



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

USBR/WaterSMART/Water Conservation

On August 5, the Bureau of Reclamation (USBR) announced \$105M of funding through its WaterSMART Water and Energy Efficiency Grants. USBR has selected 67 projects for this first round, which applied last November. The projects are focused on water conservation and efficiency measures such as canal lining, meter installation and replacement, and conservation incentives. Projects span across eleven states including Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, Texas, Utah, and Wyoming. They are expected to conserve more than 111,000 acre-feet of water annually. The next application period for Water Energy and Efficiency Grants will close in November and is expected to be announced in May 2025.

USBR Commissioner Camille Calimlim Touton said: "As we work to counter the impacts of drought and climate change, we must embrace opportunities to increase water and energy efficiency wherever possible. The President's Investing in America agenda provides the resources to expand these conservation efforts that include canal lining, meter installation, conservation incentives, and gate automation."

Acting Deputy Secretary of the Department of the Interior Laura Daniel-Davis said: "Access to clean, reliable water is essential for feeding families, growing crops, sustaining wildlife, and powering agricultural businesses. Enabled by the President's Investing in America agenda, the Biden-Harris administration is bringing historic resources to bear to ensure the stability and sustainability of the Colorado River Basin in the wake of severe drought and to safeguard communities across the West, by strengthening climate resilience and facilitating water conservation."

USDA/Water Conservation

On August 1, the U.S. Department of Agriculture (USDA) announced \$400M to help farmers continue commodity production while conserving water across the West. The funding will support at least 18 irrigation

districts use of innovative water savings technologies and farming practices while producing water-saving commodities. The funding is expected to conserve up to 50,000 acre-feet of water across 250,000 acres of irrigated land in production. USDA has preliminarily selected districts for potential inclusion in the program in Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming. Selected districts may receive up to \$15M each to enter sub-agreements with producers participating. Depending on available funding, awards to additional districts may be possible. Producers who participate will receive payments for voluntarily reducing water consumption while maintaining commodity production. USDA is seeking to learn from the strategies used and identify additional opportunities to maintain and expand water-saving commodity production in the future.

U.S. Secretary of Agriculture, Tom Vilsack said: "Agricultural producers are the backbone of rural communities across the West and many of them are struggling under prolonged drought conditions. USDA is taking an 'all hands' approach to help address this challenge, including these new partnerships with irrigation districts to support producers. We want to scale up the tools available to keep farmers farming, while also voluntarily conserving water and expanding markets for water-saving commodities."

LITIGATION

Idaho v. EPA/Water Quality Standards/Tribes

On July 24, the U.S. District Court for North Dakota granted the motion of several tribes to intervene in *Idaho v. Environmental Protection Agency (EPA)* (1:24-cv-00100). Attorneys General for the States of Alaska, Idaho, Iowa, Louisiana, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Texas, Utah, and Wyoming challenged EPA's Water Quality Standards (WQS) Regulatory Revisions To Protect Tribal Reserved Rights (89 FR 35717), published on May 2 and effective June 3 (WSW #2612).

The States asked the court to vacate the rule as a violation of the Constitution and the Administrative Procedures Act, and because it exceeds EPA's authority

under the Clean Water Act (CWA). The States argued that Congress did not “give the EPA the power to commandeer states into protecting and adjudicating alleged tribal reserved rights for the government” and that the CWA focuses on water quality, not on protecting specific rights for tribal or non-tribal members of the public. The rule requires case-by-case inquiries into undefined reserved rights that can only be resolved by courts, often over the course of a decade or more.... [T]reaty rights promised by the federal government to the tribes are socially, politically, and legally complex issues.”

EPA provides no guidance or mechanism for dispute resolution for “inevitable disagreements – between the tribes themselves, between tribes and States and between the tribes and the federal government – over the extent and nature of any alleged reserved rights.” Such disagreements “have been the subject of countless lawsuits.” The States alleged that the delegation of this effort to evaluate claimed tribal reserved rights to state water management agencies is an “unworkable task.” It would require a re-evaluation of the myriad existing permits and certifications, postponing triennial review processes, likely resulting in water quality standards (WQS) “that are orders of magnitude more stringent than those required under existing regulations....standards that cannot be reasonably met using cost effective technologies,” and leading to “the vast majority of waters being deemed impaired.” It would impact thousands of regulated entities with existing permitted discharges associated with important economic activities.

The States argued that the rule also purports to require state water quality agencies to ensure that tribes have the right to quantities of water needed to secure their claimed rights and uses, such as certain flow rates for fishing rights, “...even if the states have determined water quantities inconsistent with the tribal claims....The EPA now grants itself the ability to disapprove State water quality standards it determines are not sufficiently protective.... This puts EPA in the position of choosing whose claim to water should be protected – undermining and interfering with the States’ longstanding role, as well as previously negotiated or litigated claims and decreed water rights.” This puts vested water rights at risk.

The twelve Tribes that filed the motion to intervene noted that EPA has previously used its oversight authority to disapprove of state WQS that violate CWA requirements because they were insufficiently protective of tribal reserved rights. They said the States often fail to consider tribal uses in the WQS process, and the rule “merely clarifies existing requirements and ensures uniform treatment of Tribal reserved rights essential to Tribal rights holders’ subsistence, cultural, and spiritual practices. Tribal reserved rights can include the use of water for various purposes, such as fishing, gathering,

ceremonial, domestic, irrigation, and municipal uses. Ensuring sufficient water quality for those uses is essential for the health and wellbeing of Tribal members.... Tribes have a clear interest in the quality of waters where they hold usufructuary or ‘use’ rights and the aquatic resources that depend on these waters.” Some of the Tribes consume higher amounts of fish and wild rice than the general population, and they are concerned about contaminants such as mercury, sulfate, and chloride.

The tribes argued that this litigation threatens to impair the tribes’ sovereign and conservation interests, and that the federal government cannot adequately protect their interests in this case. “EPA defends the case as the rule maker that must consider the interests of all citizens, which includes weighing competing interests against each other. The Tribes’ interests are more particularized, given the unique treaty rights reserved for different Tribes and the specific interests in the waters of the state each Tribe occupies.” They noted that while they don’t believe the rule goes far enough to protect treaty rights, it is an essential step forward.

MEETINGS

Western States Water Council - Fall Meetings

The WSWC Fall Meetings and Joint Meeting with the Interstate Council on Water Policy (ICWP) will be held in Lawrence, Kansas on October 22-23, at The Oread Lawrence Hotel. A room block for the nights of October 21-23, is being held in the name of the WSWC. The guest room rates for single/double occupancy is \$107.00 per night, plus tax. Our room block deadline is September 20. Any reservations requested after the cut-off shall be accepted, based on availability and at the prevailing rate. There is no registration fee to attend the WSWC meetings, but we are asking all individuals, regardless of in person or virtual attendance to please register in advance. For further information, please see: <https://westernstateswater.org/events/2024-wswc-fall-2025th-meetings-in-lawrence-kansas/>.

Schedule of Meetings

Tuesday, October 22 (Central Daylight Time)

8:00 am Joint ICWP-WSWC Meeting
1:00 pm Field Trip
6:30 pm Reception

Wednesday, October 23

8:00 am Water Resources Committee Meeting
10:00 am Water Quality Committee Meeting
12:00 pm Executive Committee
1:00 pm Legal Committee Meeting
3:00 pm Host State Presentation
3:45 pm WSWC Full Council (205th) Meeting

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.