



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **WATER QUALITY** **EPA/SDWA**

On July 29, the public comment period closed for the Environmental Protection Agency's (EPA) proposed Water System Restructuring Assessment Rule (WSRAR) (89 FR 46998), under the Safe Drinking Water Act (SDWA). The rule would provide a regulatory framework for States, public water systems (PWS), and the communities they serve to identify and assess restructuring options (operator and equipment sharing, debt restructuring, new technology, interconnection with other water systems, etc.) for systems that struggle to provide safe drinking water. State agencies in Oklahoma, Texas, and Wyoming submitted comments.

The proposed rule would: (1) establish a new mandatory restructuring assessment authority for States; (2) require States with primary enforcement authority (primacy) to develop mandatory restructuring assessment programs and submit primacy revisions for EPA review and approval; (3) establish requirements for States and PWS that implement system-specific mandatory restructuring assessments; and (4) establish eligibility requirements and limitations for restructuring incentives under state-approved restructuring plans. States with primacy would be required to update their programs to incorporate the new primacy requirements within two years of promulgation, with an optional two-year extension. States would be able to mandate an assessment when the following criteria apply: (1) a PWS struggles to provide safe drinking water; (2) a PWS cannot or will not take feasible, affordable actions to comply, or it has failed to restructure on its own; (3) the State finds that restructuring is feasible; (4) the State finds that restructuring is likely to resolve the PWS' compliance challenges.

The Oklahoma Secretary of Energy and Environment (OSEE) and Oklahoma Department of Environmental Quality (ODEQ) said the proposed rule does not contemplate the full scope of potential compliance tools that should be available to States, or the increased burden on States without additional resources that will be required to manage the workload. They recommended that EPA make clear in the final rule

that States may continue to use their own restructuring programs separate from the rule, and that additional engagement is not required where States already provide for public participation. Oklahoma also pointed out that during the enforcement relief period, EPA could exercise its SDWA §1431 imminent and substantial endangerment authority, but this should be reserved for the most egregious circumstances and not be used to impede state progress or authority.

The Texas Commission on Environmental Quality (TCEQ) requested EPA respect States' discretion and eliminate requirements for reporting, recordkeeping and other reviews. TCEQ recommended requiring States to report actions for systems which move forward with the restructuring option chosen. TCEQ said the mailed notice for public meetings is impracticable and recommended electronic publication. TCEQ requested that EPA provide financial support, standardized criteria, and streamlined processes to facilitate the evaluation and oversight of assessors. They also noted that the 30-day time frames place a substantial burden on administrative agencies. TCEQ requested EPA provide guidance and form templates for restructuring plans.

The Wyoming Department of Environmental Quality (WDEQ) voiced concern that the rule could impede Wyoming's Drinking Water State Revolving Fund (DWSRF) authority. WDEQ explained that, as Wyoming has not obtained delegated authority, EPA Region 8 would be responsible for implementing the rule, including incentives through the DWSRF. WDEQ recommended that EPA ensure that the rule is written in a way that it does not impede Wyoming's DWSRF authority. WDEQ also requested that EPA consider better incentives for larger PWS' taking on the additional workload, resources, and risks of acquiring a smaller "struggling" PWS. WDEQ requested flexible timelines and deadlines to account for the additional workload.

### **WATER RESOURCES** **Kansas/Infrastructure**

On July 30, the Kansas Department of Commerce announced a Community Development Block Grant (CDBG) award for the first regional water project in over

a decade. The project aims to improve water access in Coffeyville and Caney. The project aims to regionalize water sources by installing 14 miles of piping, allowing the City of Caney to purchase water from the City of Coffeyville. Lieutenant Governor and Secretary of Commerce David Toland said: "This vital and groundbreaking partnership will significantly improve water infrastructure and ensure reliable access to clean water for residents in Caney and Coffeyville, exemplifying the tremendous value of regional collaboration. These efforts directly support the Kansas Water Plan's goals of addressing water quantity and quality issues, investing in infrastructure and protecting our water sources for generations to come."

### **USBR/Colorado River**

On August 12, the Bureau of Reclamation (USBR) issued a finding of no significant impact for a final environmental assessment of action proposed as part of a system conservation implementation agreement between USBR and the Imperial Irrigation District (IID) in California. The agreement is funded by the Inflation Reduction Act (IRA) and supports voluntary system conservation to protect Colorado River reservoir storage. Under the proposed agreement, the IID would conserve up to 300,000 acre-feet per year (AFY) of Colorado River water from 2024-26, to remain in Lake Mead. Under the agreement, deliveries to IID will drop from 2.5 to 2.2 million AFY for the three-year period. USBR will provide funding for IID's implementation of water conservation programs under which agricultural water users conserve water, thereby reducing water diversions from the Colorado River at Imperial Dam. The potential conservation programs include: (1) the existing On-Farm Efficiency Conservation Program, or a simplified version; (2) a Deficit Irrigation Program (DIP); and (3) a Farm Unit Fallowing Program (FUIFP).

In June, the Upper Colorado River Commission (UCRC) published a report on its 2023 System Conservation Pilot Program (SCPP), outlining the outcomes and lessons learned. USBR allocated up to \$125M from the IRA to allow water users to be compensated for temporary and voluntary reductions in water use. The UCRC worked with USBR to: (1) solicit and review proposals from water users; (2) rank and select projects; (3) contract with participants; (4) verify project activities; and (5) manage payment. Projects were evaluated based on historic consumptive use, likelihood of mitigating drought, diversity of location and type, size, ease of implementation, and other criteria. Compensation was offered commensurate with conserved consumptive use (CCU), estimated by contractors using the eeMETRIC methodology accessed through the OpenET platform. The SCPP received 88 applications, 64 of which were funded, resulting in an

estimated CCU of approximately 37,810 acre-feet. Participants said that the SCPP provided a financial buffer which allowed them to test new tools and strategies. They expressed intention to participate in future programs that bring new tools to support local sustainability and resiliency. On August 12, the UCRC voted unanimously to pursue a memorandum of understanding with USBR on a plan for the basin to track and receive credit for conserved water saved through conservation programs like the SCPP.

### **USBR/Water Data**

On July 31, the USBR announced the installation of eight new eddy covariance (EC) stations in Colorado, New Mexico, and Wyoming. Two more are slated to be installed in Utah by the end of August, bringing the network's total number to 14. The stations measure evapotranspiration rates and help ground-truth evapotranspiration estimates made by Reclamation's Research and Modeling Group (RRMG). The deployment of these EC stations aligns with drought contingency planning efforts and fulfills obligations under the Colorado River Drought Contingency Plan. These measures are aimed at bolstering the region's resilience against water scarcity and ensuring sustainable water use practices. RRMG Chief James Prairie said: "Our methodology has to keep up with science. The eddy covariance stations provide sound, transparent data for water users in the basin.... Further expanding our EC tower ground-truthing network allows the Upper Colorado River Basin to foster continued advancements in satellite based consumptive use estimation, ensuring accuracy improvements can continually be included when measuring irrigated agriculture's consumptive uses, the Upper Basin's largest water use sector."

### **WATER RIGHTS**

#### **Groundwater/Utah**

On August 6, the Utah Division of Water Rights issued notice of its intent to adopt a groundwater management plan for Parowan Valley in southern Utah in order to bring withdrawals in line with recharge. The plan outlines a schedule for gradually "phasing out" water rights by junior priority date. Starting in 2043, water rights with a priority date in 1955 or later will no longer be authorized to divert water. By 2080, all water rights with priority dates later than December 5, 1951 will also be terminated.

The State Engineer may adjust the schedule based on average annual artificial recharge or reductions in depletions during the 10 years prior to the target date. Water users may agree to participate in a voluntary arrangement to manage withdrawals on a system other than by priority date.

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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.**