



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS **Idaho/PCAST/Groundwater**

On September 23, Governor Brad Little (R-ID) and Lt. Governor Scott Bedke (R-ID) sent a letter to President Biden and Vice President Harris expressing concern about a request from the President's Council of Advisors on Science and Technology (PCAST) issued in April (WSW #2610). They wrote: "We are deeply concerned about your administration's efforts to increase federal oversight of groundwater in the states.... The overly broad request for information suggests the council has already predetermined the actions needed by the federal government with respect to our groundwater. Namely, it appears the council has already concluded that the agriculture industry needs to be the focal point of your groundwater grab, prior to even receiving any feedback.... Additionally, during the PCAST workshop in Arizona this summer, the overwhelming message your council received was consistent with Idahoans' concerns – the federal government has no place in groundwater management. Congress has long left those actions up to the states and has limited its involvement to funding of projects and technology advancements. Your administration should follow suit." See WSW Special Report #2622.

Little and Bedke asked the Administration to pause further action on the PCAST report until they answer the following questions: (1) How will you categorize data submissions based on the credibility of the information? (2) Will the information be used to create any additional federal regulations? (3) Did you work with any states to help develop the request for information? (4) After receiving comments and hosting the workshop, what is PCAST planning next? (5) Is PCAST developing a report and/or recommendation based on the information it has received in this process? (6) How will states be engaged in the development of any reports and/or recommendations? (7) Will the public be able to provide comments on any draft reports and/or recommendations developed?

The WSWC submitted a letter to the PCAST Groundwater Working Group in July, noting that States are in the best position to protect groundwater quality and quantity and have demonstrated the ability to do so.

The letter emphasized that States have exclusive authority over the allocation and administration of groundwater rights located within their borders. The letter read: "The WSWC opposes any and all efforts that would establish a federal ownership interest in groundwater not otherwise recognized or allowed under state law, or diminish the primary and exclusive authority of States over groundwater. Wisely, the United States' Congress and court system have long upheld States' exclusive authority over the allocation and administration of rights to the use of water within their borders.... Efforts to safeguard water security should be conducted with careful adherence to the principles of cooperative federalism and deference to States' respective laws, policies, and programs. No future administrative initiatives should attempt to usurp States' rights and prerogatives related to the management and protection of groundwater resources." See <https://westernstateswater.org/policy-letters/2024/wswc-letter-to-wh-pcast-groundwater-working-group/>

ADMINISTRATION/WATER QUALITY **Lead and Copper Rule**

On October 8, the Environmental Protection Agency (EPA) issued the 2024 Lead and Copper Rule Improvements (LCRI), a set of new final regulations for identifying, removing, and mitigating the impacts of lead pipes. The new rule requires: (1) nearly all water systems to replace lead service lines within 10 years; (2) a complete inventory of lead pipes and regular updates; (3) more rigorous tap sampling at sites with lead service lines; (4) a lower action level for lead contamination (decreased from 15 to 10 parts per billion.) Water systems with multiple exceedances of the lead action level are required to continue adjusting treatment, conduct community outreach, and make filters that are certified to reduce lead available to all consumers. The LCRI also require more frequent and proactive communications about lead pipes and plans for replacement. Alongside the new rule, EPA announced \$2.6B in newly available infrastructure funding made available through the Drinking Water State Revolving Funds (DWSRF). EPA also announced the availability of \$35M in competitive grant funding for reducing lead in drinking water.

Wastewater Management

On September 27, the EPA released resource tools to help communities that rely on lagoons for wastewater management. The First Stop Toolbox for Lagoons is a user-friendly web tool that identifies technical, financial, and regulatory support resources. It is designed to help lagoon operators and technical assistance providers assess operations and compliance challenges in their lagoons. The tools are designed to help States, authorized Tribes, and communities determine whether a water quality standards (WQS) variance is an appropriate step to take. EPA Principal Deputy Assistant Administrator for Water, Bruno Pigott said: "Safely managing wastewater is essential to healthy, thriving communities — no matter if you live in urban, suburban, or rural settings. EPA's new tools enhance operations and management to ensure that all people can rely on clean and safe water."

LITIGATION/WATER QUALITY

Washington/NPDES

On September 5, the Washington Supreme Court issued a unanimous decision in *City of Tacoma v. Dep't of Ecology* (No. 102479-7), upholding the Department of Ecology's approach to limiting nitrogen discharges into Puget Sound. In 2018, the Northwest Environmental Advocates (NWEA) petitioned Ecology to adopt stricter regulations requiring tertiary treatment for nutrient removal at wastewater treatment plants. Ecology denied the petition, saying that the advanced treatment technology would not be universally feasible or necessary for all treatment facilities. Instead, Ecology committed to setting nutrient loading limits for all dischargers into Puget Sound through the individual permitting process. The City of Tacoma, along with other municipalities and sewer districts, filed a lawsuit alleging that Ecology's actions violated Washington's Administrative Procedure Act (APA). They argued that Ecology's actions effectively created a new "rule" without undergoing the required public notice-and-comment procedures.

The Washington Supreme Court disagreed and found that Ecology's actions did not constitute a "rule" because it did not bind Ecology staff to a specific action, but allowed for discretion and case-by-case analysis in issuing permits. The Court noted that Ecology did not impose nitrogen limits on all wastewater treatment plants. For example, a general permit categorized plants into tiers based on their discharge levels, but only those in the "dominant" and "moderate" tiers were subject to limits. The nitrogen limits Ecology did impose were specific and varied according to each plant's technology and historical discharge data.

WATER RESOURCES

Columbia River Treaty

On September 17, Canada hosted a public virtual information session about the Agreement-in-Principle (AIP) reached between Canada and the United States to modernize the Columbia River Treaty (CRT) after six years of discussions. Members of the Canadian negotiation delegation were in attendance during the 90-minute session. They noted that the AIP is a non-legally binding document that provides a road map for drafting a renewed treaty. Kathy Eichenberger, lead negotiator for the Province of British Columbia (BC) and Executive Director of the CRT team, explained that under the modernized treaty Canada will reduce the amount of flood risk management (FRM) storage in treaty reservoirs by 60%, resulting in 3.6 million acre-feet (MAF) stored in Arrow Lakes Reservoir only. In return, the U.S. will pay BC \$37.6M (USD) annually, indexed to inflation through 2044. Canada will be able to reduce the coordinated reservoir storage from 15.5 MAF to a minimum of 11.5 MAF, giving BC up to 4 MAF to manage annually without U.S. agreement. This flexibility will be used to address impacts to ecosystems, Indigenous cultural values, and socioeconomic interests in the basin.

The AIP includes a reduction in the Canadian Entitlement (CE), to share power from treaty dams. The entitlement will decrease by 33% in the first year and drop to 50% by the twentieth year. In addition to the CE and annual flood risk management payments, the AIP provides for an additional \$16.6M (USD) payment to Canada annually, recognizing the additional benefits the U.S. receives from the Canadian treaty reservoirs such as irrigation, recreation, navigation, and fisheries.

The treaty will create two new advisory bodies, the Kootenay Transboundary Collaborative Workgroup (KTCW) and the Joint Ecosystem and Indigenous Cultural Values Body (JEB). The KTCW will provide recommendations to the U.S. Army Corps of Engineers (Corps) and facilitate collaboration between Canada and the U.S. on Libby Dam operations. The JEB will make recommendations to enhance ecosystem health in the Columbia River Basin in both countries. Canada has committed 1.0 MAF of water, plus an additional 0.5 MAF in dry years, to support salmon migration.

PEOPLE

On September 20, Governor Mike Dunleavy appointed **Thomas Mooney-Myers**, Assistant Attorney General, Alaska Department of Law to the WSWC. We congratulate Thomas on his appointment and look forward to working with him.

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.