



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

682 East Vine Street / Suite 7 / Murray, UT 84107 / (801) 685-2555 / Fax 685-2559 / www.westernstateswater.org

Chair - Julie Cunningham; Executive Director - J.D. Strong; Editor - Elysse Campbell

CONGRESS **NDAA**

On December 18, the President signed the National Defense Authorization Act (NDAA, S. 1071, P.L. 119-60) into law. On December 10, the House amended the bill and passed it by a vote of 312-112. On December 17, the Senate passed by a vote of 77-20.

Section 316 modified the restrictions on the use of Per- and Polyfluoroalkyl Substances (PFAS) in fire protection equipment on military bases by tying the specifications to the most recent National Fire Protection Association 1970 standard. Section 317 addressed PFAS contamination of local wells by Department of Defense (DOD) activities and the provision of alternate drinking water under specific circumstances.

Section 1531 addresses water, electricity, and other resources needs for data centers built on military installations, directing the DOD to provide estimates of increased consumption, the anticipated effects on the surrounding community, and strategies to ensure the resilience of the community, including state and local consultation to align infrastructure planning with the broader needs of the community.

Section 2804 directs the DOD to assess water management on military installations at highest risk, such as drought prone regions, decreasing water levels, water quality, overall health of an aquifer basin, and legal rights to water including water rights disputes. The evaluation includes all water sources available, all water uses disaggregated by drinking and non-potable uses, the condition and jurisdictional control of water infrastructure, and existing metering on the military installation. The assessment should also include information about mitigating infrastructure leakage, cost effective landscape management practices, and the use of alternative water sources where non-potable water can be used, preserving fresh water.

Senate/Indian Water Rights

On December 11, the Senate passed twelve tribal bills by unanimous consent, including three bills related

to amendments of existing Indian water rights settlements: (1) the Crow Tribe Water Rights Settlement Amendments Act (S. 240); (2) the Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act (S. 546); and (3) Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act (S. 640).

S. 240 amends the 2010 Crow Tribe Water Settlements Act to extend by five years the tribe's right to construct hydropower facilities on the Yellowtail Afterbay Dam in Montana. It would establish a non-trust, interest bearing account to allow Reclamation to continue to work on the rehabilitation of the Crow Irrigation Project, and another account for the tribe to fund activities related to water production, treatment, or delivery infrastructure.

S. 546 would authorize deposit of specified interest payments into the Shoshone-Paiute Tribes Water Rights Development Fund that was established in 2009.

S. 640 would authorize deposits representing unpaid interest into the Navajo Nation Water Resources Development Trust Fund, the Taos Pueblo Water Development Fund, and the Aamodt Settlement Pueblos' Fund. These funds were established in 2009 and 2010 under certain water rights settlement agreements that did not allow accrual of interest.

Finish the Arkansas Valley Conduit Act

On December 16, the Senate passed the Finish the Arkansas Valley Conduit Act (H.R. 131) by voice vote. The bill passed the House in July. This bill reduces payments that communities within the Arkansas River Valley must pay to the Bureau of Reclamation for the construction of the Arkansas Valley Conduit, a pipeline in Colorado for delivering water from the Pueblo Reservoir to such communities. Specifically, it removes interest payments and extends the repayment period to 100 years. Senator Michael Bennet (D-CO) said on the Senate floor: "This is the last component of the Frypan-Arkansas Project, a federal diversion and storage project approved by Congress in 1962.... This

relieves a huge challenge to these communities, many of whom must now rely on contaminated drinking water.”

House/CWA/WOTUS/401

On December 11, the House passed the Promoting Efficient Review for Modern Infrastructure Today (PERMIT) Act by a vote of 221-205. The bill includes several amendments to the Clean Water Act (CWA) to reform permitting processes. Section 4 requires that wastewater treatment technology established for compliance with effluent limitation guidelines actually be commercially available. Section 6 codifies the existing practice of issuing general permits under the National Pollutant Discharge Elimination System (NPDES) program.

Section 5 limits the scope of state CWA 401 certifications and water quality impacts. It requires that states only consider discharges that would result from the federally permitted or licensed activity, not from other sources; it establishes clear requirements for water quality certification requests; requires states to make final decisions on whether to grant or deny a request in writing based only on water quality reasons; and requires states to inform a project applicant within 90 days whether the states have all of the materials needed to process a certification request.

Section 8 amends 33 USC 1342 to ensure that NPDES permits include clear, objective, concrete limits on specific pollutants or waterbody conditions. If EPA or a State “determines that a water quality-based limitation on a discharge of a pollutant is necessary to include in a permit” in addition to any appropriate technology-based effluent limitations, those water quality-based limitations must specify the pollutant to which it applies, and clearly describe the manner of compliance in which the limitation may be achieved, including either (a) a numerical limit in the discharge of the pollutant; (b) a narrative description of required actions, measures, or practices to be applied to the discharge; or (c) a narrative description of a limitation on the discharge that specifies the level of control to be applied.

Section 13 codifies certain practices around the Nationwide Permit (NWP) process. Section 12 would limit the scope of EPA’s authority to veto CWA section 404 dredge and fill permit applications. Section 15 limits the judicial review timeline for 404 permits.

Section 17 directs EPA to complete a review of the regulations applicable to State assumption of 404 authority in order to identify any revisions necessary to streamline the approval process, reduce administrative burdens, and encourage more States to administer a 404 permit program. Section 19 directs the Corps to

reduce its backlog of pending 404 permit applications and jurisdictional determinations.

Section 20 would limit the scope of the Clean Water Act by redefining navigable waters to exclude (1) waste treatment systems, (2) ephemeral features that flow only in direct response to precipitation, (3) prior converted cropland, (4) groundwater, or (5) any other features determined to be excluded by the U.S. Army Corps of Engineers. For more information, see WSW #2668 and #2670.

WATER RESOURCES

Colorado River

On December 3, the Colorado River Research Group released “Colorado River Insights, 2025: Dancing with Deadpool.” The report warns that continued dry winters could leave less than 4 million acre-feet available in Lakes Powell and Mead by late 2026. Several chapters examine drivers of possible shortages and other risks to Colorado River supply. The report also examines the debate over percentage-based water apportionments, and the need to reduce consumptive overuse.

PEOPLE

On December 31, John Mackey, Director for the Division of Water Quality, Utah Department of Environmental Quality will retire. Candace Hasenyager, currently the Director for the Division of Water Resources, will become the new Division of Water Quality Director in January 2026.

In December, Adam Sullivan, Nevada State Engineer, departed from his role at the Nevada Department of Conservation and Natural Resources, Division of Water Resources. Deputy Administrator Chris Thorson will serve as the new Acting Administrator for the Division of Water Resources.

On December 18, Idaho Attorney General Raul Labrador announced the retirement of Scott Campbell, Chief Deputy Attorney General of the Energy and Natural Resources Division. Labrador said: “Scott proved invaluable to this team and the people of Idaho from day one. From the outset, he took on the Biden administration and secured major legal victories relating to Waters of the United States (WOTUS), protecting Idaho's natural resources from federal encroachment.... Scott's lifelong passion for Idaho's water and natural resources made this role the perfect capstone to an extraordinary career, and I'm deeply grateful for everything he's given me and to this state.” Joy Vega, who joined the Division in 2017, has been promoted to be the new Chief Deputy.