



Sound water policy starts with the states that manage water.

WESTERN STATES WATER

Chair - Earl Lewis; Executive Director - J.D. Strong; Editor - Elysse Ostlund Campbell

DIRECTOR'S PICK / WATER RESOURCES **WestFAST/Water Data**

On September 30, WestFAST hosted a webinar with the Bureau of Land Management (BLM) and the Desert Research Institute (DRI) titled *From Data to Decisions: Applying Climate and Remote Sensing Tools for Drought Monitoring and Resource Evaluations*.¹ BLM's Tim Assal opened by describing the decade-long partnership between the two agencies, which has produced Climate Engine—a free website that turns satellite and weather data into ready-made drought and vegetation reports for any piece of land.

DRI's Eric Jensen demonstrated Climate Engine, and its offering of three types of reports that build on each other: a drought report updated every 5 days, a vegetation production report updated every 16 days, and a longer-term site characterization report updated yearly—allowing managers to see current drought conditions and vegetation response. BLM's Paula Coutillo added that the reports' value extends well beyond grazing decisions. Her team has used them in NEPA analysis for other types of resource management planning as well. Because the reports are standardized and can be generated at whatever scale a given planning area requires, she said they offer an efficient, consistent way to bring this kind of data into a range of different BLM decisions.

DRI's Justin Huntington then showed how OpenET can check whether water-saving buyback programs actually work as intended. Some states pay farmers to give up water rights to ease pressure on a river or aquifer, and he found that in one Nevada program, the water right the state paid for was often about twice as much as the water actually being used, demonstrating that buybacks based on paper water rights can overstate how much real water gets freed up.

Finally, Huntington was asked whether a scaled-back, single-satellite version of Landsat Next, now under consideration due to budget pressure, would at least maintain current capabilities. He said it would not. The single satellite would

deliver images only every 18 days, worse than the 8-day return BLM and DRI rely on today, despite the original three-satellite design being built specifically to improve on that. A recording of the full webinar and presentation slides are available [here](#).

Western Governors/WRDA 2026

On September 28, six western governors, Kelly Armstrong (R-ND), Jared Polis (D-CO), Greg Gianforte (R-MT), Larry Rhoden (R-SD), Spencer Cox (R-UT), and Mark Gordon (R-WY), [sent a joint letter](#) to the chairs and ranking members of the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure.² The letter asks Congress to remove Section 120 from the 2026 Water Resources Development Act (WRDA) as passed by the House.

Section 120 would prohibit water from being diverted or exported from the Missouri River or its tributaries for use outside the basin unless the governors of all ten Missouri River states (CO, IA, KS, MN, MO, MT, NE, ND, SD, WY) approve. It would also bar the U.S. Army Corps of Engineers from studying the feasibility of such projects without their unanimous consent. The governors wrote that the provision “violates principles under both the state and federal constitutions and statutes” and “is certain to invite protracted litigation,” in addition to delaying needed infrastructure.

The letter points to more than a century of federal statutes and case law that recognize state primacy over water allocation, from the Desert Land Act of 1877 through the Water Supply Act of 1958. The governors noted that eight of the seventeen western states protect state ownership of water in their constitutions, including North Dakota and Montana. Section 120, the governors argue, would let other states decide whether and how a state may use water within its own borders. They say this raises Tenth Amendment concerns and invites Fifth Amendment takings claims by blocking the use of privately held water rights. They also contend it would hand ten governors a veto over interstate water distribution without guiding

standards, in violation of non-delegation and separation of powers principles, and subordinate the Corps' statutory duties to a single governor's objection.

The governors also point out that the terms "diverted or exported" and "portion of the Missouri River" are undefined. They cite Pioneer Springs Water of Independence, Missouri, which draws from wells in alluvial aquifers next to the river and ships bottled water nationwide, as an operation that might need ten governors' approval under the provision. In the announcement accompanying the letter, Governor Armstrong said: "Neither the federal government nor any individual state gets to tell North Dakota how to use Missouri River water as it passes through our state." He added that the path forward for the river "needs to be shaped collectively by the basin states working together."

ADMINISTRATION / WATER QUALITY **EPA/Army Corps/WOTUS**

On September 24, EPA and the Army Corps of Engineers joined a briefing, hosted by Association of Clean Water Administrators (ACWA) for states on the September 9 supplemental proposed rule redefining "waters of the United States" (WOTUS) following *Sackett v. EPA*. Comments are due **October 9, 2026** (Docket ID: EPA-HQ-OW-2025-0322).

Most questions focused on how the proposed definitions would apply to complex, location-specific conditions common across the West. Attendees raised questions regarding effluent-dominated streams, drying caused by irrigation diversions, isolated pools during drought, interrupted tributaries, waters dry over several short periods, and split jurisdiction within a single wetland, as well as how levees and floodgates affect a "continuous surface connection." Agency representatives clarified that flow origin is irrelevant and that jurisdictional determinations will depend strictly on observable physical conditions on the ground. Because "dry spell" is defined by climate rather than artificial diversions, a diversion-caused gap exceeding 30 days would defeat "relatively permanent" status just as a natural dry period would.

Addressing state concerns that splitting a single wetland's jurisdiction could increase dual-level federal and state permitting burdens, the agencies explained that the rule strictly adheres to the Sackett "indistinguishable" standard—covering only portions sharing perennial surface water—while inviting states to submit written feedback on potential operational problems with this approach.

State regulators also pressed the agencies on the proposal's legal rationale and practical workability, questioning the addition of a "perennial" requirement that was absent from *Sackett*, the justification for the 30-day and five-year limits, whether landowners can reasonably identify anomalous conditions or evaluate drought severity, and how a narrowed WOTUS scope aligns with Clean Water Act (CWA) §303 antidegradation requirements. The agencies maintained that the chosen terms align with the Court's test and noted that the five-year timeframe reflects the standard lifespan of Approved Jurisdictional Determinations. Clarifying impacts across broader CWA frameworks, agency officials confirmed that funding eligibility under §106 and §319 does not rely on WOTUS status, and reminded states that while §404 applies strictly to direct discharges into a WOTUS, §402 continues to regulate point-source discharges that eventually reach jurisdictional waters downstream.

Beyond policy inquiries, state representatives submitted formal administrative requests and proposals regarding rule implementation. In response to state requests for a comment period extension, EPA confirmed that leadership has received similar petitions and instructed states to submit any further extension requests in writing. The Western States Water Council (WSWC) raised the prospect of joint federal-state discussions on funding for improved jurisdictional evaluation tools, which the agencies agreed would be valuable once a final rule is promulgated. Closing the session, federal officials called on states to submit robust written comments detailing regional examples, alternative numerical thresholds, and practical tool recommendations ahead of the October 9 deadline.

LITIGATION / WATER RESOURCES ***Nebraska v. Colorado***

On September 28, defendant Colorado filed a combined answer, affirmative defenses, and counterclaim complaint against plaintiff Nebraska alongside a separate motion for partial dismissal, in [*Nebraska v. Colorado* \(No. 220161\)](#).³

"Nebraska's South Platte River Compact lawsuit is wrong on the law and not based in reality. Colorado is meeting its obligations under the compact," Colorado Attorney General Phil Weiser said in a statement announcing the filings.⁴ "We will defend the rights of Colorado water users, which is why we are asserting our own claims against Nebraska for using water that belongs to Colorado under the compact." Nebraska's suit raised three claims against Colorado under the Compact, concerning groundwater administration, the

augmentation-plan system, and the Perkins County Canal (WSW #2702).

Colorado's motion asks the Court to dismiss Nebraska's claim that Colorado's groundwater augmentation system is too "complex" under Compact Article VIII, arguing the article only confirms Colorado officials' authority to administer the Compact without separate state legislation and imposes no complexity limit. Colorado's brief said the U.S. Solicitor General reached the same conclusion in a May 2026 amicus brief recommending the Court deny Nebraska leave to bring that claim at all.

Colorado's counterclaim alleges that Nebraska is itself breaching the Compact in two separate ways: (1) by permitting at least 30 active irrigation wells within two miles of the state line, which Colorado claims deplete Lodgepole Creek—a South Platte tributary it argues is reserved exclusively for its own use; and (2) by permitting at least 19 wells near Julesburg to draw down South Platte flows inside Colorado's borders. Colorado maintains that this alleged drawdown forces it to curtail its own junior water users more than the Compact would otherwise require. Based on these assertions, Colorado is seeking damages, a declaration of its rights, and an injunction to halt the disputed pumping.

Colorado also raised several affirmative defenses. It argued that Nebraska is estopped from challenging Colorado's augmentation-plan system because Nebraska itself relies on that mechanism for Endangered Species Act (ESA) compliance under the multi-state Platte River Recovery Implementation Program. Additionally, Colorado asserted that Nebraska failed to raise its concerns through the program's internal dispute-resolution process before filing suit.

Colorado's motion to dismiss does not impact Nebraska's core claims regarding delivery failures and the Perkins County Canal.

CONGRESS / WATER QUALITY **Senate / Permitting Reform**

On September 30, leaders from the Senate Environment and Public Works (EPW) Committee and the Senate Energy and Natural Resources (ENR) Committee introduced the [Bipartisan American Affordability and Jobs Act of 2026](#).⁵ Introduced by EPW Chairman Shelley Moore Capito (R-WV), ENR Chairman Mike Lee (R-UT), EPW Ranking Member Sheldon Whitehouse (D-RI), and ENR Ranking Member Martin Heinrich (D-NM), the comprehensive package aims to overhaul

federal environmental review and permitting frameworks.

The bill clarifies the National Environmental Policy Act (NEPA) as a procedural statute rather than a mandate for specific environmental outcomes. It narrows the scope of "major federal action," expands categorical exclusions, sets strict decision timelines, and limits judicial challenge windows to 150 days while favoring court remand over permit vacatur when deficiencies are identified.

For water and wildlife regulations, the legislation requires formal administrative rulemaking for Clean Water Act (CWA) Section 304(a) water quality criteria—subjecting EPA's pollutant guidelines to notice-and-comment procedures and scientific oversight. It also shortens CWA Section 401 water quality certification reviews to nine months for interstate linear infrastructure, extends National Pollutant Discharge Elimination System (NPDES) and Section 404 general permits from five to 10 years, and aligns Endangered Species Act (ESA) Section 7 consultations with NEPA schedules. To strengthen project durability, the bill prohibits federal agencies from arbitrarily rescinding or altering valid permits in effect on or after September 16, 2026.

The bill addresses surging computational power demands by requiring large data centers (20 MW or greater) to pay for their associated transmission upgrades rather than shifting those costs onto residential utility ratepayers. It also accelerates energy and resource development by expanding categorical exclusions for geothermal leasing, streamlining hydropower relicensing and micro-hydrokinetic approvals, reducing federal onshore drilling permit requirements on non-federal lands, and establishing a 150-day statute of limitations for judicial challenges to hardrock mining and forest management projects.

With Senate leaders expected to take up the legislation following recess, a procedural roll call vote on the motion to proceed is scheduled for November 9, 2026.

CONGRESS / WATER RESOURCES **House / Water Data**

On September 15, the [House Science, Space, and Technology Committee](#) held a hearing on how artificial intelligence, advanced sensors, and satellite constellations can reduce the impacts of flooding, wildfires, and other natural hazards.⁶

Witnesses stressed that infrastructure planning and emergency management depend on current, forward-looking federal data. Melissa Roberts,

Founder and Executive Director of the American Flood Coalition, urged rapid integration of NOAA's updated Atlas 15 precipitation data into building design guidance, noting that when data is outdated, pipes end up too small and bridges too low. Dr. Ali Mostafavidarani, Founder and CEO of Resilitix AI, described his company's work on "assessment latency," the gap between receiving a warning and understanding who or what is in harm's way, and said open, connected, AI-ready datasets would greatly accelerate disaster technology. He agreed with Chairman Brian Babin (R-TX) that Congress should prioritize multi-hazard platforms over single-hazard systems, and warned that gaps in underlying data undermine forecasting and decision-making.

When Rep. Jim Baird (R-IN) asked about the NOAA-USDA drought risk atlas, which has not been comprehensively updated since 2017, Roberts said inaccurate data sets farmers up to fail and shortens the useful life of infrastructure, noting that a pipe built to outdated specs might last 10 years instead of 20. Building on Mostafavidarani's comments, she added, "It's garbage in, garbage out," warning that even cutting-edge AI can't deliver good insights without updated data. Roberts proposed a federal disaster innovation center to bring together multi-hazard data and modeling.

WEBINARS AND MEETINGS

October 14—EPA's Strengthening Water Infrastructure for Tomorrow (SWIFT) initiative hosts Natural Hazard Technical Assistance for Updating your Emergency Response Plan, a free webinar on tools, templates, and technical assistance for addressing natural hazards in emergency response plans. [Register here](#).

October 21—DOE continues its Industrial Water Reuse Webinar Series with Where Do I Fall in Water Use? Leveraging DOE Tools to Quantify Plant Water Use, a demonstration of its Plant Water Profiler. [More information here](#).

October 21–23—The Western States Water Council (WSWC) holds its Fall (211th) Meetings in Las Cruces, NM. [More information here](#).

REFERENCES

¹ Western States Water Council, "From Data to Decisions: Applying Climate and Remote Sensing Tools for Drought Monitoring and Resource Evaluations," WestFAST webinar, September 30, 2026, <https://westernstateswater.org/event/from-data-to-decisions-applying-climate-and-remote-sensing-tools-for-drought-monitoring-and-resource-evaluations/>.

² North Dakota Office of the Governor, "Armstrong Leads Governors in Letter Opposing Attempt to Restrict States' Authority to Use Missouri River Water," news release, September 28, 2026, <https://www.governor.nd.gov/news/armstrong-leads-governors-letter-opposing-attempt-restrict-states-authority-use-missouri-river>.

³ Colorado's Motion for Partial Dismissal, *Nebraska v. Colorado*, No. 22O161 (U.S. September 28, 2026), <https://www.supremecourt.gov/DocketPDF/22/22O161/425788/202609281216443962026.09.28%2022O161%20Nebraska%20v.%20Colorado%20Motion%20to%20Dismiss.pdf>.

⁴ Colorado Attorney General, "Nebraska All Wrong on South Platte River Compact Breach Claims, AG Weiser Says," September 28, 2026, <https://coag.gov/press-releases/nebraska-all-wrong-on-south-platte-river-compact-breach-claims-ag-weiser-says/>.

⁵ U.S. Senate Committee on Energy and Natural Resources, "Heinrich, Lee, Capito, and Whitehouse Introduce Bipartisan American Affordability and Jobs Act of 2026," September 30, 2026, <https://www.energy.senate.gov/press/dem/heinrich-lee-capito-and-whitehouse-introduce-bipartisan-american-affordability-and-jobs-act-of-2026/>.

⁶ House Committee on Science, Space, and Technology, "Opening Statement of Chairman Brian Babin at Innovation in Disaster Prevention: Advancing Technology for Prediction and Response," September 15, 2026, <https://science.house.gov/2026/9/opening-statement-of-chairman-brian-babin-at-natural-disasters-hearing>.