



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY

Environmental Protection Agency/SWIFIA/WIFIA

On September 6, EPA announced the availability of \$7.5B in Water Infrastructure Finance and Innovation Act (WIFIA) funding. It is the eighth round of funding, and includes \$6.5B available through WIFIA and \$1B available through the State Water Infrastructure Financing Authority (SWIFIA). To date, EPA's WIFIA program has closed loans totaling more than \$20B to help finance \$44B in projects across the country. EPA is currently accepting letters of interest for WIFIA and SWIFIA loans. EPA Administrator Michael S. Regan said: "Good infrastructure is the foundation for delivering clean, safe water to people across the country. The Biden-Harris administration has prioritized water infrastructure investment with this \$7.5 billion infrastructure funding through WIFIA, on top of the unprecedented \$50 billion in funding the Biden-Harris Administration secured under the Bipartisan Infrastructure Law. With these resources, communities will keep building on progress to replace lead pipes, cut PFAS pollution, and protect people from climate change." <https://www.epa.gov/newsreleases/search>

CONGRESS/WATER RESOURCES

California/House

On September 6, the House Natural Resources Committee's Subcommittee on Water, Wildlife and Fisheries held an oversight field hearing titled "Water Abundance: Opportunities and Challenges in California." The hearing examined California's water supply, including the challenges faced through federal regulations, and national food security.

Camille Calimlim Touton, Commissioner, Bureau of Reclamation (Reclamation), discussed managing California's Central Valley Project (CVP) and the State Water Project (SWP) amidst growing water supply challenges. Touton outlined the changes in California's hydrology over the past decade including snow-to-rain shifts in precipitation, rising sea levels, and extreme drought-flood cycles. The Central Valley Project (CVP) was originally designed based on the assumption of a reliable snowpack and the CVP's operations need to be

updated to address new challenges. Touton highlighted Reclamation's commitment to working with partners to modernize water infrastructure, address drought resiliency, improve water supply reliability, foster climate change adaptation, and improve ecosystem health.

U.S. Fish and Wildlife Service Director, Martha Williams, discussed the collaborative management of the CVP, SWP and the Klamath Project to benefit agricultural and public water supply, while maintaining habitat for Delta smelt, chinook salmon, Lost River sucker, and shortnose sucker populations. Williams said: "The Service believes the CVP can be operated in a way that meets the needs of the Central Valley's imperiled fish populations, while supporting California's farms and communities. Finding this balance takes an open, transparent, creative, and collaborative effort by all interested parties, including Tribes, agricultural producers, communities, and state and federal agencies.... In both the Klamath Basin and Central Valley, hydrology is expected to trend drier, which will impact and complicate consultation, restoration, and other long-term planning efforts. These challenges to our environment and communities must be addressed through collaborative partnerships and transparent processes among a wide variety of stakeholders who work together to develop holistic solutions."

House/WOTUS

On September 11, the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment held a hearing titled, "Waters of the United States Implementation Post-Sackett Decisions: Experiences and Perspectives." The hearing featured testimony from stakeholders to discuss the impact of the Supreme Court's *Sackett v. EPA* ruling and the agencies' subsequent approach to designating Waters of the United States (WOTUS). In his opening remarks, Subcommittee Chairman David Rouzer (R-NC) highlighted the economic impacts of the Administration's approach to WOTUS and recommended clear, predictable, and consistent regulations that protect the environment without hindering economic development. He said: "In summation, the Administration's implementation is not in accordance with the Sackett

ruling generally; nor is it consistent project to project where [jurisdictional determinations] have been issued. I remain concerned about the lack of transparency and lack of consistency with which this revised definition has been implemented. We are all still waiting for clear and consistent guidance on which everyone can rely. The decision to approach WOTUS on a site-specific basis without clear training and universal application has served only to muddy the waters of a very clear and straightforward Supreme Court ruling.”

Emma Pokon, Commissioner, Alaska Department of Environmental Conservation (DEC), testified of States’ ability to protect waters in their jurisdiction. She explained that, like Alaska, many States generally apply the same water quality standards to all waters within their boundaries, and that a reduced federal scope does not mean activity will be free of oversight. She wrote: “State policymakers can make judgment calls about what level of protection is appropriate for their residents. And states are often better situated to make those judgment calls. State officials have more complete visibility on circumstances for residents, are more accessible, and may have more nuanced appreciation for unique ecosystem issues and concerns.... But federal agencies are reluctant to trust states; instead, they continue to grope for complete authority over all waters.... As long as major elements of the Supreme Court guidance go unaddressed, conflict and pendulum swings in implementation will likely continue. Without stability, states will struggle to appropriately adjust existing programs.... Federal policymakers must remember that states exist. We’re here, and we’re ready to do our jobs to protect state waters. Moreover, working with states to achieve a stable regulatory framework would best serve the field of water quality regulation.”

Courtney Briggs, American Farm Bureau Federation, argued strongly against EPA’s and the U.S Army Corps of Engineers’ (Corps) use of memoranda to avoid rulemaking. She discussed the agencies’ release of two joint elevation coordination memos in September 2023, which un-paused issuance of jurisdictional determinations (JD) by establishing a process, outlining procedures, and providing specific timelines by which the agencies would coordinate. Briggs pointed out that these memos failed to provide any actual information for landowners to understand rule implementation on the ground. Briggs criticized agencies’ issuance of “Memos to the Field,” the substance of which disregards the Supreme Court’s ruling in *Sackett*. She characterized these memos lack transparency as “rulemakings hiding in plain sight,” adding that the agencies have not provided a mechanism for appealing these memos or any opportunity for public comment.

She testified: “Cooperative Federalism is one of the clear objectives of the CWA. Section 101(b) of the CWA

states that it is Congressional policy to preserve the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution, to plan the development and use of land and water resources, and to consult with the Administrator with respect to the exercise of the Administrator’s authority under the CWA. Congress was emphatic that the states have a role to play in protecting our nation’s water. This means that there is a clear point where federal jurisdiction ends and state jurisdiction begins.... However, the uncertainty as to where the jurisdictional line lies makes it very difficult for states to understand what is under their authority.” <https://transportation.house.gov/calendar/>

On August 30, the Corps of Engineers and EPA issued a Coordination Process Update field memo, in response to requests from the public for more information, outlining the process for issuing JDs and compiling the policy memoranda issued by the agencies which were also mentioned in Briggs’ testimony. https://www.epa.gov/system/files/documents/2024-08/ajd-coordination-memos-update-report-8-28-2024_508.pdf

Senate/Subseasonal-to-Seasonal Forecasting

On August 12, Senator Jacky Rosen (D-NV) announced the introduction of the Smarter Weather Forecasting for Water Management, Farming, and Ranching Act (S. 4975) to help water users and managers better predict extreme weather. The act would authorize subseasonal-to-seasonal (S2S) forecasting pilot projects under the National Oceanic and Atmospheric Administration (NOAA) to improve weather prediction ranging from subseasonal (two week-three months) to seasonal (three months to two years) ranges. The language closely mirrors Sec. 501 of the Weather Act Reauthorization Act (H.R. 6093), which passed the House in April (See WSW #2607). Senator Rosen said: “As extreme weather events become more common and less predictable, it’s important that we invest in the resources to improve forecasting and help communities to better prepare. I introduced this bill to do just that, and ensure Nevada’s farmers and ranchers have access to forecasts to better prepare for weather anomalies.”

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. **Our room block deadline is September 20.** For further information on the meetings, registration, hotel accommodations, etc., please see: <https://westernstateswater.org/events/2024-wswc-fall-2024-meetings-in-lawrence-kansas/>.

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.