria

On Nov. 14, 2022, the Environmental Protection Agency (EPA) [announced a final rule](#) to adopt human health criteria for the state of Washington's waters. On Nov. 18, 2022, [EPA published the final rule in the Federal Register](#). The rule goes into effect on Dec. 19, 2022.

This rulemaking returns the human health criteria to what EPA had originally approved in 2016, before they changed in 2020. EPA took comments on a draft rule from March 28, 2022 until May 31, 2022.

Timeline of EPA actions:

Nov. 15, 2016 – EPA partially approved and partially disapproved certain human health criteria that Ecology submitted to EPA on Aug. 1, 2016.

May 10, 2019 – [EPA released a statement](#) that they are reversing their 2016 decision and approving the human health criteria standards Washington submitted in 2016.

July 23, 2019 – [EPA announced](#) a draft rule to withdraw the federal water quality standards for certain human health criteria in Washington ([40 CFR 131.45](#)).

April 16, 2020 – [EPA announced](#) their final rule to withdraw the federal water quality standards for certain human health criteria in Washington (40 CFR 131.45), no effective date stated.

May 13, 2020 – [EPA published the final rule in the Federal Register](#) to withdraw the federal water quality standards for certain human health criteria in Washington (40 CFR 131.45). The final rule went into effect on June 12, 2020.

June 30, 2021 – EPA files a motion with federal court to provide time to propose new human health criteria for Washington.

March 28, 2022 – EPA [proposed a rule](#) to promulgate human health criteria for the state of Washington's waters that EPA had originally promulgated in 2016 but later removed in 2020.

Nov. 18, 2022 – [EPA published the final rule in the Federal Register](#) to promulgate human health criteria for Washington's waters. The final rule goes into effect on Dec. 19, 2022.

The following are responses to EPA's actions from Ecology and other state agencies along with our press releases and formal comments on the rulemaking.

[July 2, 2021 Director Watson statement](#)

[April 17, 2020 Director Watson statement](#)

[Oct. 6, 2019 Director Bellon written comments](#)

[Sept. 25, 2019 Director Bellon's testimony at EPA public hearing](#)

[Aug. 28, 2019 webinar public hearing testimony](#)

[July 22, 2019 Director Bellon letter about EPA public hearings](#)

[June 12, 2019 Director Bellon letter to EPA](#)

[June 6, 2019 Attorney General news release](#)

[May 10, 2019 Governor and Attorney General response](#)

[May 7, 2019 Director Bellon letter to EPA](#)

[April 10, 2019 Ecology news release](#)

Recent and current rulemaking

We use the [rulemaking process](#) to meet our priorities and commitments regarding the standards.

Aquatic Life Toxics Criteria

Visit the [rulemaking page](#) for more information.

We are considering revisions to the aquatic life toxics criteria to provide additional water quality protection for organisms that live in water. We will review all of Washington's current aquatic life toxics criteria to ensure they are consistent with nationally recommended water quality criteria issued by the Environmental Protection Agency.

Read [our blog](#) to learn more about aquatic life toxics criteria.

Natural conditions provisions

Visit the [rulemaking page](#) for more information.

We are considering revisions to address the Environmental Protection Agency's 2021 disapproval of Washington's natural condition provisions in our standards, including for fresh and marine dissolved oxygen and temperature (excluding lakes).

Variance for PCBs in Spokane River

This rulemaking is permanently on hold.

Visit our [rulemaking page](#) for more information.

The rulemaking would adopt one or more variances to the water quality standards for organic compounds known as polychlorinated biphenyls or PCBs. We are considering the variances in response to applications received from point source dischargers to the Spokane River.

Read our [June 10, 2020 press release](#) regarding the status of this rulemaking.

Applications for variances received

Facilities discharging into the Spokane River must meet Washington's [water quality standards](#), which were revised and strengthened by rule in 2016. There are five facilities that have permits to discharge wastewater into the Spokane River. We are working with the dischargers on a path to meet the water quality standard for PCBs through step-by-step reductions via a variance. All five dischargers, three municipal and two industrial, applied for a variance:

[Inland Empire Paper Company](#) 

[Kaiser Aluminum Washington – Trentwood](#) 

[Liberty Lake Sewer and Water District – Water Reclamation Facility](#) 

[City of Spokane – Riverside Park Water Reclamation Facility](#) 

[Spokane County Regional Water Reclamation Facility](#) 

Note: Applications are large files and may take a little bit to download.

Recently completed rulemaking

Outstanding Resource Waters

Read the [Outstanding Resource Waters rulemaking](#) for more information.

We adopted [outstanding resource water](#) designations for the following water bodies under WAC 173-201A-330 (Antidegradation Tier III – Protection of Outstanding Resource Waters):

Soap Lake (Grant County)

Napeequa River (Chelan County)

Green River (Lewis and Skamania counties)

Cascade River (Skagit County)

Read [our blog](#) to learn more about outstanding resource water designations.

Salmon spawning habitat protection

[Visit the rulemaking page](#) for more information.

We adopted changes to Washington's surface water quality standards. These changes better protect water quality and physical habitat for incubating eggs and young salmon in rivers and streams. The changes will further ensure salmon nests, called redds, have enough oxygen to support early life stages of salmon. We also added better protection to these early life stages of salmon from the harmful effects of too much fine sediment that can clog important spawning gravels where redds are located.

[Read our blog](#) to find out more about how this rulemaking better protects salmon.

Use Attainability Analysis for the Chelan River

Visit our [rulemaking page](#) for more information.

We made changes to the aquatic life designated use of salmonid spawning, rearing, and migration on the Chelan River through a use attainability analysis (UAA) and rulemaking process. These adopted changes to the designated uses and criteria for the Chelan River were in response to a rulemaking request from the Public Utility District No. 1 of Chelan County (Chelan PUD).

Chelan PUD returned year-round flows to the Chelan River and established habitat along the river, and conducted a 10-year monitoring and adaptive management program to meet spawning, survival, and habitat use objectives for Chinook salmon, steelhead, and resident fish. Following this work, Chelan PUD submitted a request for a Use Attainability Analysis rulemaking for the aquatic life designated use on the Chelan River to better reflect current and historical uses.

A UAA is an approved water quality tool in Washington's surface water quality standards (WAC 173-201A-440) and is used for removing or revising a designated use for a water body only if that use is not existing or attainable. A UAA is a scientific assessment of the physical, chemical, biological, and economic factors that may affect the attainment of the use.

Total Dissolved Gas in Columbia & Snake Rivers

[Visit the rulemaking page](#) for more information.

This rulemaking adopted multiple revisions including changes to the numeric criteria for total dissolved gas in the Snake and Columbia rivers. We adopted changes to the total dissolved gas criteria to allow more water to spill over dams to help salmon migrate. [Read our blog](#) to learn about the environmental impacts of allowing more water over the dams.

Triennial review

[Federal regulations](#) require that we periodically hold public hearings to review surface water quality standards. [This process](#) is called a triennial review. This review gives us an opportunity to discuss priorities and commitments to update surface water quality standards with interested parties and the public.

2021 triennial review

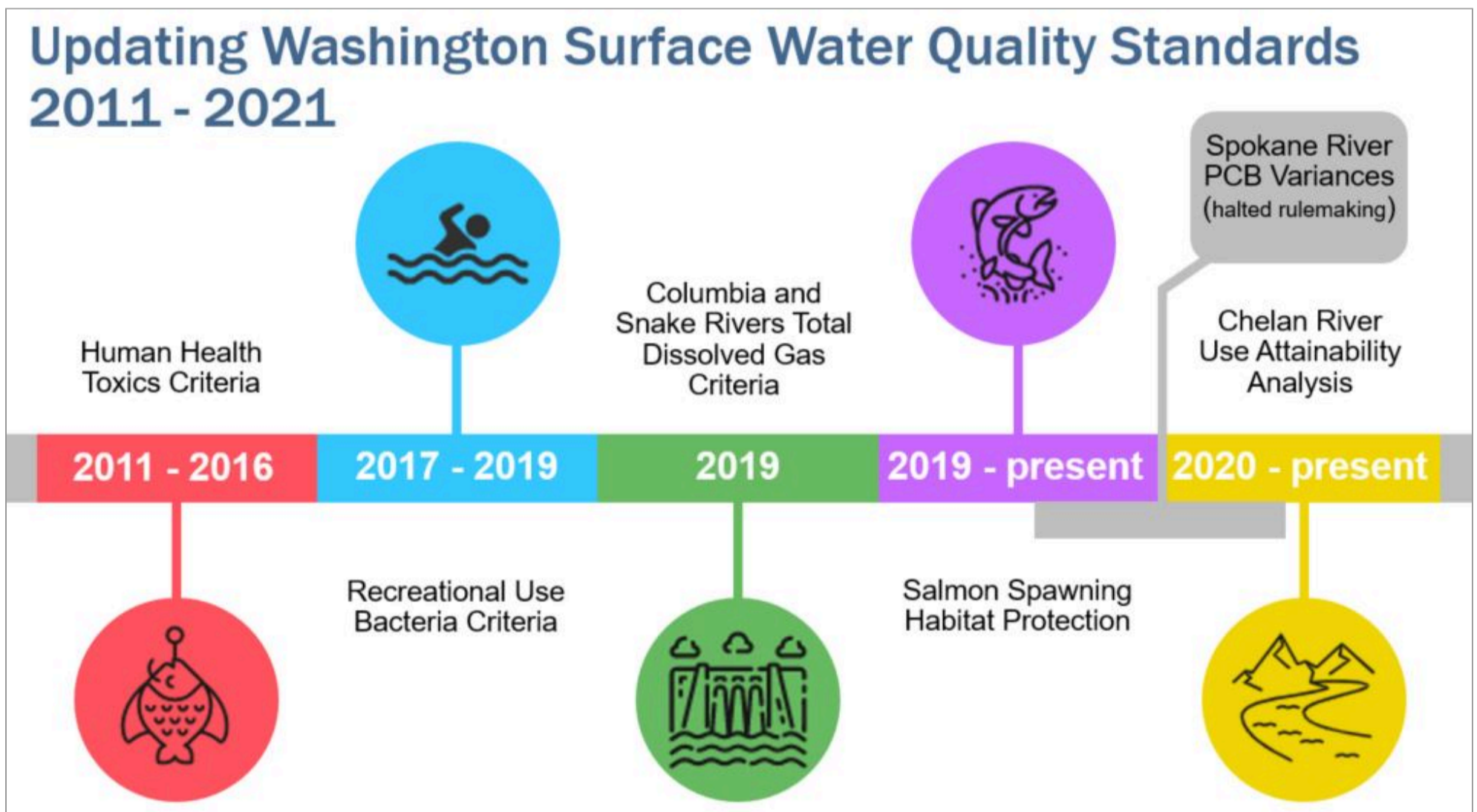
In April 2022, we submitted our [Triennial Review Report](#) to EPA with our planned updates to Washington's Surface Water Quality Standards anticipated for 2022 through 2024.

This latest Triennial Review resulted from a public review process that we conducted from July to September 2021. We accepted comments and feedback on a draft work plan of actions we expect to take related to our water quality standards in the next three years.

Overview of the triennial review process

The Triennial Review is a public involvement opportunity that helps inform and prioritize revisions to the surface water quality standards for the next three years. This is not a rulemaking process; rather, it is a planning process to help guide actions necessary to keep the standards current.

Each rulemaking project identified as a priority will have its own public process to formally comment on proposed rule changes, in accordance with Washington's Administrative Procedures Act (APA) at Chapter 34.05 Revised Code of Washington (RCW). Priorities identified in a triennial review will be incorporate as commitments Ecology's [Performance Partnership Agreement](#) with EPA.



We've used rulemaking to continually update the water quality standards. See our recent rulemaking section above to learn more about these updates.




Rulemaking process

When it is necessary to update the standards we go through the [rulemaking process](#). We select the topics for rulemaking based on which actions will make the greatest environmental and/or administrative benefits.

Topics are prioritized based on:

- The expected environmental benefits.
- Changes in science
- Federal mandates or legal requirements.
- Requests for specific updates.

Related links

- [View the current adopted surface water quality standards](#) 
- [Read our user-friendly version of the surface water quality standards](#) 
- [Read the Supplemental Spawning and Incubation Criteria \(Ecology publication\)](#) 
- [Learn about rulemaking at Ecology](#)

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360-999-9610



Water Quality Standards: Regulations and Resources


[CONTACT US](https://epa.gov/wqs-tech/forms/contact-us-standards-water-body-health-regulations-and-resources)

Federal Human Health Criteria for Washington State Waters

On November 14, 2022, EPA Administrator Regan signed a rule to restore the protective and science-based federal human health criteria (HHC) for the state of Washington's waters that EPA had originally promulgated in 2016 but later removed in 2020. This decision reflects the agency's commitment to protect people who consume fish from Washington's waters, including tribes with treaty-protected subsistence fishing rights, and to apply sound science under the Clean Water Act.



Related Information

- [Washington Water Quality Standards](https://epa.gov/wqs-tech/water-quality-standards-regulations-washington)

-  [Fact Sheet - Final Rule: Reestablishing Water Quality Criteria to Protect Human Health in the State of Washington \(pdf\)](https://www.epa.gov/system/files/documents/2022-11/wa-hhc-final-rule-fact-sheet.pdf) (133.3 KB, November 2022, EPA 820-F-22-002)
- [Final Rule: Restoring Protective Human Health Criteria in Washington](https://www.federalregister.gov/documents/2022/11/18/2022-25150/restoring-protective-human-health-criteria-in-washington)

Public Hearings

EPA provided a 60-day public comment period for this proposal which closed on May 31, 2022. EPA offered two online public hearings during the public comment period so that interested parties could provide oral comments on EPA's proposed rule.

-  [Transcript: Online Public Hearing for Proposed Federal Human Health Criteria in Washington – May 24, 2022 \(pdf\)](https://www.epa.gov/system/files/documents/2022-12/may-24-2022-transcript-11-18-22-508.pdf) (174 KB)
-  [Transcript: Online Public Hearing for Proposed Federal Human Health Criteria in Washington – May 25, 2022 \(pdf\)](https://www.epa.gov/system/files/documents/2022-12/may-25-2022-transcript-11-18-22-508.pdf) (176.7 KB)

Docket available at [regulations.gov](https://www.regulations.gov) (Docket ID No. EPA-HQ-OW-2015-0174).

Comments on the Proposal

EPA accepted written public comments on this proposed rule from April 1, 2022 to May 31, 2022. Public comments that were submitted on the proposed rule can be accessed at [regulations.gov](https://www.regulations.gov) (Docket ID No. EPA-HQ-OW-2015-0174).

- Proposed Rule: Restoring Protective Human Health Criteria in Washington [🔗](https://www.federalregister.gov/documents/2022/04/01/2022-06879/restoring-protective-human-health-criteria-in-washington)
<<https://www.federalregister.gov/documents/2022/04/01/2022-06879/restoring-protective-human-health-criteria-in-washington>> (April 1, 2022)

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[Tribes and Water Quality Standards](https://epa.gov/wqs-tech/tribes-and-water-quality-standards) <<https://epa.gov/wqs-tech/tribes-and-water-quality-standards>>

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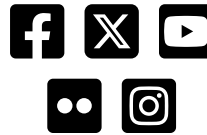
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33 U.S.C.

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Title 33 - NAVIGATION AND NAVIGABLE WATERS

CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL

SUBCHAPTER III - STANDARDS AND ENFORCEMENT

Sec. 1313 - Water quality standards and implementation plans

From the U.S. Government Publishing Office, www.gpo.gov

§1313. Water quality standards and implementation plans

(a) Existing water quality standards

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by, the Administrator pursuant to this Act as in effect immediately prior to October 18, 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife.

(4) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—

(A) STANDARD NOT ATTAINED.—For waters identified under paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

(B) STANDARD ATTAINED.—For waters identified under paragraph (1)(A) where the quality of such waters equals or exceeds levels necessary to protect the designated use for such waters or otherwise required by applicable water quality standards, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section, or any water quality standard established under this section, or any other permitting standard may be revised

only if such revision is subject to and consistent with the antidegradation policy established under this section.

(e) Continuing planning process

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards

For the purposes of this chapter the term "water quality standards" includes thermal water quality standards.

(i) Coastal recreation water quality criteria

(1) Adoption by States

(A) Initial criteria and standards

Not later than 42 months after October 10, 2000, each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under section 1314(a) of this title.

(B) New or revised criteria and standards

Not later than 36 months after the date of publication by the Administrator of new or revised water quality criteria under section 1314(a)(9) of this title, each State having coastal recreation waters shall adopt and submit to the Administrator new or revised water quality standards for the coastal recreation waters of the State for all pathogens and pathogen indicators to which the new or revised water quality criteria are applicable.

(2) Failure of States to adopt

(A) In general

If a State fails to adopt water quality criteria and standards in accordance with paragraph (1) (A) that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State.

(B) Exception

If the Administrator proposes regulations for a State described in subparagraph (A) under subsection (c)(4)(B) of this section, the Administrator shall publish any revised or new standard under this subsection not later than 42 months after October 10, 2000.

(3) Applicability

Except as expressly provided by this subsection, the requirements and procedures of subsection (c) of this section apply to this subsection, including the requirement in subsection (c)(2)(A) of this section that the criteria protect public health and welfare.

(June 30, 1948, ch. 758, title III, §303, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 846; amended Pub. L. 100–4, title III, §308(d), title IV, §404(b), Feb. 4, 1987, 101 Stat. 39, 68; Pub. L. 106–284, §2, Oct. 10, 2000, 114 Stat. 870.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (2), (3)(B), (C) and (b)(1), means act June 30, 1948, ch. 758, 62 Stat. 1155, prior to the supersedure and reenactment of act June 30, 1948 by act Oct. 18, 1972, Pub. L. 92–500, 86 Stat. 816. Act June 30, 1948, ch. 758, as added by act Oct. 18, 1972, Pub. L. 92–500, 86 Stat. 816, enacted this chapter.

AMENDMENTS

2000—Subsec. (i). Pub. L. 106–284 added subsec. (i).

1987—Subsec. (c)(2). Pub. L. 100–4, §308(d), designated existing provision as subpar. (A) and added subpar. (B).

Subsec. (d)(4). Pub. L. 100–4, §404(b), added par. (4).

Tab O – PFAS and the Woodbury Water Treatment Project

Addressing PFAS in Drinking Water

In the mid-2000s, per- and polyfluoroalkyl substances (PFAS) were found to have contaminated drinking water supplies in parts of the eastern Twin Cities, including in Woodbury's groundwater supply. Research has been conducted to identify the source and level of contamination. Contamination has been traced to four former disposal sites in Woodbury and surrounding communities as a result of byproducts from a 3M manufacturing facility.

In 2010, Minnesota's attorney general sued 3M for accountability and funding to address the PFAS issues. On Feb. 20, 2018, the State of Minnesota settled a lawsuit against 3M in return for a settlement of \$850 million. The City of Woodbury continues to advocate for allocation of this funding along with seeking other funding sources.

Immediate Treatment of PFAS

The City of Woodbury has been working with state agencies to fund both short-term and long-term drinking water system improvements. The Minnesota Department of Health has issued health advisories on nine of the city's 20 wells as of May 2024. All nine of these wells are being treated to current PFAS regulatory standards at the city's temporary Water Treatment Facility and three interim well treatment buildings to help bridge the water production gap until the new, permanent water treatment plant is designed and constructed over the next four years. [Learn more about the temporary and permanent solutions on the Water Treatment page.](#)

[Visit the Minnesota Department of Health's website for more information.](#)

[Read statement from Mayor Anne Burt about EPA announcement - April 2024](#)

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Woodbury PFAS Water Treatment & Management

Staff

Groundwater Contamination Concerns Lead to Lawsuit

In 2004, PFAS were first found to have contaminated drinking water supplies in parts of the eastern Twin Cities. Over the last 15 years or so, PFAS have been discovered in Woodbury's groundwater supply, and research has been conducted to identify the source and level of contamination.

Most of the contamination has been traced to four dumps or landfills in Oakdale and Woodbury, at the 3M manufacturing facility in Cottage Grove, and at the Washington County landfill. On February 20, 2018, the State of Minnesota settled its lawsuit against the 3M Company in return for a settlement of \$850 million.

Minnesota's attorney general sued 3M in 2010 alleging that the company's production of chemicals known as PFCs (now commonly referred to as PFAS) had damaged drinking water and natural resources in the southeast Twin Cities metro area.



Project Details

Key Project Elements

- **Centralized WTF Analysis**
- **Temporary WTP Construction**
- **Source Water Evaluation**
- **Treatment Technology Evaluation**

- **Alternatives Analysis**
- **Communications**

Lawsuit Leads to Investigation

In May of 2019 Woodbury Submitted an expedited project request to the State of Minnesota to complete a distribution system PFAS mitigation feasibility study to support the sustainable operation of the water system while plans for a final treatment system are developed.

It was important to Woodbury that they understand the potential impacts of additional well contamination and could react quickly should regulations change or contamination levels increase. A key portion of this feasibility study was to develop a hydraulic model focused on PFAS mixing and system operational dynamics which would allow Woodbury to further evaluate the well hydraulics and mixing dynamics within their distribution system.

Planning Provides a Solid Foundation for Emergency Action

Upon completion of the mixing analysis in October of 2019 AE2S discovered that Woodbury's drinking water system did not completely mix and they could potentially experience levels of PFAS above acceptable health index levels.

Following this discovery Woodbury approached the state of Minnesota with a formal request for a temporary WTP. The goal of the WTP would be to eliminate the risk of regulatory changes or increasing contaminate levels in Woodbury's wells until a final WTP was operational.

Following negotiations with the state and the identification of a temporary WTP site Woodbury was awarded a grant of \$8,725,000 to design and build a temporary WTP capable of treating 3,800gpm.

AE2S jumped into action in early 2020 to begin planning for the design and construct a temporary WTP with a goal of treatment being operational by June 1, 2020.

In addition to AE2S beginning an expedited design process, Woodbury determined that this was an emergency and declared a city emergency which allowed them to utilize a unique CMAR (Construction Manager at Risk) contracting method not yet allowed in Minnesota.

Focused Project Team Delivers a Solution in Record Time

AE2S assembled a team that was ready to deliver a project in record time. Due to the expedited nature of the project AE2S felt that a good contracting partner would be essential.

AE2S scheduled and facilitated interviews with three (3) construction partners in mid-January and ultimately Woodbury selected Rice Lake Construction Group to team with. The team jumped into action establishing a guaranteed maximum price (GMP) from Rice Lake Construction.

The project team (City of Woodbury, AE2S, and Rice Lake) met weekly to collaboratively develop three (3) separate design packages and begin portions of the construction in order to meet the schedule requirements. Rice Lake began excavation on site on February 24th.

The underground piping and foundation work was completed by April 1st just in time to allow GAC pressure vessels to be delivered on site with the precast wall panels the first week of April.

Once the building was erected Rice Lake worked diligently with the engineering team to complete the necessary internal components of the WTP and commission the pressure vessels so that the WTP successfully met the June 1st substantial completion date and was able to produce PFAS free water.

Final project items were completed following substantial completion and the entire project was successfully completed under budget and closed out by the end of 2020.

Tab P – Legal Challenges to Florida’s CWA §404 Assumption

Excerpts modified from the WSWC Newsletters (WSW #2599, 2604)

Center for Biological Diversity (CBD) et al. v. Michael S. Regan, et al. (U.S. District Court for the District of Columbia, 1:21-cv-00119)

The complaint was filed 1/14/21. The Court issued a partial MSJ ruling (2/15/24) that the Environmental Protection Agency (EPA) and the Fish and Wildlife Service (FWS) violated the Endangered Species Act (ESA) when they approved Florida's application to assume Clean Water Act (CWA) §404 permitting authority. The court held that the agencies had circumvented ESA requirements by approving programmatic Section 7 consultation, providing broad ESA liability protection for all future state permittees. The court vacated the USFWS' programmatic Biological Opinion (BiOp) and Incidental Take Statement (ITS), as well as EPA's approval of Florida's §404 assumption application.

The order resolved part of the lawsuit, but left unresolved other claims regarding violations of the CWA and the Administrative Procedures Act (APA).

CBD argued that the FWS' programmatic BiOp, programmatic ITS, and technical assistance processes "create an ESA scheme that is not authorized by law" and "give [Florida] a workaround regarding the mechanisms that Congress provided for establishing take limits, extending liability coverage, and determining jeopardy to species." They also allege that the EPA relied on the facially deficient Section 7 statements and failed to consult with the National Marine Fisheries Service (NMFS).

The federal agencies argued that even if their Section 7 consultations were insufficient, they had created a technical assistance process between Florida and the agencies to address all of the ESA requirements on a permit-by-permit basis by requiring Florida to consult with FWS regarding each application. They requested that the Court only vacate approval to those projects in the category of "may affect, likely to adversely affect" listed species.

The Court permitted defendants to submit a request for a limited stay of vacatur of Florida's §404 assumption within 10 days of the decision. The federal defendants filed their supplemental brief (2/26/24), arguing against a limited stay. They noted that a bifurcated program would be impractical and inconsistent with the CWA, and would violate 40 CFR 233.1(b), which provides that partial state programs are not approvable.

The intervenor defendants, the State of Florida and the Florida Department of Environmental Protection (FDEP), filed a brief (2/26/24) in support of the partial stay. They noted that they had over 1,000 pending §404 individual and general permit applications for roads and bridges, hospital construction projects, school buildings and facilities, affordable housing, military base projects, power grid reliability projects, and various projects to improve water quality in the Everglades. They emphasized the need for the stay to minimize the disruptive consequences of vacatur. They asked for clarification on several questions the court left unanswered regarding procedures for applications that "may affect" listed species and their continued authority over applications that do not. The Florida intervenor defendants alternatively presented the approach used by New Jersey and Michigan, involving memoranda of agreement (MOAs) that facilitate EPA or USFWS review where the State identifies applications that may affect ESA listed species. They noted that while the court found the Florida Section 7 consultation deficient, the formal process went "above and beyond what was done in the other two states at the assumption stage" where no programmatic BiOp was ever prepared.

The Court denied (4/23/24) Florida's motion to stay the vacatur of its §404 program. Florida argued that vacating its authority over the §404 program would cause irreparable harm to its state sovereignty in a cooperative-federalism program, would delay public projects and impede the enforcement of existing

permits. The Court held that Florida failed to respond to the court's reasoning for its decision and failed to identify any theory of appeal on which it is likely to prevail. It noted that the Corps is able to administer the §404 program as it did before Florida's assumption. The court disagreed that Florida's expended resources would be remedied by permitting a stay. The court also rejected the argument that the State's sovereignty is at risk of "irreparable harm," holding that "regardless of whether Florida is authorized to implement [federal] law with respect to navigable waters of the United States, it remains free to enforce state law and to exercise its traditional sovereign authority to prevent pollution and other environmental harms in the State.... Nothing that the Court has decided curtails in any manner the State's authority to exercise this traditional sovereign authority."

Florida appealed (4/26/24) the decision to the D.C. Circuit Court (#24-5101). CBD et al. filed a cross appeal (6/10/24) (#24-5156), and the federal agencies filed an appeal (6/11/24) (#24-5159). The State of Florida filed a motion in the D.C. Circuit to expedite consideration of its appeal, which is fully briefed and remains pending.

***Miccosukee Tribe v. EPA* (U.S. District Court of the Southern District of Florida, 1:22-cv-22459)**

The Miccosukee Tribe filed its case in August 2022, alleging that (1) EPA's approval of Florida's CWA §404 permitting program (85 FR 83553) impermissibly disregarded and diminished the Miccosukee Tribe's sovereignty by subjecting more than 200,000 acres of Indian lands to the state's regulatory jurisdiction, and (2) tribal members have been prevented from obtaining permits to build homes on tribal lands in the Everglades. The complaint asserted that Miccosukee lands include more than the reservation lands, noting that the Tribe holds interests in lands held by the federal government, Miccosukee reserved areas, perpetually leased lands, reserved rights lands, and fee simple lands. EPA's approval transferred CWA §404 permitting authority over such lands to the State of Florida unless such lands are subject to the ebb and flow of the tide.

The complaint alleged that the state lacks legal authority to carry out the CWA §404 program on these Indian lands, and in the absence of that authority, EPA's regulations (40 CFR 233.2(b)) specify that §404 permitting authority will remain with the U.S. Army Corps of Engineers (Corps). Rather than describe all the waters within the state's jurisdiction and all the waters retained by the Corps, Florida's description said that "State-assumed waters...are all waters of the United States that are not retained waters," provided inconsistent definitions of Corps-retained waters, and although Florida noted that "Indian country, as defined in 18 USC 1151, is not included in Florida's 404 program," it failed to include the other Indian lands. The Tribe sought five counts of relief under the Administrative Procedures Act, requesting that EPA's transfer of authority over certain waters be vacated.

As an intervenor defendant, Florida countered that "the Tribe's boundless view of 'Indian lands' as much broader than 'Indian country'" is erroneous and unprecedented. "Florida's Section 404 Program remains subject to continuous permit-by-permit oversight by the federal government and allows for full involvement by the Tribe at every stage. As such, there is no legal or factual basis to claim 'sovereignty' injuries here. The Tribe's decision to selectively forego participating in the Section 404 program for two proposed permits [the Tribe expressly asked Florida to suspend the processing of the two applications, and Florida consented to that request] is entirely self-inflicted and inconsistent with the Tribe's own past involvement in state permit programs."

Florida argued that Congress clearly did not intend the application process to include a canvass of the landscape on a parcel-by-parcel basis, allowing it to get bogged down in contentious disputes over jurisdictional line-drawing. "As set forth in the [Florida Department of Environmental Protection]-Corps MOA, any site-specific line-drawing determinations can be made as circumstances warrant, particularly

since the precise boundaries of assumable waters are subject to change based on current conditions.” Additionally, Florida expressly did not seek authority over Indian country (18 USC 1151). “If EPA correctly interpreted Indian lands synonymously with Indian country, Florida’s program obviously does not cover Indian lands within the meaning of 40 CFR 233.11(h).”

Florida also argued against the Tribe’s assertion that state-tribe interactions injure tribal sovereignty and cannot be government-to-government relations, noting that states are also sovereign, and that the BIA has acknowledged: “While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well... [T]ribes frequently collaborate and cooperate with states

The case was stayed beginning 3/18/24 in light of the *CBD v. EPA* vacatur, now on appeal. The stay is currently extended to 9/16/24.

Florida Delegation’s Efforts to Congressionally Codify its CWA §404 Program

On March 21, 2024, the House passed H.R. 7023, the Creating Confidence in Clean Water Permitting Act, introduced by Rep. David Rouzer (R-NC). Among other modifications to Clean Water Act requirements, the bill would reapprove the State of Florida’s request to carry out its own CWA §404 permitting program.

The White House OMB has issued a statement in opposition to the bill: “The Administration strongly opposes H.R. 7023, which would weaken the Clean Water Act, remove protections for waterways that are vital to the well-being of American families, and undermine ongoing, bipartisan efforts to improve the efficiency and effectiveness of infrastructure permitting processes.... H.R. 7023 would create uncertainty, confusion, and conflict in permitting processes by: restricting community input and environmental analysis and information that is needed to inform Federal decisions to protect the public; curtailing the Environmental Protection Agency’s ability to keep pollutants out of water supplies upon which communities rely; and weakening bedrock environmental protections. H.R. 7023 is out of step with the type of bipartisan permitting reforms that the Administration supports and that Congress should pass.”

On April 18, 2024, Sen. Marco Rubio (R-CA) introduced S. 4162, the Maintaining Cooperative Permitting Act of 2024. The bill seeks to ensure that CWA §404 assumption approvals by the EPA have the force and effect of law. The bill would codify the dredge and fill permitting programs administered by the States of Florida, Michigan, and New Jersey.

Relevant Provisions of H.R. 7023

SEC. 14. APPROVAL OF FLORIDA PERMIT PROGRAM.

The notice of the Environmental Protection Agency approving the State of Florida’s request to carry out a permit program for the discharge of dredged or fill material pursuant to section 404 of the Federal Water Pollution Control Act ([33 U.S.C. 1344](#)), published on December 22, 2020, and titled “EPA’s Approval of Florida’s Clean Water Act Section 404 Assumption Request” (85 Fed. Reg. 83553) shall have the force and effect of law.

Relevant Provisions of S. 4162

SEC. 2. STATE DISCHARGE OF DREDGED OR FILL MATERIAL PROGRAMS.

(a) WITHDRAWAL OF APPROVAL WITHOUT CONGRESSIONAL AUTHORIZATION PROHIBITED.—

(1) IN GENERAL.—The permit programs described in paragraph (2) are ratified, approved, and of full force and effect, and the Administrator of the Environmental Protection Agency (referred to in this section as the “Administrator”) may not withdraw the approval of those permit programs unless the withdrawal is expressly authorized by an Act of Congress enacted after the date of enactment of this Act.

(2) PERMIT PROGRAMS DESCRIBED.—The permit programs referred to in paragraph (1) are the following State permit programs for the discharge of dredged or fill material approved under section 404 of the Federal Water Pollution Control Act ([33 U.S.C. 1344](#)):

(A) The program of the State of Michigan, approved in the notice of the Environmental Protection Agency entitled “Michigan Department of Natural Resources Section 404 Permit Program Approval” (49 Fed. Reg. 38947 (October 2, 1984)) and as described in section 233.70 of title 40, Code of Federal Regulations (including any updates to the program described in a successor Federal Register notice).

(B) The program of the State of New Jersey, approved in the final rule and notice of the Environmental Protection Agency entitled “New Jersey Department of Environmental Protection and Energy Section 404 Permit Program Approval” (59 Fed. Reg. 9933 (March 2, 1994)) and as described in section 233.71 of title 40, Code of Federal Regulations (including any updates to the program described in a successor Federal Register notice).

(C) The program of the State of Florida, as described in the notice of the Environmental Protection Agency entitled “EPA's Approval of Florida's Clean Water Act Section 404 Assumption Request” (85 Fed. Reg. 83553 (December 22, 2020)) (including any updates to the program described in a successor Federal Register notice), including the Programmatic Biological Opinion with Incidental Take Statement associated with the program.

(3) SAVINGS PROVISION.—Nothing in this subsection prohibits the Administrator, in accordance with section 404(i) of the Federal Water Pollution Control Act ([33 U.S.C. 1344\(i\)](#)), from withdrawing approval of a permit program described in paragraph (2) if the Administrator determines that a State is not administering the permit program as approved.

(b) Clarification of process.—Section 404(h) of the Federal Water Pollution Control Act ([33 U.S.C. 1344\(h\)](#)) is amended by adding at the end the following:

“(6) NOT A RULE OR REGULATION.—The approval of a State permit program under this section shall not be considered to be a rule or regulation.”.

Tab Q – U.S. Supreme Court Rio Grande Decision

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TEXAS, PLAINTIFF v. NEW MEXICO AND COLORADO**ON EXCEPTION TO THIRD INTERIM REPORT OF THE SPECIAL
MASTER**

No. 141, Orig. Argued March 20, 2024—Decided June 21, 2024

Approved by Congress in 1938, the Rio Grande Compact is an interstate agreement that apportions the waters of the Rio Grande River among Colorado, New Mexico, and Texas. The Compact relies on the Federal Bureau of Reclamation’s operation of an irrigation system called the Rio Grande Project. Under the Compact, New Mexico must deliver a certain amount of water to the Elephant Butte Reservoir, located in southern New Mexico. Then, in accordance with agreements called the “Downstream Contracts,” Reclamation releases specified amounts of water from the Reservoir for delivery to two water districts in New Mexico and Texas.

In 2013, Texas filed suit in this Court against the Compact’s other two signatory States, alleging that excessive groundwater pumping in New Mexico was depleting supplies of Rio Grande water bound for Texas. The United States sought to intervene, alleging essentially the same claims as Texas. In 2018, this Court allowed the United States to intervene, holding that the United States “has an interest in seeing that water is deposited in the [Elephant Butte] Reservoir consistent with the Compact’s terms,” as that “is what allows the United States to meet its duties under the Downstream Contracts, which are themselves essential to the fulfillment of the Compact’s expressly stated purpose.” *Texas v. New Mexico*, 583 U. S. 401, 414 (2018). Texas and New Mexico now seek approval of a proposed consent decree that would resolve this case and codify a methodology for allocating each State’s share of the Rio Grande’s waters. The Special Master recommended that this Court approve the consent decree, but the United States objected and filed an exception to the Special Master’s report.

Held: Because the proposed consent decree would dispose of the United States’ Compact claims without its consent, the States’ motion to enter

Syllabus

the consent decree is denied. Pp. 7–20.

(a) A “court’s approval of a consent decree between some of the parties . . . cannot dispose of the valid claims of non-consenting intervenors; if properly raised, these claims remain and may be litigated by the intervenor.” *Firefighters v. Cleveland*, 478 U. S. 501, 529. Thus, “where the Government seeks an item of relief to which evidence adduced at trial may show that it is entitled, the [court] may not enter a ‘consent’ judgment without the actual consent of the Government.” *United States v. Ward Baking Co.*, 376 U. S. 327, 334. Pp. 7–8.

(b) The United States has valid Compact claims. Pp. 8–16.

(1) The conclusion that the United States has valid Compact claims follows directly from the Court’s decision six Terms ago “that the United States [could] pursue the particular claims it has pleaded in this case.” *Texas*, 583 U. S., at 413. To start, the Court in 2018 observed that “the Compact is inextricably intertwined with the Rio Grande Project and Downstream Contracts.” *Ibid.* Indeed, the Compact could only achieve its goals because, “by the time the Compact was executed and enacted, the United States had negotiated and approved the Downstream Contracts, in which it assumed a legal responsibility to deliver a certain amount of water to Texas.” *Ibid.* Second, New Mexico conceded that the United States had its own interests in enforcing the Compact, because it was “‘responsible for . . . delivery of . . . water’ as required by the Downstream Contracts and anticipated by the Compact.” *Id.*, at 414 (alterations in original). Third, the Federal Government could not satisfy its treaty obligations to deliver water to Mexico unless New Mexico complied with its obligations under the Compact. *Ibid.* Given these “‘distinctively federal interests,’” the Court held that the United States could pursue its claims that New Mexico was “effectively breaching its Compact duty to deliver water to the Reservoir.” *Id.*, at 411, 413. That decision compels the conclusion that United States has its own valid claims under the Compact. Pp. 8–12.

(2) The States maintain that the United States has no valid Compact claims because it does not itself receive an apportionment of water. But the same was true six Terms ago. The States also assert that the United States failed to allege a “1938 baseline,” that is, that New Mexico’s groundwater pumping should be restricted to levels in effect when the Compact was enacted. But whether the complaint uses the term “1938 baseline” is beside the point. What matters is that the United States, like Texas, pleaded that New Mexico was pumping more groundwater than the Compact contemplates, and the United States still seeks to pursue that same claim.

The States further maintain that any interest the United States has in the Compact is strictly derivative of the States’ interests. But as

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the Court explained in 2018, the United States has “distinctively federal interests” in the Compact’s operations. *Texas*, 583 U. S., at 413. Additionally, although the United States must generally comply with state law when impounding water for use in a federal irrigation project, see *California v. United States*, 438 U. S. 645, 647, the United States does not seek to skirt any state law here. Rather, its position is that the Compact itself imposes a duty of noninterference on New Mexico. Pp. 12–16.

(c) The consent decree would also dispose of the United States’ Compact claims. Pp. 16–20.

(1) In proceedings before the Special Master, the States conceded that the consent decree would resolve all parties’ claims, and the Special Master agreed. Those concessions make sense because the consent decree would, indeed, dispose of the Federal Government’s claims. The United States alleges that New Mexico’s groundwater pumping breaches the State’s Compact duty not to interfere with the Project, and it seeks an injunction against New Mexico to prohibit that interference. The proposed consent decree would neither impose that duty on New Mexico nor enjoin New Mexico from allowing excessive pumping. To the contrary, the consent decree’s proposed new metric for measuring New Mexico’s compliance with the Compact would take for granted the very increase in groundwater pumping that the United States maintains violates New Mexico’s Compact duties. See Third Interim Report 75. Accordingly, were the consent decree adopted, the United States would be precluded from claiming what it argues now—that New Mexico is in violation of the Compact when it permits groundwater pumping at those increased levels. Pp. 16–18.

(2) The States argue that rejecting the consent decree would unjustly expand the scope of this original action and that the United States should instead litigate its claims in another forum. But the scope of this action is the same as it was in 2018. The United States asserts the same claim and seeks the same relief now as it did then. That Texas has chosen to compromise does not mean that, by staying the course, the United States is expanding this action. And, because the consent decree would effectively preclude the United States from arguing that the Compact itself forecloses New Mexico’s current rates of groundwater pumping, the Court does not see how the United States could vindicate that claim elsewhere. Pp. 18–20.

Exception sustained.

JACKSON, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SOTOMAYOR, KAGAN, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which THOMAS, ALITO, and BARRETT, JJ., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 141, Orig.

TEXAS, PLAINTIFF *v.* NEW MEXICO AND COLORADO
ON EXCEPTION TO THIRD INTERIM REPORT OF THE SPECIAL
MASTER

[June 21, 2024]

JUSTICE JACKSON delivered the opinion of the Court.

The Rio Grande River begins in Colorado, flows through New Mexico into Texas, and then courses along the Texas-Mexico border. The Rio Grande Compact (Compact)—an interstate agreement between Colorado, New Mexico, and Texas—governs the “equitable apportionment” of the waters of the Rio Grande among those three States. To ensure that Texas receives its share of water, the Compact relies on the United States Bureau of Reclamation to operate the Rio Grande Project, an irrigation system in southern New Mexico.

In 2013, Texas filed suit against the other two signatory States, alleging that, in violation of the Compact, excessive groundwater pumping in New Mexico was depleting supplies of Rio Grande water bound for Texas. The United States sought to intervene, and in a decision we issued six Terms ago, we allowed it to do so. See *Texas v. New Mexico*, 583 U. S. 407 (2018). In our opinion, we explained that the Federal Government has its own distinct interests in holding New Mexico to its obligations under the Compact, as the Compact is “inextricably intertwined” with the United States’ operation of the Rio Grande Project. *Id.*, at 413.

Now, Texas and New Mexico have agreed to a proposed

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consent decree that would resolve this case and codify a methodology for determining each State’s allocation of the Rio Grande’s waters. But the United States opposes the proposed consent decree, contending that it would dispose of the Federal Government’s claims that New Mexican groundwater pumping is violating the Compact.

We agree with the United States. “[P]arties who choose to resolve litigation through settlement may not dispose of the claims of a third party.” *Firefighters v. Cleveland*, 478 U. S. 501, 529 (1986). The United States still advances the same claims as it did in 2018, backed by the same unique federal interests we identified then. Through the consent decree, the States would settle all parties’ Compact claims and, in the process, cut off the United States’ requested relief as to New Mexican groundwater pumping. Because our precedent does not permit that result, the States’ motion to enter the consent decree is denied.

I

A

The Rio Grande springs from the San Juan Mountains just east of the Continental Divide in southwestern Colorado. After tumbling out of the Rocky Mountains, the river cuts south through the deserts of New Mexico before crossing into Texas near the city of El Paso. From there, the river snakes its way southeast, marking the border between the United States and Mexico and eventually spilling into the Gulf of Mexico at the city of Brownsville, Texas.

Of course, when a river touches so many jurisdictions, disputes about water rights are bound to follow. The Rio Grande is no exception. In the late 19th century, Mexico began to voice concerns about water shortages caused by increased use of the Rio Grande’s upstream waters in the United States. See National Resources Committee, *Regional Planning: Part VI—The Rio Grande Joint Investiga-*

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tion in the Upper Rio Grande Basin in Colorado, New Mexico, and Texas, 1936–1937, pp. 7–8 (1938). In 1906, the United States and Mexico settled that dispute and entered into a treaty, with the United States promising to provide Mexico 60,000 acre-feet of Rio Grande water each year. See *Convention Between the United States and Mexico Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes*, May 21, 1906, 34 Stat. 2953, T. S. No. 455. To deliver on that promise, the United States needed to harness the river’s irregular ebb and flow brought on by alternating dry spells and floods. Accordingly, the Federal Government resolved to construct a new dam and reservoir at Elephant Butte in New Mexico, about 100 miles north of the Texas-New Mexico border. Among the first irrigation projects authorized by the Reclamation Act of 1902, the dam and reservoir constituted an essential component of the new Rio Grande Project, an irrigation system implemented by the United States Bureau of Reclamation (Reclamation). See Act of Feb. 25, 1905, ch. 798, 33 Stat. 814.

Thanks to the Rio Grande Project, the United States had harnessed the Rio Grande’s water. But that raised another question: What to do with it? Enter the “Downstream Contracts,” a series of agreements between the United States and two irrigation districts in New Mexico and Texas. First signed in 1906 and later renegotiated in the 1930s, the Downstream Contracts provided that, after allocating Mexico’s share of Rio Grande water under the 1906 Treaty, the United States would deliver apportionments of water to the two political subdivisions—the Elephant Butte Irrigation District in New Mexico (EBID) and El Paso County Water Improvement District No. 1 in Texas (EP1). Specifically, Reclamation agreed to supply water to 88,000 irrigable acres in EBID and 67,000 irrigable acres in EP1, amounting to shares of about 57% and 43% of the reserved water, respectively. Letter from S. Somach to Special Master, p. 36

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(May 8, 2018).

That left the competing water-rights claims of Colorado, New Mexico, and Texas. To resolve that dispute, those States looked to the U. S. Constitution’s Compact Clause, which permits States to enter into agreements among themselves, with the consent of Congress. Art. I, §10, cl. 3. While contractual in nature, an interstate compact “‘is not just a contract,’ but also ‘a federal statute enacted by Congress’ that preempts contrary state law.” *New York v. New Jersey*, 598 U. S. 218, 224 (2023) (quoting *Alabama v. North Carolina*, 560 U. S. 330, 351 (2010)). Once Congress gives its stamp of approval, an interstate compact becomes the law of the land, much like any other federal statute.

In 1938, with Congress’s endorsement, Colorado, New Mexico, and Texas agreed to the Rio Grande Compact, which “effect[ed] an equitable apportionment” of the Rio Grande’s waters among the three States. Act of May 31, 1939, 53 Stat. 785. For the upstream States, the Compact imposed certain delivery obligations. It required Colorado to deliver a particular amount of water to the New Mexican border. *Id.*, at 787–788. “But then, instead of similarly requiring New Mexico to deliver a specified amount of water annually to the Texas state line, the Compact directed New Mexico to deliver water to the [Elephant Butte] Reservoir.” *Texas*, 583 U. S., at 410–411. That “choice made all the sense in the world in light of the simultaneously negotiated Downstream Contracts that promised Texas water districts a certain amount of water every year from the Reservoir’s resources.” *Id.*, at 411. In other words, the Compact relied on Reclamation to apportion water through its contractual obligations to EBID and EP1.

Although the Rio Grande’s waters were plentiful in the 1930s, drought conditions set in beginning in the late 1940s and early 1950s. As a result, entities in southern New Mexico below the Elephant Butte Reservoir began pumping

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groundwater at increasing levels to support local agriculture. That groundwater pumping had important hydrological implications for the Rio Grande Project.

Here’s why: When Reclamation releases water from Elephant Butte, the water flows into the bed of the Rio Grande, and then to a series of canals and ditches, eventually reaching irrigated farms, its final destination. Some of the water runs off of the fields or percolates into the ground, returning to the river through drains or seepage. Due to these “return flows,” water trickles back to the Rio Grande riverbed, where it proceeds farther downstream to other irrigation destinations. But groundwater pumping in southern New Mexico interrupts that process, both by drawing water away from the river and by intercepting the return flows that would otherwise replenish it. Put simply, the more groundwater pumping between the Elephant Butte Reservoir and Texas, the more water Reclamation has to release from the reservoir to comply with its delivery obligations.

Reclamation dealt with these changing circumstances by developing an equation known as the D2 Curve. Using Project data from 1951 to 1978—the so-called D2 Period that witnessed New Mexico’s ramped-up groundwater pumping—Reclamation devised a linear regression model to help it predict how much water would be available to EBID and EP1 based on a given release of water from the Elephant Butte Reservoir.

The extent of groundwater pumping in New Mexico nonetheless remained a point of contention, and in 2013, Texas filed an original action in this Court against New Mexico.¹ Among other things, Texas alleged that New Mexico was violating the Compact by permitting local entities to pump groundwater at levels exceeding those contemplated in

¹Texas’s complaint also names Colorado as a signatory to the Compact, but because this dispute concerns the allocation of water downstream from Colorado, the only claims at issue here are against New Mexico. Texas’s Complaint 2, ¶¶4–5.

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1938, intercepting water bound for the Lone Star State. Texas requested declaratory, injunctive, and monetary relief, including an injunction commanding New Mexico to cease all interference with the United States' operation of the Rio Grande Project.

The United States sought to intervene in Texas's suit and filed its own complaint in 2014. Like Texas, the Federal Government took issue with New Mexico's groundwater pumping, explaining that excessive water interception below Elephant Butte could reduce Project efficiency "to a point where 43% of the available water could not be delivered to [EP1], and 60,000 acre-feet per year could not be delivered to Mexico." Intervening Complaint 4, ¶15. For relief, the United States sought a declaration and an injunction requiring New Mexico to stop in-state entities from interfering with the Project's delivery of water to EBID, EP1, and Mexico. *Id.*, at 5.

The Special Master appointed to adjudicate this case recommended dismissing the United States' complaint. But this Court allowed the United States to intervene. Specifically, we held that "the federal government has an interest in seeing that water is deposited in the [Elephant Butte] Reservoir consistent with the Compact's terms," as that "is what allows the United States to meet its duties under the Downstream Contracts, which are themselves essential to the fulfillment of the Compact's expressly stated purpose." *Texas*, 583 U. S., at 414.

B

The litigation continued. After the Special Master denied summary judgment and held the first phase of trial, Texas and New Mexico negotiated a proposed consent decree. The consent decree would make "[c]ompliance with th[e] Decree" sufficient to show "compliance with the Compact with respect to the division of Rio Grande water below Elephant

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Butte Reservoir.” Third Interim Report of the Special Master Addendum 8, ¶7 (Third Interim Report Addendum).

The centerpiece of the proposed consent decree would be the establishment of the Effective El Paso Index (EEPI), a new method of determining the allotment of Rio Grande water New Mexico must deliver downstream into Texas. The EEPI’s calculations of water allocations would be based on conditions during the D2 Period, when New Mexico was actively depleting return flows through groundwater pumping. That is, the EEPI would permit levels of pumping “reflected in the 1951–1978 timeframe rather than [requiring] a strict return to a pumping condition as existed in 1938.” Third Interim Report 75. The EEPI would then rely on the El Paso Gage, a flow indicator near the New Mexico-Texas border, to measure New Mexico’s delivery of water into Texas. Finally, the consent decree would require Reclamation to transfer water between EBID and EP1 as needed to maintain a specified allotment.

The States moved the Special Master to approve the proposed consent decree, but the United States objected. As relevant here, the United States maintained that the consent decree would impermissibly dispose of its Compact claims without its consent. The Special Master disagreed, however, and issued a Third Interim Report recommending that this Court approve the consent decree. The United States filed an exception to the report, and we set the case for argument.

II

A consent decree “embodies an agreement of the parties and thus in some respects is contractual in nature.” *Rufo v. Inmates of Suffolk County Jail*, 502 U. S. 367, 378 (1992). But it is also “an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree.” *Ibid.*

In *Firefighters v. Cleveland*, 478 U. S. 501, we described

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the rules that apply when parties wish to settle via consent decree over the objection of a nonconsenting intervenor. “[W]hile an intervenor is entitled to present evidence and have its objections heard . . . on whether to approve a consent decree,” it generally cannot block a decree that would settle the other parties’ claims “merely by withholding its consent.” *Id.*, at 529.

That rule does not apply, however, when the parties’ settlement would also affect the intervenor’s claims. Under those circumstances, parties “who choose to resolve litigation through settlement may not dispose of the claims of a third party . . . without that party’s agreement.” *Ibid.* In other words, a “court’s approval of a consent decree between some of the parties . . . cannot dispose of the valid claims of nonconsenting intervenors; if properly raised, these claims remain and may be litigated by the intervenor.” *Ibid.*

Consequently, and as we explained 20 years before *Firefighters*, “where the Government seeks an item of relief to which evidence adduced at trial may show that it is entitled, the [court] may not enter a ‘consent’ judgment without the actual consent of the Government.” *United States v. Ward Baking Co.*, 376 U. S. 327, 334 (1964).

III

With these legal rules in mind, we must now decide whether to approve the States’ proposed consent decree over the Federal Government’s objection. The relevant questions under our precedents are whether the United States has valid Compact claims and whether the proposed consent decree would dispose of those claims. Because the answer to each of those questions is yes, the consent decree cannot be approved without the United States’ consent.

A
1

Conventional wisdom posits that, because time changes

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all things, no one can step into the same river twice. This case may be an exception, though, for the same considerations that convinced us to let the United States intervene six Terms ago also lead us to conclude that the United States still has valid Compact claims today.

In 2014, the United States asked to intervene in this action, asserting “essentially the same claims Texas already” pleaded. *Texas*, 583 U. S., at 409. Namely, the United States alleged that New Mexico was impermissibly “siphon[ing] off water below the Reservoir in ways the Downstream Contracts do not anticipate.” *Id.*, at 411. The Special Master recommended that we dismiss the United States’ complaint, reasoning “that the Compact does not confer on the United States the power to enforce its terms.” *Ibid.* But in its exception to that report, the United States maintained that “it may pursue claims for violations of the Compact itself.” *Id.*, at 412.

We agreed with the United States. Although interstate compacts are (as the name suggests) agreements between States, “we have sometimes permitted the federal government to participate in compact suits to defend ‘distinctively federal interests’ that a normal litigant might not be permitted to pursue in traditional litigation.” *Id.*, at 412–413 (quoting *Maryland v. Louisiana*, 451 U. S. 725, 745, n. 21 (1981)). Examining the nature of the United States’ claims and the Rio Grande Project’s unique relationship to the Compact, we ticked through “several considerations” persuading us that the United States “may pursue the particular claims it has pleaded in this case.” 583 U. S., at 413.

First, “the Compact is inextricably intertwined with the Rio Grande Project and the Downstream Contracts,” both carried out by the Federal Government. *Ibid.* The purpose of the Compact, recall, was to “effec[t] an equitable apportionment” of the Rio Grande’s waters among the signatory States. *Ibid.* (alteration in original). But it “can achieve that purpose only because, by the time the Compact was

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executed and enacted, the United States had negotiated and approved the Downstream Contracts, in which it assumed a legal responsibility to deliver a certain amount of water to Texas.” *Ibid.* The United States, therefore, “might be said to serve, through the Downstream Contracts, as a sort of ‘agent’ of the Compact,” responsible for ensuring Texas and New Mexico receive their apportionments. *Ibid.* (some internal quotation marks omitted). Or, put another way, “the Compact could be thought implicitly to incorporate the Downstream Contracts by reference.” *Ibid.* “However described,” the bottom line was that the “federal government has an interest in seeing that water is deposited in the Reservoir consistent with the Compact’s terms.” *Id.*, at 414. And although running parallel with Texas’s asserted interests, the United States’ interest was “distinctively federal.” *Id.*, at 413 (internal quotation marks omitted). If New Mexico interfered with the Project, for instance, Reclamation might prove unable “to meet *its* duties under the Downstream Contracts, which are themselves essential to the fulfillment of the Compact’s expressly stated purpose.” *Id.*, at 414 (emphasis added).

Second, along similar lines, we stressed that New Mexico had “conceded that the United States plays an integral role in the Compact’s operation” and so had its own interests in this litigation. *Ibid.* Specifically, New Mexico had argued that the Federal Government was “an indispensable party” because it was “‘responsible for . . . delivery of . . . water’ as required by the Downstream Contracts and anticipated by the Compact.” *Ibid.* (quoting New Mexico’s Brief in Opposition to Texas’ Motion for Leave to File Complaint 33 (Mar. 11, 2013) (2013 BIO); alterations in *Texas*). For that reason, the “‘entry of a Decree in accordance with Texas’ Prayer for Relief would *necessarily* affect the United States’ interests.” 583 U. S., at 414 (quoting 2013 BIO 33; emphasis added).

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Third, we also took note of the Federal Government’s obligations under the 1906 Treaty. As explained above, the United States must deliver 60,000 acre-feet of water from the Elephant Butte Reservoir to Mexico, but the United States can “fill that Reservoir” only if New Mexico complies with its obligation “to deliver a specified amount of water to the facility.” 583 U. S., at 414. Thus, the United States’ ability to deliver water to Mexico depends on New Mexico’s compliance with “its Compact obligations,” and “a breach of the Compact could jeopardize the federal government’s ability to satisfy its treaty obligations.” *Ibid.* “Permitting the United States to proceed” with its own Compact claims would “allow it to ensure that those obligations are, in fact, honored.” *Id.*, at 415.²

In light of these “distinctively federal interests,” we held that the United States could validly claim that New Mexico was “effectively breaching its Compact duty to deliver water to the Reservoir.” *Id.*, at 411, 413. Our 2018 decision leads inexorably to the same conclusion today: The United

²Alongside these justifications for the United States’ intervention, we also noted that the Federal Government sought “substantially the same relief” as Texas, without that State’s objection. *Texas*, 583 U. S., at 415. Citing this portion of our 2018 opinion, the dissent repeatedly asserts that, back then, we reserved the question whether the United States could bring Compact claims of its own. See *post*, at 5–6, 20–22 (opinion of GORSUCH, J.). To the contrary, we repeatedly stated that the United States could “pursue the Compact claims it has pleaded in this original action.” *Texas*, 583 U. S., at 415; accord, *id.*, at 409, 413. And that is exactly what we permitted the United States to do. After all, the effect of our decision was to allow the United States to file its complaint. *Id.*, at 412–413. The issues we reserved were much narrower, namely, “whether the United States could *initiate* litigation” to enforce the Compact (had a suit not already been pending between the States) and whether the United States could “*expand* the scope of an existing” lawsuit. *Id.*, at 415 (emphasis added); see also Tr. of Oral Arg. 13–14 (Jan. 8, 2018). As with our 2018 decision, today’s opinion says nothing about whether the United States could have initiated a Compact suit on its own, and, as explained below, nothing about our decision here expands the scope of this litigation either. See *infra*, at 18.

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States has its own, uniquely federal claims under the Compact. If it did not, one might wonder why we permitted the Federal Government to intervene in the first place.

2

Our 2018 decision is also all but dispositive of the States' arguments that the United States lacks valid Compact claims today.

For starters, the States contend that the United States has no valid Compact claims because it does not itself receive an apportionment of water under the Compact. Joint Reply to Exception of the United States by the State of Texas et al. 29–31 (Joint Reply). But the United States did not receive an apportionment of Rio Grande water in 2018 any more than it does now. Rather, as we explained, its claims arise from the Compact's incorporation of the Downstream Contracts and the attendant risk that New Mexico's interference with the Project could leave Reclamation unable to meet its contractual and treaty obligations.

The States and the dissent also assert that the United States failed to allege a "1938 baseline"—a shorthand for the claim that New Mexico's groundwater pumping should be restricted to levels in effect when the Compact was enacted. See Joint Reply 36–37; *post*, at 18–24, and nn. 2–3 (opinion of GORSUCH, J.). But that argument, too, is foreclosed by our prior decision. There, we explained that Texas had alleged New Mexico was "breaching its Compact duty" by allowing downstream water "users to siphon off water . . . in ways the Downstream Contracts do not anticipate." *Texas*, 583 U. S., at 411; see Texas's Complaint 10, ¶18 (alleging that current pumping "changed the conditions that existed in 1938"). And we recognized that the United States asserted "essentially the same claims Texas already has." *Texas*, 583 U. S., at 409; see *id.*, at 411 (United States' claims "parallel Texas's"); *id.*, at 415 (United States seeks "substantially the same relief" as Texas). Whether the

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United States’ complaint uses the term “1938 baseline” is beside the point. Both Texas and the United States pleaded that New Mexico was violating the Compact by pumping more groundwater than the Compact contemplates, and that is still the claim that the United States wishes to pursue now.³

Last, we are not persuaded by the States’ reliance on our decisions in *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92 (1938), and *California v. United States*, 438 U. S. 645 (1978). The States maintain that they alone represent EBID’s and EP1’s interests in an allocation of Compact water; accordingly, they say, any interest Reclamation has in fulfilling the Downstream Contracts is strictly derivative of the States’ interest in how the water is apportioned. Joint Reply 31–36; see *post*, at 14, 18. For support, they rely on *Hinderlider*, which held that a Colorado ditch company had no right to water that the State of Colorado had agreed to apportion to New Mexico under the La Plata River Compact. 304 U. S., at 106–108. “[T]he States,” we explained, “had power to bind by compact their respective appropriators,” *id.*, at 108, notwithstanding the ditch company’s pre-existing right under Colorado law to a certain apportionment of water, *id.*, at 98.

³At times, the dissent suggests that the United States’ past briefing in this Court eschewed a 1938 baseline. See *post*, at 5, 18, n. 2, 21, n. 3, 23. It did not. The United States merely observed that a ruling in New Mexico’s favor—that New Mexico does *not* violate the Compact by allowing excessive groundwater pumping—would likely affect how Reclamation operated the Rio Grande Project, including by undermining a 2008 agreement that calculated water allocations using a D2 Period baseline. Memorandum in Support of Motion of United States to Intervene as Plaintiff 6 (Feb. 27, 2014); accord, U. S. Brief in Opposition 19 (June 16, 2014). Nowhere in that briefing did the United States purport to take any definitive position on what groundwater-pumping baseline the Compact should ultimately be read to require. See Reply Brief for United States 20 (July 28, 2017) (“[I]t remains to be seen whether the interests of Texas and the United States are completely aligned” regarding the correct baseline).

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The States’ argument here fails for at least two reasons. First, our decision in 2018 is incompatible with the suggestion that the Federal Government’s interest is either entirely derivative of the States’ interests (as with the relationship between the Colorado ditch company and the State of Colorado in *Hinderlider*) or merely a stand-in for the interests of the water districts. See *post*, at 20. Our reasons for finding that intervention was warranted—(1) the United States’ duties under the Project and the Downstream Contracts, (2) the United States’ integral role in the Compact’s operation, and (3) the United States’ treaty obligations—stemmed from “*distinctively* federal interests” the United States has, independent of Texas, “in seeing that water is deposited in the Reservoir consistent with the Compact’s terms.” *Texas*, 583 U. S., at 413–414 (emphasis added). As it did then, the United States continues to claim that New Mexico’s interference with the Project’s delivery of water violates the Compact. That Texas’s litigation strategy has since changed, such that it is now willing to accept a greater degree of groundwater pumping, does not erase the United States’ independent stake in pursuing claims against New Mexico.

Second, because *Hinderlider* was based on a compact that is different from the one at issue here, its reasoning is inapposite. Different compacts divide state and federal authority differently. *Hinderlider*’s analysis of the States’ “conclusive” power to determine their citizens’ shares of water was a function of the specifics of the compact in that case, which gave the States the sole authority over and responsibility for apportionments of the La Plata River. 304 U. S., at 96–98, 107. Here, by contrast, the United States “plays an integral role in the Compact’s operation.” *Texas*, 583 U. S., at 414. Reclamation’s operation of the Project, and the United States’ obligations to EBID and EP1 under the Downstream Contracts, are the means by which the States chose to effectuate the apportionment of water in the

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Compact. Rather than “requiring New Mexico to deliver a specified amount of water annually to the Texas state line,” the Compact instead “directed New Mexico to deliver water to the” Elephant Butte Reservoir. *Id.*, at 410–411. That choice made sense only because the “Downstream Contracts . . . promised Texas water districts a certain amount of water” via the operation of the Project. *Id.*, at 411. Accordingly, the Federal Government has its own “interest in seeing that water is deposited in the Reservoir consistent with the Compact’s terms” and not “siphon[ed] off . . . in ways the Downstream Contracts do not anticipate.” *Id.*, at 411, 414.

For similar reasons, our continued recognition of the United States’ valid Compact claims would not, as the States assert, “tur[n] on its head the hierarchy of authorities governing the distribution of water within a federal irrigation project.” Joint Reply 34. Relying on *California v. United States*, 438 U. S. 645, the States maintain that the Federal Government must “comply with state water laws in operating its federal Reclamation projects.” Joint Reply 34. True, so far as it goes. *California* held that §8 of the Reclamation Act required the United States to comply with state-imposed permit requirements when impounding water from the Stanislaus River for use in a federal irrigation project. 438 U. S., at 647–650. But the United States is not seeking to skirt any state law here.

Again, the United States’ position is that the Compact itself imposes a duty of noninterference on New Mexico. That claim is not at odds with *California*’s holding that the Secretary of the Interior must “comply with state laws, not inconsistent with congressional directives, governing use of water employed in federal reclamation projects.” *California v. FERC*, 495 U. S. 490, 504 (1990) (discussing *California v. United States*, 438 U. S. 645). The United States’ claims rest on its interpretation of the Compact, and the Compact trumps state water law. See *Texas*, 583 U. S., at 412

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("[O]nce Congress gives its consent, a compact between States—like any other federal statute—becomes the law of the land"); *New York*, 598 U. S., at 224.⁴

B

1

Because the United States has valid Compact claims and has not agreed to the proposed consent decree, the only remaining question is whether the consent decree would dispose of those claims. *Firefighters*, 478 U. S., at 529. We conclude it would.

To start, the States have conceded as much. In their briefing before the Special Master, the States acknowledged that the consent decree would “resolv[e] all of the Compact claims *stated by any party*.” States’ Joint Motion To Enter Consent Decree 33 (Nov. 14, 2022) (emphasis added). Likewise, in their reply, the States reaffirmed that “upon entry of the Consent Decree, the United States *will have no remaining Compact claims*.” States’ Joint Reply in Support of Joint Motion To Enter Consent Decree 7 (Feb. 3, 2023) (emphasis added). The Special Master agreed, explaining that the consent decree would “resolv[e] the dispute over the Texas and downstream New Mexico apportionments.” Third Interim Report 2.

And those concessions state an obvious proposition, because the consent decree would in fact resolve the United States’ claims in this action. The United States maintains that New Mexico’s pumping breaches that State’s alleged duty under the Compact not to interfere with the Project. Intervening Complaint 4–5. And the United States seeks an injunction against New Mexico that would prohibit that

⁴Accordingly, and notwithstanding the dissent’s suggestions to the contrary, see *post*, at 2, 19–20, 24–25, nothing in today’s decision affects either this Court’s state water law jurisprudence or the Federal Government’s general obligation to comply with state water law.

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interference. *Id.*, at 5. The proposed consent decree, however, would dispose of that legal claim and the associated prayer for relief without addressing the United States’ contentions, as it neither imposes the duty of noninterference that the United States seeks nor enjoins New Mexico from allowing groundwater pumping beyond 1938 levels. To the contrary, the consent decree would *incorporate* New Mexico’s groundwater pumping into the Compact by adopting a new method for apportioning Rio Grande water—the EEPI.

As explained above, the EEPI would establish “an index-based methodology” to assess New Mexico’s compliance with its water delivery obligations “based upon Project operations during the D2 Period,” from 1951 to 1978. Third Interim Report Addendum 9, 23, 25. Those decades coincided with the onset of drought conditions in the Rio Grande Basin and an accompanying increase in groundwater pumping in New Mexico. Measuring New Mexico’s compliance with the consent decree (and, by extension, its compliance with the Compact) against D2 Period conditions would therefore take for granted the very increase in groundwater pumping that the United States maintains violates New Mexico’s duty of noninterference. See Third Interim Report 75 (“Undisputedly, the Consent Decree’s reliance on the D2 period seeks to limit pumping to an average amount as reflected in the 1951–1978 timeframe rather than a strict return to a pumping condition as existed in 1938”).

Were the consent decree adopted, the United States would be precluded from claiming what it argues now—that New Mexico’s present degree of groundwater pumping violates the Compact. Indeed, the consent decree would settle that question by deeming New Mexico compliant with the Compact, even as it allows pumping at the D2 levels. And that legal determination would “be reflected in, and be enforceable as, a judicial decree.” *Rufo*, 502 U. S., at 378.

The proposed consent decree, therefore, would have the effect of “cutting [the United States] off from a remedy to

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which” it alleges it is entitled. *Lawyer v. Department of Justice*, 521 U. S. 567, 579 (1997).

The United States’ argument that groundwater pumping at D2 levels violates the Compact may or may not ultimately prevail at trial. But we “may not enter a ‘consent’ judgment without the actual consent of the Government” when “the Government seeks an item of relief to which evidence adduced at trial may show that it is entitled.” *Ward Baking Co.*, 376 U. S., at 334. Because the consent decree here would have that effect, we cannot approve it over the United States’ objection.

2

The States and the dissent nevertheless argue that rejecting the consent decree would unjustly expand the scope of this original action and that the United States can and should litigate its claims in another forum instead. Joint Reply 38–45; *post*, at 14–21. Neither argument holds up.

The first objection boils down to the unremarkable fact that the United States’ and Texas’s interests have now diverged. As we explained in 2018, both Texas and the United States at that point asserted “essentially the same claims” and sought “substantially the same relief”—an end to New Mexico “siphon[ing] off water below the Reservoir in ways the Downstream Contracts do not anticipate.” *Texas*, 583 U. S., at 409, 411, 415. The United States still asserts that same claim today and seeks that same relief. That Texas has chosen to compromise does not mean that, by staying the course, the United States is expanding this action. What is more, this Court was well aware in 2018 that the States’ interests might diverge from those of the United States. See, *e.g.*, New Mexico’s Reply to Exceptions of the United States and Colorado 25 (July 28, 2017); Reply Brief for United States 18 (July 28, 2017).

The second objection turns on a mischaracterization of the United States’ claims. The States maintain that the

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Federal Government’s qualms with New Mexico’s groundwater pumping pose only “an *intrastate* dispute between the United States and New Mexico” that is better left to existing litigation in other courts. Joint Reply 43–45. For the reasons already explained, however, the United States’ claims are not limited to “issues related to reclamation law, Project operations, or the details of New Mexico water administration.” *Id.*, at 43. Rather, the United States maintains that New Mexico’s groundwater pumping contravenes the Compact itself. Nothing in the consent decree prohibits that alleged breach of the Compact; to the contrary, compliance with the consent decree would instead constitute compliance with the Compact. We therefore do not see how the United States could elsewhere vindicate its claim that the Compact itself bars New Mexico’s allegedly excessive groundwater pumping.⁵

⁵The dissent suggests that, even if we were to adopt the proposed consent decree, the United States could continue to litigate the meaning of the Compact in another forum and later seek modification of the decree. *Post*, at 14–19. Perhaps the United States could argue elsewhere that some source of law aside from the Compact independently bars current levels of New Mexican groundwater pumping. But what matters here is that the consent decree would settle that question as far as the Compact is concerned. It would thus eliminate the United States’ claim that New Mexico is breaching a duty under the Compact. Indeed, at oral argument, counsel for Texas conceded that the consent decree would be “binding on the United States” with respect to “the baseline against which the Compact is judged.” Tr. of Oral Arg. 41 (Mar. 20, 2024). That position makes sense. And it is difficult to understand why the States would care so much about this Court’s approval of the consent decree if the United States could turn right around and undo it tomorrow in another court. Moreover, the dissent’s reliance on *Firefighters v. Cleveland*, 478 U. S. 501 (1986), for this contention is mistaken. See *post*, at 15–16. The reason the labor union in *Firefighters* “remained free to bring its own independent . . . claims in separate litigation” was that the consent decree there did “not purport to resolve any claims the [u]nion might have,” as the union had “failed to raise any substantive claims” in the first place. 478 U. S., at 530. As already explained, the same cannot be said here.

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* * *

Our decision today follows directly from our prior recognition of the United States' distinct federal interests in the Rio Grande Compact. Having acknowledged those interests, and having allowed the United States to intervene to assert them, we cannot now allow Texas and New Mexico to leave the United States up the river without a paddle. Because the consent decree would dispose of the United States' Compact claims without its consent, the United States' exception is sustained, and the States' motion to enter the consent decree is denied.

It is so ordered.

GORSUCH, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 141, Orig.

TEXAS, PLAINTIFF *v.* NEW MEXICO AND COLORADO
ON EXCEPTION TO THIRD INTERIM REPORT OF THE SPECIAL
MASTER

[June 21, 2024]

JUSTICE GORSUCH, with whom JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE BARRETT join, dissenting.

Texas and New Mexico ask us to approve a consent decree resolving their decade-long original jurisdiction dispute over the Rio Grande Compact. The decree would fairly apportion water from the Rio Grande River between those two States and leave federal reclamation operations in the area running the way they have run for decades. A Special Master we appointed to consider the dispute has recommended approving the proposed decree, concluding that it is “difficult to envision a resolution to this matter that might be superior.” Third Interim Report of the Special Master 15 (Third Interim Report). The States’ dispute resolved, and the basis for our original jurisdiction gone with it, the Special Master also recommends dismissing without prejudice any claims the United States, an intervenor in the case, might hold.

Still, the Court denies entry of the consent decree. Why? Because the federal government demands as much. Not content with receiving what it asked for when it intervened in this litigation—the protection of its existing federal reclamation operations—the United States now seeks to advance a theory about how water should be distributed between Texas and New Mexico so aggressive that New Mexico fears it could devastate its economy. In the process,

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the federal government seeks to prolong this original jurisdiction dispute, a form of litigation usually reserved for disputes between States, over the objection of both Texas and New Mexico. And it does so despite the fact the consent decree would leave the federal government free to pursue any claims it believes it has in the lower courts, where disputes between the federal government and States are normally tried.

The Court’s decision is inconsistent with how original jurisdiction cases normally proceed. It defies 100 years of this Court’s water law jurisprudence. And it represents a serious assault on the power of States to govern, as they always have, the water rights of users in their jurisdictions. The Special Master issued a detailed 115-page report laying all this out. His views were wise, his recommendations sound, and, respectfully, we should have done as he suggested.

I

A

Beginning its journey high in the San Juan Mountains, the Rio Grande runs through Colorado, New Mexico, and Texas before flowing into Mexico and eventually the Gulf of Mexico. Along the way, the river serves as a vital irrigation source for crops as varied as the terrain through which it passes, nourishing everything from pecans to the justly famous green chiles of the Hatch Valley. See *El Encanto, Inc. v. Hatch Chile Co.*, 825 F. 3d 1161 (CA10 2016).

To ensure “an equitable apportionment” of the Rio Grande’s waters, Colorado, New Mexico, and Texas entered into the Rio Grande Compact in 1938. 53 Stat. 785. Congress approved it the following year. *Ibid.*; see U. S. Const., Art. I, §10, cl. 3 (requiring congressional approval for a State’s “Compact with another State”). The Compact directs Colorado to deliver a specified amount of water to the New Mexico-Colorado border. 53 Stat. 787–788. New Mexico must then deliver water to Elephant Butte Reservoir,

GORSUCH, J., dissenting

located about 100 miles north of the Texas line, in order to ensure Texas receives its share of the river’s waters. *Id.*, at 788.

The United States Bureau of Reclamation operates the Reservoir as part of the federal Rio Grande Project. That Project serves two roles relevant here. First, pursuant to contracts with New Mexico and Texas water districts (serving areas around Las Cruces and El Paso), the Project supplies water from the Reservoir to those districts using a roughly 57%–43% split between New Mexico and Texas. *Texas v. New Mexico*, 583 U. S. 407, 410 (2018) (*Texas I*). We have called these the Downstream Contracts, and they essentially work to supplement the Compact, which is silent as to the precise quantity of water owed Texas. *Id.*, at 410–411. Second, the Project ensures the delivery of a set amount of water to Mexico to satisfy treaty obligations to that country. *Id.*, at 410.

Over the better part of a century, this arrangement has worked reasonably well. Yes, disagreements occasionally arise, sometimes leading to the filing of a complaint in this Court. But, invariably, these disputes have settled before the Court reached the merits. See, e.g., *Texas v. New Mexico*, 308 U. S. 510 (1939); *Texas v. Colorado*, 474 U. S. 1017 (1985).

B

In the early 2000s, another disagreement arose. The causes? The 100-mile-long journey water must travel from Elephant Butte Reservoir to Texas, and the increase in groundwater pumping along that route. Groundwater and surface water (like the Rio Grande) are often connected, drawing from and feeding back into one another. Because of this connection, pumping by New Mexicans downstream of the Reservoir (that is, between Elephant Butte and Texas) reduces the amount of Project water that reaches Texas’s water district. Texas saw this as a violation of the

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Compact. So in 2013, it sought to file a bill of complaint in this Court against New Mexico. (Colorado, as a signatory to the Compact, joined as a defendant). We agreed to exercise our original jurisdiction over the case and appointed a Special Master to aid in our consideration of it. *Texas I*, 583 U. S., at 411.

In brief, here is how Texas framed its claim. It argued that the Compact implicitly guarantees that the State’s water district will receive a certain minimum quantity of Rio Grande water from New Mexico. And, Texas contended, we should calculate the amount of that water based on the “conditions” in and around the river “that existed in 1938 at the time the Rio Grande Compact was executed.” Texas Complaint 5, ¶10. Back in 1938, there was hardly any groundwater pumping. So adopting 1938 conditions as our baseline would have the effect of giving Texas’s water district more water. See *id.*, at 8–10, ¶18.

New Mexico resisted Texas’s claim. Among other things, New Mexico observed that the Compact is silent about how to measure water due Texas. N. M. Brief in Opposition 14–15 (Mar. 11, 2013). And New Mexico stressed that, since approximately 1980, the federal government has relied on data about Rio Grande conditions between 1951 and 1978—the so-called D2 Period, when groundwater pumping was more prevalent—to calculate the amount of water due Texas’s water district under the Downstream Contracts. See N. M. Counterclaims 10–11, ¶¶40–41 (May 22, 2018); Joint Reply to Exception of the United States by the State of Texas et al. 5–6. New Mexico stressed, too, that Texas had not previously objected in this Court to that practice—a sign, New Mexico said, that Texas understood it to be entirely consistent with the Compact. N. M. Answer 10–11, ¶36 (May 22, 2018).

Abandoning decades of practice and mutual understanding, New Mexico continued, would threaten dire consequences for its economy. Farming along the Rio Grande,

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New Mexico explained, relies in part on groundwater pumping for irrigation. And replacing the D2 Period with a 1938 baseline, when pumping was all but nonexistent, could put at risk nearly 50,000 jobs (in a State of 2 million people) and up to 10% of the State’s gross domestic product. See 1 Tr. of Proceedings before the Special Master 47 (Oct. 4, 2021).

In short order, the United States moved to intervene and “filed a complaint that presented the federal government’s interests.” Tr. of Oral Arg. 4 (Jan. 8, 2018) (2018 Transcript). For its part, the United States agreed with Texas about the bottom line—that New Mexican groundwater pumping below the Elephant Butte Reservoir was “interfering with the equitable apportion[ment of] water to Texas.” *Id.*, at 29–30. But it disagreed with Texas about the appropriate method for calculating the amount of water owed Texas. A holding for Texas that the Compact required the use of a 1938 baseline, the federal government worried, would require it to alter its longstanding use of the D2 Period when assessing what deliveries were due under the Downstream Contracts. Reply Brief for United States 20 (July 28, 2017) (2017 Reply). Intervention, as the federal government put it, would allow it to protect its interest “in the Project’s operation” as well as its interest in ensuring sufficient water reaches Mexico to satisfy its treaty obligations. *Id.*, at 11–12, 18.

The United States also flagged for us a procedural issue: Because the federal government wasn’t a signatory to the Compact, it wasn’t clear on what basis it could press any Compact claims separate from the claims held by the signatory States. This raised the question whether the United States “could go forward” with claims in its own right “if Texas’s complaint were dismissed” or the parties settled. 2018 Transcript 14. The government speculated that it might be able to bring an independent claim as a “third-party beneficiary,” *id.*, at 19, or perhaps had some “implied right of action” under general “equitable” principles, *id.*, at

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20. But because Texas’s complaint *was* “going forward,” the government asked us not to “reach that” issue. *Id.*, at 14.

After hearing argument, in 2018 we “permitted the federal government to participate in [this] compact sui[t].” *Texas I*, 583 U. S., at 412. In our decision, we accepted the federal government’s suggestion that there was no need to decide whether it had valid, independent Compact claims of its own. *Id.*, at 415. Instead, we held, four “considerations taken collectively persuade[d] us” that the government’s participation was appropriate. *Id.*, at 413. *First*, we recognized the federal government’s “duties under the Downstream Contracts” afforded it an “interest in seeing that water is deposited in the Reservoir consistent with the Compact’s terms.” *Id.*, at 414. *Second*, we gave weight to New Mexico’s concession that the Project “plays an integral role in the Compact’s operation.” *Ibid.* *Third*, we said that “[p]ermitting the United States” to intervene would “allow it to ensure” its treaty obligations to Mexico were “honored.” *Id.*, at 415. *Fourth*, we emphasized that we had no reason to decide whether the government could press Compact claims independently of the States because “the United States ha[d] asserted its Compact claims in an existing action brought by Texas, seeking substantially the same relief and without that State’s objection.” *Ibid.*

At the same time, we expressly warned that “permission” to intervene “should not be confused for license.” *Id.*, at 413. In particular, we stressed, “[t]his case does not present the question whether the United States could initiate [its own] litigation . . . under the Compact or expand the scope of an existing controversy between [the] States.” *Id.*, at 415. And, we added, “[n]othing in our opinion should be taken to suggest whether a different result would obtain in the absence of any of the considerations” we had laid out, “or in the presence of additional, countervailing considerations.” *Ibid.*

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C

Once the case returned to the Special Master, it appeared to be heading in the same direction as prior disputes about the Rio Grande Compact. After completing an “initial phase” of a trial, months-long negotiations followed. Third Interim Report 35. Ultimately, those discussions culminated in a settlement and proposed consent decree in 2022. In the decree, the parties agreed to continue using the D2 Period to measure the amount of water due Texas’s water district. *Id.*, at 42; see Addendum to Third Interim Report 8–11 (Addendum). But they also agreed Elephant Butte—over 100 miles from the Texas border—wasn’t the appropriate place to measure the amounts due Texas in light of the New Mexican groundwater pumping between the Reservoir and state line. Instead, the States resolved to measure water flows into Texas at a federally operated gauge near El Paso, Texas, by the border between the two States. Third Interim Report 7; Addendum 8–9.

In short, as with any settlement agreement, each side gave something up to gain something it wanted. Through the use of the El Paso gauge, Texas received a guarantee that deliveries to its water district would be protected from excessive New Mexican groundwater pumping between Elephant Butte and the state line. And through the continued use of the D2 Period as the baseline, New Mexico won its water users the right to maintain at least some of that pumping. Colorado, as a signatory to the Compact, gave its assent.

For the United States, the consent decree promised business as usual. That’s because “the [c]onsent [d]ecree essentially adopt[ed]” the federal government’s “own method of operating.” Third Interim Report 107. The government would continue to use the D2 Period for measuring the amounts it distributed to Texas’s and New Mexico’s water districts, just as it had sought when it intervened and as it has done “for approximately the last 40 years.” *Id.*, at 42.

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The federal government would not even have to establish a new water gauge at El Paso, for it already operates one. See *id.*, at 107. It was undisputed, too, that the consent decree would protect water due Mexico under this country’s treaty with that nation. *Id.*, at 94, n. 10.

The federal government objected to the decree’s entry anyway. In an unexpected and still-unexplained move, the United States abandoned its position, held for over 40 years, that its own D2 Period data supply the correct method for measuring the amount of water it must deliver to Texas and New Mexico water districts. Instead, the federal government began advocating for something similar to what Texas had once urged—the “broad elimination of New Mexican [groundwater] pumping through a return to a 1938” baseline. *Id.*, at 14. Unlike Texas, however, the federal government had never alleged in its complaint that the Compact required the use of the 1938 baseline. In fact, it still has not sought to plead such a claim. Perhaps even stranger yet, despite its new litigating position, the United States continued (and still continues) to deliver water to the water districts using the D2 Period as its guide.

D

In a detailed 115-page report, the Special Master recommended we approve the consent decree. He advised that it was “difficult to envision a resolution to this matter that might be superior” to it. *Id.*, at 15. In particular, the Special Master observed that the States and federal government had long used the D2 Period to measure the apportionment of water due each State. And nothing in the voluminous submissions he received suggested that they had to do otherwise. As he put it, no evidence suggested that “the Compacting States believed [in 1938] they were locking in . . . any particular condition of development,” such as a certain amount of groundwater pumping, for determining what water was due Texas or New Mexico. *Id.*,

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at 76–77.

That left the question what to do with any claims the federal government might believe it has and wishes to pursue as a result of its newfound views. Our decision in *Texas I*, the Special Master recalled, did not decide whether the government had viable, independent Compact claims of its own. And rather than undertake that assessment himself, he recommended dismissing any claims the government might have without prejudice. Third Interim Report 115. The Court, he reasoned, had taken the rare step of exercising its original jurisdiction because the case involved a dispute between two States. *Id.*, at 11. That dispute was now resolved. And, he said, the federal government could pursue any claims it might have against the States or other water users as it normally does, “in one of several ongoing or any new lower court actions.” *Id.*, at 99. In fact, as the Special Master alluded to, the federal government is already involved in Compact-related litigation with New Mexico in federal district court. See *New Mexico v. United States*, No. 1:11–cv–00691 (DNM).

Though the States’ agreement and the Special Master’s recommendations promised to bring to an end a decade of litigation, the United States filed an exception to those recommendations. It asked us to reject the proposed decree and order the Special Master to conduct further proceedings yet. We agreed to hear oral argument on the federal government’s request.

II

A

The principles that guide our analysis in original jurisdiction water disputes like this one are long settled. The “power to control navigation, fishing, and other public uses of water,” we have said, “is an essential attribute of [State] sovereignty.” *Tarrant Regional Water Dist. v. Herrmann*,

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569 U. S. 614, 631 (2013) (internal quotation marks omitted). But in our federal system, one State may not exercise its sovereignty in ways that deny another State the capacity to exercise its own. So to prevent upstream States from wholly draining rivers that would otherwise reach their downstream neighbors, this Court many years ago developed the doctrine of equitable apportionment—the notion “that States have an equal right to make a reasonable use of a shared water resource.” *Mississippi v. Tennessee*, 595 U. S. 15, 24 (2021) (internal quotation marks omitted); see *Kansas v. Colorado*, 206 U. S. 46 (1907).

Time and again, we have urged States to effect this apportionment “by mutual accommodation and agreement” rather than through litigation. *Florida v. Georgia*, 585 U. S. 803, 809 (2018) (internal quotation marks omitted) (collecting cases). Agreements of that kind usually take the form of an interstate compact. Once approved by Congress, compacts gain the status of federal law. *Texas I*, 583 U. S., at 412. And because States’ authority over their waters is an essential attribute of their sovereignty, a compact’s apportionment of water between two or more States “is binding upon . . . all water claimants” in those States, “even where [a] State had granted the water rights before it entered into the compact.” *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92, 106 (1938). So, for example, a compact between Texas and New Mexico allocating water between them binds their respective water districts that contract for water with the federal government, along with all other water users in their jurisdictions.

Notably, compacts also bind the federal government when it distributes water from its reclamation projects pursuant to agreements like the Downstream Contracts. Compacts do so not only because they *are* federal law. *Texas I*, 583 U. S., at 412. They do so as well because Congress has specifically directed federal reclamation projects to “follow state law as to water rights” unless that law conflicts with

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some other “explicit congressional directive.” *California v. United States*, 438 U. S. 645, 673 (1978); see 43 U. S. C. §383. As we have put it, Congress has “subject[ed] to the authority of” the States “[a]ll of the acts of the [federal] Reclamation Bureau in operating [its] reservoirs.” *Nebraska v. Wyoming*, 295 U. S. 40, 42 (1935) (*Nebraska I*). So an interstate water rights compact “necessarily bind[s]” the government as it would “any other appropriator in th[e] [S]tate.” *Id.*, at 43. We have referred to this aspect of congressional water policy as a form of “cooperative federalism.” *California*, 438 U. S., at 650.

While compacts provide a highly valuable tool for resolving water disputes, disagreements about the meaning of their terms arise from time to time. The Constitution vests this Court with original jurisdiction to adjudicate these interstate disputes, an “awkwar[d]” arrangement where we sit, in effect, as a trial court, a court of first (and last) review. *South Carolina v. North Carolina*, 558 U. S. 256, 267 (2010). Decide though we may, our general “‘preference’” is for States to negotiate to resolve their differences. *Florida*, 585 U. S., at 809. When those negotiations bear fruit, the product is often a proposed consent decree containing “detailed mechanisms to promote compliance with the [c]ompact’s terms.” *E.g.*, *Kansas v. Nebraska*, 574 U. S. 445, 451 (2015).

Because a consent decree in a water rights case seeks simply to provide more “detailed mechanisms” to implement a compact, it bears the same force as one. Just like a compact, a consent decree is binding on all those in the affected States, regardless of their “participation” in the case, *Nebraska v. Wyoming*, 515 U. S. 1, 22 (1995), or their “assent or dissent,” *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 355 (1908). And, once more, the same holds true when it comes to federal reclamation projects that distribute water to users in the affected States. They must oper-

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ate consistently with a decree's terms unless doing so conflicts with some other explicit congressional directive. See *Nebraska I*, 295 U. S., at 43; *California*, 438 U. S., at 674.

Still, our approval of a consent decree is hardly a given. The parties may not use a settlement to rewrite a compact, for a new compact requires new congressional approval. See *Kansas*, 574 U. S., at 455–456. So, when presented, as we are here, with a request to approve a proposed consent decree, two considerations guide our decisionmaking. *First*, we ask whether the decree is “consistent with the compact itself.” *Id.*, at 455. In answering that question, we do not require the States’ proposal to be perfect. Rather, we will “give [a settlement] effect” as long as it is not “wholly contrary to relevant evidence, . . . even if we would reach a different conclusion upon the same evidence.” *New Hampshire v. Maine*, 426 U. S. 363, 369 (1976). *Second*, because the parties’ agreement is the driving force behind the decree, we consider whether the decree purports to bind third parties the States have no authority to represent. In particular, we confirm that a proposed settlement does not improperly impose duties or obligations on those third parties without their consent or dispose of the valid claims they enjoy. *Firefighters v. Cleveland*, 478 U. S. 501, 529 (1986).

B

With these rules in mind, I see no sound basis on which we might refuse to adopt the Special Master’s recommendation to approve the States’ consent decree.

First, the decree is consistent with the Compact. All agree the Compact implicitly guarantees Texas some minimum amount of Rio Grande water each year. Third Interim Report 75–76, and n. 6. In their settlement, the States propose to calculate that amount by reference to the D2 Period and measure it at a water gauge at El Paso. Both terms are entirely appropriate. The States have relied on the D2 Period for decades. And in making distributions to those

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States’ water districts pursuant to the Downstream Contracts, so has the federal government. These longstanding practices are “highly significant evidence of [everyone’s] understanding of the [C]ompact’s terms.” *Tarrant Regional Water Dist.*, 569 U. S., at 636 (internal quotation marks omitted). All agree, too, that the Compact expressly authorizes representatives from each compacting State to choose gauge locations. See Third Interim Report 69–70. So use of the El Paso gauge is consistent with the Compact as well. Indeed, by using that gauging station rather than one 100 miles upstream from the Texas border at the Elephant Butte Reservoir, the decree ensures Texas’s water district is protected from excessive groundwater pumping in New Mexico between the Reservoir and the state line.

Second, the consent decree does not impose any new improper duty or obligation on the federal government or deny it the ability to pursue any valid claim it may have. Yes, under the decree, reclamation authorities must measure water they distribute to Texas’s and New Mexico’s water districts using the D2 Period. And they must use the El Paso gauging station to do so. But, again, the federal government has employed the D2 Period to measure the water it distributes for decades, and it has long maintained the El Paso gauging station. The government cannot sensibly suggest that it would be improper to require it to continue doing as it has long done.

Nor is there anything unusual about any of this. As we have seen, under longstanding federal law, a consent decree between the States “will necessarily bind” “the Reclamation Bureau” because “[a]ll of [its] acts . . . in operating the [Project] so as to impound and release waters of the river are subject to the [States’] authority.” *Nebraska I*, 295 U. S., at 42–43; see Part II–A, *supra*. Accordingly, Texas and New Mexico are entitled to decide what water rights their governmental water districts are due, and the federal government’s reclamation project is bound to honor what the

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States say on the subject. See *ibid.*; *California*, 438 U. S., at 675. Of course, a consent decree would be improper if it left the federal government unable to meet some other “explicit congressional directive.” *Id.*, at 673. But the government does not argue anything of the sort here, never suggesting, for example, that the proposed decree would risk its obligations under its treaty with Mexico. To the contrary, it is undisputed that compliance with the decree would “*protect* the [t]reaty water.” Third Interim Report 94, n. 10 (emphasis added).

Think about it this way. A federal reclamation project may not decide that state water districts are entitled to different water rights than States have specified in their compacts and consent decrees. Those agreements bear the force of federal law, as Congress has directed and our cases have long recognized. And were there any possible remaining room for doubt, the Downstream Contracts themselves dispel it. They direct the contracting parties (the federal government and the water districts) to apply two sources of law when allocating water: that of the States and the federal Reclamation Act of 1902—the same statute that instructs the federal government to defer to the States in allocating water rights among their users and to operate reclamation projects consistent with what state law requires. See 4 Tex. App. in Support of Partial Summary Judgment 593; 2 *id.*, at 911–912; 43 U. S. C. §383.

Nor does the consent decree dispose of any valid claims the federal government may possess in its own right, whether under the Compact or any other source of law. To be sure, to the extent the federal government seeks to pursue a claim “wholly derivative” of the States (or their water districts), those claims necessarily “rise or fall with the claims of the States,” and the federal government has no independent right to press them. *Alabama v. North Carolina*, 560 U. S. 330, 357 (2010). But, to the extent the federal government thinks it has any independent claims of its

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own, the Special Master recommends dismissing them without prejudice.

That is “an entirely appropriate”—and our long-preferred—“means of resolving whatever questions remain” after the resolution of an interstate dispute. *California v. Nevada*, 447 U. S. 125, 133 (1980). After all, once a dispute between the States comes to an end, so does the basis for our exclusive original jurisdiction—jurisdiction we exercise only “sparingly.” *South Carolina*, 558 U. S., at 267; see 28 U. S. C. §1251. A dismissal without prejudice allows the federal government to pursue any valid independent claims it may have in the ordinary course in lower courts. And, naturally, should the federal government prevail in that litigation in a way that affects the consent decree, it may return to this Court and seek a modification of that decree.

Our consent-decree decisions outside the water-rights context confirm as much. Take *Firefighters v. Cleveland*, a Title VII discrimination suit brought by “an organization of black and Hispanic firefighters” against their employer, the city of Cleveland. 478 U. S., at 504. Under the terms of a proposed consent decree, the city sought to revise an allegedly discriminatory promotion exam and otherwise make up for its “assertedly limited minority advancement.” *Id.*, at 505; see *id.*, at 510. An intervenor, the union “represent[ing] a majority of Cleveland’s firefighters,” objected on the ground that the remedy would harm its “non-minority” members. *Id.*, at 506, 512. Affirming the entry of the decree, we noted that the union remained free to bring its own independent Title VII or Fourteenth Amendment claims in separate litigation. *Id.*, at 530. “[W]hether [those] claims have merit [is a] questio[n] that must be presented in the first instance to the [d]istrict [c]ourt.” *Ibid.* Until then, city employees, including union members, would be subject to the consent decree’s promotion provi-

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sions. If the union members won on their statutory or constitutional challenges, however, the decree would have to be modified to bring it in line with those laws. See *id.*, at 526–528. So too here.¹

III

Despite reaching a different result, the majority has little to say in response. It does not dispute the above account of our settled water law jurisprudence. Nor does it identify any inconsistency between the proposed consent decree and the Compact’s terms. Instead, bypassing all that, the majority proceeds in two steps. First, it suggests, the United States may have valid, independent Compact claims of its own that the consent decree extinguishes; second, the majority insists, holding otherwise would be inconsistent with our decision in *Texas I*, where we allowed the federal government to participate to protect its interests. Neither argument is sound.

A

Primarily, the majority contends the decree risks disposing of valid, independent claims that may belong to the federal government. To advance its position, the majority relies on supposed “concessions” by Texas and New Mexico before the Special Master that, if the consent decree were

¹The majority notes that, in *Firefighters*, the union had not raised any claims at the time the district court confirmed the consent decree; it had merely raised its objections when resisting that decree. *Ante*, at 19, n. 5. But in that particular, too, this case parallels *Firefighters*, for the United States still has not alleged a 1938 baseline, instead pressing that point in its objections to the States’ proposed decree. The majority finds “difficult to understand” *Firefighters*’ recognition that a consent decree may be entered even if an intervenor might later prevail in a separate suit in a manner requiring the modification of the decree. *Ante*, at 19, n. 5. But there is nothing difficult to understand, or even unusual, about any of that: Many years and millions of dollars into a dispute, even less-than-ideal (and perhaps short-lived) settlements often may prove appealing to the parties and legally permissible for a court to approve.

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confirmed, the federal government would be left with “no remaining Compact claims.” *Ante*, at 16 (emphasis deleted); see also *ante*, at 19, n. 5 (treating a similar assertion by Texas at oral argument as a “conce[ssion]”). This argument is wrong for a number of reasons.

First, the majority’s telling omits what happened next. Far from “agree[ing]” with the States, *ante*, at 16, the Special Master recommended we dismiss any claims the federal government might have in its own right “without prejudice to being asserted in other fora,” Third Interim Report 11. This recommendation applied, he said, “regardless of whether the United States bases its claims on Reclamation law, state law, the Compact, or some other source of authority.” *Ibid.* Because the States did not file an exception to this recommendation, we may treat them as having acceded to it. See *Texas v. New Mexico*, 592 U. S. 98, 105 (2020). That alone is enough to answer the majority.

Second, the majority does not explain why the usual course of dismissing a third party’s claims without prejudice wouldn’t be “entirely appropriate” here, as it ordinarily is in our original jurisdiction cases. *California*, 447 U. S., at 133; see *ante*, at 16–18. The majority does not, for example, explain why the federal government could not press whatever independent Compact claims it believes it has in lower courts and return here, if necessary, to seek modification of the States’ consent decree. See Third Interim Report 99–100. The majority does not offer any such explanation because it cannot. See *supra*, at 15–16, and n. 1. Until the government had the case stayed to participate in this one, the United States was already involved, as we have seen, in Compact litigation with New Mexico in federal district court. See Memorandum Opinion and Order in *New Mexico v. United States*, No. 1:11-cv-00691 (DNM, Mar. 29, 2013), ECF Doc. 193, pp. 5–6. Perhaps the government thinks it more convenient to remain here than to return for decree modification should it prevail in that suit or another.

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But that “do[es] not provide a basis for declining to [approve] a decree.” *Idaho ex rel. Evans v. Oregon*, 462 U. S. 1017, 1026 (1983).

Third, the majority struggles to spell out how the government might possibly hold Compact claims in its own right—that is, independent of the States’ claims. Yes, the majority describes the government’s present “position”—namely that the Compact imposes a 1938 baseline—and repeats the observation that “the Compact trumps state water law.” *Ante*, at 15. But the majority does not suggest, as the government once did, that the United States may sue as a third-party beneficiary of the Compact or under some ill-defined equitable cause of action. See *ante*, at 11, n. 2, 14; Part I–B, *supra*; 2018 Transcript 19–20. Nor does the majority purport to identify anything in the Compact that might entitle the federal government the right to sue to demand a 1938 baseline. See *Tarrant Regional Water Dist.*, 569 U. S., at 632 (“silence in compacts” must be read in favor of “the States’ authority to control their waters”). In fact, the majority does not dispute that the United States still has yet even to plead such a claim of its own.²

²The most the majority can muster in response is the assertion that, around the time it intervened, the United States did not affirmatively “esche[w] a 1938 baseline.” *Ante*, at 13, n. 3. The federal government, the majority continues, did not “purport to take any definitive position on what groundwater-pumping baseline the Compact should ultimately be read to require.” *Ibid.* But even this tepid defense proves too much for the record to bear. Time and again, the United States represented that one factor warranting its participation in the suit was its interest in continuing to use the D2 Period in its Project operations—an interest necessarily incompatible with a 1938 baseline. See, *e.g.*, Memorandum in Support of Motion of United States to Intervene as Plaintiff 5–6 (Feb. 27, 2014); U. S. Brief in Opposition 18–19 (June 16, 2014); 2017 Reply 19–20. Does the majority believe the government was asserting an interest in *violating* the Compact? We need not speculate. In support of its asserted interest, the United States pointed to an operating agreement with the water districts to use the D2 Period. And that agreement holds itself out as Compact compliant. See N. M. Exh. 510, pp. 5, 14.

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Fourth, the majority conspicuously avoids the lessons of our water law jurisprudence. So, for example, the majority expresses surprise that the government might be bound to honor the terms of the consent decree until and unless it prevails in other litigation on its own claims and then returns here to seek revision of the decree. *Ante*, at 19, n. 5; n. 1, *supra*. But about that there should be no surprise. Few rules in water law are more settled than that federal reclamation projects must comply with any Compact, state water law, or consent decree term “not inconsistent with clear congressional directives respecting the project.” *California*, 438 U. S., at 672; see also Part II, *supra*. And here, no one, the majority included, has identified any congressional directive, much less a clear one, inconsistent with the consent decree before us.

Fifth, the majority’s reasoning doesn’t withstand scrutiny even under ordinary consent-decree principles. Suppose, as the majority does (incorrectly), that approval of the decree would necessarily preclude the United States from claiming in any other forum “that New Mexico’s present degree of groundwater pumping violates the Compact.” *Ante*, at 17. Even so, the majority is mistaken when it claims that the proposed consent decree “would have the effect of ‘cutting [the United States] off from a remedy to which’ it alleges it is entitled.” *Ante*, at 17–18 (quoting *Lawyer v. Department of Justice*, 521 U. S. 567, 579 (1997)). It is undisputed that the government’s present “prayer for relief” in this case seeks only to “prohibit th[e] interference” with the Project caused by excess groundwater pumping in New Mexico. *Ante*, at 16–17. All agree, too, that at the time the United States intervened, the government determined how much pumping was too much by reference to the D2 Period; the government did not allege—and still has not alleged—in its complaint that the Compact mandates a 1938 baseline. Part I–B, *supra*. To complete the majority’s clipped quotation, then, the decree would “dispos[e] of [the government’s]

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claim not in the forbidden sense of cutting [it] off from a remedy” to which it alleges it is entitled, “but only in the legitimate sense of granting [the government] the very relief [it] had sought.” *Lawyer*, 521 U. S., at 579; see *infra*, at 22–24.

Instead of answering any of these problems, the majority changes the subject. It replies by observing that the federal government’s deliveries under the Downstream Contracts play a central role in effectuating the Compact by ensuring certain Rio Grande waters reach New Mexico and Texas water districts. *Ante*, at 9–10. That may be so, but it is no answer for reasons we have already seen. Those contracts do not promise water districts that the 1938 conditions will be used in measuring the water due them. Nor may the federal government seek to vindicate the contractual rights of the States’ own water districts. Rather, Congress’s instructions, a century’s worth of this Court’s precedents, and the Downstream Contracts themselves teach that the compacting States get to decide what water rights those and other water users in their jurisdictions enjoy. And a federal reclamation project is bound to honor those decisions absent some clear congressional command to the contrary. See Part II, *supra*.

B

At this point, the majority retreats. Perhaps what I have laid out above would hold true in any other case, it replies, but this one is special. Special, the majority asserts, because in *Texas I* we allowed the United States to participate in this case. And that ruling, the majority says, necessarily means the United States may pursue, independently of Texas, a claim that the Compact requires use of the 1938 conditions. *Ante*, at 9–13.

This argument is mistaken, too. Recall that, in *Texas I*, the government suggested it might be able to sue in its own right under third-party-beneficiary or equitable-cause-of-

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action theories. See Part I–B, *supra*. But recall, too, that the federal government asked us *not* to “reach” the question whether it could independently bring claims of its own under these theories or any others. *Ibid.*; 2018 Transcript 14. It said answering the question whether it could sue in its own right was needless because Texas’s claims were live. *Ibid.* We proceeded in express reliance on that representation, stressing that we were *not* resolving either “the question whether the United States” could sue independently of Texas “under the Compact” or the question whether it could otherwise “expand the scope of an existing controversy between States.” *Texas I*, 583 U. S., at 415.

Really, there was no way we *could* have passed on the federal government’s current assertion that it has a right to pursue a claim that the Compact requires the use of a 1938 baseline. As the majority concedes, *Texas I* “repeatedly” cabined our permission to intervene to “the Compact claims [the United States] has pleaded in this original action.” *Ante*, at 11, n. 2 (quoting 583 U. S., at 415). As the majority admits, too, the government has never pleaded the existence of a 1938 baseline. *Ante*, at 13, and n. 3. Instead, when it sought to intervene, the government took just the opposite view, arguing that its longstanding use of the D2 Period was consistent with the Compact. Allowing the government to reverse course now is not required by anything in *Texas I*. More nearly, it defies that decision by “expand[ing] the scope” of the parties’ litigation. *Ante*, at 18. In fact, it is hard to imagine anything that might do more to expand the scope of this dispute than forcing the States to continue to litigate when they have already resolved their differences. Cf. *Town of Chester v. Laroe Estates, Inc.*, 581 U. S. 433 (2017) (intervenor expands the scope of a case when it requests a money judgment different from the one sought by plaintiff).³

³In response, the majority wishfully asserts that “nothing about [its]

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The truth is, this Court has “often permitted the United States to intervene” even without a valid claim of its own. *Maryland v. Louisiana*, 451 U. S. 725, 745, n. 21 (1981). *Texas I* was simply of a piece with that practice. See 583 U. S., at 413 (citing that portion of *Maryland*). Far from holding the federal government could pursue a claim in its own right, we permitted it to “participate . . . to defend . . . interests that a normal litigant might not be permitted to pursue in traditional litigation.” 583 U. S., at 412–413 (internal quotation marks omitted); accord, *ante*, at 9. And allowing intervention in that posture is anything but a holding that the government may pursue an independent claim of its own. Cf. Fed. Rules Civ. Proc. 24(a)–(b) (setting out different Rules for intervention depending on whether an individual has “an interest” or “a claim”).

Beyond that flaw with the majority’s reading of *Texas I* lie others. In deciding to take the rare step of permitting intervention, we stressed that multiple “factors” “taken collectively persuade[d] us” to do so. 583 U. S., at 413, 415. At the same time, we stressed that “[n]othing in our opinion should be taken to suggest” the same result “would obtain in the absence of any of the[m] . . . or in the presence of additional, countervailing considerations.” *Id.*, at 415. Factors present then, however, are absent now. And additional considerations have indeed arisen. In fact, through the consent decree, the federal government promises to receive

decision here expands the scope of this litigation.” *Ante*, at 11, n. 2 (citing *ante*, at 18). Why? Because the United States “asserts th[e] same claim[s]” “and seeks th[e] same relief” “today” as it did “in 2018.” *Ante*, at 18. Of course, if that were true and the United States *were* “staying the course,” *ibid.*, it would be *agreeing* with the States that use of the D2 Period is permissible. But admitting as much would require the majority to do what it will not—recognize that the government’s late-stage about-turn in demanding a 1938 baseline remains unpleaded and alters the considerations that informed *Texas I*. See *ante*, at 13, 18 (highlighting Texas’s change of position, but dismissing the government’s as “beside the point”).

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everything it initially sought. Cf. *Campbell-Ewald Co. v. Gomez*, 577 U. S. 153, 178 (2016) (ROBERTS, C. J., dissenting) (“When a plaintiff files suit seeking redress for an alleged injury, and the defendant agrees to fully redress that injury, . . . there is no longer any necessity to expound and interpret the law” (emphasis deleted; internal quotation marks omitted)).

Take the treaty. One of the factors we cited as favoring intervention concerned the then-live possibility that “a breach of the Compact could jeopardize [the federal government’s] treaty obligations” to Mexico requiring it to deliver certain Rio Grande waters. 583 U. S., at 414. Now, however, everyone agrees the consent decree will do nothing to interfere with those obligations, but will instead “protect the [t]reaty water.” Third Interim Report 94, n. 10.

Next, consider the federal government’s concern in 2018 that litigation over the Compact could ultimately require it to use the 1938 conditions in its distributions to water districts, as Texas then sought. *That* development, the government worried, could interfere with its longstanding use of the D2 Period in its operations at the Reservoir and the Downstream Contracts. 2017 Reply 20; see 2018 Transcript 30–31 (Texas highlighting this as an example of where “Texas and the United States are not exactly going to be raising the same arguments”). But that, too, is no longer a worry. Under the proposed settlement, operations may continue at the Reservoir as they have for over 40 years.

Finally, recall that, when it intervened, the federal government disagreed with Texas about the use of the 1938 baseline but “substantially” agreed that groundwater pumping in New Mexico below the Reservoir interfered with the Texas water district’s receipt of water to which it was entitled. *Texas I*, 583 U. S., at 415. The parties’ proposed decree addresses this concern, as well, by ensuring

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the water due Texas (again, calculated using the government’s D2 Period data) is measured near the state line, at the El Paso gauging station, and not over 100 miles upstream, along a course where New Mexico users pump groundwater from the Rio Grande.

Here’s the bottom line: *Texas I* did not hold—nor could it have held—that the United States could pursue an independent Compact claim to enforce a 1938 baseline. To the contrary, the government’s disagreement with Texas about the appropriateness of a 1938 baseline was one of the considerations that led us to permit intervention. At the same time, the interests the federal government did assert then have been satisfied now by the States’ agreement. To conclude, as the majority does, that the government at this late hour may assert essentially any Compact-related claims—even unpleaded ones—is to ignore all this and the many caveats that accompanied our decision. Where *Texas I* warned the United States not to “confus[e]” “our permission” to intervene “for license,” *id.*, at 413, the Court now reverses course and allows the government to exercise squatter’s rights over our original jurisdiction.

IV

“The history of the relationship between the Federal Government and the States,” we once observed, contains a “consistent thread of . . . continued deference to state water law by Congress.” *California*, 438 U. S., at 653. By “den[ying]” the Special Master’s recommendation to approve the States’ consent decree “without [the] consent” of the federal government, *ante*, at 20, the Court disregards this long, unbroken practice. Not to ensure the federal government can comply with some statutory directive at odds with the decree. Not to protect the interests the government identified when it entered the case. Certainly not to avoid impermissibly disposing of a valid claim. No, the majority defies Congress’s directions and a century of our precedent all in aid

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of a position that the federal government has never pleaded, one that works *against* the government’s decades-old, real-world interests. And the majority does so even when the consent decree would permit the government to raise any valid, independent claims of its own in a different forum.

Where does that leave the States? After 10 years and tens of millions of dollars in lawyers’ fees, their agreement disappears with only the promise of more litigation to follow. All because the government won’t accept a settlement providing it with everything it once sought, and now seeks to promote the use of an alternative 1938 baseline that no party seeks and New Mexico represents could cost it tens of thousands of jobs and a large segment of the State’s economy. “[C]ooperative federalism” that is not. *California*, 438 U. S., at 650.

Looking beyond this case to future ones does not brighten the prospect. When the federal government sought to enter the case, it did so “without [Texas’s] objection,” a consideration that carried weight with us. *Texas I*, 583 U. S., at 415. But in light of the veto power the Court seemingly awards the government over the settlement of an original action, what State in its right mind *wouldn’t* object to the government’s intervention in future water rights cases? If, as happened here, even heavily caveated permission to intervene may end up federalizing an interstate dispute, what State (or Court) would ever want to risk letting the nose make it under the tent? In that way, too, I fear the majority’s shortsighted decision will only make it harder to secure the kind of cooperation between federal and state authorities reclamation law envisions and many river systems require.

With respect, I dissent.

Tab R – National Groundwater Use



WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westernstateswater.org

July 1, 2024

Sent via email: pcast@ostp.eop.gov

PCAST Groundwater Working Group

Inez Fung, Joe Kiani, Steve Pacala, Laura Greene, Catherine Woteki

Subject: State Groundwater Management and Protection

Dear PCAST Groundwater Working Group Co-Leads and Members:

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965, representing eighteen States. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future. Two of our WSWC position statements related to groundwater are summarized below.¹

Water in the West is an increasingly scarce and precious resource. Groundwater is a critically important resource that is vital to the economy and environment of the arid West. Western States recognize the importance and role of comprehensive groundwater planning in overall water management. The conditions affecting groundwater supplies, demands, and quality vary considerably across our individual member States, and we anticipate that their comments will reflect these variations. States are in the best position to protect groundwater quality and quantity. Western States understand and have demonstrated effective and comprehensive groundwater management policies, programs, and projects. They have shown the ability and authority to protect, allocate, and administer groundwater resources through state laws and regulations tailored to their individual circumstances. Working cooperatively with their federal partners, States have also shown that they have the ability and authority to address federal needs regarding groundwater within existing legal frameworks, including but not limited to, memoranda of understanding, water rights compacts, stipulations, and other methods.

States have exclusive authority over the allocation and administration of rights to the use of the groundwater located within their borders and are primarily responsible for allocating, protecting, managing and otherwise controlling the resource. Federal agencies should work cooperatively with appropriate state agencies and officials to address federal needs involving groundwater through state laws and authorities. The WSWC opposes any and all efforts that would establish a federal ownership interest in groundwater not otherwise recognized or allowed under state law, or diminish the primary and exclusive authority of States over groundwater. Wisely, the United States' Congress and court system have long upheld States' exclusive authority over the allocation and administration of rights to the use of

¹ See https://westernstateswater.org/wp-content/uploads/2023/09/506_Groundwater-Quality-Resolution.pdf and <https://westernstateswater.org/wp-content/uploads/2024/03/515-State-Primacy-over-Groundwater-14March2024.pdf>

water within their borders.² Federal administrative actions have also followed a longstanding policy of deferring to the States to develop and implement groundwater management and protection programs. Any Administration effort to exert control over groundwater or otherwise infringe upon States' authority over groundwater are contrary to existing federal law and threaten effective groundwater management and protection.

Efforts to safeguard water security should be conducted with careful adherence to the principles of cooperative federalism and deference to States' respective laws, policies, and programs. No future administrative initiatives should attempt to usurp States' rights and prerogatives related to the management and protection of groundwater resources. Any federal groundwater strategies must recognize and respect States' primacy, reflect a true state-federal partnership, and provide adequate funding consistent with current federal statutory authorities and regulatory mandates.

Attached are responses to the specific working group questions, which are intended to serve as illustrations from a western regional perspective rather than exhaustive lists. On behalf of the WSWC, we look forward to further conversations with PCAST related to this effort.

Sincerely,

A handwritten signature in cursive script that reads "Tony Willardson".

Tony Willardson
Executive Director

² See, e.g., the Mining Acts of 1866 and 1870, the Desert Land Act of 1877, § 8 of the Reclamation Act of 1902, § 10 of the Federal Water Power Act of 1920, § 1 of the Flood Control Act of 1944, § 301(a) of the Water Supply Act of 1958, § 101(b) and (g) of the Clean Water Act of 1972, *Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935), *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1471-72 (2020).

Groundwater Working Group Questions

1. How can we enhance the timely collection of data on groundwater inventory, use, recharge, and flow across the United States to gain a whole-of-country picture of the nation's groundwater resources?

WSWC principles declare, “All levels of government must prioritize the collection, analysis and open sharing of reliable data regarding water availability, quality, and usage given its importance to research for sound science and data driven decision making.” Federal agencies should work cooperatively with appropriate state agencies and officials to address both federal and state data needs involving groundwater, and to disseminate data as appropriate in a findable, accessible, interoperable, and reusable way.

All Western States administer rights to the use of groundwater and have various sources of data related to water use. The WSWC's Water Data Exchange (WaDE) program has provided access to data and metadata for some 3 million western state water rights, including ownership, point of diversion and place of use, surface or groundwater sources, and allowed diversions measured by flow or volume. This water rights data is available via a user-friendly dashboard referred to as our Western States Water Data Access and Analysis Tool (WestDAAT). The WSWC is also working with the U.S. Bureau of Reclamation to incorporate water rights and open evapotranspiration (OpenET) data as a measure of consumptive use, including groundwater use. Similar support for state efforts is likely to be the most effective and efficient means of securing more comprehensive and timely data on groundwater.

Further, States require drilling logs for water wells that can provide data on water levels and changes over time. States also operate monitoring wells with data available in varying formats on both water quantity and quality. Some States require flow meters on groundwater wells and periodic reporting of use. Others use indirect measurements, such as monitoring power used for pumping groundwater. Remote sensing to measure evapotranspiration and consumptive use by agriculture and other outdoor uses continues to expand using both aerial surveys and satellite imagery.

The WSWC strongly supports existing federal programs critical to addressing groundwater challenges, such as the National Aeronautics and Space Administration's (NASA) and U.S. Geological Survey (USGS) land imaging programs. Past and present Landsat satellites (Landsat 7,8 & 9), and the Landsat Next mission, provide thermal infrared imagery that many Western States are using to measure and monitor water use, including groundwater use, to administer water rights, and to inform water resources planning and management. The NASA-ISRO SAR (INSAR) Mission enables Synthetic Aperture Radar Interferometry (InSAR) using radar satellites to observe and monitor the ground surface and map topography and detect surface changes. InSAR, can be used to measure land subsidence due to groundwater extraction. Light Detection and Ranging (LiDAR) is another useful tool for precision topographic measurements.

Based on NASA's capabilities, Open Evapotranspiration (OpenET) uses best available science to provide easily accessible satellite-based evapotranspiration (ET) data for improved water management across the western United States. Using the Data Explorer or Application Programming Interface (API), users can

access OpenET data at the field scale for millions of individual fields or at the original quarter-acre resolution of the satellite data.

The USGS Water Resources Mission area covers important programs related to groundwater data. USGS works in collaboration with federal, state and local data providers as partners to monitor groundwater levels using the framework of the National Groundwater Monitoring Network (NGWMN). USGS also provides federal support for a Climate Response Network (CRN) with continuous, real-time instrumentation designed to provide data on long-term groundwater levels. These data are vital to water-availability studies and assessments which seek to evaluate the balance between supply and demand and the relative influence of individual components in affecting that balance and achieving water security.

The SECURE Water Act (42 U.S.C. §10368) authorized a program that supports activities related to data collection and methods research and development at the State level. The USGS Water-Use Data and Research program (WUDR) provides financial assistance through cooperative agreements with water resource agencies in States to improve the availability, quality, compatibility, and delivery of water-use data that is collected or estimated by States, including groundwater use data. USGS support for state water data gathering plans and implementation is limited. Some States have taken full advantage of WUDR funding and exhausted available funding, while others have not, often due to the prohibitive administrative burden. Further support for States' efforts is needed.

The Bureau of Reclamation plays a significant role in certain western states with respect to developing, funding, and delivering water to local recharge or water banking initiatives. It is essential that the Bureau coordinate with and consult state agencies when conducting these activities to ensure state groundwater management strategies and water rights considerations are incorporated.

2. How can we effectively model and predict changes in the inventory, recharge, and flow of groundwater in the context of the overall water cycle and provide that information to stakeholders and decision-makers?

Effectively modeling changes in groundwater availability requires enhanced data collection, inventorying, and monitoring best accomplished through state-federal partnerships and collaborative data management. Funding for water modeling, water budgeting and water data sharing will allow state and local management agencies to make informed, timely, coordinated decisions within their respective legal frameworks.

While the WSWC is primarily a policy advisory body, our member states have spent several decades collecting information about and developing expertise to better manage their respective and sometimes overlapping aquifers. For example, in 1980, Arizona passed a Groundwater Code that established Active Management Areas (AMAs) to address the effects of large-scale groundwater withdrawals on groundwater resources. Additionally, all water wells in Arizona must be registered with the Arizona Department of Water Resources (ADWR). California's Department of Water Resources (DWR) has used groundwater models for at least 40 years to simulate interactions of river basins, groundwater basis, and water projects in the Central Valley. The California DWR provides extensive technical support for local agencies on groundwater modeling, including serving modeling code,³ has invested in a massive statewide mapping and analysis program to characterize areas suitable for recharge,⁴ and has pioneered a

³ https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Data-and-Tools/Files/FAQ-and-Fact-Sheets/SGMA-Data-Tools-and-Reports-Fact-Sheet_2023.pdf

⁴ <https://data.cnra.ca.gov/dataset/aem>

FloodMAR program.⁵ Idaho has been a leader in the modeling of groundwater use and changes in groundwater levels and the impact of both surface and groundwater availability in the Snake Plain Aquifer. Kansas has developed several groundwater flow models for various basins. Nebraska has developed a number of models simulating the interaction between surface and groundwaters. Oregon has developed groundwater flow models in four basins and uses them to evaluate options for groundwater management. These models and their foundational studies were conducted in collaboration with the U.S. Geological Survey with support from its Cooperative Matching Funds (CMF) program. The CMF program supports such applied, collaborative science across the country, and limited availability of these funds constrains the nation's capacity for data-informed resource management. Expanding CMF funding for the USGS Water Availability and Use Science Program (WAUSP) budget area will directly and efficiently provide additional capacity to effectively model and predict changes in groundwater quantity and ensure that information is both peer-reviewed and readily available to stakeholders and decision-makers through USGS publications and data products. Texas has developed groundwater availability models (GAMs) that include comprehensive information on each aquifer: such as recharge; geology and how that conveys into the framework of the model; related rivers, lakes, and springs; water levels; aquifer properties; and pumping. Each model is calibrated to ensure that the models can reasonably reproduce past water levels and groundwater flows.

3. How can we efficiently scale groundwater recharge while mitigating risks? How can we ensure clean and safe groundwater, especially for the communities that are affected most by groundwater contamination and depletion?

Many Western States have decades of experience with groundwater recharge programs and projects, particularly in the Southwest. In the 1990's, the WSWC worked with the U.S. Bureau of Reclamation to evaluate legal and institutional issues related to a number of groundwater recharge demonstration projects.⁶ Some of the findings are summarized below.

Groundwater recharge projects are very site specific for hydrologic, geologic, economic, legal, and regulatory reasons. Projects are generally undertaken at a private or local government level to augment water supplies and ensure the reliability of existing water supplies. The highly variable and uncertain nature of natural precipitation and snowpack runoff in the West is often both a reason for and an obstacle to successful recharge projects. Not all aquifers are suitable candidates for groundwater recharge. Project sponsors must take into consideration the porosity or fractured nature of the underlying sediments or bedrock; the timing of the intended storage and recovery and whether the water will stay in the desired location or migrate; and the chemistry of the recharge water, the receiving water, and the surrounding aquifer geology. Project costs for upfront capital financing have generally been recovered through general tax revenues or water and sewer user fees. Unit costs of water are sensitive to such factors as project scale and production levels, and municipal projects have historically had a higher probability of success given the economies of scale and higher water values. In the West, water rights are similar to property rights, and state water laws regarding beneficial use and the administration and allocation of water can impose some constraints on the intended benefits of groundwater recharge projects. Local planning and zoning requirements can substantially increase the costs of municipal recharge projects. State and federal laws protecting the quality of existing groundwater resources, particularly where those resources are used for drinking water, can also constrain groundwater recharge projects. Federal environmental oversight and regulatory requirements under the Clean Water Act, Endangered Species,

⁵ See <https://floodmar.org/> and <https://water.ca.gov/programs/all-programs/flood-mar>

⁶ See [Ground Water Recharge Projects in the Western United States: Economic Efficiency, Financial Feasibility, and Legal/Institutional Issues \(Part I\) \(1990\)](#) and [\(Part II\) \(1998\)](#)

Act, National Environmental Policy Act, and Safe Drinking Water Act can substantially increase the cost of federally-supported projects, to the point of making them cost-prohibitive and outweighing the federal cost-share.

Successful agricultural recharge projects have used existing infrastructure and low-cost water, and often help maintain rural lifestyles. Small impoundments can significantly increase recharge. However, discharges to groundwater through infiltration are not clearly regulated, and non-point source pollution controls can have a significant impact on such recharge projects. Banking water through recharge activities offers water managers greater flexibility in meeting peak demands and providing protection from drought. However, finding water available for recharge is a primary constraint. Additionally, during drought when many water users turn to groundwater as an alternative resource, recharge facilities may be idle or operate at a fraction of their capacity due to the lack of an available surface water supply. Reclaimed water may be used for groundwater recharge if the water quality and water chemistry is suitable, however, there is still a public aversion to commingling water supplies. Public education and participation may help minimize conflicts and opposition.

Where there is a clear public interest or benefit in a groundwater recharge project, state or federal involvement may be both appropriate and necessary, including reimbursable public financing, cost sharing, and technical assistance, including investigative research and baseline data collection to facilitate decisionmaking, and monitoring water quality and quantity. State and federal surface water projects may be used as a resource where appropriate to encourage and integrate recharge opportunities.

For federal financial assistance, project purposes that may justify federal cost sharing include flood control, environmental and fish and wildlife enhancement, endangered species recovery, federal reserved water rights uses, international treaty obligations, public health, and water quality improvements. In evaluating the benefit/cost ratio, social costs and benefits should be included, such as environmental values and instream water uses. The development of accepted standards of measurement for such costs and benefits would facilitate public and private decisionmaking.

Two primary state concerns associated with groundwater recharge are: (a) the potential degradation of ambient groundwater quality and adverse effects on the current, or future use of an aquifer; and (b) the technical challenge of quantifying water available for recovery given the hydrogeologic uncertainty surrounding some proposed projects. States have an interest in ensuring that their water quality standards protect the beneficial uses of groundwater and that water is put to allowable beneficial uses. States have also been grappling in recent decades with how their legal and institutional systems govern recharge and recovery activities, seeking a balance between protecting existing resources and facilitating future resources. Some of the legal and institutional questions that arise with recharge activities include: (i) is groundwater recharge recognized as a beneficial use of surface water; (ii) is the right to withdraw groundwater protected, and is adequate information available to define the recoverable amount; (iii) are third parties with groundwater and surface water rights adequately protected; (iv) are public interest values adequately protected; (v) should groundwater protection be based on ambient quality, which may preclude the recharge of potable surface water and other waters, or preclude present and future beneficial uses?

Future construction and operation of successful recharge projects in the West will depend in large part on the ability of different public and private entities to cooperate, find common or compatible purposes, and work out collaborative working arrangements.

4. How can we engage with communities to successfully ensure a sustainable supply of groundwater, including for agriculture, industry, energy, human consumption, and healthy ecosystems and biodiversity?

Different sectors that rely on groundwater are best engaged through existing state and federal programs. Fully funding federal/state groundwater-related conservation programs, including Farm Bill programs would be an important step. Public education and stakeholder participation in programs that explain project costs, benefits, and legal and environmental constraints should be encouraged.

5. What strategies and incentives can help limit groundwater over-use?

Every Western State has addressed the problem of groundwater depletion and many have tied water supply planning, including groundwater management, to land use planning. State groundwater management plans, policies and programs should be the base for evaluating and implementing any federal strategies and incentives. For example, Arizona's Groundwater Management Act established specific management goals and requirements to address groundwater overdraft including a demonstration of a 100-year assured water supply in AMAs and adequate water supply outside of AMAs. More recently, in 2014, the State of California enacted the Sustainable Groundwater Management Act (SGMA) to better manage groundwater supplies. It requires local agencies to adopt groundwater sustainability plans for high- and medium-priority groundwater basins, aiming to balance the amount of water pumped out of and put back into a basin's aquifers. Idaho curtailments of junior groundwater users under prior appropriation laws have led to various agreements to share in the water shortages during dry years. The Nebraska, New Mexico, Kansas, and Nevada legislatures have funded programs for the voluntary retirement of groundwater rights. Oregon is collaborating with the Farm Service Agency (USDA) to launch the Harney Valley Groundwater Conservation Reserve Enhancement Program (HVG CREP), a voluntary program aimed at reducing consumptive water use by incentivizing landowners to voluntarily cancel groundwater rights and establish new conservation crops in exchange for payments.

APRIL 25, 2024

PCAST Welcomes Public Input on America's Groundwater Challenges

The Biden-Harris Administration is leading action to [advance water conservation](#) across the West. As climate change leads to intensified droughts throughout the region, President Biden's [Investing in America](#) agenda is delivering drought resilience resources and protecting the Colorado River Basin for all who depend on it.

More work lies ahead—especially for groundwater, which is interconnected with the surface water that these conservation efforts are preserving. Groundwater—which is fresh water that lies beneath Earth's surface—is part of the natural water cycle. Groundwater is a critical resource for agriculture, manufacturing, mining, energy production, and more. Groundwater also supplies drinking water for half the U.S. population, including nearly all the rural population. In the western states especially, groundwater resources are being depleted at an alarming rate, mostly from agricultural withdrawal. The problem of groundwater depletion is exacerbated by climate change and precipitation variability and in many aquifers, groundwater withdrawal has outpaced natural and artificial recharge. There is a need to explore the consequences of artificial recharge and to identify successful recharge approaches that might be scaled across the country.

In many parts of the country, the quality of groundwater has become so poor that it seriously impacts the health of communities that rely on it. This is especially true for farming and Tribal communities with no other access to potable water. Groundwater is managed locally, with best practices that vary from state to state, but there is an opportunity to develop and scale approaches to restore clean water in every community.

To safeguard our future water security, food security, and economic security, we need a clear understanding of total groundwater use, recharge, and storage across the United States. Then we need to build on that

understanding to guide the development of national stewardship strategies for this critical resource.

Following a public session on [Understanding Groundwater](#), the [President's Council of Advisors on Science and Technology \(PCAST\)](#) has launched a working group on America's groundwater to consider the challenges and opportunities to improve our understanding and stewardship of this critical resource. PCAST looks forward to working with and learning from the efforts of the Department of the Interior, the Environmental Protection Agency, the Department of Agriculture, other federal agencies, national and regional stakeholders, and many state and local agencies and organizations.

To support the development of a report to advance government-wide action on groundwater, PCAST is collecting input from the public that addresses the following questions:

- How can we enhance the timely collection of data on groundwater inventory, use, recharge, and flow across the United States to gain a whole-of-country picture of the nation's groundwater resources?
- How can we effectively model and predict changes in the inventory, recharge, and flow of groundwater in the context of the overall water cycle and provide that information to stakeholders and decision-makers?
- How can we efficiently scale groundwater recharge while mitigating risks?
- How can we ensure clean and safe groundwater, especially for the communities that are affected most by groundwater contamination and depletion?
- How can we engage with communities to successfully ensure a sustainable supply of groundwater, including for agriculture, industry, energy, human consumption, and healthy ecosystems and biodiversity?
- What strategies and incentives can help limit groundwater over-use?

We invite written submissions from the public regarding any of the issues or questions highlighted here, or addressing complementary issues that you think PCAST should consider.

Please send your ideas no later than July 1, 2024, to pcast@ostp.eop.gov with “Groundwater” in the subject line. Submissions should be no more than 5 pages in length, should provide actionable ideas, and should not include proprietary information or any information inappropriate for public disclosure.

Thank you for sharing your ideas.

Groundwater Working Group Co-Leads: [Inez Fung](#), [Joe Kiani](#), and [Steve Pacala](#)

Groundwater Working Group Members: [Laura Greene](#) and [Cathie Woteki](#)

[All PCAST Member Bios](#)

###

Tab S – Legislation and Litigation Update

**Legislation Update
204th WSWC Meeting
Fargo, North Dakota**

Complied By:
Michelle Bushman, WSWC Deputy Director and General Counsel
Elyse Ostland Campbell, WSWC Policy Analyst

This summary describes developments regarding notable legislation that pertains to WGA/WSWC policies or are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of the 118th Congress, and is organized in reverse chronological order according to bill number. For some bills, this document uses modified versions of summaries prepared by the Congressional Research Service.

NOTABLE LEGISLATION

Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.8953 Bill Title Crow Tribe Water Rights Settlement Amendment 2010 (no title) Passed (S/H) Bill Sponsor Rep. Zinke, Ryan K. [R-MT-1]	07/08/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors	Congress.gov Link	To amend the Crow Tribe Water Rights Settlement Act of 2010 to make improvements to that Act, and for other purposes. No text received.
H.R.8951 Bill Title Zuni Indian Tribe Water Rights Settlement (no title) Passed (S/H) Bill Sponsor Vasquez, Gabe [Rep.-D-NM-2]	07/08/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors 2 Democrats, NM	Congress.gov Link	To approve the settlement of water rights claims of the Zuni Indian Tribe in the Zuni River Stream System in the State of New Mexico, to protect the Zuni Salt Lake, and for other purposes. No text received.
H.R.8949 Bill Title Yavapai-Apache Water Rights Settlement (no title) Passed (S/H) Bill Sponsor Rep. Schweikert, David [R-AZ-1]	07/08/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors 2 Republicans, AZ; 1 Democratic, AZ	Congress.gov Link	To approve the settlement of water rights claims of the Yavapai-Apache Nation in the State of Arizona, to authorize construction of a water project relating to those water rights claims, and for other purposes. No text received.
H.R.8945 Bill Title Navajo Nation Rio San Jose Water Rights Settlement (no title) Passed (S/H) Bill Sponsor Leger Fernandez, Teresa [Rep.-D-NM-3]	07/08/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors	Congress.gov Link	To approve the settlement of water rights claims of the Navajo Nation in the Rio San José Stream System in the State of New Mexico, and for other purposes. No text received.

Bill Number H.R.8940 / S.4633 Bill Title Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Water Rights Settlement (no title) Passed (S/H) Bill Sponsor Ciscomani, Juan [Rep.-R-AZ-6]; Kelly, Mark [Sen.-D-AZ]	Date Introduced 07/08/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors House: 2 Democrats, AZ; 2 Republicans, AZ	WSWC Keywords Congress.gov Link	Summary of Bill To provide for the settlement of the water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe, and for other purposes. No text received.
Bill Number H.R.8937 Bill Title No title Passed (S/H) Bill Sponsor Rep. Grijalva, Raúl M. [D-AZ-7]	Date Introduced 07/08/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors 1 Democratic, NM	WSWC Keywords Congress.gov Link	Summary of Bill To establish subaccounts in the Indian Water Rights Settlement Completion Fund to satisfy the obligations of the United States with respect to certain Indian water rights settlements, and for other purposes. No text received
Bill Number H.R.8920 Bill Title Tule River Tribe Settlement (no title) Passed (S/H) Bill Sponsor Fong, Vince [Rep.-R-CA-20]	Date Introduced 07/02/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors	WSWC Keywords Congress.gov Link	Summary of Bill To approve the settlement of the water right claims of the Tule River Tribe, and for other purposes. No text received.
Bill Number H.R.8916 Bill Title No title Passed (S/H) Bill Sponsor Bost, Mike [Rep.-R-IL-12]	Date Introduced 07/02/24 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) Co-sponsors 1 Democratic, CA	WSWC Keywords Congress.gov Link	Summary of Bill To amend the Federal Water Pollution Control Act to make certain projects and activities eligible for financial assistance under a State water pollution control revolving fund, and for other purposes. No text received.
Bill Number H.R. 8812 Bill Title Water Resources Development Act of 2024 Passed (S/H) Bill Sponsor Rep. Graves, Sam [R-MO-6]	Date Introduced 06/25/24 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) 06/26/24 Ordered to be Reported by the Yeas and Nays: 61-2 Co-sponsors 2 Democrats from CA and WA, 1 Republican	WSWC Keywords WRDA Congress.gov Link	Summary of Bill The House proposal for the reauthorization of WRDA 2024. The bill would authorize 12 new U.S. Army Corps of Engineers (USACE) water resources projects and 160 project feasibility studies. The bill includes a reauthorization of the National Dam Safety Program. I would ease restrictions on the amount of funds states can receive in state assistance grants, and improve access to the High Hazard Potential Dam Rehabilitation Grant Program. It would also require the incorporation of low-head dams into the National Inventory of Dams. I would reauthorize the Inland Waterways Regional Dredge Pilot Program and authorize a new national coastal mapping program. The bill includes an extension of the National Levee Safety Program through 2033.

Bill Number S.4576 Bill Title No title Passed (S/H) Bill Sponsor Sen. Hickenlooper, John W. [D-CO]	Date Introduced 06/18/24 Assigned Committee(s) Senate - Energy and Natural Resources Hearing(s) Co-sponsors 3 Republicans including UT, WY 1 Democratic, CO	WSWC Keywords Congress.gov Link	Summary of Bill A bill to amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System conservation pilot program. Text not received.
Bill Number H.R.8685/S.4505 Bill Title Ohkay Owingeh Settlement (No title) Passed (S/H) Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3], Sen. Heinrich, Martin [D-NM]	Date Introduced 06/11/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors House: 1 Democratic, NM Senate: 1 Democratic, NM	WSWC Keywords Congress.gov Link	Summary of Bill To approve the settlement of water rights claims of Ohkay Owingeh in the Rio Chama Stream System, to restore the Bosque on Pueblo Land in the State of New Mexico, and for other purposes. Text not received.
Bill Number S.4458 Bill Title A bill to reauthorize the Reclamation Rural Water Supply Act of 2006, and for other purposes. Passed (S/H) Bill Sponsor Rounds, Mike [Sen.-R-SD]	Date Introduced 06/04/24 Assigned Committee(s) Senate - Energy and Natural Resources Hearing(s) Co-sponsors 2 Democrats	WSWC Keywords Congress.gov Link	Summary of Bill Text not received.
Bill Number S.4449 Bill Title River Democracy Act Passed (S/H) Bill Sponsor Sen. Wyden, Ron [D-OR]	Date Introduced 06/04/24 Assigned Committee(s) Senate - Energy and Natural Resources Hearing(s) Senate - 06/12/2024 Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining. Hearings held Co-sponsors 1 Democratic, OR	WSWC Keywords Congress.gov Link	Summary of Bill To amend the Wild and Scenic Rivers Act to designate certain river segments in the State of Oregon as components of the National Wild and Scenic Rivers System, and for other purposes. The bill would expand Oregon's network of Wild and Scenic rivers by 3,215 miles in key watersheds such as the Deschutes, Rogue, Grande Ronde, John Day, Clackamas, McKenzie, and others.
Bill Number S.4442 Bill Title Crow Tribe Water Rights Settlement Amendments Act of 2024 Passed (S/H)	Date Introduced 06/03/24 Assigned Committee(s) Senate - Indian Affairs Hearing(s)	WSWC Keywords Indian Water Rights Settlement Congress.gov Link	Summary of Bill S. 4442 would amend the Settlement Act by establishing a non-trust fund account to allow the Bureau of Reclamation to continue work on rehabilitation of the CIP and a new MR&I projects trust fund to be used by the Tribe for (i) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal use or wastewater infrastructure; (ii) purchasing on-Reservation land with water rights; and (iii) complying with applicable environmental laws. The amendments do not increase the funding for the Settlement Act but merely change the way some funds are held and expended.

Bill Sponsor Sen. Tester, Jon [D-MT]	Senate - 06/12/2024 Committee on Indian Affairs. Hearings held. Co-sponsors 1 Republican from MT		
Bill Number H.R.8467 Bill Title Farm, Food, and National Security Act of 2024 Passed (S/H) Bill Sponsor 3 Democrats, AZ and NV; 1 Republican, AZ	Date Introduced 05/21/24 Assigned Committee(s) Rep. Stanton, Greg [D-AZ-4] Hearing(s) Co-sponsors	WSWC Keywords Congress.gov Link	Summary of Bill The House proposal for the reauthorization of the Farm Bill 2024. Title II extends (CRP) contracts up to 30 years and would amend CREP by integrating the State Acres for Wildlife Enhancement (SAFE) Initiative. It would also incorporate precision agriculture into EQIP and establish a grant program for state and tribal soil health programs. Additionally, it authorizes advance payments for Emergency Conservation Program (ECP) rehabilitation and expands the Emergency Watershed Program for floodplain easements. Title IV focuses on rural development, clarifying purposes and maintaining funding for the Rural Water and Wastewater Circuit Rider program, and reauthorizing through 2029. Grant funds may be used for populations of 10k or fewer. The bill would update the Rural Decentralized Water Systems program eligibility requirements, loan terms, and add loans and subgrants for performing water quality testing in individual households. The title would also add disaster and recovery assistance to the Rural Water and Wastewater Technical Assistance and Training Programs.
Bill Number S. 4367 Bill Title Water Resources Development Act of 2024 Passed (S/H) Bill Sponsor Sen. Carper, Thomas R. [D-DE]	Date Introduced 05/20/24 Assigned Committee(s) Senate - Environment and Public Works Hearing(s) 05/22/2024 Placed on Senate Legislative Calendar under General Orders. Calendar No. 401. Co-sponsors 2 Republicans, 1 Democratic including AZ, ND	WSWC Keywords WRDA Congress.gov Link	Summary of Bill The Senate's proposal for the reauthorization of WRDA for 2024. The bill includes 81 feasibility studies and eight new or modified construction projects. The bill would also increase the federal cost-share for inland waterways projects to 75%, require reports on invasive species and levee safety guidelines and a user-guide on public-private partnerships, and direct the GAO to conduct studies evaluating USACE practices and programs. The bill directs the Secretary of the Army to develop a plan to implement this and prior WRDAs by identifying incomplete projects and establishing a WRDA implementation team. It directs the Secretary to expedite rulemaking necessary to implementing ability to pay authority. The bill clarifies Congressional intent regarding existing Federal interest determinations authority for feasibility studies. It would require the Secretary to provide debriefs to non-Federal interests if their submission was not included in the annual 7001 report to Congress and to notify appropriate congressional delegations of certain requests that were included in that report. The bill would amend an existing authority that allows the Secretary to enter into cooperative agreements, contracts, or any other authorized means to support the civil works missions of the US Army Corps of Engineers (Corps). The bill would allow the Secretary to accept funds from a non-Federal interest or another Federal agency for the purpose of water control manual updates. The bill directs the Secretary to make publicly available information about ongoing studies and projects at each district of the Corps and to educate non-Federal interests about
Bill Number S.4359 Bill Title National Dam Safety Act reauthorization (no title) Passed (S/H) Bill Sponsor Sen. Padilla, Alex [D-CA]	Date Introduced 05/16/24 Assigned Committee(s) Senate - Environment and Public Works Hearing(s) Senate - 05/22/2024 Placed on Senate Legislative Calendar under General Orders. Calendar No. 404. Co-sponsors 1 Democratic from ND	WSWC Keywords Congress.gov Link	Summary of Bill A bill to amend the National Dam Safety Program Act to reauthorize that Act, and for other purposes. The bill would reauthorize the National Dam Safety Program Act through 2029
Bill Number H.R.8428 Bill Title Deschutes River Conservancy Act of 2024 Passed (S/H) Bill Sponsor Rep. Chavez-DeRemer, Lori [R-OR-5]	Date Introduced 05/16/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors	WSWC Keywords Congress.gov Link	Summary of Bill To amend the Oregon Resource Conservation Act of 1996 to reauthorize the Deschutes River Conservancy Working Group, and for other purposes. The bill would establish a working group composed of a board of 10-15 directors nominated by the group represented by the member. The group would be constituted by 2 members of the environmental community in the Basin, 2 representatives of the irrigated agriculture communities, 2 representatives of the Confederated tribes of the Warm Springs Reservation of Oregon, 1 member to represent the hydroelectric production community in the Basin, 1 member to represent the federal agencies, 1 member to represent an agency of the State of Oregon, and 1 member to represent a unit of local government in the Basin.
Bill Number H.R. 8344 Bill Title	Date Introduced 05/10/24 Assigned Committee(s)	WSWC Keywords Congress.gov Link	Summary of Bill To require the Secretary of Agriculture to submit to Congress a report on available assistance to agricultural producers in the State of Texas that have suffered economic losses due to the failure of Mexico to deliver water.

<p>Texas Agricultural Producers Assistance Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. De La Cruz, Monica [R-TX-15]</p>	<p>House Committee on Agriculture</p> <p>Hearing(s)</p> <p>Co-sponsors Rep. Crockett, Jasmine [D-TX-30]; Rep. Gonzales, Tony [R-TX-23]</p>	<p>https://www.congress.gov/bill/118th-congress/house-bill/8344/cosponsors?s=1&r=1&q=%7B%22search%22%3A%22water%22%7D</p>	
<p>Bill Number H.R.8263</p> <p>Bill Title Rural Jobs and Hydropower Expansion Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Boebert, Lauren [R-CO-3]</p>	<p>Date Introduced 05/07/24</p> <p>Assigned Committee(s) House - Natural Resources</p> <p>Hearing(s) House - 05/22/2024 Subcommittee Hearings Held</p> <p>Co-sponsors</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Reclamation Project Act of 1939 to encourage non-Federal hydropower development with respect to Bureau of Reclamation projects. The bill would formally authorize the development of hydropower using all Reclamation facilities and encourages irrigation districts, electric utilities and others to develop new hydropower. The bill would provide Reclamation exclusive authority to issue permits for hydropower development within Reclamation projects, removing the need for a second permit from FERC.</p>
<p>Bill Number H.R. 8270</p> <p>Bill Title Conservation Reserve Program Modernization Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Finstad, Brad [R-MN-1]</p>	<p>Date Introduced 05/07/24</p> <p>Assigned Committee(s) House - Agriculture</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Food Security Act of 1985 to modernize the conservation reserve program, and for other purposes. The bill would expand the types of land eligible for inclusion in the CRP to include cropland meeting specific soil capability criteria, grasslands, marginal pasture land, and areas designated for conservation buffers or wildlife habitats. The bill would also adjust the annual rental payment structure for re-enrolled land under the CRP, progressively reducing the percentage of the county average soil rental rate for subsequent re-enrollments. The bill would set limitations on county average soil rental rates based on the soil capability class of eligible land enrolled in the CRP. The bill would increase the federal cost-share percentage to 50% for various conservation activities under the CRP, such as establishing permanent vegetation, erosion control, fencing for riparian areas, water development practices, and mid-contract management activities.</p>
<p>Bill Number S.4245</p> <p>Bill Title Water Monitoring and Tracking Essential Resources Data Improvement Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor</p>	<p>Date Introduced 05/02/24</p> <p>Assigned Committee(s)</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would reauthorize certain USGS water data enhancement programs. The bill renames, reprioritize, and reauthorize the national streamflow information program. The program would be renamed "Federal Priority Streamgagage Program" and reauthorized uch as the National Streamflow Information Program (to be renamed the Federal Priority Streamgagage Program) through 2028, and the National Groundwater Resources Monitoring program through 2028.</p>
<p>Bill Number S.4253/H.R.7468</p> <p>Bill Title No title</p> <p>Passed (S/H)</p> <p>Bill Sponsor</p>	<p>Date Introduced 05/02/24</p> <p>Assigned Committee(s) Senate - Foreign Relations</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill directs the Secretary of State to leverage the United States' diplomatic influence and resources to ensure compliance by Mexico with the 1944 Water Treaty concerning the Colorado and Tijuana Rivers and the Rio Grande. The bill also aims to establish agreements for predictable and reliable future water deliveries from Mexico.</p>

Sen. Cruz, Ted [R-TX] Rep. De La Cruz, Monica [R-TX-15]	Senate: 1 Republican, TX House: 28 Republicans including TX, CO, and WA; 10 Democrats, TX		
Bill Number S.4220 Bill Title WASH Access Data Collection Act of 2024 Passed (S/H) Bill Sponsor Sen. Wyden, Ron [D-OR]	Date Introduced 05/01/24 Assigned Committee(s) Senate - Environment and Public Works Hearing(s) Co-sponsors 3 Democrats from OR and NM	WSWC Keywords Congress.gov Link	Summary of Bill To collect information regarding water access needs across the United States, to understand the impacts of the water access gap in each State and territory, and for other purposes. The bill would establish the Water and Sanitation Needs Working Group. The Working Group would carry out a survey to estimate the number and geographic distribution of households in the U.S. that do not have access to drinking water infrastructure and wastewater treatment. The Group would prepare a report for Congress estimating the cost of capital improvements to ensure reliable drinking water and sanitation for all households.
Bill Number H.R.8096 / S.4188 Bill Title Future of Water Act of 2024 Passed (S/H) Bill Sponsor Rep. Khanna, Ro [D-CA-17]; Sen. Warren, Elizabeth [D-MA]	Date Introduced 04/19/24 Assigned Committee(s) House - Agriculture Senate - Agriculture, Nutrition, and Forestry Hearing(s) Co-sponsors House: 15 Democrats including CA	WSWC Keywords water rights, transfer Congress.gov Link	Summary of Bill To amend the Commodity Exchange Act to prohibit trading of water and water rights for future delivery, and for other purposes.
Bill Number H.R. 8076 / S.4173 Bill Title Clean Water Standards for PFAS Act of 2024 Passed (S/H) Bill Sponsor Rep. Pappas, Chris [D-NH-1]; Sen. Gillibrand, Kirsten E. [D-NY]	Date Introduced 04/18/24 Assigned Committee(s) House - Transportation and Infrastructure; Energy and Commerce Senate - Environment and Public Works Hearing(s) Co-sponsors House: 17 Democrats including CA, CO, NM, TX; 3 Republicans	WSWC Keywords PFAS, WQS Congress.gov Link	Summary of Bill To establish effluent limitations guidelines and standards and water quality criteria for perfluoroalkyl and polyfluoroalkyl substances under the Federal Water Pollution Control Act, and for other purposes.
Bill Number H.R. 8079/ S. 4172 Bill Title Drought Resilient Infrastructure Act of 2024 Passed (S/H) Bill Sponsor Stanton, Greg [Rep.-D-AZ-4], Sen. Kelly, Mark [D-AZ]	Date Introduced 04/18/24 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) Co-sponsors House: 3 Democrats including AZ, NV; 1 Republican, AZ Senate: 4 Democrats including CA, NM, NV; 1 Independent, AZ	WSWC Keywords Congress.gov Link	Summary of Bill To provide for water conservation, drought operations, and drought resilience at water resources development projects, and for other purposes. The bill would authorize the Secretary of the Army to implement water conservation measure in water resources development projects for which water supply is an authorized purpose. Water conservation measures authorized in this provision include stormwater retention and aquifer recharge enhancement, releases to augment water supply at another facility, modifications to existing Corps facilities to enhance stormwater retention, water storage, or aquifer recharge, and "other actions to conserve water resources." The bill would also allow the Secretary to receive and expend funds from non-federal interests or federal agencies to carry out such measures. The bill also would require that during drought conditions, consistent with other authorized purposes, water supply and conservation become primary purposes for Corps-covered projects. The bill provides for updates to water control manuals to include drought operations and contingency plans. The bill would authorize the Secretary to carry out a drought resilience projects if the Secretary determines that the project would provide for drought resilience, is in the public interest, and is cost effective. Projects may include water conservation measures, sediment management, and mitigation of non-native species. Funding is limited to \$10M per project at any single locale. The bill establishes a pilot program for using forecast-informed reservoir operations with the goals of (1) providing for drought resilience, and (2) for further development on
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill

<p>S.4157</p> <p>Bill Title Improving Corps Civil Works Compensatory Mitigation Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Padilla, Alex [D-CA]</p>	<p>04/18/24</p> <p>Assigned Committee(s) Senate - Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican</p>	<p>Congress.gov Link</p>	<p>The Act aims to improve the process and effectiveness of compensatory mitigation for civil works projects by clearly defining contracts, ensuring prioritization of existing restoration plans, and enforcing compliance with established mitigation regulations. The bill would define "contract" as an agreement between the Secretary of the Army and a mitigation provider. The bill specifies that such contracts must use accepted Corps of Engineers District-level mitigation practices and prioritize existing restoration plans by State, local, or regional entities. It would amend Section 906(d)(3)(B)(iv) to include "contract" alongside "instrument" for third-party mitigation arrangements. The bill would require that the Secretary ensure contributions are used for approved mitigation activities. The bill mandates the Secretary to ensure compliance with the section and the final rule of the Corps of Engineers and the Environmental Protection Agency entitled "Compensatory Mitigation for Losses of Aquatic Resources" or any subsequent rule.</p>
<p>H.R.8074 / S.4187</p> <p>Bill Title Forever Chemical Regulation and Accountability Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. McCollum, Betty [D-MN-4]; Sen. Durbin, Richard J. [D-IL]</p>	<p>04/18/24</p> <p>Assigned Committee(s) House - Energy and Commerce; Oversight and Accountability; Science, Space, and Technology; Transportation and Infrastructure; Armed Services Senate - Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors House: 1 Democratic</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To phase out production of nonessential uses of perfluoroalkyl or polyfluoroalkyl substances, to prohibit releases of all perfluoroalkyl or polyfluoroalkyl substances, and for other purposes. The bill would direct the National Academies of Sciences to review and evaluate available scientific evidence to determine categories of essential uses of PFAS. NAS would then provide guidance on designating PFAS uses as either "essential" or "non-essential." The bill would set a four year deadline to eliminate non-essential uses of PFAS in certain classes, and a 10-year national deadline to eliminate non-essential PFAS uses in all non-essential classes, while providing exemptions for currently unavoidable and certain critical purposes. The bill provides a petition process "to designate a use of PFAS as essential or non-essential." The bill would require all PFAS manufacturers and users to file reports with EPA to disclose certain information and submit a phase-out schedule.</p>
<p>S.4162</p> <p>Bill Title Maintaining Cooperative Permitting Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Rubio, Marco [R-FL]</p>	<p>04/18/24</p> <p>Assigned Committee(s) Senate - Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To ensure that certain permit approvals by the Environmental Protection Agency have the force and effect of law, and for other purposes. The bill would codify the dredge and fill permitting programs administered by the States of Florida, Michigan, and New Jersey.</p>
<p>H.R.8032 / S.3830</p> <p>Bill Title Low-Income Household Water Assistance Program Establishment Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Sorensen, Eric [D-IL-17]; Sen. Padilla, Alex [D-CA]]</p>	<p>04/16/24</p> <p>Assigned Committee(s) House - Transportation and Infrastructure; Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors House: 2 Republicans including OR; 1 Democratic, WA Senate:</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To authorize the Low-Income Household Water Assistance Program, and for other purposes. The Secretary, in consultation with the Administrator, shall establish the Low-Income Household Water Assistance Program to award grants, in accordance with paragraph (2), to eligible entities to provide funds to owners and operators of public water systems or treatment works to assist low-income households in paying arrearages and other rates charged to such households for drinking water or wastewater services.</p>
<p>S.4134/H.R.8030</p> <p>Bill Title</p>	<p>04/16/24</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Water Infrastructure Finance and Innovation Act of 2014 with respect to the total amount of Federal assistance for projects in States experiencing severe drought and projects in historically disadvantaged communities, and for other purposes. The bill would create exceptions for WIFIA projects in states experience severe drought under</p>

<p>DROUGHT Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Padilla, Alex [D-CA]; Rep. Peters, Scott H. [D-CA-50]</p>	<p>Senate - Environment and Public Works House - Transportation and Infrastructure; Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors House: 8 Democrats, CA</p>		<p>and for other purposes. The bill would create exceptions for certain projects in states experience severe drought under which the Administrator may finance up to 90% of the costs of a project in a state that has been designated as D2 or greater for minimum of 4 weeks during any of the 3 years preceding the date on which assistance is provided. The assistance would also be available to a county for which a drought emergency has been declared by the applicable Governor at any time during the 3-year period. It would authorize 90% cost-sharing of projects that serve communities designated as disadvantaged, underserved, or financially distressed.</p>
<p>Bill Number H.R. 7990</p> <p>Bill Title Large-Scale Water Recycling Reauthorization and Investment Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Napolitano, Grace F. [D-CA-31]</p>	<p>Date Introduced 04/15/24</p> <p>Assigned Committee(s) House - Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors 3 Democrats from AZ, CA, NV</p>	<p>WSWC Keywords Recycling</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would reauthorize the Large-Scale Water Recycling Grant program within DOI for another six years. The projects included have a total estimated cost of at least \$1B. The bill would increase authorization from \$450M to \$1B. All projects must be within one of Reclamation's seventeen western states.</p>
<p>Bill Number H.R. 7938</p> <p>Bill Title Klamath Basin Water Agreement Support Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Bentz, Cliff [R-OR-2]</p>	<p>Date Introduced 04/11/24</p> <p>Assigned Committee(s) House - Natural Resources</p> <p>Hearing(s) 05/22/2024 Subcommittee Hearings Held</p> <p>Co-sponsors</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would authorize the Secretary of the Department of Interior to enter contracts and make financial assistance available to implement voluntary programs to align water supplies and demand for irrigation water associated with the Klamath project. The bill would authorize the Secretary to enter into agreements with the Tulelake District to reimburse for 69% for O&M of Pumping Plant D. The bill sets out cost-sharing agreements for infrastructure improvements. The bill directs the Secretary to comply with National Environmental Policy, Endangered Species Act, Tribal trust and treaty rights, and the existing 2016 Klamath Power and Facilities Agreement. The bill would prevent irrigation water users from bearing financial burdens for infrastructure not being removed that Reclamation will be taking over from PacifiCorp. It would also assist in avoiding new regulatory burdens that could result from salmonids occupying currently unoccupied.</p>
<p>Bill Number H.R.7944</p> <p>Bill Title Water Systems PFAS Liability Protection Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Curtis, John R. [R-UT-3]</p>	<p>Date Introduced 04/11/24</p> <p>Assigned Committee(s) House - Energy and Commerce; Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors 5 Republicans including CA and UT 3 Democrats including TX and WA</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would exempt certain entities from liability under CERCLA with respect to releases of PFAS. Protected entities include public water systems, public or private treatment works, municipalities with §402 stormwater discharge permits, political subdivisions of a State acting as a wholesale water agency, and contractors performing management and disposal activities. Protected entities must manage PFAS substances consistent with applicable laws and are only protected from liability during and following the conveyance and treatment of water under Federal State law.</p>
<p>Bill Number H.R.7922</p> <p>Bill Title No Title</p> <p>Passed (S/H)</p> <p>Bill Sponsor</p>	<p>Date Introduced 04/10/24</p> <p>Assigned Committee(s) House - Transportation and Infrastructure; Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To establish a Water Risk and Resilience Organization to develop risk and resilience requirements for the water sector. Establishes a new governing body, the Water Risk and Resilience Organization (WRRO) with cyber and water-system expertise to work with EPA to develop and enforce cyber security requirements for drinking and wastewater systems.</p>

Rep. Crawford, Eric A. "Rick" [R-AR-1]	Rep. Duarte, John S. [R-CA-13]		
Bill Number H.R.7872 Bill Title Colorado River Salinity Control Fix Act Passed (S/H) Bill Sponsor Rep. Curtis, John R. [R-UT-3]	Date Introduced 04/05/24 Assigned Committee(s) House - Natural Resources Hearing(s) House - 06/12/2024 Ordered to be Reported by Unanimous Consent. Co-sponsors 5 Republicans including AZ, WY, UT. 4 Democrats including CO, NM, CA.	WSWC Keywords Congress.gov Link	Summary of Bill The bill would amend the Colorado River Basin Salinity Control Act to modify cost-sharing requirements for salinity control units. The bill would establish a non-reimbursable federal cost share of 70-75% for the construction and O&M of salinity control units and any associated measure to replace fish and wildlife values. non-reimbursable federal cost-share of on-farm salinity control measures would be 85%. The total costs remaining after non-reimbursable allocations would be reimbursable. The bill also clarifies the funding sources for these costs, including the Lower Colorado River Basin Development Fund and the Upper Colorado River Basin Fund, and mandates adjustments to rates for electrical energy as needed.
Bill Number H.R.7776/ S. 4016 Bill Title Help Hoover Dam Act Passed (S/H) Bill Sponsor Rep. Lee, Susie [D-NV-3] Sen. Sinema, Kyrsten [I-AZ]	Date Introduced 03/21/24 Assigned Committee(s) House - Natural Resources Senate - Energy and Natural Resources Hearing(s) House - 06/12/2024 Ordered to be Reported by Unanimous Consent. Co-sponsors House: 5 Democrats including NV, AZ, CA; 5 Republicans including NV, AZ, CA Senate: 5 Democrats including NV, AZ, CA	WSWC Keywords Congress.gov Link	Summary of Bill To amend the Boulder Canyon Project Act to authorize the Secretary of the Interior to expend amounts in the Colorado River Dam fund for any authorized activity, including operations, maintenance, investigation and cleanup actions, and capital improvements, within the Boulder Canyon Project at Hoover Dam or on land used for the construction and operation of the Hoover Dam, subject to the review and approval of the Boulder Canyon Project contractors as identified in the Hoover Power Allocation Act of 2011
Bill Number H.R. 7779 Bill Title Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2024 Passed (S/H) Bill Sponsor Rep. Maloy, Celeste [R-UT-2]	Date Introduced 03/21/24 Assigned Committee(s) House - Transportation and Infrastructure; Energy and Commerce; Natural Resources Hearing(s) Co-sponsors 9 Democrats including AK, NV, CA, CO, WA 9 Republicans including UT, ID, MT, SD, NV, CO	WSWC Keywords Congress.gov Link	Summary of Bill The bill would create a pilot permitting program under EPA to allow cleanup projects to move forward and ensure Good Samaritans have the skills and resources the need to complete permitted work. The program is designed to approve and facilitate low-risk projects that improve water or soil quality.
Bill Number H.R. 7706 Bill Title Safe Drinking Water for Disadvantaged Communities Act Passed (S/H) Bill Sponsor Rep. Nunn, Zachary [R-IA-3]	Date Introduced 03/15/24 Assigned Committee(s) House - Energy and Commerce; Transportation and Infrastructure Hearing(s) Co-sponsors 1 Democratic	WSWC Keywords Congress.gov Link	Summary of Bill To provide that funds made available under the Infrastructure Investment and Jobs Act for lead service line replacement projects be provided to disadvantaged communities in the form of forgivable loans or grants, and for other purposes.
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill

<p>H.R. 7675</p> <p>Bill Title PFAS Research and Development Reauthorization Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Pappas, Chris [D-NH-1]</p>	<p>03/13/24</p> <p>Assigned Committee(s) House - Energy and Commerce; Science, Space, and Technology; Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors 4 Republicans, 2 Democrats including CA</p>	<p>Congress.gov Link</p>	<p>To extend the authorization of appropriations for PFAS research and development by the Environmental Protection Agency. The Act would amend the National Defense Act for FY20 to extend EPA PFAS research authorization through 2029.</p>
<p>Bill Number S.3778</p> <p>Bill Title No Title</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Shaheen, Jeanne [D-NH]</p>	<p>Date Introduced 02/08/24</p> <p>Assigned Committee(s) Senate - Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors 3 bi-partisan co-sponsors including 1 Democratic from AZ</p>	<p>WSWC Keywords SDWA</p> <p>Congress.gov Link</p>	<p>Summary of Bill A bill to amend the Safe Drinking Water Act to modify eligibility for the State response to contaminants program, and for other purposes.</p>
<p>Bill Number S. 3791</p> <p>Bill Title America's Conservation Enhancement Reauthorization Act of 2024</p> <p>Passed (S/H) Passed Senate: 05/10/2024</p> <p>Bill Sponsor Sen. Carper, Thomas R. [D-DE]</p>	<p>Date Introduced 02/08/24</p> <p>Assigned Committee(s) Senate - Environment and Public Works</p> <p>Hearing(s) House - 05/10/2024 Held at the desk</p> <p>Co-sponsors 8 Republicans including OK, WY 6 Democrats including OR 1 Independent</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would reauthorize the America's Conservation Enhancement Act. The bill would expand the Black Vulture Livestock Protection Program, continue the Chronic Wasting Disease Task Force through 2030, continue protection from invasive species through 2030, continues authorization for the North American Wetlands Conservation Act activities, strengthens partnerships with the National Fish Habitat Conservation Board, improves reporting on fish habitat status and conservation efforts.</p>
<p>Bill Number H.R. 7294/S.3760</p> <p>Bill Title Watershed Protection and Forest Recovery Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Neguse, Joe [D-CO-2], Sen. Bennet, Michael F. [D-CO]</p>	<p>Date Introduced 02/07/24</p> <p>Assigned Committee(s) House - Agriculture Senate - Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors House: 3 Democrats including CA, CO, WA; 2 Republicans including UT Senate: 2 Republicans, UT and CA</p>	<p>WSWC Keywords Wildfire, watershed recovery</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/7241/</p>	<p>Summary of Bill The bill would create the Emergency Forest Watershed Program and authorize watershed recovery protection measures to protect downstream private property and water resources following natural disasters on USFS lands; Allow Tribes, States, local governments, and water providers to enter into agreements with USFS to implement watershed recovery protection measures; Speed up project timelines and require recovery project to be completed within two years after the conclusion of a natural disaster; and fully fund projects on federal lands by waiving matching requirements.</p>
<p>Bill Number H.R. 7240</p> <p>Bill Title</p>	<p>Date Introduced 02/05/24</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords Indian water rights</p> <p>Congress.gov Link</p>	<p>Summary of Bill To achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, and for other purposes. This bill modifies and ratifies a specified water rights settlement agreement entered into by the United States, Montana, and the Fort Belknap Indian</p>

<p>Fort Belknap Indian Community Water Rights Settlement Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor #REF!</p>	<p>House - Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>https://www.congress.gov/bill/118th-congress/house-bill/7243/</p>	<p>specified water rights settlement agreement entered into by the United States, Montana, and the Fort Belknap Indian Community (i.e., the Gros Ventre and Assiniboine Tribes). The bill requires the community's water rights to be held in trust for the benefit of the community and its allottees. The community must enact a tribal water code to regulate its water rights. Additionally, the bill authorizes the Department of the Interior and the Department of Agriculture (as applicable) to enter negotiations with Montana to exchange certain state lands for federal lands to be held in trust for the benefit of the community. The bill also establishes the Aaniiih Nakoda Settlement Trust Fund (and specified accounts) for purposes of carrying out this bill, establishes the Fort Belknap Indian Community Water Settlement Implementation Fund (and specified accounts) for purposes of carrying out this bill, and provides funding for specified accounts established by the bill.</p>
<p>Bill Number H.R.7241/ S. 2917</p> <p>Bill Title Rural Water System Disaster Preparedness and Assistance Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Rosendale Sr., Matthew M. [R-MT-2]</p>	<p>Date Introduced 02/05/24</p> <p>Assigned Committee(s) House - Agriculture Senate - Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors House: 2 Republicans Senate: 1 Republican, 1 Democratic</p>	<p>WSWC Keywords USDA rural water</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would establish an emergency preparedness and response technical assistance program within the U.S. Department of Agriculture to provide grants to assist associations that operate rural water or wastewater systems in preparing for and responding to natural or man-made disasters.</p>
<p>Bill Number H.R.7023</p> <p>Bill Title Creating Confidence in Clean Water Permitting Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Rouzer, David [R-NC-7]</p>	<p>Date Introduced 01/31/24</p> <p>Assigned Committee(s) House - Transportation and Infrastructure</p> <p>Hearing(s) 3/21/2024 Passed House</p> <p>Co-sponsors</p>	<p>WSWC Keywords CWA, WOTUS</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/7023/</p>	<p>Summary of Bill This bill modifies CWA water quality criteria, the NPDES program, the 404 dredged or fill program, and the meaning of WOTUS. It includes provisions to shield NPDES permit holders from liability under certain circumstances. It also provides statutory authority for the EPA to issue general permits under the program. The EPA must also provide written notification two years before the expiration of a general permit. If notice is not provided by that deadline, then discharges under the expired permit may continue until a new permit is issued. The bill limits EPA's veto authority. The bill also modifies requirements for general permits to discharge dredge or fill material that are issued on a nationwide, regional, or state basis for particular categories of activities, including by extending the maximum term for a general permit from a period of 5 years to 10 years. It also exempts the Corps from certain consultation and environmental review requirements when reissuing nationwide general permits. It directs EPA and the Corps to issue guidance on the implementation of the 2023 WOTUS rule.</p>
<p>Bill Number H.R. 7178</p> <p>Bill Title Water Conservation Economic Adjustment Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Titus, Dina [D-NV-1]</p>	<p>Date Introduced 01/31/24</p> <p>Assigned Committee(s) House Transportation and Infrastructure House Financial Services</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican, CA</p>	<p>WSWC Keywords Water supply</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/7178/</p>	<p>Summary of Bill The bill would amend Section 209 of the Public Works and Economic Development Act (PWEDA) of 1965 to include assistance for limiting industrial consumptive water use as an eligible use.</p>
<p>Bill Number H.R. 7065</p> <p>Bill Title Priority for Water Supply and Conservation Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor</p>	<p>Date Introduced 01/22/24</p> <p>Assigned Committee(s) House - Transportation and Infrastructure; Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords Water supply</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/7065/</p>	<p>Summary of Bill To include water supply and water conservation as a primary mission of the Corps of Engineers in planning, designing, constructing, modifying, operating, and maintaining water resources development projects, and for other purposes.</p>

Rep. Napolitano, Grace F. [D-CA-31]	2 Republicans including CA; 1 Democratic		
Bill Number H.R.7066 Bill Title Defending Against Manipulative Negotiators Act (DAMN) Passed (S/H) Bill Sponsor Rep. Newhouse, Dan [R-WA-4]	Date Introduced 01/22/24 Assigned Committee(s) House - Natural Resources Hearing(s) Co-sponsors 4 Republicans from OR, WA, ID	WSWC Keywords Columbia River Basin Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/7066/	Summary of Bill The bill would prohibit the use of federal funds from being used in breaching or altering the Lower Snake River Dams and to prohibit the implementation of the Columbia Basin Restoration Initiative.
Bill Number H.R.7021 Bill Title Water Quality Criteria Development and Transparency Act Passed (S/H) Bill Sponsor Rep. Owens, Burgess [R-UT-4]	Date Introduced 01/17/24 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) Co-sponsors 1 Republican	WSWC Keywords CWA water quality criteria Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/7021/	Summary of Bill The bill would amend the CWA to require any new or revised water quality criteria issued by EPA to be expressly subject to Administrative Procedures Act notice and comment rulemaking requirements.
Bill Number H.R.7013 Bill Title Confidence in Clean Water Permits Act Passed (S/H) Bill Sponsor Rep. Duarte, John S. [R-CA-13]	Date Introduced 01/17/24 Assigned Committee(s) House - Transportation and Infrastructure, Subcommittee on Water Resources and Environment. Hearing(s) Co-sponsors 1 Republican	WSWC Keywords NPDES Congress.gov Link	Summary of Bill The bill would clarify the scope of NPDES permit discharge authorizations and effluent limitations. The bill clarifies that compliance with the conditions of an NPDES permit constitutes compliance with respect to discharges of any pollutants for which effluent limitations are included in the permit. It also extends compliance to pollutants not explicitly included in the permit but identified through indicator parameters in the permit, identified as present discharges during the permit application process, or present in any waste streams or processes related to the point source. The bill mandates that any water quality-based limitations on pollutant discharges in an NPDES permit must be specified explicitly. These specifications must include the particular pollutant and the numerical limit on its discharge or the precise waterbody conditions to be achieved.
Bill Number H.R. 7026 Bill Title Reducing Permitting Uncertainty Act Passed (S/H) Bill Sponsor Rep. Stauber, Pete [R-MN-8]	Date Introduced 01/17/24 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) Co-sponsors 1 Republican	WSWC Keywords Congress.gov Link	Summary of Bill The bill would amend the Federal Water Pollution Control Act to clarify when the Administrator of the Environmental Protection Agency has the authority to prohibit the specification of a defined area, or deny or restrict the use of a defined area for specification, as a disposal site under §404. The bill limits the period during which the Administrator may prohibit the specification of any defined area as a disposal site to (1) begin on the date that the Secretary provides notice to the Administrator that the Secretary has completed all procedures for processing an application for a permit under §404 and (2) end on the date on which the Secretary issues the permit. The period must not be fewer than 30 days.
Bill Number H.R.6821 Bill Title Healthy Farms Healthy Watersheds Act of 2023 Passed (S/H)	Date Introduced 12/14/23 Assigned Committee(s) House - Agriculture Hearing(s)	WSWC Keywords USDA Conservation Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/6821/	Summary of Bill To amend the Food Security Act of 1985 to establish a pilot program that focuses Department of Agriculture conservation funding on reducing the most problematic nutrients in the highest-impact areas, and for other purposes. The bill aims to streamline planning and administration processes under the P.L.566 program to enable more projects, shift decision-making to local NRCS staff, expand program eligibility, and allow federal funding to count toward state and local match requirements. The bill prioritizes projects with multiple conservation and public benefits.

<p>Bill Sponsor Rep. Kaptur, Marcy [D-OH-9]</p>	<p>Co-sponsors 1 Republican</p>		
<p>Bill Number H.R. 6093</p> <p>Bill Title Weather Act Reauthorization Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Lucas, Frank D. [R-OK-3]</p>	<p>Date Introduced 12/11/23</p> <p>Assigned Committee(s) House Science, Space, and Technology</p> <p>Hearing(s) House - 12/11/2023 Placed on the Union Calendar, Calendar No. 247 04/30/2024 Passed House, 394-19</p> <p>Co-sponsors 16 Republicans including TX, CA, and OK. 13 Democrats including CA, OR, CO</p>	<p>WSWC Keywords Forecasting and S2S</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/6093/</p>	<p>Summary of Bill To improve NOAA's weather research, support improvements in weather forecasting and prediction, expand commercial opportunities for the provision of weather data, and for other purposes. The bill would modernize research programs authorized by the 2017 Weather Act including the National Weather Service (NWS), National Environmental Satellite Data and Information Service (NESDIS), National Centers for Environmental Information (NCEI), and the National Integrated Drought Information System (NIDIS). The bill directs the establishment of new research and development programs related to radar, atmospheric rivers, and coastal flooding. The bill would also authorize the National Oceanic Atmospheric Administration (NOAA) to contract with the private sector to acquire commercial weather data and codify the Commercial Data Program to manage commercial contracting. It also aims to improve emergency weather communication. The bill directs the establishment of pilot programs to improve subseasonal to seasonal research and forecasting and authorizes the National Mesonet Program, and the National Coordinated Soil Moisture Monitoring Network.</p>
<p>Bill Number H.R.6621</p> <p>Bill Title Rural Uplift and Revitalization Assistance Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Davis, Donald G. [D-NC-1]</p>	<p>Date Introduced 12/06/23</p> <p>Assigned Committee(s) House - Agriculture</p> <p>Hearing(s)</p> <p>Co-sponsors 2 Republicans, including TX</p>	<p>WSWC Keywords Rural technical assistance</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/6621/</p>	<p>Summary of Bill The bill would authorize USDA to provide technical assistance to strengthen local capacity and improve access to rural development programs for geographically underserved and distressed rural areas directly or through cooperative agreements.</p>
<p>Bill Number H.R.6599/S.3406</p> <p>Bill Title No Title</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Lujan, Ben Ray [D-NM]</p>	<p>Date Introduced 12/05/23</p> <p>Assigned Committee(s) House - Natural Resources Senate - Indian Affairs</p> <p>Hearing(s)</p> <p>Co-sponsors House: 1 Democratic, NM Senate: 1 Democratic, NM</p>	<p>WSWC Keywords Indian water rights</p> <p>Congress.gov Link</p>	<p>Summary of Bill Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act. The bill would authorize the appropriation of \$6.3 million for the Navajo Nation Water Resources Development Fund; \$7.8 million for the Taos Pueblo Water Development Fund; and \$4.3 million for the Aamodt Settlement Pueblos' Fund, which covers Nambé, Pojoaque, San Ildefonso, and Tesuque Pueblos.</p>
<p>Bill Number S.3366</p> <p>Bill Title Farmers Freedom Act of 2023</p>	<p>Date Introduced 11/30/23</p> <p>Assigned Committee(s) Senate - Energy and Natural Resources</p>	<p>WSWC Keywords WOTUS and prior converted cropland</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would require EPA to revert to the definition of prior converted cropland (PCC) from the Trump administration's Waters of the United States (WOTUS) rule.</p>

<p>Passed (S/H)</p> <p>Bill Sponsor Sen. Tester, Jon [D-MT]</p>	<p>Hearing(s)</p> <p>Co-sponsors 8 Republicans including ND, KS, NE, SD, WY</p>		
<p>Bill Number H.R.6525/S. 2650</p> <p>Bill Title Wildfire Resilient Communities Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Hoyle, Val T. [D-OR-4]; Sen. Merkley, Jeff [D-OR]</p>	<p>Date Introduced 11/30/23</p> <p>Assigned Committee(s) Senate - Energy and Natural Resources House - Natural Resources; Agriculture; House Agriculture Subcommittee on Forestry</p> <p>Hearing(s) 01/24/2024: House, referred to the Subcommittee on Forestry</p> <p>Co-sponsors House: 7 Democrats from CA, CO, OR, NM Senate: 3 Democrats from CA, OR</p>	<p>WSWC Keywords Wildfires</p> <p>Congress.gov Link</p>	<p>Summary of Bill This bill provides funding to address wildland fire management in certain at-risk communities that are within the vicinity of federal lands that are at high risk from wildfire, to carry out hazardous fuels reduction projects, prioritizing projects that (1) are conducted in areas that are within or adjacent to at-risk communities or high value watersheds, have very high wildfire hazard potential, or are in fire regime I, II, or III; or (2) are designed to integrate and advance two or more of the goals established in a specified wildland fire management report to create fire-adapted communities, to restore and maintain resilient landscapes, and to achieve safe, effective fire response. USDA and DOI shall furnish financial and technical assistance to at-risk communities that are adjacent to federal land, including through states, to assist such communities in planning and preparing for wildfire. The bill makes permanent the Collaborative Forest Landscape Restoration Program. It removes the limits on the number of proposals that may be funded for ecological restoration treatments for priority forest landscapes under the program. The Forest Service may continue to select the number of proposals that are determined likely to receive adequate funding. The bill establishes the County Stewardship Fund for making payments to counties that have a contract for a stewardship contracting project on federal land within their boundaries.</p>
<p>Bill Number H.Res.683/ S.Res.379</p> <p>Bill Title No Title</p> <p>Passed (S/H) Agreed to in House</p> <p>Bill Sponsor Rep. De La Cruz, Monica [R-TX-15]; Sen. Cruz, Ted [R-TX]</p>	<p>Date Introduced 11/28/23</p> <p>Assigned Committee(s) House - Foreign Affairs; Senate - Foreign Relations</p> <p>Hearing(s)</p> <p>Co-sponsors House: 47 Republicans including TX, CA, OK, OR, UT, WA; 5 Democrats including TX Senate: 1 Republican from TX</p>	<p>WSWC Keywords Rio Grande, Mexico water deliveries</p> <p>Congress.gov Link</p>	<p>Summary of Bill Expressing support for the diplomatic relations required to encourage the Government of Mexico to fulfill its water deliveries on an annual basis to the United States under the treaty between the United States and Mexico regarding the utilization of the Colorado and Tijuana Rivers and of the Rio Grande.</p>
<p>Bill Number S.3346</p> <p>Bill Title Montana Headwaters Legacy Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Tester, Jon [D-MT]</p>	<p>Date Introduced 11/27/23</p> <p>Assigned Committee(s) Senate Energy and Natural Resources</p> <p>Hearing(s) 6/12/2024: Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining. Hearings Held</p> <p>Co-sponsors</p>	<p>WSWC Keywords Wild and Scenic Rivers</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would designate stretches of the Gallatin, Madison, and Smith Rivers as Wild and Scenic Rivers, a total of 384 miles of Montana Rivers.</p>
<p>Bill Number H.R.6442</p> <p>Bill Title Fill the Lake Act</p>	<p>Date Introduced 11/15/23</p> <p>Assigned Committee(s) House Natural Resources</p>	<p>WSWC Keywords Water resources</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/6442/</p>	<p>Summary of Bill The legislation would require the Department of Interior to maintain a minimum pool level on Flathead Lake of 2892' MSL (mean sea level) and a maximum of 2893' MSL from June 15th to September 15th of each calendar year</p>

Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Zinke, Ryan K. [R-MT-1]	Co-sponsors		
Bill Number S.3292/H.R. 6411 Bill Title IMAGINE Act of 2023	Date Introduced 11/14/23 Assigned Committee(s) Senate Environment and Public Works; House Transportation and Infrastructure Subcommittee on Water Resources and Environment; House Science, Space, and Technology; House Energy and Commerce Subcommittee on Environment, Manufacturing, and Critical Materials	WSWC Keywords Infrastructure Congress.gov Link	Summary of Bill The bill aims to promote research in construction materials and techniques to extend the life of transportation and water infrastructure. The bill would establish the Interagency Innovative Materials Task Force. The National Institute of Standards and Technology (NIST) would chair the Task Force and bring together the Federal Highway Administration (FHWA), the Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), and other relevant agencies organizations. Along with other transportation infrastructure programs, the bill would authorize \$65M (FY24-FY28) for a grant program at the EPA for the use of innovative materials in the design and installation of wastewater transport and treatment systems, and drinking water treatment and distribution systems in small to medium-sized communities.
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Whitehouse, Sheldon [D-RI]; Rep. Magaziner, Seth [D-RI-2]	Co-sponsors Senate: 1 Republican House: 1 Republican		
Bill Number H.R. 6235/S.3348 Bill Title Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2023	Date Introduced 11/06/23 Assigned Committee(s) Senate Commerce, Science, and Transportation; House Science, Space, and Technology; House Natural Resources, Subcommittee on Water, Wildlife, and Fisheries	WSWC Keywords HABs Congress.gov Link	Summary of Bill The bill would reauthorize the Harmful Algal Bloom and Hypoxia Research and Control Amendments Act (HABHRCA) of 1998 and aims to improve monitoring, forecasting, prevention, and mitigation of harmful algal blooms and hypoxia by requiring better coordination among task force agencies and state and local entities.
Passed (S/H)	Hearing(s) 01/18/2024: House, Subcommittee Hearings Held 03/12/2024: House, Ordered to be Reported in the Nature of a Substitute by Unanimous Consent		
Bill Sponsor Rep. Bonamici, Suzanne [D-OR-1]; Sen. Sullivan, Dan [R-AK]	Co-sponsors House: 2 Democrats including CA; 3 Republicans Senate: 8 Democrats including CA, OR; 6 Republicans including AK, TX; 1 Independent		
Bill Number H.R. 6209/S. 2042 Bill Title Sloan Canyon Conservation and Lateral Pipeline Act	Date Introduced 11/02/23 Assigned Committee(s) Senate Energy and Natural Resources	WSWC Keywords Infrastructure Congress.gov Link	Summary of Bill The bill would allow a portion of the Southern Nevada Water Authority's (SNWA) Horizon Lateral water pipeline project to tunnel underneath Sloan Canyon National Conservation Area (NCA). The bill would also expand the Sloan Canyon NCA by 9,290 acres.
Passed (S/H)	Hearing(s) 12/20/2023: Placed on Senate Legislative Calendar under General Orders. Calendar No. 299.		
Bill Sponsor	Co-sponsors		

Rep. Titus, Dina [D-NV-1]; Sen. Cortez Masto, Catherine [D-NV]			
Bill Number H.R. 5903 Bill Title No Title Passed (S/H) Bill Sponsor Rep. Napolitano, Grace F. [D-CA-31]	Date Introduced 10/25/23 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) 11/15/2023: Ordered to be Reported in the Nature of a Substitute by Voice Vote. Co-sponsors 3 Democrats, CA and TX 2 Republicans, CA	WSWC Keywords Infrastructure Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5903/	Summary of Bill To authorize the International Boundary and Water Commission to accept funds for activities relating to wastewater treatment and flood control works, and for other purposes. The bill would authorize the Commission to accept funds from a federal or non-federal entity, including through a grant or funding agreement, to study, design, construct, operate, and maintain wastewater treatment and flood control works and related structures, consistent with the functions of the Commission.
Bill Number H.R. 5983 Bill Title Clean Water Act of 2023 Passed (S/H) Bill Sponsor Rep. Larsen, Rick [D-WA-2]	Date Introduced 10/25/23 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) Co-sponsors 130 Democrats	WSWC Keywords WOTUS Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5983/	Summary of Bill To amend the CWA to restore a national minimum standard of protection for the water resources of the United States while providing certainty to regulated entities. The bill would amend the CWA (33 U.S.C. 1251) to change the terms and definition for waters controlled under the CWA. Regulated waters of the United States would be termed "Protected Water Resources" and be defined as: "All waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters (and their tributaries), including lakes, rivers, streams (including intermittent and ephemeral streams), wetlands, and all impoundments of the foregoing, to the fullest extent that these waters are subject to the legislative power of Congress under the Constitution." It would also amend the definition of "wetlands" to mean "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."
Bill Number S. 3082 Bill Title Water Quality Certification Improvement Act of 2023 Passed (S/H) Bill Sponsor Sen. Barrasso, John [R-WY]	Date Introduced 10/19/23 Assigned Committee(s) Senate - Environment and Public Works Hearing(s) Co-sponsors 4 Republicans including MT, WY, ND, NE	WSWC Keywords CWA 401 Congress.gov Link	Summary of Bill The bill would establish the scope of section 401 review as limited to water quality impacts only, direct states to only consider discharges from the licensed activity itself, require states to publish clear requirements for water quality certification requests, require states to make final decisions based solely on water quality reasons, and require states to inform a project applicant within 90 days.
Bill Number H.R. 5874 Bill Title Transboundary Aquifer Assessment Program Act (TAAP) Passed (S/H) Bill Sponsor Rep. Ciscomani, Juan [R-AZ-6]	Date Introduced 10/03/23 Assigned Committee(s) House - Natural Resources Hearing(s) 01/17/2024: Ordered to be Reported (Amended) by Unanimous Consent. Co-sponsors 1 Democratic, NM 1 Republican	WSWC Keywords Groundwater Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5874/	Summary of Bill The bill would reauthorize the Transboundary Aquifer Assessment Program (TAAP), a federal program that supports binational research on groundwater security, quantity, and quality in border communities.
Bill Number S. 2994/H.R. 6653	Date Introduced 09/28/23	WSWC Keywords Water quality	Summary of Bill The bill would establish a 30 percent federal Investment Tax Credit for projects relating to dam safety, fish passage,

<p>Bill Title Maintaining and Enhancing Hydroelectricity and River Restoration Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Cantwell, Maria [D-WA]; Rep. Smith, Adrian [R-NE-3]</p>	<p>Assigned Committee(s) Senate - Finance House - Ways and Means</p> <p>Hearing(s)</p> <p>Co-sponsors Senate: 5 Democrats including WA; 6 Republicans including AK, NE; 1 Independent House: 5 Democrats including AK, WA; 4 Republicans</p>	<p>Congress.gov Link</p>	<p>environmental upgrades, and water quality. The bill also creates a new federal cost-share to incentivize the removal of obsolete river obstructions that harm river ecosystems and impede outdoor recreation. These investments will help restore river health, enhance public safety, and support the benefits of hydroelectricity.</p>
<p>Bill Number H.R.5756</p> <p>Bill Title Protect Families from Toxic Algal Blooms Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Harder, Josh [D-CA-9]</p>	<p>Date Introduced 09/27/23</p> <p>Assigned Committee(s) House - Science, Space, and Technology</p> <p>Hearing(s)</p> <p>Co-sponsors 4 Democrats including CA 2 Republicans</p>	<p>WSWC Keywords HABs</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5756/</p>	<p>Summary of Bill To amend the Water Resources Development Act of 2020 to permit the sale of technologies to certain water and irrigation districts to expedite the removal of harmful algal blooms, and for other purposes. The bill would permit the Secretary to enter agreements with water and irrigation districts located in focus areas for the use or sale of technologies to expedite the removal of harmful algal blooms.</p>
<p>Bill Number H.R. 5764</p> <p>Bill Title Support Water-Efficient Strategies and Technologies Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3]</p>	<p>Date Introduced 09/27/23</p> <p>Assigned Committee(s) House - Agriculture, Subcommittee on Conservation, Research, and Biotechnology</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican, CA 1 Democratic</p>	<p>WSWC Keywords USDA Conservation</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5764/</p>	<p>Summary of Bill To amend the Food Security Act of 1985 to increase payments for drought-resilient or water-saving practices and to provide additional payments for perennial production systems, and for other purposes. The bill would allow the USDA Secretary to increase cost shares to 85 percent for Environmental Quality Incentives Programs (EQIP) practices that support water-conserving and drought-resilient programs. The bill would also make perennial production systems eligible for supplemental payments within the Conservation Stewardship Program (CSP). It would also allow the Secretary to conduct outreach on the program and offer payments for soil testing.</p>
<p>Bill Number S. 2928</p> <p>Bill Title Water Infrastructure Subcontractor and Taxpayer Protection Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Kelly, Mark [D-AZ]</p>	<p>Date Introduced 09/26/23</p> <p>Assigned Committee(s) senate - Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican ND 2 Democrats including CA</p>	<p>WSWC Keywords WIFIA</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Water Infrastructure Finance and Innovation Act of 2014 to establish payment and performance security requirements for projects, and for other purposes. The bill would require any primary contractor working on water infrastructure projects financed by federally guaranteed loans to hold a surety bond.</p>
<p>Bill Number S.Res.355</p> <p>Bill Title No Title</p> <p>Passed (S/H)</p>	<p>Date Introduced 09/21/23</p> <p>Assigned Committee(s) Senate - Indian Affairs</p> <p>Hearing(s)</p>	<p>WSWC Keywords Clean Water Access for Tribes</p> <p>Congress.gov Link</p>	<p>Summary of Bill Recognizing the critical importance of access to reliable, clean drinking water for Native Americans and affirming the responsibility of the Federal Government to ensure such water access.</p>

<p>Bill Sponsor Sen. Bennet, Michael F. [D-CO]</p>	<p>Co-sponsors 14 Democrats including NM, OR, WA, AZ, CA, CO, MT 1 Independent</p>		
<p>Bill Number H.R. 5664</p> <p>Bill Title Water Infrastructure Finance and Innovation Act Amendments of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Schrier, Kim [D-WA-8]</p>	<p>Date Introduced 09/21/23</p> <p>Assigned Committee(s) House - Transportation and Infrastructure; Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors 4 Democrats including CA 3 Republicans including WA, CA, OR</p>	<p>WSWC Keywords WIFIA</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5664/</p>	<p>Summary of Bill To reauthorize the Water Infrastructure Finance and Innovation Act of 2014, and for other purposes. The bill would reauthorize the USACE WIFIA program through FY 2027. It would broaden WIFIA funding and extend financing eligibility to state entities, as well as non-federal cost shares in federally involved projects. The bill would authorize the use of collaborative project delivery methods for WIFIA projects, including the construction management at-risk method and design-build methods. It would also allow certain federal water infrastructure loans to have maturity dates of up to 55 years.</p>
<p>Bill Number H.R. 5483</p> <p>Bill Title Securing Access for the central Valley and Enhancing (SAVE) Water Resources Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Harder, Josh [D-CA-9]</p>	<p>Date Introduced 09/14/23</p> <p>Assigned Committee(s) House - Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors 4 Democrats from CA</p>	<p>WSWC Keywords Water resources</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5483/</p>	<p>Summary of Bill To promote water supply reliability and improved water management for rural communities, the State of California, and the Nation, and for other purposes. The bill would provide \$250M in water storage funding and expedite a record of decision to move forward on the Los Vaqueros Reservoir Expansion Phase II Project. It would establish a water infrastructure and drought solutions fund to provide \$750 million for water surface and groundwater storage, water reclamation and reuse, and WaterSMART program projects. The bill would also reauthorize the Rural Water Supply Act. Finally, the bill would create a financing program to provide low-interest loans to fund water infrastructure projects, fund WaterSMART programs from \$50M to \$500M and extend the program's authorization. It would also expedite a request from Stockton East Water District to provide water to unserved rural communities in their Central Valley Project service area.</p>
<p>Bill Number S.2781</p> <p>Bill Title Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2024</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Heinrich, Martin [D-NM]</p>	<p>Date Introduced 09/13/23</p> <p>Assigned Committee(s) Senate - Environment and Public Works</p> <p>Hearing(s) 01/25/24: Placed on Senate Legislative Calendar under General Orders. Calendar No. 312</p> <p>Co-sponsors 40 bi-partisan co-sponsors including AK, AZ, CA, CO, ID, MT, NV, ND, OR, SD, UT, WY, NM, OK</p>	<p>WSWC Keywords Good Sam</p> <p>Congress.gov Link</p>	<p>Summary of Bill This bill promotes the remediation of abandoned hardrock mine sites by Good Samaritans. A Good Samaritan means a person that is (1) not a past or current owner or operator of the abandoned site; (2) had no role in the creation of the historic mine residue; and (3) is not potentially liable under any law for the remediation, treatment, or control of the historic mine residue. The bill requires the Environmental Protection Agency (EPA) to establish a Good Samaritan pilot program. Under the program, the EPA may issue certain permits to allow Good Samaritans to remediate historic mine residue at abandoned hardrock mine sites without being subject to enforcement or liability under specified environmental laws for past, present, or future releases, threats of releases, or discharges of hazardous substances or other contaminants at or from the abandoned mine site. In addition, the bill establishes a Good Samaritan Mine Remediation Fund for land management agencies that authorize Good Samaritans to conduct remediation projects on federal land.</p>
<p>Bill Number H.Res.683</p> <p>Bill Title No Title</p> <p>Passed (S/H) House - 11/28/2023: Motion to reconsider laid on the table Agreed to without objection.</p> <p>Bill Sponsor</p>	<p>Date Introduced 09/13/23</p> <p>Assigned Committee(s) House - Foreign Affairs</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords Rio Grande, Mexico water deliveries</p> <p>Congress.gov Link</p>	<p>Summary of Bill This resolution expresses support for the diplomatic relations required to encourage the government of Mexico to make annual water deliveries to the United States under a 1944 treaty between the two countries. The resolution also acknowledges that farmers in south Texas are experiencing water shortages.</p>

Rep. De La Cruz, Monica [R-TX-15]	47 Republicans including TX, CA, OK, OR, UT, WA 5 Democrats including TX		
Bill Number H.R. 5325 Bill Title Domestic Water Protection Act of 2023 Passed (S/H) Bill Sponsor Rep. GAllego, Ruben [D-AZ-3]	Date Introduced 09/01/23 Assigned Committee(s) House - Ways and Means; Natural Resources Hearing(s) Co-sponsors 1 Democratic, AZ	WSWC Keywords Ag water Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5325	Summary of Bill The bill would establish a NOAA program to improve precipitation forecasts across all timescales, including modeling for S2S and S2D
Bill Number H.R.5304 Bill Title Safeguarding Our Levees Act Passed (S/H) Bill Sponsor Rep. Harder, Josh [D-CA-9]	Date Introduced 08/29/23 Assigned Committee(s) House Committee on Agriculture, Subcommittee on Conservation, Research, and Biotechnology Hearing(s) Co-sponsors 1 Republican	WSWC Keywords Levees Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5304/	Summary of Bill The bill would amend the Flood Control Act of 1941 to require the Army Corps of Engineers to rehabilitate broken levees within 180 days, and adjust cost share to 75% federal/25% non-federal for levee improvements.
Bill Number H.R.5250/S.3147 Bill Title Flooding Prevention, Assessment, and Restoration Act of 2023 Passed (S/H) Bill Sponsor Rep. Davis, Donald G. [D-NC-1] ; Sen. Ricketts, Pete [R-NE]	Date Introduced 08/22/23 Assigned Committee(s) House: Subcommittee on Conservation, Research, and Biotechnology. Senate: Committee on Agriculture, Nutrition, and Forestry. Hearing(s) Co-sponsors House: 5 Democrats including CA; 5 Republicans Senate: 1 Democratic	WSWC Keywords Watersheds Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5250/	Summary of Bill To amend the Agricultural Credit Act of 1978 with respect to the emergency watershed program, and for other purposes. The bill would allow project sponsors to use federal funds to improve flood protection above the level that existed at the time of disaster. It would also direct USDA to conduct a national agriculture flood vulnerability study to assess flood risk in farmland and rural communities. It also would increase the federal cost share for the Watershed Rehabilitation Program, from 65% to up to 90% for limited-resource areas.
Bill Number H.R. 5243 Bill Title Less Talk More Action Water Modernization Act of 2023 Passed (S/H) Bill Sponsor Rep. Santos, George [R-NY-3]	Date Introduced 08/18/23 Assigned Committee(s) Ways and Means; Appropriations; Energy and Commerce; Transportation and Infrastructure; Natural Resources Hearing(s) Co-sponsors	WSWC Keywords Water projects Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5243/	Summary of Bill The bill would rescind funds for IRS enforcement and COVID-19 relief and redirect them toward water-related projects
Bill Number H.R. 5104/S.3111	Date Introduced 08/01/23	WSWC Keywords Dam safety	Summary of Bill The bill would reauthorize the National Dam Safety Program Act

<p>Bill Title National Dam Safety Program Reauthorization Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Edwards, Chuck [R-NC-11]; Sen. Padilla, Alex [D-CA]</p>	<p>Assigned Committee(s) Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors House: 6 Democrats including CA, WA; 5 Republicans including WA Senate: 7 Democrats including CO, OR; 6 Republicans including ND, AK, NE</p>	<p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5104/</p>	
<p>Bill Number H.R. 5089</p> <p>Bill Title Reducing Regulatory Burdens Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Rouzer, David [R-NC-7]</p>	<p>Date Introduced 07/28/23</p> <p>Assigned Committee(s) Transportation and Infrastructure; Agriculture</p> <p>Hearing(s) 1/31/24 Ordered to be Reported</p> <p>Co-sponsors 2 Republicans including CA, TX</p>	<p>WSWC Keywords Pesticides</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would amend FIFRA and CWA to clarify Congressional intent in the use of pesticides in or near navigable waters</p>
<p>Bill Number H.R. 5088/S. 1987</p> <p>Bill Title Fort Belknap Indian Community Water Rights Settlement Act of 2023</p> <p>Passed (S/H) 06/20/2024: Passed Senate with an amendment by Voice Vote. (text of amendment in the nature of a substitute: CR S4188-4198)</p> <p>Bill Sponsor Rep. Rosendale Sr., Matthew M. [R-MT-2]; Sen. Tester, Jon [D-MT]</p>	<p>Date Introduced 07/28/23</p> <p>Assigned Committee(s) Natural Resources; Indian Affairs</p> <p>Hearing(s) 7/19/23: SIA hearing; ordered reported with an amendment 07/28/23: Referred to the House Committee on Natural Resources</p> <p>Co-sponsors House: 1 Republican, MT</p>	<p>WSWC Keywords Indian water rights</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5088/</p>	<p>Summary of Bill Ratifies the settlement of the reserved water rights claims of the Fort Belknap Indian Community in Montana. It allocates 20,000 acre-feet per year of Reclamation water stored in Lake Elwell for the Community for any beneficial use on or off the reservation. It provides for mitigation of the Milk River Project in cooperation with Montana and the Blackfoot Tribe with \$300M in funding. It provides for BIA rehabilitation and modernization of the Fort Belknap Indian Irrigation Project in consultation with the Community, with funding of \$415M (228M mandatory). It establishes the Aaniiih Nakoda Settlement Trust Fund with three accounts for (1) irrigation and water resources development (\$89M, \$29M mandatory), (2) administration, operation, and maintenance of water resources and water rights (\$66M mandatory), and (3) clean and safe domestic water and sewer systems (\$157M, \$110M mandatory). The bill acknowledges Montana's contribution of \$5M toward the irrigation and water resources development account after approval of the final decree in the Montana Water Court.</p>
<p>Bill Number H.R. 5016/S. 2654</p> <p>Bill Title Water Efficiency, Conservation, and Sustainability Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Levin, Mike [D-CA-49]; Sen. Padilla, Alex [D-CA]</p>	<p>Date Introduced 07/27/23</p> <p>Assigned Committee(s) Energy and Commerce; Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords Water efficiency incentive programs</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/5016/</p>	<p>Summary of Bill Directs EPA to establish a grant program for eligible entities with water efficiency incentive programs, with half the grant funds for entities in areas of severe drought and where the Governor has declared a drought emergency. Grants would be up to \$250,000 with at least 40% cost share, with waivers for significant hardship. Authorizes \$50M each for FY24-28. Also directs EPA to establish a technical assistance grant program to support annual audits of public water systems and to implement sustainable water loss control, with \$40M each for FY24-28. Also directs EPA to establish a grant program to assist states, tribes, and local governments to adopt higher standard plumbing codes and implement a plan to comply, including workforce training and enforcement and compliance programs</p>
<p>Bill Number H.R. 4959</p> <p>Bill Title</p>	<p>Date Introduced 07/27/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords Dam safety</p> <p>Congress.gov Link</p>	<p>Summary of Bill Directs the Comptroller General to prepare a report for Congress on the status of dams in the USDA Watershed Program</p>

<p>No Title</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Van Orden, Derrick [R-WI-3]</p>	<p>Transportation and Infrastructure; Agriculture; Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors 2 Democrats</p>		
<p>Bill Number S. 2697</p> <p>Bill Title Clean Drinking Water for Rural Communities Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Feinstein, Dianne [D-CA]</p>	<p>Date Introduced 07/27/23</p> <p>Assigned Committee(s) Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Democratic, CA</p>	<p>WSWC Keywords Rural drinking water</p> <p>Congress.gov Link</p>	<p>Summary of Bill Amends the definition of "rural" in the Consolidated Farm and Rural Development Act to populations of less than 20,000 inhabitants to improve access to grants and loans for compliance with drinking water standards.</p>
<p>Bill Number S. 2696</p> <p>Bill Title EQIP Water Conservation Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Bennet, Michael F. [D-CO]; Rep. Ciscomani, Juan [R-AZ-6]</p>	<p>Date Introduced 07/27/23</p> <p>Assigned Committee(s) Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors 8 Democratic, Independent, and Republican co-sponsors from AZ, CA, CO, KS, NM</p>	<p>WSWC Keywords Water efficiency incentive programs</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/2696/</p>	<p>Summary of Bill The bill would amend the Food Security Act to modify a waiver authority for water conservation or irrigation efficiency practice</p>
<p>Bill Number S. 2636/H.R.6497</p> <p>Bill Title Healthy Watersheds, Healthy Communities Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor</p>	<p>Date Introduced 07/27/23</p> <p>Assigned Committee(s) Agriculture, Nutrition, and Forestry</p> <p>Hearing(s) 01/24/24: Referred to the Subcommittee on Conservation, Research, and Biotechnology</p> <p>Co-sponsors Senate: 2 Democrats and 1 Republican co-sponsors including NE, OR House: 3 Democrats including CO and 3 Republicans including WY, NE</p>	<p>WSWC Keywords Watersheds</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would amend the Watershed Protection and Flood Prevention Act to (1) include drought as a natural resource concern; (2) allow consolidated planning for large or connected watersheds; (3) define irrigation efficiency and water conservation; (4) include irrigation districts as local organizations (making them eligible for assistance); (5) shift project assistance and oversight from national office to local NRCS State Conservationists; (6) give the Secretary the ability to waive financial estimate requirements for natural infrastructure project components; (7) require USDA to make public notifications on project benefits and funding; (8) require USDA to prioritize projects with multiple benefits; and (9) raise the allowable federal contribution to \$50M.</p>
<p>Bill Number S. 2611</p> <p>Bill Title Snow Survey Northeast Expansion Act</p> <p>Passed (S/H)</p>	<p>Date Introduced 07/27/23</p> <p>Assigned Committee(s) Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p>	<p>WSWC Keywords NRCS Snow Survey</p> <p>Congress.gov Link</p>	<p>Summary of Bill Directs NRCS to expand the snow survey and water supply forecasting program to serve the northeastern US</p>

Bill Sponsor Sen. Shaheen, Jeanne [D-NH]	11/01/23: Committee on Small Business and Entrepreneurship. Hearings held. Co-sponsors 1 Independent, 1 Republican		
Bill Number S.2226 Bill Title S.Amdt.1084 to S.Amdt.935 Passed (S/H) 7/27/2023 Amendment SA 1084 agreed to in Senate by Voice Vote. Bill Sponsor Sen. Daines, Steve [R-MT]	Date Introduced 07/27/23 Assigned Committee(s) Hearing(s) Co-sponsors 1 Democratic, MT	WSWC Keywords Indian water rights Congress.gov Link	Summary of Bill To provide for the settlement of the water rights claims of the Fort Belknap Indian Community. See H.R.7240
Bill Number H.R. 4913 Bill Title No Title Passed (S/H) Bill Sponsor Rep. Jackson, Jeff [D-NC-14]	Date Introduced 07/26/23 Assigned Committee(s) Science, Space, and Technology Hearing(s) Co-sponsors	WSWC Keywords NOAA forecasting and S2S Congress.gov Link	Summary of Bill The bill would establish a NOAA program to improve precipitation forecasts across all timescales, including modeling for S2S and S2D
Bill Number H.R. 4902/S. 2250 Bill Title Voluntary Groundwater Conservation Act Passed (S/H) Bill Sponsor Rep. Caraveo, Yadira [D-CO-8]; Sen. Bennet, Michael F. [D-CO]	Date Introduced 07/26/23 Assigned Committee(s) Agriculture; Agriculture, Nutrition, and Forestry Hearing(s) Co-sponsors House: 2 Democrats from CO, NM; 2 Republicans Senate: 2 Democrats, NM; 1 Republican	WSWC Keywords Congress.gov Link	Summary of Bill The bill would amend the ACEP in the Food Security Act to establish a groundwater conservation easement program to support landowners with groundwater rights to adapt to and reduce reliance on declining groundwater resources, to recharge aquifers, and allow for continued ag production
Bill Number S. 2514 Bill Title Colorado River Salinity Control Fix Act Passed (S/H) Bill Sponsor Sen. Bennet, Michael F. [D-CO]	Date Introduced 07/26/23 Assigned Committee(s) Agriculture, Nutrition, and Forestry Hearing(s) Co-sponsors 5 Democrats including CA, CO, AZ; 3 Republicans including WY, UT; 1 Independent, AZ	WSWC Keywords Congress.gov Link	Summary of Bill The bill modifies the allocation of reimbursable costs for salinity control units on the Colorado River
Bill Number H.R. 4877 Bill Title	Date Introduced 07/25/23 Assigned Committee(s)	WSWC Keywords Congress.gov Link	Summary of Bill This bill requires the Department of Energy (DOE) to establish a research, development, and demonstration program concerning abandoned oil and gas wells. Under the program, DOE must work to improve (1) data collection on the location of abandoned oil or gas wells; (2) the plugging, remediation, reclamation, and reuposing of the wells; and (3)

<p>Abandoned Well Remediation Research and Development Act</p> <p>Passed (S/H) Passed the House: 04/30/2024</p> <p>Bill Sponsor Rep. Lee, Summer L. [D-PA-12]</p>	<p>House - Science, Space, and Technology Senate - Energy and Natural Resources</p> <p>Hearing(s) 05/01/2024 Received in the Senate and Read twice and referred to the Committee on Energy and Natural Resources</p> <p>Co-sponsors 5 Democrats including NM 1 Republican, OK</p>		<p>location of abandoned oil or gas wells, (2) the plugging, remediation, reclamation, and repurposing of the wells, and (3) strategies to mitigate potential environmental impacts of documented and undocumented abandoned wells. The program terminates after five years.</p>
<p>Bill Number H.R. 4811</p> <p>Bill Title Safe Hydration is an American Right in Energy Development Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Schakowsky, Janice D. [D-IL-9]</p>	<p>Date Introduced 07/20/23</p> <p>Assigned Committee(s) Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors 22 Democrats including CO, CA, OR, WA</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Amends the SDWA (42 USC 300h) to require state underground injection programs to include regular testing and reporting of groundwater quality for drinking water sources located within a mile of hydraulic fracturing operations</p>
<p>Bill Number H.R. 4785</p> <p>Bill Title Fracturing Responsibility and Awareness of Chemicals Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. DeGette, Diana [D-CO-1]</p>	<p>Date Introduced 07/20/23</p> <p>Assigned Committee(s) Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors 24 Democrats including CA, WA, OR</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Amends the SDWA (42 USC 300h) to repeal the exemption for hydraulic fracturing, requiring disclosure of fracking chemicals to the State or EPA Administrator</p>
<p>Bill Number H.R. 4778</p> <p>Bill Title Focused Reduction of Effluence and Stormwater runoff through Hydrofracking Environmental Regulation (FRESHER) Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Cartwright, Matt [D-PA-8]</p>	<p>Date Introduced 07/20/23</p> <p>Assigned Committee(s) T&I</p> <p>Hearing(s)</p> <p>Co-sponsors 27 Democrats including CA, OR, CO, AZ, WA</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Amends the CWA (33 USC 1342 and 1362) to eliminate stormwater permit exemptions for oil, gas, and mining operations, and directs DOI to study stormwater impacts associated with oil and gas operations, including impacts to groundwater</p>
<p>Bill Number H.R. 4746/S. 2385</p> <p>Bill Title Tribal Access to Clean Water Act</p> <p>Passed (S/H)</p>	<p>Date Introduced 07/19/23</p> <p>Assigned Committee(s) Natural Resources; Energy and Commerce; Agriculture; Indian Affairs</p> <p>Hearing(s)</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Authorizes funding and extends authorizations for existing USDA, Reclamation, and Indian Health Services programs to provide access to reliable, clean, and drinkable water on tribal lands</p>

<p>Bill Sponsor Rep. Neguse, Joe [D-CO-2]; Sen. Bennet, Michael F. [D-CO]</p>	<p>09/19/23 Referred to the Subcommittee on Commodity Markets, Digital Assets, and Rural Development 02/08/2024 Senate Committee on Indian Affairs. Hearings held.</p> <p>Co-sponsors House: 16 Democrats including NM, CA, NV, CO, OR Senate: 6 Democrats including NM, CO, OR, CA 2 Independents</p>		
<p>Bill Number S. 2388/H.R. 3809</p> <p>Bill Title Cybersecurity for Rural Water Systems Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Cortez Masto, Catherine [D-NV]; Rep. Davis, Donald G. [D-NC-1]</p>	<p>Date Introduced 07/19/23</p> <p>Assigned Committee(s) House Agriculture, Subcommittee on Commodity Markets, Digital Assets, and Rural Development Senate Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors House: 5 Republican sponsors, and 3 Democratic sponsors including CA Senate: 1 Independent and 1 Republican including SD</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Would amend the Consolidated Farm and Rural Development Act to establish a cybersecurity circuit rider program to provide cybersecurity-related technical assistance to certain entities that operate rural water or wastewater systems</p>
<p>Bill Number H.R. 4643</p> <p>Bill Title Nogales Wastewater Improvement Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Grijalva, Raúl M. [D-AZ-7]</p>	<p>Date Introduced 07/14/23</p> <p>Assigned Committee(s) Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Democratic and 1 Republican, AZ</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To provide for the assumption of full ownership and control of the International Outfall Interceptor in Nogales, Arizona, by the International Boundary and Water Commission</p>
<p>Bill Number H.R. 4643</p> <p>Bill Title Nogales Wastewater Improvement Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Grijalva, Raúl M. [D-AZ-7]</p>	<p>Date Introduced 07/14/23</p> <p>Assigned Committee(s) House - Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican, AZ; 1 Democratic, AZ</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill This bill establishes requirements to address wastewater from the International Outfall Interceptor, which is a pipeline that carries wastewater from the United States-Mexico border to the Nogales International Wastewater Treatment Plant. The plant, which is located in Rio Rico, Arizona, treats sewage and wastewater originating from Nogales, Mexico, and Nogales, Arizona. The bill transfers the ownership, operations, and maintenance of the pipeline from the city of Nogales, Arizona, to the U. S. Section of the International Boundary and Water Commission. The commission must construct, operate, and maintain a debris screen at the pipeline's Manhole One for intercepting debris and drugs coming into the United States from Nogales, Mexico. <i>The bill also limits the portion of the costs that the city of Nogales, Arizona, must pay for the Nogales sanitation project.</i></p>
<p>Bill Number H.R. 4596/S. 2247</p> <p>Bill Title</p>	<p>Date Introduced 07/13/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill This bill reauthorizes through FY2031 and revises the U.S. Fish and Wildlife Service's Upper Colorado River and San Juan River Basin recovery implementation programs to restore populations of certain endangered and threatened fish.</p>

<p>Upper Colorado and San Juan River Basins Endangered Fish Recovery Programs Reauthorization Act of 2023</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Boebert, Lauren [R-CO-3] ; Sen. Hickenlooper, John W. [D-CO]</p>	<p>Natural Resources; Energy and Natural Resources</p> <p>Hearing(s) 09/20/23: H.R.4596 Ordered to be Reported by Unanimous Consent</p> <p>Co-sponsors House: 8 Republicans from WY, CO, CA, AZ, TX, WA Senate: 3 Democrats including NM, CO; 1 Republican, UT</p>		<p>The goal of the Upper Colorado River Endangered Fish Recovery Program is to recover the humpback chub (<i>Gila Cypha</i>), bonytail (<i>Gila elegans</i>), Colorado pikeminnow (<i>Ptychocheilus lucius</i>), and razorback sucker (<i>Xyrauchen texanus</i>). The states of Colorado, Utah, and Wyoming are partners in the program.</p> <p>The goal of the San Juan River Basin Recovery Implementation Program is to recover the Colorado pikeminnow (<i>Ptychocheilus lucius</i>) and razorback sucker (<i>Xyrauchen texanus</i>). The states of Colorado and New Mexico are partners in the program.</p> <p>The bill expands the programs to include the recovery of threatened fish stock. Thus, the bill requires the Upper Colorado River program to continue efforts to restore populations of the humpback chub, which was reclassified from an endangered species to a threatened species in 2001.</p>
<p>Bill Number H.R. 4540</p> <p>Bill Title Water Infrastructure Enhancement Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Cuellar, Henry [D-TX-28]</p>	<p>Date Introduced 07/11/23</p> <p>Assigned Committee(s) Energy and Commerce</p> <p>Hearing(s) 7/14/23: Referred to the Subcommittee on Environment, Manufacturing, and Critical Materials</p> <p>Co-sponsors 3 Democrats including NM 4 Republicans including TX</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Amends the SDWA to establish a grant program for water suppliers to make infrastructure improvements to public water systems, and authorizes \$800M for each of FY24-29</p>
<p>Bill Number H.R. 4356/S. 2927</p> <p>Bill Title WaterSMART Access for Tribes Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Stansbury, Melanie Ann [D-NM-1], Sen. Lujan, Ben Ray [D-NM]</p>	<p>Date Introduced 06/23/23</p> <p>Assigned Committee(s) Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors House: 6 Democrats including NM, CA Senate: 2 Democrats including NV, CO</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Amends the WaterSMART program to authorize DOI to waive the non-Federal share of infrastructure improvements for Indian tribes if the cost share would cause financial hardship</p>
<p>Bill Number H.R. 4297/S. 2156</p> <p>Bill Title Bolts Ditch Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Neguse, Joe [D-CO-2]; Sen. Bennet, Michael F. [D-CO]</p>	<p>Date Introduced 06/22/23</p> <p>Assigned Committee(s) Natural Resources; Energy and Natural Resources</p> <p>Hearing(s) 02/06/2024: House, Ordered to be Reported by Unanimous Consent 06/12/2024: Senate, hearings held</p> <p>Co-sponsors House: 1 Republican, CO Senate: 1 Democratic, CO</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the John D. Dingell, Jr. Conservation, Management, and Recreation Act to allow for additional entities to be eligible to complete the maintenance work on Bolts Ditch and the Bolts Ditch Headgate within the Holy Cross Wilderness, Colorado.</p>
<p>Bill Number H.R. 4290/S. 2077</p> <p>Bill Title</p>	<p>Date Introduced 06/22/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Federal Agriculture Improvement and Reform Act of 1996 to ensure that producers who rely on acequia systems have access to drought protections</p>

<p>Acequia Communities Empowered by Qualifying Upgrades for Infrastructure Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Lujan, Ben Ray [D-NM]</p>	<p>Agriculture; Natural Resources; Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors House: 2 Democrats, NM Senate: 1 Republican, TX</p>		
<p>Bill Number S.2202</p> <p>Bill Title Restore Aging Infrastructure Now (RAIN) Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Feinstein, Dianne [D-CA]</p>	<p>Date Introduced 06/22/23</p> <p>Assigned Committee(s) Energy and Natural Resources</p> <p>Hearing(s) 7/19/23: Committee on Energy and Natural Resources Subcommittee on Water and Power. Hearings Held.</p> <p>Co-sponsors Senate: 1 Democratic, CA</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would authorize the modification of transferred works to improve water quality for drinking water, to increase the reliability or quantity of the drinking water supply of disadvantaged communities, and other project benefits as part of extraordinary operation and maintenance work</p>
<p>Bill Number S. 2169</p> <p>Bill Title Watershed Results Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Wyden, Ron [D-OR]</p>	<p>Date Introduced 06/22/23</p> <p>Assigned Committee(s) Energy and Natural Resources</p> <p>Hearing(s) 7/19/23: Committee on Energy and Natural Resources Subcommittee on Water and Power. Hearings Held.</p> <p>Co-sponsors</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Directs DOI to establish 2-5 pilot watershed projects in Reclamation states, Alaska, and Hawaii, in consultation with states, tribes, and others, with a cross-agency funding strategy to achieve the outcomes of (1) a quantifiable increase in surface water or groundwater; (2) an increase in habitat; or (3) other quantifiable watershed benefits. The bill would waive cost-share requirements, and establishes a process for recommending permanent funding for permanent projects. Authorizes \$15M for each watershed pilot for each of FY24-29, and another \$2M to carry out advanced watershed analytics for each pilot for each of FY24-26.</p>
<p>Bill Number S. 2162</p> <p>Bill Title Support To Rehydrate the Environment, Agriculture, and Municipalities (STREAM) Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Feinstein, Dianne [D-CA]</p>	<p>Date Introduced 06/22/23</p> <p>Assigned Committee(s) Energy and Natural Resources</p> <p>Hearing(s) 7/19/23: ENR Subcommittee hearing</p> <p>Co-sponsors 1 Democratic, AZ 1 Independent, AZ</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Provides authorizations for Reclamation state storage and conveyance projects, water recycling, desalination, drinking water assistance for disadvantaged communities, O&M work, drought resilience, dam safety, improved technology and data, ecosystem restoration, and modifications to drought program. Authorizes over \$1.65B for FY25-29</p>
<p>Bill Number S. 2161</p> <p>Bill Title Canal Conveyance Capacity Restoration Act</p> <p>Passed (S/H)</p>	<p>Date Introduced 06/22/23</p> <p>Assigned Committee(s) Energy and Natural Resources</p> <p>Hearing(s)</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To provide financial assistance for projects to address certain subsidence impacts in the State of California</p>

Bill Sponsor Sen. Feinstein, Dianne [D-CA]	Co-sponsors		
Bill Number S. 2160/ H.R. 6107 Bill Title Urban Canal Modernization Act Passed (S/H) Bill Sponsor Sen. Risch, James E. [R-ID]; Rep. Simpson, Michael K. [R-ID-2]	Date Introduced 06/22/23 Assigned Committee(s) Energy and Natural Resources Hearing(s) 7/19/23: ENR Subcommittee hearing 11/14/23: House-Natural Resources, Subcommittee Hearings Held Co-sponsors House: 2 Republicans from ID, WA Senate: 1 Democratic, OR; 1 Republican, ID	WSWC Keywords Congress.gov Link	Summary of Bill Authorizes O&M work for urban canals for at-risk populations.
Bill Number S. 2130 Bill Title PFAS Community Engagement and Transparency Act Passed (S/H) Bill Sponsor Sen. Shaheen, Jeanne [D-NH]	Date Introduced 06/22/23 Assigned Committee(s) Armed Services Hearing(s) Co-sponsors	WSWC Keywords Congress.gov Link	Summary of Bill To require community engagement and reporting relating to activities of the Department of Defense with respect to PFAS
Bill Number H.R. 4247 Bill Title Flood Prevention and Snowpack Management Act Passed (S/H) Bill Sponsor Rep. Harder, Josh [D-CA-9]	Date Introduced 06/21/23 Assigned Committee(s) T&I Hearing(s) Co-sponsors 3 Democrats, CA	WSWC Keywords Congress.gov Link	Summary of Bill Directs the Corps to establish a Task Force with FEMA, Reclamation, NOAA, California representatives and agencies and tribes, develop a plan of action for snowpack melt, flood mitigation and recovery, and expediting water storage projects to capture water from the snowpack and alleviate future drought conditions.
Bill Number S. 2102 Bill Title Water for Conservation and Farming Act Passed (S/H) Bill Sponsor Sen. Wyden, Ron [D-OR]	Date Introduced 06/21/23 Assigned Committee(s) Energy and Natural Resources Hearing(s) 7/19/23: ENR Subcommittee hearing Co-sponsors Sen. Merkley, Jeff [D-OR]	WSWC Keywords Congress.gov Link	Summary of Bill Title I of the bill provides for drought preparedness and improved water supply reliability. It creates a new Bureau of Reclamation Infrastructure Fund which would transfer \$300M a year for FY35-65 directly from the Reclamation Fund, with a third of those funds expended by DOI for each of (1) reclamation and reuse projects, (2) water management improvement grants, and (3) Reclamation dam safety. It would increase WaterSMART funding from \$820M to \$1B and expend the program to include temporary, voluntary, and compensated transactions to decrease consumptive uses at a watershed scale; and to include enhancing natural water storage in floodplains and riparian wetlands.
Bill Number H.R. 4213/S. 1224 Bill Title Conservation Reserve Enhancement Program Improvement Act	Date Introduced 06/20/23 Assigned Committee(s) Agriculture	WSWC Keywords Congress.gov Link	Summary of Bill Amends the Food Security Act to modify CREP, including setting payment rates for retired water rights under drought and water conservation agreements to be equal to the irrigated acre payment rates determined by USDA.

<p>Passed (S/H)</p> <p>Bill Sponsor Yadira Caraveo (D-CO)(Previously Rep. Buck, Ken [R-CO-4]); Sen. Bennet, Michael F. [D-CO]</p>	<p>Hearing(s) 8/21/23: Referred to the Subcommittee on Conservation, Research, and Biotechnology. 06/14/2024: House, Yadira Caraveo (D-CO) asked to be considered first sponsor, agreed to without objection.</p> <p>Co-sponsors House: 1 Democratic, CO Senate: 1 Democratic, CO; 2 Republicans</p>		
<p>Bill Number H.R. 4197/S.202</p> <p>Bill Title Collaborative Forest Landscape Restoration Program Reauthorization Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Neguse, Joe [D-CO-2]; Sen. Merkley, Jeff [D-OR]</p>	<p>Date Introduced 06/16/23</p> <p>Assigned Committee(s) Agriculture; Natural Resources</p> <p>Hearing(s) 08/21/2023 Referred to the Subcommittee on Forestry</p> <p>Co-sponsors House: 2 Democrats from WA, OR Senate: 3 Democrats including OR, CO, MT; 2 Republicans, ID</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Reauthorizes the program and adds eligibility to criteria for proposals that (1) seek to use innovative implementation such as good neighbor agreements and conservation finance agreements; (2) seek to reduce the risk of uncharacteristic wildfire or increase ecological restoration activities within lands that cross state, tribal, and private boundaries; or (3) that seek to enhance watershed health and drinking water sources.</p>
<p>Bill Number H.R. 4094/S. 1955</p> <p>Bill Title Great Salt Lake Stewardship Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Curtis, John R. [R-UT-3]; Sen. Lee, Mike [R-UT]</p>	<p>Date Introduced 06/14/23</p> <p>Assigned Committee(s) Natural Resources; Energy and Natural Resources</p> <p>Hearing(s) 7/19/23: SENR hearing 11/15/2023: House, Ordered to be Reported by Unanimous Consent 12/14/23: Senate, Ordered to be reported with amendments favorably</p> <p>Co-sponsors House: 4 Republicans, UT Senate: 1 Republican, UT</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Authorizes the Central Utah Project to expend funds toward water conservation measures for the benefit of the downstream Great Salt Lake basin</p>
<p>Bill Number H.R. 4069</p> <p>Bill Title Protecting Coasts and Cities from Severe Weather Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Kean, Thomas H. [R-NJ-7]</p>	<p>Date Introduced 06/13/23</p> <p>Assigned Committee(s) Science, Space, and Technology</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill Directs NOAA to establish a coastal flooding and storm surge forecast improvement program that prioritizes real-time prediction of the ocean's role in coastal flooding and storm surge events, improvements in mitigating impacts, and utilizes distributed sensors to easily incorporate data into models. It also directs NOAA to work with FEMA and others to ensure equal and complete weather observation coverage and emergency information sharing in the United States, including advancing weather forecasting and climate modeling at urban scales, and supporting interagency pilot projects to accelerate coordination and use of localized weather data such as mesonets for emergency management decisions and infrastructure operators.</p>
<p>Bill Number H.R. 4052</p>	<p>Date Introduced 06/13/23</p>	<p>WSWC Keywords</p>	<p>Summary of Bill The Congressional findings include the ASCE 2021 report card estimating the costs of various infrastructure needs, including (1) drinking water infrastructure and stormwater systems (\$204B); (2) dams, levees, inland waterways, and</p>

Bill Title National Infrastructure Bank Act Passed (S/H) Bill Sponsor Rep. Davis, Danny K. [D-IL-7]	Assigned Committee(s) 7 House committees Hearing(s) Co-sponsors 37 Democratic co-sponsors, including AZ, CA, NM, WA	Congress.gov Link 	including (1) drinking water, wastewater, and stormwater systems (\$801M), (2) dams, levees, inland waterways, and ports (\$197M, and (3) major new water supply projects (\$400M). The bill proposes a national bank to finance various infrastructure needs, including water infrastructure. It authorizes \$100M for FY23-24 to get the bank started.
Bill Number H.R. 4018/S.1853 Bill Title Headwaters Protection Act Passed (S/H) Bill Sponsor Rep. Costa, Jim [D-CA-21]; Sen. Bennet, Michael F. [D-CO]	Date Introduced 06/12/23 Assigned Committee(s) Agriculture; Natural Resources Hearing(s) Co-sponsors House: 5 Democratic and 3 Republican Co-Sponsors including from CA, OR, NM, CO, WA Senate: 6 Democrats including CA, NM, AZ, CO, OR; 2 Republicans including ID; 1 Independent, AZ	WSWC Keywords Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/4018	Summary of Bill To amend the Healthy Forests Restoration Act of 2003 to reauthorize and improve the Water Source Protection Program. Priority projects include risk management benefits for drought, wildfire, flooding, and minimizing risks to watershed health, water supply and quality, water-related infrastructure (including municipal and ag systems), and include contributions of funds or in-kind or leadership support from non-federal partners. It authorizes \$30M for each of FY24-28.
Bill Number H.R. 4017/S.174 Bill Title Conservation Reserve Program Improvement Act Passed (S/H) Bill Sponsor Rep. Costa, Jim [D-CA-21]; Sen. Thune, John [R-SD]	Date Introduced 06/12/23 Assigned Committee(s) Agriculture Hearing(s) Co-sponsors House: 1 Democratic, CA; 1 Republican Senate: 1 Democratic; 1 Republican, SD	WSWC Keywords Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/4017	Summary of Bill Revises the CRP to permanently establish a continuous enrollment procedure for the State Acres for Wildlife Enhancement Initiative. Provides federal cost sharing payments for grazing infrastructure on CRP contracts and practices where grazing is included in the conservation plan, and for other plans not related to haying or grazing. It increases the annual rental payment limitation from \$50,000 to \$125,000.
Bill Number H.R. 3980 Bill Title National Oceanic and Atmospheric Administration Act Passed (S/H) Bill Sponsor Rep. Lucas, Frank D. [R-OK-3]	Date Introduced 06/09/23 Assigned Committee(s) Science, Space, and Technology; Natural Resources Hearing(s) Co-sponsors 13 Republican co-sponsors, including CA, OK, TX	WSWC Keywords Congress.gov Link 	Summary of Bill The bill would create NOAA as an independent science research and development agency
Bill Number H.R. 3977/S. 1898 Bill Title Navajo-Gallup Water Supply Project Amendments Act	Date Introduced 06/09/23 Assigned Committee(s) Natural Resources; Indian Affairs	WSWC Keywords Congress.gov Link 	Summary of Bill The bill would amend the Northwestern New Mexico Rural Water Projects Act to authorize an expansion of the project service area to meet the needs of additional Navajo Nation tribal members in NM and AZ at no additional cost, extends the project deadline beyond 2024 to 2029 to allow time for project completion, and increases the funding authorization from \$870M to \$2.175B to match updated construction costs.

<p>Passed (S/H)</p> <p>Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Lujan, Ben Ray [D-NM]</p>	<p>Hearing(s) 7/12/23: SIA hearing 11/15/2023 Senate Committee on Indian Affairs. Ordered to be reported with an amendment in the nature of a substitute favorably.</p> <p>Co-sponsors House: 1 Republican, UT; 1 Democrats, NM Senate: 1 Republican, UT; 1 Democratic, NM</p>		
<p>Bill Number H.R. 3972</p> <p>Bill Title Flood Resiliency and Land Stewardship Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Hinson, Ashley [R-IA-2]</p>	<p>Date Introduced 06/09/23</p> <p>Assigned Committee(s) Agriculture</p> <p>Hearing(s)</p> <p>Co-sponsors House: 2 Democrats; 2 Republicans</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Food Security Act of 1985 to add flood prevention and mitigation measures to purposes of the Regional Conservation Partnership Program</p>
<p>Bill Number H.R. 3966</p> <p>Bill Title Improving Atmospheric River Forecasts Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Garcia, Mike [R-CA-27]</p>	<p>Date Introduced 06/09/23</p> <p>Assigned Committee(s) Science, Space, and Technology</p> <p>Hearing(s)</p> <p>Co-sponsors 1 Republican, CA</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill directs NOAA to establish at least one pilot project within OAR's US Weather Research Program to carry out the activities to implement the recommendations in the 2018 NWS report on "Seasonal to Subseasonal Forecasting Innovation: Plans for the 21st Century."</p>
<p>Bill Number H.R. 3954/S. 1874</p> <p>Bill Title Water and Agriculture Tax Reform Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Buck, Ken [R-CO-4]; Sen. Crapo, Mike [R-ID]</p>	<p>Date Introduced 06/09/23</p> <p>Assigned Committee(s) House Ways and Means; Senate Finance</p> <p>Hearing(s)</p> <p>Co-sponsors House: 2 Republicans including WA and UT. 1 Democratic, CO Senate: 4 Republicans including ID, WY, MT 1 Democratic, CO</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Internal Revenue Code of 1986 to facilitate water leasing and water transfers to promote conservation and efficiency.</p>
<p>Bill Number S. 1764/H.R.482</p> <p>Bill Title Western Wildfire Support Act</p> <p>Passed (S/H)</p>	<p>Date Introduced 05/31/23</p> <p>Assigned Committee(s) Energy and Natural Resources</p> <p>Hearing(s)</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill is to improve activities relating to wildfires, including preparation and post-wildfire mitigation. Section 302 establishes a Long-Term Burned Area Recovery Account (\$100M annually) for rehabilitation projects between 1-3 years after a wildfire, with a priority on downstream effects on water resources</p>

<p>Bill Sponsor Sen. Cortez Masto, Catherine [D-NV]; Rep. Neguse, Joe [D-CO-2]</p>	<p>10/25/2023: Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining. Hearings held. Co-sponsors House: 5 Democrats including CA, NV, NM</p>		
<p>Bill Number H.R. 3746 Bill Title Fiscal Responsibility Act Passed (S/H) 5/31/23: House passed 314-117 6/1/23: Senate passed 63-36 6/3/23: President signed into law, P.L. 118-5 Bill Sponsor Rep. McHenry, Patrick T. [R-NC-10]</p>	<p>Date Introduced 05/29/23 Assigned Committee(s) 15 Committees Hearing(s) Co-sponsors</p>	<p>WSWC Keywords Congress.gov Link https://www.congress.gov/bills/118th-congress/house-bill/3746</p>	<p>Summary of Bill The bill will raise the debt ceiling, temporarily suspend the debt limit, impose caps on discretionary funding in FY24-25 enforced by sequestration, rescind unobligated balances, and make further changes affecting spending and revenues. It also amends provisions of existing law that regulate the permitting of proposed energy-related projects. Division C, Title III on permitting reform would amend the National Environmental Policy Act (NEPA) regarding: (1) thresholds for NEPA review; (2) the designation of lead agencies to coordinate cross-agency NEPA reviews; (3) categorical exclusions; and (4) adding energy storage to the projects covered by the FAST-41 program. It directs the CEQ to study the potential for online and digital technologies to address delays in NEPA reviews, including the creation of a unified online permitting portal that would allow applicants to submit required documents, to track progress, and to work with agencies to upload and edit documents in real-time. Section 324 directed the expedited completion of the Mountain Valley Pipeline (MVP), a 303-mile interstate natural gas. Congress directed the Army Corps of Engineers under subsection (d) to issue all permits or verifications necessary "to complete the construction of the [MVP] across the waters of the United States," notwithstanding any other provision of law, within 21 days of enactment of H.R. 3746. Division B, Title I, rescinded many ARPA (P.L. 117-2) funds. Section 57 rescinded the unobligated balance of the \$500M appropriated for state and tribal drinking water and wastewater grants for low-income ratepayer assistance (ARPA §2912(a)). Section 65 rescinded funds for the Fish and Wildlife Service (ARPA §6002). Section 66 rescinded unobligated funds for the Bureau of Indian</p>
<p>Bill Number H.R. 3675 Bill Title Western Water Accelerated Revenue Repayment Act Passed (S/H) Bill Sponsor Rep. Boebert, Lauren [R-CO-3]</p>	<p>Date Introduced 05/25/23 Assigned Committee(s) Natural Resources Hearing(s) 07/26/23 Ordered to be Reported in the Nature of a Substitute (Amended) by the Yeas and Nays (22-14) Co-sponsors 9 Republicans including WY, WA, AZ, MT, TX, CO, CA</p>	<p>WSWC Keywords Congress.gov Link</p>	<p>Summary of Bill Amends WIIN (PL 114-322) section 4013 to extend contract prepayment authority. This bill permanently authorizes a provision under the Water Infrastructure Improvements for the Nation Act that (1) allows certain water users (e.g., agriculture and municipal water users) in western states to prepay what they owe under contracts with the Bureau of Reclamation for the storage and supply of water resources; and (2) requires a specified portion of the receipts generated from such prepayments be directed to the Reclamation Water Storage Account for the construction of water storage.</p>
<p>Bill Number H.R. 3568/S.1718 Bill Title Primacy Certainty Act Passed (S/H) Bill Sponsor Rep. Greshaw, Dan [R-TX-2]; Sen. Sullivan, Dan [R-AK]</p>	<p>Date Introduced 05/22/23 Assigned Committee(s) Energy and Commerce; Environment and Public Works Hearing(s) Co-sponsors House: 7 Republicans including TX, AZ, UT Senate: 2 Republicans including WY, NE</p>	<p>WSWC Keywords Congress.gov Link</p>	<p>Summary of Bill Amends the SDWA to clarify EPA's timeline for making decisions on the approval or disapproval of State underground injection control programs. It requires EPA to provide notice to the State within 180 days of the application or notice on the status of the review, the reason a decision has not yet been made, and an itemized list of specific deficiencies with the State's application or notice to be addressed to receive approval of the application or notice. It would create automatic approval of complete applications or notices if EPA doesn't approve or disapprove within 30 days of the 180-day period.</p>
<p>Bill Number H.R. 3490 Bill Title Water Infrastructure Modernization Act Passed (S/H)</p>	<p>Date Introduced 05/18/23 Assigned Committee(s) T&I, Energy and Commerce Hearing(s)</p>	<p>WSWC Keywords Congress.gov Link</p>	<p>Summary of Bill Amends the CWA and SDWA to authorize grants for smart water infrastructure technology for drinking water, wastewater, and stormwater systems, to support modernization of POTWs and drinking water systems, and to encourage use of water-efficient technologies to address drought and prepare for the strain of growing populations and climate change on over-allocated water supplies</p>

Bill Sponsor Rep. Gallego, Ruben [D-AZ-3],	Co-sponsors Rep. Duarte, John S. [R-CA-13]		
Bill Number S. 1715/H.R. 3439/S.188 Bill Title Wildfire Emergency Act Passed (S/H) Bill Sponsor Sen. Feinstein, Dianne [D-CA]; Rep. Panetta, Jimmy [D-CA-19]	Date Introduced 05/18/23 Assigned Committee(s) Agriculture, Nutrition, and Forestry; 4 House committees Hearing(s) Co-sponsors House: 8 Democrats including CA, OR Senate S.1715: 3 Democrats including CA, OR; 1 Republican, UT Senate S.188: 2 Democrats including CA, OR; 1 Republican MT	WSWC Keywords Congress.gov Link	Summary of Bill Directs USDA to select and implement landscape-scale forest restoration projects, to assist communities in increasing their resilience to wildfire
Bill Number H.R. 3424 Bill Title Forest Conservation Easement Program Act Passed (S/H) Bill Sponsor Rep. Kelly, Trent [R-MS-1]	Date Introduced 05/17/23 Assigned Committee(s) Agriculture Hearing(s) Co-sponsors House: 9 Democrats including OR, WA, CA; 6 Republicans	WSWC Keywords Congress.gov Link	Summary of Bill Directs USDA to establish the forest conservation easement program to, among other things, protect and restore watersheds for water quality and quantity improvements
Bill Number H.R. 3167/S.115 Bill Title Clean Water Allotment Modernization Act Passed (S/H) Bill Sponsor Rep. Waltz, Michael [R-FL-6]; Sen. Rubio, Marco [R-FL]	Date Introduced 05/09/23 Assigned Committee(s) T&I Hearing(s) Co-sponsors House: 7 Republicans Senate: 1 Democratic, AZ; 1 Republican	WSWC Keywords Congress.gov Link	Summary of Bill Revises EPA's allocation formula for distributing SRF funds for water quality infrastructure projects. The initial allotment for FY24-28 must be no less than the amount received by each state in FY23, with additional allotments based on each state's share of the US population. The formula must also provide allotments for tribes and territories, and an allotment for EPA's oversight of American iron and steel requirements. Beginning in FY29, EPA must use an updated allotment formula base on the needs of states as identified in the most recently available clean watersheds needs survey.
Bill Number S. 1430 / H.R. 7994 Bill Title Water Systems PFAS Liability Protection Act Passed (S/H) Bill Sponsor Sen. Lummis, Cynthia M. [R-WY]; Rep. Curtis, John R. [R-UT-3]	Date Introduced 05/03/23 Assigned Committee(s) Environment and Public Works; House - Energy and Commerce; Transportation and Infrastructure Hearing(s) Co-sponsors Senate: 9 Republicans including AK, ID, NE, ND, OK House: 5 Republicans including CA, UT; 3 Democrats including TX, WA	WSWC Keywords Congress.gov Link	Summary of Bill The bill would exempt state and local water entities (POTWs, municipalities with 402 permits for stormwater discharges, water agencies, public water systems, and contractors performing management or disposal activities) from CERCLA liability for PFAS releases.

<p>Bill Number H.R.3027</p> <p>Bill Title Reclamation Climate Change and Water Program Reauthorization Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Porter, Katie [D-CA-47]</p>	<p>Date Introduced 04/28/23</p> <p>Assigned Committee(s) Natural Resources</p> <p>Hearing(s) Subcommittee Hearings Held (6/14/2023)</p> <p>Co-sponsors 9 Democratic co-sponsors (including NM, OR, CA, AZ)</p>	<p>WSWC Keywords SECURE Water Act</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/3027</p>	<p>Summary of Bill Originally authorized in the 2009 Omnibus Public Land Management Act, under the SECURE Water Act §9503(c), the program coordinates the efforts of the Bureau of Reclamation, the U.S. Geological Survey (USGS), the U.S. Department of Agriculture (USDA), the National Oceanic and Atmospheric Administration (NOAA), and other federal and state agencies to address the risks of climate change to water scarcity in watersheds with Reclamation facilities. The program is used to develop strategies to manage water supply, potential shortages and water delivery to contractors, conflicts, and impacts to water uses and the environment. Reclamation reports to Congress every five years with the West-Wide Climate and Hydrology Assessment, which provides estimates of changes in temperature, precipitation, snowpack, and streamflow across the West.</p>
<p>Bill Number H.R. 2921</p> <p>Bill Title Water Infrastructure Sustainability and Efficiency (WISE) Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Williams, Nikema [D-GA-5]</p>	<p>Date Introduced 04/26/23</p> <p>Assigned Committee(s) Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors 11 Democratic co-sponsors including CA, NV, OR</p>	<p>WSWC Keywords SRFs</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/2921</p>	<p>Summary of Bill The bill would amend the CWA to require a certain percentage of funds appropriated for SRF grants to be used for green projects, water or energy efficiency improvements, or other environmentally innovative activities.</p>
<p>Bill Number H.R. 2811</p> <p>Bill Title Limit, Save, Grow Act</p> <p>Passed (S/H) 4/26/23: Passed House 217-215 Senate - 05/04/2023 Committee on the Budget. Hearings held</p> <p>Bill Sponsor Rep. Arrington, Jodey C. [R-TX-19]</p>	<p>Date Introduced 04/25/23</p> <p>Assigned Committee(s) 11 Committees</p> <p>Hearing(s) 5/4/23: Senate Budget Hearing</p> <p>Co-sponsors 19 Republican co-sponsors (including CA, OK, TX, UT, WA)</p>	<p>WSWC Keywords CWA 401</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/2811</p>	<p>Summary of Bill The bill would provide for an increase to the debt ceiling. It also incorporates H.R. 1, including the provisions on amending CWA 401 State Certifications</p>
<p>Bill Number H.R. 2787 / S. 1233</p> <p>Bill Title No Title</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Sewell, Terri A. [D-AL-7] Sen. Booker, Cory A. [D-NJ]</p>	<p>Date Introduced 04/20/23</p> <p>Assigned Committee(s) Agriculture</p> <p>Hearing(s)</p> <p>Co-sponsors 2 Republican co-sponsors</p>	<p>WSWC Keywords Infrastructure</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/2787</p>	<p>Summary of Bill To amend the Consolidated Farm and Rural Development Act to modify provisions relating to rural decentralized water systems grants.</p>
<p>Bill Number H.R. 2671</p> <p>Bill Title</p>	<p>Date Introduced 04/18/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords WIFIA</p> <p>Congress.gov Link</p>	<p>Summary of Bill To amend the Water Infrastructure Finance and Innovation Act of 2014 with respect to budgetary treatment of certain amounts of financial assistance</p>

Restoring WIFIA Eligibility Act	T&I, Energy and Commerce	https://www.congress.gov/bill/118th-congress/house-bill/2671	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Costa, Jim [D-CA-21]	Co-sponsors 2 Republicans including UT 1 Democratic, CA		
Bill Number H.R.2521	Date Introduced 04/14/23	WSWC Keywords	Summary of Bill
Bill Title Clean Drinking Water Equity Act	Assigned Committee(s) House Energy and Commerce Subcommittee on Environment, Manufacturing, and Critical Materials	Congress.gov Link	To amend the Safe Drinking Water Act with respect to assistance for disadvantaged communities, and for other purposes. This bill revises the drinking water state revolving fund (SRF) program to increase the cap on the total amount of loan subsidies that states may give to assist disadvantaged communities. The drinking water SRF program is a financial assistance program to help water systems and states achieve the health protection objectives of the Safe Drinking Water Act.
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Ruiz, Raul [D-CA-25]	Co-sponsors		
Bill Number H.R. 2461	Date Introduced 04/03/23	WSWC Keywords Tribal water rights	Summary of Bill
Bill Title San Juan Southern Paiute Tribal Homelands Act	Assigned Committee(s) Natural Resources	Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/2461	To ratify a Treaty (2000) between the San Juan Southern Paiute Tribe and the Navajo Nation, to provide for the creation of a reservation for the San Juan Southern Paiute Tribe. Section 10 provides for transfers of water rights, water rights held in trust by the federal government, and establishes parameters for water used on Northern and Southern areas of the newly created reservation.
Passed (S/H)	Hearing(s) 6/7/23: Subcommittee hearing		
Bill Sponsor Rep. Crane, Elijah [R-AZ-2]	Co-sponsors 7 bipartisan co-sponsors from AZ and MT		
Bill Number S. 1079	Date Introduced 03/30/23	WSWC Keywords Rural infrastructure	Summary of Bill
Bill Title Assistance for Rural Water Systems Act	Assigned Committee(s) Agriculture, Nutrition, and Forestry	Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/1079	To amend the Consolidated Farm and Rural Development Act to provide additional assistance to rural water, wastewater, and waste disposal systems
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Shaheen, Jeanne [D-NH]	Co-sponsors 3 Republicans including AK 1 Democratic		
Bill Number H.R. 2429 / S. 1118	Date Introduced 03/30/23	WSWC Keywords OpenET	Summary of Bill
Bill Title Open Access Evapotranspiration Data Act	Assigned Committee(s) Natural Resources; Energy and Natural Resources	Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/2429	The bill authorizes the OpenET Data Program under the USGS to deliver satellite-based ET data to advance the quantification of ET and consumptive water use, and to provide data users with estimates across large landscapes
Passed (S/H)	Hearing(s)		

<p>Bill Sponsor Rep. Lee, Susie [D-NV-3] Sen. Cortez Masto, Catherine [D-NV]</p>	<p>7/19/23: Senate Subcommittee hearing 12/14/23: Ordered to be reported with an amendment in the nature of a substitute favorably 04/09/2024: Senate, placed on Legislative Calendar under general orders</p> <p>Co-sponsors House: 4 bipartisan co-sponsors in CA, UT Senate: 1 Democratic co-sponsor in CO</p>		
<p>Bill Number H.R. 2419</p> <p>Bill Title Canal Conveyance Capacity Restoration Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Costa, Jim [D-CA-21]</p>	<p>Date Introduced 03/30/23</p> <p>Assigned Committee(s) Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors 2 Democrats, CA</p>	<p>WSWC Keywords Infrastructure</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/2419</p>	<p>Summary of Bill To provide financial assistance for projects to address certain subsidence impacts in the State of California</p>
<p>Bill Number S. 1023/ H.R. 4956</p> <p>Bill Title Farmer-Informed WOTUS Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Braun, Mike [R-IN]; Rep. Yakym, Rudy [R-IN-2]</p>	<p>Date Introduced 03/29/23</p> <p>Assigned Committee(s) Agriculture, Nutrition, and Forestry; House Agriculture, T&I</p> <p>Hearing(s)</p> <p>Co-sponsors House: 2 Republicans Senate: 5 Republicans including NE, ND</p>	<p>WSWC Keywords WOTUS</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/1023</p>	<p>Summary of Bill To establish an advisory committee to inform Congress of the impact of Waters of the United States regulations on United States agriculture</p>
<p>Bill Number S. 1023/ H.R. 4956</p> <p>Bill Title Define WOTUS Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Braun, Mike [R-IN]</p>	<p>Date Introduced 03/29/23</p> <p>Assigned Committee(s) Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors 2 co-sponsors</p>	<p>WSWC Keywords WOTUS</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/1022</p>	<p>Summary of Bill To amend the CWA to modify the definition of navigable waters. The bill would define "navigable waters" as (1) the territorial seas; (2) interstate waters that are used, or are susceptible to use in the natural and ordinary condition of those waters, as a means in transport of interstate or foreign commerce; (3) relatively permanent, standing, or continuously flowing bodies of water that form geographical features commonly known as streams, rivers, or lakes, that flow directly into waters described in clause (2); and wetlands that are adjacent to and have a continuous surface water connection to waters described in clause (2) or (3). The bill would also provide certain exclusions for "navigable waters," and define "continuous surface connection" and "relatively permanent, standing, or continuously flowing bodies of water."</p>
<p>Bill Number H.R. 1740</p> <p>Bill Title No Title</p>	<p>Date Introduced 03/23/23</p> <p>Assigned Committee(s) T&I, Energy and Commerce</p>	<p>WSWC Keywords WIFIA</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1740</p>	<p>Summary of Bill To amend the Water Infrastructure Finance and Innovation Act of 2014 to establish payment and performance security requirements for projects. Requires a borrower to secure the financial project with payment and performance bonds in minimum amounts.</p>

Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Bost, Mike [R-IL-12]	Co-sponsors 10 Democrats including CA, TX 6 Republicans		
Bill Number S.950 / H.R. 1738 Bill Title Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2023 Passed (S/H)	Date Introduced 03/22/23 Assigned Committee(s) Indian Affairs; Natural Resources Hearing(s) 12/18/23: Passed Senate with amendment by Unanimous Consent 12/22/23: Received in the House, and held at the desk Co-sponsors Senate: 2 Republicans from ID, 1 Democratic from NV House: none	WSWC Keywords Tribal water rights Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/950	Summary of Bill To amend the Omnibus Public Land Management Act of 2009 to make a technical correction to the water rights settlement for the Shoshone-Paiute Tribes of the Duck Valley Reservation. The bill adjusts interest payments to the Tribes' Development Fund, adding \$5.1M, and makes indexing adjustments since 2016.
Bill Number S. 938 / H.R. 1729 Bill Title Water Affordability, Transparency, Equity, and Reliability Act Passed (S/H)	Date Introduced 03/22/23 Assigned Committee(s) Senate Finance Several House Committees Hearing(s)	WSWC Keywords Infrastructure Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/938	Summary of Bill This bill increases funding for water infrastructure, including funding for several programs related to controlling water pollution or protecting drinking water. Specifically, it establishes a Water Affordability, Transparency, Equity, and Reliability Trust Fund. The fund may be used for specified grant programs. The bill increases the corporate income tax rate to 24.5% to provide revenues for the fund. In addition, the bill revises requirements concerning the clean water state revolving fund (SRF) and the drinking water SRF, including by prohibiting states from providing financial assistance using amounts from the clean water SRF for projects that will provide substantial direct benefits to new communities other than projects for constructing an advanced decentralized wastewater system. It also creates or reauthorizes several grant programs related to water infrastructure, such as grants for removing lead from drinking water. To establish a trust fund, up to \$35B or 1/20th of the CW and DW needs assessment, to provide for adequate funding for water and sewer infrastructure. The bill allocates specific percentages to infrastructure under EPA, USDA, HHS, and Labor programs: Clean Water, Safe Drinking Water, Household Wells, Colonias, Indian Health Services, and Water Operators Job Training grants.
Bill Number S. 843 / H.R. 2694 Bill Title No title Passed (S/H)	Date Introduced 03/16/23 Assigned Committee(s) Energy and Natural Resources Natural Resources Hearing(s) 5/17/23: SENR hearing; reported 118-68 7/19/23: Senate Calendar Co-sponsors Senate: 1 Republican, ID	WSWC Keywords Dams Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/843	Summary of Bill The bill would amend the IJA to extend funding eligibility under 43 USC 3204(b) to dams developed under the Carey Act (43 USC 641) for rehabilitation and reconstruction projects
Bill Number S.806 / H.R. 1721 Bill Title	Date Introduced 03/15/23 Assigned Committee(s)	WSWC Keywords Congress.gov Link	Summary of Bill This bill directs the Department of Agriculture (USDA) to establish a program under which USDA awards grants for improving the quality of drinking water in certain rural areas. Grants may be given to individuals or entities, such as homeowners, renters, and licensed child-care facilities, that have demonstrated the presence of one or more health

<p>Healthy H2O Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Baldwin, Tammy [D-WI]; Rep. Pingree, Chellie [D-ME-1]</p>	<p>Senate - Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors Senate: 8 Democrats including OR, CA, NM; 1 Republican; 1 Independent House: 29 Democrats and 8 Republicans including CA, NM, TX, WA, CO, & OR</p>		<p>homeowners, renters, and licensed child-care facilities, that have demonstrated the presence of one or more health contaminants in their drinking water. Grants may also be given to nonprofit organizations to help individuals and entities test their water, analyze the results of the tests, and reduce the contamination.</p>
<p>Bill Number S. 798 / H.R. 1593</p> <p>Bill Title Land and Water Conservation Fund Water Amendments Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Rubio, Marco [R-FL] Rep. Mast, Brian J. [R-FL-21]</p>	<p>Date Introduced 03/14/23</p> <p>Assigned Committee(s) Energy and Natural Resources Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords water quality</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/798</p>	<p>Summary of Bill Authorizes DOI to use LWCF funds to provide financial assistance for water quality improvement projects that restore natural hydrologic systems such as wetlands or living shorelines. To be eligible, the statewide outdoor recreation plan must identify projects on waters with a CWA 303(d) impaired water quality control plan</p>
<p>Bill Number H.R. 1 / S. 947</p> <p>Bill Title Lower Energy Costs Act</p> <p>Passed (S/H) 3/30/23: Passed House 225-204</p> <p>See H.R.</p> <p>Bill Sponsor Scalise, Steve [Rep.-R-LA-1] Sen. Kennedy, John [R-LA]</p>	<p>Date Introduced 03/14/23</p> <p>Assigned Committee(s) Natural Resources, Energy and Commerce, Agriculture, Transportation and Infrastructure, Budget</p> <p>Hearing(s)</p> <p>Co-sponsors House - 49 co-sponsors</p>	<p>WSWC Keywords CWA 401</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1</p>	<p>Summary of Bill Under §30002, the bill would amend CWA §401, limiting the authority and timing for states to issue certifications. The bill would require each State to publish new certification requirements within 30 days of when the bill is enacted. "A decision to grant or deny a request for certification shall be based only on the applicable provisions of sections 301, 302, 303, 306, and 307, and the grounds for the decision shall be set forth in writing and provided to the applicant. Not later than 90 days after receipt of a request for certification, the State, interstate agency, or Administrator, as the case may be, shall identify in writing all specific additional materials or information that are necessary to grant or deny the request." The bill would: (1) strike consideration of "activities" and limit certifications to only "discharges"; (2) require a direct discharge into navigable waters; (3) remove the requirement for state applications, allowing a "request for certification" to trigger several statutory requirements; and (4) replaces broad consideration of "water quality requirements" in several places with the more specific provisions of CWA 301, 302, 303, 306, or 307. Additionally, H.R. 1 §10009 includes provisions to promote interagency coordination for review of natural gas pipelines. Subsection (e) explicitly exempts natural gas pipelines from the CWA §401 state certification process, and shifts any discretionary decisions about terms and conditions to mitigate the discharge of pollutants to FERC as the lead coordinating agency.</p>
<p>Bill Number H.R. 1556/S.1022</p> <p>Bill Title Define WOTUS Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Miller, Mary E. [R-IL-15] Sen. Braun, Mike [R-IN]</p>	<p>Date Introduced 03/10/23</p> <p>Assigned Committee(s) Transportation and Infrastructure Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors 3 Republicans</p>	<p>WSWC Keywords WOTUS</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1556</p>	<p>Summary of Bill The bill would amend the CWA to define "navigable waters" to explicitly exclude intermittent or ephemeral waters, subsurface waters, some intrastate waters, man-made channels or ditches, prior converted cropland, artificially irrigated areas, artificial lakes and ponds constructed in uplands, water-filled depressions in uplands, stormwater control features, wastewater recycling structures in uplands, waste treatment systems, water that require means beyond visual inspection to determine whether they are covered (e.g., aerial photographs, satellite imaging, or hydrologic testing), and limits determinations to the present-day regardless of whether the waters were navigable in the past or could become navigable in the future. The bill further defines "continuous surface water connection," "relatively permanent, standing, or continuously flowing bodies of water. Section 520 clarifies procedures for jurisdictional determinations. "Navigable waters" would include (1) territorial seas, (2) interstate waters used for interstate commerce, (3) relatively permanent, standing, or continuously flowing bodies of water that flow directly into interstate waters, and (4) adjacent wetlands that have a continuous surface water connection to interstate waters and their tributaries.</p>
<p>Bill Number H.R. 1556/S.1022</p> <p>Bill Title</p>	<p>Date Introduced 03/10/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords WOTUS</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill would amend the CWA to define "navigable waters" to explicitly exclude intermittent or ephemeral waters, subsurface waters, some intrastate waters, man-made channels or ditches, prior converted cropland, artificially irrigated areas, artificial lakes and ponds constructed in uplands, water-filled depressions in uplands, stormwater control features,</p>

<p>Define WOTUS Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Miller, Mary E. [R-IL-15] Sen. Braun, Mike [R-IN]</p>	<p>Transportation and Infrastructure Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors 3 Republicans</p>	<p>https://www.congress.gov/bill/118th-congress/house-bill/1556</p>	<p>areas, artificial lakes and ponds constructed in uplands, water-filled depressions in uplands, stormwater control features, wastewater recycling structures in uplands, waste treatment systems, water that require means beyond visual inspection to determine whether they are covered (e.g., aerial photographs, satellite imaging, or hydrologic testing), and limits determinations to the present-day regardless of whether the waters were navigable in the past or could become navigable in the future. The bill further defines "continuous surface water connection," "relatively permanent, standing, or continuously flowing bodies of water. Section 520 clarifies procedures for jurisdictional determinations. "Navigable waters" would include (1) territorial seas, (2) interstate waters used for interstate commerce, (3) relatively permanent, standing, or continuously flowing bodies of water that flow directly into interstate waters, and (4) adjacent wetlands that have a continuous surface water connection to interstate waters and their tributaries.</p>
<p>Bill Number S. 747 / H.R. 1517</p> <p>Bill Title Relief for Farmers Hit with PFAS Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Collins, Susan M. [R-ME] Rep. Pingree, Chellie [D-ME-1]</p>	<p>Date Introduced 03/09/23</p> <p>Assigned Committee(s) Agriculture, Nutrition, and Forestry Agriculture</p> <p>Hearing(s)</p> <p>Co-sponsors 2 Independent and 9 Democratic cosponsors including NM, OR House: 9 Democrats including NM, WA, OR; 1 Republican</p>	<p>WSWC Keywords PFAS</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/747</p>	<p>Summary of Bill Directs USDA to establish a program to provide grants to eligible states and tribes, in consultation with EPA, to address PFAS contamination on agricultural lands. At least 30% of the total funding must go to one or more eligible governments with a population <3M, with state/tribe prioritizing purposes that directly assist producers experiencing financial losses due to PFAS. The bill authorizes \$500M for FY24-28.</p>
<p>Bill Number H.R. 1607 / S. 739</p> <p>Bill Title No Title</p> <p>Passed (S/H) 11/06/23, Passed House: On motion to suspend the rules and pass the bill, as amended Agreed to by the Yeas and Nays: (2/3 required): 384 - 1</p> <p>Bill Sponsor Sen. Kelly, Mark [D-AZ] Rep. Schweikert, David [R-AZ-1]</p>	<p>Date Introduced 03/09/23</p> <p>Assigned Committee(s) Energy and Natural Resources Natural Resources</p> <p>Hearing(s) Senate - 11/07/2023 Received in the Senate and Read twice and referred to the Committee on Energy and Natural Resources</p> <p>Co-sponsors House: 2 Democrats, AZ; 2 Republicans AZ Senate: 1 Independent, AZ</p>	<p>WSWC Keywords Hydropower</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/739</p>	<p>Summary of Bill This bill would clarify federal jurisdiction over land reserved under a 1917 agreement between the U.S. and the Salt River Valley Water Users' Association, with the exclusive right to use the covered land for the development, generation, and transmission of electrical power and energy for the use and benefit of the Salt River Federal Reclamation Project. The federal government will hold title to the land, and SRP will be responsible for O&M. The Bureau of Reclamation is developing pumped storage at the site near the Roosevelt Dam on the Salt River in Arizona.</p>
<p>Bill Number S. 702/H.R. 4890</p> <p>Bill Title Urban Waters Federal Partnership Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Sinema, Kyrsten [I-AZ]; Rep. Stanton, Greg [D-AZ-4]</p>	<p>Date Introduced 03/08/23</p> <p>Assigned Committee(s) Environment and Public Works; House T&I, Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors Senate: 1 Republican cosponsor, TX; 1 Democratic cosponsor, AZ House: 2 Republicans</p>	<p>WSWC Keywords water resources</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/702</p>	<p>Summary of Bill The Senate bill authorizes EPA, DOI, and USDA to establish the Urban Waters Federal Partnership Program to coordinate across federal agencies (including the Corps, NOAA, DOE, FEMA, and other agencies) to support economically distressed urban communities in reconnecting with their associated waterways, including technical assistance, funding for projects that provide habitat or water quality improvements, increase river recreation, enhance community resilience, install infrastructure, strengthen community engagement and education regarding water resources, and carry out community-based capacity building</p>
<p>Bill Number H.R. 1407 / S.726</p> <p>Bill Title</p>	<p>Date Introduced 03/07/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords water quality</p> <p>Congress.gov Link</p>	<p>Summary of Bill This bill allows the issuance of tax-exempt private activity bonds to finance the replacement of any privately-owned portion of a lead service line in a public water system. Specifically, the bill provides that the use of proceeds from such bonds for replacement of a lead service line does not constitute private business use.</p>

<p>Financing Lead Out of Water Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Kildee, Daniel T. [D-MI-8] Sen. Bennet, Michael F. [D-CO]</p>	<p>House Ways and Means Senate Finance</p> <p>Hearing(s)</p> <p>Co-sponsors House: 18 Democrats including CA, CO, NM; 7 Republicans Senate: 7 Democrats including CA</p>	<p>https://www.congress.gov/bill/118th-congress/house-bill/1407</p>	<p>allows for replacement of a lead service line does not constitute private business use.</p>
<p>Bill Number H.R. 1367 / S. 660</p> <p>Bill Title Water System Threat Preparedness and Resilience Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Schakowsky, Janice D. [D-IL-9] Sen. Markey, Edward J. [D-MA]</p>	<p>Date Introduced 03/03/23</p> <p>Assigned Committee(s) Transportation and Infrastructure; Energy and Commerce Environment and Public Works</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords Infrastructure</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1367</p>	<p>Summary of Bill This bill requires the Environmental Protection Agency (EPA) to create a program to support increased membership and involvement of certain smaller water utilities and water treatment works (e.g., wastewater systems) in the Water Information Sharing and Analysis Center (WaterISAC). As background, WaterISAC is a group of water and wastewater systems and associations that coordinate with the EPA and other federal agencies to collect and analyze data on water security and threats. WaterISAC also provides analysis and resources to support response, mitigation, and resilience initiatives.</p>
<p>Bill Number H.R. 1304 / S.595</p> <p>Bill Title Rio San José and Rio Jemez Water Settlements Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3] Sen. Heinrich, Martin [D-NM]</p>	<p>Date Introduced 03/01/23</p> <p>Assigned Committee(s) Natural Resources Indian Affairs</p> <p>Hearing(s) Senate - 12/12/2023 Placed on Senate Legislative Calendar under General Orders. Calendar No. 274.</p> <p>Co-sponsors House: 2 Democratic cosponsors from NM Senate: 1 Democratic, NM</p>	<p>WSWC Keywords Indian water rights</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1304</p>	<p>Summary of Bill To approve the settlement of water rights claims of the Pueblos of Acoma and Laguna in the Rio San José Stream System and the Pueblos of Jemez and Zia in the Rio Jemez Stream System in the State of New Mexico</p>
<p>Bill Number H.R. 1274 / S. 612</p> <p>Bill Title Lake Tahoe Restoration Reauthorization Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Amodei, Mark E. [R-NV-2] Sen. Cortez Masto, Catherine [D-NV]</p>	<p>Date Introduced 03/01/23</p> <p>Assigned Committee(s) Natural Resources; Transportation and Infrastructure; Agriculture Energy and Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors House: 4 Democratic and 2 Republican cosponsors from NV and CA Senate: 4 Democrats from NV and CA</p>	<p>WSWC Keywords water quality</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1274</p>	<p>Summary of Bill To reauthorize the Lake Tahoe Restoration Act</p>
<p>Bill Number S. 540 / H.R. 1236</p> <p>Bill Title</p>	<p>Date Introduced 02/28/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords water quality and quantity</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill authorizes \$60B for an Outdoor Restoration Fund, with \$20B for a Restoration and Resilience Grant program and \$40B for the Restoration Resilience Partnership Program. The bill would establish a Restoration Fund Advisory Council, with 12 members representing states, tribes, local government, resource-dependent industries, conservation,</p>

<p>Protect the West Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Bennet, Michael F. [D-CO] Rep. Crow, Jason [D-CO-6]</p>	<p>Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors 2 Democratic co-sponsors (CO, OR)</p>	<p>https://www.congress.gov/bill/118th-congress/senate-bill/540</p>	<p>Council, with 12 members representing states, tribes, local government, resource-dependent industries, conservation, wildlife, or watershed organizations, and national experts on restoration, economic development, and community and climate resilience. For the grant program, priority projects include collaborative projects that address shared priorities of federal and non-federal partners, advance state and tribal plans relating to forests and water, utilize watershed analytics to measure expected outcomes, and improve long-term economic security. The projects would focus on fire ecosystems, hazardous fuels reduction, wildlife habitat, and "measurably improve water quality or water quantity outcomes in waterways that flow through and out of priority areas."</p>
<p>Bill Number H.R. 1181</p> <p>Bill Title To amend the Federal Water Pollution Control Act with respect to permitting terms, and for other purposes.</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Garamendi, John [D-CA-8]</p>	<p>Date Introduced 02/24/23</p> <p>Assigned Committee(s) Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors 2 Democrats including CA; 3 Republican including CA</p>	<p>WSWC Keywords NPDES permits</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1181</p>	<p>Summary of Bill This bill extends the maximum term for certain permits issued under the National Pollutant Discharge Elimination System (NPDES) program. Specifically, the bill extends the maximum term for NPDES permits issued to states or municipalities from 5 to 10 years.</p>
<p>Bill Number H.R. 1152</p> <p>Bill Title Water Quality Certification and Energy Project Improvement Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Rouzer, David [R-NC-7]</p>	<p>Date Introduced 02/24/23</p> <p>Assigned Committee(s) Transportation and Infrastructure</p> <p>Hearing(s) 03/17/2023: Reported by the Committee on Transportation and Infrastructure. 03/17/2023: Placed on the Union Calendar by the House</p> <p>Co-sponsors 2 co-sponsors Rep. Garret Graves (R-LA) and Rep. Scott Perry (R-PA).</p>	<p>WSWC Keywords CWA 401</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1152</p>	<p>Summary of Bill The bill would amend CWA §401, limiting the authority and timing for states to issue certifications. The bill would require each State to publish new certification requirements within 30 days of when the bill is enacted. "A decision to grant or deny a request for certification shall be based only on the applicable provisions of sections 301, 302, 303, 306, and 307, and the grounds for the decision shall be set forth in writing and provided to the applicant. Not later than 90 days after receipt of a request for certification, the State, interstate agency, or Administrator, as the case may be, shall identify in writing all specific additional materials or information that are necessary to grant or deny the request." The bill would: (1) strike consideration of "activities" and limit certifications to only "discharges"; (2) require a direct discharge into navigable waters; (3) remove the requirement for state applications, allowing a "request for certification" to trigger several statutory requirements; and (4) replaces broad consideration of "water quality requirements" in several places with the more specific provisions of CWA 301, 302, 303, 306, or 307. See also H.R. 1, H.R. 2811</p>
<p>Bill Number S. 482</p> <p>Bill Title Klamath Power and Facilities Agreement Support Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Wyden, Ron [D-OR]</p>	<p>Date Introduced 02/16/23</p> <p>Assigned Committee(s) Energy and Natural Resources</p> <p>Hearing(s) 07/18/2023: Hearings held</p> <p>Co-sponsors Sen. Merkley, Jeff [D-OR]</p>	<p>WSWC Keywords Hydropower and water supply</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/482</p>	<p>Summary of Bill The bill directs Reclamation to support lowering the Klamath Irrigation District's net delivered power cost, authorizes agreements with state and local entities for watershed projects, authorizes Reclamation to cover a portion of O&M costs of an irrigation pumping plant in Tulelake, CA, and authorization for an agreement to take ownership and operation of the Keno Dam and Link River Dam.</p>
<p>Bill Number S. 466</p> <p>Bill Title</p>	<p>Date Introduced 02/16/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords PFAS</p> <p>Congress.gov Link</p>	<p>Summary of Bill This bill requires various studies and reports on the exposure, hazards, and management of PFAS, and directs an implementation plan.</p>

<p>Federal PFAS Research Evaluation Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Peters, Gary C. [D-MI]</p>	<p>Commerce, Science, and Transportation</p> <p>Hearing(s)</p> <p>Co-sponsors 3 Bipartisan cosponsors</p>	<p>https://www.congress.gov/bill/118th-congress/senate-bill/466</p>	
<p>Bill Number S. 461 / H.R. 1061</p> <p>Bill Title No Title</p> <p>Passed (S/H)</p> <p>Bill Sponsor Sen. Cramer, Kevin [R-ND]</p>	<p>Date Introduced 02/16/23</p> <p>Assigned Committee(s) Energy and Natural Resources</p> <p>Hearing(s)</p> <p>Co-sponsors Sen. Hoeven, John [R-ND]</p>	<p>WSWC Keywords Hydropower</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/461</p>	<p>Summary of Bill To make certain irrigation districts eligible for Pick-Sloan Missouri Basin Program pumping power.</p>
<p>Bill Number H.R. 1008</p> <p>Bill Title Combat Harmful Algal Blooms Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Donalds, Byron [R-FL-19]</p>	<p>Date Introduced 02/14/23</p> <p>Assigned Committee(s) T&I, Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors 11 Democrats including CA, WA, AK; 15 Republicans including TX</p>	<p>WSWC Keywords HABs</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/1008</p>	<p>Summary of Bill This bill includes algal blooms within the definition of major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and directs the Centers for Disease Control and Prevention to submit to specified congressional committees a detailed study relating to the health effects of exposure to cyanotoxins in the air that result from algal blooms.</p>
<p>Bill Number H.R. 873</p> <p>Bill Title Water Quality and Environmental Innovation Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Donalds, Byron [R-FL-19]</p>	<p>Date Introduced 02/08/23</p> <p>Assigned Committee(s) Transportation and Infrastructure; Energy and Commerce; Science, Space, and Technology</p> <p>Hearing(s)</p> <p>Co-sponsors 5 Republicans including TX, AZ 1 Democratic</p>	<p>WSWC Keywords water quality</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/873</p>	<p>Summary of Bill This bill establishes and transfers funds to the Water Quality and Environmental Innovation Fund. Until September 30, 2028, the Environmental Protection Agency (EPA) may use the fund to award grants and contracts to carry out projects (1) that use emerging technologies (e.g., artificial intelligence or quantum information science) to address threats to water quality; or (2) for the research, development, or design of such technologies. At the start of each fiscal year from FY24 through FY2028, an amount of funding must be transferred to the fund that is equal to the amount that the EPA determines will be collected in such fiscal year from fees and charges under the Motor Vehicle and Engine Compliance Program of the EPA.</p>
<p>Bill Number S. 306</p> <p>Bill Title Tule River Tribe Reserved Water Rights Settlement Act</p> <p>Passed (S/H)</p>	<p>Date Introduced 02/07/23</p> <p>Assigned Committee(s) Indian Affairs</p> <p>Hearing(s)</p>	<p>WSWC Keywords Tribal water rights</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/306</p>	<p>Summary of Bill A bill to approve the Tule River Tribe water rights settlement.</p>

<p>Bill Sponsor Padilla, Alex [Sen.-D-CA]</p>	<p>03/29/2023: Committee on Indian Affairs ordered to be reported without amendment favorably. 11/03/2023: Reported by Sen. Schatz, placed on Senate Legislative Calendar under General Orders, No. 236</p> <p>Co-sponsors Sen. Feinstein, Dianne [D-CA]</p>		
<p>Bill Number H.R. 797/ S.271</p> <p>Bill Title Farm System Reform Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Khanna, Ro [Rep.-D-CA-17]; Sen. Booker, Cory A. [D-NJ]</p>	<p>Date Introduced 02/03/23</p> <p>Assigned Committee(s) Agriculture; Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors House: 38 Democratic cosponsors including CA, OR, WA, TX Senate: 3 Democrats and 1 Independent</p>	<p>WSWC Keywords CAFOs</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/797</p>	<p>Summary of Bill This bill places a moratorium on large concentrated animal feeding operations (CAFOs); expands country-of-origin labeling; and expands requirements in the livestock, poultry, and meat markets. Large CAFO may not commence or expand operations and, after January 1, 2040, may not continue to operate. Department of Agriculture must provide grants to eligible animal feed operation (AFO) owners to pay off related debt and to transition the property to alternative agriculture activities. Integrators that exercise substantial operational control of an AFO are liable and subject to civil action for an AFO's operation. Further, the bill expands requirements and prohibitions under the Packers and Stockyards Act of 1921 in order to increase competition and transparency in the livestock, poultry, and meat markets.</p>
<p>Bill Number H.J. Res. 27 / S.J.Res. 7</p> <p>Bill Title No Title</p> <p>Passed (S/H) 3/9/23 Passed House: 227-198 3/29/23 Passed Senate: 53-43 4/6/23 Vetoed by President 4/18/23 House failed to pass over veto, 227-196</p> <p>Bill Sponsor Graves, Sam [Rep.-R-MO-6] Capito, Shelley Moore [Sen.-R-WV]</p>	<p>Date Introduced 02/02/23</p> <p>Assigned Committee(s) Transportation and Infrastructure</p> <p>Hearing(s)</p> <p>Co-sponsors House - 170 Republican cosponsors Senate - 48 Republican cosponsors, 1 Democratic cosponsor from WV</p>	<p>WSWC Keywords WOTUS</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-joint-resolution/27</p>	<p>Summary of Bill This joint resolution nullifies the rule titled Revised Definition of "Waters of the United States," which was submitted by the U.S. Army Corps of Engineers and the Environmental Protection Agency on January 18, 2023. The rule specifies which bodies of water fall under the scope of the Clean Water Act and are thereby under federal jurisdiction and protected. For example, the definition in the 2023 rule includes certain wetlands and ephemeral waters (e.g., waters that flow intermittently).</p> <p>The 2023 rule replaced the 2020 Navigable Waters Protection Rule that included a narrower definition of waters of the United States.</p>
<p>Bill Number S. 202/H.R.4197</p> <p>Bill Title Collaborative Forest Landscape Restoration Program Reauthorization Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor</p>	<p>Date Introduced 02/01/23</p> <p>Assigned Committee(s) Agriculture, Nutrition, and Forestry</p> <p>Hearing(s)</p> <p>Co-sponsors</p>	<p>WSWC Keywords Wildfires</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/202</p>	<p>Summary of Bill This bill reauthorizes and expands the Collaborative Forest Landscape Restoration program, which helps fund collaborative and community-based forest management. The bill emphasizes proposals that use good neighbor agreements, reduce the risk of uncharacteristic wildfire or increase ecological restoration activities, and enhance watershed health and drinking water sources.</p>

Sen. Merkley, Jeff [D-OR]; Rep. Neguse, Joe [D-CO-2]	Senate: 3 Democratic and 2 Republican cosponsors from ID, OR, CO, MT House: 3 Democrats from WA, OR, NM		
Bill Number S. 174/H.R.4017 Bill Title Conservation Reserve Program Improvement Act Passed (S/H) Bill Sponsor Sen. Thune, John [R-SD]; Rep. Costa, Jim [D-CA-21]	Date Introduced 01/31/23 Assigned Committee(s) Agriculture, Nutrition, and Forestry Hearing(s) Co-sponsors Senate: 2 Bipartisan Cosponsors from MN and SD House: 1 Democratic, CA; 1 Republican	WSWC Keywords Farm Bill Conservation Programs Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/174	Summary of Bill A bill to amend the Food Security Act of 1985 to improve the conservation reserve program (grazing and water infrastructure)
Bill Number S. 162 Bill Title Smith River National Recreation Area Expansion Act Passed (S/H) Bill Sponsor Sen. Merkley, Jeff [D-OR]	Date Introduced 01/31/23 Assigned Committee(s) Energy and Natural Resources Hearing(s) 07/11/2023, Reported by Senator Manchin without amendment with report No. 118-49 Co-sponsors 3 Democratic cosponsors from OR and CA	WSWC Keywords Wild and Scenic Rivers Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/162	Summary of Bill This bill expands the Smith River National Recreation Area in California into Oregon and designates specific segments of the North Fork Smith River as components of the National Wild and Scenic Rivers System (NWSRS). It emphasizes management of roadless backcountry and white-water recreation in OR, and directs USDA to study the additions and modify any applicable management plan to protect inventoried resources. It directs USDA to enter into an MOA with applicable Indian tribes to (1) provide them with access to the portions of the recreation area in Oregon to conduct historical and cultural activities; and (2) develop interpretive information to be provided to the public on the history of, and use of the area by, those tribes. On the adoption of a resolution by the State Land Board of Oregon, USDA shall acquire the 555 acres of land known as the Cedar Creek Parcel in Oregon. A streamside protection zone in which timber harvesting is prohibited (with exceptions) shall be established for each of the designated North Fork Smith River segments.
Bill Number S. 128/H.R.4643 Bill Title Nogales Wastewater Improvement Act Passed (S/H) Bill Sponsor Sen. Sinema, Kyrsten [I-AZ]; Rep. Grijalva, Raúl M. [D-AZ-7]	Date Introduced 01/30/23 Assigned Committee(s) Indian Affairs Hearing(s) 07/09/2024 Read twice and referred to the Committee on Indian Affairs Co-sponsors Senator Mark Kelly (D-AZ); 2 Representatives from AZ, bipartisan	WSWC Keywords International waters Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/128	Summary of Bill This bill establishes requirements to address wastewater from the International Outfall Interceptor, which is a pipeline that carries wastewater from the United States-Mexico border to the Nogales International Wastewater Treatment Plant. The plant, which is located in Rio Rico, Arizona, treats sewage and wastewater originating from Nogales, Mexico, and Nogales, Arizona. The bill transfers the ownership, operations, and maintenance of the pipeline from the city of Nogales, Arizona, to the U.S. Section of the International Boundary and Water Commission. The commission must construct, operate, and maintain a debris screen at the pipeline's Manhole One for intercepting debris and drugs coming into the United States from Nogales, Mexico. The bill also limits the portion of the costs that the city of Nogales, Arizona, must pay for the Nogales sanitation project.
Bill Number S. 115/H.R.3167 Bill Title Clean Water Allotment Modernization Act Passed (S/H)	Date Introduced 01/26/23 Assigned Committee(s) Environment and Public Works Hearing(s)	WSWC Keywords SRFs Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/115/	Summary of Bill This bill revises the formula EPA uses to determine how to distribute funds from the Clean Water SRF program. Under the program, the EPA allocates funding to states for water quality infrastructure projects, such as wastewater systems and stormwater management projects. In FY24-FY2028, the EPA must provide an initial allotment to each state that is equal to the amount the state received in FY23. The EPA must also provide an additional allotment to each state that is based on its share of the U.S. population. In FY2029 and each subsequent fiscal year, the EPA must use an updated allotment formula, which is based on the needs of states as identified in the most recently available clean watersheds needs survey. Beginning in FY24, the formula must also provide allotments for Indian tribes and territories. In addition, the formula must provide an allotment

<p>Bill Sponsor Sen. Rubio, Marco [R-FL]; Rep. Waltz, Michael [R-FL-6]</p>	<p>5/10/23: Referred to the Subcommittee on Water Resources and the Environment Co-sponsors Senate: 1 Republican, FL; 1 Democratic, AZ House: 7 Republicans, FL</p>		<p>formula must also provide allotments for Indian tribes and territories. In addition, the formula must provide an allotment for EPA's oversight of SRF projects to ensure they use American iron and steel.</p>
<p>Bill Number S. 64/H.R. 7544 Bill Title Water Rights Protection Act Passed (S/H) Bill Sponsor Sen. Barrasso, John [R-WY];Rep. Maloy, Celeste [R-UT-2]</p>	<p>Date Introduced 01/24/23 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors House: 2 Republican co-sponsors from ID Senate: 5 Republican co-sponsors from AZ, CO, ID, KS, UT</p>	<p>WSWC Keywords water rights Congress.gov Link https://www.congress.gov/bill/118th-congress/senate-bill/64</p>	<p>Summary of Bill This bill addresses issues of water rights with respect to lands under the jurisdiction of DOI and USDA, including water rights of federally recognized Indian tribes.They must ensure that federal action imposes no greater restriction or regulatory requirement than under applicable state water law. It would prohibit the agencies from take actions that adversely affects state authority in permitting water usage or in adjudicating water rights, or from requiring water users to transfer water rights to the United States or acquire water rights in the name of the United States as a condition of issuing or renewing a land use or occupancy agreement.</p>
<p>Bill Number H.R. 5770 Bill Title Water Data Improvement Act Passed (S/H) Bill Sponsor Rep. Neguse, Joe [D-CO-2]</p>	<p>Date Introduced 01/17/23 Assigned Committee(s) House - Natural Resources Hearing(s) 01/17/2024: Ordered to be Reported (Amended) by Unanimous Consent. 07/08/2024: Passed House On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote. Co-sponsors 1 Republican, AZ 1 Democratic, NV</p>	<p>WSWC Keywords Congress.gov Link</p>	<p>Summary of Bill To reauthorize certain United States Geological Survey water data enhancement programs through 2028.</p>
<p>Bill Number H.R. 289 Bill Title Protect Our Water Rights Act Passed (S/H) Bill Sponsor LaMalfa, Doug [Rep.-R-CA-1]</p>	<p>Date Introduced 01/11/23 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors</p>	<p>WSWC Keywords water supply Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/289</p>	<p>Summary of Bill The bill directs Reclamation operations in the Central Valley Project and Upper Klamath Lake. Allocations for the Sacramento Valley contractors would align with the percentages in the Sacramento Water Year Type Index, with not less than 100% of their contract quantities in Wet and Above Normal Years, not less than 75% in Below Normal years, and not less than 50% in Dry and Critically Dry years. The bill provides additional conditions regarding substitute supplies, making water available to wetlands, protection of municipal and industrial water supplies, and protection of other operations, deliveries, and allocations to other Reclamation project contractors. The bill also directs Reclamation to operate all water in the Upper Klamath Lake above elevation 4136 feet solely for agricultural and refuge purposes, and to the extent practicable, maximize storage in the Upper Klamath Lake.</p>
<p>Bill Number H.R. 277 / S. 184 Bill Title Regulations From the Executive in Need of Scrutiny (REINS) Act</p>	<p>Date Introduced 01/11/23 Assigned Committee(s) House - Judiciary, Rules, Budget Senate - placed directly on the legislative calendar</p>	<p>WSWC Keywords Regulatory oversight Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/277</p>	<p>Summary of Bill This bill revises provisions relating to congressional review of agency rulemaking.Specifically, the bill establishes a congressional approval process for a major rule. A major rule may only take effect if Congress approves of the rule. A major rule is a rule that has resulted in or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises; or (4) an increase in mandatory vaccinations.The bill</p>

<p>Passed (S/H) House: 06/14/2023 passed 221-210</p> <p>Bill Sponsor Rep. Kat Cammack (R-Fla.) Sen. Paul, Rand [R-KY]</p>	<p>Hearing(s) Senate - 06/21/2023 Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 103</p> <p>Co-sponsors House - 182 Republican co-sponsors Senate - 29 Republican co-sponsors</p>		<p>also provides for the designation, review, and approval of at least 20% of agency rules currently in effect.</p>
<p>Bill Number H.R. 250</p> <p>Bill Title Clean Water SRF Parity Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Garamendi, John [D-CA-8]</p>	<p>Date Introduced 01/10/23</p> <p>Assigned Committee(s) Transportation and Infrastructure</p> <p>Hearing(s) 02/01/2023: Referred to Subcommittee on Water Resources and Environment</p> <p>Co-sponsors 1 Republican and 5 Democratic co-sponsors</p>	<p>WSWC Keywords SRFs</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/250</p>	<p>Summary of Bill The bill would amend the CWA (33 USC 1383) to make certain qualified nonprofit entity and POTW projects and activities eligible for financial assistance under SRFs, with limitations on contributions and recipients. This bill expands the state revolving fund established under the Clean Water Act, including by allowing low-interest loans to be given to privately owned treatment works to address wastewater. Currently, loans are given to wastewater systems that are publicly owned.</p>
<p>Bill Number H.R. 215</p> <p>Bill Title Working to Advance Tangible and Effective Reforms (WATER) for California Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Valadao, David G. [Rep.-R-CA-22]</p>	<p>Date Introduced 01/09/23</p> <p>Assigned Committee(s) Natural Resources</p> <p>Hearing(s) 04/28/2023: Committee on Natural Resources approved for report 22-17</p> <p>Co-sponsors 11 Republican co-sponsors, CA</p>	<p>WSWC Keywords water supply</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/215</p>	<p>Summary of Bill This bill modifies CWA water quality criteria, the NPDES program, the 404 dredge or fill program, and the meaning of WOTUS. It includes provisions to shield NPDES permit holders from liability under certain circumstances. It also provides statutory authority for the EPA to issue general permits under the program. The EPA must also provide written notification two years before the expiration of a general permit. If notice is not provided by that deadline, then discharges under the expired permit may continue until a new permit is issued. The bill limits EPA's veto authority. The bill also modifies requirements for general permits to discharge dredge or fill material that are issued on a nationwide, regional, or state basis for particular categories of activities, including by extending the maximum term for a general permit from a period of 5 years to 10 years. It also exempts the Corps from certain consultation and environmental review requirements when reissuing nationwide general permits. It directs EPA and the Corps to issue guidance on the implementation of the 2023 WOTUS rule.</p>
<p>Bill Number H.R. 189</p> <p>Bill Title Action Versus No Action Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. McClintock, Tom [R-CA-5]</p>	<p>Date Introduced 01/09/23</p> <p>Assigned Committee(s) Natural Resources; Agriculture</p> <p>Hearing(s)</p> <p>Co-sponsors 6 Republican co-sponsors, including CA, OR</p>	<p>WSWC Keywords NEPA</p> <p>Congress.gov Link https://www.congress.gov/bill/118th-congress/house-bill/189</p>	<p>Summary of Bill For certain collaborative forest management activities (16 USC 6591b(b)(1)(C)) requiring NEPA environmental assessments (EA) or Environmental Impact Statements (EIS), the bill would limit the consideration of alternatives to only two: (1) the forest management activity, or (2) the alternative of no action. For the alternative of no action, the relevant Secretary (Agriculture or DOI) would consider the effect of no action on forest health, wildfire potential, wildlife diversity, and other factors, and the implications of resulting declines on domestic water supply, habitat, potential losses of life and property, and other economic and social factors.</p>
<p>Bill Number H.R. 186</p> <p>Bill Title</p>	<p>Date Introduced 01/09/23</p> <p>Assigned Committee(s)</p>	<p>WSWC Keywords water storage projects</p> <p>Congress.gov Link</p>	<p>Summary of Bill The bill directs the Bureau of Reclamation to coordinate Federal and State permitting processes and unified environmental documentation related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretaries of the Interior and Agriculture. and designates the Bureau of Reclamation as the lead</p>

<p>Water Supply Permitting Coordination Act</p> <p>Passed (S/H)</p> <p>Bill Sponsor McClintock, Tom [Rep.-R-CA-5]</p>	<p>Natural Resources</p> <p>Hearing(s) 02/21/2023 Referred to the Subcommittee on Water, Wildlife, and Fisheries</p> <p>Co-sponsors 5 Republican co-sponsors, including CA, OR, and UT</p>	<p>https://www.congress.gov/bills/118th/congress/house-bill/186/</p>	<p>jurisdiction of the Secretaries of the Interior and Agriculture, and designates the Bureau of Reclamation as the lead agency for permit processing and establishing the project schedule. Specifically, Reclamation must identify, notify, and coordinate all Federal agencies that may have jurisdiction over a review, analysis, opinion, statement, permit, license, approval, or decision for a qualifying project. A state where a project is being considered may also choose to participate as a cooperating agency. Reclamation's coordination responsibilities include (1) preparing a unified environmental review document, and (2) maintaining a consolidated administrative record and project data records. Additionally, Reclamation is authorized to accept and expend funds contributed by a nonfederal public entity to expedite the evaluation of a permit for such a project.</p>
<p>Bill Number H.R. 2199, H.R. 2283</p> <p>Bill Title No Title</p> <p>Passed (S/H)</p> <p>Bill Sponsor Rep. Biggs, Andy [R-AZ-5]</p>	<p>Date Introduced 03/29/23</p> <p>Assigned Committee(s) House - Transportation and Infrastructure; Energy and Commerce</p> <p>Hearing(s)</p> <p>Co-sponsors 4 Republicans including MT, AZ</p>	<p>WSWC Keywords</p> <p>Congress.gov Link</p>	<p>Summary of Bill To provide for a limitation on availability of funds for the EPA WIFIA Program Account for fiscal year 2024.</p>

Litigation Update
204th WSWC Meeting
Fargo, North Dakota
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This summary describes developments regarding notable litigation that pertains to WGA/WSWC policies or cases that are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of 2023.

Case Name	Issues	PFAS CERCLA rule (89 FR 39124)
<i>Chamber of Commerce et al. v. EPA</i>	The U.S. Chamber of Commerce petitioned for direct review of EPA's new rule "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances" (89 FR 39124), under the Administrative Procedures Act and Section 113 of CERCLA.	
Case Number		
#24-1193		
Court		
D.C. Circuit		
Relevant Dates		
6/10/24: Petition filed		
Related Cases		
Notes		
Case Name	Issues	PFAS National Primary Drinking Water Regulation (89 FR 32532)
<i>AWWA et al. v. EPA</i>	The American Water Works Association (AWWA) and Association of Metropolitan Water Agencies (AMWA) filed a petition for direct review of EPA's PFAS drinking water rule, published on April 26. "Petitioners strongly support the protection of public health and the use of a sound scientific process in the development of regulations. EPA did not rely on the best available science and the most recent occurrence data, and used novel approaches as the basis for certain portions of the rule. EPA finalized this rule without following the process mandated by Congress, without allowing the public an adequate opportunity to provide comment, and without addressing the concerns raised by those who work to deliver safe and affordable drinking water to their communities. Petitioners are seriously concerned about the impact of this rule on water affordability, particularly for households that struggle to pay for essential needs. EPA has significantly underestimated the costs of this rule and the adverse impact that it will have on individual water users."	
Case Number		
#24-1188		
Court		
D.C. Circuit		
Relevant Dates		
6/7/24: Petition filed		
Related Cases		
Notes		
Case Name	Issues	CWA 404 Veto
<i>State of Alaska v. United States</i>	Alaska petitioned for \$700B in compensation for EPA's 2023 veto action (Final Determination) that blocked the development of the Pebble Mine. Alaska noted that, in authorizing the Statehood Act and Cook Inlet Land Exchange, Congress explicitly recognized that Alaska would develop its mineral resources. The State alleged that these agreements constitute contracts, under which the State would receive land, associated mining rights (subject to lease by the State), and regulatory authority over its lands. They claimed that EPA's Final Determination decision is a breach of contract by the federal government, as well as a breach of the covenant of good faith and fair dealing. The State further alleged multiple takings counts (permanent categorical taking, permanent non-categorical taking, and temporary taking) stating that EPA's Final Determination denies all economically beneficial or productive use of the land. They asserted that a finding of either type of permanent taking should entitle them to compensation exceeding \$700B, the 100-year value of Pebble Mine estimated by EPA in 2010. The State argued that even if the EPA were to withdraw its Final Determination or it were to be vacated, the Determination has blocked the U.S. Army Corps of Engineers (Corps) from issuing a Clean Water Act (CWA) permit for the Pebble Mine. This would constitute a temporary taking, entitling the State to just compensation in an amount that exceeds \$10,000.	
Case Number		
1:24-cv-00396		
Court		
U.S. Court of Federal Claims		
Relevant Dates		
3/14/24: Petition filed		
Related Cases		
Notes		

<p>Case Name <i>Pacific Coast Federation of Fishermen's Associations, Inc., et al. v. Ernest Conant, et al.</i></p> <p>Case Number 2:11-cv-02980</p> <p>#23-15599</p> <p>Court U.S. District Court for the Eastern District of California</p> <p>9th Circuit</p> <p>Relevant Dates 2011: Complaint filed 2017: District Court Decision 2019: 9th Circuit Decision (remand) 3/4/24: Agriculture Coalition Amicus Brief</p> <p>Related Cases</p> <p>Notes</p>	<p>Issues CWA exemptions for agricultural irrigation, 33 U.S.C. §1342(1)(1)</p> <p>The Association of California Water Agencies (ACWA) led an agricultural coalition amicus curiae brief, noting that the Grasslands Bypass Project drainage infrastructure is not unique, and “this case may have far-reaching impacts on farmlands that utilize and rely on irrigation drainage facilities essential to maintaining crop production.” The CWA exemption for agricultural return flows applies to “millions of acres of farmland” and a ruling rendering that exemption essentially nonexistent “would broadly affect western agriculture, forcing thousands of farmers and operators of agricultural drainage systems across the western United States to immediately apply for and operate under onerous NPDES permits or face liability under the CWA.” They emphasized the lower court’s determination that the exemption “cannot be defeated merely because additional nonpoint sources of pollution may enter into agricultural drains that convey agricultural return flows to waters of the United States.”</p> <p>BACKGROUND: The underlying case, filed in 2011, arises from water discharges from the Grasslands Bypass Project in California’s Central Valley. The project was created as a result of a previous lawsuit for the purpose of preventing irrigation water from leaching selenium and salt from the agricultural soil into the groundwater. The project collects water used to irrigate agricultural land through an underground perforated tile drainage system, moving “the collected drainage water through a concrete-lined conveyance for many miles before it dispenses into a wetland.” The plaintiffs alleged that the Bureau of Reclamation (USBR) and the Grasslands Water District are discharging pollutants, without a National Pollutant Discharge Elimination System (NPDES) permit, which made their way into the San Joaquin River and San Francisco Bay Delta in violation of the Clean Water Act (CWA). The defendants argued that the agricultural land is exempt from CWA permitting under 33 U.S.C. §1342(1)(1).</p> <p>In 2017, the district court held that, because the majority of the water came from agricultural lands, the exemption applied. In 2019, the 9th Circuit reversed and remanded that decision, noting that the CWA exemption language is “for discharges composed entirely of return flows from irrigated agriculture.” On remand, the lower court again held that the exemption applied, because the water was either from the agricultural lands or from other nonpoint sources that are exempt. The plaintiffs appealed.</p>
<p>Case Name <i>Center for Biological Diversity (CBD) et al. v. Michael S. Regan, et al.</i></p> <p>Case Number 1:21-cv-00119</p> <p>#24-5101, #24-5156, #24-5159</p> <p>Court U.S. District Court for the District of Columbia</p> <p>D.C. Circuit Court</p> <p>Relevant Dates 1/1/21: Complaint filed 2/15/24: Partial MSJ decision (vacatur of 404 delegation) 2/26/24: Federal agency defendants and Florida intervenor defendants arguments on partial stay of vacatur 4/23/24: Court denied partial stay of vacatur 4/26/24: Florida appealed (#24-5101) 6/10/24: CBD cross-appeal (#24-5156) 6/11/24: Federal agencies appealed (#24-5159)</p> <p>Related Cases</p> <p>Notes</p>	<p>Issues Delegation of CWA §404 and Endangered Species Act</p> <p>The Court issued a partial MSJ ruling (2/15/24) that the Environmental Protection Agency (EPA) and the Fish and Wildlife Service (FWS) violated the Endangered Species Act (ESA) when they approved Florida’s application to assume Clean Water Act (CWA) §404 permitting authority. The court held that the agencies had circumvented ESA requirements by approving programmatic Section 7 consultation, providing broad ESA liability protection for all future state permittees. The court vacated the USFWS’ programmatic Biological Opinion (BiOp) and Incidental Take Statement (ITS), as well as EPA’s approval of Florida’s §404 assumption application.</p> <p>The intervenor defendants, the State of Florida and the Florida Department of Environmental Protection (FDEP), filed a brief (2/26/24) in support of the partial stay. They noted that they had over 1,000 pending §404 individual and general permit applications for roads and bridges, hospital construction projects, school buildings and facilities, affordable housing, military base projects, power grid reliability projects, and various projects to improve water quality in the Everglades. They emphasized the need for the stay to minimize the disruptive consequences of vacatur. They asked for clarification on several questions the court left unanswered regarding procedures for applications that “may affect” listed species and their continued authority over applications that do not. The Florida intervenor defendants alternatively presented the approach used by New Jersey and Michigan, involving memoranda of agreement (MOAs) that facilitate EPA or USFWS review where the State identifies applications that may affect ESA listed species. They noted that while the court found the Florida Section 7 consultation deficient, the formal process went “above and beyond what was done in the other two states at the assumption stage” where no programmatic BiOp was ever prepared.</p> <p>BACKGROUND: CBD argued that the FWS’ programmatic BiOp, programmatic ITS, and technical assistance processes “create an ESA scheme that is not authorized by law” and “give [Florida] a workaround regarding the mechanisms that Congress provided for establishing take limits, extending liability coverage, and determining jeopardy to species.” They also allege that the EPA relied on the facially deficient Section 7 statements and failed to consult with the National Marine Fisheries Service (NMFS).</p> <p>The federal agencies argued that even if their Section 7 consultations were insufficient, they had created a technical assistance process between Florida and the agencies to address all of the ESA requirements on a permit-by-permit basis by requiring Florida to consult with FWS regarding each application. They requested that the Court only vacate approval to those projects in the category of “may affect, likely to adversely affect” listed species.</p>
<p>Case Name State of Louisiana et al. v. U.S. Environmental Protection Agency et al.</p>	<p>Issues CWA §401 Water Quality Certification Improvement Rule (2023 Rule) (88 FR 66558)</p> <p>The plaintiff states (including AK, MT, OK, and WY) 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</p>

Case Number	<p>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.</p> <p>The intervenor defendant states (including CA, NM, OR, and WA) 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.</p>
2:23-cv-01714	
Court	
U.S. District Court for the Western District of Louisiana	
Relevant Dates	
<p>12/4/23: Complaint filed</p> <p>1/12/24: 18 states filed a motion to intervene as defendants</p> <p>2/6/24: EPA Answer</p> <p>3/7/24: Motion for Preliminary Injunction denied</p> <p>5/30/24: Plaintiffs’ MSJ</p>	
Related Cases	
Notes	

Case Name	Issues
Klamath Irrigation District v. Reclamation	Federal water rights
Case Number	<p>The underlying issue in both cases was whether Reclamation held the water rights necessary to implement its 2019-2024 Klamath Project operating procedures, based on the biological opinions of the FWS and NMFS, to maintain instream flows from the Upper Klamath Lake to the Klamath River downstream to benefit the threatened salmon and to comply with the ESA. Reclamation noted that the 2019-2024 operations plan has the added effect of partially protecting the tribal fishing-based water rights in California. The Klamath River Basin Compact between California and Oregon (1957) recognizes vested rights to waters originating in the Upper Klamath River Basin, whether diverted or used in Oregon or California, and does not deprive tribes of their rights to those waters under treaty, agreement, or statute. While the United States filed water rights claims in the Klamath Basin Water Adjudication on behalf of tribes in Oregon, and for diversions that take place in Oregon but are used in California, they did not file claims on behalf of the Hoopa Valley Tribe and Yurok Tribe in California. USBR asserted that they did not need to because those tribes and their water uses are outside of Oregon jurisdiction.</p> <p>The Klamath I APA claims alleged that USBR’s 2019-2024 operating procedures were unlawful. The lower court dismissed the case under FRCP 19, because the Klamath Tribes and the Hoopa Valley Tribe, which could not be joined as parties to the APA action due to their tribal sovereign immunity, were indispensable parties to a lawsuit that could impact their rights to the water for hunting, fishing, and gathering. The court held that because the case was not about administering rights following a state stream adjudication, the McCarren Amendment did not apply and could not waive the immunity of the tribes. The 9th Circuit affirmed. In its Klamath I petition for certiorari, the Klamath Irrigation District’s (KID) question presented was: “Whether [FRCP] 19 requires dismissal of an action challenging a federal agency’s use of water subject to state-adjudicated water rights if a Native American tribe asserts an interest in the suit and does not consent to joinder.” KID argued that the decision of the lower courts granted Native American tribes a veto power over water rights cases against the federal government, and undermined the Western water rights adjudication regime. KID argued: “The real-world consequences of the Ninth Circuit’s holding are severe. Property rights that cannot be asserted in court are not property rights at all. The Ninth Circuit’s ruling deprived thousands of farmers and ranchers in Oregon’s Klamath Water Basin of their ability to vindicate water rights in Oregon’s Upper Klamath Lake against the federal government after they spent more than 38 years in litigation to obtain a comprehensive adjudication of all state and federal rights in that source.” KID noted that it did not seek to prevent USBR from satisfying its obligations to the Tribes or under the ESA, only to require that USBR obtain water using lawful means, including purchase, appropriation, or judicial condemnation. KID also expressed concerns about the U.S. Supreme Court waiting for a Circuit split. “Nearly all Native American land is located within the Ninth and Tenth Circuits. This means that only those two circuits are likely to address the Rule 19 and McCarran Amendment questions</p>
22-1116 (Klamath I)	
23-216 (Klamath II) (appeal from a motion in In re Waters of the Klamath River Basin, #WA1300001)	
Court	
U.S. Supreme Court	
U.S. District Court for the District of Oregon (Klamath I)	
Klamath County Circuit Court (Klamath II)	
Relevant Dates	
<p>5/11/23: Klamath I Petition for Cert</p> <p>9/27/23: Federal brief in opposition to Klamath I</p> <p>10/20/23: Klamath I Petition denied</p> <p>1/8/24: Klamation II Petition denied</p>	
Related Cases	
Notes	

See <https://www.oregon.gov/owrd/programs/waterrights/adjudications/klamathriverbasinadj/pages/default.aspx> and <https://www.courts.oregon.gov/courts/klamath/resources/pages/klamathbasinadjudication.aspx>

within the Ninth and Tenth Circuits. This means that only those two circuits are likely to address the Rule 15 and McCarran Amendment questions this case raises; indeed, they account for most of the cases that cite the McCarran Amendment and Reclamation Act.... [The Ninth Circuit] has jurisdiction over seven Western States that encompass a population of over 65 million people—approximately a fifth of the country.... Scarcity of water is one of the most important problems facing this vast region, yet the decision below severely undermines the legal framework to determine and administer rights in that scarce and vital resource."

The underlying case for Klamath II began as a motion for a preliminary injunction in the Klamath Basin Water Adjudication. In Oregon, OWRD handles the first phase of reviewing water rights claims, hearing contested claims, and issuing a determination. OWRD began the Klamath Basin Water Adjudication in 1975 and issued its Findings of Fact and Final Order of Determination in 2013. In the second phase, the Klamath County Circuit Court is responsible for resolution of exceptions and issuance of the water right decree. In 2021, KID filed a motion for a preliminary injunction in the Klamath Basin Water Adjudication to enjoin certain aspects of USBR's operation of the Klamath Project, based on the water rights and storage rights in OWRD's Final Order of Determination. KID argued that USBR had to acquire a water right to implement its operations plan, and that the Hoopa Valley Tribe and Yurok Tribe in California lacked any water rights to the Klamath River flows because they had failed to file water rights claims in Oregon. USBR removed the motion to the U.S. District Court for the District of Oregon (KID v. USBR, #1:21-cv-504) due to ESA compliance implications under federal law, as well as the reserved water rights of tribes in California. OWRD joined as an intervenor. The U.S. District Court denied KID's subsequent motion to remand back to the State Court, holding that the Adjudication did not possess exclusive jurisdiction over the injunctive claim. The court rejected KID's argument that the McCarran Amendment waived the United States' sovereign immunity on the issues of ESA compliance and the fishing-based water rights in California, noting that these issues are not governed by Oregon law. OWRD explained that the jurisdiction of the Klamath Basin Water Adjudication does not extend to these issues. On appeal, when KID sought a writ of mandamus on the motion for remand, the 9th Circuit (#22-70052) affirmed, holding that the McCarran Amendment does not expand a state court's subject matter jurisdiction or empower a state to adjudicate rights beyond its jurisdiction. On appeal, KID's question presented was: "Whether the federal government can avoid the doctrine of prior exclusive jurisdiction in an ongoing, comprehensive water adjudication under the McCarran Amendment by asserting defenses based on federal law." KID argued that the ruling of the lower courts enables the federal government to remove any water rights case or enforcement proceeding that affects an interstate water system or federal obligations to federal court. KID pointed out that Klamath I enabled the tribes to close the federal courthouse doors to water users, and Klamath II allowed the federal government to close the state courthouse doors. "As a result, the rights of every other water user turn on the tactical litigation decisions of parties who compete with them for access to this limited resource. Collectively, those parties now have the power to insulate agency water rights actions from judicial review."

Case Name	Issues	Delegation of CWA 404 and Tribal Lands
<i>Miccosukee Tribe v. EPA</i>		
Case Number		
1:22-cv-22459		
Court		
U.S. District Court for the Southern District of Florida		
Relevant Dates		
8/4/22: Tribe filed complaint against EPA 9/7/22: Florida motion to intervene (granted) 7/27/23: Tribe's MSJ 9/27/23: EPA cross-MSJ 12/20/23: Florida Reply to cross-MSJ 12/27/23: Florida Reply to MSJ 3/18/24: Stay (pending outcome of CBD v. EPA, which vacated EPA's approval of Florida's CWA 404 assumption of authority)		
Related Cases		
Notes		

	<p>corporate, and other specific and changing determinations can be made as circumstances warrant, particularly since the precise boundaries of assumable waters are subject to change based on current conditions." Additionally, Florida expressly did not seek authority over Indian country (18 USC 1151). "If EPA correctly interpreted Indian lands synonymously with Indian country, Florida's program obviously does not cover Indian lands within the meaning of 40 CFR 233.11(h)." Florida also argued against the Tribe's assertion that state-tribe interactions injure tribal sovereignty and cannot be government-to-government relations, noting that states are also sovereign, and that the BIA has acknowledged: "While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well... [T]ribes frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement."</p>
<p>Case Name <i>Loper Bright Enterprises v. Raimondo</i></p> <p>Case Number 22-451</p> <p>(lower court: 21-5166)</p> <p>Court U.S. Supreme Court</p> <p>(United States Court of Appeals for the District of Columbia Circuit)</p> <p>Relevant Dates 10/10/22: Petition for Cert 12/15/22: States amicus brief 5/1/23: Petition granted for Q2 7/24/23: States amicus brief 9/15/23: Brief of Respondents 10/13/23: Case to be argued in tandem with #22-1219 10/16/23: Reply of Petitioners 1/17/24: Oral Argument 6/28/24: Decision</p> <p>Related Cases No. 22-1219, Relentless, Inc., et al. v. Dept. of Commerce, et al.</p> <p>Notes</p>	<p>Issues Chevron Deference</p> <p>On June 28, 2024, the Supreme Court overturned Chevron's two-step analysis for deference to federal agency interpretations of ambiguous statutes. Section 706 of the Administrative Procedures Act (APA) directs courts to "decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of agency action." This is distinguishable from the clear deference to agencies under the APA for judicial review of agency policymaking and factfinding. The Court said: "...delegating ultimate interpretive authority to agencies is simply not necessary to ensure that the resolution of statutory ambiguities is well-informed by subject matter expertise. The better presumption is therefore that Congress expects courts to do their ordinary job of interpreting statutes, with due respect for the views of the Executive Branch. And to the extent that Congress and the Executive Branch may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute.... Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous."</p> <p>BACKGROUND: On May 1, 2023, the U.S. Supreme Court granted certiorari with the limited issue of whether the court should overrule Chevron, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency. In the underlying case, the Magnuson-Stevens Act requires marine vessel owners to make room on board for federal observers to ensure compliance with federal regulations, and NMFS regulations require the owners to pay the salaries of the government-mandated observers. A divided panel of the D.C. Circuit deferred to the NMFS, identifying the silence in the statute as ambiguity that called for Chevron deference. Eighteen states filed an amicus brief in support of the petition, including Alaska, Idaho, Kansas, Montana, Nebraska, Texas, and Utah. They noted that Chevron deference, the most cited administrative case law in history, "gives agencies wide latitude to interpret statutes aggressively and shift course dramatically when administrations change. Regulation is costly; over-regulation and mercurial regulation even more so." The states argued: "This problem is not academic. Right or wrong, the lower courts treat Chevron as a heavy thumb on the federal government's side of the scale. The real-world result? Agencies have all the incentives to push expansive constructions of their governing statutes. After all, if agencies—and the administrations most of them answer to—know that lower courts will almost certainly defer to a plausible interpretation, it is hard to hold the line on a more restrained view of agency power.... Even more when administrations change and the next set of officials come in to 'undo the ambitious work of their predecessors' by 'proceeding in the opposite direction with equal zeal.' Changed agency priorities are not inherently wrong, of course—and we have seen a lot of them as presidents ask federal agencies to enact 'partisan policy agendas' that are otherwise 'stymied by congressional stalemate.' But by encouraging ever-more-ambitious theories of agency power, Chevron expands the range. Now, waffling from one aggressive construction to its opposite becomes a whipsaw. That's a bad place to be. Litigation is expensive and can take years; the countless challenges involving Chevron seem a poor investment when lower courts virtually always defer to the work of another Branch. More to the point, regulation is expensive. And when the uncertainty in the law favors over-regulation, not under, our residents and businesses pay the higher price."</p>
<p>Case Name <i>West Virginia et al. v. EPA</i></p> <p>Case Number 3:23-cv-00032</p> <p>Court U.S. District Court in North Dakota</p> <p>Relevant Dates</p>	<p>Issues 2023 WOTUS Rule (88 FR 3004) and Amended Rule (88 FR 61964)</p> <p>A coalition of 24 states, led by WV and including the ten western states of AK, KS, MT, NE, ND, OK, SD, UT, and WY, requested that the rule be vacated and remanded to the agencies for violations of the Clean Water Act (CWA), the Administrative Procedures Act (APA), and the U.S. Constitution, including the Commerce Clause and the Fifth and Tenth Amendments. The States asserted that the 2023 WOTUS rule mirrors or exceeds the 2015 WOTUS Rule (enjoined by this court for likely violating the CWA grant of authority to EPA and the Corps), and that it "improperly upsets the balance of State and federal powers in an area typically dominated by the States." Each State expressed its sovereign authority to govern, manage, and protect the waters within its borders, as cited in their respective state constitutions and statutes. For a lengthier summary of the complaint, see WSW #2546 Special Report.</p> <p>On April 12, 2023, the court issued a preliminary injunction staying the implementation of the 2023 Waters of the United States (WOTUS) Rule in</p>

<p>2/16/23: Lawsuit filed 4/12/23: Preliminary injunction (24 states) 7/18/23: Case stayed 9/1/23: Status report from Corps & EPA re: amended WOTUS rule issued 10/10/23: Stay lifted 11/13/23: Amended Complaint 12/12/23: Industry Motion to Intervene granted (Ag, Mining, Construction, etc) 12/13/23: Answers filed 2/26/24: States and Industry MSJs filed 4/26/24: EPA, Corps MSJ filed 6/25/24: various replies filed to MSJs</p>	<p>On April 12, 2023, the court issued a preliminary injunction staying the implementation of the 2023 Waters of the United States (WOTUS) Rule in 24 states (AK, AL, AR, FL, GA, IA, IN, KS, LA, MI, MO, MT, ND, NE, NH, OH, OK, SC, SD, TN, UT, VA, WV, and WY). The court found that the 2023 rule has unlimited boundaries and “raises a litany of other statutory and constitutional concerns.” The court noted that EPA has arguably acted beyond its statutory authority, noting problems with several categories of water, including: (1) interstate waters not connected to navigable waters; (2) impounded waters without any outlet or hydrologic connection to the tributary network; (3) an overly broad definition of tributary that includes dry waterways; (4) non-navigable intrastate waters previously considered isolated and not subject to CWA jurisdiction; and (5) a treatment of wetlands that is “plagued with uncertainty” and extends jurisdiction to remote wetlands that the U.S. Supreme Court has already excluded. For a lengthier summary of the preliminary injunction, see WSW # 2552 Special Report.</p>
<p>Related Cases</p>	
<p>Notes</p>	
<p>Case Name</p>	<p>Issues 2023 WOTUS Rule (88 FR 3004) and Amended Rule (88 FR 61964)</p>
<p><i>Texas et al. v. EPA et al.</i></p>	<p>The complaint requested that the 2023 WOTUS rule be vacated for violations of the Constitution, the CWA, and the APA. Texas alleged: “The Final Rule harms Plaintiffs by: (1) expanding federal regulation beyond that authorized in the CWA; (2) eroding the states’ authorities over their own waters; (3) increasing the states’ burdens and diminishing the states’ abilities to administer their own programs; and (4) undermining the states’ sovereignty to regulate their internal affairs as guaranteed by the Constitution.” Texas asserted that the CWA “only authorizes the Federal Agencies to regulate ‘navigable waters,’ defined as ‘waters of the United States’” and the new rule is a violation of the CWA and APA for asserting jurisdiction over lands and waters that fall outside the CWA and effectively removing any requirement of navigability. For a lengthier summary of the complaint, see WSW #2546 Special Report.</p>
<p>Case Number</p>	
<p>3:23-cv-00017</p>	
<p>Court</p>	
<p>U.S. District Court for the Southern District of Texas</p>	
<p>Relevant Dates</p>	
<p>1/18/23: Lawsuit filed 2/27/23: Idaho joined 3/19/23: Preliminary injunction (TX & ID only) 7/10/23: Case stayed 9/1/23: Status report from Corps & EPA re: amended WOTUS rule issued 2/2/24: Plaintiffs filed MSJ 4/2/24: EPA, Corps MSJ and opposition to Plaintiff’s MSJ 6/17/24: TX and ID Reply</p>	<p>On March 19, 2023, the court issued a preliminary injunction preventing the 2023 WOTUS Rule from taking effect in the States of Texas and Idaho. “[T]wo aspects of the 2023 Rule make the plaintiffs particularly likely to succeed on the merits – first, the Rule’s significant-nexus test, and second, the Rule’s categorical extension of federal jurisdiction over all interstate waters, regardless of navigability.” The court found that Chevron deference does not apply due to the criminal penalties in the rule, and due to the significant constitutional and federalism questions raised by the agencies’ interpretation of the CWA. The court held that the states had standing to challenge the rule to protect their quasi-sovereign interests in regulating their land and water. For a lengthier summary of the preliminary injunction, see WSW # 2549.</p> <p>In August 2023, the EPA announced amendments in response to the Supreme Court decision in Sackett v. EPA. In turn, Texas and Idaho amended their complaint to include the changes. On February 2, 2024, the plaintiffs filed an MSJ. They argued that the Amended 2023 Rule (88 FR 61964) is unconstitutionally vague in its definitions of “every jurisdictional category,” including its definitions of Traditional Waters, Impoundments, Tributaries, Wetlands, and Other Jurisdictional State Waters. Additionally, the Relatively Permanent Standard is broader and vaguer than the standard described in Sackett and Rapanos. Plaintiffs also argued that the Amended 2023 Rule exceeds the CWA, is contrary to the States’ sovereignty, violates due process afforded by the Constitution, and was adopted through unlawful procedure under ADA. They conclude: “It cannot be supported by the plain language of the Clean Water Act, it is inconsistent with Supreme Court precedent, it cannot be justified as a valid exercise of congressional authority under the Commerce Clause, it cannot be excused in the face of the Tenth Amendment, and it infringes on the due process rights afforded under the Fifth Amendment. And even if it were not substantially unlawful, it was adopted through unlawful procedure.” See WSW #2596</p>
<p>Related Cases</p>	
<p>Notes</p>	
<p>Case Name</p>	<p>Issues Water rights adjudication (groundwater), SGMA 2014, federal water rights and groundwater</p>
<p><i>Indian Wells Valley Water District v. All Persons Who Claim a Right to Extract Groundwater in the Indian Wells Valley Groundwater Basin, etc., et al.</i></p>	<p>On June 11 and 21, 2024, the adjudication was separated into several phases. Phase 1 will address the federal government’s reserved water rights claims to groundwater. Phase 2 will adjudicate the safe yield and groundwater in storage. Phase 3 will determine the water rights claims of all other parties. Phase 4 will determine a physical solution.</p>
<p>Case Number</p>	
<p>30-2021-01187275-CU-OR-CJC</p>	
<p>Court</p>	
<p>Orange County Superior Court, California</p>	<p>BACKGROUND: The original complaint was filed by Mojave Pistachios, LLC. The cross-complaint by the Indian Wells Valley Water District (IWWVD) seeks “a judgment to comprehensively determine and adjudicate all groundwater rights in the Basin and to provide a physical solution for the perpetual and continuous management of the Basin.” IWWVD’s website noted that water use in the basin has exceeded groundwater supply for years, resulting in an “overdraft” condition. IWWVD is a member of the Indian Wells Valley Groundwater Authority, formed pursuant to the Sustainable Groundwater Management Act (SGMA). The Authority developed and adopted a groundwater sustainability plan (GSP), and several</p>

<p>Relevant Dates</p> <p>6/16/21: IWWVD Cross-complaint, opening the adjudication 9/7/21: California Department of Water Resources received notice of the adjudication 10/13/21: form of Notice of Commencement of Groundwater Basin Adjudication approved 12/16/21: Notices mailed to basin property owners 3/17/23: Case Management Conference 9/1/23: Status Conference (awaiting judicial assignment from the Judicial Council, followed by briefing on Court's authority to determine safe yield and impose a physical solution, as well as the issue of including de minimis users and McCarran jurisdiction) 2/23/24: IWWVD Motion for order to divide the trial into phases, establish the basin boundary, set the phase 1 trial, and partially lift the discovery stay [4/28/2025: Phase 1 Trial on federal reserved water right claim scheduled]</p> <p>Related Cases</p> <p>Mojave Pistachios, LLC v. IWWVD</p> <p>Comprehensive adjudication of the Cuyama Valley Groundwater Basin, another basin in an overdraft condition. (9/2/21)</p> <p>Notes</p> <p>See: https://www.iwwvd.com/basin-adjudication/</p>	<p>Sustainable Groundwater Management Act (SGMA). The authority developed and adopted a groundwater sustainability plan (GSP), and several lawsuits were filed alleging that the GSP actions to regulate water use and impose fees were unlawful and excessive, leading in part to the present adjudication. IWWVD's website said: "The Basin underlies approximately 382,000 acres or approximately 600 square miles of land. Approximately 301,000 acres of land overlying the Basin are federal property managed by Naval Air Weapons Station China Lake, the Bureau of Land Management, and the Forest Service. The non-federal lands overlying the Basin consist of the City of Ridgecrest and unincorporated land in the Counties of Kern, Inyo, and San Bernardino. Water rights of the federal government are beyond the jurisdiction of the State to regulate. Under applicable law, the federal government may only participate in a water rights lawsuit if such a case is considered to be what is called a 'comprehensive adjudication' involving all stakeholders/pumpers. The District is therefore taking the necessary action of filing a comprehensive adjudication. Such steps will involve all stakeholders/pumpers; protect the general welfare of the Basin; protect the District's right to pump groundwater from the Basin; protect groundwater quality; and to manage water costs to the public. The goal of the District's action is to bring long-term and enforceable sustainability to the Basin."</p> <p>During a joint case management conference, one of the jurisdictional issues raised was whether the de minimis water users, and any overlying non-users, needed to be included in the proceeding in order for the Court to have jurisdiction over the United States as part of a comprehensive adjudication, both to ensure the US participation and to protect the due process rights of these others. Also discussed was the potential for a bifurcated trial, with phase 1 focused on the characteristics of the basin, the total groundwater and available freshwater in storage, and the safe yield. Phase 2 would then address water rights claims not already agreed to by stipulation, and the presentation of a "physical solution" (California Const. Art. X sec. 2), one that achieves the practical allocation of water among competing interests consistent with the constitutional mandate to maximize reasonable and beneficial use, and recognize established water rights. The solution seeks to make water available for a greater number of beneficial uses while still protecting senior priorities and implementing targeted management actions. Some of the parties requested that phase 1 of the trial be completed by the end of summer 2023, and phase 2 occur expeditiously thereafter. The Water District filed a motion regarding the scope of the trial phases. They proposed that Phase 1 issues include determining the amount of fresh groundwater in storage and adjudicating the federal reserved water right claim of the United States. Phase 2 would include determining the safe yield, adjudicating all water rights and their relative priorities, and considering and adopting a physical solution consistent with the Phase 1 trial findings.</p>
<p>Case Name</p> <p><i>Center for Biological Diversity et al. v. Spellmon</i></p> <p>Case Number</p> <p>4:21-cv-00047</p> <p>1:22-cv-02586</p> <p>Court</p> <p>U.S. District Court for Montana</p> <p>U.S. District Court for the District of Columbia</p> <p>Relevant Dates</p> <p>5/3/21: Lawsuit filed 6/7/21: Montana intervened 8/31/21: Petroleum associations intervened 9/7/21: Answer from the Corps 6/9/22: Hearing on MSJs ("order will be submitted forthwith") 8/18/22: Case transferred to District of Columbia 11/18/22: Supplemental Briefing on schedule submitted by the parties to the DC court 9/2023: Supplemental authorities filed</p> <p>Related Cases</p> <p>Northern Plains Resource Council et al. v. U.S. Army Corps of Engineers, No. 4:19-cv-00044 (D. Mont.), appeal vacated lower court decision (8/11/21) in part due to new NWP that renders some claims moot, and remanded to determine whether vacatur was appropriate, (9th Cir, #20-35412). On remand, claim four was dismissed as moot, and the other three claims were dismissed without prejudice (9/29/22)</p>	<p>Issues</p> <p>Nationwide Permits, ESA</p> <p>The complaint for declaratory and injunctive relief stems from the Corps issuance of Nationwide Permit 12, a general permit for oil and gas pipeline projects pursuant to CWA 404(e). The lawsuit alleges ESA and APA violations for failure to assess environmental effects, and to fulfill consultation responsibilities under ESA section 7 with the National Marine Fisheries Service and the FWS. The NWP 12 allows oil and gas pipelines to cross water repeatedly without limits to the number of wetlands a project might impact, ignoring the cumulative effects of large interstate pipelines.</p> <p>On August 18, 2022, the federal court in Montana determined that it was not the appropriate venue for the ESA claims, as the events giving rise to the claims did not occur in Montana, and the sole Montana plaintiff could not show Article III standing on the ESA claims. The case was transferred to the District of Columbia for further proceedings.</p>

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Case Name <i>Center for Biological Diversity et al. v. Interior et al.</i>	Issues ESA
Case Number 4:20-cv-106	On appeal, the 9th Circuit vacated the 2014 BiOp, and reversed the district court's decision to grant the federal MSJ on the issue of agricultural water easement savings in the groundwater demand accounting, and remanded with instructions for the Army and FWS to re-evaluate its water-savings analysis in a new BiOp to ensure that the tangible effects of the proposed action are "reasonably certain" to occur as required by the regulations (50 CFR 402.02). The court upheld other portions of the 2014 BiOp.
22-15809	
Court U.S. District Court for the District of Arizona	BACKGROUND: The lawsuit challenges the assumptions of a 2014 FWS biological opinion, over groundwater pumping for use by Fort Huachuca and its contractors near the San Pedro River. Plaintiffs challenge the reliance on speculative water savings from agricultural water easements that hadn't been used for years, ignoring the effects of pumping on river base flows over an extended period of time, failure to analyze the effects of climate change, and alleges various other (ESA) violations. The lawsuit seeks to vacate the 2014 biological opinion and order the defendants to reinstate consultation on the effects of continued groundwater pumping associated with the Fort on listed species. On March 31, 2022, the lower court issued a decision requiring FWS and Fort Huachuca to reinstate an ESA 7(a)(2) consultation and formulate a BiOp consistent with the court's opinion.
9th Circuit	
Relevant Dates 3/13/20: Lawsuit filed 6/8/20: DOI/Army Answer 9/15/20: Administrative Record filed 11/13/20: Plaintiffs MSJ filed 3/26/21: Federal cross-MSJ filed 3/26/21: Motion to supplement Admin Record 9/21/21: Oral argument on MSJs 3/31/22: Court order directing FWS and the Fort to reinstate an ESA 7(a)(2) consultation and formulate a BiOp consistent with the Opinion 5/27/22: Notice of appeal to 9th Cir. by Plaintiffs 9/14/22: Opening brief filed 5/16/23: Oral arguments 12/4/23: 9th Cir. Opinion	
Related Cases	
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Case Name <i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.</i>	Issues Indian Reserved Water Rights
Case Number 5:20-cv-00174	At issue is whether the water district's assessment of fees (replenishment assessment charges, RAC) on the tribe's production of its federally reserved groundwater is preempted as a matter of federal law. The water district uses Colorado River water to recharge the aquifer. The RACs are imposed on water production in designated areas of benefit—including much of the Agua Caliente Reservation—to cover the costs of artificial recharge programs. The tribe argues that the RACs unlawfully interfere with its inherent and exclusive sovereign authority to regulate its water resource.
Court U.S. District Court for the Central District of California	
Relevant Dates 1/24/2020: case filed 3/13/2020: Answers filed by Desert Water Agency and Coachella Valley Water District 6/22/2020: Defendants motion to bifurcate case 6/29/2020: Plaintiff's opposition to bifurcation 7/20/20: Motion denied; case management order modified to extend deadlines 10/6/20: Case stayed pending private mediation 5/29/24: Stay extended (9/1/24)	
Related Cases <i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.</i> , 13-883	
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<p>Case Name <i>Save the Colorado, et al. v. DOI</i></p> <p>Case Number 3:19-cv-8285</p> <p>23-15247</p> <p>Court U.S. District Court for the District of Arizona</p> <p>9th Circuit</p> <p>Relevant Dates 10/1/2019: Complaint 12/5/2019: DOI answer 4/2/2020: Joint Motion to Intervene by Colorado, California, Arizona Department of Water Resources, Nevada, Utah, and Wyoming 4/30/2020: Joint Motion to Intervene by Southern Nevada Water Authority, Central Arizona Water Conservation District, and Metropolitan Water District of Southern California 1/22/22: Plaintiffs MSJ 3/13/22: DOI's MSJ 4/7/22: Intervenor defendants' (lower basin) joinder to DOI's MSJ 4/8/22: NM Interstate Stream Commission amicus brief 10/7/22: Oral Arguments held 12/23/22: Judgement entered for the Defendants</p> <p>2/23/23: Appeal to 9th Circuit 8/23: States' briefings filed, joining with DOI briefing and adding State concerns 2/6/24: Oral argument</p> <p>Related Cases</p> <p>Notes</p>	<p>Issues Colorado River</p> <p>On April 28, 2024, the 9th Circuit upheld DOI's December 2016 plan for managing the Glen Canyon Dam. The 9th Circuit agreed with the District Court, finding that DOI selected a management plan that adequately juggled its obligations under the Grand Canyon Protect Act of 1992, the Colorado River Storage Project Act of 1956, and other regulations.</p> <p>BACKGROUND: Plaintiffs allege that DOI failed to take into consideration the effects of climate change and the aging infrastructure of the Glen Canyon Dam in its environmental analysis of future operations. They also assert that DOI failed to consider the alternatives of decommissioning the dam, filling Lake Mead first, and returning the river to its natural flow. The plaintiffs seek to set aside DOI's final environmental impact statement for violations of NEPA, and to require the inclusion of the impacts of climate change and a reasonable range of alternatives in the proposed action. DOI denied all the allegations, and asserted that the plaintiffs are not entitled to the relief they seek, and that the court lacks subject matter jurisdiction. The Colorado River Basin states and agencies intervened, joining in DOI's answer, and laid out the intricate complexities of the Law of the River, with its many compacts, treaties, Congressional deference to state water rights and laws, and ongoing efforts among the states and various other organizations and interested parties to manage the flow, salinity, and ecological benefits of the river. On December 23, 2022, the court issued its decision denying the plaintiffs' MSJ and granting the federal defendants' and state intervenors' cross-MSJs. The court held that NEPA only requires consideration of reasonable alternatives consistent with the agency's policy objectives and the purpose, in this case, of the LTEMP, which is to set guidelines regarding water releases based on the 2007 Interim Guidelines and the Law of the River. Complying with the Law of the River, meeting water delivery requirements, and complying with other federal laws is an appropriate goal for the federal defendants. The range of alternatives considered in the EIS was consistent with the NEPA goals of informed decision-making and informed public participation. The EIS provided explanations for why the plaintiffs' proposed alternatives (decommissioning Glen Canyon Dam, equalizing upstream flows, filling Lake Mead first, or run-of-the-river) were rejected. On February 23, 2023, the plaintiffs appealed the decision to the 9th Circuit. The 9th Circuit heard oral arguments on February 6, 2024.</p>
<p>Case Name <i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.</i></p> <p>Case Number 5:13-cv-883</p> <p>Court U.S. District Court for the Central District of California</p> <p>Relevant Dates</p>	<p>Issues Indian Reserved Water Rights</p> <p>BACKGROUND: The Agua Caliente Band of Cahuilla Indians filed a lawsuit in May 2013, asking the Court to declare and quantify the existence of the tribe's water rights as the senior rights in the Coachella Valley under federal law. In March 2015, the District Court ruled on summary judgment that the Agua Caliente Band of Cahuilla Indians has a reserved right to water, and groundwater is a water source available to fulfill that right. The Court denied the Tribe's claim for aboriginal title to groundwater. The case was trifurcated, with phase II addressing whether the Tribe beneficially owns the "pore space" of the groundwater basin underlying the Reservation, and whether a tribal right to groundwater includes the right to receive water of a certain quality. Phase III will focus on the quantification of the Tribe's right. (Note: The order of Phase II and Phase III appears to have been reversed. as litigation continued.)</p> <p>On March 7, 2017, the 9th Circuit upheld the California District Court's summary judgment, holding that the United States implicitly reserved a right</p>

<p>5/2013: Agua Caliente filed suit 3/27/2015: Summary judgment re: groundwater available as part of reserved water right 10/18/16: Oral arguments on interlocutory appeal, 9th Cir. 3/7/17: 9th Circuit panel decision on Phase I reserved groundwater appeal from CA court 6/5/17: Tribe's Motion to Lift Stay granted; CA Dist. Ct. proceeding with Phase II 7/5/17: Petition for Certiorari from DWA and CVWD 8/7/17: Amicus brief in support of Petition for Cert, filed by NV, AZ, AR, ID, NE, ND, SD, TX, WI, WY 11/27/17: S. Ct. denied Cert 4/19/19: Dist. Ct. granted Defendants' MSJ on Phase II 8/14/19: Dist. Ct. denied motion to reconsider 7/17/20: Agua Caliente filed its amended complaint 7/31/20: Answers to amended complaint 10/6/20: Case stayed pending private mediation 5/29/24: Stay extended (9/1/24)</p> <p>Related Cases</p> <p>9th Circuit #15-55896</p> <p>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., 5:20-cv-00174</p> <p>Notes</p> <p>For more information see: http://www.scotusblog.com/case-files/cases/coachella-valley-water-district-v-agua-caliente-band-cahuilla-indians/ and https://www.narf.org/cases/agua-caliente-v-coachella/</p>
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to water when it created the Agua Caliente Reservation, and that the Tribe's reserved water right extends to the groundwater underlying the Reservation. The court expressed "no opinion on how much water falls within the scope of the Tribe's federal groundwater right," since that will be determined at a later phase of the case. However, even with water under state-law entitlements, "there can be no question that water [from the aquifer] in some amount was necessarily reserved to support the reservation created." On July 5, 2017, the Defendant water agencies filed petitions for cert. On August 7, 2017, NV, AZ, AR, ID, NE, ND, SD, TX, WI, and WY filed an amicus curiae brief, arguing that the 9th Circuit's expansion of the federal reserved water rights doctrine unsettles the scope of the states' authority over groundwater resources, and that the decision is inconsistent with caution courts must exercise when altering the federal-state balance by interfering with state sovereign power, particularly when applying implied Congressional intent. It calls the decision an "indiscriminate application of the Winters doctrine to groundwater" that ignores the nuances of past court decisions and expressed Congressional intent. The Supreme Court denied the petition for cert on November 27, 2017.

On April 19, 2019, the U.S. District Court for the Central District of California granted the defendants' motions for summary judgment, which argued that the tribe does not have standing to assert its claims. The court agreed, noting that although there may be injury to the groundwater in the form of overdrafts and the practice of recharge with lower-quality Colorado River water, the tribe has not demonstrated injury to its ability to use water of a sufficient quality or quantity to fulfill the purposes of the reservation. Similarly, the court held that the tribe did not demonstrate that the defendants interfered with the tribe's right to use the aquifer's pore spaces to store its reserved water rights. On July 17, 2020, the tribe filed its amended complaint. The case was stayed for mediation.

Case Name	Issues
<i>California v. Bureau of Land Mgmt.</i>	Hydraulic fracturing
Case Number	BACKGROUND: On December 28, 2017, the Bureau of Land Management (BLM) published its Federal Register notice of the final decision to rescind the stayed 2015 Hydraulic Fracturing Rule. BLM's review of the Rule found that all 32 of the states with federal oil and gas leases have regulations to address hydraulic fracturing, and that companies are disclosing the chemical content of their hydraulic fracturing fluids using FracFocus or other state regulatory databases. Rescinding the 2015 Rule was also considered consistent with the Administration's Executive Order 13771 to reduce the costs of regulatory compliance. On January 24, 2018, California and several environmental groups sought to vacate the rescission and reinstate all of the Hydraulic Fracturing Rule's provisions. CA argues that hydraulic fracturing on federal and Indian lands, particularly those not subject to state jurisdiction, will impact surface water and groundwater resources, air pollution, and seismicity from the disposal of wastewater. Additionally, states do not have BLM's stewardship standards and trust responsibilities over federal lands.). California said that although new administrations are entitled to change policy positions, the APA requires a reasoned explanation for those changes, particularly addressing any inconsistencies with prior factual findings. California argues that state and tribal regulations fall short of the 2015 Rule requirements. "For example, at least six of the nine states where the majority of fracking on federal land occurs did not require the use of tanks instead of pits for containing injection waste fluids, as the Fracking Rule does. Additionally, most of the nine states' regulations on monitoring and verifying the integrity of cement casing fell short of the Fracking Rule's requirements. The Fracking Rule contemplated concurrent state regulation of wells on federal lands and in no way prevented states from enacting stricter requirements. States or tribes could also apply for a variance from the requirements of the Fracking Rule." State requirements also differ "with regard to mechanical integrity testing, pressure monitoring during hydraulic fracturing operations, and post-fracturing disclosure requirements."
18-521	
20-16157	
Court	The district court rejected CA's arguments. "The Court's task is not to decide whether the changes [BLM] seek[s] to make will result in better or worse environmental policy...[or] to decide whether it would find the rationales advanced by the agency compelling (or even persuasive) if it were reviewing the matter from scratch. Instead, the narrow APA question before the Court is whether the admitted policy change represented by the Repeal was so inadequately explained as to be arbitrary and capricious." The court added that it may not question BLM's choice to weigh socioeconomic concerns more heavily than the value of consistent federal regulations the 2015 rule may have provided. The court also rejected Wyoming's argument that BLM lacked authority to promulgate the rule. Aside from the fact that the 2015 rule wasn't before the court (only the repeal of the rule), the court said BLM never conceded that it lacked legal authority, only eliminated the need for further litigation over BLM's statutory authority by repealing the rule. The case is now on appeal before the 9th Circuit.
U.S. District Court for the Northern District of California	
9th Circuit	
Relevant Dates	
1/24/18: Lawsuits filed	
7/17/18: U.S. Motion to transfer case to Wyoming denied	
10/9/18: BLM lodged administrative record with the court	
1/22/20: Hearing on MSJs	
3/27/20: BLM and WY's Cross MSJ's granted, CA's MSJ denied	
6/12/20: CA filed appeal, 9th Cir. #20-16157	
10/21/20: Opening briefs	
11/20/20: Answering brief	
2/11/21: Reply briefs	
2/19/21: Mediation conference scheduled for March 1	
3/19/21: Case administratively closed for mediation	
7/11/24: Administrative closure extended to 8/9/24	

Related Cases	
Sierra Club et al. v. Zinke, No. 18-524 (consolidated)	
Notes	
Case Name	Issues Rio Grande Compact
<i>Texas v. New Mexico and Colorado</i>	On June 21, 2024, the Supreme Court of the United States, in a 5-4 opinion, denied approval of a settlement between Texas, New Mexico, and Colorado, noting that the federal government had its own distinct interests in holding New Mexico to its obligations under the Compact, as the Compact is “inextricably intertwined” with the United States’ operation of the Rio Grande Project. The Court said that the proposed settlement failed to prohibit New Mexico from interfering with the United States’ Project delivery of water to Texas water districts. It also failed to disallow New Mexico from allowing excessive pumping downstream of Elephant Butte Reservoir. The Court further argued that, by requiring the use of the projected data period from 1951 to 1978 (D2) the settlement would impose new metrics for measuring compliance which take New Mexico’s pumping during that period for granted. These provisions would preclude the United States from arguing that the Compact itself forecloses New Mexico’s current rates of groundwater pumping. The Court also responded to the dissenting opinion that the Court’s decision “defies 100 years of [the] Court’s water law jurisprudence,” saying: “Nothing in today’s decision affects either this Court’s state water law jurisprudence or the Federal Government’s general obligation to comply with state water law.”
Case Number	BACKGROUND: The state of Texas filed a lawsuit in the United States Supreme Court against the states of New Mexico and Colorado alleging that New Mexico is violating the 1939 Rio Grande Compact, which governs the distribution of Rio Grande water among the three states. New Mexico denies this allegation. The United States filed a motion to intervene on the grounds that the case affects the Department of Interior’s management of the Reclamation’s Rio Grande Project, its calculation of diversion allocations, and its responsibility to deliver water to intended Project beneficiaries and to Mexico pursuant to Treaty. On January 9, 2023, the Special Master released the states-proposed Consent Decree (document 720). In his order (document 742), the Special Master said: “The States, but not the United States, now have reached a proposed settlement of their pending claims against one another. The proposed settlement differs in many ways from the parties’ litigation positions... Texas, however, asserts that it is satisfied the Decree achieves its primary goal: ensuring delivery to Texas of Texas’s share of Rio Grande water with well-defined methods to verify delivery and enforceable consequences for under- or over-delivery. New Mexico, similarly, asserts that it is satisfied the Decree achieves New Mexico’s primary goals: ensuring delivery in New Mexico of the appropriate share of Rio Grande water without unduly infringing upon New Mexico’s sovereignty to address water-related disputes between New Mexicans, between New Mexico and its citizens (including water districts), or between New Mexico and the United States. Colorado, whose interests are primarily upstream of the Elephant Butte Reservoir, agrees that the Decree is consistent with the Compact and adequately protects Colorado’s interests. Finally, the Decree does not amend the Compact. In fact, it expressly disavows any such amendment as well as any interference with the United States’ duties towards Mexico and towards native citizens’ tribes. To achieve these goals, the proposed Decree employs several mechanisms found elsewhere in the Rio Grande Compact and in many other interstate compacts. For example, the Decree calls for a gauge to measure flow near El Paso and imposes a delivery requirement on New Mexico at that gauge. The delivery requirement is based on formulas that use many inputs including the flow leaving Caballo Reservoir just downstream of Elephant Butte Reservoir. Recognizing the likelihood that actual deliveries will vary from formula-required deliveries, the Decree establishes deviation limits and calls for responsive actions in the event deliveries exceed or fall short of requirements. In part, responsive actions are left for New Mexico to select in its sovereign prerogative. Ultimately water transfers through the Rio Grande Project and adjustments to water escrow accounts are required if any state fails to remedy deviations adequately or in a timely fashion.”
#220141	
Court	On July 24, 2023, the Special Master submitted his recommendation to the Supreme Court to approve the Consent Decree. On October 6, 2023, the U.S. filed exceptions on the grounds that it was not a party to the Consent Decree, that its claims have not been resolved, that the Consent Decree violates the Rio Grande Compact, and that it imposes obligations on the U.S. without its consent. On December 4, 2023, the States of Texas, New Mexico, and Colorado filed a joint reply to the United States exceptions. The States argued that they are able to resolve ambiguities in an interstate compact, and that the Supreme Court has historically honored such agreements between states. The States explained how the Consent Decree is consistent with the Rio Grande Compact, and argued that the Bureau of Reclamation acts as an agent of the Compact, not of the States. “The United States asserts, incorrectly, that Reclamation, and not the Compact, ‘dictate[s] the terms of the apportionment’ below the Reservoir. That radical position would stand the normal principles of compact apportionment on their head and vest the United States with freedom to determine how much water New Mexico and Texas receive. Because the Compact, not Reclamation, establishes the apportionment... Reclamation simply does not have discretion to adjust the amount of water to which each State is entitled. Any other result would undermine State sovereignty and allow the apportionment to change based on the unilateral actions of the United States – a non-signatory to the Compact.”
U.S. Supreme Court	
Relevant Dates	On December 11, 2023, 22 other states filed an amicus brief in support of TX, NM, and CO. The brief argued that the ability to form interstate compacts is a key component of state sovereignty, enabling them to address issues that cross jurisdictional boundaries, including the ability to equitably apportion and manage interstate waters. “As parties to interstate water compacts, Amici States expect certainty from their agreements and to be able to manage their state waters in accordance with such agreements. If a dispute arises regarding an interstate water compact, the state parties to the compact have the authority to resolve these disputes among themselves. State sovereignty and principles of federalism prevent undue interference from the United States when the United States is not a party to the compact.” The Amici States argued: “Even in those
1/8/13: Texas filed its complaint 2/27/14: United States Motion to Intervene 3/20/17: Special Master Report received by the Supreme Court 8/4/17: Kansas amicus brief in support of Texas re: interstate compacts and impact of upstream groundwater diversions 1/8/18: S. Ct. oral arguments 3/5/18: S. Ct. decision to allow US to intervene 5/23/18: NM filed Answers and Counterclaims 7/20/18: TX Answer 7/23/18: U.S. Answer 12/21/18: U.S. Motion for Judgment on the Pleadings 12/26/18: Texas and New Mexico motions for partial judgment 4/2/19: Hearing on motions before Special Master 3/31/20: Status conference to discuss completion of discovery, to set hearing dates, to establish a trial date, and to discuss potential for settlement 6/25/20: Mediator appointed 11/5/20: Texas, U.S., and New Mexico’s respective partial MSJs filed 12/22/20: responses to partial MSJs filed 3/9/21: Partial MSJ hearing 5/21/21: Order granting and denying various MSJ issues 8/19/21: Texas Motion for Continuance of Trial (COVID concerns) October - November 2021: First half of split trial 3/1/22: Settlement negotiations continue; request for Fall 2022 second half of trial. 6/24/22: Status conference: settlement agreed to in principle (drafting, approval, legislative and regulatory steps pending) 9/21/22: Joint Status report: settlement discussions continue, proposed completion or trial by January 2023 1/9/23: Proposed Consent Decree (settlement agreement) unsealed 7/24/23: Special Master’s Recommendation to the Supreme Court to approve the Consent Decree 10/6/23: United States Exception to the Special Master’s Recommendation 12/4/23: TX, NM, CO joint reply to the Exceptions 12/11/23: 22 states filed an amicus brief (including AK, AZ, ID, KS, MT, NE, OR, SD, UT, WY) [3/20/24: Oral argument scheduled]	
Related Cases	
Notes	

For more information, see <https://www.ca8.uscourts.gov/texas-v-new-mexico-and-colorado-no-141-original> and <https://www.scotusblog.com/case-files/cases/texas-v-new-mexico-and-colorado/>

under interference from the United States when the United States is not a party to the compact. The Amici States argued: “Even in those instances where there is a federal water project associated with an project does not create a role for the United States in the enforcement or interpretation of the compact or in the division and governance of water between the States. Federal law requires that the United States comply with state law relating to the control, appropriation, and distribution of water in federal water projects. See 43 U.S. § 383 [Section 8 of the Reclamation Act]; see also 43 U.S.C. § 666 [McCarran Amendment]. Federal water project authorizations do not supersede compact terms negotiated by States and cannot impose new terms and conditions that were not agreed to by the compacting parties. This Court should reject the United States’ argument that it may enforce against state parties its own interpretation of interstate water compacts to which it is not a party and refuse the United States’ attempt to expand its role in the interpretation and enforcement of such compacts.” The Amici States noted that the Bureau of Reclamation could still resolve its concerns by going back to the states: “That does not mean, however, that the United States is without recourse. If the United States has a claim regarding water appropriated to it in relation to a federal water project, the United States, like all other water right holders, may turn to state courts to protect project water rights.... In line with these principles, laws authorizing federal water projects that involve compact water recognize that such projects are subsidiary to interstate compacts and must operate within the compact framework.”

Tab T – Indian Water Rights Settlement Completion Fund

.....
(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R.

To establish subaccounts in the Indian Water Rights Settlement Completion Fund to satisfy the obligations of the United States with respect to certain Indian water rights settlements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GRIJALVA introduced the following bill; which was referred to the Committee on _____

A BILL

To establish subaccounts in the Indian Water Rights Settlement Completion Fund to satisfy the obligations of the United States with respect to certain Indian water rights settlements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INDIAN WATER RIGHTS SETTLEMENT COMPLE-**
4 **TION FUND SUBACCOUNTS.**

5 (a) AMENDMENT.—Section 70101 of the Infrastruc-
6 ture Investment and Jobs Act (Public Law 117–58; 25

1 U.S.C. 149) is amended by inserting after subsection (d)
2 the following new subsections:

3 “(e) OPERATIONS, MAINTENANCE, AND REPAIR SUB-
4 ACCOUNT.—

5 “(1) ESTABLISHMENT.—There is established
6 within the Fund a subaccount to be known as the
7 Operations, Maintenance, and Repair Subaccount
8 (referred to in this subsection as the ‘OMR Sub-
9 account’).

10 “(2) DEPOSITS.—

11 “(A) IN GENERAL.—Not later than De-
12 cember 31 of the year on which this subsection
13 is enacted, and on each October 1 thereafter
14 through October 1, 2033, out of any funds in
15 the Treasury not otherwise appropriated, the
16 Secretary of the Treasury shall deposit in the
17 OMR Subaccount \$34,000,000 for the uses set
18 forth in paragraph (3).

19 “(B) AVAILABILITY.—Amounts deposited
20 in the OMR Subaccount under this paragraph
21 shall be available to the Secretary of the Inte-
22 rior, without further appropriation or fiscal
23 year limitation, for the uses described in para-
24 graph (3).

1 “(3) USES.—Amounts deposited in the OMR
2 Subaccount under paragraph (2) shall be used by
3 the Secretary of the Interior for transfers to funds
4 or accounts authorized to receive appropriations to
5 satisfy obligations of the United States under the
6 following provisions:

7 “(A) The water delivery and operation,
8 maintenance, repair, and related provisions of
9 Public Law 98–530, relating to the water rights
10 of the Ak-Chin Indian Community.

11 “(B) The water delivery and operations,
12 maintenance, repair and related provisions of
13 the Colorado Ute Indian Water Rights Settle-
14 ment Act of 1988 (Public Law 100–585), relat-
15 ing to the Animas-La Plata Project, as defined
16 in section 3(2) of such Act.

17 “(C) The provisions of section 10603(g) of
18 the Omnibus Public Land Management Act of
19 2009 (Public Law 111–11), relating to the
20 Navajo-Gallup Water Supply Project.

21 “(D) The water acquisition provisions of
22 the Snake River Water Rights Act of 2004
23 (title X of division J of Public Law 108–447),
24 relating to Snake River flow augmentation
25 under section 5(a) of such Act.

1 “(f) NEW AND CONTINUING SETTLEMENTS SUB-
2 ACCOUNT.—

3 “(1) ESTABLISHMENT.—There is established
4 within the Fund a subaccount to be known as the
5 New and Continuing Settlements Subaccount (re-
6 ferred to in this subsection as the ‘NCS Sub-
7 account’).

8 “(2) DEPOSITS.—

9 “(A) IN GENERAL.—Not later than De-
10 cember 31 of the year on which this subsection
11 is enacted, and on each October 1 thereafter
12 through October 1, 2033, out of any funds in
13 the Treasury not otherwise appropriated, the
14 Secretary of the Treasury shall deposit in the
15 NCS Subaccount \$250,000,000 for the uses set
16 forth in paragraph (3).

17 “(B) AVAILABILITY.—In addition to
18 amounts otherwise available, amounts deposited
19 in the NCS Subaccount under this paragraph
20 shall be available to the Secretary of the Inte-
21 rior, without further appropriation or fiscal
22 year limitation, for the uses described in para-
23 graph (3).

24 “(3) USES.—Subject to paragraph (4), amounts
25 deposited in the NCS Subaccount under paragraph

1 (2) shall be used by the Secretary of the Interior for
2 transfers to funds or accounts authorized to receive
3 appropriations, or to satisfy other obligations of the
4 United States identified by the Secretary of the In-
5 terior, under any Indian water settlement approved
6 and authorized by an Act of Congress.

7 “(4) SCOPE OF TRANSFERS.—

8 “(A) IN GENERAL.—Transfers authorized
9 under paragraph (3) shall be made in such
10 amounts as are determined by the Secretary of
11 the Interior to be appropriate to satisfy the ob-
12 ligations of the United States, including appro-
13 priate indexing, pursuant to the applicable In-
14 dian water settlement.

15 “(B) SEQUENCE AND TIMING.—The Sec-
16 retary of the Interior shall have the discretion
17 to determine the sequence and timing of trans-
18 fers from the NCS Subaccount under para-
19 graph (3) in order to substantially complete the
20 eligible Indian water settlements as expedi-
21 tiously as practicable.”.

22 (b) CONFORMING AMENDMENTS.—Section 312(e)(5)
23 of the White Mountain Apache Tribe Water Rights Quan-
24 tification Act of 2010 (title III of Public Law 111–291)
25 is amended—

- 1 (1) by striking “made available from—” and in-
- 2 serting “made available from the Reclamation Water
- 3 Settlements Fund established by section 10501(a) of
- 4 the Omnibus Public Land Management Act of 2009
- 5 (43 U.S.C. 407(a)).”; and
- 6 (2) by striking subparagraphs (A) and (B).

Tab U – State Reports

Tab W – Newsletter Index

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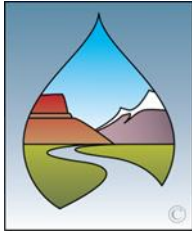
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**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
STATE CWA SECTION 401 CERTIFICATION AUTHORITY**

**Deadwood, South Dakota
September 16, 2021**

WHEREAS, States have responsibly exercised their delegated authority under the Clean Water Act (CWA) Section 401 and under state water quality statutes to protect water quality, and must consider proposed activities and discharges in light of the states' designated water uses and related water quality standards; and

WHEREAS, the Council supports a balanced and integrated approach to achieve water and energy policy goals that plans for the future in sustainable ways, and recognizes legitimate state water and water quality management, protection and planning authorities to balance competing water uses; and

WHEREAS, the western states strongly support the planning and development of critical infrastructure and streamlined permitting processes, but such efforts should not come at the expense of states' authority to allocate, manage, and protect their water resources; and

WHEREAS, the development of hydropower and other federally permitted and licensed projects involving activities that may impact states' water quality standards should be appropriately undertaken in compliance with substantive and procedural state water law and delegated authority under CWA Section 401; and

WHEREAS, CWA Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution."; and

WHEREAS, CWA Section 101(g) of the CWA further provides that it is the primary and exclusive authority of each state to "allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act"; and

WHEREAS, Section 27 of the Federal Power Act declares: "That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein."; and

WHEREAS, the Supreme Court has narrowly interpreted the Federal Power Act (16 U.S.C. 791a et seq.) reading Section 27 (16 U.S.C. 821) to limit state authority to set streamflow requirements on federally permitted and licensed projects, holding in *First Iowa Hydro-Electric Cooperative v. Federal Power Commission*, 328 U.S. 152 (1946) and in *California v. FERC*, 495 U.S. 490 (1990) that federal requirements preempted any state requirements, including efforts to establish minimum stream flows, noting that "...Congress remains free to alter what we have done"; and

WHEREAS, these rulings eroded state authority over state resources, and the Council has supported federal legislation to restore states' primary authority for regulating streamflows and water use and clarifying Congressional intent under the Federal Power Act; and

WHEREAS, in *P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), the Supreme Court upheld a state's delegated authority to impose minimum stream flow conditions under

the CWA Section 401 certification process where necessary to protect a designated use for fish habitat, expressly rejecting any implied limitations on Section 401 certifications based on the *First Iowa* interpretation of the Federal Power Act; and

WHEREAS, an overly narrow reading of Section 401 would deprive the states of the ability to maintain the very beneficial uses that the Clean Water Act was designed to protect, and threaten the existing partnership between states and federal agencies based on cooperative federalism; and

WHEREAS, the vast majority of Section 401 certification requests are processed within 90 days, well within the one year allowed by current law, with relatively little if any backlog of certification actions; and

WHEREAS, most delays are typically due to submission of an incomplete application, applicants' non-responsiveness to requests for additional information, the completion of necessary study requirements, the size and complexity of some projects (and related impacts), substantive changes to the proposed project requiring further review, or constraints on state resources; and

WHEREAS, CWA Section 401 certification denials by states are rare and carefully considered, and are not examples of the failure of the system, as the process has been historically well-understood, reliable and supported by case law that provides certainty for both the states, federal agencies, and the regulated community; and

WHEREAS, recent actions taken by the federal government under the 2020 CWA Section 401 Certification Rule have caused some western states to issue an increased number of denials, due to inflexible deadlines that do not accommodate state public engagement laws or allow sufficient time to gather adequate information on project impacts; and

WHEREAS, the rule revision has also recently led to federal agencies waiving reopener conditions in nationwide permits imposed on federal projects by states under CWA Section 401, inconsistent with CWA Sections 101(b) and 101(g), Section 27 of the Federal Power Act, and the Supreme Court ruling under *P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology*; and

WHEREAS, substantial and recurring changes to regulatory definitions, policies, and programs between federal Administrations create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports any changes that strengthen the deference to state water laws and do not diminish the primary state authority and responsibility for the appropriation, allocation, development, conservation, and protection of their water resources, including minimum streamflows, and the protection of water quality and designated uses.

BE IT FURTHER RESOLVED that the Western States Water Council strongly supports early state engagement in federal permitting and licensing actions and the coordination of state and federal environmental requirements and review processes for critical infrastructure without diminishing state authority.

BE IT FURTHER RESOLVED that the Western States Water Council supports a mechanism in any rule development process for a representative number of states, as co-regulators with diverse perspectives and regions, to engage actively with EPA staff to provide direct and effective feedback on the implementability of a proposed rule.



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
CLEAN WATER ACT JURISDICTION
Deadwood, South Dakota
September 16, 2021

WHEREAS, the Clean Water Act (CWA) is built upon the principle of cooperative federalism in which Congress intended the states, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers to implement the CWA as partners, delegating co-regulator authority to the states;

WHEREAS, the CWA’s cooperative federalism framework has resulted in significant water quality improvements since the law’s enactment in 1972, and western states have made great strides in protecting water quality and coordinating water quality and water quantity decisions; and

WHEREAS, EPA has actively sought meaningful state consultation, engagement and participation in its review and development of a new proposed rule to define Waters of the United States; and

WHEREAS, States are best positioned to manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology, geology, and legal frameworks; and

WHEREAS, States have both state statutory and constitutional authority pursuant to their “waters of the state” jurisdiction to protect the quality of waters within their borders and such jurisdiction generally extends beyond the limits of federal jurisdiction under the CWA; and

WHEREAS, CWA Section 101(b) supports the states’ critical role in protecting water quality by stating: “It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution;” and

WHEREAS, CWA Section 101(g) further provides that the primary and exclusive authority of each state to “allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act;” and

WHEREAS, a one-size-fits-all national approach to federal regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West, where water can be scarce and a variety of unique waterbodies exist, including but not limited to small ephemeral washes and arroyos, snow dependent intermittent streams, effluent dependent and dominated streams, prairie potholes, playa lakes, and terminal lakes, as well as numerous man-made reservoirs, impoundments, and water and stormwater conveyance structures; and

WHEREAS, physical, biological, and chemical differences between waters, and hydrologic differences, both spatially and temporally, as well as considerable differences in legal doctrines that govern water in western states, mean that any federal effort to clarify CWA jurisdiction will inevitably impact each State differently, thus underscoring the need to thoroughly involve states in developing and implementing any rule so as to clearly respect and avoid conflict with state authority over the regulation of water quality and the allocation of waters and water rights within their respective borders; and

WHEREAS, any efforts to redefine or clarify CWA jurisdiction have, on their face, numerous federalism implications that have the potential to significantly impact states and alter the distribution of power and responsibilities among the states and the federal government; and

WHEREAS, as co-regulators, States are separate and apart from the general public, and have a unique role with the federal government in the development and implementation of any rule to clarify or redefine CWA jurisdiction; and

WHEREAS, information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states; and

WHEREAS, uncertainty and differences of opinion have and continue to exist regarding CWA jurisdiction among States, and challenge EPA and the Corps to develop and implement any new rule in cooperation with the States, based on principles of cooperative federalism, and together to provide greater certainty and a clearer definition of the limits of federal jurisdiction; and

WHEREAS, perennial streams with a relatively permanent surface water connection to navigable waters are presumptively considered to be under federal CWA jurisdiction consistent with *Rapanos*; and

WHEREAS, substantial and recurring changes to regulatory definitions, policies, and programs between federal Administrations create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits.

NOW, THEREFORE BE IT RESOLVED that Congress and the Administration should ensure that any federal effort to clarify or define CWA jurisdiction and define Waters of the United States:

1. Creates a more enduring and broadly supported definition.
2. Gives as much weight and deference as possible to state needs, priorities, and concerns.
3. Includes robust and meaningful state participation and consultation in the development and implementation of any rule, acknowledging the inherent federalism implications.
4. Gives full force and effect to Congress' intent and the purposes of CWA Sections 101(b) and 101(g).
5. Appropriately considers that Justice Kennedy's "significant nexus" test in *Rapanos* requires a connection between waters that is more than speculative or insubstantial to establish jurisdiction. Federal CWA jurisdiction efforts should also quantify "significance" to ensure that the term's usage does not extend jurisdiction to waters with a *de minimis* connection to jurisdictional waters, applied to individual waters on a case-by-case and not watershed basis.
6. Complies with the limits set by Congress and appropriately considers the limits the U.S. Supreme Court has placed on CWA jurisdiction, expressed through the plurality opinion authored by Justice Scalia in *Rapanos*.
7. Specifically excludes waters and features outside the scope of the CWA jurisdiction including but not limited to groundwater.

8. Acknowledges that states have authority to protect all “waters of the state,” and that excluding waters from federal jurisdiction does not mean that they will be exempt from state regulation and protection.
9. Continues to provide access to appropriate technical and financial assistance to the States to protect and improve water quality under existing EPA programs without regard to jurisdictional determinations.
10. Provides a clearly delineated process for resolving differences of opinion over federal and non-federal jurisdiction, and jurisdiction between different States and Tribes (treated as States).
11. Provides for mapping of jurisdictional waters as a joint federal/state/tribal effort employing the best available data and tools, with appropriate provisions and processes for map maintenance.
12. Includes an appropriate delay in the effective date of any new rule or otherwise allows for a transition enabling States to take such actions as may be necessary to address any gaps in state law, regulation and protection, and to ensure sufficient time for tools to be developed by federal agencies, in collaboration with states, that facilitate implementation of the new rule,
13. Recognizes the unique landscapes and flow regimes in various regions of the Nation and the need for flexibility in implementation or define a regional nature of the rule.
14. Provides, in the rule development process, a representative number of states, as co-regulators, with diverse perspectives and regions to engage actively in an integrated way with EPA and USACE staff to provide direct and effective feedback on the implementability of a proposed rule.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding**

FEDERAL WATER AND CLIMATE DATA COLLECTION AND ANALYSIS PROGRAMS

Deadwood, South Dakota

September 16, 2021

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states, and has long been involved in western water conservation, development, protection, and management issues, and the member states and political subdivisions have long been partners in cooperative federal water and climate data collection and analysis programs; and

WHEREAS, in the West, water is a critical, vital resource and sound decision-making demands accurate and timely data on precipitation, temperature, evapotranspiration, soil moisture, snow depth, snow water content, streamflow, groundwater, water quality and similar information; and

WHEREAS, the demands for water and related climate data continue to increase, and this information is used by federal, state, tribal, and local government agencies, as well as private entities and individuals to: (1) forecast flooding, drought and other climate-related events; (2) project future water supplies for agricultural, municipal, and industrial uses; (3) estimate streamflows for hydropower production, recreation, and environmental purposes, such as for fish and wildlife management, including endangered species needs; and (4) facilitate water management and administration of water rights, decrees, and interstate compacts; and

WHEREAS, without timely and accurate information, human life, health, welfare, property, and environmental and natural resources are at considerably greater risk of loss; and

WHEREAS, critical and vital information is gathered and disseminated through a number of important federal programs including, but not limited to: (1) the Snow Survey and Water Supply Forecasting Program, administered by the National Water and Climate Center (NWCC) in Portland, Oregon, and funded through USDA's Natural Resources Conservation Service (NRCS); (2) NWCC's Soil and Climate Analysis Network (SCAN); (3) the U.S. Geological Survey's (USGS) Groundwater and Streamflow Information Program (GWSIP) and National Streamflow Network, which are funded through the Department of Interior; (4) Landsat thermal data, archived and distributed by the USGS, and other remotely-sensed data acquired through the National Atmospheric and Space Administration (NASA) and its water-related missions; (5) the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service and Climate Programs Office; (6) the Environmental Protection Agency's National Environmental Information Exchange Network (NEIEN); and (7) the Bureau of Reclamation's Agrimet System and similar weather station networks; and

WHEREAS, state-of-the-art technology has been developed to provide real or near real-time data in formats that can be shared and used by different computer programs with the potential to vastly improve the water-related information available to decisionmakers in natural resources and emergency management, and thus better protect the public safety, welfare and the environment; and

WHEREAS, these federal programs and newly proposed projects and programs provide useful products to assist in visualizing and interpreting data on water and snow, water use, evapotranspiration and

other parameters making water supply, demand and availability information more accessible and easy to interpret; and

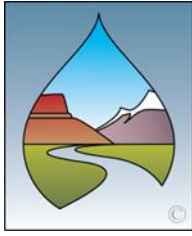
WHEREAS, over a number of years, the lack of capital investments in water data programs has led to the discontinuance, disrepair, or obsolescence of vital equipment needed to maintain existing water resources related data gathering activities; and

WHEREAS, there is a serious need for adequate and consistent federal funding to maintain, restore, modernize, and upgrade federal water, weather and climate observation programs, not only to avoid the loss or further erosion of critical information and data, but also to address new emerging needs, with a primary focus on coordinated data collection and dissemination; and

WHEREAS, wildfires, floods, and other natural disasters have led to the significant loss of monitoring capabilities and require timely action to restore, maintain, and upgrade sensors and observing systems and networks.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the Administration and the Congress to give a high priority to the allocation and appropriation of sufficient funds for these critical, vital programs, which benefit so many, yet have been or are being allowed to erode to the point that it threatens the quantity and quality of basic data provided to a myriad, growing and diffuse number of decisionmakers and stakeholders, with significantly adverse consequences.

BE IT FURTHER RESOLVED, that the Western States Water Council supports efforts to enhance and expand the availability of and access to consistent and comprehensive water supply, demand and water use data and information, such as, but not limited to, the Open Access Evapotranspiration (OpenET) data program and related federal authorizing legislation and appropriations.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
DROUGHT PREPAREDNESS, PREDICTION AND EARLY WARNING PROGRAMS
Deadwood, South Dakota
September 16, 2021**

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states, and has long been involved in western water conservation, development, protection, and management issues, and western states have a long history of promoting drought preparedness, planning and response programs, in cooperation with federal agencies; and

WHEREAS, in the West, water is often scarce even in “wet” years and drought is a recurring threat to our environment, economy and way of life – affecting not only the West, but also the Nation; and

WHEREAS, according to the National Centers for Environmental Information (NCEI), from 1980-2020, there have been 28 drought events costing over \$1B/event with total economic losses of \$258.9B due to drought, or an average of \$9.2B/event, also leading to an average of 95 deaths/year, with drought contributing to another \$102.3B in wildfire losses, and 10 deaths/year, and NCEI noting a rise in vulnerability to drought and wildfire in the western states¹; and

WHEREAS, continuing exceptional, extreme and severe drought conditions afflict the West and elsewhere, highlighting the need for greater attention to developing more comprehensive and coordinated drought prediction, preparedness, planning and response programs at all levels; and

WHEREAS, there is a need for maintaining and improving existing monitoring networks that help provide drought early warning signals, as well as for tracking the impacts of drought; and

WHEREAS, there is a continuing need for developing new monitoring technologies, such as remote sensing, that provide more timely data on water availability and better spatial coverage for assessing drought impacts; and

WHEREAS, early drought warning systems facilitate early drought assessment and mitigation efforts to minimize drought impacts; and

WHEREAS, there is a need for continuing federal research to develop new predictive capability for precipitation at subseasonal to seasonal time scales as described in the report to Congress prepared by NOAA pursuant to Title II of PL 115-25; and

WHEREAS, there is a continuing need for a permanent federal role in coordination of research programs related to drought early warning and prediction; and

WHEREAS, the collection and monitoring of basic data on streamflow, snow pack, groundwater levels, and weather and climate data are essential to understanding water availability and interpreting the early signs of drought.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urges the Administration and the Congress to support federal programs including but not limited to the National Integrated Drought Information System (NIDIS), under the National Oceanic and Atmospheric Administration (NOAA), and other efforts designed to improve our forecasting and response capabilities.

ⁱ [2020 U.S. billion-dollar weather and climate disasters in historical context | NOAA Climate.gov](#)



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
BUREAU OF RECLAMATION DROUGHT RESPONSE PROGRAM
Deadwood, South Dakota
September 16, 2021**

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states and since its inception the Council has been actively involved in national drought preparedness, planning and response, as well as related policy and program development and implementation; and

WHEREAS, in the West, water is often scarce and drought is a recurring threat; and

WHEREAS, according to the National Centers for Environmental Information (NCEI), from 1980-2020, there have been 28 drought events costing over \$1B/event with total economic losses of \$258.9B due to drought, or an average of \$9.2B/event, also leading to an average of 95 deaths/year, with drought contributing to another \$102.3B in wildfire losses, and 10 deaths/year, and NCEI noting a rise in vulnerability to drought and wildfire in the western statesⁱ; and

WHEREAS, the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2214(c)) and subsequent reauthorizations, under Title I, provide only temporary authority for some critical Reclamation actions; and

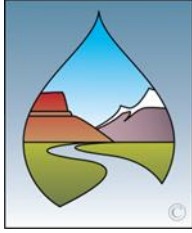
WHEREAS, Reclamation's current Drought Response Program supports a proactive approach to drought and provides financial assistance to water managers and users via its WaterSMART program to: (1) develop drought contingency plans; (2) implement drought resiliency projects to build the capacity of communities to mitigate and respond to drought – increasing the reliability of water supplies, improving water management and operational flexibility, facilitating voluntary sales, transfers or exchanges of water, and providing benefits for fish and wildlife and the environment; and (3) undertake emergency actions to minimize losses due to drought through temporary construction activities and other activities, including water purchases and the use of Reclamation facilities to convey and store water; and

WHEREAS, there is a continuing need for making permanent the temporary authority allowing Reclamation the flexibility to continue delivering water to meet authorized project purposes, meet environmental requirements, respect state water rights, work with all stakeholders, and provide leadership, innovation, and assistance.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council strongly supports legislation to permanently authorize Title I activities under the Reclamation States Emergency Drought Relief Act, and provide for adequate appropriations to meet priority needs and continue the Reclamation Drought Response Program.

BE IT FURTHER RESOLVED that the Council urges and encourages the Administration and the Congress to assess and consider the need for a comprehensive national drought preparedness and response program on par with federal efforts to address other natural disasters such as hurricanes, tornadoes and similar extreme events.

ⁱ [2020 U.S. billion-dollar weather and climate disasters in historical context | NOAA Climate.gov](https://www.noaa.gov/news/2020-u-s-billion-dollar-weather-and-climate-disasters-in-historical-context)



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
STATES' WATER RIGHTS AND NATURAL FLOWS
Deadwood, South Dakota
September 16, 2021**

WHEREAS, the Western States Water Council strongly supports preservation of the States' inherent right to develop, use, control, and distribute water; and

WHEREAS, States have exclusive authority over the allocation and administration of rights to the use of surface water located within their borders and are primarily responsible for protecting, managing and otherwise controlling the resource; and

WHEREAS, States are in the best position to protect and allow for the orderly and rational allocation and administration of the resource through state laws and regulations that are specific to their individual circumstances; and

WHEREAS, the Flood Control Act of 1944 specifically declared the policy of Congress to recognize the interests and rights of the Missouri River Basin States in determining the development of the watersheds within their borders and likewise their interests and rights in water use and control, and to preserve and protect to the fullest extent established and potential uses of the rivers' natural flows, those flows being the natural flows that would pass through the states in the absence of the U.S. Army Corps of Engineers dams; and

WHEREAS, the federal government has long recognized the right to use water as determined under the laws of the various states; and

WHEREAS, the various states have the authority and duty to manage permitting of stored water to supplement natural flows; and

WHEREAS, federal agencies in the western states, such as the Bureau of Reclamation, generally recognize western water laws and natural flows through reservoir operations, with releases from storage that supplement natural flows, and water service contracts that supplement natural flow; and

WHEREAS, representatives of the U.S. Army Corps of Engineers have indicated that all waters entering its Missouri River mainstem reservoirs are stored waters to be allocated and controlled by the U.S. Army Corps of Engineers without recognition of the States' rights to natural flows being separate from the captured floodwaters stored within those reservoirs; and

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council urges the U.S. Army Corps of Engineers to recognize and proceed in conformity with State law related to the development, use, control, appropriation, storage, and distribution of the States' surface waters, including natural flows.

BE IT FURTHER RESOLVED, that the Western States Water Council supports legislation to require the U.S. Army Corps of Engineers to comply with substantive and procedural state law as it relates to development, use, control, appropriation, storage, and distribution of the States' surface waters, including natural flows, similar to the U.S. Bureau of Reclamation.

BE IT FURTHER RESOLVED, that any policy of the U.S. Army Corps of Engineers to require storage contracts to access natural flows within a reservoir boundary would be a violation of the States' rights to develop, use, control, and distribute surface water.

BE IT FURTHER RESOLVED, that the Western States Water Council opposes any and all efforts that would diminish the primary and exclusive authority of States over the allocation of surface water.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
Abandoned Hardrock Mine Cleanup**

**Deadwood, South Dakota
September 16, 2021**

WHEREAS, the General Mining Act of 1872 allowed individuals to obtain exclusive rights to valuable hardrock mineral deposits on land belonging to the United States without requirements to reclaim the land until the 1970s; and

WHEREAS, hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper; and

WHEREAS, as part of this past, the West contains historically mined and abandoned hardrock mines on public and private land, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the needed cleanup and reclamation; and

WHEREAS, a recent report from the Government Accountability Office (GAO-20-238) found that the United States has at least 140,000 abandoned hardrock mine features on federal land of which 22,500 pose or may pose environmental hazards, including adverse effects to water quality; and

WHEREAS, most of these sites are in many western states with a significant portion located wholly or partially on public land managed by the U.S. Forest Service or the U.S. Bureau of Land Management; and

WHEREAS, significant hardrock mining has also occurred on tribal lands; and

WHEREAS, there could be more than 390,000 additional abandoned hardrock mine features on federal land that have not yet been characterized; and

WHEREAS, many of the abandoned hardrock mines are co-located on public and private land; therefore, consideration should be given to the private land component as well when assessing full mine site cleanup; and

WHEREAS, many states have agencies that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate impacted waters, and implement abandoned mine programs that are used to identify state-specific priorities with respect to abandoned hardrock mining issues; and

WHEREAS, there are numerous economic, environmental, and social benefits from remediating and reclaiming lands and waters impaired by abandoned hardrock mines; and

WHEREAS, water quality impacts can be severe, with water quality conditions resulting in impacts to drinking water supplies, aquatic life, recreational uses, agriculture and livestock; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) has identified developing alternative industrial development projects that are bonded for future cleanup on abandoned hardrock mine sites as an innovative solution to generate benefits and return abandoned mine lands to productivity while considering economic, environmental and social effects; and

WHEREAS, establishing a productive post-mining land use is an important safety and quality of life issue for states, especially where abandoned hardrock mine sites exist with encroaching development, have an increased prevalence of outdoor recreation opportunities such as off highway vehicle usage, or where the sites can meet the growing demand for renewable energy development and storage; and

WHEREAS, the cleanup of abandoned hardrock mines is hampered by two issues – (1) insufficient state and federal resources and (2) concerns about liability, compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site; and

WHEREAS, Bureau of Land Management officials estimated that with the agency’s current abandoned mine budget and staff resources, it could take up to 500 years just to confirm the presence of physical or environmental hazards present at the approximately 66,000 hardrock mines identified and the estimated 380,000 features not yet captured in its database (GAO-20-238); and

WHEREAS, states, tribes, municipalities, federal agencies, volunteer citizen groups, and private parties that have no liability or responsibility for the sites (referred to as Good Samaritans in this resolution) have engaged in or are interested in voluntary restoration work at abandoned hardrock mines; and

WHEREAS, Good Samaritans currently have potential liability for their voluntary cleanup under the Clean Water Act (CWA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) despite the fact that they did not previously operate or own the mine. Such Good Samaritans have expressed interest in voluntarily bearing the costs of the cleanup, and they could provide numerous benefits if they were able to remediate the abandoned mine, but are dissuaded by liability concerns; and

WHEREAS, liability concerns also prevent other active modern mining companies from re-mining or voluntarily cleaning up abandoned mines; and

WHEREAS, “Good Samaritan” bills have been introduced in Congress over the years to protect non-liable entities that are willing to voluntarily clean up these sites from legal liability under CERCLA and CWA; and

WHEREAS, in 2020 the EPA created a new office, the Office of Mountains, Deserts, and Plains, to promote Good Samaritan cleanup efforts and foster partnerships with states, tribes, local communities and other stakeholders to ensure more efficient cleanup of both Superfund and non-Superfund sites in the West, including abandoned mines; and

WHEREAS, in many western states, abandoned hardrock mine cleanup projects on public and private lands can be led by state agency project managers in states with established abandoned hardrock mine lands programs if sufficient funding were available, and allowing deferral of project leads to states on pilot programs can facilitate improved cleanup response times.

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council (WSWC) supports increased federal funding and workforce resources dedicated to addressing the backlog of abandoned hardrock mine inventory through both federal and state programs, with a priority on those sites that are contributing to CWA 303(d) impaired waters or have been otherwise prioritized by states.

BE IT FURTHER RESOLVED, that increased federal funding appropriated by Congress should not be used to offset or otherwise reduce existing resources allocated to states to work on abandoned hardrock mine issues and should be delivered to state and federal agencies through a clear,

transparent, and efficient manner that maximizes project implementation work at sites prioritized by states.

BE IT FURTHER RESOLVED that the WSWC supports a rapid and extensive inventory and characterization of environmental hazards and impacts, including water quality, caused by abandoned hardrock mines on federal, state, tribal, and private land across western states and working collaboratively with states and tribes, relying on their expertise to prioritize sites for cleanup.

BE IT FURTHER RESOLVED that the WSWC supports efforts by the EPA Office of Mountains, Deserts, and Plains to advance and resolve states' priority abandoned mine issues by helping states to leverage federal programs and enhance collaboration across federal agencies, states, regional, local, non-profit, and private partnerships to create an "all-hands" approach to finding creative solutions, including mining actions identified in EO 14017, for the cleanup of abandoned hardrock mine sites and to accelerate remedial efforts using the most advanced technology solutions.

BE IT FURTHER RESOLVED that the WSWC supports exploration of new ideas for moving projects forward, such as using Brownfields' Bona Fide Prospective Purchaser protections or other methods of promoting liability protections until such time that a Good Samaritan program can be established.

BE IT FURTHER RESOLVED that the WSWC supports legislation to amend the Clean Water Act to protect Good Samaritans and States from inheriting perpetual liability for the site and to include flexibility and mechanisms for States to implement creative approaches to remediation (e.g., use of Supplemental Environmental Projects obtained through settlements).

BE IT FURTHER RESOLVED, the WSWC supports legislation establishing pilot projects, including pilot projects under state-led programs, to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.

BE IT FURTHER RESOLVED, the WSWC calls on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA, CWA and RCRA liabilities for Good Samaritans, while the federal government should also develop remedies for liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental entities, and the mining industry) from improving conditions at abandoned mines.