



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **WESTERN GOVERNORS**

#### **Cybersecurity/Water Infrastructure**

On April 10, the Western Governors' Association (WGA) sent a letter to the Senate Energy and Natural Resources Subcommittee on Water and Power with policy recommendations to address cybersecurity threats for critical water infrastructure in the nation's energy sector.

The letter included WGA's Policy Resolution 2022-05 on Cybersecurity: "The cybersecurity of our nation is an all-of-government and industry-wide endeavor.... Cybersecurity is especially imperative for critical infrastructure, which includes the nation's...water and wastewater systems.... Effective cybersecurity programs require strategic and functional relationships and information sharing between federal, state and local levels of government, and the public and private sectors.... The federal government must continue to clarify the roles and responsibilities of federal agencies in preventing, preparing for, and responding to cyberattacks. Centralized authority, points of contact, and formalized communication pathways are necessary to address increasingly complex threats.... The federal government must also improve agency coordination to use often-constrained security resources more efficiently and harmonize disparate regulations that put an unnecessary burden on state governments."

### **ADMINISTRATION/WATER QUALITY**

#### **OMB/EPA/PFAS CERCLA Rule**

On April 12, the White House Office of Management and Budget (OMB) completed its review of the Environmental Protection Agency's (EPA) proposed rule "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances" (87 FR 54415). The rule as proposed would require manufacturers, processors, and waste management and wastewater treatment facilities to report releases of PFOA and PFOS, and their salts and structural isomers. The reporting would increase transparency, enable federal agencies to respond more quickly to cleanup needs, and recover cleanup costs from responsible parties. (WSW #2520)

### **EPA/PFAS Drinking Water Rule**

On April 10, the EPA issued its final National Primary Drinking Water Regulation for per-and-polyfluoroalkyl substances (PFAS), scheduled for publication in the *Federal Register* on April 26. The rule is the first national legally-enforceable drinking water standard for PFAS. The rule sets individual limits for five PFAS: (1) PFOA; (2) PFOS; (3) PFNA; (4) PFHxS, and (5) HFPO-DA (also known as "GenX Chemicals"). All public water systems have three years to complete their initial monitoring for these chemicals and must inform the public of the level of PFAS measured in their drinking water. Where PFAS is found at levels that exceed these standards, systems must implement solutions to reduce PFAS in their drinking water within five years. EPA estimates that between about 6% and 10% of the 66,000 public drinking water systems subject to this rule may have to take action to reduce PFAS to meet these new standards. EPA considered 120,000 comments on the proposed rule from a variety of stakeholders.

EPA is setting enforceable Maximum Contaminant Levels (MCLs) at 4.0 parts per trillion (ppt) for PFOA and PFOS, and at 10 ppt for PFNA, PFHxS, and HFPO-DA. EPA is regulating mixtures of four PFAS (PFHxS, PFNA, HFPO-DA, and PFBS) through a hazard index. The non-enforceable Maximum Contaminant Level Goal (MCLG) for PFOA and PFAS have been set to zero. This is a health-based goal which EPA says reflects the latest science showing that there is no level of exposure to these two PFAS without risk of health impacts. MCLGs for PFNA, PFHxS, and HFPO-DA are set at 10 ppt.

Under the rule requirements, public water systems must: (1) conduct initial and ongoing compliance monitoring for the regulated PFAS; (2) implement solutions to reduce regulated PFAS in their drinking water if levels exceed the MCLs; and (3) inform the public of measured levels of regulated PFAS and any MCL exceedance. At the end of the initial three-year monitoring period, water systems must include the data in Consumer Confidence Reports, continue to monitor and report results, and provide public notice for monitoring and testing violations. Starting five years after rule promulgation, water systems must comply with all MCLs and provide public notice for all MCL violations.

The Proposed Rule, set forth in March 2023 (WSW #2550), suggested a hazard index approach which would consider the toxicity of the regulated PFAS as additive, and set the trigger threshold at 1.2 ppt. Western state comments expressed concerns about the hazard index approach, urged EPA to provide guidance on disposal, recommended longer timeframes for implementation, and requested monitoring flexibility. (WSW Special Report #2561)

Changes from the proposed rule include: (1) increasing the compliance deadline for MCLs from 3 to 5 years for systems to plan, fund, and construct capital improvements; (2) setting individual MCLGs and MCLs for PFHxS, PFNA, and HFPO-DA in addition to the mixture hazard index; (3) requiring the presence of two or more PFAS to apply the hazard index (rather than one or more); and (4) providing additional flexibility to reduce ongoing monitoring from quarterly to annual or triennial based on results.

### **CONGRESS/WATER QUALITY** **Water Systems PFAS Liability Protection Act**

On April 11, Rep. John Curtis (R-UT) and Rep. Marie Gluesenkamp Perez (D-WA) introduced the Water Systems PFAS Liability Protection Act (H.R. 7944), to exempt water and wastewater systems from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) with respect to releases of PFAS substances. The exemption would prevent any person (including the United States, any State, or Indian Tribe) from recovering costs or damages from a protected waste system for costs arising from a release of a covered PFAS substance.

The bill is a companion to a broader legislative package introduced by Senator Cynthia Lummis (R-WY) in May of 2023, offering related CERCLA PFAS liability protections for water systems (S.1430), agriculture (S.1427), airports (S. 1433), fire suppression system users (S. 1432), and waste or resources management (S.1429).

Curtis said: “In the West, and particularly in Utah, we understand deeply the value of clean water to our communities, our economy, and our way of life. This bill prevents the burden of industrial irresponsibility to fall on the shoulders of Utah’s families and ratepayers. It’s about ensuring that those who profit from these chemicals bear the cost of their impact, not the Utahns who rely on the integrity of their water supply.”

Perez said: “PFAS chemicals have harmful effects on our health and children’s development – and water utilities are on the front line of the treatment and disposal

of these substances. This bipartisan legislation will help ensure policies to hold PFAS polluters accountable aren’t having unintended consequences on water utilities and ratepayers, especially in small and rural communities.”

### **Senate/PFAS/CERCLA**

On March 20, the Senate Committee on Environment and Public Works (EPW) held a hearing to discuss EPA’s proposed designation of certain PFAS as CERCLA hazardous substances. The hearing focused on potential impacts to passive receivers of PFAS contamination such as airports, farmers, water utilities, waste managers, landfills, cities and other local offices.

Chairman Tom Carper (D-DA) said: “We need strategic national policies and investments to help us do several things: first, determine the spread of PFAS contamination; second, identify the health threats that these chemicals can pose; third, explore the best methods to rid our water and lands of them and lastly, collectively find a path forward to making the actual polluters pay while protecting innocent parties.”

Ranking Member Shelley Moore Capito (R-WV) pointed out that absent congressional action, passive receivers would bear the brunt of PFAS liabilities, potentially raising taxes and utility rates. Capito also highlighted EPW Committee discussions to draft legislation to include protections for passive receivers. She said: “To effectively address these issues, which we should, we have crafted a draft piece of legislation that focuses on creating a comprehensive [strategy] to tackle PFAS pollution. I have made it clear that my support of any PFAS legislation is contingent upon also addressing liability under CERCLA, and providing liability protections for those passive receivers. This is a non-negotiable condition for me. Entities that had no role in creating or controlling these contaminants should not be penalized. I am confident that carefully crafted bipartisan legislation can strike the right balance to protect public health and the environment from PFAS contamination, without imposing additional financial strain on American households already grappling with the challenge of daily living.”

### **PEOPLE**

On April 8, Governor Michelle Lujan Grisham appointed **Tanya Trujillo**, Deputy State Engineer, and **Nathaniel Chakeres**, General Counsel, New Mexico Office of the State Engineer, and **John Rhoderick**, Water Protection Division Director, New Mexico Environment Department, to serve on the WSWC. We congratulate Tanya, Nathaniel, and John on their appointments and look forward to working with them.

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**The WESTERN STATES WATER COUNCIL is a government entity of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.**