



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION**

#### **DOGE Lease Cancellations**

As of March 24, the Department of Government Efficiency (DOGE) had announced the termination of 96 leases in water-related agencies throughout western States, totaling 962,163 square-feet (sq ft). The lease terminations are subject to change and may not result in office closures. Agencies may negotiate new leases to stay in place, downsize existing space, or relocate. DOGE reported eight U.S. Forest Service lease cancellations in the West largely consisting of supervisors offices, some of which house training and research programs for wildfire management, such as the Phoenix Interagency Fire Training Center (AZ) and the RMRS Natural Resources Research Center (CO). Five cancelled Bureau of Reclamation leases include area offices, the Trinity River Restoration Program office (CA), and the Columbia-Pacific Northwest Regional Office (ID). Four western Army Corps of Engineers (Corps) facilities would be terminated including area offices (CA, UT) and the Risk Management Center Western Division (CO).

The Environmental Protection Agency's (EPA) cancellations included space for the Pacific Southwest (Region 9) office as well as a drinking water testing lab in CO. DOGE reported 28 leases would be terminated between the Natural Resources Conservation Service and Farm Service Agency, largely consisting of state, county, and area service centers. The U.S. Geological Survey (USGS) would lose the most square footage with a total of 186,169 sq ft across 16 cancelled leases. The majority of these USGS facilities house water research centers. The National Oceanic Atmospheric Administration (NOAA) would lose seven office spaces, the majority of which facilitate NOAA's Fisheries activities. DOGE reported fifteen terminated leases for the U.S. Fish and Wildlife Service in the West, mostly consisting of field offices. <https://doqe.gov/savings>

On April 7, Democratic Colorado Senators Joe Neguse, Michael Bennet, and John Hickenlooper wrote a letter to the General Services Administration acting Administrator Stephen Ehikian regarding the planned termination of federal facility leases in Colorado. The Senators noted nearly twenty cancelled leases in

Colorado for federal land and natural resource agencies. They highlighted the risks such closures could cause, and noted the importance of research and innovation in support of resource protection, weather forecasting, disaster mitigation, and drought response. "Terminating these facility leases and others across the state of Colorado would be detrimental to our shared duty to responsibly manage our public lands, provide for the safety of visitors, and further critical science and research efforts." They noted uncertainty regarding the lease cancellations reported on the DOGE website and expressed concern for the lack of transparency and regulatory oversight. They requested information on the Colorado leases, criteria used to determine cancellation, termination timelines, as well as impacts to operations and the President's Return to In-person mandate. <https://neguse.house.gov/media/press-releases>

### **ADMINISTRATION/WATER QUALITY**

#### **EPA/Army Corps/WOTUS**

On April 4, EPA and the Corps held a kickoff federalism consultation briefing for intergovernmental association staff on EPA's plans to revise the definition of Waters of the United States (WOTUS). Michelle Bushman and others emphasized the importance of consulting with States individually as co-regulators who will be primarily responsible for implementing the new WOTUS definitions, and volunteered WSWC and other organizations to facilitate a second meeting with representative states across the nation, similar to the one that occurred under the first Trump Administration. Megan Bland of the National Conference of State Legislatures requested EPA consult with state legislatures, given their varying regulatory schemes. Bushman questioned whether definitions alone would solve all the problems with implementation. She suggested a process for States to field disagreements regarding determinations and to provide mapping for the regulated community. EPA acknowledged that implementation is a critical aspect of the rulemaking, and said they are seeking input on how to create implementable definitions and tools. Adam Carpenter, American Water Works Association, asked about the possibility of revisiting assumable waters under Section 404(g) and the Corp's guidance on compensatory mitigation. EPA indicated support for States pursuing

Section 404(g) assumption and noted that the Corps memo on mitigation reflected existing policy. Mark Limbaugh from the National Association of Towns and Townships noted problems with the Corps requiring permits for irrigation ditches that are being piped. He advocated for a definition that clarifies that jurisdictional ditches are those that run through jurisdictional wetlands. Regarding related programs, Bushman stressed the importance of continuing to support state programs financially, even with changes to jurisdictional waters.

EPA opened a 30-day period for the public to comment on the scope of “relatively permanent,” “continuous surface connection,” and jurisdictional ditches by April 23 (see WSW #2652). Additionally, EPA has invited states and interstate organizations to submit comments on federalism issues by June 2.

## **ADMINISTRATION/WATER RESOURCES** **Reclamation/Water Infrastructure**

On April 4, the Bureau of Reclamation announced a \$134M award for the proposed Sites Reservoir Project through the Water Infrastructure Improvements for the Nation Act. The project is expected to increase northern California’s water storage capacity by up to 15%. Northwest of Sacramento, the reservoir would store water diverted from the Sacramento River via existing pumping infrastructure after all other water rights and regulatory requirements are met. Water would be released to beneficiaries throughout the State during dryer periods. <https://www.usbr.gov/newsroom/news-release/5131>

## **LITIGATION/WATER RIGHTS** **Utah/Great Salt Lake/Public Trust**

On March 27, Utah’s Third District Court rejected in part Utah’s Motions to Dismiss in the public trust doctrine case, *Utah Physicians for a Healthy Environment et al. v. Utah Department of Natural Resources, et al.* (#230906637). The complaint asserted a claim against the state agencies for a breach of trust for failure to protect the public resources in the Great Salt Lake (GSL). In particular, the plaintiffs sought a declaratory judgment that the “public trust doctrine imposes a duty on [State] Defendants to identify and implement feasible means of maintaining the [GSL] at least at the [4,198 feet] level, including the reduction of unsustainable upstream diversions.” Among the arguments in the Motions to Dismiss, the Utah Division of Water Rights argued that “inserting water rights into Utah’s public trust doctrine goes against the long-standing water public policy of the state” and “the State Engineer lacks legal authority to curtail water rights to maintain lake levels.”

The Central Utah, Jordan Valley, and Weber Basin Water Conservancy Districts, intervener defendants,

argued that the court lacks jurisdiction because “(1) federally owned water rights and related facilities are subject to sovereign immunity; (2) by seeking to ‘modify’ the legal extent of every water right in the GSL Basin, Plaintiffs are effectively seeking a general adjudication of water rights, but general adjudications are special statutory civil actions which can only be brought pursuant to Title 73, Chapter 4; and (3) District projects include trans-basin diversions to import hundreds of thousands of acre-feet of water from the Colorado River Basin to the Wasatch Front, and issues related to such ‘imported water’ can only be determined in a general adjudication proceeding.” The Districts also noted that the complaint failed to join either the tens of thousands of water right holders or the United States as parties to the complaint.

Water user organizations that intervened as defendants included water districts, municipalities, and a regional power company. They argued that “modifying water rights is constitutionally prohibited, the Plaintiffs’ proposed remedy is an uncompensated taking of private property and creates impossible conflicts among state agencies, that article XX, section 1 of the Utah Constitution is not self-executing, and Plaintiffs have no claim under Utah’s Uniform Trust Code.”

The Court found that it has subject matter jurisdiction to “issue a limited declaratory judgment regarding (a) the scope of the public trust doctrine, which includes the navigable waters of the [GSL]; (b) the scope of the State’s duties as trustee of the public trust, which includes the duty to protect the [GSL] from substantial impairment and preserve the waters of the [GSL] so they can be used for the trust purposes of navigation, commerce, fishing, and recreation; and (c) the State’s alleged breach of its trustee duties. However, the court agrees with Defendants that it does not have subject matter jurisdiction to issue declaratory relief in the form of an order directing the State to ‘review, and where necessary, modify [upstream] diversions to protect and preserve the public trust.’ Consequently, the court grants the Motions to Dismiss with respect to this aspect of Plaintiffs’ declaratory judgment claim.”

## **PEOPLE**

**Gretel Follingstad** is leaving her position as the Intermountain West Regional Drought Early Warning Coordinator for NOAA’s National Integrated Drought Information System (NIDIS). **Elizabeth Ossowski**, NIDIS Program Coordinator, will represent NIDIS on the WestFAST team going forward.

**Mindi Dalton** is retiring as Program Coordinator for the USGS Water Availability and Use Science Program. **Brian Clark**, Deputy Program Coordinator will join WestFAST to represent USGS.

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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.**