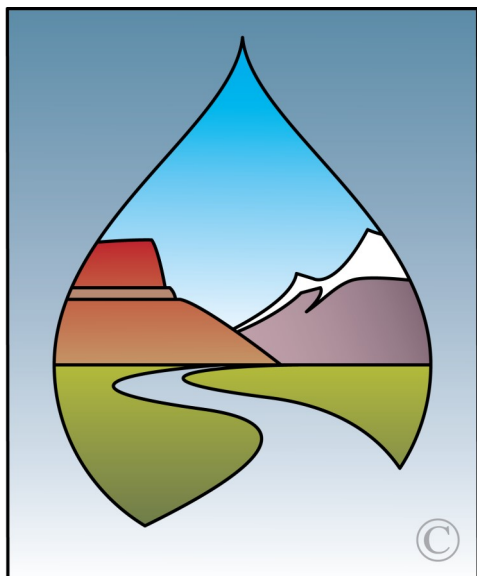


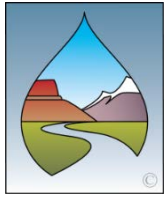
A photograph of a sunset over a body of water. The sun is low on the horizon, casting a bright glow and reflecting on the water's surface. The sky is filled with soft, white clouds. The word "NEBRASKA" is superimposed in large, bold, red letters with a black outline.

NEBRASKA



WESTERN STATES
WATER COUNCIL

183rd Council Meeting
Nebraska City, Nebraska
April 12-14, 2017



WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 I Murray, Utah 84107-5501 I (801) 685-2555 I FAX (801) 685-2559

Web Page: www.westernstateswater.org

MEMORANDUM

TO: Council Members and Others
FROM: Tony Willardson, Executive Director
DATE: April 5, 2017
RE: Briefing Books for the 183rd Council Meetings in Nebraska City, Nebraska

This is notification that the briefing book for our meetings being held in Nebraska City, Nebraska on April 12-14, 2017 is available on our [183rd meetings web page](#). The minutes from our last meetings held in St. George, Utah are posted on our website (under Past Meetings) for your review.

On Wednesday morning, April 12th, a discussion on the National Drought Resilience Partnership pilot programs will be held. The workshop will commence Wednesday morning at 9:00 am, and conclude around 11:30 a.m. The Wednesday morning workshop will be available upon request for remote participation via teleconference.

Council members and guests are invited to join our Nebraska hosts on a field trip Wednesday afternoon, sponsored by: **Blankenau Wilmoth Jarecke, LLP - Aqualawyers; HDR, Inc.; JEO Consulting; and Olsson Associates**. Please meet in the hotel lobby at 12:15 p.m. and pick up a boxed lunch before boarding the bus. Registration is required and is \$15 per person. Space is available and payment arrangements can be made in advance on-line or at the door. We will be traveling to Omaha to board the River City Star Riverboat for a private cruise on the Missouri River. We expect to return to the Lied Lodge around 4:30-5:00 p.m. Dinner is on your own.

On Thursday, the WSWC Committee meetings will be held sequentially, beginning at 8:00 a.m. with the Nebraska host state presentation. This will be followed by the Water Resources Committee meeting at 9:15. The Executive Committee will begin at 11:45 a.m. and meet over lunch until 1:15 p.m. All others will be on their own for lunch. The Water Quality Committee meeting will begin at 1:30 p.m., followed by the Legal Committee, which will start at 3:45 pm. A reception will be held at the hotel from 6:00 – 7:00 p.m., and all Council members and guests are invited to attend. We wish to express our appreciation to our reception sponsors, **Burns & McDonnell**.

The meetings will conclude with the Full Council which begins at 8:00 a.m. on Friday, April 14th. The Honorable Pete Ricketts, Governor of Nebraska, will address the Council.

On Thursday, the Water Resources, Water Quality, and Legal Committee meetings, as well as the Friday morning Full Council meeting will be available via teleconference and webinar. **Call-in instructions and information on how to participate via webinar are attached to this memorandum**. If you wish to participate via teleconference in the Executive Committee meeting, please let Tony know. In the event you have difficulties connecting, please call or text Tony at 801-573-7593 or Michelle at 801-615-1673.

We look forward to interesting and productive meetings in Nebraska City, and hope you are able to join us. If you have any questions regarding these matters, please let us know.

CALL-IN AND WEBINAR INSTRUCTIONS

A. Call-In Information

The dates, times, and call-in information for each meeting are listed below. The below list also indicates which meetings will be available via webinar. Instructions on how to participate via webinar are contained in Section B, which follows.

For teleconference and webinar audio, **please use the dial-in numbers as indicated below.**

Central				
Day, Date	Time	Meeting	Dial-in Number	Webinar
Thurs, Apr 13	9:00 am	Water Resources Committee	1-800-920-7487 Code: 19896486#	Yes
Thurs, Apr 13	1:30 pm	Water Quality Committee	1-800-920-7487 Code: 19896486#	Yes
Thurs, Apr 13	3:45 pm	Legal Committee	1-800-920-7487 Code: 19896486#	Yes
Fri, Apr 14	8:00 am	WSWC 183rd Full Council Meeting	1-800-920-7487 Code: 19896486#	Yes
<i>Please send a request if you wish to participate via teleconference in the Executive Committee.</i>				
Thurs, Apr 13	11:45 am	Executive Committee	Upon Request	No

B. General Webinar Instructions

Depending on your web browser and system configuration, you may experience problems accessing the webinar.

Please check and prepare your computer a day or two in advance of the meeting as follows:

1. Start your web browser
2. Visit <http://westerngovernors.webex.com>
3. Select “Setup / Event manager” (left side of page)

To participate via webinar, please follow the instructions below:

1. Go to <https://westerngovernors.webex.com/>
2. Select the meeting you wish to join.
3. If requested, enter your name and email address.
4. If a password is required, enter: “wswc” for all meetings
5. Click “Join.”
6. Follow the instructions that appear on your screen.

When you attempt to log in, you may receive a message that says you need Java to run the meeting software. If you do not have an up-to-date version of Java on your computer, the WebEx software should offer you a temporary application that you can run on your computer to make the WebEx application work correctly.

We recommend you place your phone on mute and under no circumstance place the call on hold. If you encounter troubles connecting to the audio (or other things), you may ask questions or communicate via the WebEx “chat” feature.

Tab A – Schedule of Meetings – Agenda –
30-day Notice

WESTERN STATES WATER COUNCIL
183rd COUNCIL MEETING
Nebraska City, Nebraska
April 13-14 2017

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- A. Schedule of Meetings - Agenda - 30-day Notice
- B. Membership List
- C. WSWC Policy Positions
 - Proposed Position**
 - #[] - Funding for Rural Water Projects
 - #[] - Weather Research, Forecasting, and Innovation
 - Sunsetting Positions**
 - Wat Res #360 - Bureau of Reclamation's Maintenance, Repair and Rehabilitation Needs
 - Wat Res #361 - Reclamation Safety of Dams Act of 1978
 - Wat Res #362 - Transfer of Federal Water and Power Projects and Related Facilities
 - Wat Res #363 - National Levee Safety Act of 2007 and the Interpretation of Levees & Water Supply Canals
 - WQ #364 - Clean Water State Revolving Fund and the Drinking Water State Revolving Fund
- WSWC Sunsetting Positions – Subsequent Related Actions
 - GAO Report
 - Reclamation Project Transfers
- List of Current WSWC Policy Statements and Sunsetted Positions
- D. Budget
- E. Water Data Exchange (WaDE) Program Update/Expansion
- F. Workshop and Legislation on Improving Long-Range Seasonal to Sub-Seasonal Precipitation Forecasting
- G. WSWC FY2016-2017 Water Resources Committee Work Plan
- H. WSWC FY2016-2017 Executive Committee Work Plan
- I. WSWC FY2016-2017 Water Quality Committee Work Plan
- J. WSWC FY2016-2017 Legal Committee Work Plan
- K. Summary of WSWC Activities and Events
- L. Future WSWC Meetings
- M. WSWC Support Letters regarding the Clean Water and Drinking Water State Revolving Funds
- N. WSWC Comment Letter regarding EPA's Proposed Rulemaking on Tribal Baseline Water Quality Standards
- O. WSWC Comment Letter regarding the U.S. Army Corps of Engineers Water Supply Rule
- P. *Catskills* – EPA Water Transfers Rule
- Q. *Agua Caliente* Case
- R. Criteria and Procedures for Negotiations of Indian Water Rights Claims
- S. WSWC/NARF Symposium on the Settlement of Indian Water Rights Claims
- T. Water Rights Settlements Update
- U. Legislation and Litigation Update
- V. State Reports
- W. Newsletter Index
- XYZ. Sunsetting Positions for Summer 2017 Meetings (#365 - #371)

SCHEDULE OF MEETINGS

WESTERN STATES WATER COUNCIL 183rd COUNCIL MEETINGS

Lied Lodge & Conference Center
Nebraska City, Nebraska
April 12-14, 2017

<u>Date</u>	<u>Time</u>	<u>Meeting</u>	<u>Room</u>	<u>Adjournment</u>
<u>Wednesday, April 12</u>				
	9:00 am	National Drought Resilience Partnership Discussion	Rosenow C&D	11:30 am
	12:30 pm	Field Trip – <i>(see registration form on our website for details)</i> Sponsors: Blankenau Wilmoth Jarecke, LLP - Aqualawyers; HDR, Inc.; JEO Consulting; and Olsson Associates		5:00 pm
	6:00 pm	Management Subcommittee <i>(over dinner)</i>		
<u>Thursday, April 13</u>				
	8:00 am	Nebraska Host State Presentation	Rosenow C&D	9:00 am
	9:15 am	Water Resources Committee	Rosenow C&D	11:30 am
	11:45 am	Executive Committee <i>(over lunch)</i>	Rosenow A&B	1:15 pm
	1:30 pm	Water Quality Committee	Rosenow C&D	3:30 pm
	3:45 pm	Legal Committee	Rosenow C&D	5:45 pm
	6:00 pm	WSWC Reception Sponsor: Burns & McDonnell	Rosenow A&B	7:00 pm
<u>Friday, April 14</u>				
	8:00 am	Full Council Meeting	Rosenow C&D	11:30 am

AGENDA
WATER RESOURCES COMMITTEE
Lied Lodge & Conference Center
Nebraska City, Nebraska
April 13, 2017

Called to Order at: 9:00 a.m. (Central Time)
Conducting: David Barfield

Room: Rosenow C&D

TABS

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Proposed Position** – David Barfield
 - a. Supporting Weather Research, Forecasting, and Innovation
- C 4. **Sunsetting Positions** – David Barfield
 - #360 – regarding the Bureau of Reclamation’s maintenance, repair and rehabilitation needs;
 - #361 – regarding the Reclamation Safety of Dams Act of 1978;
 - #362 – regarding the transfer of federal water and power projects and related facilities;
 - #363 – regarding the National Levee Safety Act of 2007 and the interpretation of levees and water supply canals
5. **Western Governors’ Association (WGA) Water-Related Activities** – Ward Scott, Policy Advisor, WGA
- E 6. **WaDE Program Update/Kick-Off** – Sara Larsen
7. **USGS Nebraska Water Science Center Activities** – Bob Swanson, Director
8. **Missouri River Runoff Projections/National Integrated Drought Information System (NIDIS) Update** – Doug Kluck, NOAA Regional Climate Services Director, Central Region
9. **Oklahoma National Drought Resiliency Partnership Pilot in Oklahoma** – Duane Smith, Consultant (former WSWC Chairman)
10. **NASA Applied Sciences Program** – Danielle Wood, Applied Sciences Manager
11. **Ground Water Recharge Projects** – Tony Willardson
 - a. Proposed Survey and Summary Report
- F 12. **CDWR/WSWC Workshops** – Tony Willardson
 - a. Improving Long-Range Weather Forecasts (Sub-Seasonal to Seasonal (S2S) Precipitation Forecasting) – Strategic Action Plan
May 17-19, 2017 – San Diego, California – Doubletree San Diego Downtown
- G 13. **FY2016-2017 Committee Work Plan** – David Barfield
- XYZ 14. **Sunsetting Positions for 2017 Summer Meetings - #365 - #371**
15. **Other Matters/Adjourn**

AGENDA
EXECUTIVE COMMITTEE
Lied Lodge & Conference Center
Nebraska City, Nebraska
April 13, 2017

Call to Order at: 11:45 a.m. (Mountain Time)
Conducting: Jerry Rigby, Chair

Room: Rosenow A&B

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- D 3. **Report on Budget and Finances – Tim Davis**
 - a. FY2016-2017 Budget Status Report / Dues Report
 - b. WaDE/EN Grants Status Report
 - c. CDWR Contracts Status Report
 - d. FY2017-2018 Proposed Budget
- C 4. **Sunsetting Positions – Tony Willardson**

Wat Res	#360 - Bureau of Reclamation's Maintenance, Repair and Rehabilitation Needs
Wat Res	#361 - Reclamation Safety of Dams Act of 1978
Wat Res	#362 - Transfer of Federal Water and Power Projects and Related Facilities
Wat Res	#363 - National Levee Safety Act of 2007 and the Interpretation of Levees and Water Supply Canals
WQ	#364 - Clean Water State Revolving Fund and the Drinking Water State Revolving Fund
- K 5. **Executive Director's Report/WSWC Activities and Events – Tony Willardson**
6. **WSWC Strategic Planning Subcommittee Report – Jerry Rigby/Jeanine Jones (by phone)**
 - a. Updates to Previous WSWC Reports (e.g., Groundwater Recharge)
7. **Federal Administration Transition and WSWC Priorities – Jerry Rigby**
- L 8. **Future WSWC Meetings**
 - a. S2S Precipitation Forecasting Workshop – May 17-29, 2017 – San Diego, CA
 - b. WSWC Summer Meetings – June 27-29, 2017 – Rohnert Park, CA
 - c. WSWC/NARF Indian Water Rights Settlement Symposium – August 8-10, 2017 – Great Falls, MT
- H 9. **FY2016-2017 Committee Work Plan – Jerry Rigby**
- XYZ 10. **Summer 2017 Meeting Sunsetting Positions (adopted July / August 2014)**

Legal	#365 - Preemption of State Water Law in Federal Legislation
Wat Res	#366 - Federal Research and Development of Updated Hydroclimate Guidance for Floods and Droughts
Wat Res	#367 - Reclamation Fund (asks Congress to fully appropriate the receipts and collections accruing to the Reclamation Fund)
Wat Res	#368 - Water Resources Research Institutes (requesting Congress to maintain the federal authorization and financial support for the state WRRI program)
Wat Qual	#369 - Clean Water Act Jurisdiction
Wat Qual	#370 - The Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices
Executive	#371 - Water-Related Federal Rules, Regulations, Directives, Orders and Policies
11. **Other Matters**

AGENDA

WATER QUALITY COMMITTEE MEETING

Lied Lodge & Conference Center

Nebraska City, Nebraska

April 13, 2017

Call to Order at: 1:30 pm (Central Time)
Conducting: Kent Woodmansey, Chair

Room: Rosenow C&D

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Proposed Position** – Kent Woodmansey
 - a. Supporting USDA Rural Water and Wastewater Programs
- C 4. **Sunsetting Position** – Kent Woodmansey

#364 – Regarding the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund
- M a. WSWC Support Letter
- N 5. **Discussion: EPA Tribal Baseline Water Quality Standards**
 - a. WSWC Comment Letter – Michelle Bushman
6. **Discussion: Waters of the United States – Now What?**
7. **EPA Update** – Roger Gorke
 - a. Office of Water Leadership Changes
 - b. Budget Outlook
 - c. Future Priorities
 - d. EPA Infrastructure Finance Center
8. **Gold King Mine Update and Abandoned Mine Regulation & Legislation** –
Dennis McQuillan, Chief Scientist, New Mexico
Skip Feeney, Mine Impacted Stream Expert, Colorado Water Quality Control Division
Walt Baker, Director, Utah Division of Water Quality
9. **National Academies of Sciences Proceedings on Flowback and Produced Waters** –
Michelle Bushman
- I 10. **FY2016-2017 Committee Work Plan** – Kent Woodmansey
- XYZ 11. **Sunsetting Positions for 2017 Summer Meeting - #369-370**
12. **Other Matters**

AGENDA

LEGAL COMMITTEE MEETING

Lied Lodge & Conference Center

Nebraska City, Nebraska

April 13, 2017

Call to Order at: 3:45 pm (Central Time)
Conducting: Jennifer Verleger, Chair

Room: Rosenow C&D

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- O 3. **U.S. Army Corps of Engineers Water Supply Rule**
 - a. WSWC Rule Comments – Jennifer Verleger
 - b. National Water Supply Alliance Update
4. **Dakota Access Pipeline** – Garland Erbele
- P 5. **Water Transfers** – Peter Nichols, Special Assistant Attorney General to Colorado and New Mexico
 - a. 2nd Circuit Ruling
 - b. Draft Legislation
 - c. Committee Discussion
6. **WOTUS Litigation Update** – Jennifer Verleger
- Q 7. **Agua Caliente Case: Reserved Rights to Groundwater** – Michelle Bushman
 - a. 9th Circuit Ruling
 - b. Committee Discussion
- R 8. **Criteria and Procedures for Negotiations of Indian Water Rights Claims** – Jay Weiner, Norman Johnson
 - a. Letters
 - b. Committee Discussion on State Participation
- S 9. **WSWC/NARF Indian Water Rights Settlement Symposium** – Jay Weiner
- T 10. **Roundtable: Water Rights Settlements Updates**
11. **WSWC/WestFAST Federal Non-Tribal Water Claims Workshop** – Roger Pierce
- U 12. **Legislation and Litigation Update** – Michelle Bushman
- J 13. **FY2016-2017 Committee Work Plan** – Jennifer Verleger
14. **Other Matters**

AGENDA

183rd COUNCIL MEETING Lied Lodge & Conference Center Nebraska City, Nebraska April 14, 2017

Call to Order at: 8:00 a.m.
Conducting: Jerry Rigby, Chair

Room: Rosenow C&D

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
3. **Welcome to Nebraska** - Governor Pete Ricketts
4. **WSWC Water Data Exchange (WaDE) Expansion** – Sara Larsen
5. **Nebraska Natural Resource Districts** – Dean Edson, Executive Director, Nebraska Association of Resources Districts
6. **Platte River Recovery Implementation Program** -- Dr. Jerry Kenny, Executive Director
7. **WestFAST Report and Workplan** – Roger Gorke, Environmental Protection Agency, WestFAST Chair, and Roger Pierce, WestFAST Liaison
8. **Committee Reports** – Action Items
 - C, G a. Water Resources Committee – David Barfield
 - C, H b. Executive Committee – Tim Davis
 - C, I c. Water Quality Committee – Kent Woodmansey
 - J d. Legal Committee – Jennifer Verleger
- L 9. **Future Council Meetings**
- XYZ 10. **Sunsetting Positions for Summer 2017 Meetings**
- V 11. **State Reports**
12. **Other Matters**



WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 I Murray, Utah 84107-5501 I (801) 685-2555 I FAX (801) 685-2559

Web Page: www.westernstateswater.org

MEMORANDUM

TO: Council Members
FROM: Tony Willardson, Executive Director
DATE: March 15, 2017
RE: **30-Day Notice of Spring (183rd) Council Meetings in Nebraska City, Nebraska**

This memo is to advise that the 183rd meetings of the Western States Water Council will be held April 12-14, 2017, in Nebraska City, Nebraska. Of note, Governor Pete Ricketts will address the Council on Friday morning. Adhering to the WSWC rules of organization, any external policy positions to be proposed for Council consideration must be included in the 30-day notice.

One new policy position is being proposed for consideration at the Nebraska meetings in support of the Weather Research, Forecasting and Innovation. The following five positions are scheduled to sunset at this meeting.

Position #360 Bureau of Reclamation's Maintenance, Repair and Rehabilitation Needs;
Position #361 Reclamation Safety of Dams Act of 1978;
Position #362 Transfer of Federal Water and Power Projects and Related Facilities;
Position #363 National Levee Safety Act of 2007 and Water Supply Canals; and
Position #364 Clean Water State Revolving Fund and the Drinking Water State Revolving Fund.

Montana and Oklahoma have suggested changes to Position #364 and the redline version is attached. All sunsetting positions are attached and are also available on our [website](http://www.westernstateswater.org). Revision and readoption of these sunsetting positions will be considered. We would encourage you to consult with your respective Governor's advisor and Western Governors' Association Staff Advisory Council (SAC) member, regarding the aforementioned policy positions.

An Executive Committee conference call to discuss the attached sunsetting positions and any new proposed positions will be held on **Thursday, March 23, at 1:30 p.m. Mountain Time** (12:30 pm Pacific; 2:30 pm Central). Committee Chairs are also invited to participate. Call details will be sent separately to Executive Committee members, who may designate an alternate to join the call and engage in the discussion.

The Council's internal policy specifies that for the purpose of the conference call and the meetings themselves, for participation by persons who are not Governor-appointed WSWC representatives, the Executive Committee member must provide written notification of any designee to act on behalf of a member. An email to Tony with the name of your designee is sufficient.

The Council meetings will be held at the [Lied Lodge & Conference Center Arbor Day Farm](http://www.liedlodge.com), located at 2700 Sylvan Road, Nebraska City, Nebraska. The group room rate is \$91/night (single occupancy) or \$101 per room (double occupancy). Reservations may be made directly with the hotel by calling [1-800-546-5433](tel:1-800-546-5433), and request the Western States Water Council special group rate. You should have received this information previously. Our hotel room block cutoff date has expired, but reservations will be accepted on a space and rate available basis. Check in time is 4 pm and check out time is 11 am.

There is no fee to attend the regular WSWC meetings, but we would appreciate being informed in advance of your attendance, so that we may have a name badge prepared and make other appropriate arrangements. Also, as described below, there will be a field trip for which registration is required with a nominal charge.

Attached is a schedule of meetings. As previously advised, the WSWC Strategic Planning Subcommittee suggested some changes to our typical agenda. Prior to the Committee meetings, Thursday will begin with a host state presentation from Nebraska (rather than on Friday morning). Also, the Subcommittee recommended that each state submit a brief one-page report on water issues and events in your state in advance of the meetings, to be included in the briefing materials. This is intended to facilitate questions, networking and discussion and should not be an arduous task for any state. Please submit your written state reports no later than **March 27, 2017**. As usual, state reports will also be presented orally on Friday at the full Council meeting.

Also, please note that on Wednesday, April 12, in conjunction with the regularly-scheduled Council meetings, interested members and guests are invited to attend a workshop focused on the National Drought Resilience Partnership (NDRP). The workshop is scheduled to begin at 8:00 a.m. with a discussion of NDRP pilot projects in Montana and Oklahoma, to be followed at 10:00 am by a more general NDRP introduction and webinar that will also be available to the public. The workshop/webinar will end around 11:30 a.m.

Our Nebraska hosts have arranged an exciting field trip for Council members and guests on Wednesday afternoon, April 12. The bus will depart from the Lied Lodge at 12:30 p.m. and a box lunch is included. We'll drive to Omaha and take a riverboat tour on the Missouri River. We will return to the hotel around 4:30 p.m. – 5:00 p.m. The cost is \$15.00 per person, and advance registration is requested by **March 27, 2017**.

We wish to acknowledge all our field trip and meeting sponsors who also include: ***Aqua Lawyers; HDR, Inc.; JEO Consulting; and Olsson Associates.***

The Nebraska Spring meetings will begin on Thursday, April 13 at 8:00 am with the host state presentation first on the agenda. The Water Resources Committee will follow beginning at 9:15 a.m. and our typical schedule will then follow, with the Executive Committee invited to meet over lunch from 11:45-1:15 p.m., followed by the Water Quality Committee from 1:30-3:30 pm. The schedule will conclude with the Legal Committee meeting, beginning at 3:45 pm and will end around 5:45 p.m. WSWC members and guests are invited to a reception on Thursday evening at 6:00 p.m. at the hotel sponsored by ***Burns & McDonnell.***

The Full Council meeting will commence at 8:00 a.m. on Friday, April 14, and adjourn around 11:30 a.m. Meeting agenda will be posted on our [183rd meetings web page](#), and available to download. The WSWC meetings will also be accessible via teleconference and webinar. Dial-in and webinar participation information is posted online and is also attached.

Briefing books will be made available for download from the [183rd meetings web page](#) on April 5th. If you wish to receive a hard copy of the briefing book, please contact Julie at jgroat@wswc.utah.gov by **March 27th** so that a book may be sent to you in advance of the meetings, or made available for pick-up on site.

Please contact me at twillardson@wswc.utah.gov if we can be of any assistance or answer any questions. We look forward to very enjoyable and productive meetings, and express our appreciation to our Nebraska hosts and sponsors.

Attachments

Tab B – Membership List

WESTERN STATES WATER COUNCIL

MEMBERSHIP LIST

March 30, 2017

OFFICERS

Chair - **Jerry Rigby**
Vice-Chair - **Jeanine Jones**
Secretary-Treasurer - **Tim Davis**

STAFF

Executive Director - **Tony Willardson**
Legal Counsel - **Michelle Bushman**
WaDE Program Manager - **Sara Larsen**
Federal Liaison - **Roger Pierce**
Office Manager - **Cheryl Redding**
Administrative Assistant - **Julie Groat**

Staff E-mail: twillardson@wswc.utah.gov
mbushman@wswc.utah.gov
rogervpierce@wswc.utah.gov
saralarsen@wswc.utah.gov
credning@wswc.utah.gov
jgroat@wswc.utah.gov

Address: 682 East Vine Street, Suite 7
Murray, UT 84107
(801) 685-2555
(801) 682-2559 (fax)

ALASKA

***Honorable Bill Walker**

Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001
(907) 465-3500

†**Brent Goodrum**, Director
Division of Mining, Land & Water
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1070
Anchorage, AK 99501-3579
(907) 269-8600
(907) 269-8904 (fax)
brent.goodrum@alaska.gov

†**Alice Edwards**, Deputy Commissioner
Alaska Dept. of Environmental Conservation
410 Willoughby, Suite 303
P.O. Box 11180
Juneau, AK 99811-1800
(907) 465-5066
(907) 465-5070 (fax)
alice.edwards@alaska.gov

†**David W. Schade** (Alt)
Natural Resources Manager III
Chief, Water Resources Section
Division of Mining Land & Water
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1020
Anchorage, AK 99501-3579
(907) 269-8645
david.w.schade@alaska.gov

ARIZONA

***Honorable Doug Ducey**

Governor of Arizona
Statehouse
Phoenix, AZ 85007
(602) 542-4331

****Thomas Buschatzke**, Director
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
(602) 771-8426
(602) 771-8681 (fax)
tbuschatzke@azwater.gov

Trevor Baggione, Director
Arizona Water Quality Division
1110 West Washington Street
Phoenix, AZ 85007
(602) 771-2321
(602) 771-4834 (fax)
baggione.trevor@azdeq.gov

L. William Staudenmaier, Attorney
Snell & Wilmer
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, AZ 85004-2202
(602) 382-6571
(602) 382-6070 (fax)
wstaudenmaier@swlaw.com

*Ex-Officio Member

**Executive Committee Member

†Council members denoted by this symbol are listed by virtue of their office, pending receipt of a letter of appointment by their Governor.

Cynthia Chandley, Attorney (Alt.)
7289 East Alta Sierra Drive
Scottsdale, AZ 85266
(602) 882-6116
cchandley@cmocinternational.com

CALIFORNIA

***Honorable Jerry Brown**
Governor of California
State Capitol
Sacramento, CA 95814
(916) 445-2841

†William Croyle**, Acting Director
California Department of Water Resources
1416 Ninth Street
P.O. Box 942836
Sacramento, CA 95814
(916) 653-5791
(916) 653-5028 (fax)
wcroyle@water.ca.gov

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
(916) 341-5615
(916) 341-5620 (fax)
thoward@waterboards.ca.gov

Betty H. Olson, Professor
Civil & Environmental Engineering
University of California, Irvine
1361 SE II, Code: 7070
Irvine, CA 92697-7070
(949) 824-7171
(949) 824-2056 (fax)
bholson@uci.edu

Jeanine Jones, P.E. (Alt.)
Interstate Resources Manager
California Department of Water Resources
1416 Ninth Street
P.O. Box 942836
Sacramento, CA 94236-0001
(916) 653-8126
(916) 653-5028 (fax)
jeanine.jones@water.ca.gov

COLORADO

***Honorable John Hickenlooper**
Governor of Colorado
State Capitol
Denver, CO 80203
(303) 866-2471

****James L. Eklund**, Director
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203
(303) 866-3441
(303) 866-4474 (fax)
james.eklund@state.co.us

Trisha Oeth, Administrator
Water Quality Control Commission
Colorado Dept. of Public Health & Environment
OED-OLRA-A5
4300 Cherry Creek Drive South
Denver, CO 80246-1530
(303) 692-3468
(303) 691-7702 (fax)
trisha.oeth@state.co.us

Dick Wolfe, State Engineer
Colorado Division of Water Resources
1313 Sherman Street, Room 318
Denver, CO 80203
(303) 866-3581
(303) 866-3589 (fax)
dick.wolfe@state.co.us

Patrick J. Pfaltzgraff, Director (Alt.)
Water Quality Control Division
Colorado Dept. of Public Health & Environment
WQCD-DO-B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530
(303) 692-3509
(303) 782-0390 (fax)
patrick.j.pfaltzgraff@state.co.us

Harold D. (Hal) Simpson (Alt.)
5967 South Birch Way
Centennial, CO 80121
(303) 771-3449 (home)
(303) 916-1093 (mobile)
halsimpson28@msn.com

John R. Stulp (Alt.)
Special Policy Advisor to the Governor for Water
IBCC Director
1313 Sherman Street, Suite 721
Denver, CO 80203
(303) 866-3441 x. 3257
john.stulp@state.co.us

IDAHO

***Honorable C. L. "Butch" Otter**
Governor of Idaho
State Capitol
Boise, ID 83720
(208) 334-2100

****Jerry R. Rigby**
Rigby, Andrus & Rigby Law, PLLC
553 East 4th South
Rexburg, ID 83440
(208) 356-3633
(208) 356-0768 (fax)
jrigby@rex-law.com

John Simpson
Barker, Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83701
(208) 336-0700
(208) 344-6034 (fax)
jks@idahowaters.com

†John Tippets, Director
Idaho Department of Environmental Quality
Statehouse Mail
1410 North Hilton Street
Boise, ID 83706-1255
(208) 373-0240
(208) 373-0417 (fax)
john.tippets@deq.idaho.gov

Gary Spackman, Director (Alt.)
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4800
(208) 287-6700 (fax)
gary.spackman@idwr.idaho.gov

KANSAS

***Honorable Sam Brownback**
Governor of Kansas
State Capitol, 2nd Floor
Topeka, KS 66612-1590
(785) 296-3232

****David W. Barfield**, Chief Engineer
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6658
(785) 564-6779 (fax)
david.barfield@kda.ks.gov

Susan Metzger, Assistant Secretary
Office of the Secretary
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6700
(785) 564-6779 (fax)
susan.metzger@kda.ks.gov

Tracy Streeter, Director
Kansas Water Office
900 SW Jackson Street, Suite 404
Topeka, KS 66612
(785) 296-3185
(785) 296-0878 (fax)
tracy.streeter@kwo.ks.gov

Chris W. Beightel (Alt.)
Water Management Services Program Manager
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6659
(785) 564-6779 (fax)
chris.beightel@kda.ks.gov

Earl Lewis, Assistant Director (Alt.)
Kansas Water Office
900 SW Jackson Street, Suite 404
Topeka, KS 66612
(785) 296-3185
(785) 296-0878 (fax)
earl.lewis@kwo.ks.gov

Tom Stiles (Alt.)
Chief, Office of Watershed Planning
Kansas Department of Health & Environment
Signature Building
1000 SW Jackson Street
Topeka, KS 66612-1367
(785) 296-6170
(785) 291-3266 (fax)
tstiles@kdheks.gov

MONTANA

***Honorable Steve Bullock**
Governor of Montana
State Capitol
Helena, MT 59620
(406) 444-3111

****Tim Davis**
Water Quality Division Administrator
Montana Department of Environmental Quality
1520 East 6th Avenue
P.O. Box 200901
Helena, MT 59620-1601
(406) 444-4632
(406) 444- (fax)
timdavis@mt.gov

John Tubbs, Director
MT Dept. of Natural Resources & Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-1948
(406) 444-0533 (fax)
jtubbs@mt.gov

†Jan Langel, Acting Administrator
Water Resources Division
MT Dept. of Natural Resources & Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-0559
jlangel@mt.gov

†Tom Livers, Director (Alt.)
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-1601
(406) 444-2544
(406) 444-4386 (fax)
tlivers@mt.gov

George Mathieus, Deputy Director (Alt.)
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-1601
(406) 444-7423
(406) 444-4386 (fax)
gemathieus@mt.gov

Mike Volesky, Deputy Director (Alt.)
Montana Fish, Wildlife & Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 444-4600
(406) 444-4952 (fax)
mvolesky@mt.gov

Jay Weiner, Assistant Attorney General (Alt.)
Civil Services Bureau
Montana Office of the Attorney General
215 North Sanders Street, 3rd Floor
Helena, MT 59620
(406) 444-2026
(406) 444-3549 (fax)
jweiner2@mt.gov

NEBRASKA

***Honorable Pete Ricketts**
Governor of Nebraska
State Capitol
Lincoln, NE 68509
(402) 471-2244

****Jeff Fassett**, Director
Nebraska Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676
(402) 471-2366
(402) 471-2900 (fax)
jeff.fassett@nebraska.gov

James R. Macy, Director
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, NE 68509-8922
(402) 471-2186
jim.macy@nebraska.gov

NEVADA

***Honorable Brian Sandoval**
Governor of Nevada
State Capitol
Carson City, NV 89701
(775) 687-5670

****Jason King**, State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701-9965
(775) 684-2861
(775) 684-2811 (fax)
jking@water.nv.gov

†Bradley Crowell, Director
NV Dept. of Conservation & Natural Resources
901 South Stewart Street, Suite 1003
Carson City, NV 89701
(775) 684-2700
(775) 684-2715 (fax)
bcrowell@dcnr.nv.gov

Roland D. Westergard
207 Carville Circle
Carson City, NV 89703
(775) 882-3506

NEW MEXICO

***Honorable Susana Martinez**
Governor of New Mexico
State Capitol
Santa Fe, NM 87501
(505) 476-2200

†**Tom Blaine**, State Engineer
New Mexico Office of the State Engineer
Concha Ortiz y Pino Building
130 South Capitol Street, NEA Building
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6175
(505) 827-6188 (fax)
tom.blaine@state.nm.us

†**Butch Tongate**, Environment Secretary
New Mexico Environment Department
1190 Street Francis Drive, N4050
P.O. Box 26110
Santa Fe, NM 87502-0110
(505) 827-2855
butch.tongate@state.nm.us

Bidtah N. Becker (Alt.)
Executive Director
Navajo Nation Division of Natural Resources
P.O. Box 9000
Window Rock, AZ 86515
(928) 871-6592
bidtahnbecker@navajo-nsn.gov

Eileen Grevey Hillson (Alt.)
AguaVida Resources
915 Camino Ranchitos NW
Albuquerque, NM 87114
(505) 238-0461 (cell)
(505) 898-0747 (fax)
ehillson@swcp.com

Maria O'Brien, Attorney (Alt.)
Modrall Sperling
500 Fourth Street NW, Suite 1000
P.O. Box 2168
Albuquerque, NM 87103-2168
(505) 848-1800
(505) 848-9710 (fax)
mobrien@modrall.com

†**Greg Ridgley**, Chief Counsel (Alt.)
New Mexico Office of the State Engineer
130 South Capital Street
Santa Fe, NM 87506-5108
(505) 827-6150
(505) 827-3887 (fax)
greg.ridgley@state.nm.us

John Utton, Attorney (Alt.)
Utton and Kery, P.A.
317 Commercial, NE, Suite 316
Albuquerque, NM 87102
(505) 699-1445
john@uttonkery.com

NORTH DAKOTA

***Honorable Doug Burgum**
Governor of North Dakota
State Capitol
Bismarck, ND 58505
(701) 224-2200

****Garland Erbele**, State Engineer
North Dakota State Water Commission
900 East Boulevard Avenue
Bismarck, ND 58505-0850
(701) 328-4942
gerbele@nd.gov

L. David Glatt, Chief
Environmental Health Section
North Dakota Department of Health
Gold Seal Center
918 East Divide Avenue
Bismarck, ND 58501-1947
(701) 328-5152
(701) 328-5200 (fax)
dglatt@nd.gov

Jennifer L. Verleger
Assistant Attorney General
North Dakota Office of the Attorney General
500 North 9th Street
Bismarck, ND 58505
(701) 328-3537
(701) 328-4300 (fax)
jverleger@nd.gov

OKLAHOMA

***Honorable Mary Fallin**
Governor of Oklahoma
State Capitol
Oklahoma City, OK 73105
(405) 521-2342

†****Julie Cunningham**
Executive Director
Oklahoma Water Resources Board
3800 North Classen Boulevard
Oklahoma City, OK 73118
(405) 530-8800
(405) 530-8900 (fax)
julie.cunningham@owrb.ok.gov

†**Shellie Chard**, Director
Water Quality Division
Oklahoma Dept. of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677
(405) 702-7100
(405) 702-7101 (fax)
shellie.chard@deq.ok.gov

†**Rob Singletary**, General Counsel
Oklahoma Water Resources Board
3800 North Classen Boulevard
Oklahoma City, OK 73118
(405) 530-8800
(405) 530-8900 (fax)
rob.singletary@owrb.ok.gov

OREGON

***Honorable Kate Brown**
Governor of Oregon
State Capitol
Salem, OR 97310
(503) 378-3100

****Thomas M. Byler**, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
(503) 986-0900
(503) 986-0903 (fax)
thomas.m.byler@wrdd.state.or.us

†**Jennifer Wigal**
Water Quality Program Manager
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204
(503) 229-5323
(503) 229-5408 (fax)
wigal.jennifer@deq.state.or.us

SOUTH DAKOTA

***Honorable Dennis Daugaard**
Governor of South Dakota
State Capitol
Pierre, SD 57501
(605) 773-3212

****Steven M. Pirner**, Secretary
SD Dept. of Environment & Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181
(605) 773-5559
(605) 773-6035 (fax)
steve.pirner@state.sd.us

Kent Woodmansey, PE
Engineering Manager, Feedlot Permit Program
SD Dept. of Environment & Natural Resources
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181
(605) 773-3351
(605) 773-4068 (fax)
kent.woodmansey@state.sd.us

TEXAS

***Honorable Gregory W. Abbott**
Governor of Texas
State Capitol
Austin, TX 78711
(512) 463-2000

****Jonathan K. "Jon" Niermann**
Commissioner
Texas Commission on Environmental Quality
P.O. Box 13087, MC 100
Austin, TX 78711-3087
(512) 239-5505
(512) 239-5533 (fax)
jon.niermann@tceq.texas.gov

Bech K. Bruun, Chairman
Texas Water Development Board
1700 North Congress Avenue
P.O. Box 13231
Austin, TX 78711-3231
(512) 463-7847
(512) 475-2053 (fax)
bech.bruun@twddb.texas.gov

Craig Estes, Senator (Alt.)
Texas State Senate
2525 Kell Boulevard, Suite 302
Wichita Falls, TX 76308
(940) 689-0191
(940) 689-0194 (fax)
craig.estes@senate.state.tx.us

UTAH

***Honorable Gary R. Herbert**
Governor of Utah
State Capitol
Salt Lake City, UT 84114
(801) 538-1000

****Walter L. Baker**, Director
Division of Water Quality
Utah Department of Environmental Quality
195 North 1950 West
P. O. Box 144870
Salt Lake City, Utah 84114-4870
(801) 536-4300
(801) 536-4301 (fax)
wbaker@utah.gov

Eric Millis, Director
Utah Division of Water Resources
1594 West North Temple, Suite 310
P.O. Box 146201
Salt Lake City, UT 84114-6201
(801) 538-7230
(801) 538-7279 (fax)
ericmillis@utah.gov

Norman K. Johnson (Alt.)
Assistant Attorney General
Utah Attorney General's Office
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
(801) 538-7227
(801) 538-7440 (fax)
normanjohnson@utah.gov

WASHINGTON

***Honorable Jay Inslee**
Governor of Washington
State Capitol
Olympia, WA 98504
(360) 753-6780

****Maia Bellon**, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-7001
(360) 407-6989 (fax)
maib461@ecy.wa.gov

Tom Loranger
Water Resources Program Manager
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6672
(360) 407-6574 (fax)
tlor461@ecy.wa.gov

Alan Reichman (Alt.)
Assistant Attorney General
Ecology Division, Water Section
Washington State Attorney General's Office
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6748
(360) 586-6760 (fax)
alanr@atg.wa.gov

†Buck Smith (Alt.)
Senior Hydrogeologist
Water Resources Program
Washington Department of Ecology
3190 160th Avenue, SE
Bellevue, WA 98008
(425) 649-7147
(425) 649-7098 (fax)
buck.smith@ecy.wa.gov

WYOMING

***Honorable Matt Mead**
Governor of Wyoming
State Capitol
Cheyenne, WY 82001
(307) 777-7434

****Patrick T. Tyrrell**, State Engineer
Wyoming State Engineer's Office
Herschler Building, 4th Floor East
122 West 25th Street
Cheyenne, WY 82002
(307) 777-6150
(307) 777-5451 (fax)
patrick.tyrrell@wyo.gov

Christopher M. Brown
Senior Assistant Attorney General
Water and Natural Resources Division
Wyoming Attorney General's Office
123 Capitol Avenue
Cheyenne, WY 82002
(307) 777-3406
(307) 777-5451 (fax)
chris.brown@wyo.gov

Todd Parfitt, Director
Wyoming Department of Environmental Quality
200 West 17th Street, 4th Floor
Cheyenne, WY 82002
(307) 777-7555
(307) 777-7682 (fax)
todd.parfitt@wyo.gov

Harry LaBonde, Director (Alt.)
Wyoming Water Development Commission
6920 Yellowtail Road
Cheyenne, WY 82002
(307) 777-7626
(307) 777-6819 (fax)
harry.labonde@wyo.gov

†Steve Wolff (Alt.)
Interstate Streams Administrator
Wyoming State Engineer's Office
Herschler Building, 4th Floor East
122 West 25th Street
Cheyenne, WY 82002
(307) 777-1942
(307) 777-5451 (fax)
steve.wolff@wyo.gov

†Kevin Frederick, Administrator (Alt.)
Water Quality Division
Wyoming Department of Environmental Quality
200 West 17th Street, 4th Floor
Cheyenne, WY 82002
(307) 777-7072
(307) 777-5973 (fax)
kevin.frederick@wyo.gov

WESTERN STATES WATER COUNCIL COMMITTEE ASSIGNMENTS

EXECUTIVE COMMITTEE

Vacant - Alaska
Thomas Buschatzke- Arizona
William Croyle - California
Jeanine Jones - California
(Vice-Chair) (Alternate)*
James Eklund - Colorado
Hal Simpson - Colorado
(Alternate)*
Jerry Rigby - Idaho
(Chair)
David Barfield - Kansas
Tim Davis - Montana
Jeff Fassett - Nebraska
Jason King - Nevada
Roland Westergard - Nevada
(Alternate)*
Tom Blaine - New Mexico
Garland Erbele - North Dakota
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
Steve Pirner - South Dakota
Kent Woodmansey - South Dakota
(Alternate)*
Jon Niermann - Texas
Walt Baker - Utah
Maia Bellon - Washington
Patrick T. Tyrrell - Wyoming

Management Subcommittee

Jerry Rigby
(Chair)
Jeanine Jones
(Vice-Chair)
Tim Davis
(Secretary/Treasurer)
Tony Willardson
(Executive Director)
Pat Tyrrell
(Former Chair)

Nominating Subcommittee

Roland Westergard **(Chair)** - Nevada
Hal Simpson - Colorado
Pat Tyrrell - Wyoming

Ex-Officio Representatives

*For purposes of Committee rosters, the designation as an "alternate" only reflect the person's function on the Committee.

LEGAL COMMITTEE

David Schade - Alaska
William Staudenmaier - Arizona
Cynthia Chandley - Arizona
(Alternate)*
Jeanine Jones - California
James Eklund - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho
(Alternate)*
Vacant - Kansas
Jay Weiner - Montana
Jim Macy - Nebraska
Jason King - Nevada
Roland Westergard - Nevada
(Alternate)*
Maria O'Brien - New Mexico
Greg Ridgley - New Mexico
(Alternate)*
Jennifer Verleger - North Dakota
(Chair)
Rob Singletary - Oklahoma
Thomas Byler - Oregon
Kent Woodmansey - South Dakota
Jon Niermann - Texas
Norman Johnson - Utah
Alan Reichman - Washington
Chris Brown - Wyoming
(Vice-Chair)

Clean Water Act Jurisdiction

Michelle Hale - Alaska
Trisha Oeth - Colorado
Barry Burnell - Idaho
Tom Stiles - Kansas
Jennifer Verleger - North Dakota
Todd Chenoweth - Texas
Walt Baker - Utah
Lauren Driscoll - Washington
Bill DiRienzo - Wyoming

Non-Tribal Federal Water Needs Subcommittee

David Schade - Alaska
Jay Weiner - Montana
Kristen Geddy - Nevada
Susan Joseph-Taylor - Nevada
Greg Ridgley - New Mexico
Jennifer Verleger - North Dakota
Jonathan Allen - Oklahoma
Dwight French - Oregon
Jesse Ratcliff - Oregon
Todd Chenoweth - Texas
Norm Johnson - Utah
Buck Smith - Washington
Abigail Boudewyns - Wyoming
Chris Brown - Wyoming
Pat Tyrrell - Wyoming

Ex-Officio Representatives

BLM - Jana Wilcox
FWS - Andrew Hautzinger
DOD - Marc Kodack
BOR - Becky Fulkerson
Donald Anderson

Tribal Reserved Water Rights Subcommittee

William Staudenmaier - Arizona
Cynthia Chandley - Arizona
Jay Weiner - Montana
Greg Ridgley - New Mexico
Arianne Singer - New Mexico
Norman Johnson - Utah

WRDA/Corps Policies

Tom Stiles - Kansas
Tim Davis - Montana
Jennifer Verleger - North Dakota

WATER QUALITY COMMITTEE

Alice Edwards - Alaska
Trevor Baggione - Arizona
Thomas Howard - California
Betty Olson - California
(Alternate)*
Trisha Oeth - Colorado
Patrick Pfaltzgraff - Colorado
(Alternate)*
John Tippetts - Idaho
Tom Stiles - Kansas
George Mathieus - Montana
Jim Macy - Nebraska
Vacant - Nevada
Butch Tongate - New Mexico
David Glatt - North Dakota
Julie Cunningham - Oklahoma
Shellie Chard - Oklahoma
(Alternate)*
Jennifer Wigal - Oregon
Kent Woodmansey - South Dakota
(Chair)
Steve Pirner - South Dakota
(Alternate)*
Jon Niermann - Texas
Todd Chenoweth - Texas
(Alternate)*
Walter Baker - Utah
Maia Bellon - Washington
Pat Tyrrell - Wyoming
Kevin Frederick - Wyoming
(Vice-Chair) (Alternate)*
Todd Parfitt - Wyoming
(Alternate)*

Clean Water Act Subcommittee

Michelle Hale - Alaska
Trisha Oeth - Colorado
Barry Burnell - Idaho
Tom Stiles - Kansas
Jennifer Verleger - North Dakota
Todd Chenoweth - Texas
Walt Baker - Utah
Lauren Driscoll - Washington
Bill DiRienzo - Wyoming

Water Quality/Quantity Nexus Workgroup

Walt Baker - Utah

WATER RESOURCES COMMITTEE

David Schade - Alaska
Thomas Buschatzke - Arizona
William Croyle - California
Jeanine Jones - California
(Alternate)*
James Eklund - Colorado
John Stulp - Colorado
(Alternate)*
Dick Wolfe - Colorado
(Alternate)*
John Simpson - Idaho
Jerry Rigby - Idaho
(Alternate)*
David Barfield - Kansas
John Tubbs - Montana
Tim Davis - Montana
(Alternate)*
Jeff Fassett - Nebraska
Jason King - Nevada
Tom Blaine - New Mexico
Garland Erbele - North Dakota
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
(Chair)
Kent Woodmansey - South Dakota
Bech Bruun - Texas
Eric Millis - Utah
Tom Loranger - Washington
Patrick Tyrrell - Wyoming
Steve Wolff - Wyoming
(Alternate)*

Climate Adaptation and Drought Subcommittee

Jeanine Jones - California (Chair)

Ex-Officio Representatives

Corps - Rolf Olsen
NRCS - Mike Strobel

Water Information and Data Subcommittee (WaDE)

Lane Letourneau - Kansas
David Rodriguez - New Mexico
Julie Cunningham - Oklahoma
Barry Norris - Oregon
Robert Mace - Texas
Pat Tyrrell - Wyoming

Ex-Officio Representatives

USBR - Becky Fulkerson
Corps - Steve Ashby
Boni Bigornia
USGS - Pixie Hamilton and Eric Evenson
NASA - Brad Doorn
NOAA - DeWayne Cecil
NRCS - Mike Strobel

Committee Assignments

EXECUTIVE COMMITTEE

Vacant - Alaska
Thomas Buschatzke - Arizona
William Croyle - California
Jeanine Jones - California
(Vice-Chair) (Alternate)*
James Eklund - Colorado
Hal Simpson - Colorado
(Alternate)*
Jerry Rigby - Idaho
(Chair)
David Barfield - Kansas
Tim Davis - Montana
Jeff Fassett - Nebraska
Jason King - Nevada
Roland Westergard - Nevada
(Alternate)*
Tom Blaine - New Mexico
Garland Erbele - North Dakota
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
Steve Pirner - South Dakota
Kent Woodmansey - South Dakota
Jon Niermann - Texas
Walt Baker - Utah
Maia Bellon - Washington
Patrick T. Tyrrell - Wyoming

WATER QUALITY COMMITTEE

Alice Edwards - Alaska
Trevor Baggiore - Arizona
Thomas Howard - California
Betty Olson - California
(Alternate)*
Trisha Oeth - Colorado
Patrick Pfaltzgraff - Colorado
(Alternate)*
John Tippets - Idaho
Tom Stiles - Kansas
George Mathieus - Montana
Jim Macy - Nebraska
Vacant - Nevada
Butch Tongate - New Mexico
David Glatt - North Dakota
Julie Cunningham - Oklahoma
Shellie Chard - Oklahoma
(Alternate)*
Jennifer Wigal - Oregon
Kent Woodmansey - South Dakota
(Chair)
Steve Pirner - South Dakota
(Alternate)*
Jon Niermann - Texas
Todd Chenoweth - Texas
(Alternate)*
Walter Baker - Utah
Maia Bellon - Washington
Pat Tyrrell - Wyoming
Kevin Frederick - Wyoming
(Vice-Chair) (Alternate)*
Todd Parfitt - Wyoming
(Alternate)*

WATER RESOURCES COMMITTEE

David Schade - Alaska
Thomas Buschatzke - Arizona
William Croyle - California
Jeanine Jones - California
(Alternate)*
James Eklund - Colorado
John Stulp - Colorado
(Alternate)*
Dick Wolfe - Colorado
(Alternate)*
John Simpson - Idaho
Jerry Rigby - Idaho
(Alternate)*
David Barfield - Kansas
John Tubbs - Montana
Tim Davis - Montana
(Alternate)*
Jeff Fassett - Nebraska
Jason King - Nevada
Tom Blaine - New Mexico
Garland Erbele - North Dakota
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
(Chair)
Kent Woodmansey - South Dakota
Bech Bruun - Texas
Eric Millis - Utah
Tom Loranger - Washington
Patrick Tyrrell - Wyoming
Steve Wolff - Wyoming
(Alternate)*

LEGAL COMMITTEE

David Schade - Alaska
William Staudenmaier - Arizona
Cynthia Chandley - Arizona
(Alternate)*
Jeanine Jones - California
James Eklund - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho
(Alternate)*
Vacant - Kansas
Jay Weiner - Montana
Jim Macy - Nebraska
Jason King - Nevada
Roland Westergard - Nevada
(Alternate)*
Maria O'Brien - New Mexico
Greg Ridgley - New Mexico
(Alternate)*
Jennifer Verleger - North Dakota
(Chair)
Rob Singletary - Oklahoma
Thomas Byler - Oregon
Kent Woodmansey - South Dakota
Jon Niermann - Texas
Norman Johnson - Utah
Alan Reichman - Washington
Chris Brown - Wyoming
(Vice-Chair)



WESTERN STATES FEDERAL AGENCY SUPPORT TEAM

(Updated 2/15/2017)

Carlson, Christopher (FS Acting)

Assistant Director for Water and Aquatic
Resources
Forest Service
1400 Independence Avenue, SW
Washington, DC 20250
(202) 205-1481
ccarlson@fs.fed.us

Curtis, Doug (BLM)

Water Resources Specialist
Bureau of Land Management
20 M Street, SE, Room 5282
Washington, DC 20003
Office: (202) 912 7139
Cell: (202) 579 1565
pcurtis@blm.gov

D'Antonio, John (USACE)

Deputy District Engineer
Programs and Project Management
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109
(505) 342-3261
john.r.d'antonio@usace.army.mil

Dempsey, Lauren M. (DoD Alternate)

Western Region Water Specialist
Air Force Western Regional Environmental
Office: AFCEC/CZO (San Francisco)
540 Airlift Drive, Suite C201
Travis AFB, CA 94535
(707) 424-8628
lauren.dempsey@us.af.mil

Doorn, Bradley (NASA)

Water Resources Program Manager
Science Mission Directorate
Earth Science Division
National Aeronautics and Space Administration
300 E Street, SW
Washington, DC 20546
(202) 358-2187
bradley.doorn@nasa.gov

Ellsworth, Alan (NPS Alternate)

Water Advisor
National Parks Service
Washington, DC 20250
(202) 513-7181
alan_ellsworth@nps.gov

Fulkerson, Becky (BoR)

Policy Analyst
Bureau of Reclamation
1849 C Street NW
Washington, DC 20240-0001
(202) 513-0638
rfulkerson@usbr.gov

Gorke, Roger (EPA, WestFAST Chair)

Senior Policy Advisor, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC: 4101 M
Washington, DC 20460-001
(202) 564-0470
gorke.roger@epa.gov

Harvey, Forrest "Ed" (NPS)

Chief, Water Resources Division
National Parks Service
Washington, DC 20250
(970) 225-3511
forrest_harvey@nps.gov

Hautzinger, Andrew (FWS)

Chief, Division of Water Resources
Fish and Wildlife Service
500 Gold Avenue, SW, Room 4002
Albuquerque, NM 87102
(505) 248-7946
andrew_hautzinger@fws.gov

Jones, Sonya (USGS)

Water Availability and Use Science Program
Coordinator
U.S. Geological Survey
1770 Corporate Drive, Suite 500
Norcross, GA 30093
(678) 524-1544
sajones@usgs.gov



WESTERN STATES FEDERAL AGENCY SUPPORT TEAM

(Updated 2/15/2017)

Kodack, Marc (DoD)

Office of the Deputy Assistant Secretary of the
Army (Energy and Sustainability)
U.S. Department of Defense
110 Army Pentagon, Room 3D453
Washington, DC 20310
(571) 256-4197
marc.d.kodack.civ@mail.mil

Lambert, Patrick (USGS Alternate)

USGS Southwest Region Associate Director/Water
Census Leadership Team
2329 West Orton Circle
Salt Lake City, Utah 84119
(801) 908-5053
Cell: (801) 755-4105
plambert@usgs.gov

Melton, Forrest (NASA Alternate)

Associate Program Manager for Water Resources,
Applied Sciences Program
National Aeronautics and Space Administration
NASA Ames Research Center, MS: 232-21
Moffett Field, CA 94035-1000
(650) 604-2787
Forrest.S.Melton@nasa.gov

McCormick, Ron (BLM Alternate)

Water Resources Specialist for Soil, Water, and
Air
Bureau of Land Management
20 M Street, SE
Washington, DC 20003-3503
(202) 912-7135
rmccormi@blm.gov

Roger Pierce (WestFAST Federal Liaison)

Meteorologist (NOAA/NWS)
Western State Water Council
682 East Vine Street, Suite 7
Murray, UT 84107
(801) 685-2555
rogervpierce@wswc.utah.gov
roger.pierce@noaa.gov

Pulwarty, Roger (NOAA)

Director and Physical Scientist, NIDIS
National Oceanic and Atmospheric Administration
325 Broadway, R/PSD
Boulder, CO 80305
(303) 497-4425
roger.pulwarty@noaa.gov

Strobel, Michael (NRCS)

Director, National Water and Climate Center
USDA-Natural Resources Conservation Service
1201 NE Lloyd Boulevard, Suite 802
Portland, OR 97232
(503) 414-3055
michael.strobel@por.usda.gov

Werner, Kevin (NOAA, WestFAST Vice Chair)

NOAA, National Weather Service Headquarters
Office of Organizational Excellence Director
1325 East - West Highway
Silver Spring, MD 20910
(301) 427-9061
kevin.werner@noaa.gov

Zamuda, Craig (DoE)

Senior Policy Advisor
Office of Climate Change Policy and Technology
Office of Policy and International Affairs
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
(202) 586-9038
craig.zamuda@hq.doe.gov

Tab C – WSWC Policy Positions



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RURAL WATER and WASTEWATER PROJECT/INFRASTRUCTURE NEEDS
and
U.S. DEPARTMENT of AGRICULTURE PROGRAMS

Nebraska City, Nebraska
April 14, 2017

WHEREAS, in the West, water is indeed our “life blood,” a vital and scarce resource the availability of which has and continues to circumscribe growth, development, our economic and environmental well-being and quality of life; and

WHEREAS, across the West, many small, rural and tribal communities are experiencing water supply shortages due to drought, declining streamflows and groundwater supplies, and inadequate infrastructure, with some communities hauling water over substantial distances to satisfy their potable water needs; and

WHEREAS, often water supplies that are available to these communities are of poor quality and may be impaired by naturally occurring and man-made contaminants, including arsenic and carcinogens, which impact communities’ health and their ability to comply with increasingly stringent federal water quality and drinking water mandates; and

WHEREAS, many small, rural and tribal communities (including colonias) also face challenges related to meeting federal mandates for wastewater treatment; and

WHEREAS, at the same time, many small, rural and tribal communities in the West are suffering from significant levels of unemployment and simply lack the financial capacity and expertise to plan, finance and construct needed drinking water and wastewater system improvements; and

WHEREAS, there is a Federal responsibility to assist these communities in meeting related federal mandates to achieve water and wastewater public health goals; and

WHEREAS, the Budget Blueprint from the Executive Office of the President/Office of Management and Budget proposes elimination of USDA’s water and wastewater grant and loan programs, at a savings of \$498 million, saying rural communities can be served by private sector financing or other federal investments, such as the Environmental Protection Agency’s State Revolving Funds (SRF); and

WHEREAS, EPA’s SRF program is already oversubscribed, and these USDA programs help provide financing for clean and reliable drinking water systems, sanitary sewage disposal, solid waste disposal and stormwater drainage for individual households, businesses,

cooperatives, private non-profits, and state and local governmental entities and tribal communities – many without access to private, commercial credit on reasonable terms or other federal financial assistance (including the SRFs); and

WHEREAS, these programs help very small, financially distressed communities by providing long-term low interest loans (up to 40 years at fixed rates determined by need), loan guarantees, and grants if funds are available, and related programs provide technical assistance and training grants; and

WHEREAS, these wise investments of federal dollars can help businesses and manufacturers to locate or expand operations in these communities, providing an economic boost, as well as environmental improvements and other long-term returns.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council strongly supports Administrative and Congressional action to expedite construction of authorized rural water supply projects in a timely manner, including projects that meet tribal trust and other federal responsibilities -- recognizing and continuing to defer to the primacy of western water laws and tribal settlements in allocating water among users.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Urging Congress to Support**

**SUBSEASONAL to SEASONAL
WEATHER RESEARCH, FORECASTING, and INNOVATION**

**Nebraska City, Nebraska
April 13, 2017**

WHEREAS, Western States experience great subseasonal, seasonal, and annual variability in precipitation, with serious impacts and consequences for water supply planning and management, drought and flood preparedness and response, water rights administration, operation of water projects, and aging water infrastructure; and

WHEREAS, sound decision-making to protect life and property by reducing flood risks and to inform decisions involving billions of dollars of economic activity for urban centers, agriculture, hydropower generation, and fisheries depends on our ability to observe, understand, model, predict, and adapt to precipitation variability on operational time scales ranging from a few weeks to a season or more; and

WHEREAS, investments in observations, modeling, high-performance computing capabilities, research, and operational forecasting of precipitation provide an opportunity to significantly improve planning and water project operations to reduce flood damages, mitigate economic and environmental damages, and maximize water storage and water use efficiency; and

WHEREAS, operating aging water infrastructure in the face of growing and often competing water supply and water management demands requires that state, federal, tribal, and local agencies optimize operations for maximum efficiency and seek innovations, such as improved subseasonal to seasonal forecasting, to support their decision-making; and

WHEREAS, the responsibility for operational weather forecasting rests with the National Weather Service (NWS), and current NWS subseasonal to seasonal precipitation outlooks are not yet sufficiently reliable to support water resources decision-making; and

WHEREAS, ~~legislation there is a need~~ to authorize and prioritize National Oceanic and Atmospheric Administration ([NOAA](#)) research and weather modeling to improve operational sub-seasonal and seasonal precipitation forecasts, with attention to Western needs; and

WHEREAS, THE Congress recently enacted the Weather Research and Forecasting Innovation Act of 2017.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports the implementation of the appropriate legislation, ~~that~~ authorizing federal action to improve precipitation forecasting at the seasonal and sub-seasonal scales in the West, and urges NOAA to work with western states.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Urging Congress to Support**

Subseasonal to Seasonal WEATHER RESEARCH, FORECASTING, and INNOVATION

**Nebraska City, Nebraska
April 13, 2017**

WHEREAS, Western States experience ~~great extreme~~ subseasonal, seasonal, and annual ~~variability in precipitation, weather and weather-related events with droughts, floods, hurricanes, tornadoes, and wildfires,~~ with serious impacts and consequences for ~~emergency and~~ water ~~supply resource~~ planning and management, ~~drought and flood preparedness and response,~~ water rights administration, operation of water projects, ~~and~~ aging water infrastructure, ~~and planning for future water use;~~ and

WHEREAS, sound decision-making to protect life and property ~~by reducing flood risks~~ and to inform ~~decisions involving billions of dollars of economic activity for urban centers, agriculture, hydropower generation, and fisheries water resources planning and management~~ depends on our ability to observe, understand, ~~monitor,~~ model, predict, and adapt to ~~precipitation variability droughts, floods, extreme storms, and other weather events on an~~ operational time scales ~~ranging from a few weeks to a season or more(ranging from hours to weeks, months, and years);~~ and

WHEREAS, investments in observations, ~~modeling monitoring,~~ ~~high-performance~~ computing capabilities, research, and ~~operational~~ forecasting ~~of precipitation the development of extreme weather events~~ provide an opportunity to significantly improve planning and ~~water project design and~~ operations to ~~reduce flood damages, avoid or minimize the loss of life and property,~~ mitigate economic and environmental damages, and maximize water storage and water use efficiency; and

WHEREAS, operating aging water infrastructure in the face of growing and often competing water supply and water management demands requires that state, federal, tribal, and local agencies ~~optimize operations for maximum efficiency and seek innovations, such as improved subseasonal to seasonal forecasting, to support their decision-making; and~~

WHEREAS, ~~most state, local and tribal water managers and water providers have a limited ability to undertake the observations and research necessary to understand and develop adaptation strategies for extreme weather events; and the responsibility for operational weather forecasting rests with the National Weather Service (NWS), and current NWS subseasonal to seasonal precipitation outlooks are not yet sufficiently reliable to support water resources decision-making; and~~

WHEREAS, legislation ~~such as H.R. 353, the Weather Research and Forecasting Innovation Act,~~ is needed to authorize and prioritize ~~National Oceanic and Atmospheric Administration research and weather modeling actions~~ to improve ~~operational weather research and~~ sub-seasonal and seasonal ~~precipitation~~ forecasts, ~~with attention to Western needs. by collecting data and information, and coordinating and leveraging existing research and federal resources in collaboration with state, local and tribal entities to improve forecasting for public planning and preparedness for droughts, floods,~~

~~hurricanes, tornadoes, wildfires, and other extreme weather-related natural disasters.~~

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports appropriate legislation, ~~including H.R. 353~~, that authorizes federal action to ~~plan, prepare for and avoid, minimize or mitigate the impacts of extreme weather events, including weather observations, monitoring, computing capabilities, and to improve~~ precipitation forecasting at the seasonal and sub-seasonal scales in the West, ~~as well as improving state-federal collaboration to facilitate sound and resilient emergency and water resource planning, management, and development decisions.~~



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Urging Congress to Support**

**SUBSEASONAL to SEASONAL
WEATHER RESEARCH, FORECASTING, and INNOVATION**

**Nebraska City, Nebraska
April 13, 2017**

WHEREAS, Western States experience great subseasonal, seasonal, and annual variability in precipitation, with serious impacts and consequences for water supply planning and management, drought and flood preparedness and response, water rights administration, operation of water projects, and aging water infrastructure; and

WHEREAS, sound decision-making to protect life and property by reducing flood risks and to inform decisions involving billions of dollars of economic activity for urban centers, agriculture, hydropower generation, and fisheries depends on our ability to observe, understand, model, predict, and adapt to precipitation variability on operational time scales ranging from a few weeks to a season or more; and

WHEREAS, investments in observations, modeling, high-performance computing capabilities, research, and operational forecasting of precipitation provide an opportunity to significantly improve planning and water project operations to reduce flood damages, mitigate economic and environmental damages, and maximize water storage and water use efficiency; and

WHEREAS, operating aging water infrastructure in the face of growing and often competing water supply and water management demands requires that state, federal, tribal, and local agencies optimize operations for maximum efficiency and seek innovations, such as improved subseasonal to seasonal forecasting, to support their decision-making; and

WHEREAS, the responsibility for operational weather forecasting rests with the National Weather Service (NWS), and current NWS subseasonal to seasonal precipitation outlooks are not yet sufficiently reliable to support water resources decision-making; and

WHEREAS, legislation is needed to authorize and prioritize National Oceanic and Atmospheric Administration research and weather modeling to improve operational sub-seasonal and seasonal precipitation forecasts, with attention to Western needs.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports appropriate legislation, that authorizes federal action to improve precipitation forecasting at the seasonal and sub-seasonal scales in the West.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
BUREAU OF RECLAMATION'S
MAINTENANCE, REPAIR AND REHABILITATION NEEDS
Nebraska City, Nebraska
April 14, 2017**

WHEREAS, the Bureau of Reclamation operates hundreds of dams, reservoirs, and related infrastructure in the West, supplying water and power to millions of people, irrigating millions of acres for food and fiber, providing flood control and recreation, and supporting wildlife and habitat; and

WHEREAS, the importance of maintaining these projects cannot be overstated; and

WHEREAS, many of Reclamation's facilities are nearing, or have already exceeded, their original design lives and are in need of maintenance, repair, and/or rehabilitation (MR&R), in order to minimize risks to: (1) human health and safety; (2) economic growth; and (3) the environment; and

WHEREAS, MR&R needs refer to both maintenance that has been deferred and future projections or anticipated maintenance, repair and rehabilitation work; and

WHEREAS, Reclamation's funding and the funding from non-federal partners which operate two-thirds of Reclamation's infrastructure under contract is not sufficient to address all MR&R needs; and

WHEREAS, in 2015, Reclamation's Infrastructure Investment Strategy estimated that the total funding needed to address its MR&R needs is \$2.9 billion;¹ and

WHEREAS, Congress and the Administration must have access to consistent and accurate information on Reclamation's MR&R needs to address these needs through investments that are based on long-term capital planning and budgeting strategies; and

WHEREAS, state water managers require this information to carry out their water planning and other water administration activities; and

WHEREAS, in recent years, Reclamation has made progress in developing and improving estimates of MR&R needs for infrastructure under its jurisdiction as well as standard asset management criteria that evaluate risks to: (1) human health and safety; (2) economic growth; and (3) the environment; and

¹ See page 6 of https://www.usbr.gov/live/8-20-15/Infrastructure_Investment_Strategy_Final_Report_May2015-2.pdf

WHEREAS, Reclamation also continues to work with non-federal operating entities to clarify the processes for providing non-federal input into compiling and reporting MR&R needs; and

WHEREAS, notwithstanding these improvements, much of the currently available information regarding Reclamation's MR&R needs for Reclamation's infrastructure under contract is inconsistent and difficult to obtain; and

WHEREAS, a process is needed to evaluate Reclamation's MR&R needs for facilities under contract pursuant to standard asset management criteria that evaluate risks to: (1) human health and safety; (2) economic growth; and (3) the environment.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council urges Congress and the Administration to work together to develop a standardized process to evaluate Reclamation's MR&R needs for facilities under contract and a process to ensure Reclamation can receive from partners/operating entities, and provide, the most up-to-date, consistent, and accurate information, including the estimated costs of those needs and the relative priority or importance of addressing those needs; and

BE IT FURTHER RESOLVED that Reclamation should ensure that appropriate information on its MR&R needs is readily accessible and easy to understand by Congress, state policy makers, and the public.



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
BUREAU OF RECLAMATION'S
MAINTENANCE, REPAIR AND REHABILITATION NEEDS
Arlington, Virginia
April 3, 2014
Nebraska City, Nebraska
April 14, 2017

WHEREAS, the Bureau of Reclamation operates hundreds of dams, reservoirs, and related infrastructure in the West, supplying water and power to millions of people, irrigating millions of acres for food and fiber, providing flood control and recreation, and supporting wildlife and habitat; and

WHEREAS, the importance of maintaining these projects cannot be overstated; and

WHEREAS, many of Reclamation's facilities are nearing, or have already exceeded, their original design lives and are in need of maintenance, repair, and/or rehabilitation (MR&R), in order to minimize risks to: (1) human health and safety; (2) economic growth; and (3) the environment~~threatening public safety as well as private and public property~~; and

WHEREAS, MR&R needs refer to both maintenance that has been deferred and future projections or anticipated maintenance, repair and rehabilitation work; and

WHEREAS, Reclamation's funding and the funding from non-federal partners which operate two-thirds of Reclamation's infrastructure under contract ~~has not kept pace with its not sufficient to address all its~~ MR&R needs; and

WHEREAS, in 2015, Reclamation's Infrastructure Investment Strategy estimated~~ds~~ that the ~~backlog total funding of projects~~ needed to address its MR&R needs is \$2.96 billion;¹ and

WHEREAS, Congress and the Administration must have access to consistent and accurate information on Reclamation's MR&R needs to address these needs through investments that are based on long-term capital ~~budgeting efficiencies rather than annual incremental choices~~planning and budgeting strategies; and

WHEREAS, state water managers require this information to carry out their water planning and other water administration activities; and

WHEREAS, in recent years, Reclamation has made progress in developing and improving estimates of MR&R needs for infrastructure under its jurisdiction as well as standard

¹ See page 6 of [https://www.usbr.gov/live/8-20-15/Infrastructure Investment Strategy Final Report May2015-2.pdf](https://www.usbr.gov/live/8-20-15/Infrastructure%20Investment%20Strategy%20Final%20Report%20May2015-2.pdf)

asset management criteria that evaluate risks to: (1) human health and safety; (2) economic growth; and (3) the environment; and

WHEREAS, Reclamation also continues to work with non-federal operating entities to clarify the processes for providing non-federal input into compiling and reporting MR&R needs; and

WHEREAS, notwithstanding these improvements, much of the currently available information regarding Reclamation's MR&R needs for Reclamation's infrastructure under contract is inconsistent and difficult to obtain, ~~including the basis for Reclamation's MR&R backlog estimates~~; and

WHEREAS, a process is needed to evaluate Reclamation's MR&R needs for facilities under contract pursuant to standard asset management criteria that evaluate risks to: (1) human health and safety; (2) economic growth; and (3) the environment.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council urges Congress and the Administration to work together to develop a standardized process to evaluate Reclamation's MR&R needs for facilities under contract and a process to ensure Reclamation is provided can receive from partners/operating entities, and provide, the most up-to-date, consistent, and accurate information ~~regarding Reclamation's MR&R needs for facilities under contract~~, including the estimated costs of those needs and the relative priority or importance of addressing those needs; and

BE IT FURTHER RESOLVED that Reclamation should ensure that appropriate information on its MR&R needs is readily accessible and easy to understand by Congress, state policy makers, and the public.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RECLAMATION SAFETY OF DAMS ACT OF 1978**

**Nebraska City, Nebraska
April 14, 2017**

WHEREAS, the Bureau of Reclamation's dams and reservoirs are the primary source of water for numerous regions and communities throughout the West; and

WHEREAS, Reclamation's dams and reservoirs provide essential benefits such as drinking water, irrigation, hydropower, flood control, and recreation, while also supporting wildlife and habitat; and

WHEREAS, the safe operation and maintenance of Reclamation's dams is critical to sustaining these benefits and preventing dam failure, which threatens lives as well as private and public property; and

WHEREAS, most of Reclamation's dams are older than 50 years, with an average age of 70 years, and the agency has identified recommended modifications to prevent safety or performance issues; and

WHEREAS, maintaining and rehabilitating dams and related infrastructure is one of the most serious problems that Reclamation currently faces; and

WHEREAS, the Reclamation Safety of Dams Act of 1978 provides Reclamation with authority to preserve and maintain the structural safety of dams under its stewardship; and

WHEREAS, in FY2016, the Congress provided an additional \$1.1 billion in budget authority (P.L. 114-113, Section 204), giving Reclamation several more years before reaching its spending ceiling; and

WHEREAS, failure to appropriate such sums as are necessary for Reclamation's dam safety activities will increase the chances of dam failures by hindering the agency's ability to carry out critical dam safety rehabilitation and modernization efforts, risking loss of life and public and private property.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council urges the Administration and Congress to work together and determine such sums as may be necessary for Reclamation to carry out the purposes of the Reclamation Safety of Dams Act of 1978.



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RECLAMATION SAFETY OF DAMS ACT OF 1978
[Arlington, Virginia](#)
[April 3, 2014](#)
[Nebraska City, Nebraska](#)
[April 14, 2017](#)

WHEREAS, the Bureau of Reclamation's dams and reservoirs are the primary source of water for numerous regions and communities throughout the West; and

WHEREAS, Reclamation's dams and reservoirs provide essential benefits such as drinking water, irrigation, hydropower, flood control, and recreation, while also supporting wildlife and habitat; and

WHEREAS, the safe operation and maintenance of Reclamation's dams is critical to sustaining these benefits and preventing dam failure, which threatens lives as well as private and public property; and

WHEREAS, ~~many most~~ of Reclamation's dams [are older than 50 years, with the average age of 70 years, and the agency has identified recommended modifications to prevent safety or performance issues are nearing, or have already exceeded, their design lives and are in need of rehabilitation or modernization](#); and

WHEREAS, maintaining and rehabilitating dams and related infrastructure is one of the most serious problems that Reclamation currently faces; and

WHEREAS, the Reclamation Safety of Dams Act of 1978 provides Reclamation with authority to preserve and maintain the structural safety of dams under its stewardship; and

~~**WHEREAS**, current authorizations for the Act will soon be exhausted; and~~

[WHEREAS](#), in FY2016, the Congress provided an additional \$1.1 billion in budget authority (P.L. 114-113, Section 204), giving Reclamation several more years before reaching its spending ceiling; and

WHEREAS, failure to ~~appropriate~~[authorize](#) such sums as are necessary for Reclamation's dam safety activities ~~under the Act~~ will increase the chances of dam failures by hindering the agency's ability to carry out critical dam safety rehabilitation and modernization efforts, [risking loss of life and public and private property](#).

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council urges the Administration and Congress to work together and determine such sums as may be necessary for Reclamation to carry out the purposes of the Reclamation Safety of Dams Act of 1978.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
THE TRANSFER OF FEDERAL WATER AND POWER PROJECTS
AND RELATED FACILITIES
Arlington, Virginia
April 3, 2014**

WHEREAS, past and present proposals have been made to transfer ownership of various federal agencies' water and power projects and related facilities to non-federal entities; and

WHEREAS, such transfers may offer important benefits, but many are necessarily very complex and involve many different interests, including important public and third-party interests protected under various state and federal laws; and

WHEREAS, many of these projects serve multiple purposes and were built (and their capital costs are being repaid) under longstanding agreements with water, power, and other users; and

WHEREAS, some single-purpose projects might be appropriately transferred under an expedited review process to their non-federal sponsors/operators by mutual agreement; and

WHEREAS, the many potential public benefits and costs related to transfers involve state and local governments and other interests, in addition to the federal government; and

WHEREAS, present and potential benefits may be lost unless there is a careful analysis of the transfer of individual projects; and

WHEREAS, federal project transfers require a careful project-by-project analysis of expected costs and benefits; and

WHEREAS, states have the primary responsibility for the comprehensive development, administration, and protection of their water resources for all purposes.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports the careful evaluation of the transfer of federal water and power assets and urges the Administration and Congress to work together ~~to establish a process and develop appropriate criteria and guidelines for a project-by-project review of transfer proposals~~, with strong state involvement and protections for state water laws and water rights.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
THE NATIONAL LEVEE SAFETY ACT OF 2007
LEVEES AND CANAL STRUCTURES**

**Nebraska City, Nebraska
April 14, 2017**

WHEREAS, Congress enacted the National Levee Safety Act of 2007 (the Act) in the aftermath of Hurricane Katrina and the failure of the levees and flood water conveyance canals in New Orleans, Louisiana;¹ and

WHEREAS, the Act created the “National Committee on Levee Safety” (NCLS) to develop recommendations for a national levee safety program, including a strategic plan for implementation of the program; and

WHEREAS, one objective of the National Levee Safety Act of 2007 was to promote sound technical practices in levee design, construction, operation, maintenance, inspection, assessment, and security; and

WHEREAS, in January 2009, the NCLS released, “Recommendations for a National Levee Safety Program – A Report to Congress;” and

WHEREAS, the report’s core recommendation calls for the creation of an independent National Levee Safety Commission to: (1) develop national safety standards for levees for common, uniform use by all federal, state, and local agencies; (2) inventory and inspect all levees on a periodic basis; and (3) develop national tolerable risk guidelines for levees; and

WHEREAS, the Water Resources Reform and Development Act (WRRDA) of 2014 subsequently redefined the term “levee” as an embankment or flood wall (i) “the primary purpose of which is to provide hurricane, storm, and flood protection...;” and (ii) “that normally is subject to water loading for only a few days or weeks during a year;” and further defined “canal structures” to mean an embankment, wall or structure along a canal or manmade watercourse that (i) constrains water flows; (ii) is subject to frequent water loading; and (iii) “is an integral part of a flood risk reduction system that protects the leveed area from flood waters” associated with weather-related events; and

WHEREAS, water supply canals that are part of an irrigation or municipal or industrial water supply system should appropriately be excluded from the National Levee Safety Program; and

WHEREAS, the water loadings of water supply canals are controlled and therefore do not pose the same risk as levees; and

¹ 121 Stat. 1288, P.L. 110-114.

WHEREAS, the Bureau of Reclamation already has authority under the Aging Water Infrastructure and Maintenance Act, which Congress enacted as Subtitle G of the Omnibus Public Lands Management Act of 2009,² to address the canals it owns, and inspects those embankment sections of canals located in urban areas; and

WHEREAS, all 50 states confront levee safety issues, but the issues associated with water supply canals are essentially confined to the 17 western states; and

WHEREAS, potential public safety problems involving water supply canals do not often involve a lack of engineering expertise or design standards, but the ability to finance necessary improvements; and

WHEREAS, Reclamation and the States are in the best position to address the public safety issues presented by water supply canals because such issues are localized and minor in comparison to the risks associated with inadequately designed and maintained levees; and

WHEREAS, the U.S. Government Accountability Office (GAO) released a June 2016 report that found that WRRDA directed the U.S. Army Corps of Engineers and Federal Emergency Management Agency (FEMA) to: (1) reconvene the National Committee on Levee Safety; (2) develop a national levee inventory; (3) implement a multifaceted levee safety initiative; (4) report to Congress by June 10, 2015; (4) report on the feasibility of a joint dam and levee-safety program by June 10, 2017; and (5) submit a report with recommendations identifying and addressing legal liabilities of engineering levee projects; and

WHEREAS, GAO found that with the exception of continuing to develop a national levee inventory that the Corps and FEMA have made little progress in implementing key WRRDA requirements, given resource constraints; and recommended that they develop a plan with milestones for implementing the required activities using existing resources or request additional resources as needed.

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council supports the development of a national program of safety standards for levees, flood walls and flood water conveyance canals; and

BE IT FURTHER RESOLVED, that such a program should not apply to federal or non-federal water supply canals; and

BE IT FURTHER RESOLVED, that the Western States Water Council encourages the Administration and Congress to work together and determine the level of adequate funding for implementing the related requirements of the National Levee Safety Act of 2007, WRRDA 2014, and the Aging Water Infrastructure and Maintenance Act (Subtitle G of the Omnibus Public Lands Management Act of 2009).

² 123 Stat. 991, P.L. 111-11.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
THE NATIONAL LEEVE SAFETY ACT OF 2007
and the**

INTERPRETATION OF LEEVES AND WATER SUPPLY CANAL STRUCTURES

**Arlington, Virginia
April 3, 2014
Nebraska City, Nebraska
April 14, 2017**

WHEREAS, Congress enacted the National Levee Safety Act of 2007 (the Act) in the aftermath of Hurricane Katrina and the failure of the levees and flood water conveyance canals in New Orleans, Louisiana;¹ and

WHEREAS, the Act created the “National Committee on Levee Safety” (NCLS) to develop recommendations for a national levee safety program, including a strategic plan for implementation of the program; and

WHEREAS, in January 2009, the NCLS released a draft report, “Recommendations for a National Levee Safety Program – A Report to Congress from the National Committee on Levee Safety;” and

WHEREAS, the report’s core recommendation calls for the creation of an independent National Levee Safety Commission to: (1) develop national safety standards for levees for common, uniform use by all federal, state, and local agencies; (2) inventory and inspect all levees on a periodic basis; and (3) develop national tolerable risk guidelines for levees; and

WHEREAS, the Water Resources Reform and Development Act (WRRDA) of 2014 subsequently redefined Section 9002(3) of the Act defines the term “levee” as embankments and flood walls (i) “the primary purpose of which is to provide hurricane, storm, and flood protection...” and “ii) “ that normally is subject to water loading for only a few days or weeks during a year;” and further defined “canal structures” to mean an embankment, wall or structure along a canal or manmade watercourse that (i) constrains water flows; (ii) is subject to frequent water loading; and (iii) “is an integral part of a flood risk reduction system that protects the leveed area from flood waters” associated with that provide protection from weather-related events; and are subject to water loading for only a few days or weeks a year, but also includes “structures along canals that constrain water flows and are subject to more frequent water loadings that do not constitute a barrier across a watercourse;” and

WHEREAS, the water loadings of water supply canals are controlled and therefore do not pose the same risk as levees; and

¹ 121 Stat. 1288, P.L. 110-114.,

WHEREAS, water supply canals that are part of an irrigation or municipal or industrial water supply system should appropriately be excluded from the National Levee Safety Program; and

~~WHEREAS, the NCLS concluded that water supply canals are “... canals that constrain water flows and are subject to more frequent water loadings [than are levees] ...” and therefore treats the embankment sections of water supply canals as “structures along canals;” and~~

~~WHEREAS, the NCLS’s recommendations for a national program of safety standards and tolerable risk guidelines for levees might therefore be inappropriately applied to water supply canals throughout the West, including both non-federal facilities and federal facilities managed by the U.S. Bureau of Reclamation and state and local agencies; and~~

WHEREAS, the Bureau of Reclamation already has authority under the Aging Water Infrastructure and Maintenance Act, which Congress enacted as part Subtitle G of the Omnibus Public Lands Management Act of 2009,² to address the canals it owns, and ~~inspects~~ inspects those embankment sections of canals located in urban areas; and

~~WHEREAS, the Water Resources Development Act currently in conference would create a National Levee Safety Program to encourage establishment of State and Tribal levee safety programs, recognizing States and Tribes are uniquely positioned to regulate local and regional levee systems; and~~

WHEREAS, the ~~purpose of the program is one objective of the National Levee Safety Act of 2007 was~~ to promote sound technical practices in levee design, construction, operation, maintenance, inspection, assessment, and security; and

~~WHEREAS, the program definitions for “canal structures” should specifically exclude water supply canals, which are fundamentally different from flood risk reduction systems that may include floodways and canals providing protection by moving floodwaters associated with precipitation accompanying hurricanes and other similar extreme weather-related events; and~~

WHEREAS, all 50 states confront levee issues, but the issues associated with water supply canals are essentially confined to the 17 western states; and

~~WHEREAS, there are major institutional differences between levees and water supply canals in the West and the “political systems” commonly used to govern levees that warrant treating them separately; and~~

~~WHEREAS, water supply canals are essentially standalone features whose integrity is not dependent on the performance of other canals, and therefore do not share the potential for systemic failure; and~~

² 123 Stat. 991, P.L. 111-11,

~~WHEREAS, levees are designed to provide protection from flooding and make development behind them possible, while water supply canals serve a separate and distinct purpose; and~~

~~WHEREAS, the stakeholder communities and interests involved in addressing the issues related to levees and water supply canals are different, and addressing them jointly through a single national program would not be conducive to effectively addressing either set of issues; and~~

WHEREAS, potential public safety problems involving water supply canals do not often involve a lack of engineering expertise or design standards, but the ability to finance necessary improvements; and

WHEREAS, Reclamation and the states are in the best position to address the public safety issues presented by water supply canals because such issues are localized and minor in comparison to the risks associated with inadequately designed and maintained levees; and.

WHEREAS, the U.S. Government Accountability Office (GAO) released a June 2016 report that found that WRRDA directed the U.S. Army Corps of Engineers and Federal Emergency Management Agency (FEMA) to: (1) reconvene the National Committee on Levee Safety; (2) develop a national levee inventory; (3) implement a multifaceted levee safety initiative; (4) report to Congress by June 10, 2015; (4) report on the feasibility of a joint dam and levee-safety program by June 10, 2017; and (5) submit a report with recommendations identifying and addressing legal liabilities of engineering levee projects; and

WHEREAS, GAO found that with the exception of continuing to develop a national levee inventory that the Corps and FEMA have made little progress in implementing key WRRDA requirements, given resource constraints; and recommended that they develop a plan with milestones for implementing the required activities using existing resources or request additional resources as needed.

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council supports the development of a national program of safety standards for levees and flood water conveyance canals; and

BE IT FURTHER RESOLVED, that ~~any proposed legislation creating~~ a national program of safety standards for levees and flood water conveyance canals should not apply to federal or non-federal water supply canals; and

BE IT FURTHER RESOLVED, that the Western States Water Council encourages the Administration and Congress to work together and determine the level of adequate funding for implementing the related requirements of the National Levee Safety Act of 2007, WRRDA 2014, and the Aging Water Infrastructure and Maintenance Act (Subtitle G of the Omnibus Public Lands Management Act of 2009).³

³ 123 Stat. 991, P.L. 111-11.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding the
CLEAN WATER STATE REVOLVING FUND
and the
DRINKING WATER STATE REVOLVING FUND**

**Arlington, Virginia
April 3, 2014**

WHEREAS, the economies of every state and the Nation as a whole depend upon sufficient water supplies of suitable quality, which require adequate water and sewer infrastructure; and

WHEREAS, the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund and Drinking Water State Revolving Fund (SRF programs) provide states with capitalization grants that are leveraged with state contributions to offer financial assistance to cities, towns, communities, and others for the planning, design, construction and rehabilitation of drinking water and wastewater-related infrastructure; and

WHEREAS, each state administers the SRF programs in coordination with EPA, and these programs are one of the principal tools that states use to pursue the goals of the Clean Water Act and Safe Drinking Water Act; and

WHEREAS, the nation's wastewater and drinking water infrastructure is aging and in need of repair and replacement; and

WHEREAS, the Environmental Protection Agency's (EPA) most recent estimates show a total capital investment need of \$271 billion for wastewater and stormwater infrastructure and \$384.2 billion for drinking water infrastructure nationwide over the next 20 years, and a significant funding gap exists under current spending and operation practices; and

WHEREAS, the 2017 American Society of Civil Engineers' Infrastructure Report Card and updated Failure to Act Report estimates that the gap in needed new capital investments in water and wastewater projects could lead to cumulative costs for businesses and households of \$105 billion by 2025, as well as a potential loss of up to 500,000 jobs, and by 2040 to costs of \$152 billion with 956,000 jobs at risk; and

WHEREAS, these estimates do not include anticipated operation and maintenance costs, nor an estimated \$30-\$40 billion unfunded gap related to calls for replacing some 7.3 million lead water service lines; and

WHEREAS, federal appropriations and budget requests that would reduce SRF funding ignore the multitude of needs as identified by EPA, particularly given that many states and communities are struggling to meet their water and wastewater challenges in the face of growing populations and aging infrastructure; and

WHEREAS, to the extent federal law has established certain nationwide levels of treatment for drinking water and wastewater, the federal government has an obligation to provide states with the necessary financial and technical assistance needed to comply with such requirements, including the appropriation of adequate funding for SRF capitalization grants; and

WHEREAS, EPA's Clean Water and Drinking Water Infrastructure Sustainability Policy mandates that state SRF programs promote sustainable systems; and

WHEREAS, the SRF Programs already have measures in place to ensure system sustainability and account for individual state needs and priorities; and

WHEREAS, the SRF programs are one of the most successful delivery mechanisms for federal assistance; and

WHEREAS, new competing water and wastewater infrastructure funding programs should not come at the expense of the SRFs, which are a proven model for addressing water and wastewater infrastructure needs; and

WHEREAS, Congress has approved a number of additional restrictions on the states' management and use of SRF funds, including but not limited to: (1) mandating the use of between 10% and 20% of appropriated funds for principal forgiveness, negative interest loans, grants, or a combination thereof; (2) setting aside 10% of funds for green infrastructure, water or energy efficiency, or other environmentally innovative activities; and (3) "American Iron and Steel" provisions that limit the use of SRF funds to purchase certain types of materials and services; and

WHEREAS, although often well-intended, these types of restrictions are generally aimed at advancing policy objectives that are unrelated or contrary to the SRFs' primary purpose of providing funding for basic water infrastructure; and

WHEREAS, these types of restrictions reduce flexibility, increase administrative burdens and capital costs, and hinder the states' ability to manage the SRFs in the most cost effective manner; and

WHEREAS, additional restrictions on state SRF management represent unfunded federal mandates that impose significant regulatory burdens and make state SRF programs less attractive to local entities; and

WHEREAS, every federal dollar directed away from addressing the primary goal of the SRF programs reduces the capacity of a state to leverage their SRF programs and address infrastructure needs; and

WHEREAS, the State and Tribal Assistance Grants (STAG), including Performance Partnership Grants (PPG) and other grants are critical to the state programs that assure that the nation's drinking water and water quality remain safe for the public health of the citizens; and

WHEREAS, STAG money is supplemented by state funds to implement Federal laws and regulations.

NOW, THEREFORE, BE IT RESOLVED, that the Administration and Congress should work together to ensure that stable and continuing federal appropriations are made to the SRF capitalization grants and State and Tribal Assistance Grants at funding levels that are adequate to help states address their water infrastructure needs and protect drinking water, water, and air for the benefit of the people.; and

BE IT FURTHER RESOLVED, that the SRF programs should provide for greater flexibility and fewer restrictions on state SRF management.

See also Position #330 adopted April 15, 2011 in Santa Fe, New Mexico.



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WHEREAS, the nation's wastewater and drinking water infrastructure is aging and in need of repair and replacement; and

WHEREAS, the Environmental Protection Agency's (EPA) most recent estimates show a total capital investment need of \$~~298-271~~ billion for wastewater and stormwater infrastructure and \$~~334.8~~384.2 billion for drinking water infrastructure nationwide over the next 20 years, ~~and~~ and

~~WHEREAS, the EPA has identified a significant funding gap exists of nearly \$55 [update] billion~~ under current spending and operation practices; and

~~WHEREAS, the American Society of Civil Engineers has reported that failure to address this funding gap could lead to \$206 billion in increased costs for businesses and households by 2020, as well as a potential loss of up to 700,000 jobs; and~~

WHEREAS, the 2017 American Society of Civil Engineers' Infrastructure Report Card and updated Failure to Act Report estimates that the gap in needed new capital investments in water and wastewater projects could lead to cumulative costs for businesses and households of \$105 billion by 2025, as well as a potential loss of up to 500,000 jobs, and by 2040 to costs of \$152 billion with 956,000 jobs at risk; and"

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WHEREAS, additional restrictions on state SRF management represent unfunded federal mandates that impose significant regulatory burdens and make state SRF programs less attractive to local entities; and

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WSWC Sunsetting Positions – Subsequent Related Actions

- **Position #364** – Regarding the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund (Apr 3, 2014)

Concerns have been raised over recommended cuts to EPA programs, particularly as it relates to State and Tribal Assistance Grants (STAG) and the SRFs, though it appears for now that SRFs spending will be held level. Appropriations peaked with the ARRA stimulus package and have since declined. Oklahoma and Montana have suggested changes to the sunsetting position.

- **Position #363** – Regarding the National Levee Safety Act of 2007 and the Interpretation of Levees and Water Supply Canals (Apr 3, 2014)

This position was adopted in part due to concerns that proposed guidance for evaluating flood control canal structures would be inappropriately applied to water supply canals, which serve a very different purpose and were already otherwise provided for under Reclamation law.

On June 10, 2014 the Water Resources Reform and Development Act (WRRDA) was signed into law. “Levee” is defined as an embankment, including floodwalls -- (i) the primary purpose of which is to provide hurricane, storm, and flood protection relating to seasonal high water, storm surges, precipitation, and other weather events; and (ii) that normally is subject to water loading for only a few days or weeks during a year. It includes structures along canals that constrain water flows and are subject to more frequent water loadings, but that do not constitute a barrier across a watercourse [a dam]. “Canal structure” means an embankment, wall, or structure along a canal or manmade watercourse that — “(i) constrains water flows; “(ii) is subject to frequent water loading; and “(iii) is an integral part of a flood risk reduction system that protects the leveed area from flood waters associated with hurricanes, precipitation events, seasonal high water, and other weather-related events.

This last provision appears to exclude water supply canals that are part of an irrigation or municipal water supply system.

Of note, in July 2016 the GAO issued a report concluding that the Corps and FEMA have made little progress in carrying out required levee safety activities, and recommending they develop a plan with milestones using existing resources or requesting additional resources as needed.
GAO-16-709

- **Position #362** – Regarding the Transfer of Federal Water and Power Projects and Related Facilities (Apr 3, 2014)

Since 1995, the Bureau of Reclamation, working closely with the beneficiaries of the specific projects, has conveyed title to a significant number of projects and project related facilities including dams, reservoirs, canals, lateral, and headquarter and other buildings, project lands, and easements. After analyzing a number of successful and unsuccessful title transfer, Reclamation established a flexible process with a general set of policies and criteria to govern the process of

developing a title transfer agreement which would then become the basis of legislation to authorize title transfer for each specific project.

Legislation to authorize the Secretary to undertake title transfers, within specific parameters, without additional action by Congress has been discussed but not enacted.

- **Position #361** – Regarding the Reclamation Safety of Dams Act of 1978 (Apr 3, 2014)

P.L. 114-113, the Consolidated Appropriations Act, 2016 (H.R. 2029) amended the act:

(Sec. 203) Amends the Reclamation Safety of Dams Act of 1978 to authorize Interior to conduct construction projects under the Act with benefits that include, but are not limited to additional conservation storage capacity. (Under current law, construction under the Act is limited to dam safety and does not include providing additional conservation storage capacity.)

(Sec. 204) Amends the Reclamation Safety of Dams Act of 1978 to increase: (1) the authorization of appropriations for construction under the Act, and (2) the limitation on appropriations that may be used to modify an existing dam. Requires Interior to notify Congress prior to obligating modification expenditures exceeding specified amounts.

The authorization for appropriations under the Act was raised by an addition \$1.1B raising the total authorized ceiling to over \$2.5B raising to \$20M the ceiling for a requirement that prohibits any obligation (over and above that amount) in carrying out actual construction to modify an existing dam prior to 30 calendar days from the date that the Secretary has transmitted a report on such existing dam to the House Natural Resources Committee and Senate Energy and Natural Resources Committee (previously it was the Congress).

- **Position #360** – Regarding the Bureau of Reclamation's Maintenance, Repair and Rehabilitation Needs (Apr 3, 2014)

In the last Congress, Rep. Paul Gosar (R-AZ) introduced the Bureau of Reclamation Transparency Act.

H.R. 1107 (Sec. 4) would direct the Department of the Interior to submit to Congress, make publicly available, and biennially update an Asset Management Report that describes the Bureau of Reclamation's efforts to maintain in a reliable manner all reserved works (with operations and maintenance performed by Bureau employees or through a contract with the Bureau) at Reclamation facilities (infrastructure assets owned by the Bureau) and to standardize and streamline data reporting and processes across regions and areas.

(Sec. 5) Interior must: (1) coordinate with the non-federal entities responsible for the operation and maintenance of transferred works in developing reporting requirements for Asset Management Reports regarding major repair and rehabilitation needs for transferred works, and (2) develop and implement a categorical rating system for transferred works that incorporates the rating system for major repair and rehabilitation needs for reserved works.

Related bills S. 593 and S. 2902 were introduced, respectively by Senators John Barrasso (R-WY) and Jeff Flake (R-AZ).

The legislation has been reintroduced in this Congress (H.R. 660 and S. 216).

GAO Highlights

Highlights of [GAO-16-709](#), a report to congressional committees

Why GAO Did This Study

Levees, which are man-made structures such as earthen embankments or concrete floodwalls, play a vital role in reducing the risk of flooding. Their failure can contribute to loss of lives or property, as shown by the devastation of Hurricane Katrina in 2005. It is estimated that there are over 100,000 miles of levees across the United States, many of which are owned or operated by nonfederal entities. The Corps and FEMA are the two principal federal agencies with authorities related to levee safety.

The Water Resources Reform and Development Act of 2014 requires the Corps and FEMA to take the lead on certain national levee-safety-related activities including developing a national levee inventory, which Congress authorized in 2007. The act also includes a provision for GAO to report on related issues. This report examines the Corps' and FEMA's progress in carrying out key national activities related to levee safety required in the act. GAO reviewed pertinent federal laws and executive orders as well as budget, planning, and policy documents from the Corps and FEMA; compared agency activities with federal internal control standards; and interviewed Corps and FEMA headquarters officials.

What GAO Recommends

GAO recommends that the Corps and FEMA develop a plan that includes milestones for implementing the required national levee-safety-related activities using existing resources or requesting additional resources as needed. The agencies generally concurred with GAO's recommendation.

View [GAO-16-709](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or fennella@gao.gov

July 2016

LEVEE SAFETY

Army Corps and FEMA Have Made Little Progress in Carrying Out Required Activities

What GAO Found

The U.S. Army Corps of Engineers (Corps) and the Federal Emergency Management Agency (FEMA) have made little progress in implementing key national levee-safety-related activities required in the Water Resources Reform and Development Act of 2014. More specifically, the Corps has been working to develop a national levee inventory, but the agencies have taken no action on the remaining key national levee-safety-related activities for which they are responsible under the act, as shown in the table below. Agency officials identified resource constraints as a primary reason for their lack of progress in implementing such activities, and Corps officials said that not implementing these activities could potentially result in safety risks and federal financial risks for disaster relief, among other impacts. However, the agencies have no plan for implementing the remaining activities required by the act. Without a plan that includes milestones for accomplishing these activities using existing resources or requesting additional resources as needed, the agencies are unlikely to make progress implementing the activities under the act.

Implementation Status, as of June 2016, of Key National Levee-Safety-Related Activities in the Water Resources Reform and Development Act of 2014

Activity	Implementation status	Statutory deadline	Agency responsible
Reconvene the national committee on levee safety	No action	None	Corps
Continue to develop national levee inventory	Ongoing	None	Corps
Implement multifaceted levee safety initiative	No action	Several	Corps and FEMA
Submit a report on the state of U.S. levees, the effectiveness of the levee safety initiative, and any necessary congressional actions	No action	June 10, 2015 and biennially thereafter	Corps
Submit a report including recommendations on advisability and feasibility of a joint dam and levee-safety program	No action	June 10, 2017	Corps and FEMA
Submit a report including recommendations that identify and address legal liabilities of engineering levee projects	No action	June 10, 2015	Corps

Source: GAO analysis of Corps and Federal Emergency Management Agency (FEMA) information. | GAO-16-709

Title Transfer of Projects and Facilities of the Bureau of Reclamation

The Bureau Reclamation is collaboratively pursuing title transfer with its customers and water contractors to convey ownership -- or title -- to water projects, canals, lateral and other water and power related infrastructure and facilities to the beneficiaries of those facilities.

This is a voluntary effort that is most often initiated by Reclamation's water and power contractors.

Title transfer is a tool for improving the efficiency of water management and dealing with an aging infrastructure. The transfer of title will divest Reclamation of responsibility for the operation, maintenance, management, regulation of, and liability for the project (or the lands and facilities) to be transferred. It will also provide the non-Federal entity with greater autonomy and flexibility to manage the facilities to meet their current needs in compliance with Federal, state and local laws and in conformance with contractual obligation. The transfer of title to a project or set of facilities will, in effect, sever Reclamation's ties with that project or those conveyed facilities.

Under the Reclamation Act of 1902, while responsibility for operations, maintenance and replacement (OM&R) of facilities can, and often is, transferred to the water users, title, or ownership of the facilities and projects themselves, must remain with the United States until Congress specifically authorizes their transfer.

Since 1995, the Bureau of Reclamation, working closely with the beneficiaries of the specific projects, has conveyed title to a significant number of projects and project related facilities including dams, reservoirs, canals, lateral, and headquarter and other buildings, project lands, and easements. List of projects/facilities conveyed (Powerpoint - 311 KB) .

POLICIES AND TITLE TRANSFER PROCESS: In 1995, after analyzing a number of successful and unsuccessful efforts to transfer title that had been attempted over the previous decade or so, Reclamation established a flexible process. This included a general set of policies and criteria to govern the process of developing a title transfer agreement which would then become the basis of legislation to authorize title transfer for each specific project. The Framework for the Transfer of Title Bureau of Reclamation Projects (PDF - 35KB) articulates the process and those broad general criteria that governs this effort.

In subsequent years, after evaluating the lessons learned along the way, Reclamation has continued to work with its customers and stakeholders to streamline and improve the process. In 2004, the Framework was updated and in 2006, as part of the Managing for Excellence Initiative, Reclamation streamlined the title transfer process to make it more transparent, clear and consistent.

The most important lesson learned during this review is that having a clear and consistent process is very important and those that followed the title transfer process (Powerpoint - 717

KB), were able to address concerns and complete the transfer, including the legislation required to authorize the transfer, in a more timely, less costly and less controversial manner.

In order to ensure that all the parties fully understand the process, the issues and what facilities are being considered, Reclamation, in conjunction with the National Water Resources Association and the Family Farm Alliance, developed a title transfer checklist (MS Word - 27 KB) that Reclamation, together with the entity interested in title transfer, go through to identify the assets to be considered for conveyance, the interests (why they want title), the stakeholders who need to be involved and the steps that need to be followed.

Because title transfer is considered a “major Federal Action” under both the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), Reclamation’s title transfer process requires compliance with the requirements of both of these statutes. Further, the public scoping and public involvement processes of NEPA provide a good mechanism for ensuring that the process for title transfers is transparent, open and seeks the input of interested stakeholders.

CONTACTS: For information and details about the title transfer of a specific project or set of facilities, please contact Reclamation’s area office which manages those facilities.

For information about general policies and title transfer activities, please contact James Hess, who serves as Reclamation’s Title Transfer Coordinator (jhess@usbr.gov).

**FRAMEWORK
FOR THE
TRANSFER OF TITLE
BUREAU OF RECLAMATION PROJECTS
AUGUST 7, 1995
(Updated September, 2004)**

The criteria and guidance outlined in this document applies to "uncomplicated" projects. "Uncomplicated" projects are generally defined in the Scope of Application section following. This guidance is intended to initiate the Bureau of Reclamation's title transfer process.

This guidance does not apply to the more complicated projects, e.g., large multi-purpose projects where there is no consensus among the project beneficiaries concerning the transfer, where more than one competent beneficiary has expressed an interest in acquiring title, or where the institutional and legal concerns cannot be readily resolved.

BACKGROUND: The Reclamation program was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. The results of that work are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water in the United States, the sixth largest electric power generator, and the manager of 45 percent of the surface water in the Western United States. Many of these projects were constructed at a time when there were no local communities and utilities. Today much of the West is settled and is, in some respects, the most urbanized region of the country. Reclamation owns and operates public utility facilities which, if located in other parts of the country, would likely be owned, operated, and funded by publicly regulated private corporations or local government agencies. While it has been Reclamation's policy for decades to transfer operation and maintenance of projects to local entities where and when appropriate, interest in the actual transfer of title (with its attendant responsibilities) is now growing.

PURPOSE

As part of the second phase of the National Performance Review (REGO II), Reclamation initiated an effort to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not identified as having national importance. This effort is recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project and will provide the non-Federal entity with greater autonomy and flexibility to manage the facilities to meet their current needs in compliance with other Federal, state and local laws and in conformance with contractual obligation. The transfer of title to a project or set of facilities will, in effect, sever Reclamation's ties with that project.¹

SCOPE OF APPLICATION OF FRAMEWORK

It is Reclamation's intent to transfer title and responsibility for certain projects or facilities, when and where appropriate, to qualifying non-Federal interests. Uncomplicated projects are projects or facilities where there are no competing interests, the facilities are not hydrologically integrated with other projects, the financial arrangements are relatively simple and easily defined, and the legal and institutional concerns² associated with a transfer can be readily addressed. In other words, after meeting the requirements set forth in the Criteria section below, projects will be selected for title transfer on the basis of the transfer being achievable and able to move forward quickly.

For purposes of this document and the transfer of title to the projects, the terms "beneficiary" and "stakeholder" are defined as follows: (a) **beneficiary** refers to (i) contractors and others who receive direct benefits under the authorized purposes for that project and (ii) non-Federal governmental entities in the project area; (b) **stakeholder** is a broader term and includes the beneficiaries, as well as those individuals, organizations, or other entities which receive indirect benefits from the project or may be particularly affected by any change from the status quo.

CRITERIA FOR TITLE TRANSFER

Following are the six major criteria that must be met before any project is transferred:

¹ Note: Reclamation recognizes that the complete severance of the relationship between Reclamation and the transferee may not be possible in all instances.

² Such concerns include, but are not limited to, unresolved Native American claims, endangered species considerations, international or interstate issues, absence of consensus among beneficiaries, significant disagreements raised by the stakeholders, a need to prepare an Environmental Impact Statement, and substantive objections from other governmental entities.

- 1) The Federal Treasury, and thereby the taxpayer's financial interest, must be protected
- 2) There must be compliance with all applicable State and Federal laws
- 3) Interstate compacts and agreements must be protected
- 4) The Secretary's Native American trust responsibilities must be met
- 5) Treaty obligations and international agreements must be fulfilled
- 6) The public aspects of the project must be protected

GENERAL GUIDANCE FOR DETERMINING PROJECTS ELIGIBLE FOR TRANSFER

Reclamation Area offices will review projects nominated by an interested transferee and will pursue negotiations regarding those projects where the issues associated with transfer are relatively easy to resolve. This could include projects with multiple purposes and numerous stakeholders, but only if it is clear that outstanding issues are resolved and that there is consensus among the stakeholders.

Reclamation will not initiate negotiations on those projects where title transfer will involve a protracted process to ensure that the six criteria listed above are met.

Generally, Reclamation will not pursue transfer of powerhouses and generating facilities where power is marketed by the Power Marketing Administrations or where such power is used for purposes not directly associated with project purposes.

GENERAL GUIDELINES APPLYING TO TRANSFERS

All transfers will be voluntary.

Reclamation's intent is to transfer projects to current project beneficiaries, including non-Federal governmental entities, or to entities approved by the current beneficiaries.

All transfers must have the consent of other project beneficiaries. If another beneficiary raises substantive objections which cannot be resolved, the project will remain in Federal ownership.

Reclamation will comply with National Environmental Policy Act and other applicable laws in all transfers.

All transfers must ensure the United States' Native American trust responsibilities are satisfied. In addition, outstanding Native American claims that are directly pending before the Department and that would be directly affected by the proposed transfer will be resolved prior to transfer.

Reclamation officials will meet with representatives from all interested Federal and State agencies to consider their concerns early in the transfer process.

Potential transferees must be competent to manage the project and be willing and able to fulfill all legal obligations associated with taking ownership of that project, including compliance with Federal, State, and tribal laws that apply to facilities in private ownership and assumption of full liability for all matters associated with ownership and operation of the transferred facilities. Potential transferees must be able to demonstrate the technical capability to maintain project safety on a permanent basis and an ability to meet financial obligations associated with the project.

In general, it is Reclamation's expectation that, upon the transfer of title to a project, its jurisdiction over that project will be divested. Reclamation further recognizes that in some cases the complete divestiture of jurisdiction may not be attainable because the transferee still receives water supplied from a Reclamation facility, or only a portion of the project was transferred and the rest of the project remains in Federal ownership, or there are other extenuating circumstances. The degree to which the Reclamation Reform Act of 1982 will apply following transfer will be negotiated on a case-by-case basis.

The financial interests of the Government and general taxpayers will be protected. Transferees must agree to fair and equitable terms based upon the factual circumstances associated with each project. (See attachment which describes the valuation of projects.) Transferees will be expected to pay upfront the estimated transaction costs, such as costs associated with compliance with the National Environmental Policy Act, real estate boundary surveys, and so forth. The Federal share of any transaction costs will either be deducted from the "price" paid by the non-Federal entities pursuant to the valuation methodology or paid as an in-kind service for work done by Reclamation staff. Reclamation will not provide new loans to finance transfers.

No transferred Federal asset will be considered for federal assistance for project operation, maintenance, and replacement or capital construction purposes following completion of the transfer.

Prior to the initiation of detailed discussions on title transfer, Reclamation and the potential transferees will execute an agreement covering the responsibilities of all parties during the negotiations.

A base value will be determined for each project as it becomes the subject of serious negotiations for transfer. (See attached guidance on valuation.) The negotiated price for the project may deviate up or down from the base value. It will be necessary for Reclamation and the interested non-Federal entity to document how the factual circumstances and equitable treatment considerations justify such adjustments. In addition, Reclamation may consider future uses on the transferred lands and waters in establishing a price.

Potentially affected State, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussions to transfer title and will have (1) the opportunity to voice their views and suggest options for remedying any problems and (2) full

access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner.

Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer of each project or feature.

Title Transfer Checklist

	District	Reclamation	Comment/Explanations
1. Why do you want title Transfer?			
2. Who would oppose this transfer & why?			
3. Project Features			
A. Multiple Purpose?			
B. Single Purpose?			
C. Authorized Project Purposes			
1. Irrigation			
2. M&I			
3. Power			
4. Flood Control			
5. Fish and Wildlife			
6. Recreation			
7. Highway Improvement			
8. Other Considerations			
D. What Project Facilities/Assets Are there?			
1. Dam			
2. Reservoir			
3. Canals/Laterals			
4. Distribution			
5. Drainage & Conveyance			
6. Lands			
7. Buildings			

	District	Reclamation	Comment/Explanations
8. Power generation facilities			
9. pumping plant(s)			
10. transmission lines & equipment			
11. Other (Dikes, fish facilities, diversion structures, etc.)			
E. Which facilities are proposed for transfer?			
F. Physical considerations of other interests adjacent to or intermingled with the Project?			
1. State Park			
2. Forest Service/BLM			
3. Tribe(s)			
4. Cabin Sites			
5. Recreation Facilities			
6. Other Districts			
7. Other			
4. Issues/Considerations			
A. What changes does the District intend to make to project purposes?			
B. Are there international treaties (e.g. Water to Mexico, Flyway and habitat treaties,) that affect project operations?			
C. Interstate Compacts or concerns?			
D. Threatened or Endangered species?			

	District	Reclamation	Comment/Explanations
E. Are there Tribal issues (water rights, nearby Tribes, sacred sites, non-adjudicated water)?			
F. Are the facilities operationally or financially integrated with this facility?			
5. Repayment Status			
6. Land Ownership Status.			
A. Fee Title			
B. Withdrawn			
1. BLM			
2. Forest Service			
3. Other			
C. Canal Act			
D. Subsurface Rights			
E. Easement & Rights of Way			
F. Other			
7. Water Rights (Do they want title?)			
A. Direct Flow			
B. Storage Rights			
C. Other State Requirements			
8. RRA Compliance			
A. Full Transfer (Exempt)			
B. Partial Transfer (Comply)			
9. Incidental Revenue from Project Lands			
A. Grazing leases			
B. Oil & Gas			
C. Timber			

	District	Reclamation	Comment/Explanations
D. Minerals			
E. Water Sales			
F. Wheeling			
G. Lease of power			
H. Other			
10. Existing Contracts			
A. Repayment (9(d))			
B. Water Service			
C. M&I			
D. Other			
11. Safety of Dams Issues			
A. Are there SOD activities on-going or planned?			
A. Is there currently instrumentation monitoring done by Reclamation?			
B. Who will serve as the “responsible party for safety of dams activities?			
C. Who will carry out inspections etc.?			
12. Are there Environmental Mitigation Lands?			
13. Compliance Issues Requd.			
A. NEPA			
1. Transfer			
2. Project operations			
B. ESA Restrictions			
C. Cultural/Historic Preservation Resources			

	District	Reclamation	Comment/Explanations
D. Hazardous Materials Site Assessment			
14. Unauthorized Uses of Water which might complicate transfer?			
15. Salinity or Selenium Concerns			
16. Water Quality/Clean Water Act Concerns?			
17. Operations, Maintenance & Replacement			
A. Who Carries out OM&R Activities?			
B. What is the District's capabilities and competence to assume all OM&R responsibilities (Describe in detail)			
C. Critical maintenance issues			
D. O&M Reviews			
1. When was the last one completed?			
2. Is there one scheduled or programmed?			
18. Workforce Considerations			
A. Will Federal employees be affected by the transfer?			
B. Can existing Federal employees be protected in the transfer?			
C. Right of First Refusal			

	District	Reclamation	Comment/Explanations
19. Aid to Irrigation			
20. Project Power			
A. Is there a difference between the preference & project rates? Contracts			
B. Are there provisions in the Project's authorizing legislation on project or pumping power?			
C. Which Power Marketing Agency is involved?			
21. Are they willing to assume liability?			
22. Outstanding litigation that could impact transfer?			
23. What level of Public Involvement & Participation are they Willing to carry out?			
24. Delineate beneficiaries (contractors), stakeholders, general public. Have all interested parties been notified of potential transfer?			
25. Stakeholders			
A. Non-Federal			
1. Irrigation			
2. M&I			
3. Recreation			
4. Environmental Groups			
5. Power			
6. landowners			

	District	Reclamation	Comment/Explanations
7. County Gov't			
8. City Government			
9. State (Water resources, State Engineer, Fish and Game, SHPO, water quality, public health, parks and recreation)			
10. Tribes			
11. Leaseholders (cabin)			
12. Leaseholders (grazing, oil & gas etc.)			
13. Other			
B. Federal Agencies			
1. BLM			
2. National Park Service			
3. BIA			
4. Fish & Wildlife Service			
5. MMS			
6. Corps of Engineers			
7. NOAA Fisheries			
8. WAPA/BPA			
9. Treasury			
10. Defense (Army, Navy etc.)			
11. FERC			
12. EPA			
13. OMB/CBO			
14. IG/GAO			
15. Congressional Staff			
a. House Member(s)			
b. Senator(s)			
c. House Committee Staff			

[illegible]

WSWC POLICY STATEMENTS

Position Number	Committee Oversight	Date Adopted	POSITIONS (Policy positions will be deactivated three (3) years after their adoption, unless extended by formal action of the Council.)
398	L	9/30/2016	Urging Congress to reaffirm its deference to state water law, provide for the waiver of the United States' immunity to participation in state administrative and judicial proceedings, payment of fees required by state law
397	WR	9/30/2016	Continuing support for implementation of the SECURE Water Act
396	WR	9/30/2016	Urging the Administration and NASA to enhance focus on research for water resources applications
395	WR	7/15/2016	Urges the Administration and the Congress to support water research and development programs at the Department of Energy National Laboratories
394	WR	7/15/2016	Opposes removal of "fish and wildlife" as an authorized purpose for which the Corps can manage the Missouri River Mainstem Reservoir System
393	WR	7/15/2016	States the WSWC "...opposes any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing
392	WR	7/15/2016	Supports federal efforts to prepare for and respond to extreme weather events, including an expanded and enhanced west-wide extreme precipitation monitoring system.
391	WR	3/22/2016	Supports renewable hydropower development
390	WR	3/22/2016	Supporting rural water infrastructure needs and projects
389	WR	3/22/2016	Urging the Administration and the Congress to prioritize federal programs that translate science on climate and weather extremes to water resources management actions
388		10/9/2015	Regarding States' Water Rights and Natural Flows
387	WR	10/9/2015	Regarding Bureau of Reclamation Drought Response Program
386	WR	10/9/2015	Regarding Drought Preparedness, Prediction and Early Warning Programs
385	WR	10/9/2015	Regarding Federal Water and Climate Data Collection and Analysis Programs
384	E	10/9/2015	A Vision on Water
383	E	7/10/2015	A Vision on Water
382	WQ	7/10/2015	Regarding Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
381	WR	7/10/2015	Regarding the Rural Water Supply Project/Infrastructure Needs
380	WR	4/17/2015	On State Primacy over Groundwater
379	WR	4/17/2015	Supporting Federal Climate Adaptation Research
378	WR	4/17/2015	Regarding Integrating Water and Energy Policy and Planning
377	WQ	10/10/2014	Asserting state primacy on Protecting Ground Water Quality
376	L	10/10/2014	Supporting Indian Water Rights Settlements
375	L	10/10/2014	Outlining actions Federal agencies should take to expedite State General Stream Adjudications
374	L	10/10/2014	Supports the Dividing the Waters Program
373	WQ	10/10/2014	Letter commenting on the proposed rule developed by the EPA and the USACE to clarify the scope of Clean Water Act jurisdiction (combined file)
372	WR	10/3/2014	Letter sending comments on the USFS Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560
371	E	8/11/2014	Regarding Water-Related Federal Rules, Regulations, Directives, Orders and Policies
370	WQ	8/11/2014	Regarding the Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices
369	WQ	7/18/2014	Regarding Clean Water Act jurisdiction
368	WR	7/18/2014	Supporting the Water Resources Research Institutes (requesting Congress to maintain the federal authorization and financial support for the state WRRRI program)
367	WR	7/18/2014	Regarding the Reclamation Fund (asks Congress to fully appropriate the receipts and collections accruing to the Reclamation Fund)
366	WR	7/18/2014	Supporting Federal Research and Development of Updated Hydroclimate Guidance for Floods and Droughts
365	L	7/18/2014	Regarding Preemption of State Water Law in Federal Legislation
364	WQ	4/3/2014	Regarding the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund
363	WR	4/3/2014	Regarding the National Levee Safety Act of 2007 and the Interpretation of Levees and Water Supply Canals
362	WR	4/3/2014	Regarding the Transfer of Federal Water and Power Projects and Related Facilities
361	WR	4/3/2014	Regarding the Reclamation Safety of Dams Act of 1978
360	WR	4/3/2014	Regarding the Bureau of Reclamation's Maintenance, Repair and Rehabilitation Needs

Sunsetted Positions

2016

- #359 Opposing requiring pesticide applications for National Pollutant Discharge Elimination System (NPDES) discharge permits. (*outdated*)

2015

- #338 Energy and Water Integration Act of 2011. (*outdated*)
- #341 Letter regarding concerns with the Bureau of Reclamation's proposed changes to the Reclamation Manual. (*outdated*)

2013

- #323 A Shared Vision on Water Planning and Policy. (*superceded by more recent position*)

2012

- #313 Letter Regarding National Water Research and Development Initiative Act. (*There is no current legislation*)
- #315 Letter to House Transportation and Infrastructure Committee leaders raising concerns regarding a draft bill entitled the Sustainable Watershed Planning Act. (*outdated, not reintroduced*)
- #317 Supporting the Bureau of Reclamation's Field Services Program. (*outdated*)
- #318 Offering general comments to CEQ on the Principles and Guidelines. (*outdated*)
- #319 Describing principles that are important to the Western states in considering a "national vision" for water policy. (*superceded by more recent position*)

2011

- #297 Strong support for legislation to establish a National Drought Council to improve national drought preparedness, mitigation, and response efforts. (*There is no current legislation*)
- #298 In cooperation with the Interstate Council on Water Policy expressing strong support for increased funding for the Cooperative Water Program and the National Streamflow Information Program. (*superceded by more recent position statements and letters*)
- #299 Supporting S. 2842, the Aging Water Infrastructure and Maintenance Act. (*enacted*)
- #300 Regarding introduction of the Cooperative Watershed Management Act of 2008 (S. 3085). (*enacted*)
- #301 Commenting on H.R. 135, the "21st Century Water Commission," specifically declaring that the WSWC be involved in the selection of members and that it include State and Native American involvement. (*Bill has not been reintroduced*)

- #302 Supporting the enactment of S. 895 to provide the Bureau of Reclamation with authority to assess rural water supply needs and for sufficient funding. (*enacted*)
- #303 Revised resolution in support of the Weather Modification Research and Technology Transfer Act. (*No federal research program or legislation has been reintroduced*)
- #306 Urging support for full funding of the USGS National Streamflow Information Program (NSIP) and sufficient funding for the Cooperative Water Program to match non-USGS contributions. (*outdated*)
- #307 Letter to Senator Bingaman, Senate Energy and Natural Resources Committee, expressing interest in S. 3231, the Omnibus Public Lands Management Act. (*outdated*)
- #311 Letter to Steve Stockton offering assistance to the Corps in their water planning initiative. (*outdated*)

2010

- #287 Setting forth the Council's past perspectives on a proposed "Twenty-First Century Water Commission." (*outdated - see #301 above*)
- #289 Support of the proposed Water Conservation, Efficiency and Management Act, to specifically authorize the Bureau of Reclamation's water conservation programs. (*separately authorized*)
- #290 Concern over the Administration's decision to zero out funding for the U.S. Bureau of Reclamation's Technical Assistance to States (TATS) Program. (*outdated*)
- #291/#292 Regarding the proposed Agricultural Water Enhancement Program. (*enacted*)
- #295 Concern over budget request for federal funding for water and wastewater treatment, specifically EPA's State Revolving Fund (SRF) Capitalization Grants. (*combined with #296 and replaced with #330 – Apr 15, 2011*)
- #296 Concern with OMB directive to EPA disallowing the use of SRF revenues to repay bonds. (*combined with #295 and replaced with #330 – Apr 15, 2011*)

2009

- #276 Urging the Congress and Administration to Continue to Recognize State Primacy Regarding Water Rights and Water Quality Certification in the Federal Licensing of Hydroelectric Projects. (*supplanted by WGA resolution*)
- #277 Letter commending the American Indian Environmental Office of EPA for its efforts in establishing the Tribal Water Program Council and expressing a hope that it would "offer an ongoing opportunity for state-tribal cooperation on issues of mutual interest." (*outdated*)
- #279 Support for legislation (S. 2751 and H.R. 5136) to create a National Integrated Drought Information System within the National Oceanic and Atmospheric Administration. (*authority enacted*)
- #280 Strong support for federal legislation, the National Drought Preparedness Act, to establish a national policy for drought and coordinate "proactive measures at all levels of government to plan,

prepare and mitigate the serious impacts of drought.” (*deferred to WGA resolution*)

- #281 Support for Reclamation’s Water Conservation Field Services Program and “Bridging-the-Headgate” Partnerships. (*outdated*)
- #282 Regarding Federal Non-Tribal Fees in General Adjudications asking the Congress to pass legislation requiring the Federal government, when a party to a general water rights adjudication, to pay fees for costs imposed by the state to conduct the proceedings to the same extent as all other users. (*deferred to WGA resolution*)
- #283 Reiterating strong support for maintaining a thermal band as part of the Landsat Data Continuity Mission, and the necessary funding. (*separately updated*)

2008

- #262 Support for the U.S. Geological Survey’s Cooperative Water Program (CWP) and opposes any effort to force the privatization of related USGS services. (*separately updated*)
- #268 The Western States Water Council endorses policy resolutions adopted by the Western Governors’ Association, and will allow these policies to guide the Council in matters relevant to implementation and potential reauthorization of the Clean Water Act. (*deferred to WGA resolution*)
- #269 Water Efficiency Standards for Plumbing Products (*subsequently enacted*)
- #270 Reauthorization of the Farm Bill. (*reauthorized*)
- #271 Support for the National Aeronautics and Space Administration’s Landsat Data Continuity Mission and calling for continued funding to include a thermal infrared sensor. (*superceded by 2009 WSWC Position No. 283*)
- #273 Support for the Nonpoint Source Grant program administered by the U. S. Environmental Protection Agency under Section 319 of the Clean Water Act. (*outdated*)

Tab D – Budget

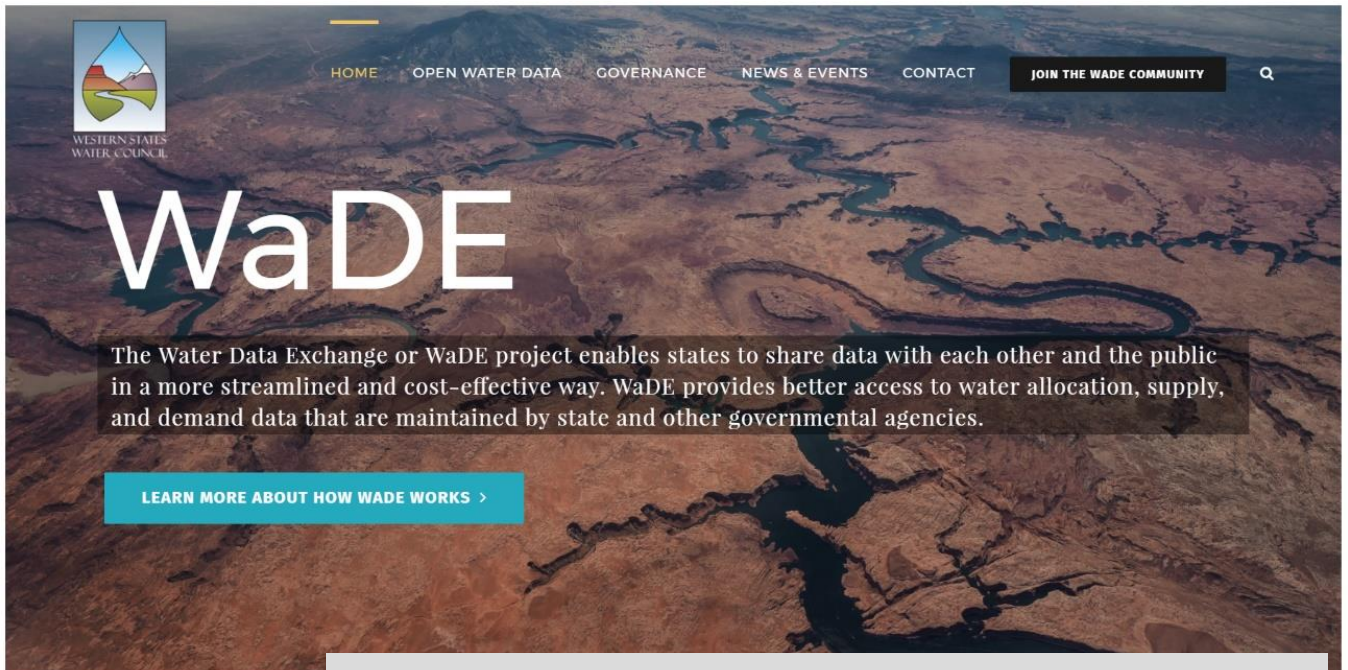
W S W C Proposed FY18 Budget

		FY 2016 Actual Total Income / Expense		Approved Budget FY2017	Estimated FY2017 Expenses/Income		Proposed Budget FY2018	% Change from FY2017 Estimated Expenditures
<u>INCOME</u>								Over / -Under
Member States Assessments	1	\$ 510,000.00	1	\$ 510,000.00	\$ 510,000.00	\$	510,000.00	0.00%
Newsletter		\$ 3,400.00		\$ 3,400.00	\$ 3,100.00	\$	2,900.00	-6.45%
EPA EN Contracts		\$ 99,674.77		\$ 118,000.00	\$ 100,521.00	\$	114,000.00	13.41%
CDWR Contracts		\$ 1,602.62		\$ 34,000.00	\$ 88,778.00			-100.00%
Council Meeting Sponsors		\$ 5,970.19		\$ 7,000.00	\$ 9,500.00	\$	7,000.00	-26.32%
Symposium (WSWC / NARF)		\$ 34,628.00		\$ -	\$ -	\$	34,630.00	
Symposium/Workshop Sponsors		\$ 5,000.00		\$ -	\$ 15,000.00	\$	20,000.00	33.33%
Interest		\$ 4,986.85		\$ 5,000.00	\$ 5,000.00	\$	3,000.00	-40.00%
Other		\$ 831.00		\$ -	\$ -	\$	-	
TOTAL INCOME		\$ 666,093.43		\$ 677,400.00	\$ 731,899.00	\$	691,530.00	-5.52%
<u>EXPENSE</u>								
Accounting		\$ 8,700.00		\$ 8,200.00	\$ 8,700.00	\$	9,000.00	3.45%
Annual & Sick Leave Funding				\$ -	\$ -	\$	-	
Audit	2	\$ 8,540.00	2	\$ -	\$ -	\$	8,670.00	
Contingencies		\$ 4,072.98		\$ 4,000.00	\$ 6,000.00	\$	5,800.00	-3.33%
Contract Services		\$ 8,401.65		\$ 4,000.00	\$ 22,000.00	\$	20,000.00	-9.09%
Equipment Replacement Fund		\$ 3,000.00		\$ 3,000.00	\$ 3,000.00	\$	2,500.00	-20.00%
Furniture-Equipment		\$ 1,791.13		\$ 700.00	\$ 1,350.00	\$	1,000.00	-25.93%
Insurance		\$ 727.00		\$ 800.00	\$ 900.00	\$	900.00	0.00%
Maintenance Contracts		\$ 7,222.57		\$ 5,500.00	\$ 5,500.00	\$	6,000.00	9.09%
Meeting Expenses (WGA & Arkadin)		\$ 24,315.58		\$ 18,000.00	\$ 30,000.00	\$	21,300.00	-29.00%
Office Supplies		\$ 2,205.20		\$ 2,300.00	\$ 3,300.00	\$	2,800.00	-15.15%
Payroll Benefits		\$ 124,182.11		\$ 169,565.00	\$ 136,200.00	\$	141,100.00	3.60%
Healthcare								
Pension								
Payroll Salaries		\$ 305,964.84		\$ 316,700.00	\$ 320,934.00	\$	329,710.00	2.73%
Payroll Taxes		\$ 25,384.71		\$ 26,855.00	\$ 26,855.00	\$	27,960.00	4.11%
Pension Management		\$ 3,370.05		\$ 3,400.00	\$ 3,400.00	\$	3,740.00	10.00%
Postage & Freight		\$ 4,556.88		\$ 4,500.00	\$ 2,800.00	\$	3,000.00	7.14%
Printing & Reproduction		\$ 3,628.21		\$ 3,700.00	\$ 4,600.00	\$	5,000.00	8.70%
Rent Expense/HOA Fees/Property Tax		\$ 36,483.61		\$ 34,000.00	\$ 15,900.00	\$	5,915.00	-62.80%
Reports & Publications		\$ 5,704.10		\$ 5,600.00	\$ 5,700.00	\$	5,700.00	0.00%
Symposium (CDWR)		\$ 3,967.01		\$ -	\$ 7,500.00	\$	7,500.00	0.00%
Symposium (WaDE)				\$ -	\$ -	\$	-	
Symposium (WSWC / NARF)		\$ 27,463.52		\$ -	\$ -	\$	27,500.00	
Telephone/Internet (UBS & Comcast)		\$ 2,285.43		\$ 2,300.00	\$ 4,800.00	\$	5,000.00	4.17%
Travel		\$ 58,737.31		\$ 49,400.00	\$ 47,000.00	\$	49,435.00	5.18%
Utilities (Questar & Murray Power)				\$ 2,880.00	\$ 1,900.00	\$	2,000.00	5.26%
TOTAL EXPENSES		\$ 670,703.89		\$ 665,400.00	\$ 658,339.00	\$	691,530.00	5.04%
NET RESERVE GAIN(LOSS)		\$ (4,610.46)		\$ 12,000.00	\$ 73,560.00	\$	-	
TOTAL ESTIMATED RESERVE		\$ 589,605.89			\$ 353,165.00			

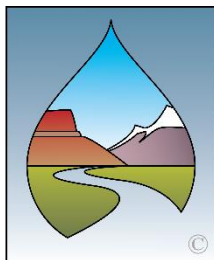
1 Full dues from 17 states

2 Management subcommittee approved change to biannual audit

Tab E – Water Data Exchange (WaDE)
Program Update/Expansion



A new WaDE website and community forum will serve as a more effective way to receive feedback, implement proposed changes, and discuss topics surrounding “open water data” concepts and news.

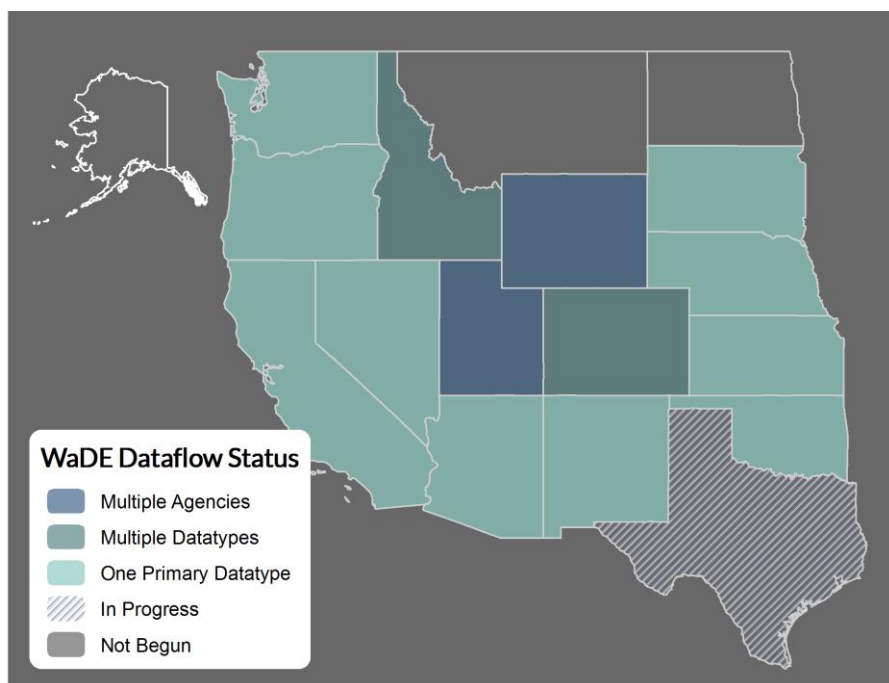


WESTERN STATES
WATER COUNCIL

WaDE and Open Water Data, 2017 - The past year has been very busy for the WSWC and the Water Data Exchange (WaDE) Program. With initial participating states providing “lessons learned,” remaining states have benefitted from a more streamlined and efficient deployment process. Future deployments and updates will take advantage of more robust hosting technologies.

Engagement with New Partners to Expand Datatype Coverage. Throughout the fall of 2016, the WSWC worked with the Utah Department of Environmental Quality, Utah State University, and California Department of Water Resources to investigate publication of datatypes not currently in WaDE that can be made more “open”, specifically near real-time water quality sensor data sharing, and sensor-based reporting for groundwater wells. By piloting the publication of these two datatypes with the partners, WSWC hopes to demonstrate how access to sensor-based information can lead to more informed decision-making, and serve as an early warning system when detrimental conditions develop in monitored surface and groundwater bodies.

Participation in the Aspen Institute Dialogue Series. Other WSWC outreach efforts this past year included attending an Aspen Institute Dialogue Series on Integrating Water Data for Sustainability. These meetings brought together a select group of water managers, policy makers, regulators, state agency leaders, and others from the private and public sectors to develop a set of principles and recommendations for “open water data.” The discussion sought to articulate the value of investing in, sharing, and integrating data systems for more sustainable water management. The Aspen Institute will publish their findings in a summer of 2017 report. WaDE was discussed and highlighted as a significant collaborative partnership and first step toward greater water data sharing and integration.

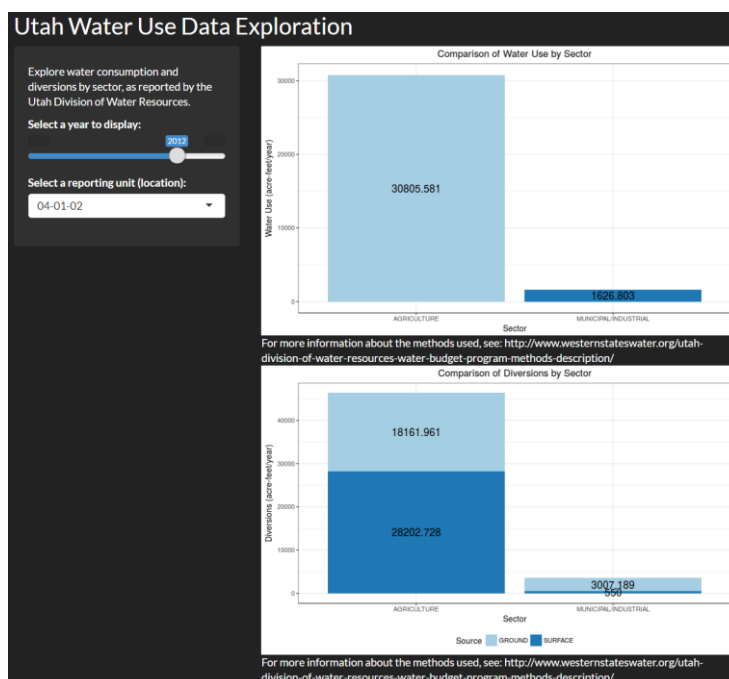


Eight additional agencies (six states) began to flow data in the WaDE framework this past year, a major accomplishment. However, more work needs to be done to include more states and identify additional datasets that can be shared. Most partners are sharing one targeted WaDE datatype.

WaDE Expansion and Release. A majority of WSWC members are now flowing data in the WaDE platform. The datatypes vary and regional comparability is limited; however, as a first step toward a truly collaborative water data-sharing platform, WaDE is a significant achievement. A new website dedicated to the project (wade.westernstateswater.org) includes new ways to access data – by datatype as well as by location – and a community forum for discussing open water data topics and requesting changes. This makes it much easier to suggest improvements and provide updates. The WSWC will reconvene the Water Information and Data Subcommittee (WIDS) to oversee the project in the coming year. Please join WIDS if you would like to help with WaDE, and planning of a 2017 Water Information Management Symposium.

Demonstrating utility via use cases for specific WaDE customers. The USGS Water Use and Data Research (WUDR) Program is a natural fit for WaDE. USGS would like to be able to increase the frequency and the quality of the water use updates they receive from state partners, and some states would like to be able to share their water use data through WaDE to serve this purpose. WSWC has worked with the USGS Water Science Center in Utah to develop a use case application, built on R and Shiny (a data visualization software package), that automatically pulls Utah's water use data into a graphical interface. This makes it easy to walk through each year and basin's water withdrawals and consumptive use by sector, as well as the related metadata.

Screenshot of the Utah Water Use Data Exploration R/Shiny Application



WaDE Overview

What is WaDE and why is it Important?

How much water is there? What is its quality? How is it currently being used? Improving our water data infrastructure, quality, and availability is one of the country's most pressing challenges, but it is one that will enable us to more sustainably manage our most precious resource. To address this challenge the Western States Water Council (WSWC) aimed to formulate a strategy and to develop a framework for its member states to begin to share important water supply, water use, and water administration datasets with each other, with federal partners, and with the public, called the Water Data Exchange or WaDE for short. State agencies understand that, with growth and climate change, droughts and floods, energy and food security issues, and just plain curiosity, questions surrounding water availability and use are not going away. They know there is a need to develop a cost-effective, easy-to-update way to get the information out to interested parties in an ongoing fashion.

A Principles Based Approach to Data-Sharing

Taking a principles-based approach, the Council has sought to articulate and put into action its vision for sharing water data. These principles include: (1) making transparency, openness, discoverability, and accessibility the default for all public water data, while also ensuring the highest levels of security and privacy for stakeholders where needed; (2) whenever possible, sharing data using developed standards and machine-readable formats, including thoroughly documented metadata, which will promote interoperability, regional analyses, and user flexibility; and (3) taking a federated approach where data-producers maintain control over and responsibility for their information. This allows them the freedom to share what they wish (or not) at any point in time through the WaDE portal.

A Collaborative Achievement

Since 2012, the Council has been laying the foundation for an effective program. This includes the mundane tasks of surveying and outreach to data providers, procuring additional resources for states who needed assistance, forming partnership to oversee the funds and other governance, development of the WaDE code and application, extensive assistance for implementation with state partners, as well as ongoing maintenance and updates. It's not glamorous work, but cumulatively it represents a tremendous step forward in not only the data-sharing and publishing practices within the states, but the in the way we value the information we have concerning our resources. We are starting to think of water data beyond its limited and specific mission, and beginning to see the limitless value of high-quality data shared in a way that is easily discoverable and accessible. Comprised of a majority of WSWC state members, the current WaDE portal is an ambitious start. Apart from the data themselves, WSWC hopes that WaDE will be a role-model project for collaboration and partnership, and that it will become a key source of information that can effectively inform the thinking and strategic approach of policy and decision-makers in the West.

Tab F – Workshop & Legislation on
Improving Long-Range Seasonal to
Sub-Seasonal Precipitation
Forecasting

Workshop on Improving Long-Range Weather Forecasts and Sub-Seasonal to Seasonal Precipitation Forecasting



Sponsored by:

**Western States Water Council
and
California Department of Water Resources**



**May 17-19, 2017
San Diego, California
Doubletree San Diego Downtown**

The purpose of the workshop is to support water management decision making through improved precipitation forecasting. The agenda includes lessons learned from recent years' seasonal outlooks, updates on scientific research on sources of skill and predictability, and programmatic efforts to improve forecasting. Increasing forecast skill will require a sustained investment over time, prioritizing the federal resources necessary to make progress, and a specific focus on the West. Strategies for improving precipitation forecasting will be discussed.

Please complete this form to attend the workshop, which will begin Wednesday at 1:00 pm and conclude Friday, around 12 noon. For room reservations, contact the hotel directly at 1-619-239-6800 and ask for the Western States Water Council group room block.

NO REGISTRATION FEE

Name _____

Title _____

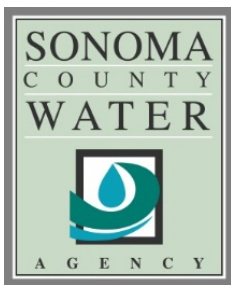
Company or Agency _____

Address _____

City/State/Zip _____

Telephone _____ Email _____

Please return this completed form to Julie Groat at jgroat@wswc.utah.gov or via fax to the WSWC offices at 801-685-2559.



ASSOCIATION OF
METROPOLITAN
WATER AGENCIES



Colorado River District



Subseasonal-to-Seasonal (S2S) Precipitation Coalition

The Subseasonal-to-Seasonal (S2S) Precipitation Coalition is a broad-based, multi-state coalition of entities committed to advancing federal support for enhanced precipitation prediction in the Western United States.

After enduring several years of drought, Western states have experienced historic precipitation in recent months. In both extremes, improved forecasting will allow communities throughout the West to better prepare for wet and dry seasons alike.

Effective water management in the West is enhanced by sound, scientifically-based decisions made weeks to months ahead of time. While some of these key decisions hinge on expectations or predictions of precipitation, snow pack and general watershed conditions, precipitation forecasting beyond 5-7 days is highly uncertain.

Subseasonal-to-Seasonal “S2S” timescales span from lead times of two weeks to several months for precipitation forecasting.

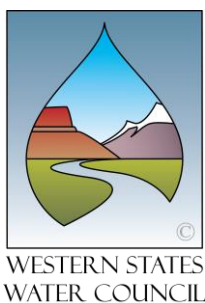
The science community has identified a strategy for pursuing improvements to national precipitation forecasts from two weeks to several months in advance. The S2S Precipitation Coalition is informing policymakers of the importance of these water decisions and the need for forecast research and related science.

FOUNDING MEMBERS

Association of Metropolitan Water Agencies
Association of California Water Agencies
Colorado River District
Salt River Project
Sonoma County Water Agency
Scripps Institution of Oceanography, UC San Diego
Western States Water Council

www.amwa.net
www.acwa.com
www.coloradoriverdistrict.org
www.srpnet.com
www.scwa.ca.gov
cw3e-web.ucsd.edu
www.westernstateswater.org

For additional information, please contact Jordan Smith at 202-298-1914 or jas@vnf.com.

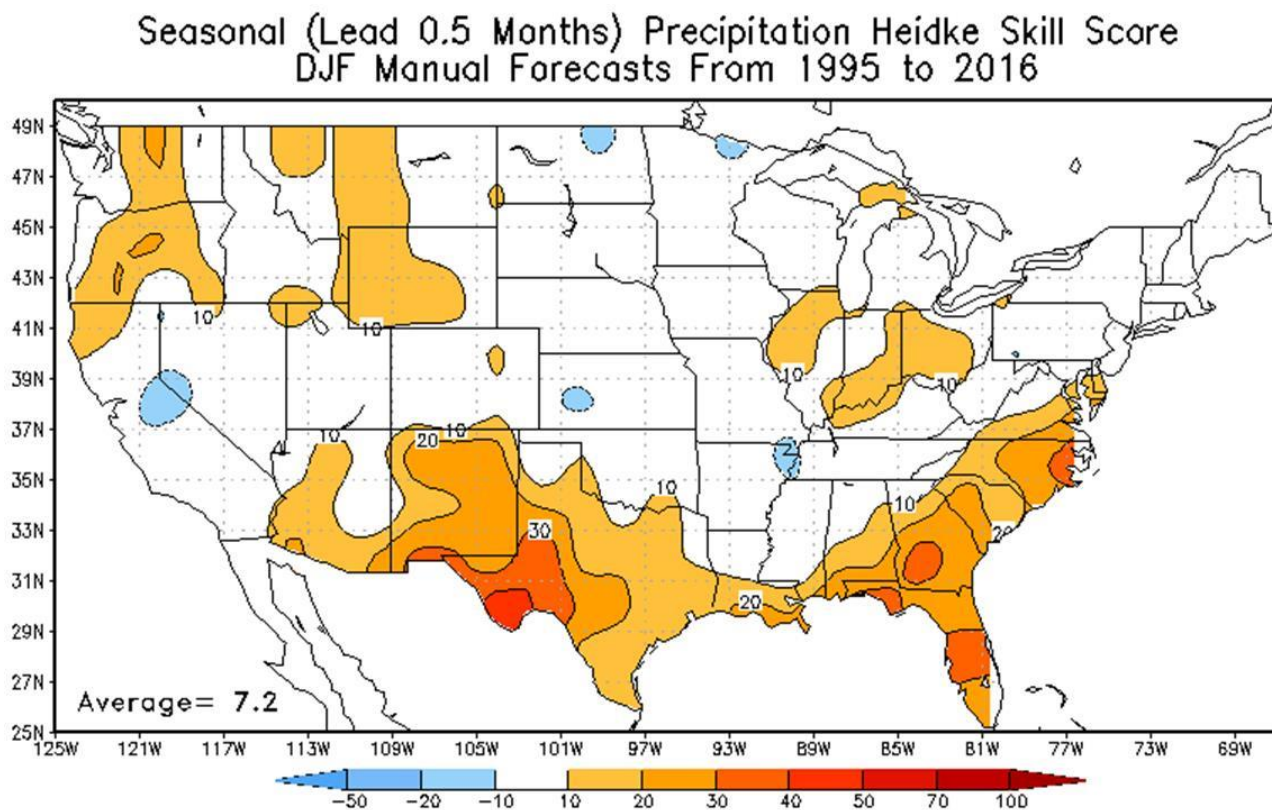


IMPROVING LONG-RANGE PRECIPITATION FORECASTING

(Sub-seasonal to Seasonal Precipitation Forecasting)

Will this winter be wet or dry? This question is asked every year by state, local, and federal water managers, as well as by cities, farmers, and power utilities. Lead time is crucial for operating water supply and flood control infrastructure and for making other Western water management decisions. Accurate sub-seasonal to seasonal (S2S) precipitation forecasts are critical for supporting these decisions and improving efficiency of water project operations. Current NOAA National Weather Service (NWS) seasonal outlooks are not yet sufficiently reliable to support water resources decision-making.

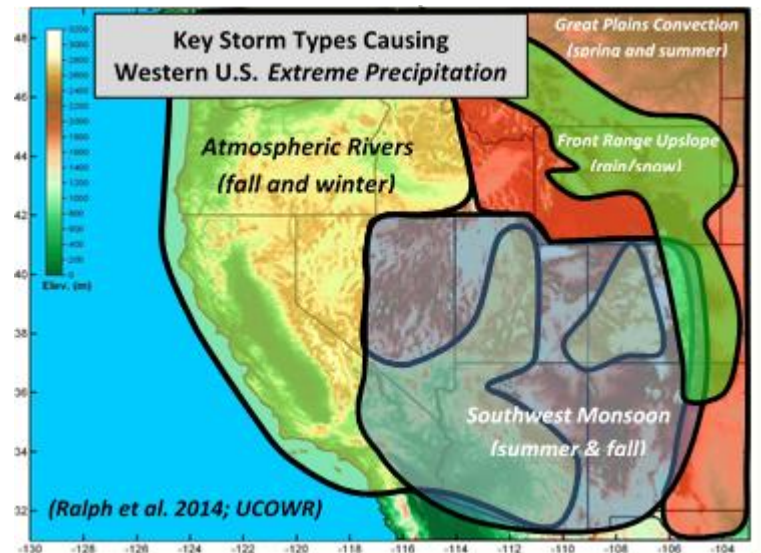
The need: (1) authorizing legislation to prioritize and focus NOAA's research with the goal of improving S2S forecasts; and (2) FY 2018 appropriations to support the work.



National Weather Service Climate Prediction Center verification of its historical 3-month December/January/February outlook. White areas on the map represent no more skill than simply forecasting long-term average climate conditions. A perfect forecast would have a skill score of 100.

Water is the lifeblood of the West...

Water is the life-blood of the West, which experiences far greater variability in annual precipitation than does the eastern half of the country. Managing water in the West is about managing for the extremes of droughts and floods, and the need to prepare for times of scarcity when water is abundant. Skillful S2S forecasts would allow us to better balance reservoir operations for the competing objectives of water storage and flood control, estimate runoff available to support hydropower generation, and allocate water to agricultural producers making planting decisions.



Improving S2S forecasts will require a sustained investment over a period of time, and prioritizing the NOAA resources necessary to make progress. Opportunities for near-term progress can be enhanced through focused research on sources of Western extreme precipitation (see figure). Overall, necessary elements include:

- Developing dynamical and statistical weather forecasting models and other analytical tools, working in coordination with the water community to focus on tools useful for informing resource management
- Dedicating high-performance computing resources for model development
- Developing research-level variable-resolution coupled models capable of mesoscale resolution over the U.S., to simulate regionally important features such as mountain snowpack and to improve assimilation of observations into weather models
- Reducing gaps in understanding, such as the role of the El Niño-Southern Oscillation (ENSO) in influencing S2S climate variations, through directed research
- Using directed research on watershed-scale pilot projects at NOAA Cooperative Institutes to improve forecasting by exploring new sources of S2S predictability, such as atmospheric river or Southwest monsoon storms
- Maintaining the necessary observing systems to support weather modeling, including ocean monitoring systems such as buoys and floats used to monitor ENSO conditions



In the Senate of the United States,

March 29, 2017.

Resolved, That the bill from the House of Representatives (H.R. 353) entitled “An Act to improve the National Oceanic and Atmospheric Administration’s weather research through a focused program of investment on affordable and attainable advances in observational, computing, and modeling capabilities to support substantial improvement in weather forecasting and prediction of high impact weather events, to expand commercial opportunities for the provision of weather data, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert the following:

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 (a) *SHORT TITLE.*—*This Act may be cited as the*
3 *“Weather Research and Forecasting Innovation Act of*
4 *2017”.*

5 (b) *TABLE OF CONTENTS.*—*The table of contents for*
6 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—UNITED STATES WEATHER RESEARCH AND FORECASTING IMPROVEMENT

Sec. 101. Public safety priority.

Sec. 102. Weather research and forecasting innovation.

Sec. 103. Tornado warning improvement and extension program.

Sec. 104. Hurricane forecast improvement program.

Sec. 105. Weather research and development planning.

Sec. 106. Observing system planning.

Sec. 107. Observing system simulation experiments.

Sec. 108. Annual report on computing resources prioritization.

Sec. 109. United States Weather Research program.

Sec. 110. Authorization of appropriations.

TITLE II—SUBSEASONAL AND SEASONAL FORECASTING INNOVATION

Sec. 201. Improving subseasonal and seasonal forecasts.

TITLE III—WEATHER SATELLITE AND DATA INNOVATION

Sec. 301. National Oceanic and Atmospheric Administration satellite and data management.

Sec. 302. Commercial weather data.

Sec. 303. Unnecessary duplication.

TITLE IV—FEDERAL WEATHER COORDINATION

Sec. 401. Environmental Information Services Working Group.

Sec. 402. Interagency weather research and forecast innovation coordination.

Sec. 403. Office of Oceanic and Atmospheric Research and National Weather Service exchange program.

Sec. 404. Visiting fellows at National Weather Service.

Sec. 405. Warning coordination meteorologists at weather forecast offices of National Weather Service.

Sec. 406. Improving National Oceanic and Atmospheric Administration communication of hazardous weather and water events.

Sec. 407. National Oceanic and Atmospheric Administration Weather Ready All Hazards Award Program.

Sec. 408. Department of Defense weather forecasting activities.

Sec. 409. National Weather Service; operations and workforce analysis.

Sec. 410. Report on contract positions at National Weather Service.

Sec. 411. Weather impacts to communities and infrastructure.

Sec. 412. Weather enterprise outreach.

Sec. 413. Hurricane hunter aircraft.

Sec. 414. Study on gaps in NEXRAD coverage and recommendations to address such gaps.

TITLE V—TSUNAMI WARNING, EDUCATION, AND RESEARCH ACT OF 2017

Sec. 501. Short title.

Sec. 502. References to the Tsunami Warning and Education Act.

Sec. 503. Expansion of purposes of Tsunami Warning and Education Act.

Sec. 504. Modification of tsunami forecasting and warning program.
Sec. 505. Modification of national tsunami hazard mitigation program.
Sec. 506. Modification of tsunami research program.
Sec. 507. Global tsunami warning and mitigation network.
Sec. 508. Tsunami science and technology advisory panel.
Sec. 509. Reports.
Sec. 510. Authorization of appropriations.
Sec. 511. Outreach responsibilities.
Sec. 512. Repeal of duplicate provisions of law.

1 **SEC. 2. DEFINITIONS.**

2 *In this Act:*

3 (1) *SEASONAL.*—The term “seasonal” means the
 4 time range between 3 months and 2 years.

5 (2) *STATE.*—The term “State” means a State, a
 6 territory, or possession of the United States, including
 7 a Commonwealth, or the District of Columbia.

8 (3) *SUBSEASONAL.*—The term “subseasonal”
 9 means the time range between 2 weeks and 3 months.

10 (4) *UNDER SECRETARY.*—The term “Under Sec-
 11 retary” means the Under Secretary of Commerce for
 12 Oceans and Atmosphere.

13 (5) *WEATHER INDUSTRY AND WEATHER ENTER-*
 14 *PRISE.*—The terms “weather industry” and “weather
 15 enterprise” are interchangeable in this Act, and in-
 16 clude individuals and organizations from public, pri-
 17 vate, and academic sectors that contribute to the re-
 18 search, development, and production of weather fore-
 19 cast products, and primary consumers of these weath-
 20 er forecast products.

1 **TITLE I—UNITED STATES**
 2 **WEATHER RESEARCH AND**
 3 **FORECASTING IMPROVEMENT**

4 **SEC. 101. PUBLIC SAFETY PRIORITY.**

5 *In conducting research, the Under Secretary shall*
 6 *prioritize improving weather data, modeling, computing,*
 7 *forecasting, and warnings for the protection of life and*
 8 *property and for the enhancement of the national economy.*

9 **SEC. 102. WEATHER RESEARCH AND FORECASTING INNOVA-**
 10 **TION.**

11 *(a) PROGRAM.—The Assistant Administrator for the*
 12 *Office of Oceanic and Atmospheric Research shall conduct*
 13 *a program to develop improved understanding of and fore-*
 14 *cast capabilities for atmospheric events and their impacts,*
 15 *placing priority on developing more accurate, timely, and*
 16 *effective warnings and forecasts of high impact weather*
 17 *events that endanger life and property.*

18 *(b) PROGRAM ELEMENTS.—The program described in*
 19 *subsection (a) shall focus on the following activities:*

20 *(1) Improving the fundamental understanding of*
 21 *weather consistent with section 101, including the*
 22 *boundary layer and other processes affecting high im-*
 23 *pact weather events.*

24 *(2) Improving the understanding of how the pub-*
 25 *lic receives, interprets, and responds to warnings and*

1 *forecasts of high impact weather events that endanger*
2 *life and property.*

3 *(3) Research and development, and transfer of*
4 *knowledge, technologies, and applications to the Na-*
5 *tional Weather Service and other appropriate agen-*
6 *cies and entities, including the United States weather*
7 *industry and academic partners, related to—*

8 *(A) advanced radar, radar networking tech-*
9 *nologies, and other ground-based technologies, in-*
10 *cluding those emphasizing rapid, fine-scale sens-*
11 *ing of the boundary layer and lower troposphere,*
12 *and the use of innovative, dual-polarization,*
13 *phased-array technologies;*

14 *(B) aerial weather observing systems;*

15 *(C) high performance computing and infor-*
16 *mation technology and wireless communication*
17 *networks;*

18 *(D) advanced numerical weather prediction*
19 *systems and forecasting tools and techniques that*
20 *improve the forecasting of timing, track, inten-*
21 *sity, and severity of high impact weather, in-*
22 *cluding through—*

23 *(i) the development of more effective*
24 *mesoscale models;*

1 (ii) more effective use of existing, and
2 the development of new, regional and na-
3 tional cloud-resolving models;

4 (iii) enhanced global weather models;
5 and

6 (iv) integrated assessment models;

7 (E) quantitative assessment tools for meas-
8 uring the impact and value of data and observ-
9 ing systems, including Observing System Sim-
10 ulation Experiments (as described in section
11 107), Observing System Experiments, and Anal-
12 yses of Alternatives;

13 (F) atmospheric chemistry and interactions
14 essential to accurately characterizing atmos-
15 pheric composition and predicting meteorological
16 processes, including cloud microphysical, pre-
17 cipitation, and atmospheric electrification proc-
18 esses, to more effectively understand their role in
19 severe weather; and

20 (G) additional sources of weather data and
21 information, including commercial observing
22 systems.

23 (4) A technology transfer initiative, carried out
24 jointly and in coordination with the Director of the
25 National Weather Service, and in cooperation with

1 *the United States weather industry and academic*
2 *partners, to ensure continuous development and tran-*
3 *sition of the latest scientific and technological ad-*
4 *vances into operations of the National Weather Serv-*
5 *ice and to establish a process to sunset outdated and*
6 *expensive operational methods and tools to enable*
7 *cost-effective transfer of new methods and tools into*
8 *operations.*

9 (c) *EXTRAMURAL RESEARCH.—*

10 (1) *IN GENERAL.—*In carrying out the program
11 under this section, the Assistant Administrator for
12 Oceanic and Atmospheric Research shall collaborate
13 with and support the non-Federal weather research
14 community, which includes institutions of higher edu-
15 cation, private entities, and nongovernmental organi-
16 zations, by making funds available through competi-
17 tive grants, contracts, and cooperative agreements.

18 (2) *SENSE OF CONGRESS.—*It is the sense of
19 Congress that not less than 30 percent of the funds for
20 weather research and development at the Office of
21 Oceanic and Atmospheric Research should be made
22 available for the purpose described in paragraph (1).

23 (d) *ANNUAL REPORT.—*Each year, concurrent with the
24 annual budget request submitted by the President to Con-
25 gress under section 1105 of title 31, United States Code,

1 *for the National Oceanic and Atmospheric Administration,*
 2 *the Under Secretary shall submit to Congress a description*
 3 *of current and planned activities under this section.*

4 **SEC. 103. TORNADO WARNING IMPROVEMENT AND EXTEN-**
 5 **SION PROGRAM.**

6 (a) *IN GENERAL.*—*The Under Secretary, in collabora-*
 7 *tion with the United States weather industry and academic*
 8 *partners, shall establish a tornado warning improvement*
 9 *and extension program.*

10 (b) *GOAL.*—*The goal of such program shall be to reduce*
 11 *the loss of life and economic losses from tornadoes through*
 12 *the development and extension of accurate, effective, and*
 13 *timely tornado forecasts, predictions, and warnings, includ-*
 14 *ing the prediction of tornadoes beyond 1 hour in advance.*

15 (c) *PROGRAM PLAN.*—*Not later than 180 days after*
 16 *the date of the enactment of this Act, the Assistant Adminis-*
 17 *trator for Oceanic and Atmospheric Research, in coordina-*
 18 *tion with the Director of the National Weather Service, shall*
 19 *develop a program plan that details the specific research,*
 20 *development, and technology transfer activities, as well as*
 21 *corresponding resources and timelines, necessary to achieve*
 22 *the program goal.*

23 (d) *ANNUAL BUDGET FOR PLAN SUBMITTAL.*—*Fol-*
 24 *lowing completion of the plan, the Under Secretary, acting*
 25 *through the Assistant Administrator for Oceanic and At-*

1 (b) *LIMITATION.*—No additional funds are authorized
 2 to carry out this title and the amendments made by this
 3 title.

4 **TITLE II—SUBSEASONAL AND**
 5 **SEASONAL FORECASTING IN-**
 6 **NOVATION**

7 **SEC. 201. IMPROVING SUBSEASONAL AND SEASONAL FORE-**
 8 **CASTS.**

9 Section 1762 of the Food Security Act of 1985 (Public
 10 Law 99-198; 15 U.S.C. 313 note) is amended—

11 (1) in subsection (a), by striking “(a)” and in-
 12 serting “(a) *FINDINGS.*—”;

13 (2) in subsection (b), by striking “(b)” and in-
 14 serting “(b) *POLICY.*—”; and

15 (3) by adding at the end the following:

16 “(c) *FUNCTIONS.*—The Under Secretary, acting
 17 through the Director of the National Weather Service and
 18 the heads of such other programs of the National Oceanic
 19 and Atmospheric Administration as the Under Secretary
 20 considers appropriate, shall—

21 “(1) collect and utilize information in order to
 22 make usable, reliable, and timely foundational fore-
 23 casts of subseasonal and seasonal temperature and
 24 precipitation;

1 “(2) leverage existing research and models from
2 the weather enterprise to improve the forecasts under
3 paragraph (1);

4 “(3) determine and provide information on how
5 the forecasted conditions under paragraph (1) may
6 impact—

7 “(A) the number and severity of droughts,
8 fires, tornadoes, hurricanes, floods, heat waves,
9 coastal inundation, winter storms, high impact
10 weather, or other relevant natural disasters;

11 “(B) snowpack; and

12 “(C) sea ice conditions; and

13 “(4) develop an Internet clearinghouse to provide
14 the forecasts under paragraph (1) and the informa-
15 tion under paragraphs (1) and (3) on both national
16 and regional levels.

17 “(d) *COMMUNICATION.*—The Director of the National
18 Weather Service shall provide the forecasts under paragraph
19 (1) of subsection (c) and the information on their impacts
20 under paragraph (3) of such subsection to the public, in-
21 cluding public and private entities engaged in planning
22 and preparedness, such as National Weather Service Core
23 partners at the Federal, regional, State, tribal, and local
24 levels of government.

1 “(e) *COOPERATION.*—*The Under Secretary shall build*
2 *upon existing forecasting and assessment programs and*
3 *partnerships, including—*

4 “(1) *by designating research and monitoring ac-*
5 *tivities related to subseasonal and seasonal forecasts*
6 *as a priority in one or more solicitations of the Coop-*
7 *erative Institutes of the Office of Oceanic and Atmos-*
8 *pheric Research;*

9 “(2) *by contributing to the interagency Earth*
10 *System Prediction Capability; and*

11 “(3) *by consulting with the Secretary of Defense*
12 *and the Secretary of Homeland Security to determine*
13 *the highest priority subseasonal and seasonal forecast*
14 *needs to enhance national security.*

15 “(f) *FORECAST COMMUNICATION COORDINATORS.*—

16 “(1) *IN GENERAL.*—*The Under Secretary shall*
17 *foster effective communication, understanding, and*
18 *use of the forecasts by the intended users of the infor-*
19 *mation described in subsection (d). This may include*
20 *assistance to States for forecast communication coor-*
21 *dinators to enable local interpretation and planning*
22 *based on the information.*

23 “(2) *REQUIREMENTS.*—*For each State that re-*
24 *quests assistance under this subsection, the Under*
25 *Secretary may—*

1 “(A) provide funds to support an indi-
2 vidual in that State—

3 “(i) to serve as a liaison among the
4 National Oceanic and Atmospheric Admin-
5 istration, other Federal departments and
6 agencies, the weather enterprise, the State,
7 and relevant interests within that State;
8 and

9 “(ii) to receive the forecasts and infor-
10 mation under subsection (c) and dissemi-
11 nate the forecasts and information through-
12 out the State, including to county and trib-
13 al governments; and

14 “(B) require matching funds of at least 50
15 percent, from the State, a university, a non-
16 governmental organization, a trade association,
17 or the private sector.

18 “(3) LIMITATION.—Assistance to an individual
19 State under this subsection shall not exceed \$100,000
20 in a fiscal year.

21 “(g) COOPERATION FROM OTHER FEDERAL AGEN-
22 CIES.—Each Federal department and agency shall cooper-
23 ate as appropriate with the Under Secretary in carrying
24 out this section.

25 “(h) REPORTS.—

1 “(1) *IN GENERAL.*—Not later than 18 months
2 after the date of the enactment of the Weather Re-
3 search and Forecasting Innovation Act of 2017, the
4 Under Secretary shall submit to the Committee on
5 Commerce, Science, and Transportation of the Senate
6 and the Committee on Science, Space, and Technology
7 of the House of Representatives a report, including—

8 “(A) an analysis of the how information
9 from the National Oceanic and Atmospheric Ad-
10 ministration on subseasonal and seasonal fore-
11 casts, as provided under subsection (c), is uti-
12 lized in public planning and preparedness;

13 “(B) specific plans and goals for the contin-
14 ued development of the subseasonal and seasonal
15 forecasts and related products described in sub-
16 section (c); and

17 “(C) an identification of research, moni-
18 toring, observing, and forecasting requirements
19 to meet the goals described in subparagraph (B).

20 “(2) *CONSULTATION.*—In developing the report
21 under paragraph (1), the Under Secretary shall con-
22 sult with relevant Federal, regional, State, tribal, and
23 local government agencies, research institutions, and
24 the private sector.

25 “(i) *DEFINITIONS.*—In this section:

1 “(1) *FOUNDATIONAL FORECAST.*—The term
2 ‘*foundational forecast*’ means basic weather observa-
3 tion and forecast data, largely in raw form, before
4 further processing is applied.

5 “(2) *NATIONAL WEATHER SERVICE CORE PART-*
6 *NERS.*—The term ‘*National Weather Service core*
7 *partners*’ means government and nongovernment enti-
8 ties which are directly involved in the preparation or
9 dissemination of, or discussions involving, hazardous
10 weather or other emergency information put out by
11 the National Weather Service.

12 “(3) *SEASONAL.*—The term ‘*seasonal*’ means the
13 time range between 3 months and 2 years.

14 “(4) *STATE.*—The term ‘*State*’ means a State, a
15 territory, or possession of the United States, including
16 a Commonwealth, or the District of Columbia.

17 “(5) *SUBSEASONAL.*—The term ‘*subseasonal*’
18 means the time range between 2 weeks and 3 months.

19 “(6) *UNDER SECRETARY.*—The term ‘*Under Sec-*
20 *retary*’ means the Under Secretary of Commerce for
21 Oceans and Atmosphere.

22 “(7) *WEATHER INDUSTRY AND WEATHER ENTER-*
23 *PRISE.*—The terms ‘*weather industry*’ and ‘*weather*
24 *enterprise*’ are interchangeable in this section and in-
25 clude individuals and organizations from public, pri-

vate, and academic sectors that contribute to the research, development, and production of weather forecast products, and primary consumers of these weather forecast products.

“(j) *AUTHORIZATION OF APPROPRIATIONS.*—For each of fiscal years 2017 and 2018, there are authorized out of funds appropriated to the National Weather Service, \$26,500,000 to carry out the activities of this section.”.

TITLE III—WEATHER SATELLITE AND DATA INNOVATION

SEC. 301. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SATELLITE AND DATA MANAGEMENT.

(a) SHORT-TERM MANAGEMENT OF ENVIRONMENTAL OBSERVATIONS.—

(1) MICROSATELLITE CONSTELLATIONS.—

(A) IN GENERAL.—The Under Secretary shall complete and operationalize the Constellation Observing System for Meteorology, Ionosphere, and Climate–1 and Climate–2 (COSMIC) in effect on the day before the date of the enactment of this Act—

(i) by deploying constellations of microsatellites in both the equatorial and polar orbits;

Tab G – FY2016-2017 Water Resources Committee Work Plan

**WATER RESOURCES COMMITTEE
WORK PLAN
2016/2017**

1. WATER AVAILABILITY & USE - WATER DATA EXCHANGE (WaDE)

Work to date: The Council continues to work with member states and federal agencies through the Western States Federal Agency Support Team (WestFAST) to build on efforts undertaken previously. A common WaDE portal has been created, with a link on the WSWC website, and a beta version is being tested with data from California, Colorado, Idaho, Kansas, Utah and Wyoming. Sixteen states have been interviewed regarding their existing data systems. Oklahoma and Oregon will soon provide data, and work in Nebraska, Nevada, South Dakota, Texas and Washington is in progress. Moreover, a mapping tool has been created to allow states to review data. Alaska, Arizona, New Mexico, North Dakota and Washington are evaluating the resources required for them to participate.

These data are important for a number of applications. Some examples include, but are certainly not limited to: (a) state and regional water planning; (b) local watershed and urban planning and development; (c) siting of electric power generation and other energy production facilities; and (d) enabling a better understanding of the links between energy, water quantity and water quality. WaDE is consistent with and will seek to integrate other national efforts, including the National Water Availability and Use Assessment (the Water Census), which is led by the U.S. Geological Survey (USGS), as well as federal open water data initiatives. WaDE will support these efforts by laying the groundwork for exchanging the core state data that may be used to support these studies, and in the future seek to incorporate into the WaDE portal available federal data.

Council staff are also working as part of a USGS Ad Hoc Group on a National Water Assessment to develop a strategic plan to improve the acquisition, storage and dissemination of data on existing surface and ground water supplies and uses, both consumptive and non-consumptive, identifying trends and common themes, including changing demographics, environmental policies, energy demands, and climate, etc. WaDE will better enable the western states to share water use, water allocation, and water planning data with one another and with the federal government. It will also seek to improve the sharing of Federal data that supports state water planning efforts.

Data collection, management, distribution and visualization are critical for sound decisionmaking, but related programs are often underappreciated and underfunded. The Council has a long history of working to support federal programs to maintain and improve the measurement, monitoring and management of western water resources and related data, including related Interior, NASA, NOAA and USDA programs (see Position #345, October 12, 2012, and Position #357, October 3, 2013).

2016/17: WSWC staff will continue working to help individual members states build their capacity to connect to WaDE. This will entail some site visits, as well as regular communication among members and state information technology staff to gather, input and manage data, testing the schema and refining products for presenting consumptive use and water availability information for decisionmaking. The Council will continue working with member states, USGS

and various federal agencies to gather and disseminate water resources data using WaDE and other resources. The Council will also partner with USGS on facilitating funding to states for water data. The Committee, through a Subcommittee and various work groups, will continue to gather information on state water availability and use data and summarize existing state capabilities. Work to help states to develop, disseminate, visualize and review data on water availability will continue. The WSWC is seeking other resources to assist states.

The Council will also communicate the critical need for federal water data related programs and will revise and renew its message to better bring attention to water data needs and develop strategies to meet those needs. Consistent reliable future funding will be one major focus. There are a number of items under this functional area. Part of this effort will be to highlight critical measuring and monitoring “tools,” for any water management “toolbox,” and communicating their value for enhancing our ability to wisely manage water resources.

Subcommittee: Jeanine Jones (CA); James Eklund (CO); David Barfield (KS); Tim Davis (MT); J.D. Strong (OK); Tom Byler (OR); Dr. Robert Mace (TX); and Eric Millis (UT). Dr. Mace also represents the WSWC on the federal Advisory Committee on Water Information (ACWI).

Timeframe: Ongoing

2. CDWR/WSWC S2S & IMIS WORKSHOPS

Work to date: The Western States Water Council (WSWC) and California Department of Water Resources (CDWR) entered into an agreement to assist in implementing Governor Jerry Brown’s emergency drought proclamation regarding improving agricultural water use efficiency and water conservation, through scoping efforts to improve subseasonal to seasonal (S2S) forecasting skill (2 weeks to one year) and identifying and describing Irrigation Management Information Systems (IMIS) and weather station networks, looking towards possible expansion of the California Irrigation Management Information System (CIMIS) into interstate watersheds, beginning with the Colorado River System, but also the Klamath River, as well as the Truckee Carson and Walker Rivers (California-Nevada group).

With regard to S2S forecasting, two workshops were held in 2015. Two additional workshops were held in 2016, one in College Park, Maryland at NOAA headquarters on April 29, and a final workshop June 6-9, in San Diego, California. The Council coordinated the meetings and will provide a report and outreach publication to CDWR to include recommendations to NOAA on improvements regarding sub-seasonal to seasonal precipitation forecasting. Similarly, the Council coordinated an August 25-26 workshop on IMIS and is preparing a summary report.

A number of preliminary scoping and planning calls have been held to perform an initial assessment of potential partner networks. An initial workshop will be held in Southern California’s Colorado River service area. Based on the outcome of the initial workshop, follow-up workshops will be scheduled in 2016.

2016/17: Seasonal Precipitation Forecasting Workshops: April 29, 2016 and June 6-9, 2016.

CIMIS Workshop: August 25-26, 2016. Summary reports and recommendations, deliverable in June and December.

3. ENERGY & WATER RESOURCES – INTEGRATED MANAGEMENT

Work to date: The increase in demands for water to meet energy needs is raising interest in the interrelationship between water and power resources, including transportation fuels, and opportunities to better understand the energy-water nexus and maximize efficiencies. The Council has addressed various aspects of energy issues as they relate to water resources as part of its regular meetings, including the demand for water resources created by new energy development. Hydraulic fracturing is a current issue and long standing practice with which the states have considerable experience. (See Water Quality Committee workplan.) The use of water produced by energy development has also been discussed.

Since 2009, the Council has worked with the WGA to look at present and future water needs related to renewable and traditional energy production, and related impacts on water supplies. The Council has also urged the Administration and Congress to support Department of Energy hosted energy-water programs conducted at national laboratories (Position #355, June 26, 2013).

In 2012, the Council completed a review of the water requirements for concentrated solar power development in the Southwest and related institutional issues and permitting requirements, which has been published by the National Renewable Energy Lab (NREL).

2016/17: The Council actively participates with the Western Electric Coordinating Council (WECC) and related State Provincial Steering Group and Environmental Data Work Group. As resources permit, the Council will continue to compile existing information through WaDE addressing water availability and anticipated demands for energy resources development (and the implications for water use in the West). Further, the Council will consider and evaluate any federal legislation and other potential collaborative efforts in addressing energy and water needs. The Council will evaluate as appropriate specific energy and water related issues as they arise, such as hydraulic fracturing and other practices. Lastly, WECC/WSWC collaboration will continue.

Timeframe: Ongoing

4. DROUGHT, NIDIS and EXTREME WEATHER EVENTS

Work to Date: Drought is a recurring natural phenomenon, the effects of which can be minimized through appropriate planning and preparedness activities. The Council has expressed its support for federal applied research and hydroclimate data collection programs to assist water agencies at all levels of government in adapting to weather extremes and climate variability and change (Position #379, April 17, 2015). The Council also supports development of an improved western observing system for extreme precipitation events and research to better understand hydroclimate processes (Position #366, July 18, 2014). Since 2006, the Council has held a number of workshops related to climate adaptation and extreme events, including future drought and floods.

In May 2014, the Council collaborated with the National Oceanic and Atmospheric Administration (NOAA) to prepare and present a congressional briefing on the importance of atmospheric research and monitoring programs. In June 2014, the Council held a Hydroclimate Monitoring & Data Workshop in cooperation with California Department of Water Resources (CDWR) in San Diego, followed by a series of workshops in 2015-2016 on seasonal precipitation forecasting.

2016/17: The Council's Executive Director has been asked to Co-Chair the National Integrated Drought Information System (NIDIS) Executive Council with NOAA. The Committee will continue working to improve preparedness and response to drought, floods and other extreme events in cooperation with member states, the WGA and WestFAST. The Council will also continue to support and advise WGA and NOAA with respect to NIDIS, and other weather/climate monitoring and adaptation efforts (including RISAs work). The Council will also continue to assist California's DWR in an ongoing series of workshops. The Council will work to evaluate proposed climate, drought and weather legislation and drought related authorities of federal agencies.

Time Frame: Ongoing

Subcommittee: ????

5. WESTERN WATER INFRASTRUCTURE PROJECTS AND PROGRAM FUNDING

Work to date: Many western states face overwhelming infrastructure financing needs, as well as declining budgets for ongoing services. The Council's origins are associated with challenges to augment and better manage the West's water supply. Augmenting the West's water supply continues to be a priority. The Council has in the past prepared reports on state water resources programs and project cost sharing and financing and analyzed state water use fees. In November 2010, the Council convened a symposium and summarized the proceeding in "Western Water Resources Infrastructure Strategies: Identifying, Prioritizing and Financing Needs." The latest in the series of symposia was held in November 2012 in Phoenix, Arizona. The Council also began compiling an updated summary of western state infrastructure financing authorities, funding sources, policies and programs. The Council has also supported expenditures from the Reclamation Fund for authorized project purposes, including specifically authorized rural water supply projects and authorized projects as part of negotiated Indian water rights settlements.

2016/17: The Council will continue to call on the Congress to ensure that revenues raised from the development of western resources, specifically revenues accruing to the Reclamation Fund, are appropriated and expended as intended for the development and management of western water resources (consistent with Position #367, July 18, 2014). The Council will otherwise support efforts to secure adequate federal funding to meet growing western water demands, and work to develop a strategy to communicate important infrastructure needs. The Council will focus on developing public-private partnerships to support this effort.

Time Frame: Ongoing

Tab H – FY2016-2017 Executive Committee Work Plan

**EXECUTIVE COMMITTEE
WORK PLAN
2016/2017**

1. WGA/WSWC COORDINATION and COLLABORATION

Work to Date: The publication of the WGA/WSWC report(s) entitled “Water Needs and Strategies for a Sustainable Future,” raised awareness of the challenges facing the West. The WGA adopted the 2006 and 2008 reports as policy, and the Council has worked to implement their recommendations, many of which have been completed. In June 2010, the Council completed and the WGA accepted a Progress Report summarizing implementation activities. In 2011, WGA adopted two comprehensive policy statements, one focused on water quantity and the other on water quality, which the WGA revised and readopted in December 2013, and will reconsider in 2016.

Of particular note, a priority recommendation was establishment of the Western States Federal Agency Support Team (WestFAST) and the hiring of a liaison officer in the Council’s offices. Both of which were accomplished in 2008 and continued.

The Council has worked closely with WGA on various regulatory and other issues, especially the EPA’s proposed and final rules related to Clean Water Act jurisdiction and the definition of Waters of the United States, as well as the U.S. Forest Service’s proposed groundwater directive, which was subsequently withdrawn in part due to the Council’s concerns.

2016/17: The Council and the Committee will continue to coordinate and consult with the WGA on matters that come before the Council and assist in the development and implementation of WSWC and WGA water-related policies. WGA staff will be invited to attend and participate in our meetings, workshops and symposia.

As in the past, the Council may propose policy resolutions for WGA consideration. Further, the WSWC Chair and/or Executive Director will participate in WGA meetings as appropriate. Working with the WGA, the Council will also coordinate WestFAST activities and needs.

Time Frame: ongoing

Subcommittee: Management Subcommittee

2. WESTFAST

Work to date: WestFAST’s creation has had many benefits. It is a unique forum for addressing western (and national) water issues that has brought together over a dozen federal agencies to collaborate with each other and state agencies with water-related responsibilities. WestFAST addresses issues raised and discussed with the Council and WGA (which in turn support development and implementation of related federal policies and programs). WestFAST and the Council have also discussed collaborative principles to guide federal/state working relationships. WestFAST is now in its eighth year.

2016/17: The Executive Committee will continue to oversee the Council's work with WestFAST. Further, the Committee will work to ensure participating agencies realize the real and potential benefits of WestFAST, and work to build a sound foundation for continuing collaboration. The WSWC will meet with WestFAST principals on March 24, 2016, and will continue to seek building closer ties with WestFAST principals.

Time Frame: Ongoing

3. FEDERAL ADMINISTRATION and CONGRESSIONAL VISITS/CONTACTS

Work to date: The WSWC's members, officers and staff continue to meet with key members of Congress, and the Administration on issues of interest to the Council.

On December 14-15, 2015, the WSWC Executive Director attended a White House Roundtable on Water Innovation (by invitation) and a related Office of Science and Technology Policy (OSTP) follow-up discussion session. WSWC member J.D. Strong of Oklahoma was invited to attend the second in a series of White House OSTP Water, Technology and Innovation discussions on February 1, 2016. WSWC Chairman Pat Tyrrell of Wyoming, members John Tubbs of Montana, James Eklund of Colorado, and J.D. were invited to a White House Water Summit in D.C. on March 22, 2016 – World Water Day.

In an ongoing effort to promote WSWC and WGA positions and priorities, Council officers, members and staff travel regularly to Washington, D.C. and make visits with Administration and Congressional officials. Native American Rights Fund (NARF) staff join WSWC members and staff in many of the visits. WSWC members and staff have also previously hosted or presented at briefings for congressional staff on the importance federal data gathering activities, including the Landsat thermal data, U.S. Geological Survey streamgaging programs, National Oceanic and Atmospheric Administration programs, including the National Integrated Drought Information System, River Forecast Centers, and Regional Integrated Science and Assessments, as well as Indian water rights settlements. Some of the feedback from these meetings suggested a need for greater contact and communication between the Council and federal and congressional policymakers. Of note, the Council is often invited to testify on proposed legislation. Further, the Council also distributes policy positions adopted at its meetings to all House and Senate members of western state delegations.

2016/17: The Council's Officers and staff again planned visits during the Council's Spring 2016 meetings in the Washington, D. C. area to make Administration and Congressional contacts and advise them on major national water issues from the perspective of western states. WSWC members and staff will also schedule visits with individual congressional offices. The WestFAST Liaison Officer and WestFAST members will participate in these visits with Executive Branch agencies. The WSWC will meet with WestFAST principals on March 24, 2016. Other trips and visits may be made as needed. The Council staff and members will also communicate our external positions as the need arises and continue to respond to requests for testimony, briefings and information from the Congress and the Administration.

Time frame: Spring 2016/Ongoing

Subcommittee: Management Subcommittee

4. REGULAR COUNCIL MEETINGS

Work to Date: The first meeting of the Council was held in Stateline, Nevada in 1965, and regular meetings have been held since. Currently, the Council meets three times per year, rotating among the member states, which host the meetings at a location of their choice. Guest speakers and topics for discussion are scheduled according to members' interests and needs. External policy positions for consideration are noticed 30-days before the Council meets and are distributed not only to members, but also to WGA staff and the governors' staff. Any position statement not noticed may be brought before the Council for consideration at a meeting by unanimous consent, but if approved, must be sent to WGA for review prior to distribution consistent with mutually agreed upon procedures for policy coordination between WGA and WSWC.

Nevada hosted the 50th Anniversary Summer 2015 meetings in Stateline on July 8-10. Several former members attended, as well as numerous guest dignitaries.

2016/17: The Spring 2016 meetings were held in Washington, D.C. on March 22-24. This included the biennial Washington, D.C. Roundtable, which was sponsored in cooperation with the Interstate Council on Water Policy. The Summer meetings will be held on July 13-15, in Bismarck, North Dakota, and the Fall meetings are scheduled for September 28-30, in St. George, Utah.

5. NEWSLETTER

Work to date: *Western States Water* provides members and others with accurate and timely information on various water resources topics at state, regional and national levels. It is provided as a free service to members, governors and their staff, member state water resource agencies, state water users associations, selected multi-state organizations, key Congressmen and their staffs, and top federal administration officials. Other public and private agencies and individuals may subscribe for a fee. It is primarily distributed via email, and is posted on our website, with password protection (for recent issues).

2016/17: Along with the Council's regular meetings, the newsletter requires our most significant commitment of staff resources, though that is usually ancillary to other efforts. The response from members and others receiving the newsletter has been consistently positive. The Council will continue to provide this service weekly via email, except for those who request a hard copy.

Time Frame: Ongoing

6. WATER MANAGEMENT SYMPOSIA

Work to date: An annual WSWC Water Management Symposium has traditionally been held under the auspices of the Executive Committee. However, the Committee has usually asked one of the other committees to take the lead. In odd numbered years, Indian Water Rights Settlement Symposia have been held.

In 2012, the Council held a symposium in November in Phoenix, Arizona in collaboration with relevant federal agencies, multiple stakeholders, and public and private experts on Western State Water Resources Infrastructure Needs & Strategies. It explored state financing authorities, policies, programs and projects, as well as public-private financing and cost sharing resources, with a goal of identifying common interests and promoting partnerships.

Last year the Council sponsored an Indian Water Rights Settlement Symposium in Reno, Nevada on August 25-27, 2015.

2016/17: The Committee will consider hosting symposia on any topic related to tribal issues, data issues, or other topics and issues as their importance merits.

Time Frame – 2016-2017

7. ANNUAL REPORT

Since its organization in 1965, the Council has prepared and published an annual report. The annual report includes a brief discussion of the Council's formation and a detailed summary of its current membership and activities. It is a report of the Council's meetings, and provides an explanation of resolutions and positions and other actions taken by the Council. Further, it includes a description of workshops, seminars and symposia sponsored by the Council, as well as other important activities and events. It also describes the Council's involvement in major current water policy issues. Lastly, biennially, it includes an audit of the Council's finances, and current rules of organization. Recently, electronic copies have been distributed.

Time frame: July-December

Tab I – FY2016-2017 Water Quality
Committee Work Plan

**WATER QUALITY COMMITTEE
WORK PLAN
July 1, 2016 to June 30, 2017**

1. HYDRAULIC FRACTURING

Background: In June 2015, the Environmental Protection Agency (EPA) published a study on the relationship between hydraulic fracturing and drinking water, titled “Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources.” In March 2015, the Bureau of Land Management (BLM) issued a final rule for hydraulic fracturing on public lands, which includes a variance process that would allow states to propose their own standards if they can prove that their regulations meet or exceed the requirements in BLM’s rule. In addition, EPA, the Department of Energy (DOE), and the Department of the Interior (DOI) agreed in April 2012 to develop a “Multi-Agency Unconventional Oil and Gas Research Program” to support policy decision by relevant state and federal agencies. The effort is intended to help support the White House’s March 2011 “Blueprint for a Secure Energy Future.”

Work-to-Date: The Western Governors’ Association (WGA) Resolution #2014-4 and WSWC Position #353 state that: (1) federal efforts involving hydraulic fracturing should leverage state knowledge, experience, policies, and regulations; (2) such efforts should be limited, based upon sound science, and driven by states; and (3) that both organizations oppose any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.

2016-2017: The Committee will work with the Water Resources and Legal Committees to support the WGA and WSWC positions, and will continue to monitor and update the WSWC on developments involving hydraulic fracturing, including but not limited to EPA’s study, BLM’s rule, and the EPA/DOE/DOI research program.

The Committee will also work in collaboration with the Water Resources and Legal Committees to prepare a summary of the applicable WSWC states’ experiences with hydraulic fracturing. The summary will complement previous reports by the Groundwater Protection Council and others that describe how state programmatic elements and regulations ensure that hydraulic fracturing does not impair water resources and environmental values. Examples of the types of information sought for the summary include but are not limited to: (1) the impacts of hydraulic fracturing on water quality, if any; (2) examples of how state regulations and other efforts protect water quality; (3) the economic benefits of hydraulic fracturing; (4) water supplies and amounts used for hydraulic fracturing; (5) state interaction with federal agencies involving hydraulic fracturing; and (6) the degree to which states utilize oil and gas taxes and other revenue related to hydraulic fracturing to fund water-related efforts, including but not limited to water planning, water management, and water regulation and protection. WSWC staff will prepare the summary under the direction of the Committees, and will gather the necessary information through independent research and focused telephone interviews with select staff from the applicable WSWC state agencies. WSWC staff will also coordinate with other relevant state associations and organizations to avoid duplicating prior efforts. It is envisioned that the full WSWC will review the summary.

Time Frame: 2016-2017, pending available staff time and resources.

2. WATER QUALITY/QUANTITY NEXUS

Work-to-Date: Paragraph (B)(3) of WGA Resolution #2015-08 states: “Western Governors believe effective solutions to water resource challenges require an integrated approach among states and with federal, tribal and local partners. Federal investments should assist states in implementing state water plans designed to provide water for municipal, rural, agricultural, industrial and habitat needs, and should provide financial and technical support for development of watershed and river basin water management plans when requested by states. Integrated water management planning should also account for flood control, water quality protection, and regional water supply systems. Water resource planning must occur within a framework that preserves states’ authority to manage water through policies which recognize state law and the financial, environmental and social values of the water resource to citizens of the western states today and in the future.” (emphasis added)

On October 6-7, 2015, the Water Quality Committee held a workshop in conjunction with the WSWC’s 2015 fall meetings in Manhattan, Kansas. The workshop provided insights on: (1) how state water quantity and quality regulations interact with each other; (2) how states can protect water quality within the existing framework of the prior appropriation doctrine; and (3) the proper relationship between federal environmental protections and the states’ primary and exclusive authority over the allocation of water resources. WSWC staff prepared a preliminary report of the meeting, which included recommendations for WSWC next steps.

2016-2017: The Committee will produce findings and policy options from the WQ2 workshop for the WSWC to consider as it supports WGA Resolution #2015-08. The Committee will also follow up on the next steps recommended in the WQ2 workshop, including: (1) create a nexus Toolbox of useful and accessible information, including interagency MOUs, instream flow legislation, case studies, and reports of additional workshops, to provide a resource for the states seeking to learn from each other’s experiences; (2) create a subcommittee to provide a more focused review of the 1997 WSWC report on Water Quantity/Water Quality Interrelationships: Western State Perspectives; and (3) identify and coordinate with federal agencies and other technical or national organizations with common interests to co-host educational workshops or symposia on relevant nexus topics, both to develop better relationships and to find additional potential solutions to nexus problems.

Time Frame: Ongoing

WQ2 Nexus Workgroup: Walt Baker (UT)

3. CLEAN WATER ACT ISSUES

There are a number of ongoing Clean Water Act (CWA) issues that pertain to WSWC policies or are otherwise of interest that the Committee will monitor and address on an as needed basis. These issues are listed below in order of priority.

a. CWA Jurisdiction*

Background: In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S. Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006).

In September 2013, the EPA and Corps withdrew the draft guidance. At the same time, the agencies announced that they had submitted a draft rule to clarify the extent of CWA jurisdiction to the Office of Management and Budget (OMB) for interagency review. On April 21, 2014, EPA and the Corps published a proposed rule in the Federal Register with an initial 90-day public comment period that was later extended to October 20, 2014

Work-to-Date: In 2013, the WSWC wrote EPA and the Corps a series of five letters requesting greater state consultation in the development of the rule. In addition, the WSWC created a CWA Rulemaking Workgroup to gather information on the WSWC member states' perspectives regarding the rulemaking and to identify further areas of consensus among the western states. In March 2014, the workgroup developed a letter that the WSWC sent to EPA and the Corps, setting forth a list of additional consensus comments on the rulemaking. The Western Governors' Association (WGA) sent a subsequent letter on March 25, 2014, that cited the WSWC's letter and urged the agencies to consult with the states individually and through the WGA before taking further action on the rulemaking.

The 90-day public comment period was extended to October 20, 2014, following requests from the WGA and other organizations for an extension. Following the rule's publication, EPA and the Corps engaged in a series of calls with the WSWC to discuss the states' questions and concerns about the rulemaking. WSWC Water Quality Committee Chair J.D. Strong of Oklahoma also testified on behalf of the WSWC and the WGA before the House Transportation and Infrastructure Committee regarding the rule on June 11, 2014.

The WSWC adopted Position #369 regarding CWA rulemaking efforts on July 18, 2014, during its summer meetings in Helena, Montana. The resolution replaces WSWC Position #330.5 and served as the basis of a comment letter the WSWC sent to EPA and the Corps on October 15, 2014. That letter called for the creation of a state-federal workgroup to refine and revise the rule and set forth a number of requested changes.

On June 29, 2015, the EPA and the Corps published their final rule in the Federal Register.

2016-2017: The Committee will continue to work with the Water Resources and Legal Committees through the Workgroup to follow and comment on the further development and/or implementation of the jurisdictional rule and other federal actions regarding CWA jurisdiction in accordance with the WSWC's positions.

Time Frame: Ongoing

CWA Rulemaking Workgroup: Michelle Hale (AK), Trisha Oeth (CO), Barry Burnell (ID), Tom Stiles (KS), Jennifer Verleger (ND), J.D. Strong (OK), Todd Chenoweth (TX), Walt Baker (UT), Laura Driscoll (WA), , and Bill DiRienzo (WY).

*See Item 2 of the Legal Committee Workplan

b. State Revolving Funds (SRFs) and Infrastructure Financing

Background: Over the years, some budget requests from the Administration have proposed cuts to the SRF programs. Various acts of Congress have also authorized or retained a number of limitations on the use of SRF funds, including but not limited to: (1) “Buy American” provisions for iron and steel; (2) requirements that between 20% and 30% of SRF funds be used for principal forgiveness, negative interest loans, or grants subject to additional provisions; and (3) requirements that states use at least 10% of their SRF funds for green infrastructure, water or energy efficiency improvements, or other “environmentally innovative” activities.

For FY 2017, the President’s budget request seeks \$2B for the Clean Water and Drinking Water SRFs. Legislation introduced in the 114th Congress (H.R. 4653) would reauthorize the SRF, with spending of up to \$3.1 billion for FY2017, increasing to \$5.5 billion in FY2021. The SRF authorization expired in 2003, but Congress has continued to fund the program, appropriating \$863 million in last year’s spending bill.

Work-to-Date: WSWC Position #364 urges the Administration and Congress to provide greater flexibility and fewer restrictions on state SRF management and stable and continuing appropriations to the SRF capitalization grants at funding levels that are adequate to help states address their water infrastructure needs. WGA resolution 2014-04 also supports the SRFs as “important tools” and requests greater flexibility and fewer restrictions on state SRF management.

2016-2017: The Committee will support the WGA and WSWC positions. In particular, WSWC staff will continue to update the Committee on developments within Congress and the Administration that have the potential to impact the SRFs. As needed, Committee members and WSWC staff will also meet with the Administration and Congress to further the objectives of the WGA and WSWC positions.

Time Frame: Ongoing

c. EPA’s Water Transfers Rule

Background: On March 28, 2014, the U.S. District Court for the Southern District Court of New York (SDNY) vacated the rule in *Catskills Mountain Chapter of Trout Unlimited v. EPA (Catskills II)*, 2014 U.S. Dist. LEXIS 42545 (S.D.N.Y., March 2014). Among other things, the court reasoned that many of the types of conveyances contemplated by the rule would not be considered navigable waters under the jurisdictional standards set forth in the U.S. Supreme Court’s *Rapanos* decision. The SDNY court further opined that language in the CWA regarding state rights and state primacy over water allocation

support an interpretation that allows for a federal role in water allocation. EPA has appealed this decision to the Second Circuit Court of Appeals, along with 11 western states¹ and a number of western water providers that have intervened in the action to uphold the rule. California has also filed an amicus brief in support of the rule.

On August 21, 2015 a Ninth Circuit panel affirmed (on other grounds) a district court decision in *Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation*, that the Bureau of Reclamation was not required to obtain a Clean Water Act (CWA) §402 permit for waters transferred through a drain as part of the Klamath Irrigation Project. The lower court held that the Bureau of Reclamation was exempt from the permit requirement under the Environmental Protection Agency's (EPA) Water Transfers Rule, 40 CFR §122.3(i). The 9th Circuit panel relied instead on a subsequent "meaningfully distinct" test from a 2013 U.S. Supreme Court decision in *Los Angeles County Flood Control District v. Natural Resources Defense Council*, 133 S. Ct. 710. In that case, the Supreme Court held that "no pollutants are 'added' to a body of water when water is merely transferred between different portions of that water body." The panel found this a "simpler path" than deciding whether the Water Transfers Rule is properly within EPA's authority, as is the issue currently before the 2nd Circuit in *Catskills Mountains Chapter of Trout Unlimited v. EPA*, No. 14-01991.

Work-to-Date: Paragraph B(2)(c) of WGA Resolution #2014-04 and WSWC Position #342 generally support EPA's Water Transfers Rule (940 C.F.R. § 122.3(i)), which clarifies that water transfers from one "navigable" water to another are exempt from National Pollutant Discharge Elimination System (NPDES) permitting under Section 402 of the CWA. The rule states that transfers do not require NPDES permits if they do not add pollutants and if there is no intervening municipal, industrial, or commercial use between the diversion and the discharge of the transferred water.

2016-2017: The Committee and WSWC staff will: (1) continue to support the WGA and WSWC positions; (2) monitor any and all activities impacting EPA's rule, including but not limited to the Second Circuit litigation and possible efforts by EPA to reconsider the rule; (3) inform the WSWC of ongoing developments; and (4) take any other actions needed to support the WGA/WSWC positions regarding the rule.

Time Frame: Ongoing

d. Nutrients

Background: EPA's Office of Water is working to carry out a National Nutrient Strategy to accelerate state adoption of numeric water quality standards while building the scientific and technical infrastructure needed to develop new criteria to address nitrogen and phosphorus pollution.

On March 16, 2011, then EPA Acting Assistant Administrator for Water Nancy Stoner issued a memo to EPA's Regional Administrators to synthesize key principles regarding

¹ The 11 intervening states include: Alaska, the Arizona Department of Water Resources, Colorado, Idaho, Nebraska, Nevada, North Dakota, New Mexico, Texas, Utah, and Wyoming.

the agency's technical assistance and collaboration with states. The memo urged the regions to place new emphasis on working with states to achieve near-term reductions in nutrient loadings. Most notably, the memo provided a "Recommended Elements of a State Nutrients Framework" to serve as a tool to "...guide ongoing collaboration between EPA regions and states in their joint effort to make progress on reducing nitrogen and phosphorus pollution." It also asked each region to use the framework as a basis for discussions with interested and willing states, the goal of which would be to tailor the framework to particular state circumstances.

Work-to-Date: The Committee and WSWC staff have followed and updated the WSWC on EPA efforts involving nutrients. Various Committee meetings have also featured presentations from EPA and state officials on federal and state nutrient management efforts.

Paragraph B(3)(b) of WGA Resolution #2014-04 states that "...nutrients produced by non-point sources fall outside of NPDES jurisdiction and should not be treated like other pollutants that have clear and consistent thresholds over a broad range of aquatic systems and conditions." The WGA's resolution further states that states should have "sufficient flexibility" to utilize their own incentives and authorities to establish standards and control strategies to address nutrient pollution, rather than "being forced to abide by one-size-fits-all federal numeric criteria." According to the WGA's resolution, successful tools currently in use by states include best management practices, nutrient trading, and controlling other water quality parameters, among other "innovative" approaches.

2016-2017: The Committee and WSWC staff will monitor EPA's nutrient efforts and inform the WSWC of ongoing developments. It will also ensure that the WSWC's efforts do not duplicate those of the Association of Clean Water Administrators.

Time Frame: Ongoing

e. Treatment as States Rulemaking Efforts

Background: EPA is engaged in two separate, but related rulemaking efforts regarding the tribes' ability to obtain "treatment as states" (TAS) status under Section 518 of the CWA, which is needed for tribes to operate certain CWA regulatory programs.

The first effort involves the development of a possible interpretive rule that could do away with current requirements that tribes must demonstrate that they have inherent authority to operate CWA regulatory programs. EPA has indicated that such a reinterpretation would consider Section 518 to be an express delegation of authority from Congress. EPA conducted pre-proposal outreach with the states, including the WSWC in August 2014, and intends to publish an interpretive rule for public comment in mid-to-late 2015.

The second effort involves the development of a formal rule that will set forth the regulatory process by which tribes can obtain TAS status to operate the impaired water listing and total daily maximum daily load (TMDL) programs. EPA has indicated that Section 518 requires the development of the rule. The agency has also conducted pre-

proposal outreach with the states, including the WSWC in October 2014, and intends to publish a draft rule for public comment in mid-to-late 2015.

2016-2017: The Committee will continue to monitor these rulemakings and engage with EPA as appropriate.

Time Frame: Ongoing

f. Abandoned Hardrock Mine Remediation

Background: A number of Good Samaritan bills have been introduced in Congress over the years, including legislation introduced by Senator Mark Udall (D-CO). These bills have been unsuccessful due to concerns about the potential impacts of amending the CWA and perceptions that sufficient protections already exist under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). However, considerable uncertainty exists as to whether CERCLA and other existing authorities provide Good Samaritans with sufficient protection from third party lawsuits for sites in which there is a continuing discharge of pollutants as defined by the CWA.

In December 2012, the Environmental Protection Agency (EPA) issued a memorandum to clarify administrative protections for Good Samaritans. EPA's regulations require operators of sites that continue to discharge pollution after cleanup to obtain NPDES permits under the CWA. The memorandum clarifies that Good Samaritans who complete cleanup efforts pursuant to EPA policies will not be considered "operators" responsible for obtaining NPDES permits if they lack: (1) access and authority to enter the site; (2) an ongoing contractual agreement or relationship with the site owner to control discharges; (3) power or responsibility to make timely discovery of changes to the discharges; (4) power or responsibility to direct persons who control the mechanisms, if any, causing the discharges; and (5) power or responsibility to prevent and abate the environmental damage caused by the discharges. Nevertheless, the memorandum states that it "...does not address or resolve all potential liability associated with discharges from abandoned mines."

Work-to-Date: The WGA and WSWC have long supported legislation to amend the Clean Water Act (CWA) to protect authorized third parties, or "Good Samaritans," who voluntarily clean up abandoned hardrock mines, from inheriting perpetual liability for the site under the CWA (WGA Policy Resolution #13-05).

Over the past several years, the Committee has worked to support Good Samaritan legislation and other efforts to clean up abandoned hardrock mines, including multiple visits with Congress and the Administration, Congressional testimony in support of such legislation, and involvement in a WGA-organized Task Force focused on crafting an exemption for Good Samaritan activities by state governments.

2016-2017: The Committee will coordinate with the WGA and encourage efforts to clean up abandoned hardrock mines, including but not limited to enactment of Good Samaritan legislation and efforts to support utilization of EPA's 2012 memorandum. As part of this effort, the Committee will work with key Congressional members/staff,

Administration officials, and other stakeholders to develop and support efforts to clean up abandoned hardrock mines in accordance with the WGA's policies, including the possible development of a workgroup and/or workshop to bring together interested stakeholders to identify ways to facilitate abandoned hardrock mine remediation.

In addition to the above actions, the Committee will: (1) work with the Administration and Congress to provide liability protections to Good Samaritans under existing authorities; and (2) evaluate the prospects for Good Samaritan legislation.

Time Frame: Ongoing

Tab J – FY2016-2017 Legal Committee Work Plan

**LEGAL COMMITTEE
WORK PLAN
July 1, 2016 to June 30, 2017**

**1. STATE AND FEDERAL COLLABORATION REGARDING THE
ADJUDICATION OF FEDERAL NON-TRIBAL WATER RIGHTS**

Work-to-Date: The Committee has created a Federal Non-Tribal Water Claims Subcommittee to evaluate ways the WSWC and WestFAST can improve the effective resolution of federal non-tribal water rights claims. The Subcommittee consists of WSWC members and WestFAST members, who serve in an *ex officio* capacity.

The Subcommittee issued a questionnaire in 2012 to WSWC member states, the Bureau of Land Management, the Bureau of Reclamation, the Department of Defense, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Forest Service. The questionnaire sought information on ways the WSWC and WestFAST could address the issues and challenges that involve federal non-tribal water right claims,¹ as well as examples of successful state and federal efforts to resolve these claims. Responses indicated a broad consensus that the WSWC and WestFAST could develop a clearinghouse of information to assist states and federal agencies in the effective resolution of federal non-tribal water rights claims.

On July 15-16, 2014, the WSWC and WestFAST held a workshop in Helena, Montana to discuss ways to improve the resolution of federal non-tribal water rights claims and to begin the process of developing a clearinghouse of information that states and tribes can use to resolve these claims. The WSWC and WestFAST subsequently created a joint state-federal workgroup to help develop the clearinghouse and implement the other recommendations that emerged from the workshop.

2016-2017: The Committee will work to carry out the recommendations and next steps that emerged from the workshop. Under the direction of the Committee, the workgroup will hold calls on a quarterly basis to discuss the development of the clearinghouse and to serve as a forum for information sharing and relationship building. The Workgroup will also advise the Committee about potential future actions the WSWC and WestFAST may take to address federal water needs and may hold webinars on specific topics of interest. The workgroup will hold workshops on (1) identifying state and federal perspectives of groundwater rights, with case studies as examples of how they've been handled in the past through adjudications, settlements, compacts or statutes; (2) hypothetical or actual examples of how adjudicated or decreed federal water rights will be administered by states, and how state and federal agencies would approach situations like curtailments under the current laws.

Time Frame: Ongoing

¹ For the purposes of the questionnaire, the term "federal non-tribal water right claim" encompassed federal reserved right claims, federal state-based claims, and claims relating to the aforementioned federal agencies that do not involve water right claims made by a tribe.

Federal Non-Tribal Water Claims Subcommittee: David Schade (AK), Jay Weiner (MT), Greg Ridgley (NM), Jennifer Verleger (ND), Dwight French (OR), Todd Chenoweth (TX), Norm Johnson (UT), Buck Smith (WA), and Pat Tyrrell and Chris Brown (WY). WestFAST members and agency staff participating in the Subcommittee in an *ex officio* capacity include: Jana Wilcox (Bureau of Land Management), Marc Kodack (Department of Defense), Andrew Hautzinger (U.S. Fish and Wildlife Service), Donald Anderson and Becky Fulkerson (Bureau of Reclamation), Jeff Hughes (National Park Service) and Jean Thomas (U.S. Forest Service). Other *ex officio* members of the Subcommittee include Kristen Geddes and Susan Joseph-Taylor (NV), Jonathan Allen (OK), Jesse Ratcliff (OR), and Abigail Boudewyns (WY).

2. CWA JURISDICTION*

Work-to-Date: In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S. Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006).

In September 2013, the EPA and Corps withdrew the draft guidance. At the same time, the agencies announced that they had submitted a draft rule to clarify the extent of CWA jurisdiction to the Office of Management and Budget (OMB) for interagency review.

In 2013, the WSWC wrote EPA and the Corps a series of five letters requesting greater state consultation in the development of the rule. In addition, the WSWC created a CWA Rulemaking Workgroup to gather information on the WSWC member states' perspectives regarding the rulemaking and to identify further areas of consensus among the western states. In March 2014, the workgroup developed a letter that the WSWC sent to EPA and the Corps, setting forth a list of additional consensus comments on the rulemaking. The Western Governors' Association (WGA) sent a subsequent letter on March 25, 2014, that cited the WSWC's March 10 letter and urged the agencies to consult with the states individually and through the WGA before taking further action on the rulemaking.

On April 21, 2014, EPA and the Corps published a proposed rule in the Federal Register with an initial 90-day public comment period that was later extended to October 20, 2014, following requests from the WGA and other organizations for an extension. Following the rule's publication, EPA and the Corps engaged in a series of calls with the WSWC to discuss the states' questions and concerns about the rulemaking. WSWC Water Quality Committee Chair J.D. Strong of Oklahoma also testified on behalf of the WSWC and the WGA before the House Transportation and Infrastructure Committee regarding the rule on June 11, 2014.

The WSWC adopted Position #369 regarding CWA rulemaking efforts on July 18, 2014, during its summer meetings in Helena, Montana. The resolution replaces WSWC Position #330.5 and served as the basis of a comment letter the WSWC sent to EPA and the Corps on October 15, 2014, Position #373. That letter called for the creation of a state-federal workgroup to refine and revise the rule and set forth a number of requested changes.

On June 29, 2015, the EPA and the Corps published their final rule in the Federal Register. The final rule incorporates some of the changes requested in Position #373.

2016-2017: The Committee will continue to work with the Water Resources and Water Quality Committees through the Workgroup to follow and comment on the implementation of the jurisdictional rule and other federal actions regarding CWA jurisdiction in accordance with the WSWC's and WGA's positions.

Time Frame: Ongoing

CWA Rulemaking Workgroup: Michelle Hale (AK), Trisha Oeth (CO), Barry Burnell (ID), Tom Stiles (KS), Jennifer Verleger (ND), J.D. Strong (OK), Todd Chenoweth (TX), Walt Baker (UT), Laura Driscoll (WA), and Bill DiRienzo (WY).

*See Item 3(a) of the Water Quality Committee Workplan

3. AD HOC GROUP ON RESERVED INDIAN WATER RIGHTS

Work-to-Date: The Western Governors' Association (WGA) and WSWC have long supported the negotiated resolution of Indian water rights claims (WSWC Position #376). As a result, the WGA and WSWC have worked with the Native American Rights Fund (NARF) for over thirty years as part of an Ad Hoc Group on Reserved Indian Water Rights to promote negotiated settlements.

Over the years, the Ad Hoc Group has carried out a number of activities to support the negotiated settlement of Indian reserved water rights claims, including frequent trips to Washington, D.C. to support policies that facilitate settlements and a biennial symposium on settlements that the WSWC and NARF hold every odd year. The Group has also worked to highlight the need to secure a permanent funding mechanism for authorized settlements and to identify alternative funding sources to help ensure that settlements authorized by Congress and approved by the President will be implemented.

In recent years, the WSWC and NARF have established regular meetings with the Deputy Secretary of the Interior's Office, the Secretary of the Interior's Indian Water Rights Office, and other Interior officials engaged in Interior's Indian water rights efforts. The WSWC and NARF have also held regular meetings with the White House Office of Management and Budget and other White House officials to support the WSWC's settlement policies.

2016-2017: The Committee will oversee WSWC's Ad Hoc Group efforts in the following areas: (1) activities to gather support for an appropriate remedy to settlement funding issues, including the development of a permanent settlement funding mechanism, the identification of other possible funding sources, and funding for federal assessment, negotiation, and implementation teams; (2) continue meeting with the Administration via the quarterly conference calls and other face-to-face opportunities to discuss key issues associated with Indian water rights settlements; and (3) hold the 2017 Symposium on the Settlement of Indian Reserved Water Rights Claims in partnership with the Native American Rights Fund.

Time Frame: Ongoing

Reserved Rights Subcommittee: Bill Staudenmaier (AZ); Cindy Chandley (AZ); Jay Weiner (MT), Greg Ridgley (NM), and Norman Johnson (UT). NARF members participating in the Subcommittee in an ex officio capacity include: John Echohawk, Joel Williams, Heather Whiteman Runs Him, Steve Moore, and David Gover. Other ex officio members include Susan Cottingham, Nathan Bracken, Stanley Pollack, David Mullon, Ryan Smith, Michael Bogert, Pamela Woodies, and Arianne Singer.

4. U.S. FOREST SERVICE PROPOSED GROUNDWATER DIRECTIVE

Work-to-Date: On May 6, 2014, the U.S. Forest Service published a proposed directive in the Federal Register that would create a “comprehensive direction” for the agency’s management of groundwater on National Forest System (NFS) land. In particular, the directive is intended to: (1) provide for consideration of groundwater resources in Forest Service activities; (2) encourage source water protection and water conservation; (3) establish procedures for reviewing new proposals for groundwater withdrawals on NFS land; (4) require the evaluation of potential impacts from groundwater withdrawals on NFS natural resources; and (5) provide for measurement and reporting to help build the agency’s understanding of groundwater resources on NFS land. Comments on the proposed directive are due August 4, 2014.

According to the Forest Service, the directive will not infringe on state-issued water rights or change how state groundwater and surface water quality regulations affect federal lands. However, while the directive would require the agency to comply with state law when filing groundwater use claims in state adjudications and administrative proceedings, it would, among other things: (1) require application of “...the Reservation or Winters Doctrine to groundwater, as well as surface water, consistent with the purposes of the Organic Administration Act, the Wild and Scenic Rivers Act, and the Wilderness Act;” (2) require the Forest Service to evaluate all applications to states for water rights on lands adjacent to NFS lands; and (3) would presume that groundwater and surface water are connected unless proven otherwise.

WSWC position #380 notes that no federal court has recognized a federal reserved water right to groundwater, and opposes “...efforts that would establish a federal ownership interest in groundwater or diminish the primary and exclusive authority of States over groundwater.” Similarly, WGA Resolution #2015-08, paragraph B(1)(a) states: “While the Western Governors acknowledge the important role of federal laws such as the Clean Water Act, the Endangered Species Act, and the Safe Drinking Water Act, nothing in any act of Congress or Executive Branch regulatory action should be construed as affecting or intending to affect states’ primacy over the allocation and administration of their water resources.”

On July 2, 2014, the WGA wrote Secretary of Agriculture Tom Vilsack to express concern that the directive “could have significant implications for our states and our groundwater resources.” WGA’s letter also asked Vilsack to respond to a series of questions regarding the directive. The WSWC subsequently sent a letter to the USFS on October 3, 2014 (Position #372) that outlined a number of questions and concerns about the directive, including: (1) its potential to infringe on state water management, (2) questions about the legal basis for the directive; and (3) the lack of state consultation in the development of the directive.

In December 2014, USFS Chief Tom Tidwell indicated that the USFS will not move forward with the directive until after agency personnel have engaged with states and other stakeholders to better understand their concerns. After the USFS has completed this engagement, it will publish a revised directive in the Federal Register for public comment.

At the WSWC's request, the USFS met with the WSWC on February 13, 2015 to discuss the WSWC's concerns regarding the directive. The meeting identified a number of conceptual, consensus-based changes that may be able to address some of the WSWC's concerns.

On June 19, 2015, the USFS published a Notice of Withdrawal of the Proposed Directive in the Federal Register. The USFS acknowledged the States' concerns that the Proposed Directive would exceed USFS authority and infringe on States' authority to allocate water. The withdrawal will allow USFS to engage in further conversations with the States. USFS intends to use the input from States and others to develop new directives that create a consistent approach to evaluating and monitoring the effects on groundwater resulting from actions on USFS lands.

2016-2017: The Committee will use the results of the WSWC's February 2015 meeting with the USFS to develop consensus changes to the directive that could form the basis of potential comments for the WSWC to submit once the USFS re-publishes the directive for public comment. The Committee will also continue to monitor this issue and engage with the USFS as appropriate under the supervision of the WSWC and in close coordination with the WGA.

Time Frame: Ongoing

5. WRDA/CORPS POLICIES

Work to date: The Council has in the past supported regular passage of a Water Resources Development Act (WRDA), and has addressed a number of specific policy issues, while not taking any position on specific project authorizations. The Council has raised concerns with the Corps' approach to identifying and regulating the use of "surplus waters" and Corps drought authorities related to Corps projects. The Council also worked to exclude irrigation water supply canals from any new safety levee safety program.

2016-2017: The Council will continue to work with the Congress and Corps on WRDA and Corps-related issues, including the treatment of irrigation canals under the proposed new levee safety program. Further, the Council will continue to work to ensure that state water rights and prerogatives are protected, specifically as it relates to natural flows, Corps storage and other issues.

Subcommittee: Jennifer Verleger (ND); Tracy Streeter (KS); and Tim Davis (MT)

A. CORPS SURPLUS WATER RULEMAKING

Work to date: A draft Corps surplus water rulemaking is pending. The Flood Control Act of 1944 specifically declared the policy of Congress to recognize the interests and rights of the Missouri River Basin States in determining the development of the watersheds within their borders and likewise their interests and rights in water use and control, and to preserve and protect to the fullest extent established and potential uses of the rivers' natural flows, those flows

that would pass through the states in the absence of the Corps of Engineers dams. The federal government has long recognized the right to use water as determined under the laws of the various states. However, the Corps has indicated that all waters entering its Missouri River mainstem reservoirs are stored waters to be allocated and controlled by the federal agency and does not recognize the States' right to access natural flows, separate from the captured floodwaters stored within those reservoirs.

In October 2015, the Council adopted a resolution (#388) urging the Corps to recognize the legal rights of the States' to allocate water, wrote the Assistant Secretary of the Army for Civil Works regarding its concerns, and has met with Corps officials on different occasions, as well as discussed legislative clarifications with congressional staff. The Council has also surveyed its member states regarding their definition of stored waters and related storage rights.

2016-2017: The Committee will continue to work to address this issue and explore alternative solutions, including both administrative and congressional action.

Tab K – Summary of WSWC Activities and Events

**Western States Water Council
Summary of Activities
From October 2016 – through March 2017**

WGA COORDINATION

December 13-14, 2016 – WSWC Executive Director attended the WGA Winter Meeting in San Diego, California.

LETTERS

December 28, 2016 – The WSWC submitted comments to EPA on the agency’s advanced notice of proposed rulemaking regarding federal baseline water quality standards for Indian reservations. WSWC raised several questions, including mechanisms for dispute resolution, using state standards as a baseline, and jurisdictional concerns, particularly in places of checkerboard ownership within reservation boundaries.

February 17, 2017 – WSWC wrote a letter to the Secretary’s Indian Water Rights Office, U.S. Department of the Interior, regarding the 1990 Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims.

PUBLICATIONS

“Irrigation Management Information Systems in the West: Capabilities and Challenges,” October 2016.

WaDE DEVELOPMENT

December 6-9, 2016 – WaDE Program Manager attended an Aspen Institute Dialogue Series on Sharing and Integrating Water Data for Sustainability in Wye, Maryland.

January 17-20, 2017 – WaDE Program Manager attended USGS Program Activities in Austin, Texas.

January 30-February 2, 2017 – WaDE Program Manager attended an Aspen Institute Dialogue Series on Sharing and Integrating Water Data for Sustainability in Aspen, Colorado.

COORDINATION WITH WESTFAST AGENCIES

WestFAST agencies continue to work out agreements for the NOAA liaison position, and Roger Pierce is working out of his NWS office in San Diego, pending approval to relocate to Salt Lake City.

Council staff continues to discuss changes within the Administration with WestFAST members on a number of policy issues and potential future actions, sharing WSWC priorities.

October 17-20, 2016 – WaDE Program Manager participated in NASA Program Activities in Washington, DC.

October 25-28, 2016 – WSWC Executive Director attended the NIDIS Executive Council meeting in Washington, DC.

COORDINATION WITH OTHER ORGANIZATIONS

November 4, 2016 – WSWC Executive Director attended the Upper Colorado River Basin Policy Leaders Meeting in Grand Junction, Colorado.

November 13-17, 2016 – WSWC Executive Director participated by invitation as part of a panel of experienced “old guys” presenting their perspectives on the past, present and future of water management at the AWRA Annual Conference in Orlando, Florida.

December 14-16, 2016 – WSWC Executive Director attended the CRWUA Annual Conference in Las Vegas, Nevada.

February 8-10, 2017 – WSWC Legal Counsel gave a presentation at the Arizona Tribal Water Seminar in Phoenix, Arizona.

March 20, 2017 – WSWC Legal Counsel attended the Annual Utah Water Law and Policy Seminar, Water and its Interconnectedness, in St. George, Utah.

March 23-24, 2017 – WSWC Legal Counsel attended the Wallace Stegner Center Annual Symposium, Water in the West: Exploring Untapped Solutions, in Salt Lake City, Utah.

March 27-29, 2017 – WSWC Legal Counsel attended and presented at the ABA Water Law Conference in Hollywood, California.

COMMITTEES, TASK FORCES AND WORK GROUPS

Ad Hoc Group on Indian Water Rights Settlements – WSWC Executive Director and Legal Counsel

Advisory Committee on Water Information (ACWI) Climate Adaptation Workgroup – WSWC Member Jeanine Jones of California

ACWI Subcommittee on Spatial Water Data – WaDE Program Manager

American Bar Association Water Law Conference Planning Committee – WSWC Legal Counsel

American Water Resources Association (AWRA) – WSWC Executive Director and WaDE Program Manager

National Geospatial Advisory Committee, Landsat Advisory Group – WSWC Executive Director

National Integrated Drought Information System (NIDIS) Executive Council – WSWC Executive Director

National Water Census Ad Hoc Group –WaDE Program Manager

National Drought Resilience Partnership – WSWC Executive Director

Open Water Data Initiative (OWDI) Technical Development Workgroup and Drought/Water Supply Workgroup – WaDE Program Manager

WaDE - Exchange Network Grant FY2013/FY2015 Steering Committees – WaDE Program Manager

USGS Groundwater and Streamflow Information Program Collaborative Working Group – WaDE Program Manager

USGS Water Use Strategic Planning Team – WaDE Program Manager

Western Electricity Coordinating Council (WECC) Scenario Planning Steering Group and Environmental Data Work Group – WSWC Executive Director

Tab L – Future WSWC Meetings

WESTERN STATES WATER COUNCIL

FUTURE MEETINGS

Upcoming Council Meetings/Host States

2017 Meetings

Summer Meeting – Rohnert Park, Sonoma County, California
June 27-29, 2017 (Tuesday – Thursday)
DoubleTree Sonoma Wine Country

Fall Meeting – Albuquerque, New Mexico
October 18-20, 2017
Albuquerque Marriott Pyramid North

2018 Meetings

Spring – Washington, D.C.
Summer – Oregon (last hosted 7/29/11 in Bend)
Fall – Idaho (last hosted 10/7/11 in Idaho Falls)

2019 Meetings

Spring – Washington (last hosted 6/8/12 in Seattle)
Summer – Alaska (TBD)
Fall – Texas (last hosted 10/12/12 in San Antonio)

2017 Workshops

WSWC/CDWR Improving Long-Range S2S Precipitation Forecasting
May 17-19, 2017
San Diego, California
Doubletree San Diego Downtown

WSWC/WestFAST Workshop on Federal Non-Tribal Water Claims
October 18, 2017
Albuquerque, New Mexico
Albuquerque Marriott Pyramid North

MEETING SCHEDULE

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	Alaska	Arizona	California	Colorado	Idaho	Kansas	Montana	Nebraska	Nevada	New Mexico	North Dakota	Oklahoma	Oregon	South Dakota	Texas	Utah	Washington	Wyoming	Other
150																			Wash. DC 3/29/06
151				Breckenridge 7/21/06															
152																		Sheridan 10/6/06	
153														Sioux Falls 5/4/07					
154							Bozeman 8/10/07												
155		Phoenix 11/16/07																	
156																			Wash. DC 3/7/08
157										Medora 7/11/08									
158											Oklahoma Cy 10/17/08								
159						Kansas Cy 4/24/09													
160																Park City 7/17/09			
161								Lincoln 10/16/09											
162																			Wash. DC 3/23/10
163									Lake Tahoe 7/23/10										
164			San Diego 10/29/10																
165										Santa Fe 4/15/11									
166													Bend 7/29/11						
167					Idaho Falls 10/7/11														
168																			Wash. DC 3/15/12
169																	Seattle 6/8/12		
170															San Antonio 10/12/12				

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Tab M – WSWC Support Letters regarding
the Clean Water and Drinking
Water State Revolving Funds

EPA SRF & STAG Support Letter

Administration/Congress

Dear ____:

Our nation's wastewater and drinking water infrastructure are aging and in need of repair and replacement. Additionally, many of our cities, towns, and communities lack the necessary funds to construct or rehabilitate infrastructure to comply with federal clean water and safe drinking water treatment standards.

In order to effectively implement the requirements of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) the states and the Environmental Protection Agency (EPA) rely on vital programs and tools that require adequate funding through Congress, including EPA's Clean Water and Drinking Water State Revolving Funds (SRF) and State and Tribal Assistance Grants (STAG).

The Western States Water Council has long supported SRF programs, which provide states with federal capitalization grants that are leveraged with state contributions to offer financial assistance to communities where needed. State SRF programs have measures in place to address individual state needs and priorities, and to ensure infrastructure sustainability. The loan repayments enable the SRF programs to be maintained over time. Restrictive federal program mandates, unfortunately, often hinder the flexibility of the state SRF programs to the point that small communities are unable to use them, avoiding them in favor of higher cost financing options that are more workable.

The states and EPA have voluntarily formed Environmental Performance Partnership Agreements that [combine workplans for STAG categorical grants and align state and federal priorities, enabling them to work together to more effectively manage state water resources with defined environmental outcomes. These agreements are made possible through STAG \[categorical grants\]\(#\), which provide critical funds to ensure that the nation's water is clean, ~~and~~ drinking water remains safe \[and that states can issue the vast bulk of the permits needed to build, expand, or operate facilities such as manufacturing and industrial plants needed to expand our economy.\]\(#\)](#)

The Western States Water Council requests that Congress work together with the Administration to ensure that stable and continuing federal appropriations are made to the SRF [programs](#) and STAG [programs](#)~~categorical grants~~, at funding levels that are adequate to help states address their water infrastructure needs, implement federal laws and regulations, and protect public health and the environment for the benefit of the people.

Thank you for your consideration of our concerns.

Sincerely,

Jerry Rigby, Chair
Western States Water Council

Tab N – WSWC Comment Letter Regarding
EPA's Proposed Rulemaking on
Tribal Baseline Water Quality
Standards



WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westernstateswater.org

Environmental Protection Agency

Proposed rulemaking on baseline water quality standards for Indian reservations

Docket ID: HQ-OW-2016-0405

The Western States Water Council represents 18 Western states, many of which have a large tribal presence within their state boundaries. We appreciate the efforts EPA has made to provide information to the states in advance of this rulemaking effort. However, promulgation of nationwide baseline water quality standards (WQS) have the potential to create a more complicated regulatory environment for state water quality and water resources managers and users, and at this time may raise more questions and conflicts that they will resolve.

The proposed rulemaking has raised questions and concerns about: (1) how EPA would implement such a rule and under what authorities, particularly with regard to non-jurisdictional waters and unquantified reserved water rights; (2) how the baseline WQS would impact existing state jurisdictions and water quality programs, particularly where the outer reservation boundaries do not reflect current regulatory jurisdictions and/or non-tribal lands within reservation boundaries; and (3) how EPA would resolve any differences between states and tribal standards, as well as states' standards and EPA's baseline standards for tribes without treatment as states (TAS) authority.

Legal Authority and Administrative Issues

A fundamental question is whether or not any waters for which EPA proposes standards and regulations are waters of the United States and/or trust waters specifically reserved by the Congress for reservation purposes and duly quantified as part of a general state adjudication or otherwise decreed. If not, what if any authority does EPA have to promulgate standards?

Other related questions also arise. Does EPA have the requisite Congressional statutory authority to promulgate baseline WQS on reservations, or trust lands outside the boundaries of reservations, for tribes that lack TAS authority? What authority is there to recognize tribal designations to protect "cultural," "ceremonial," and other traditional uses not mentioned in the Clean Water Act? What, if any, authority does EPA have over intrastate waters that do not cross state boundaries and therefore may not be jurisdictional waters of the United States? While the federal government holds land in trust for the tribes, that does not necessarily mean that it also holds the local waters in trust. Many reserved water rights currently remain unquantified by the federal government and inaccessible to tribes. How will EPA determine to which waters the baseline WQS apply?

Will these baseline WQS be directly enforceable by EPA? How will these standards be used where there is no point source in the area? Will these baseline WQS go through a CWA §303(c) triennial

review to modify and improve the standards, with public hearings and opportunities for public participation, as the states and tribes with TAS are required to do?

Will EPA consider the potentially less disruptive alternative of allowing existing state standards to become the baseline WQS for tribes where appropriate? Further, where there are differences between the state or states and tribes, should they not first be allowed to negotiate and develop cooperative standards, or seek mediation before EPA promulgates standards?

Boundaries of Tribal Lands and Jurisdiction

Uncertainty surrounds the legal boundaries of many tribal lands in the West. How will EPA determine the boundaries of reservations and trust lands, particularly where those boundaries are subject to ongoing dispute? Additionally, non-tribal ownership of lands within reservation boundaries are often subject to state rather than tribal laws. How will EPA develop and enforce WQS standards across lands that alternate between tribal and non-tribal ownership?

For example, several of our states have raised concerns in previous comments to EPA's recent rulemaking efforts regarding tribes. In Idaho, there are significant outstanding issues regarding the borders of Indian reservations, as well as issues of land patents and rights-of-way running through reservations. Additionally, there are concerns about how the baseline WQS will impact Idaho's ability to apply state water quality laws to non-tribal members on tribal lands. South Dakota has similar concerns, with disputed reservation boundaries and lands within reservations owned by non-tribal members currently subject to state regulation. In North Dakota, there are many private landowners engaged in agricultural production on tribal lands who are subject to state regulation. While North Dakota supports and acknowledges the importance of clean water, it wants to ensure that private landowners are not unnecessarily subject to overlapping or uncertain authority under the Clean Water Act.

Utah's eastern Uncompahgre reservation's historic boundary includes nearly 2 million acres, only a small portion of which contains tribal lands. Thousands of acres of private and state trust lands within the historic boundary are currently subject to Utah jurisdiction and multiple Clean Water Act programs. In Colorado, land within the Southern Ute reservation boundary has a checkerboard pattern, with half of the land owned in fee by Colorado citizens, and the other half owned by the federal government, partly in trust for the Southern Ute Tribe. The complex boundaries and jurisdictional authority are governed by P.L. 98-290. In Oklahoma, the tribes have allotments rather than reservations with boundaries. Although EPA has provided initial assurances that allotments would not be included in the baseline WQS, Oklahoma also has several trust lands with boundaries that may be in dispute.

Dispute Resolution

EPA's regulations under 40 CFR §131.7 provide a mechanism for resolving disputes between States and Indian tribes with TAS status that arise as a result of differing water quality standards on common bodies of water.¹ Eligibility for EPA's §131.7 dispute resolution depends on six criteria,

¹ EPA's dispute resolution mechanism has only arisen in two instances to our knowledge: (1) *Arkansas v. Oklahoma*, 503 U.S. 91 (1992); (2) *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996) (over EPA's approval of the Isleta Pueblo's numeric and narrative WQS for ceremonial, recreational, fishery, agricultural and industrial water supply uses).

including §131.7(b)(2) which requires the tribe to be “eligible to the same extent as a state for purposes of water quality standards,” and §131.7(b)(5) which requires the WQS to not only be approved by EPA, but also to be adopted pursuant to the respective state and tribal laws. Tribes without TAS authority as required under (b)(2), and tribes that have not adopted EPA’s proposed baseline WQS pursuant to that tribe’s laws as required under (b)(5) would appear to fall outside the 40 CFR §131.7 dispute mechanism. Will there still be an available avenue to resolve prospective state-tribal differences in WQS that result in unreasonable consequences? If not, does EPA have the necessary authority to develop appropriate regulations to address disputes over baseline WQS?

Thank you for the opportunity to comment on EPA’s advanced notice of proposed rulemaking regarding baseline water quality standards (WQS) for tribes. We look forward to EPA providing answers to our questions. Until such questions can be answered, it would appear unwise to rush into the promulgation of any regulation, the result of which may very well be more confusion and conflict.

Sincerely,

A handwritten signature in cursive script that reads "Tony Willardson".

Tony Willardson
Executive Director
Western States Water Council

Tab O – WSWC Comment Letter
Regarding the U.S. Army Corps of
Engineers' Water Supply Rule

DRAFT

Theodore Brown
Chief, Policy and Planning Division
COE/DOD
441 G Street, NW.
Washington, DC 20314

theodore.a.brown.civ@mail.mil

RE: Proposed Rule on Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply

Dear Chief Brown:

On behalf of the Western States Water Council, I am writing to comment on the Corps' proposed rule on the use of reservoir projects for domestic, municipal, and industrial water supply, published in the Federal Register for public comment on December 16, 2016.

As previously expressed in our letter to Assistant Secretary Jo-Ellen Darcy on August 6, 2013, our member states have serious concerns over the lack of substantive state participation in the development of the rule. State input for such a water supply rule is critical, particularly where the Corps policies will result in a disproportionate impact on western water resources, where the laws differ significantly from the laws governing riparian water users along rivers in the East. The Western States have primary, often exclusive authority over the protection, development, and management of waters within their boundaries, including natural surface waters flowing through Corps reservoirs and dams. We believe that the Corps' assertions of broad authority over surface waters and the potential interference with the lawful exercise of state water rights are contrary to over 100 years of deference afforded state water laws by the Congress and the Supreme Court of the United States.¹

The proposed rule fails to distinguish between "surplus waters," defined by the Corps in relation to storage and authorized purposes, and the "natural flows," defined as waters that would be available for use in the absence of federal dams and reservoirs and that belong under the exclusive jurisdiction of the states. Corps reservoirs have the capacity to capture and store floodwaters, and may hold water not necessary for federal purposes (but still under federal control). However, not all of the water behind a dam—the footprint of which may reach back for hundreds of miles—belongs under federal jurisdiction. Although captured and held by the Corps' reservoirs, restricting access to natural flows behind Corps dams abrogates states' rights to allocate and appropriate their water resources.

The Corps' definition and quantification of "surplus waters" must explicitly exclude the "natural flows." The proposed rule indicates that it is not intended to upset the balance between federal purposes and state prerogatives to allocate water. However, without making a clear distinction

¹ See, e.g., the 1866 Mining Act (43 USC §661); the 1877 Desert Land Act (43 USC §321); the 1920 Federal Power Act (16 USC §§802, 821); the Clean Water Act (33 USC §§1251(b) and (g)); the 1902 Reclamation Act (43 USC §383); the 1944 Flood Control Act (33 USC §701-1); the 1958 Water Supply Act (43 USC §390b); *Martin v. Lessee of Wadell*, 41 U.S. 367, 410 (1842); *Pollard v. Hagan*, 44 U.S. 212 (1845); *Kansas v. Colorado*, 206 U.S. 46 (1907); *California Oregon Power v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935); *California v. U.S.*, 438 U.S. 645, 653-664 (1978); *PPL Montana v. Montana*, 565 U.S. 576 (2012).

between Corps' "surplus waters" and state "natural flows," the rule will do precisely that. The Corps must recognize the legal right of the states to develop, use, manage, control, distribute, and allocate the states' surface waters. Any Corps policy to require storage contracts subject to surplus determinations, time limitations, right-of-way requirements, and fees to access these "natural flows" within a reservoir boundary would be a violation of the states' rights.

The proposed rule also fails to recognize critical differences between the climate, hydrology, and water laws of the Eastern and Western States. Unlike the wetter climate of the East, precipitation is often scarce in the West, and numerous reservoirs capture and moderate the "natural flows." Corps' reservoirs primarily provide non-consumptive flood control, hydropower and navigation benefits, but may be a significant source of municipal and industrial water. Further, the scale of the Corps' projects in the West is often much larger than in the East. Reservoirs capture large volumes, which may comprise a greater percentage of the average annual flow, and can cover hundreds of square miles. Withdrawals of "natural flows" for consumptive uses by the state or state water rights holders may often be *de minimus* compared to storage and releases for authorized, non-consumptive federal purposes.

Water law differences are also substantial. For example, Eastern riparian property owners may withdraw waters from adjacent sources without a state permit. In the West, under state-granted water rights, water must be appropriated, withdrawn, and often transferred long distances from the point of diversion to the point of use. Water users under a prior appropriations legal framework also often have vested private property rights in water, granted and administered by the states. These may be entitled to Constitutional protections and may not be taken for public purposes without just compensation. Securely established water rights are vital to the Western States' economies and their ability to grow. By ignoring regional differences, the proposed rule threatens to undermine the legal structure long-established in the West to allocate limited water resources.

The proposed rule notes that the Corps intends to initiate a positive dialogue "with all interested parties, resulting in a final rule that will more effectively accomplish Congressional intent regarding the utilization of Corps reservoirs for water supply." We request that the Corps enter into an open and authentic dialogue with the states designed to achieve a mutually acceptable policy that reflects the Constitutional division of powers, state primacy over water resources allocation, and the realities of western water law, with a flexible but consistent approach that accounts for the significant physical, hydrological, and legal differences that exist between the states.

Thank you for considering our comments and concerns, as well as our request to engage more fully with the states. We look forward to continuing our collaborative relationship with the Corps to address these and other water management issues in the West.

Sincerely,

Jerry Rigby, Chairman
Western States Water Council

Tab P – *Catskills* – EPA Water Transfers
Rule

Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA (Catskill III)

On January 18, 2017, a 2nd Circuit panel of three judges issued a 2-1 decision in *Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA (Catskill III)*, #14-1823, reversing the judgment of the U.S. District Court for the Southern District of New York. The decision allows the Environmental Protection Agency's (EPA) Water Transfers Rule, 40 C.F.R. §122.3(i), to stand. See [WSWC Position #382](#), which supports the Water Transfers Rule.

New York City gets its water from the Schoharie Reservoir through a series of creeks, reservoirs, tunnels and aqueducts in an interbasin "water transfer" that conveys waters of the United States without subjecting those waters to any intervening industrial, municipal, or commercial use. "Water transfers are an integral part of America's water-supply infrastructure, of which the Schoharie Reservoir system is but a very small part."

The Court noted that the EPA has historically "taken a hands-off approach to water transfers, choosing not to subject them to the requirements of the National Pollutant Discharge Elimination System (NPDES) permitting program established by the Clean Water Act (CWA) in 1972." In 2008, EPA formalized its decades-long stance by promulgating the Water Transfers Rule. The Rule was vacated by the District Court, under the two-step framework of *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), finding that EPA's interpretation was unreasonable and contrary to CWA requirements.

The 2nd Circuit panel also applied a *Chevron* analysis, but concluded that EPA's interpretation of the CWA was reasonable and supported by valid considerations. "The Act does not require that water quality be improved whatever the cost or means, and the Rule preserves state authority over many aspects of water regulation, gives regulators flexibility to balance the need to improve water quality with the potentially high costs of compliance with an NPDES permitting program, and allows for several alternative means for regulating water transfers. While we might prefer an interpretation more consistent with what appear to us to be the most prominent goals of the CWA, *Chevron* tells us that so long as the agency's statutory interpretation is reasonable, what we might prefer is irrelevant." The Court pointed to several alternative means to regulate pollution in water transfers, including state statutory and common law, interstate compacts, and international treaties.

To read the 2nd Circuit opinion, see http://www.westernstateswater.org/wp-content/uploads/2017/03/Doc-506-1-OPINION_Catskill-Mountains.pdf

Tab Q – *Agua Caliente* Case

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AGUA CALIENTE BAND OF CAHUILLA
INDIANS,

Plaintiff-Appellee,

UNITED STATES OF AMERICA,

Intervenor-Plaintiff-Appellee,

v.

COACHELLA VALLEY WATER
DISTRICT; ED PACK, in Official
Capacity as Member of the Board of
Directors of the Coachella Valley
Water District; JOHN POWELL, JR., in
Official Capacity as Member of the
Board of Directors of the Coachella
Valley Water District; PETER
NELSON, in Official Capacity as
Member of the Board of Directors of
the Coachella Valley Water District;
G. PATRICK O'DOWD, in Official
Capacity as a Member of the Board
of Directors of the Coachella Valley
Water District; CASTULO R.
ESTRADA, in Official Capacity as a
Member of the Board of Directors of
the Coachella Valley Water District;
DESERT WATER AGENCY; PATRICIA
G. OYGAR, in Official Capacity as
Member of the Board of Directors of

No. 15-55896

D.C. No.
5:13-cv-00883-
JGB-SP

OPINION

the Desert Water Agency; THOMAS KIELEY, III, in Official Capacity as Member of the Board of Directors of the Desert Water Agency; JAMES CIOFFI, in Official Capacity as Member of the Board of Directors of the Desert Water Agency; CRAIG A. EWING, in Official Capacity as Member of the Board of Directors of the Desert Water Agency; JOSEPH K. STUART, in Official Capacity as Member of the Board of Directors of the Desert Water Agency,
Defendants-Appellants.

Appeal from the United States District Court
For the Central District of California
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted October 18, 2016
Pasadena, California

Filed March 7, 2017

Before: Richard C. Tallman and Morgan B. Christen,
Circuit Judges, and Matthew F. Kennelly,* District Judge.

Opinion by Judge Tallman

*The Honorable Matthew F. Kennelly, United States District Judge for the Northern District of Illinois, sitting by designation.

SUMMARY**

Water Rights / Tribal Rights

The panel affirmed the district court's partial summary judgment in favor of the Agua Caliente Band of Cahuilla Indians and the United States, which declared that the United States impliedly reserved appurtenant water sources, including groundwater, when it created the Tribe's reservation in California's arid Coachella Valley.

The Tribe filed this action for declaratory and injunctive relief against water agencies, and the parties stipulated to divide the litigation into three phases. Phase I, at issue in this interlocutory appeal, addressed whether the Tribe has a reserved right to groundwater.

Under the doctrine in *Winters v. United States*, 207 U.S. 564 (1908), federal reserved water rights are directly applicable to Indian reservations.

The panel held that the *Winters* doctrine does not distinguish between surface water and groundwater. The panel held that the United States, in establishing the Agua Caliente reservation, impliedly reserved water. The panel further held that because the United States intended to reserve water when it established a home for the Agua Caliente Band of Cahuilla Indians, the district court did not err in determining that the government reserved appurtenant water sources – including groundwater – when it created the

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Tribe's reservation in the Coachella Valley. The panel also held that the creation of the Agua Caliente Reservation carried with it an implied right to use water from the Coachella Valley aquifer.

The panel rejected the water agencies' arguments concerning the contours of the Tribe's reserved water rights. The panel held that state water rights are preempted by federal reserved rights. The panel also held that the fact that the Tribe did not historically access groundwater did not destroy its right to groundwater now. Finally, the panel held that the Tribe's entitlement to state water did not affect the analysis with respect to the creation of the Tribe's federally reserved water right.

COUNSEL

Steven Bane Abbott (argued), Gerald D. Shoaf, and Julianna K. Tillquist, Redwine and Sherrill, Riverside, California, for Defendants-Appellants Coachella Valley Water District, G. Patrick O'Dowd, Ed Pack, John Powell Jr., Peter Nelson, and Castulo R. Estrada.

Roderick E. Walston (argued), Arthur L. Littleworth, Michael T. Riddell, and Steven G. Martin, Best Best & Krieger LLP, Walnut Creek, California, for Defendants-Appellants Desert Water Agency, Patricia G. Oygar, Thomas Kieley III, James Cioffi, Craig A. Ewing, and Joseph K. Stuart.

Catherine F. Munson (argued), Kilpatrick Townsend & Stockton LLP, Washington, D.C.; Steven C. Moore and Heather Whiteman Runs Him, Native American Rights

Fund, Boulder, Colorado; Mark H. Reeves, Kilpatrick Townsend & Stockton LLP, Augusta, Georgia; Adam H. Charnes, Kilpatrick Townsend & Stockton LLP, Dallas, Texas; for Plaintiff-Appellee.

Elizabeth A. Peterson (argued), Yosef M. Negose, Daron T. Carreiro, Patrick Barry, John L. Smeltzer, and William B. Lazarus, Attorneys; John C. Cruden, Assistant Attorney General; United States Department of Justice, Washington, D.C.; Christopher Watson and Scott Bergstrom, Office of the Solicitor, United States Department of the Interior, Washington, D.C.; for Intervenor-Plaintiff-Appellee.

OPINION

TALLMAN, Circuit Judge:

“When the well’s dry, we know the worth of water.” Benjamin Franklin (1706–1790),
Poor Richard’s Almanac.

The Coachella Valley Water District (“CVWD”) and the Desert Water Agency (“DWA”) (collectively, the “water agencies”) bring an interlocutory appeal of the district court’s grant of partial summary judgment in favor of the Agua Caliente Band of Cahuilla Indians (the “Tribe”) and the United States. The judgment declares that the United States impliedly reserved appurtenant water sources, including groundwater, when it created the Tribe’s reservation in California’s arid Coachella Valley. We agree. In affirming, we recognize that there is no controlling federal appellate authority addressing whether the reserved rights doctrine applies to groundwater. However, because we

conclude that it does, we hold that the Tribe has a reserved right to groundwater underlying its reservation as a result of the purpose for which the reservation was established.

I

A

The Agua Caliente Band of Cahuilla Indians has lived in the Coachella Valley since before California entered statehood in 1850. The bulk of the Agua Caliente Reservation was formally established by two Presidential Executive Orders issued in 1876 and 1877, and the United States, pursuant to statute, now holds the remaining lands of the reservation in trust for the Tribe. The reservation consists of approximately 31,396 acres interspersed in a checkerboard pattern amidst several cities within Riverside County, including Palm Springs, Cathedral City, and Rancho Mirage. *See Agua Caliente Band of Mission Indians v. Riverside County*, 442 F.2d 1184, 1185 (9th Cir. 1971).

The Executive Orders establishing the reservation are short in length, but broad in purpose. In 1876, President Ulysses S. Grant ordered certain lands “withdrawn from sale and set apart as reservations for the permanent use and occupancy of the Mission Indians in southern California.” Exec. Order of May 15, 1876. Similarly, President Rutherford B. Hayes’s 1877 Order set aside additional lands for “Indian purposes.” Exec. Order of Sept. 29, 1877. These orders followed on the heels of detailed government reports from Indian agents, which identified the urgent need to reserve land for Indian use in an attempt to encourage tribal members to “build comfortable houses, improve their acres, and surround themselves with home comforts.” Comm’r of Indian Aff., Ann. Rep. 224 (1875). In short, the United

States sought to protect the Tribe and “secure the Mission Indians permanent homes, with land and water enough.” Comm’r of Indian Aff., Ann. Rep. 37 (1877).

Establishing a sustainable home in the Coachella Valley is no easy feat, however, as water in this arid southwestern desert is scarce. Rainfall totals average three to six inches per year, and the Whitewater River System—the valley’s only real source of surface water—produces an average annual supply of water that fluctuates between 4,000 and 9,000 acre-feet, most of which occurs in the winter months.¹ See CVWD, Engineer’s Report on Water Supply and Replenishment Assessment at III-12 (2016–2017); CVWD, Urban Water Management Plan at 3-2, 3-20 (2005). In other words, surface water is virtually nonexistent in the valley for the majority of the year. Therefore, almost all of the water

¹ An acre-foot is the volume of water sufficient to cover one acre in area at a depth of one foot. CVWD, 2010–2011 Annual Review at 2. It is equivalent to 325,851 gallons. *Id.* It takes about four acre-feet of water to irrigate one acre of land for a year in the Coachella Valley. See U.S. Dep’t of Agric., A Review of Agricultural Water Use in the Coachella Valley at 6 (2006). Therefore, at 9,000 acre-feet per year, the river system provides enough water to irrigate around 2,250 acres. At 4,000 acre-feet per year, the system can only irrigate about 1,000 acres. Considering that the Tribe is not the only user of the Whitewater River System, and that its reservation alone accounts for 31,396 acres, even in a peak year the river system provides very little water for irrigation or for human consumption.

consumed in the region comes from the aquifer underlying the valley—the Coachella Valley Groundwater Basin.²

The Coachella Valley Groundwater Basin supports 9 cities, 400,000 people, and 66,000 acres of farmland. *See* CVWD-DWA, *The State of the Coachella Valley Aquifer* at 2. Given the demands on the basin's supply, it is not surprising that water levels in the aquifer have been declining at a steady rate. Since the 1980s, the aquifer has been in a state of overdraft,³ which exists despite major efforts to recharge the basin with water delivered from the California Water Project and the Colorado River. In total, groundwater pumping has resulted in an average annual recharge deficit of 239,000 acre-feet, with cumulative overdraft estimated at 5.5 million acre-feet as of 2010.

The Tribe does not currently pump groundwater on its reservation. Rather, it purchases groundwater from Appellant water agencies. The Tribe also receives surface water from the Whitewater River System, particularly the Andreas and Tahquitz Creeks that sometimes flow nearby. The surface water received from this system is consistent with a 1938 California Superior Court adjudication—the Whitewater River Decree—which attempted to address state-law water rights for users of the river system. Because the United States held the lands in trust, it participated in the

² The CVWD estimates that surface water accounts for less than five percent of its water supply each year. *See* CVWD, *Urban Water Management Plan* at 3-20 (2005).

³ Overdraft occurs when the amount of water extracted from the underground basin exceeds its recharge rate. CVWD, 2010–2011 *Annual Review* at 2.

adjudication via a “Suggestion” on behalf of the Tribe and the resulting state court order included a water allotment for the Tribe’s benefit.⁴ The amount of water reserved for the Tribe from this adjudication, however, is minimal, providing enough water to irrigate approximately 360 acres. Further, most of this allotment is filled outside of the growing season because the river system’s flow peaks between December and March. Thus, groundwater supplied by the water agencies remains the main source of water for all types of consumption on the reservation throughout the year.

B

Given an ever-growing concern over diminishing groundwater resources, the Agua Caliente Tribe filed this action for declaratory and injunctive relief against the water agencies in May 2013. The Tribe’s complaint requested a declaration that it has a federally reserved right and an aboriginal right to the groundwater underlying the reservation. In June 2014, the district court granted the United States’ motion to intervene as a plaintiff. The United States also alleges that the Tribe has a reserved right to groundwater.

The parties stipulated to divide the litigation into three phases. Phase I, at issue here, seeks to address whether the Tribe has a reserved right and an aboriginal right to groundwater. According to the parties’ stipulation, Phase II

⁴ In providing this “Suggestion,” the government maintained that it was not “submitting the rights of the United States . . . to the jurisdiction of the Department of Public Works of the State of California” and that the court lacked “jurisdiction [to adjudicate] the water rights of the United States.” The federal government continues to maintain this position before us.

will address whether the Tribe beneficially owns the “pore space” of the groundwater basin underlying the Agua Caliente Reservation and whether a tribal right to groundwater includes the right to receive water of a certain quality. Finally, Phase III will attempt to quantify any identified groundwater rights.

In March 2015, the district court granted in part and denied in part Plaintiffs’ and Defendants’ cross motions for partial summary judgment with respect to Phase I of the litigation. In its order, the district court held that the reserved rights doctrine applies to groundwater and that the United States reserved appurtenant groundwater when it established the Tribe’s reservation.⁵ The district court then certified its order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), and we granted the water agencies’ petition for permission to prosecute this appeal.

II

The district court’s grant of summary judgment is reviewed de novo. *Tohono O’odham Nation v. City of Glendale*, 804 F.3d 1292, 1297 (9th Cir. 2015); *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48

⁵ The district court also held that the Tribe does not have an aboriginal right to the groundwater. An aboriginal right is a type of property right that derives from territorial occupancy of land. See *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 641–42 (9th Cir. 1986). However, the Tribe did not appeal this issue, and we do not review it here.

(1986). A court shall grant summary judgment when, “under the governing law, there can be but one reasonable conclusion as to the verdict.” *Anderson*, 477 U.S. at 250.

III

Due to the unusual trifurcation of this litigation, we are concerned on appeal only with Phase I—whether the Tribe has a federal reserved right to the groundwater underlying its reservation. This question, however, is best analyzed in three steps: whether the United States intended to reserve water when it created the Tribe’s reservation; whether the reserved rights doctrine encompasses groundwater; and, finally, whether the Tribe’s correlative rights under state law or the historic lack of drilling for groundwater on the reservation, or the water the Tribe receives pursuant to the Whitewater River Decree, impacts our answers to these questions. We address each in turn.

A

For over one hundred years, the Supreme Court has made clear that when the United States “withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.” *Cappaert v. United States*, 426 U.S. 128, 138 (1976) (citing U.S. Const. art. I, § 8; U.S. Const. art. IV, § 3); *see also Winters v. United States*, 207 U.S. 564, 575–78 (1908); *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 46 (9th Cir. 1981).

In what has become known as the *Winters* doctrine, federal reserved water rights are directly applicable “to Indian reservations and other federal enclaves,

encompassing water rights in navigable and nonnavigable streams.” See *Cappaert*, 426 U.S. at 138. The creation of these rights stems from the belief that the United States, when establishing reservations, “intended to deal fairly with the Indians by reserving for them the waters without which their lands would have been useless.” *Arizona v. California*, 373 U.S. 546, 600 (1963); see also *id.* at 598–99 (“It is impossible to believe that when Congress created the great Colorado River Indian Reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of the lands were of the desert kind—hot, scorching sands—and that water from the river would be essential to the life of the Indian people and to the animals they hunted and the crops they raised.”).

Despite the longstanding recognition that Indian reservations, as well as other reserved lands, require access to water, the *Winters* doctrine only applies in certain situations: it only reserves water to the extent it is necessary to accomplish the purpose of the reservation, and it only reserves water if it is appurtenant to the withdrawn land. *Winters*, 207 U.S. at 575–78; *Cappaert*, 426 U.S. at 138. Once established, however, *Winters* rights “vest[] on the date of the reservation and [are] superior to the rights of future appropriators.” *Cappaert*, 426 U.S. at 138.

B

1

Given the limitations in the *Winters* doctrine, we must first decide whether the United States, in establishing the Agua Caliente Reservation, impliedly reserved water. See *United States v. New Mexico*, 438 U.S. 696, 701 (1978). We conclude that it did. And although the parties and the district

court focused on the application of the *Winters* doctrine to groundwater specifically, their argument over the creation of a federal reserved right—and, in particular, the relevance of *New Mexico* to that question—depends on whether the Agua Caliente Reservation carried with it a reserved right to water generally. Whether the Tribe’s reserved right extends to the groundwater underlying its reservation is a separate question from whether the establishment of the reservation contained an implicit right to use water.

In *New Mexico*, the Supreme Court emphasized that, under the reserved rights doctrine, the government reserves only “that amount of water necessary to fulfill the purpose of the reservation, no more.” *Id.* (quoting *Cappaert*, 426 U.S. at 141). “Where water is only valuable for a secondary use of the reservation, . . . the United States [must] acquire water in the same manner as any other public or private appropriator.” *Id.* at 702. In other words, *New Mexico* established a “primary-secondary use” distinction. Water is impliedly reserved for primary purposes. It is not, however, reserved for secondary purposes.⁶

The water agencies argue that *New Mexico* requires us—when deciding if a reserved right exists at all—to determine whether water is necessary to fulfill the primary purpose of the Agua Caliente Reservation. If it is not, they argue, then we are to conclude that Congress did not intend any water to be impliedly reserved under a federal water right. Put

⁶ We have previously noted that *New Mexico* is “not directly applicable to *Winters* doctrine rights on Indian reservations.” *United States v. Adair*, 723 F.3d 1394, 1408 (9th Cir. 1983). However, it clearly “establish[es] several useful guidelines.” *Id.* Thus, we consider its application here.

differently, the water agencies argue that *New Mexico* stands for the proposition that water is impliedly reserved only if other sources of water then available cannot meet the reservation's water demands. According to the water agencies, if other sources of water exist—and the lack of a federal right would not entirely defeat the purpose of the reservation—then Congress intended to defer to state water law and require the United States to obtain water rights like any other private user.

New Mexico, however, is not so narrow. Congress does not defer to state water law with respect to reserved rights. *Id.* at 702, 715. Instead, Congress retains “its authority to reserve unappropriated water . . . for use on appurtenant lands withdrawn from the public domain for specific federal purposes.” *Id.* at 698.

The federal purpose for which land was reserved is the driving force behind the reserved rights doctrine. “Each time [the] Court has applied the ‘implied-reservation-of-water-doctrine,’ it has carefully examined both the asserted water right and the specific purposes for which the land was reserved, and concluded that without the water the purposes of the reservation would be entirely defeated.” *Id.* at 700. But the question is not whether water stemming from a federal right is necessary at some selected point in time to maintain the reservation; the question is whether the purpose underlying the reservation envisions water use.

Winters itself established that the purpose of the reservation is controlling. In *Winters*, the Supreme Court addressed whether the federal government reserved water for tribal usage at the Fort Belknap Indian Reservation, which had been reserved by the United States “as and for a permanent home” for several tribes. 207 U.S. at 565. The

Winters Court observed that the arid tribal reservation would be “practically valueless,” and that a civilized community “could not be established thereon,” without irrigation. *Id.* at 576. Thus, the Court held that, in creating the reservation, the United States simultaneously reserved water “for a use which would be necessarily continued through years.” *Id.* at 577. The reserved right turned on the purpose underlying the formation of the Fort Belknap Reservation.

Though it was decided seventy years after *Winters*, *New Mexico* remains faithful to this construction. In analyzing the reserved rights doctrine, the Court first sought to determine Congress’ intent in creating the Gila National Forest. *New Mexico*, 438 U.S. at 698. After reviewing the congressional act that established the forest, the Court determined that Congress intended only two purposes—“to conserve the water flows, and to furnish a continuous supply of timber for the people.” *Id.* at 707 (citation omitted). It did not, however, reserve the forest lands for aesthetic, environmental, recreational, or wildlife-preservation purposes. *Id.* at 708. Thus, the Court deemed the latter uses “secondary,” for which the reserved right did not attach, and held that only “to fulfill the very purposes for which a federal reservation was created . . . [did] the United States intend[] to reserve the necessary water.” *Id.* at 702.

As such, *New Mexico*’s primary-secondary use distinction did not alter the test envisioned by *Winters*. Rather, it added an important inquiry related to the question of *how much* water is reserved. It also answered that question by holding that water is reserved only for primary purposes, those directly associated with the reservation of land. It did not, however, eliminate the threshold issue—that

a reserved right exists if the purposes underlying a reservation envision access to water.

2

Because *New Mexico* holds that water is reserved if the primary purpose of the reservation envisions water use, we now determine the primary purpose of the Tribe's reservation and whether that purpose contemplates water use. To do so, we consider "the document and circumstances surrounding [the reservation's] creation, and the history of the Indians for whom it was created." *Walton*, 647 F.2d at 47.

The Executive Orders establishing the Tribe's reservation declared that the land was to be set aside for "the permanent use and occupancy of the Mission Indians" or, more generally, for "Indian purposes."⁷ See *supra* Part I. While imprecise, such a purpose is not indecipherable. Our precedent recognizes that "[t]he specific purposes of an Indian reservation . . . [are] often unarticulated. The general purpose, *to provide a home for the Indians*, is a broad one and must be liberally construed." *Walton*, 647 F.2d at 47 (emphasis added). Moreover, "[m]ost of the land in these reservations is and always has been arid," and it is impossible to believe that the United States was unaware "that water . . . would be essential to the life of the Indian people." *Arizona*, 373 U.S. at 598–99.

⁷ Additionally, government reports preceding the Executive Orders recognized the need to secure the Tribe "permanent homes, with land and water enough." See Comm'r of Indian Aff., Ann. Rep. 37 (1877).

The situation facing the Agua Caliente Tribe is no different. Water is inherently tied to the Tribe's ability to live permanently on the reservation. Without water, the underlying purpose—to establish a home and support an agrarian society—would be entirely defeated. Put differently, the primary purpose underlying the establishment of the reservation was to create a home for the Tribe, and water was necessarily implicated in that purpose. Thus, we hold that the United States implicitly reserved a right to water when it created the Agua Caliente Reservation.

C

While we conclude that the federal government envisioned water use when it established the Tribe's reservation, that does not end our inquiry. We must now determine whether the *Winters* doctrine, and the Tribe's reserved water right, extends to the groundwater underlying the reservation. And while we are unable to find controlling federal appellate authority explicitly holding that the *Winters* doctrine applies to groundwater,⁸ we now expressly hold that it does.

Apart from the requirement that the primary purpose of the reservation must intend water use, the other main limitation of the reserved rights doctrine is that the

⁸ We previously held that the *Winters* doctrine applies “not only [to] surface water, but also to underground water.” *United States v. Cappaert*, 508 F.2d 313, 317 (9th Cir. 1974), *aff'd on other grounds*, *Cappaert*, 426 U.S. at 142. But on appeal, the Supreme Court did not reach this question. *See Cappaert*, 426 U.S. at 142. In that case, the peculiarities of the hydrological forms led the Court to conclude as a question of fact that the reserved water in a cavern pool was surface water, not groundwater. *Id.*

unappropriated water must be “appurtenant” to the reservation. *See Cappaert*, 426 U.S. at 138. Appurtenance, however, simply limits the reserved right to those waters which are attached to the reservation. It does not limit the right to surface water only. *Cappaert* itself hinted that impliedly reserved waters may include appurtenant groundwater when it held that “the United States can protect its water from subsequent diversion, whether the diversion is of surface or groundwater.” *Id.* at 143. If the United States can protect against groundwater diversions, it follows that the government can protect the groundwater itself.⁹

Further, many locations throughout the western United States rely on groundwater as their only viable water source. *See, e.g., In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 989 P.2d 739, 746 (Ariz. 1999) (en banc) (“The reservations considered in [*Winters* and *Arizona*] depended for their water on perennial streams. But some reservations lack perennial streams and depend for present and future survival substantially or entirely upon pumping of underground water. We find it no more thinkable in the latter circumstance than in the former that

⁹ Although the district court found that the groundwater contained in the Coachella Valley aquifer “does not ‘add to, contribute to or support’ any surface stream from which the Tribe diverts water,” that does not mean that the hydrological cycle in the Coachella Valley has been severed. *See* U.S. Geological Surv., Ground Water and Surface Water: A Single Resource, U.S.G.S. Circular 1139 at 9–10 (1998) (recognizing a connection between surface and groundwater even where the water table falls below the stream bed). Further, we note that surface water is used here to replenish groundwater sources. As such, the district court may wish to hear expert opinion on the interconnectedness of the waters in the valley in the later phases of this litigation. Proper factual findings on this issue will allow the district court to fashion appropriate relief during the quantification phase.

the United States reserved land for habitation without reserving the water necessary to sustain life.”). More importantly, such reliance exists here, as surface water in the Coachella Valley is minimal or entirely lacking for most of the year. Thus, survival is conditioned on access to water—and a reservation without an adequate source of surface water must be able to access groundwater.

The *Winters* doctrine was developed in part to provide sustainable land for Indian tribes whose reservations were established in the arid parts of the country. And in many cases, those reservations lacked access to, or were unable to effectively capture, a regular supply of surface water. Given these realities, we can discern no reason to cabin the *Winters* doctrine to appurtenant surface water. As such, we hold that the *Winters* doctrine encompasses both surface water and groundwater appurtenant to reserved land.¹⁰ The creation of the Agua Caliente Reservation therefore carried with it an implied right to use water from the Coachella Valley aquifer.

D

The final issue we must address is the contours of the Tribe’s reserved right, including its relation to state water law and the Tribe’s existing water rights.

A “reserved right in unappropriated water . . . vests on the date of the reservation and is superior to the rights of future appropriators.” *Cappaert*, 426 U.S. at 138. Further, reserved rights are not analyzed “in terms of a balancing

¹⁰ The parties do not dispute appurtenance, nor could they. The Coachella Valley Groundwater Basin clearly underlies the Tribe’s reservation. See generally CVWD, Engineer’s Report on Water Supply and Replenishment Assessment (2016–2017).

test.” *Id.* Rather, they are federal water rights that preempt conflicting state law. *See Walton*, 647 F.2d at 51–53; *see also New Mexico*, 438 U.S. at 715 (“[T]he ‘reserved rights doctrine’ . . . is an exception to Congress’ explicit deference to state water law in other areas.”). Finally, the rights are not lost through non-use. *See Walton*, 647 F.2d at 51. Instead, they are flexible and can change over time. *See id.* at 47–48; *United States v. Ahtanum Irrigation Dist.*, 236 F.2d 321, 326 (9th Cir. 1956).

Despite the federal primacy of reserved water rights, the water agencies argue that because (1) the Tribe has a correlative right to groundwater under California law and (2) the Tribe has not drilled for groundwater on its reservation, and (3) because the Tribe is entitled to surface water from the Whitewater River Decree, the Tribe does not need a federal reserved right to prevent the purpose of the reservation from being entirely defeated. Put differently, the water agencies argue that, because the Tribe is already receiving water pursuant to California’s correlative rights doctrine and the Whitewater River Decree, a federal reserved right is unnecessary.

However, the water agencies’ arguments fail for three reasons. First, state water rights are preempted by federal reserved rights. *See Walton*, 647 F.2d at 51; *see also Ahtanum Irrigation Dist.*, 236 F.2d at 329 (“Rights reserved by treaties such as this are not subject to appropriation under state law, nor has the state power to dispose of them.”). Second, the fact that the Tribe did not historically access groundwater does not destroy its right to groundwater now. *See Walton*, 647 F.2d at 51. And third, the *New Mexico* inquiry does not ask if water is currently needed to sustain the reservation; it asks whether water was envisioned as

necessary for the reservation's purpose at the time the reservation was created. *See supra* Part III.B. Thus, state water entitlements do not affect our analysis with respect to the creation of the Tribe's federally reserved water right.

IV

In sum, the *Winters* doctrine does not distinguish between surface water and groundwater. Rather, its limits derive only from the government's intent in withdrawing land for a public purpose and the location of the water in relation to the reservation created. As such, because the United States intended to reserve water when it established a home for the Agua Caliente Band of Cahuilla Indians, we hold that the district court did not err in determining that the government reserved appurtenant water sources—including groundwater—when it created the Tribe's reservation in the Coachella Valley.

Finally, we recognize that the district court's failure to conduct a thorough *New Mexico* analysis with respect to whether the Tribe needs access to groundwater was largely a function of the parties' decision to trifurcate this case. We also understand that a full analysis specifying the scope of the water reserved under *New Mexico* will be considered in the subsequent phases of this litigation.

Presumably, however, the water agencies will continue to argue in these later phases that the *Winters* doctrine is dependent upon the Tribe's demonstrated need—that is, need above and beyond what the Tribe is already receiving under state-law entitlements or could receive through a paramount surface water right. And while we express no opinion on how much water falls within the scope of the Tribe's federal groundwater right, there can be no question

that water in some amount was necessarily reserved to support the reservation created. Thus, to guide the district court in its later analysis, we hold that the creation of the Agua Caliente Reservation carried with it an implied right to use water from the Coachella Valley aquifer.

Each party shall bear its own costs.

AFFIRMED.

Tab R – Criteria and Procedures for
Negotiations of Indian Water
Rights Claims



WESTERN STATES WATER COUNCIL

682 East Vine Street, Suite 7 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westernstateswater.org

February 21, 2017

Ms. Pamela Williams, Director
Secretary's Indian Water Rights Office
U.S. Department of the Interior
1849 C Street NW, MS 6040
Washington, DC 20240

sent via email: pamela_williams@ios.doi.gov

Re: Modifications to Criteria and Procedures

Dear Ms. Williams,

On December 9, 2016, the Department of the Interior (DOI) sent letters to tribal leaders as part of its consultation sessions to obtain tribes' perspectives on the current process of negotiating and reviewing Indian water rights settlements. The letters also sought to identify potential improvements to the process, particularly regarding the 1990 Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims (C&Ps) (55 FR 9223).

As you know, the Western States Water Council (WSWC) has worked with the Native American Rights Fund for more than 30 years to promote negotiated settlements as the best way to fulfill U.S. trust responsibility to quantify valid tribal water claims and to provide the stability and certainty necessary for continuing economic and water development for both tribes and states. The WSWC supports continued efforts to resolve Indian reserved water rights claims through negotiation. The C&Ps have a marked impact not only on the tribes and local non-tribal communities and states, but also on regional river basins, interstate compacts, and even international treaties.

Many of our states are heavily invested in the outcome of the water rights settlements at issue, and in a spirit of cooperative federalism we hope to offer some additional insights from our states' perspectives regarding potential modifications to the C&Ps.

Representative Rob Bishop's letter of February 26, 2015, outlined several steps that would enable settlements to move forward, focusing on Criteria 4 and 5 related to the total cost of a settlement to all parties, calculable federal and non-federal legal exposure, and federal trust or programmatic costs. Although the C&Ps have flaws, WSWC member states are concerned about delaying further settlements in the queue. Changes to the C&Ps may precipitate another lengthy review and consume limited resources. Additionally, we are uncertain what direction the new Administration may go in making changes.

If DOI determines that the C&Ps should be reviewed, the WSWC would emphasize that each tribe and river basin is unique, and there is no one-size-fits all settlement. While each Administration's interpretation of the C&Ps and the federal trust responsibility has varied over time, one thing that has remained constant is OMB's tendency to under value these settlements, focusing solely on the United States' calculable legal expenses and potential liability. OMB often discounts the federal government's fiduciary duties and treaty obligations.

In many cases, tribes have significant breach of trust claims against the federal government for failing to protect their water rights. In settlements, these claims are generally waived, along with a portion of the tribe's water rights, in consideration for federal funding to build needed infrastructure. Settlements bring wet water to tribal communities, rather than funding litigation. Court-ordered judgements may recognize tribal water rights, but provide little in the way of resources to develop those waters. The economic growth that occurs due to the certainty of settled water rights, together with project financing, is invaluable to the tribal communities. Non-tribal communities also benefit.

Additionally, settlements often lead to greater cooperation and improved relationships between state, tribal, local, and federal parties, creating good will and "peace in the valley." Both are valuable, though intangible and difficult to quantify in monetary terms.

All of these factors, along with other considerations unique to each settlement, must be taken into account when determining the value of a settlement as opposed to prolonged litigation.

We appreciate your consideration of our views and look forward to working with the new Administration on future settlements.

Sincerely,

A handwritten signature in cursive script that reads "Tony Willardson". The ink is dark and the signature is fluid, with a long, sweeping tail on the "n".

Tony Willardson
Executive Director



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB 22 2017

Mr. Tony Willardson
Executive Director
Western States Water Council
682 East Vine Street, Suite 7
Murray, Utah 84107

Dear Mr. Willardson:

Thank you for your letter to the Secretary's Indian Water Rights Office regarding the recent consultations held by the Department of the Interior and other Federal agencies. We appreciate your comments and are reviewing them closely. Your input is invaluable as we examine and determine whether to update the 1990 *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims* (55 Fed. Reg. 9,223 (March 12, 1990)).

We have held three consultations around the country to receive input from tribal leaders. You will find further details and transcripts from those consultations at <http://www.doi.gov/siwro>. If you have any questions or would like additional information, please contact the Secretary's Indian Water Rights Office at (202) 208-1442.

Sincerely,

Pamela Williams, Director
Secretary's Indian Water Rights Office

Tab S – WSWC/NARF Symposium on the
Settlement of Indian Water Rights
Claims

Western States Water Council & Native American Rights Fund

SYMPOSIUM ON THE SETTLEMENT OF INDIAN RESERVED WATER RIGHTS CLAIMS

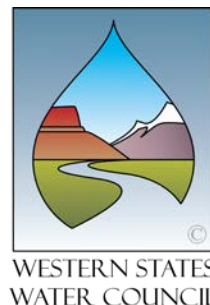
**August 8-10, 2017
Best Western Plus Heritage Inn
Great Falls, Montana**

The Western States Water Council and Native American Rights Fund will cosponsor a Symposium on the settlement of Indian reserved water rights claims on August 8-10, 2017. The meetings will be held at the Best Western Plus Heritage Inn in Great Falls, Montana. A number of topics will be addressed by experts and participants regarding completed and ongoing negotiated settlements.

We expect another excellent conference. Successful symposia have been held since 1991. The primary meeting format consists of panel discussions with presenters who have been involved in negotiated settlements representing tribal, state, local, and federal governments, interest groups, congressional staff, and others. The meeting schedule provides opportunities for informal interchange and cultural enlightenment. Participant feedback from the meetings has been very positive. Continuing Legal Education Credit will be available for lawyers who attend.

For more information as it becomes available, see our websites at:
<http://www.westernstateswater.org> and <http://narf.org/water/>.

Sponsors are welcome and encouraged to contact Tony Willardson, WSWC Executive Director.



Western States Water Council

682 East Vine Street, Suite 7
Murray, UT 84107

Phone (801) 685-2555
www.westernstateswater.org

Tab T – Water Rights Settlements Update

LSI 4th Annual Comprehensive Conference on Tribal Water in Arizona

State-Tribal Water Rights Settlements Update

Michelle Bushman

Western States Water Council

February 2017

Sources of information for this update include information from members of the Western States Water Council, status updates and other documents in court cases, testimony and reports before Congress and State Legislatures, the Department of the Interior's list of Federal Indian Water Rights Negotiating Teams, summaries from State water rights websites and the Native American Rights Fund, with supplemental information from some local news articles.

Arizona

Hualapai

In 2011, the United States established a Federal Water Rights Negotiating Team to negotiate a comprehensive settlement of all the Hualapai Tribe's water rights claims in the Colorado, Verde, and Bill Williams River basins. The Tribe entered discussions with the Arizona Department of Water Resources (ADWR), the Salt River Project (SRP), and the Central Arizona Water Conservation District (CAWCD) regarding the Tribe's claims to the Colorado River and groundwater for its main reservation, as well as other waters for lands held in trust. Following a change application filed by Freeport Minerals Corp., to sever and transfer surface rights on a ranch to wells near its mines, the Tribe also entered negotiations with Freeport and others regarding water rights claims in the Bill Williams watershed. In 2012, the negotiations were consolidated, but bifurcated into two phases for practical reasons (some of the water rights at issue faced forfeiture within a timeframe too short to complete a comprehensive settlement). In June 2014, Phase 1 of the settlement was complete and was introduced to Congress as the Bill Williams River Water Rights Settlement Act. The Act, which did not require any appropriations, was passed and signed into law December 2014 (Pub. L. 113-223), and became enforceable on December 11, 2015. Phase 2 of the comprehensive settlement continued forward in 2016, to resolve the Tribe's remaining water rights claims to water from the Colorado River, the Verde River and the Bill Williams River.

Navajo Nation/Hopi Tribe/San Juan Southern Paiute Tribe

The Tribes and Nation are part of the Little Colorado River adjudication, started in 1978, *In re: The General Adjudication of all Right to use of water in the Little Colorado River System and Source* (Superior Ct. No. 6417). Settlement negotiations started as early as 1995. In 2008, the preliminary Hydrographic Survey Report (HSR) for water uses on the Hopi Reservation was released by the ADWR. In 2010, the Court delayed the litigation schedule for substantive progress toward a settlement agreement. The draft settlement was approved in 2010, and after some further modifications, the settlement was introduced for Congressional approval in 2012, but did not pass. In the meantime, the parties agreed that ADWR should continue working on

the final Hopi HSR, and in 2011 various legal matters were briefed. Objections to the Hopi HSR were filed in 2013, and the Court requested a final HSR by December 2015. In 2016, the Special Master reviewed objections to the HSR for the Hopi Reservation, and after oral arguments found that the objections did not satisfy the statutory requirements. The Navajo Nation filed a motion to request additional information about the Hopi Tribe's water rights attributes and about their experts. The Special Master reviewed over 90 title documents, and in September 2016 submitted a report on priority dates for land acquired by the federal government in the Hopi Reservation. For the Navajo Nation, ADWR will be preparing 3 HSRs in the next three years, and the Navajo Nation will be filing amended claims to deal with separate categories of water uses. The United States' expert reports were due in January 2017, and the Navajo Nation requested a two-month extension for their expert reports, which was granted. The Special Master set a hearing for March 1, 2017, to consider objections and information contained within the parties' expert reports.

San Carlos Apache Tribe

The United States obtained water entitlements for the Tribe with the Globe Equity Act of 1935. The full extent and nature of the Tribe's rights were uncertain, however, and the Tribe's claims became part of the *General Adjudication of the Gila River System and Source*. The Tribe entered into a Central Arizona Project (CAP) contract for water from the Black River in 1980. The CAP allocation of water and Tribe's ability to lease the water off-reservation was modified under the 1992 Water Rights Settlement Act and subsequent 1999 Settlement Agreement.

The 2004 Arizona Water Rights Settlement Act (Pub. L. 108-451) included a placeholder to preserve the Tribe's water rights claims while settlement negotiations continued on remaining claims, and appropriated funds for technical and legal efforts toward settlement negotiations, as well as funds to complete the San Carlos Irrigation Project started in the 1930s.

In 2006, the Tribe argued to the Arizona Supreme Court that its reserved water rights should not be limited by the 1935 Globe Equity Act, but the Court disagreed (Gila VI, 127 P.3d 882).

Since at least 2005, the Tribe has been involved in the San Pedro River Watershed consolidated cases (W1-11-1174), objecting to half of the United States' thirty Public Water Reserve No. 107 federal reserved rights claims to springs located either on or near the southwest boundary of the reservation. Part of the problem is that the location of the reservation boundary is disputed between the Tribe and the United States. By 2014, the location of the springs and their direction of flow had been determined, and the Tribe and the United States were working on a settlement agreement. By April 2016, the United States and the San Carlos Apache Tribe submitted a Joint Report, as well as a Stipulation to Resolve Objections from the Gila River Indian Community, the SRP, the Yavapai-Apache Nation, and the Tonto Apache Tribe over sixteen of the water rights claims. In a September 2016 Status Report, the United States was reviewing the issue of whether to maintain its state-based claims for three springs. By the January 2017 Status Report, the United States had withdrawn those claims. The final stipulations and pleadings to complete settlement are due to the Special Master by March 3, 2017.

In 2013, the Tribe and the Bureau of Reclamation signed a Memorandum of Understanding (MOU) that gives the Tribe access to the Black River and authorizes negotiations for a contract

to deliver decreed and non-decreed water from the Black River to the reservation and adjoining areas.

Tohono O'odham Nation

Parts of the Nation's water rights settlements were resolved in the 1982 Southern Arizona Water Rights Settlement Act and Title III of the 2004 Arizona Water Settlements Act. The Nation still has unresolved claims in the Sif Oidak District. The Nation approved a settlement proposal in 2009 on the Sif Oidak claims. In 2011, the Department of the Interior appointed a Federal Indian Water Rights Negotiating Team to assist in settling the Nation's water right claims, on the condition that the negotiation be for a comprehensive settlement of the Nation's remaining claims in Arizona. The Negotiating Team agreed to exclude issues involving groundwater pumping in Mexico, as well as surface waters flowing to and from Mexico. The comprehensive negotiations include nine districts in addition to Sif Oidak. The Negotiating Team agreed to resolve the Sif Oidak claims while issues involving the remaining nine districts are researched and discussed. Negotiations continued through 2016.

Tonto Apache Tribe

In 1980, the Tonto Apache Tribe signed a water delivery contract with CAP, but the location of the reservation made it physically impossible to divert the Tribe's allocation until the nearby town of Payson entered an agreement with the SRP to bring the water closer. The Tribe's allocation of CAP water is credited against its federally reserved water rights once they are quantified. In 2014, the Tonto Apache Tribe's request for a Federal Water Rights Negotiation Team, supported by the nearby Town of Payson, was granted, and negotiations between the Tribe, the United States, and ADWR continued through 2016. The parties are hoping to be able to introduce federal legislation in 2017.

Yavapai-Apache Nation of the Camp Verde Indian Reservation

The Nation has worked toward the negotiation and settlement of its federal water rights for over 40 years. The Nation is part of the statewide adjudication (*In Re the General Adjudication of all rights to use water in the Gila River System and Sources.*) In 2004, the Nation was allocated 1,500 acre-feet of CAP as part of the Arizona Water Settlements Act (Pub. L. 108-451). The ongoing request for a Federal Water Negotiating Team began in the 1980s and was finally granted in 2010. Negotiations stalled in 2011 over key provisions of the agreement. In 2013 the Nation was working with the Department of the Interior to secure funding through the technical assistance funds to ensure that the negotiations would continue.

In 2015, the Verde Ditch Company (VDC) and SRP sought to establish a procedure through an MOU for some VDC shareholders to confirm which water uses from the Verde Ditch are historic and to categorize types of water users. While the procedure is internal, qualitative and not intended to replace the statewide adjudication of claims and their priority dates, quantities, purpose or season of use, the MOU excluded the Yavapai-Apache Nation claims and uses, despite the Nation's status as an irrigator and shareholder in the VDC. The Nation sought modifications to the MOU that would protect the rights of individual shareholders and provide a

fair and transparent process, and important improvements were made. The VDC operates under a 1909 *Hance v. Arnold* case that governs the operations of the Verde Ditch, requiring Court approval of any subsequent modifications. When the VDC and SRP sought Court approval of the MOU in August 2015, the United States objected, arguing that the water rights were already before the statewide adjudication, and that *Hance v. Arnold* Court did not have jurisdiction. The Court disagreed, and directed the SRP and VDC to proceed in drafting their new MOU. The United States appealed the decision to the Arizona Court of Appeals, Division 1 (*USA v. Verde Ditch, et al.*, #15-0690), challenging the court's jurisdiction over the Verde Ditch. The appeal has been briefed, and oral arguments are scheduled for February 8, 2017. The new MOU has been postponed pending the outcome of the appeal.

California

Cahuilla Band of Mission Indians/Pechanga Band of Luiseno Mission Indians/Ramona Band

In 1951, *United States v. Fallbrook Public Utility District, et al* (3:51-cv-1247) initiated the adjudication of water rights in the Santa Margarita River Watershed, including the rights of the Pechanga, Ramona and Cahuilla tribes. The tribal federally reserve water rights were acknowledged by a 1966 Fallbrook Decree, but were left unquantified. In efforts to avoid further litigation, the Pechanga worked collaboratively with their neighbors to develop mutual private agreements to share and manage the limited water resources. These efforts resulted in the Groundwater Management Agreement in 2006 and the Recycled Water Agreement in 2007; however, neither of the agreements addressed the scope of the Pechanga Band's overall water rights to the Santa Margarita River Watershed.

In 2006, the Pechanga Band sought settlement of the water rights claims and requested a Federal Water Rights Negotiation Team, which was granted in 2008. In the meantime, the Ramona and Cahuilla Bands sought to intervene in the *Fallbrook* case to quantify their respective water rights in the Santa Margarita River Watershed.

Negotiations began in 2008, and a settlement was completed in April 2016. The Pechanga Band of Luiseno Mission Indians Water Rights Settlement Act was approved by Congress as part of the Water Infrastructure Improvements for the Nation (WIIN) Act (S.612, §§3401 et seq.) on December 10, 2016, and signed into law by President Obama on December 16, 2016 (Pub. L. 114-322). The Act confirms the water rights settlement between the Pechanga Band, the United States, the Rancho California Water District, the Eastern Municipal Water District, and the Metropolitan Water District. It guarantees a permanent supply of water to the Pechanga Band, up to 4,994 acre-feet per year under the Fallbrook Decree, and provides coordinated water resource management among the Tribe and Water Districts within the Santa Margarita Basin. It also authorizes \$28.5 million for water quality, infrastructure, recycling and delivery.

Tule River Indian Tribe

The Tribe began efforts to secure its water rights in 1971. In 2007, the Tribe successfully settled its water rights in an agreement with water users on the South Fork Tule River, quantifying their reserved rights while allowing non-tribal neighbors to continue their historic uses. The agreement is between the Tribe, the Tule River Association, and the South Tule Independent Ditch Company, and recognizes the Tribe's consumptive right to water in the amount of 5,828 acre-feet per year and the right to construct adequate storage to put that quantity of water to beneficial use.

Since then, the Tribe has sought Congressional ratification of the settlement agreement and funding for infrastructure and storage reservoirs on the Tule Reservation to enable the Tribe to access the water. Bills introduced in 2007, 2008 and 2009 did not pass. In 2013, the Water Settlement Technical Report was completed, an important step toward implementation and ratification of the settlement agreement. As of December 2016, the Tribe continued to negotiate with the United States to reach agreement on an infrastructure plan and associated costs.

Agua Caliente Band of Cahuilla Indians

After more than 20 years of efforts to resolve concerns over the quality and quantity of water in the aquifer underlying the Coachella Valley, the Agua Caliente Band of Cahuilla Indians filed a lawsuit in May 2013, *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.* (U.S. District Court, Central District of California, EDCV 13-883). The case asks the Court to declare and quantify the existence of the tribe's water rights as the senior rights in the Coachella Valley under federal law. In March 2015, the Court ruled on summary judgment that the Agua Caliente Band of Cahuilla Indians has a reserved right to water, and groundwater is a water source available to fulfill that right. The Court denied the Tribe's claim for aboriginal title to groundwater.

The water districts filed a petition with the 9th Circuit for interlocutory review of the portion of the District Court's order addressing the inclusion of groundwater in the Tribe's reserved right to water. The parties briefed the issue during the Fall and Winter of 2015-2016, and oral argument were held October 17, 2016. The parties are determining how Phase 2 of the case, which deals with issues such as water quality and what standards will be used to quantify the tribe's rights, will proceed while the 9th Circuit review is pending.

Idaho

Coeur d'Alene

In 2008, Idaho initiated the Coeur d'Alene-Spokane River Basin Adjudication (Case No. 49576). The United States filed 353 federal reserved water right claims on behalf of the Coeur d'Alene Tribe, many of which are aimed at maintaining the current level of Lake Coeur d'Alene. In 2014, the Idaho Legislature passed a resolution (HCR062) in support of negotiation efforts (rather than prolonged litigation) to settle the Tribe's claims. In August 2015, the Coeur d'Alene Tribe, State of Idaho, United States and other stakeholders lodged an Memorandum of Agreement (MOA) with the Coeur d'Alene-Spokane River Basin Adjudication (CSRBA) (Subcase No. 91-7755) outlining the framework for pursuing settlement discussions regarding the Tribal claims. In 2016,

caucus meetings were held in March and October for those objecting to claims. As of the January 2017 Status Report, 11,817 water rights claims have been filed across five CSRBA basins, with 7,626 claims remaining to be reported to the Court in 2017-2018. Approximately 85,000 objections have been filed on 445 Federal Reserved Rights water claims, of which 353 are Bureau of Indian Affairs sub-cases. The Director's Report has been filed in four basins, and the preliminary Director's Report is expected for the fifth basin in the Summer/Fall of 2017.

Kansas

Kickapoo Tribe

In 1994, the Kickapoo Tribe entered into an agreement with the Nehama Brown Watershed Joint District No. 7 (Watershed District), the *Watershed Plan and Environmental Impact Statement for the Upper Delaware and Tributaries Watershed*. Under the agreement, the parties planned to jointly develop a reservoir project and construction of multiple dams that would address the Tribe's water rights and needs, as well as improve soil conservation and flood prevention. The reservoir has not been built, and water resources in the watershed continued to be developed by the non-Indian community. In 2006, the Tribe filed suit in the U.S. District Court of Kansas, *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Nehama Brown Watershed Joint District No. 7* (Case No. 06-cv-2248). The Tribe's claims focused in part on contract interpretation, and whether the contract unambiguously required the Watershed District to exercise its power of eminent domain to condemn non-Indian-owned land for the reservoir project that the Tribe was unable to acquire on its own.

In 2007, the parties took a break from litigation to explore settlement possibilities, where the Tribe's senior reserved water rights were acknowledged. The parties discussed "the amount of water needed to satisfy the Tribe's rights, the source of that water, and the means to effectively collect, store and deliver that water." In 2010, the State of Kansas and the Tribe were able to draft a Condemnation Agreement for the water storage project, but the Watershed District rejected the agreement in 2011. The Federal Court found in favor of Watershed District regarding the interpretation of the contract. The Tribe has purchased approximately 80% of the land rights needed for the project, and is evaluating an alternative means to secure the remaining land.

Negotiations continued from 2011-2016. On September 8, 2016, the State of Kansas and the Kickapoo Tribe of Kansas settled the decade-long lawsuit. The Water Rights Settlement Agreement recognizes the Tribe's senior water rights in the Delaware River Watershed, with an 1832 priority date. Direct use and storage allowances of the agreement were determined based on municipal build-out concept, using methods consistent with the Kansas law for Kansas water users. This method was determined by both the State and Tribe to be superior to the traditional method of quantifying Tribal reserve water rights based on "practicable irrigable acreage." The settlement includes an MOA that establishes clear and transparent procedures for communication, monitoring and protection of the tribal water right, and provides a process of annual reviews by the State and Tribe to insure the MOA remains current, especially as the Tribe develops storage. While downstream State water rights could be affected as the Tribe uses and stores water that formerly made its way downstream, very few water rights are immediately

downstream of the reservation. The agreement will be forwarded to Congress for ratification with a request for the appropriation of funds for the construction of a reservoir in the area.

Montana

Blackfeet

The Blackfeet Nation, the United States and the State of Montana entered into a water rights compact after 20 years of negotiations. The compact was approved by the Montana Legislature in 2009. The compact will provide water and economic development for the Blackfeet Nation while protecting the rights of water users locally and downstream on the Milk River. Legislation to ratify the compact was introduced in Congress in 2010, 2011, and 2013. The 2015 iteration was introduced in the Senate as S.1125, and passed in December 2016 as part of Title III of the Water Infrastructure Improvements for the Nation (WIIN) Act (Pub. L. 114-322). The members of the Blackfeet Nation will vote on whether to approve the compact on April 20, 2017.

Confederated Salish and Kootenai Tribes

The Confederated Salish and Kootenai Tribes, the United States and the State of Montana entered into a water rights compact after nearly 15 years of negotiations. In 2013, the Montana Legislature killed in committee a bill to approve the Compact, but after renegotiations of key provisions, relating to irrigation use and instream flows on the Reservation, the Montana Legislature approved a revised compact during its 2015 session. Federal legislation to authorize the compact was introduced in May 2016 (S. 3013).

Gros Ventre and Assiniboine Tribes

The Gros Ventre and Assiniboine tribes share the Fort Belknap Indian Reservation. A compact between Montana and the Gros Ventre and Assiniboine tribes of the Fort Belknap Indian Reservation was ratified by the Montana Legislature in 2001. The compact protects water rights for domestic use, livestock and irrigation use, as well as emergency use for public health and safety. Negotiations continue on a federal bill, which must be approved by Congress. A bill was introduced in Congress in 2011 and again in 2013, but no action has been taken.

Nevada

Walker River Paiute Tribe/Bridgeport Paiute Indian Colony/Yerington Paiute Tribe

The Federal Court litigation over rights to and administration of the Walker River system began in 1924, when the United States sued the Walker River Irrigation District (WRID) and others to quiet title to a federal reserved water right claim for the Walker River Paiute Reservation, after upstream users prevented water from reaching the Reservation (*United States v. Walker River Irrigation District*, (U.S. District Court for Nevada)). Following trial, the Court entered a judicial Decree in 1936, modified in 1940, which quantified the Tribe's water rights. In 1992, the parties requested the Court to address additional claims to water from the Walker River System under its continuing jurisdiction to administer the Decree. The Walker River Paiute Tribe's claims include

the right to water from a reservoir built on the reservation in the late 1930s, federal reserved water rights for lands restored or added to the tribe after 1936, and reserved rights to groundwater, none of which was addressed by the previous Decree. The United States made additional claims on behalf of the Bridgeport Paiute Indian Colony and the Yerington Paiute Tribe (among other military, BLM and National Forest federal claims). A Federal Water Rights Negotiation Team was assigned to the three Tribes in 1999.

In 2003, the parties engaged in Court-ordered mediation while litigation was stayed. By 2006, the parties had not agreed on any of the basic issues, and the Walker River Paiute Tribe withdrew from the mediation process. The stay was lifted and litigation continued forward. In June 2010, the Tribe began discussions with the States of Nevada and California regarding possible settlement options to resolve the Tribe's pending claims that may not have been explored during the past mediation efforts. A number of circumstances had changed since 2006 that led the Tribe to believe a settlement might be possible.

In May 2015, the Court (Case No. 3:73-cv-127, In Equity No. C-125-B) granted a motion to dismiss the claims of the Walker River Paiute Tribe and the United States (including the Bridgeport Paiute Indian Colony and the Yerington Paiute Tribe), holding that the adjudication and 1940 Decree precluded an expansion of water rights in the Walker River or its branches or tributaries with the same senior priority dates. The Walker River Paiute Tribe and the United States appealed the decision to the 9th Circuit (*United States et al. v. Walker River Irrigation District et al.* (15-16479)). A second appeal was consolidated with this one in October 2015. Briefing from the various parties continued through 2016 and is scheduled to end March 3, 2017.

New Mexico

Pueblo of Jemez/Pueblo of Zia/ Pueblo of Santa Ana

Adjudication of the Jemez River System began in 1983 with *United States v. Abousleman, et al.* (No. 83cv1041). The Special Master issued a report and recommended rulings in 1990 and again in 1995. The Court entered a partial final decree in 2000 on the non-Pueblo, non-federal water rights in the Jemez River System. The parties briefed their positions with regard to the Indian water rights claims in 2004. The parties then entered settlement negotiations, reaching Settlement Principles in 2008 to establish a framework for final resolution of the Pueblos' water rights claims. Negotiations were unsuccessful. In 2012, the parties resumed litigation. The parties briefed various threshold legal issues in 2013 through 2015. A decision on the threshold issues are still pending.

Pueblo of Acoma/ Pueblo of Laguna/Navajo Nation

The Rio San Jose adjudication proceeding began in 1983, *New Mexico v. Kerr-McGee Corporation* (New Mexico 13th Judicial District, CB-83-190-CV, and CB-83-220-CV (Consolidated)). Most recently, six-month stays from litigation were sought and granted for purposes of settlement negotiations in early 2014 and 2015. In May 2015, the United States, the Pueblos of Acoma and Laguna, and the State of New Mexico engaged a retired judge as a mediator and, after extensive mediation sessions and meetings, the parties made substantial

progress toward a comprehensive settlement agreement. In October 2015, the United States, the Pueblos of Acoma and Laguna, and the State of New Mexico filed a joint motion to extend litigation deadlines. The Court granted the motion in January 2016. In May 2016, the Court then granted a similar motion to vacate pre-trial deadlines, with the exception of hearings to preserve expert testimony. As of the November 2016 Status Report, the parties had a provisional agreement and continued to meet regularly to pursue final settlement terms. The parties were looking at alternative long-term water supplies and water quality data, and assessing the best design and costs to build storage and delivery infrastructure to provide wet water to the Pueblos. They identified two hydrologic models to evaluate the water supply options.

Zuni Tribe/Ramah Navajo Nation

The Zuni River adjudication, *United States [now New Mexico] v. A&R Productions, et al.* (US Dist. Ct. No 01-cv-0072) was filed in 2001. Most of the non-tribal claims in the adjudication have been resolved. In 2007, the tribal claims became part of sub-proceedings. In 2013, the parties requested a stay of the case to explore settlement negotiations. In 2014, the United States, Zuni, Navajo and the State of New Mexico completed several depositions and prepared a *Negotiation Process and Confidentiality Agreement for Settlement Discussions Concerning the Zuni River Cases in New Mexico*. They also created a negotiation technical committee to work on a hydrologic model and technical reports relevant to the sub-proceeding. Per Joint Status Reports filed with the court each June and December (2014-2016), the Zuni Tribe continues to work with the United States on drafting a settlement proposal, while the technical committee continues to meet regularly to develop a model to assist settlement and administrative initiatives.

Oklahoma

Choctaw/Chickasaw

In 2011, following a decade of negotiation relating to Oklahoma's water plan, the Chickasaw and Choctaw Nations filed a lawsuit in the U.S. District Court for the Western District of Oklahoma (*Chickasaw Nation et al. v. Fallin et al.*, Case 5:11-cv-927) against the State of Oklahoma and Oklahoma City over management of southeastern Oklahoma surface water, including the removal of water from Sardis Lake to be pumped through a pipeline to Oklahoma City.

The Chickasaw and Choctaw Nations in Oklahoma do not have reservations, since the lands were allotted to individual tribal members, owned in fee simple by the Tribal members. In some cases, land allotments have been transferred to non-Indian owners. However, there are multiple treaties between the Tribes and the U.S. Government that may impact the extent of the Tribes' rights to water.

In 2012, the parties mediated for a year, creating a panel of interested stakeholders and laying the foundation for settlement negotiations. Negotiations commenced in 2013, and in August 2016, the Chickasaw and Choctaw Nations, Oklahoma City, and the State of Oklahoma were able to reach an agreement. The settlement was approved by Congress as part of the WIIN Act (S.612, §3608) on December 10, 2016, and signed into law by President Obama on December 16, 2016 (Pub. L. 114-322). The settlement resolves long-standing questions and multiple court actions

over water rights ownership and regulatory authority over the waters of the Choctaw and Chickasaw Nations' historic treaty territories, particularly water use conflicts over Sardis Lake and Kiamichi Basin in southeastern Oklahoma.

The agreement provides a framework that fosters intergovernmental collaboration on water resources management and future allocations, ensuring that the Choctaw and Chickasaw nations have a voice in specific proceedings addressing water resources within their treaty territories. It also protects existing water rights and current and future water needs of communities throughout the region, and affirms the role of the State and the Oklahoma Water Resources Board in water rights permitting and administration. The agreement will implement a system of lake level release restrictions for Oklahoma City's measured use of Sardis Lake and the Kiamichi River for municipal water supply purposes, while supporting critical recreation, fish and wildlife uses through the Oklahoma Department of Wildlife Conservation's lake level management plan. It also resolves the outstanding debt associated with Sardis Lake. The settlement calls for a commission to evaluate the impacts of future proposals for out-of-state water use or diversion, which would remain subject to State legislative authorization. If the Oklahoma Legislature approves such a proposal, the agreement ensures that any proceeds would meet water and wastewater infrastructure needs, particularly in southeastern Oklahoma.

Oregon

Confederated Tribes of the Umatilla Indian Reservation

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have worked with the State of Oregon, local irrigators and the Bureau of Reclamation over many years to improve water management in the Umatilla Basin. The community collaboration produced the successful 1988 Umatilla Basin Project Act (Pub. L. 100-557), and allowed Tribal input into Oregon's Integrated Water Resources Strategy, completed in 2012. A Federal Water Rights Negotiating Team was assigned to the CTUIR in September 2012, beginning the formal negotiations of the federal reserved water rights, building on the relationships already developed between communities. In 2013, a technical team for the Tribe began developing a water resources modeling tool, using water data from Oregon and U.S. Geological Survey (USGS). The Oregon Water Resources Department (OWRD) began analyzing the Umatilla River Basin RiverWare Model in 2014 and provided feedback in early 2015. The CTUIR sought additional FY2016 Budget funding support from Congress in March 2015 for the technical and legal aspects of the water rights negotiations so that the current progress is not delayed. Additional phases of the USGS Umatilla Basin Groundwater Study are on hold until further funding is secured. In the meantime, negotiations and discussions continue, with topics including the protection of instream flows for fisheries and associated cultural traditions, while also providing water for economic and agricultural development.

Klamath Tribes

The 40-year Klamath Basin Adjudication has proceeded through the Oregon process to quantify the relative rights of the Klamath River Basin. In an effort to settle portions of that litigation the Klamath water settlement agreements attempt to resolve complex water and management issues between members of the United States, Klamath Tribes, Yurok Tribe, Karuk Tribe, States of Oregon and California, Upper and Lower Basin water users, and Power stakeholders. In 2010, the Klamath Basin Restoration Agreement (KBRA) and Klamath Hydroelectric Settlement Agreement (KHSA) were reached, and the Upper Klamath Basin Comprehensive Agreement (UKBCA) was signed in April 2014. Implementation meetings began immediately and continued through 2015, while seeking Congressional approval of the suite of Agreements (S.133). As contemplated in the UKBCA, the Klamath Tribes participated in the rules advisory committee formed by the OWRD, to assist in developing rules for the management of groundwater for the benefit of senior water rights holders. The KBRA, a regionally-brokered fishery restoration and water management deal, terminated on December 31, 2015, due to a lack of federal authorizing legislation. The KHSA and the UKBCA remain in effect, but are inter-dependent with the recently terminated KBRA. The parties will confer to determine the fate of the two remaining agreements and decide whether the goals of the KBRA can be achieved in some fashion. On April 6, 2016, the Department of the Interior, Department of Commerce, PacifiCorp, and the states of Oregon and California signed an amended KHSA and a new Klamath Power and Facilities Agreement (KPFA), with plans to follow a process administered by the Federal Energy Regulatory Commission (FERC) in order to remove four dams on the Klamath River by 2020. In September 2016, PacifiCorp submitted the amended KHSA and dam removal plans to FERC for approval, with letters of support from the Department of the Interior and the National Oceanic and Atmospheric Administration sent in October 2016. That process is expected to continue through 2017.

Utah

Navajo Nation

In 2003, the Navajo Nation and the State of Utah executed an MOA to resolve the Nation's reserved water rights claims in Utah. Within a few years, they formulated basic points to resolve the Nation's claims. They also began requesting federal participation in the negotiation process. A Federal Water Rights Negotiation Team was assigned in 2013. In March 2015, Utah Governor Gary Herbert signed a legislative resolution to support the negotiated settlement of the federal reserved water rights claims. Federal legislation was introduced in the Senate as the Navajo Utah Water Rights Settlement Act (S. 3482) in November 2016.

Washington

Lummi Nation/Nooksack Indian Tribe

In 1995, a Federal Water Rights Negotiation Team was appointed to help resolve disputes over groundwater. Litigation was filed in 2001 after negotiations stalled. A negotiated settlement was approved by the District Court in 2007. An appeal to the 9th Circuit was resolved in 2009, and a settlement over groundwater use for the Lummi Peninsula, part of the reservation, is currently being implemented. Conflict remains over water for the remainder of the reservation.

The Nation and Tribe have been involved in addressing conflicts over water allocation in the Nooksack River watershed and participating in the Water Resource Inventory Area 1 (WRIA 1) Watershed Management Project. The parties hoped that collaboration in the WRIA 1 project, with its data collection and technical analyses, would resolve water resource concerns without litigation. The Lummi Nation and Nooksack Indian Tribe withdrew from settlement negotiations in 2010, sending a letter to the Department of the Interior in 2011 to request litigation to quantify the tribal instream flow rights. The United States appointed a litigation team and hired technical experts.

In 2013, the parties held a Water Supply Symposium in an effort to revive WRIA 1 efforts, and settlement negotiations have resumed. In June 2015, the Lummi Nation proposed a “conceptual settlement” to community stakeholders, seeking feedback. In 2016, efforts continued to reach out to the State of Washington with its Water Rights Settlement Initiative.

BRYCE CANYON NATIONAL PARK WATER RIGHTS AGREEMENT

This Agreement is made and entered into by the United States of America ("United States") and the State of Utah ("Utah" or the "State").

RECITALS

A. The area of Bryce Canyon National Park lies within both the Paria River drainage (Area 89) and the Upper Sevier River drainage (Area 61).

B. Utah has initiated a statutory adjudication of water rights that includes the Paria River drainage (Area 89) entitled, "IN THE MATTER OF THE GENERAL DETERMINATION OF ALL RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE COLORADO RIVER IN KANE, GARFIELD, WAYNE, PIUTE, EMERY, SEVIER AND SANPETE COUNTIES, UTAH, AND EXCLUSIVE OF THE GREEN RIVER AND VIRGIN RIVER DRAINAGES," filed in the Sixth Judicial District, Wayne County, State of Utah, as Civil No. 435 (the "Southwestern Colorado River Adjudication"). That adjudication encompasses the majority of the area within which Bryce Canyon National Park (the "Park") is located. In October 1975, prior to the United States' joinder to that adjudication, the Utah State Engineer issued a Proposed Determination of water rights for Area 89. The United States was subsequently joined as a party to that adjudication pursuant to the provisions of 43 U.S.C. § 666 and, on December 13, 1983, filed a "MASTER STATEMENT OF WATER USER'S CLAIMS AND OBJECTIONS TO STATE ENGINEER'S PROPOSED DETERMINATION OF WATER RIGHTS" ("Master Statement") which "claims reserved rights in those portions of Bryce Canyon National Park included in the area encompassed by this adjudication." The State Engineer has not issued an Addendum to the Proposed Determination to address the claims of the United States included in its Master Statement, and the court has not issued a decree for Area 89 of that adjudication.

C. On February 21, 1926, the Utah State Engineer issued a Proposed Determination of water rights for the Sevier River and its tributaries, including the Upper Sevier River drainage (Area 61), in a statutory adjudication of water rights entitled "RICHLANDS IRRIGATION COMPANY v. WEST VIEW IRRIGATION COMPANY," filed in the Fifth Judicial District, Millard County, State of Utah, as Case No. 843 (herein the "Sevier River Adjudication"), and, on November 30, 1936, the court issued a decree in that adjudication. However, the United States was never joined as a party to the Sevier River Adjudication.

D. In order to remove any causes of present and future controversy over the use of water at the Park, the United States and Utah have conducted negotiations regarding a federal reserved water right for the Park.

E. These negotiations have resulted in the recognition of a federal reserved water right of the United States for the Park, subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, based on the mutual promises and agreements contained herein, the parties agree to the following:

1. Establishment of Bryce Canyon National Park. Bryce Canyon National Monument (the "Monument") was established on June 8, 1923 by Presidential Proclamation No. 1664, 43 Stat. 1914, issued pursuant to the Antiquities Act of June 8, 1906, 34 Stat. 225, 16 U.S.C. § 431. On June 7, 1924, pursuant to the National Park Service Organic Act of August 25, 1916, 64 Stat. 535, 16 U.S.C. § 1, Congress, in Public Law 68-227, 43 Stat. 593 (as amended by Public Law 70-374, 45 Stat. 502, dated May 12, 1928), established Utah National Park by including the lands comprising the Monument within the Park. On February 25, 1928, Congress, in Public Law 70-74, 45 Stat. 147 (as amended by Public Law 70-374, 45 Stat. 502, dated May 12, 1928), changed the name of Utah National Park to Bryce Canyon National Park (the "Park") and added certain lands to the Park. On January 5, 1931, pursuant to Public Law 71-352, 46 Stat. 582, dated June 13, 1930, the Park was expanded by Presidential Proclamation, 46 Stat. 3042 (as amended by Public Law 71-675, 46 Stat. 1166, dated February 17, 1931). On May 4, 1931, pursuant to Public Law 71-675,

46 Stat. 1166, dated February 17, 1931, the Park was expanded by Presidential

Proclamation No. 1952, 47 Stat. 2455 (as amended by Public Law 77-485, 56 Stat. 141,

dated March 7, 1942)). On December 31, 1971, through Special Warranty Deed U51130 from the Utah Parks Company to the United States of America, the Park was expanded by 100 acres. The purposes for which the Monument and the Park were established include the preservation in their natural state and protection of areas containing outstanding scenic features; the preservation of areas for scientific interest and importance; the preservation of the area as a public park for the benefit and enjoyment of the people; and the conservation of "the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. § 1). The lands comprising the Park and the dates on which the lands were reserved from the public domain or otherwise acquired for Park purposes are shown in the attached Appendix A and are described in the applicable proclamations, and public laws identified herein.

2. Recognition of Federal Reserved Water Right. To fulfill the purposes for which the Park was established and subject to the terms and conditions of this Agreement, the United States has a federal reserved water right to all naturally occurring water underlying, originating within, or flowing through the Park (which includes perennial, intermittent and ephemeral streams, springs, seeps, groundwater, and other natural sources of water) that was unappropriated as of the relevant dates of reservation or acquisition of the lands now within the boundaries of the Park. The United States' federal reserved water right shall have a single priority date of June 8, 1923 for the administrative uses discussed in paragraph 3.1 below, and five separate priority dates for the in situ and instream uses discussed in paragraph 3.2 below, which priority dates shall correspond to the five dates on which the lands comprising the Park were reserved from the public domain or otherwise acquired for Park purposes: June 8, 1923, February 25, 1928, January 5, 1931, May 4, 1931, and December 31, 1971, with the priority date of a particular place of use being the date of reservation or acquisition of those lands, as shown in Appendix A.

3. Uses of Federal Reserved Water Right. The United States' federal reserved water right may be used as follows:

3.1 Administrative Uses. In the exercise of its federal reserved water right, the United States may, for administrative uses, divert no more than 184 acre-feet per year (AFY) and deplete no more than 156 AFY from within the boundaries of the

Park. Such administrative uses include but are not limited to: domestic, culinary, irrigation, landscaping, and campground uses; the excavation, restoration, and preservation of buildings and ruins; road construction and maintenance; the construction, operation, and maintenance of visitor facilities; and other administrative uses that shall satisfy the existing and future requirements for the operation and protection of the Park. In addition, the United States may divert such additional amounts of water as are necessary for emergency fire suppression within the Park, and such diversions shall not be charged against the maximum annual diversions and depletions that the United States may make for administrative uses, as described in this paragraph. As set forth in Paragraph 4 herein, the water for such administrative uses shall be first satisfied under the United States' Water Right No. 61-893, a state-based appropriative right established under Utah law.

3.2 In Situ and Instream Uses. The remainder of the water reserved to the United States pursuant to its federal reserved water right shall remain in its free flowing and natural condition for in situ and instream uses (collectively "in situ uses") that shall satisfy and promote the purposes for which the Park was established. Such in situ uses include but are not limited to providing water for: riparian and wetland vegetation and ecosystems; geomorphologic processes; wildlife habitat and watering; and other uses that shall satisfy and promote the scenic, conservation, preservation, protection, recreational, and other purposes for which the Park was established.

4. Use of Water Right No. 61-893 for Administrative Uses. Water Right No. 61-893 is a decreed water right with a priority date of 1888 and a maximum annual diversion of 181 AFY. Upon execution of this Agreement, Water Right No. 61-893 shall continue to be administered under Utah law. The water for the administrative uses within the Park shall be first satisfied under Water Right No. 61-893. In the event the amount of water produced under Water Right No. 61-893 is not sufficient for such administrative uses, water may be diverted within the boundaries of the Park for such uses under the United States' federal reserved water right according to its priority date.

5. Subordination of In Situ Uses. The United States hereby subordinates the portion of its federal reserved water right held for in situ uses (but not administrative uses) as follows:

5.1 Subordination to Existing Water Rights. The United States hereby subordinates the portion of its federal reserved water right held for in situ uses to the following (collectively "Existing Water Rights"): (1) all valid existing water rights held by third parties that have been perfected or decreed and are of record in the Utah Division of Water Rights (the "Division") as of the date of the last party's signature to this Agreement (the "Effective Date"); and (2) any valid diligence claims that are submitted by third parties to the Division after the Effective Date.

5.2 Inapplicability of Subordinations. The foregoing subordinations shall no longer be operative as to any Existing Water Rights that subsequently are withdrawn, forfeited, abandoned, lost through nonuse, or otherwise terminated or reduced. The subordinations also shall not apply to or otherwise affect the portion of the United States' federal reserved water right held for administrative uses. Further, the subordinations shall not be construed as providing consent to any applications to appropriate, change, or exchange water inside or outside the Park filed with the Division after the Effective Date and shall not limit the United States' right to protest any such applications.

6. Right-of-Way Permits. The Tropic & East Fork Irrigation Company (the "Company"), of Tropic, Utah, has a permit for the operation and maintenance of an underground irrigation water pipeline and the Water Canyon Dam, located within the boundaries of the Park, authorized pursuant to Right of Way Permit No. RW 1330-14-001

issued to the Company by the National Park Service on December 10, 2013. The Town of Tropic (the "Town") has a permit for the operation and maintenance of an underground culinary water conveyance system, located within the boundaries of the Park, authorized pursuant to Right of Way Permit No. RW 1330-15-001 issued to the Town by the National Park Service on November 12, 2015. The National Park Service will continue to cooperate with the Company and the Town in the administration of these right-of-way permits, nothing in this Agreement shall affect or modify in any way these permits, or the permitting process in the future, and this Agreement shall have no effect on any rights-of-way that predate creation of the Park.

7. Relationship Between United States' Federal Reserved Water Right and Its State-Based Appropriative Water Rights. In addition to the federal reserved water right recognized by this Agreement, the United States also currently owns six state-based appropriative water rights for the Park, which are listed and summarized in the attached Appendix B (the "state-based rights").

7.1 Partial Merger of State-Based Appropriative Rights. Upon the issuance of a final, non-appealable decree in the Southwestern Colorado River Adjudication, and in any subsequent statutory adjudication including the Upper Sevier River drainage (Area 61) confirming and adjudicating the federal reserved water right recognized by this Agreement, the United States' state-based appropriative rights represented by Water Right Nos. 61-48, 61-121, 89-10, 89-11, and 89-1486, as more particularly described in the Appendix B, shall be merged into the federal reserved water right recognized by this Agreement.

7.2 Federal Reserved Water Right Number. Upon execution of this Agreement, the State Engineer shall assign a water right number in the Utah Division of Water Rights' records for the federal reserved water right recognized by this Agreement.

8. Entirety of Federal Reserved Water Right. The federal reserved water right recognized herein includes all water rights of every nature and description derived under federal law from the doctrine of federal reserved water rights from all sources of water, both surface and underground, and includes all types and kinds of uses whatsoever, and encompasses the entire federal reserved water right held by the United States for the Park as now constituted. Absent Congressional or Presidential action, the federal reserved water right for the lands now constituting the Park shall not be enlarged, expanded, or re-quantified.

9. Issuance of Proposed Determinations and/or Addenda. For the water rights within the Park recognized by this Agreement and tributary to the Paria River drainage (Area 89), the State Engineer will prepare a Proposed Determination for such water rights consistent with this Agreement for submission to the court, and the parties hereto will cooperate to obtain an interlocutory decree. There is no active statutory adjudication in the Upper Sevier River drainage (Area 61), since the Sevier River was adjudicated in 1936. If and when a new adjudication is undertaken in this drainage area, and the United States is joined in the adjudication, for the water rights within the Park and tributary to the Upper Sevier River drainage, the State Engineer will prepare a Proposed Determination for such water rights consistent with this Agreement for submission to the court, and the parties hereto will cooperate to obtain an interlocutory decree. Subject to paragraph 10 herein, until

such time that the parties are successful in obtaining such respective interlocutory decrees, this Agreement shall nevertheless remain binding on the parties.

10. Modification of Agreement. The provisions of this Agreement may be modified in writing and upon the mutual consent of the parties to this Agreement, which consent shall not be unreasonably withheld. Further, if a third party objection to this Agreement is sustained by the district or appellate courts that diminishes or limits the federal reserved water right recognized by this Agreement or if the district or appellate courts do not otherwise ratify and approve the federal reserved water right without conditions, the United States may request the initiation of good faith negotiations with the State in an attempt to address the issue or issues underlying the district or appellate courts' action and seek to resolve this matter without litigation. If the parties do not agree that the issue or issues underlying the district or appellate courts' action can be resolved

through good faith negotiations, or are not able to resolve such issue or issues following such negotiations, the United States shall have the option of voiding this Agreement, including but not limited to the quantification provisions of Paragraph 3.1, the subordination provisions of Paragraph 5.1, and the merger provision of Paragraph 7.1, upon delivery of written notice of termination to the Division.

11. Limitations on Effect of Agreement. Nothing in this Agreement shall constitute an admission, waiver, or precedent as to any party for any other federal reserved water right claim, or create any third party rights. Without limiting the foregoing, nothing in this Agreement shall be construed or interpreted to:

11.1 In any way affect any water rights of the United States other than the water rights held by the United States for the Park within the context of the Southwestern Colorado River Adjudication and/or any future statutory adjudication of water rights in the Upper Sevier River drainage (Area 61);

11.2 Establish any precedent or standard to be used for the quantification of federal reserved water rights, including the water rights of any Indian Tribe, in any other judicial or administrative proceeding;

11.3 Limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;

11.4 Restrict the power of the United States to reserve water in the future, or to acquire additional rights to the use of water under the laws of Utah;

11.5 Restrict the power of Utah or the State Engineer to allocate, administer, or distribute the waters of the State, except as expressly provided in this Agreement;

11.6 Settle other federal reserved water rights of the United States;

11.7 Provide consent to any applications to appropriate, change, or exchange water within or outside the Park filed with the Division after the Effective Date or limit the United States' right to protest any such applications; or

11.8 Limit in any way the United States' permitting, land use, administrative, or other regulatory authority, including but not limited to its authority to issue, modify, or terminate right-of-way permits or other authorizations on Park lands. 12. Protection of Federal Reserved Water Right Under State Law. The federal reserved water right of the United States, as set forth and quantified herein, shall be administered and protected under State law in the same manner as any water right originating under State law, without losing its character as, or the attributes of, a federal reserved water right as provided under federal law. Pending the issuance of interlocutory and/or final decrees in the Southwestern Colorado River Adjudication and/or any future statutory adjudication of water rights in the Upper Sevier River drainage (Area 61) confirming and adjudicating the federal reserved water right recognized by this Agreement, the United States may develop water for administrative uses under the federal reserved water right in accordance with the diversion and depletion limits set forth in Paragraph 3.1 above, provided that it gives at least 90 days prior written notice to the State Engineer before drilling a new well or otherwise developing a new point of diversion.

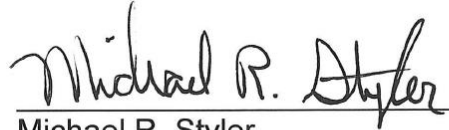
13. Duplicate Copies. This Agreement may be executed in duplicate. Each of the duplicate copies bearing original signatures shall be deemed an original.

It being resolved and agreed to as delineated above, the undersigned parties express their mutual agreement hereto this 18th day of January, 2017.

For the State of Utah:



Gary Herbert
Governor



Michael R. Styler
Executive Director
Department of Natural Resources



Kent L. Jones, P.E.
State Engineer
Division of Water Rights

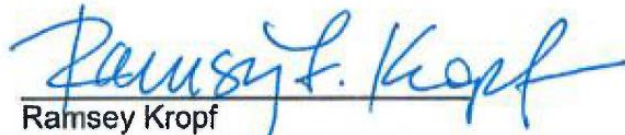


Norman K. Johnson
Assistant Attorney General
Natural Resources Division Director

For the United States:



Sue Masica
Director, Intermountain Region
National Park Service



Ramsey Kropf
Deputy Solicitor for Water Resources
Department of the Interior

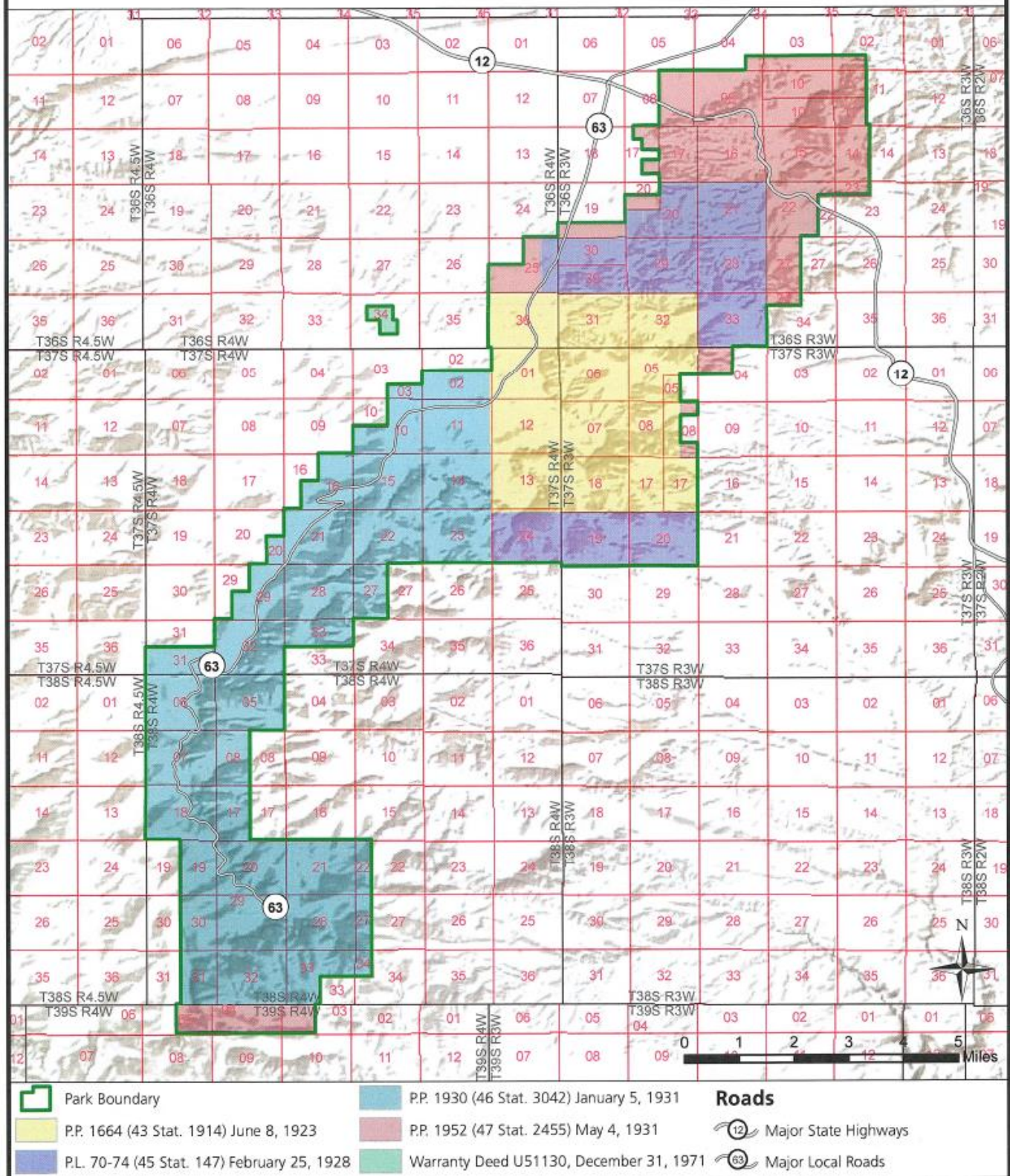
John C. Cruden, Assistant Attorney General



Anna K. Stimmel, Trial Attorney.
David W. Gehlert, Trial Attorney
Division of Water Rights
U.S. Department of Justice
Environment and Natural Resources Division

Appendix A

Bryce Canyon National Park Land Reservations



APPENDIX B

The United States' six state-based appropriative water rights for administrative uses in the Park as of the Effective Date.

Water Right No.	Water Source	Priority Date	Point of Diversion (Salt Lake Base and Meridian)	Place of Use	Type of Use	Period of Use	Current Diversion Rate (cfs)
61-48	Trough Spring	October 18, 1923	S. 4238 ft., W. 1288 ft. from NE Cor. Sec. 16, T37S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.05
61-121	Underground Water Well	February 09, 1951	S. 2450 ft., W. 2035 ft. from NE Cor. Sec. 36, T36S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.003
61-893	Underground Water Wells	1888	(1) S. 1636 ft., W. 368 ft. from N4 Cor. Sec. 34, T36S, R4W (2) S. 1939 ft., W. 100 ft. from N4 Cor. Sec. 34, T36S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.25
89-10	Hopkins Spring	August 8, 1921	S. 2050 ft., W. 1415 ft. from NE Cor. Sec. 01, T37S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.0011
89-11	Shaker Spring	January 02, 1923	S. 2800 ft., W. 2120 ft. from NE Cor. Sec. 16, T37S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.2
89-1486	Yovimpa Springs	October 19, 1948	S. 564 ft., W. 168 ft. from NE Cor. Sec. 32, T38S, R4W	Within the Exterior Boundaries of the Park	Domestic and Other	01/01-12/31	0.0343

Tab U – Legislation and Litigation Update

LEGISLATION AND LITIGATION UPDATE
183RD WSWC MEETINGS
NEBRASKA CITY, NE – APRIL 13, 2017

Compiled By:
Michelle Bushman
WSWC Legal Counsel
mbushman@wswc.utah.gov

This summary describes developments regarding notable legislation and litigation that pertain to WGA/WSWC policies or are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of the 115th Congress. This update is current as of April 1, 2017, and the legislative portion is organized in reverse chronological order according to bill number. For some bills, this document uses modified versions of summaries prepared by the Congressional Research Service.

NOTABLE LEGISLATION

Bill Number(s)	Summary	Dates/Status	Sponsor(s)
S. 738	Issue: Abandoned Mines Title: Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act. The bill would amend the Surface Mining Control and Reclamation Act of 1977 to provide funds to States and Indian tribes for the purpose of promoting economic revitalization, diversification, and development in economically distressed communities through the reclamation and restoration of land and water resources adversely affected by coal mining carried out before August 3, 1977. The bill would authorized the appropriation of \$200M each year from FY2018-FY2022, for projects reasonably likely to promote economic and community development in the area.	3/27/17: S. 738 introduced in the Senate, referred to the Energy and Natural Resources Committee.	Senator Joe Manchin (D-WV) introduced S. 738, with 4 Democrat co-sponsors from OH, PA, and VA
S.714	Issue: Water Resource Management No Title. A bill to amend Public Law 103-434 to authorize Phase III of the Yakima River Basin Water Basin Water Enhancement Project for the purposes of improving water management in the Yakima River basin Senator Cantwell’s press release states that the reintroduced bill “addresses water security needs in the Yakima River Basin, which is one of the Columbia River Basin’s most significant tributaries, through an unprecedented, collaborative approach that has become a national model for water management. The bill authorizes key elements of a plan to meet the long-term water needs of both humans and nature through a combination of conservation, restoration, fish recovery and drought relief measures.” <i>This bill is similar to a bill Senator Cantwell introduced June 2015 (S. 1694) and passed as part of the bipartisan energy bill, the North American Energy Security and Infrastructure Act (S. 2012), but differences between the House and Senate were never resolved in 2016.</i>	3/23/17: S. 714 introduced in the Senate, referred to Committee on Energy and Natural Resources	Senator Maria Cantwell (D-WA) introduced S. 714 with co-sponsor Senator Patty Murray (D-WA)

S. 692	Issue: CWA Technical Assistance Title: Water Infrastructure Flexibility Act The bill would provide technical assistance, outreach and training for compliance the CWA and Safe Drinking Water Act, including information about financial assistance and regulatory flexibility, opportunities to develop integrated plans, and promotion of green infrastructure on a local and regional level	3/21/17: S. 692 introduced in the Senate, referred to the Committee on Environment and Public Works 3/28/17: Subcommittee on Fisheries, Water, and Wildlife held hearings on S. 692	Senator Deb Fischer (R-NE) introduced S. 692, with 8 bipartisan co-sponsors from AR, MD, MI, MO, NJ, OH, and OK
S. 685	Issue: Rural Infrastructure Title: Clean Water for Rural Communities Act. The bill's purpose is to ensure a safe and adequate municipal, rural, and industrial water supply for various counties in Montana and North Dakota that are part of the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System, authorizing a cooperative agreement to provide federal cost-share assistance for the planning, design, and construction of the water systems, according to Reclamation feasibility studies and reports.	3/21/17: S. 685 introduced in the Senate, referred to the Committee on Energy and Natural Resources	Senator Steve Daines (R-MT) introduced S. 685, with co-sponsor Jon Tester (D-MT)
S. 677/H.R. 1654	Issue: Surface Water Storage Projects Title: Water Supply Permitting Coordination Act. The bill would authorize the Secretary of the Interior to coordinate Federal and State permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency for permit processing.	3/21/17: S. 677 introduced in the Senate and referred to the Committee on Energy and Natural Resources; H.R. 1654 introduced in the House and referred to the Committee on Natural Resources	Senator John Barasso (R-WY) introduced S. 677, with 5 Republican co-sponsors from AZ, ID, NV, and WY Rep. Tom McClintock (R-CA) introduced H.R. 1654 with 8 Republican co-sponsors from AZ, CA, CO, ND, and WY
S. 664	Issue: Indian Water Rights Title: Navajo Utah Water Rights Settlement Act. The bill includes a water settlement fund to be used for the construction of drinking water infrastructure, domestic and municipal water supply, and the financing of distribution infrastructure on the Navajo Nation in exchange for limiting the legal exposure and litigation expenses of the federal government and the State of Utah. The agreement quantifies the Navajo Nation's right to use 81,500 acre-feet of water annually, from water sources on or adjacent to the Navajo Reservation within Utah's boundaries. The federal contribution would be authorized up to \$198.3M, which includes \$11.1M to a trust account to assist the Navajo Nation with the expenses of operating, maintaining, and replacing the water development projects, and \$1M for programmatic costs, including the preparation of a hydrographic survey of	3/15/17: S. 664 introduced in the Senate and referred to Committee on Indian Affairs	Senator Orrin Hatch (R-UT) introduced S. 664

	historic and existing water uses on the Reservation. The bill includes a provision that the total federal obligation would increase or decrease based on construction costs from the June 2014 cost indices. Utah would contribute an additional \$8M for planning, design and construction of water development projects, with payments spread over three years.		
S. 518	Issue: CWA Technical Assistance Title: Small and Rural Community Clean Water Technical Assistance Act. The bill would amend the CWA (33 USC 1281, 1383, 1301(d)) to provide technical assistance for qualified nonprofit small treatment works serving less than 10,000 people. The bill would authorize \$15M to be appropriated each year FY2018-FY2022. The EPA Administrator would be authorized to use the funds to provide grants or cooperative agreements to qualified nonprofit small treatment works technical assistance providers to provide to owners and operators of small treatment works onsite technical assistance, circuit rider technical assistance programs, multi-State, regional technical assistance programs, and onsite and regional training, to assist the small treatment works in achieving compliance with this Act or obtaining financing under this Act for eligible projects.	3/2/17: S. 518 introduced in the Senate, referred to the Environment and Public Works Committee	Senator Roger Wicker (R-MS) introduced S. 518, with 7 Democrat and 6 Republican co-sponsors from AR, HI, ID, MN, MT, ND, WV, and WY
H.R. 1673	Issue: State Revolving Funds Title: Water Affordability, Transparency, Equity, and Reliability (WATER) Act. The bill would amend the Internal Revenue Code relating to the establishment of trust funds to create a Water Affordability, Transparency, Equity, and Reliability Trust Fund in the Treasury. Funds would be limited to \$34.9M in any fiscal year, and would be allocated between the Clean Water and Safe Drinking Water programs, as well as household well water systems under the USDA Consolidated Farm and Rural Development Act. Rep. Conyers said the bill “funds a massive investment in our public water utilities and creates thousands of jobs in every community...More than 11,200 community water systems have lead service lines, some of which provide water to schools. The EPA estimates roughly \$697B is needed to upgrade our drinking water and wastewater systems over the next 20 years. Without adequate federal support, communities often have to compensate for the funding gap by raising service rates, which some households cannot afford, leading some...to be cut off from water and sewer service... The WATER Act would allow states to issue grants to replace lead service lines and would establish a School Drinking Water Improvement Grant program to provide funding to public primary and secondary schools that wish to test, repair, replace or install the infrastructure necessary for drinking water foundations or bottle filling stations. Additionally, the WATER Act creates a new grant program to help households install, repair, replace and upgrade septic tanks and drainage fields. The legislation also amends the existing Tribal grant program to increase the amount of assistance from 1.5 percent of Drinking Water SRF funds to 3 percent.”	3/22/17: H.R. 1673 introduced in the House, referred to several committees	Rep. John Conyers (D-MI) introduced H.R. 1673, with 23 Democrat co-sponsors, including from AZ, CA, NM, TX, and WA
H.R. 1653	Issue: State Revolving Funds Title: Drinking Water Affordability Act. The bill would amend the Safe Drinking Water Act (42	3/21/17: H.R. 1653 introduced in the House, referred to Committee on	Rep. Robert Latta (R-OH) introduced H.R. 1653 with co-sponsor

	USC 300g and 300j) to authorize activities FY2018-FY2024, to modify loan terms, and to exempt public water systems from redundant federal cross-cutting requirements if States impose an equally stringent requirement. The bill also requires reports from EPA on best practices for streamlining application processes and efficient administration of SRFs, and a GAO report on a study of cost-effective and economically feasible rehabilitation or replacement of drinking water infrastructure, with an assessment of barriers that preclude communities from using such materials and technologies.	Energy and Commerce	Rep. David McKinley (R-WV)
H.R. 1647	Issue: State Revolving Funds Title: Water Infrastructure Trust Fund Act. The bill would amend the Internal Revenue Code relating to the establishment of trust funds to create a Water Infrastructure Trust Fund in the Treasury, with funds available without further appropriation for EPA capitalization grants under the CWA (33 USC 1377) and the Safe Drinking Water Act (42 USC 300j-12)	3/21/17: H.R. 1647 introduced in the House, referred to several committees	Rep. Earl Blumenauer (D-OR) introduced H.R. 1647 with co-sponsor Rep. John Duncan
H.R. 1579	Issue: Water Infrastructure Resiliency Title: Secure and Resilient Water Systems Act. The bill would require community drinking water systems to identify their source water and distribution system vulnerabilities to climate change, drought, extreme weather; source water degradation due to threats from industrial activity, pipelines and storage tanks, contaminated sites, agricultural activity, and oil and gas exploration; and threats from intentional acts, including intentional contamination, sabotage, and theft of chemicals. These assessments would be due to the EPA Administrator every five years. Each community water system would also be required to submit a protection plan that identifies strategies and resources to mitigate threats, including emergency response plans. The bill would authorize cost-share grants to provide technical assistance for those water systems at greatest and most immediate risk, with an appropriation authorized of \$50M for each FY2018-FY2022	3/16/17: H.R. 1579 introduced in the House, referred to the Committee on Energy and Commerce	Rep. Scott Peters (D-CA) introduced H.R. 1579 with co-sponsors Frank Pallone (D-NJ) and Paul Tonko (D-NY)
H.R. 1261	Issue: WOTUS/Navigable Waters Title: Federal Regulatory Certainty for Water Act. The bill amends the CWA (33 USC 1362) to define “navigable waters” as navigable-in-fact, or permanently or continuously flowing bodies of water (streams, rivers, lakes, oceans) connected to navigable-in-fact waters. It explicitly excludes intermittent or ephemeral flows, wetlands, playa lakes, prairie potholes, wet meadows, wet prairies, and vernal pools unless they are adjacent to navigable waters with a continuous surface water connection.	2/28/17: H.R. 1261 introduced in the House, referred to the Committee on Transportation and Infrastructure	Rep. Mac Thornberry (R-TX) introduced H.R. 1261 with co-sponsor Rep. Kevin Cramer (R-ND)
S. 451/H.R. 1663	Issue: Water Infrastructure Funding and Research Title: Water Resources Research Amendments Act. This bill amends the Water Resources Research Act (42 USC 10301) to: (1) declare that additional research is required into increasing the effectiveness and efficiency of new and existing treatment works through alternative approaches, including non-structural alternatives, decentralized approaches, energy use efficiency, water use efficiency, and actions to extract energy from wastewater; (2) require each water resources research and technology institute to arrange for research that fosters the exploration of new ideas that expand	2/27/17: S. 451 introduced in the Senate, referred to Committee on Environment and Public Works 3/21/17: H.R. 1663 introduced in the House,	Senator Benjamin Cardin (D-MD) introduced S. 451 with co-sponsor John Boozman (R-AR) Rep. Robert Whitman (R-VA) introduced

	understanding of water resources (currently, of water-related phenomena); (3) direct the Department of the Interior to report to specified congressional committees annually on each institute's compliance with matching fund requirements and provisions permitting the use of funds only to reimburse direct cost expenditures incurred for the conduct of the water resources research program; and (4) authorize appropriations for such institutes through FY2022	referred to the Natural Resources Committee	H.R. 1663, with co-sponsors Grace Napolitano (D-CA) and Morgan Griffith (R-VA)
H.J. Res. 77	Issue: Corps Water Control Manuals No Title. Provides congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Army Corps of Engineers in December 2016 relating to the Apalachicola-Chattahoochee-Flint River Basin Water Control Master Manual, impacting water resources in Alabama, Florida, and Georgia	2/16/17: H.J. Res. 77 introduced in the House, referred to the Transportation and Infrastructure Committee	Rep. Neal Dunn (R-FL) introduced H.J. Res. 77 with 12 Florida co-sponsors.
H.R. 1179	Issue: EPA Veto Authority, Environmental Lawsuits Title: Discouraging Frivolous Lawsuits Act. The bill would amend the Clean Water Act to streamline the permitting process for infrastructure projects, and hold special interest groups accountable for filing frivolous lawsuits that unnecessarily delay infrastructure projects at increased tax-payer expense. The bill would remove the EPA's veto authority over Corps-issued permits on wetlands, reducing the uncertainty applicants experience when filing permits.	2/16/17: H.R. 1179 introduced in the House, referred to the Committee on Transportation and Infrastructure	Rep. Tom Rice (R-SC) introduced H.R. 1179 with 21 Republican co-sponsors, including from AZ, CA, NV, UT, and TX
H.R. 1105	Issue: Clean Water Act – WOTUS Rule Title: Stop WOTUS Act. The bill would repeal the Waters of the United States (WOTUS) Rule, issued by the EPA and Corps under the Clean Water Act, which defines the scope of waters protected and regulated. Rep. Rick Allen provided the following background: "The rule would significantly broaden the definition to extend the federal government's regulatory authority over nearly all bodies of water, including creeks, streams, and groundwater as well as drainage ditches, irrigation pipes and farmland ponds. The Administration failed to properly consult state and local governments in developing its rule, which undermines the federal-state partnership Congress intended to establish under the CWA."	2/16/17: H.R. 1105 introduced in the House, referred to the Committee on Transportation and Infrastructure	Rep. Rick Allen (R-GA) introduced H.R. 1105
H.R. 1071	Issue: Safe Drinking Water Act Title: Assistance, Quality, and Affordability (AQUA) Act. To amend the Safe Drinking Water Act, to increase assistance for States, water systems, and disadvantaged communities; to encourage good financial and environmental management of water systems; to strengthen the Environmental Protection Agency's ability to enforce the requirements of the Act. The bill would increase federal investments in U.S. water systems to remove old lead pipes, and improve long-term resiliency and sustainability. It would authorize significantly higher funding levels for the Drinking Water State Revolving Fund for states to meet their most pressing local water system needs.	2/15/17: H.R. 1071 introduced in the House, referred to the Committee on Energy and Commerce	Rep. Paul Tonko (D-NY) introduced H.R. 1071, with 16 Democratic co-sponsors, including from CA, CO, and TX
H.R. 1068	Issue: Safe Drinking Water Act	2/15/17: H.R. 1068 introduced in the House	Rep. Frank Pallone (D-NJ) introduced H.R.

	Title: Safe Drinking Water Act Amendments. To enable needed drinking water standards, reduce lead in drinking water, plan for and address threats from climate change, terrorism, and source water contamination, invest in drinking water infrastructure, increase compliance with drinking water standards, foster greater community right to know about drinking water quality, and promote technological solutions for drinking water challenges.	and referred to the Committee on Energy and Commerce	1068 with 9 Democratic co-sponsors, including from CA and CO.
S. 398	Issue: Federal Allocation of Interstate Water Resources No Title. Directs the Secretary of the Army to modify the operation of certain water development projects in the Apalachicola, Chattahoochee, Flint (ACF) Rivers. The intent is to provide freshwater flows sufficient for the physical, chemical, biological and overall ecological integrity of the “components, functions, and natural processes” required for a thriving river system, floodplain and Apalachicola Bay – and thereby protect commercial and recreational fishing and shellfish. The bill is in response to a U.S. Army Corps of Engineers’ (Corps) environmental impact statement (EIS) and updated ACF water control manual that would provide for nearly all of Atlanta’s water needs through 2050, as well as an anticipated Supreme Court special master’s report that is expected to also favor Georgia. The bill would support and re-establish “thriving and diverse fish, wildlife and plant populations with species composition, diversity, adaptability, and functional organization similar to those found in the... ecosystems prior to the construction of the [ACF] projects.” It is intended to restore and recover endangered, threatened and/or at risk species and prevent significantly harmful adverse impacts to the ecosystems. The bill directs the Corps to enter into an arrangement with the National Oceanic and Atmospheric Administration (NOAA) to study and evaluate existing studies, assessments and data related to freshwater flows, and recommend how to maintain such flows. It would prohibit the Corps from issuing a final water control manual based on its 2016 EIS, and calls for development of a revised manual with operational modifications to carry out the purposes of the bill, including “to the maximum extent practicable, while providing system-wide balance in conservation storage through the maintenance of water levels in the same action zone for each of the [ACF] project reservoirs.” Further, the bill calls for an independent National Academy of Sciences peer review of each revised water control manual. Before a manual is issued, the Corps is to obtain written approval from NOAA, EPA, the FWS, and the U.S. Geological Survey.	2/15/17: S. 398 introduced in the Senate, referred to the Committee on Environment and Public Works	Senator Bill Nelson (D-FL) introduced S. 398
H.R. 953	Issue: FIFRA Title: Reducing Regulatory Burdens Act. To amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Water Pollution Control Act to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters, exempting certain pesticides from NPDES permitting. <i>Related to Position #359, allowed to sunset at the St. George, Utah meeting September 2016. See also S. 340.</i>	2/7/17: H.R. 953 introduced in the House, referred to Committees on Transportation and Infrastructure, and Agriculture 2/16/17: House Agriculture Committee	Rep. Bob Gibbs (R-OH) introduced H.R. 953, with 35 Republican and 2 Democrat co-sponsors

		held a mark-up session and ordered H.R. 953 reported.	
H.R. 939/H.R. 904	Issue: EPA State Revolving Funds Title: Buy America for Drinking Water Extension Act (H.R. 939). To amend the Safe Drinking Water Act to extend and expand the provision requiring the use of iron and steel products that are produced in the United States in projects funded through a State drinking water treatment revolving loan fund. Title: Buy American Improvement Act (H.R. 904). Section 208 includes drinking water state revolving funds, Section 209 includes rural utilities, and Section 211 includes the Rural Water Supply Program	2/7/17: H.R. 939 introduced in the House, referred to Committee on Energy and Commerce 2/7/17: H.R. 904 introduced in the House, referred to various committees	Rep. Cheri Bustos (D-IL) introduced H.R. 939, with 18 Democrat and 1 Republican co-sponsor Rep. Daniel Lipinski (D-IL) introduced H.R. 904, with 16 Democrat and 2 Republican co-sponsors
S. 340	Issue: Water Quality Title: Sensible Environmental Protection Act. A bill to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters. The bill would amend FIFRA 7 USC 136a(f) and the CWA 33 USC 1342 to clarify which pesticides are exempt from NPDES discharge permits. It would require EPA and USDA to report to Congress on coordination between the agencies and the effectiveness of regulations regarding water quality and human health. <i>Related to Position #359, allowed to sunset at the St. George, Utah meeting September 2016. See also H.R. 953.</i>	2/7/17: S. 340 introduced in the Senate, referred to the Committee on Environment and Public Works	Senator Mike Crapo (R-ID) introduced S. 340, with 13 Republican and 3 Democrat co-sponsors, including from AZ, ID, KS, NE, ND, OK, SD, and WY
H.R. 875	Issue: Water Infrastructure Projects Title: Bureau of Reclamation Water Project Streamlining Act. To facilitate and streamline the Bureau of Reclamation process for creating or expanding water storage, rural water supply, and water recycling projects under Reclamation law. Sets forth provisions governing feasibility studies for surface water storage projects initiated by the Department of the Interior under the Reclamation Act of 1902 (project studies). Requires a project study initiated after enactment of this Act to: (1) result in the completion of a final feasibility report within three years; (2) have a maximum federal cost of \$3 million; and (3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the required review, while eliminating repetitive discussions of the same environmental issues. The bill sets forth factors for extending such timeline for complex projects, and sets requirements for Interior to complete reviews for project studies, set meetings, provide information and expedite project study completion, as well as other responsibilities. It also sets requirements for project NEPA compliance, sets forth responsibilities of the lead agency, and provides for a reduction of funds for such an agency that fails to render such a decision by a specified deadline. Directs Interior to: (1)	2/6/17: H.R. 875 introduced in the House, referred to the Committee on Natural Resources	Rep. Dan Newhouse (R-WA) introduced H.R. 875

	survey the use by the Bureau of categorical exclusions in projects since 2005 and propose a new categorical exclusion for a category of activities if merited, and (2) establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process. Requires Interior to develop and submit an annual Report to Congress on Future Water Project Development that: (1) identifies the project reports, proposed project studies, and proposed modifications to authorized projects and project studies that are related to the missions and authorities of the Bureau of Reclamation, that require specific congressional authorization, that have not been congressionally authorized, that have not been included in any previous annual report, and that, if authorized, could be carried out by the Bureau of Reclamation; (2) provides a description the benefits to the protection of human life and property, improvements to domestic irrigated water and power supplies, the national economy, the environment, or the national security interests; and (3) for proposed project studies, whether the non-federal interest submitting the proposal has local support and the financial ability to cost-share. <i>Note: This bill is similar to H.R. 2097</i>		
H.R. 689/S.285	Issue: Access to irrigation headgate on federal land for maintenance Title: Bolts Ditch Access and Use Act. Seeks to resolve maintenance issues for a ditch headgate located on wilderness land in Colorado's White River National Forest. The parties have a stipulated settlement agreement on the point of diversion for the Bolts Ditch, removing it from the wilderness area absent other Congressional or Presidential authorization. S. 2524 would direct the USDA to issue a special use permit authorizing non-motorized access for routine maintenance on the Bolts Ditch headgate, but does not authorize new construction or reconstruction. <i>Note: This bill is similar to S. 2524 and H.R. 4510 introduced in the 114th Congress, passed by the House.</i>	1/24/17: H.R. 689 introduced in the House, referred to the Committee on Natural Resources 2/2/17: S. 285 introduced in the Senate, referred to the Committee on Energy and Natural Resources 2/6/17: H.R. 689 passed by a vote of 409-1 2/7/17: H.R. 689 received by the Senate, referred to Committee on Energy and Natural Resources 3/30/17: ENR Committee ordered H.R. 689 and S. 285 to be reported favorably without amendment	Rep. Jared Polis (D-CO) introduced H.R. 689, with co-sponsors Rep. Scott Tipton (R-CO) and Doug Lamborn (R-CO) Senator Cory Gardner (R-CO) introduced S. 285 with co-sponsor Senator Michael Bennet (D-CO)
S. 199/H.R. 648	Issue – Reclamation/Infrastructure Title –None: Amends the Colorado River Storage Project Act to authorize the Department of the	1/24/17: S. 199 introduced in the Senate, referred to the Committee on Energy	Senator John Barasso (R-WY) introduced the bill with co-sponsor

	Interior, in cooperation with the state of Wyoming, to amend the Definite Plan Report for the Seedskadee Project to provide for the study, design, planning, and construction activities that will enable the use of all active storage capacity of Fontenelle Dam and Reservoir, including the placement of sufficient riprap on the upstream face of the Dam to allow such storage capacity to be used for authorized Project purposes. <i>Note: This bill is similar to S. 1305 and H.R. 2273 introduced in the 114th Congress and passed by the House.</i>	and Natural Resources. H.R. 648 introduced in the House, referred to the Committee on Natural Resources 3/15/17: House passed H.R. 648 by a vote of 408-0 3/21/17: Senate received H.R. 648, referred to ENR Committee 3/30/17: Senate ENR Committee reported S. 199 favorably without amendment	Michael Enzi (R-WY) Rep. Liz Cheney (R-WY) introduced H.R. 648
H.R. 660/S.216	Issue: Reclamation Aging Infrastructure Title: Bureau of Reclamation Transparency Act. To require the Secretary of the Interior to submit to Congress a report on the efforts of the Bureau of Reclamation to manage its aging infrastructure assets, which provide important benefits to the 17 Reclamation states including irrigated agriculture, municipal and industrial water, hydropower, flood control, fish and wildlife, and recreation. The replacement value of these assets was \$94.5B as of 2013, and many of the infrastructure facilities are over 60 years old. The bill requires DOI to submit an Asset Management Report to Congress for reserved and transferred works, describing maintenance and major repair and rehabilitation needs and the cost estimate of appropriations needed to complete each item, and a rating system. DOI may consult with the Corps and with water and power contractors as appropriate to facilitate the preparation of the report. The bill also reduces the federal cost share of the Central Valley Water Recycling Project by \$2M	1/24/17: H.R. 660 introduced in the House, referred to the Committee on Natural Resources; S. 216 was introduced in the Senate and referred to the Committee on Energy and Natural Resources 3/30/17: Senate ENR Committee reported S. 216 favorably without amendment	Senator John Barasso (R-WY) introduced S. 216 with co-sponsor Sen. Brian Schatz (D-HI) Rep. Paul Gosar (R-AZ) introduced H.R. 660, with 15 Republican and 5 Democrat co-sponsors from AZ, CA, CO, GA, NV, NM, PA, TN, TX, and WA
H.R. 637	Issue - EPA Climate Change Regulations Title - Stopping EPA Overreach Act: The bill would prevent the EPA from exceeding its statutory authority by prohibiting the regulation of climate change or global warming through the Clean Air Act, the Federal Water Pollution Control Act, the National Environmental Policy Act, the Endangered Species Act, or the Solid Waste Disposal Act, noting that the Acts neither authorize nor require such regulation. <i>Note: This bill is similar to H.R. 3880 introduced in the 114th Congress</i>	1/24/17: H.R. 637 introduced in the House, referred to multiple committees	Rep. Gary Palmer (R-AL) introduced H.R. 637, with 120 Republican co-sponsors

S. 181	Issue: Water Infrastructure No Title. To ensure that certain Federal public works and infrastructure projects use materials produced in the United States, including iron, steel, manufactured goods, pipes, concrete, glass, lumber, drywall, and insulation. Projects receiving federal assistance failing to comply with various domestic content preference statutes would be considered deficient, and federal funds would not be available for infrastructure projects going forward unless all of the iron, steel, manufactured goods, and commodity construction materials used in the project are produced in the United States. With written justification, exceptions would be made where the relevant materials are not produced in sufficient and reasonably available quantities, or purchasing the materials in the U.S. would increase the costs of the overall project by more than 25%. <i>See WSWC Position #364.</i>	1/20/17: S. 181 introduced in the Senate, referred to the Committee on Homeland Security and Governmental Affairs.	Senator Sherrod Brown (D-OH) introduced S. 181 with co-sponsor Sen. Rob Portman (R-OH)
H.R. 448	Issue: Water Conservation Title: Water Conservation Rebate Tax Parity Act. To amend the Internal Revenue Code to expand the tax exclusion for certain conservation subsidies to include subsidies for water conservation or efficiency measures and storm water management measures.	1/11/17: H.R. 448 introduced in the House, referred to the Committee on Ways and Means	Rep. Jared Huffman (D-CA) introduced H.R. 448, with 7 Democrat and 3 Republican co-sponsors, including from AZ, CA, and TX
H.R. 438	Issue: Salton Sea/Water Quality Title: California New River Restoration Act. The bill directs EPA to establish a restoration program to build on, and help coordinate funding for, restoration and protection efforts relating to the New River, which was born out of the Colorado River's occasional flows into the Salton Sink and the erosion of the New River channel and has significant water pollution problems from agricultural runoff, raw sewage, pesticides, and waste discharges from sources in Mexico and the Imperial Valley. The EPA program would implement projects, plans, and initiatives for the New River supported by the California-Mexico Border Relations Council, and work in consultation with applicable federal, state, regional, and international management entities. EPA would also provide grants and technical assistance to the state and various other entities to carry out the purposes of the program, with the federal cost share not to exceed 55%, and non-federal costs that may be provided by in-kind contributions of services or materials. EPA would provide annual reports to Congress on implementation and funding of the program.	1/11/17: H.R. 438 introduced in the House, referred to the Committees on Natural Resources and Transportation & Infrastructure	Rep. Juan Vargas (D-CA) introduced H.R. 438 with co-sponsor Rep. Duncan Hunter (R-CA)
S. 90/H.R. 428	Issue: BLM Property/Red River Banks Title: Red River Gradient Boundary Survey Act. Directs BLM to survey the gradient boundary along the Red River in the States of Oklahoma and Texas, subject to approval of those states' respective land offices. <i>Note: This is similar to H.R. 2130 and S. 1153 introduced in the 114th Congress, passed by the House</i>	1/10/17: S. 90 introduced in the Senate, referred to the Committee on the Judiciary; H.R. 428 introduced in the House, referred to the House Committee on Natural	Senator John Cornyn (R-TX) introduced S. 90 with co-sponsor Senator Ted Cruz (R-TX) Rep. Mac Thornberry

	12/9/15.	Resources 2/14/17: House passed H.R. 428 by a vote of 250-171 2/15/17: Senate received H.R. 428, referred to the Committee on Energy and Natural Resources	(R-TX) introduced H.R. 428 with 8 Republican co-sponsors from Texas and Oklahoma
S. Res. 12	Issue: Clean Water Act/WOTUS Rule A resolution expressing the sense of the Senate that clean water is a national priority, and that the June 29, 2015, Waters of the United States Rule should be withdrawn or vacated.	1/12/17: S. Res. 12 introduced in the Senate, referred to the Committee on Environment and Public Works	Senator Deb Fischer (R-NE) introduced S. Res. 12, with co-sponsor Joni Ernst (R-IA)
H.R. 519	Issue: Water Infrastructure/Tax Incentive Title: Water and Agriculture Tax Reform Act. Amends the Internal Revenue Code to permit tax-exempt mutual ditch or irrigation companies to earn income from dispositions of certain real property and stock interests without affecting their tax-exempt status, but requires that such income be used to pay the costs of operations, maintenance, and capital improvements of such a company. Also establishes a rule regarding the organizational governance of mutual ditch or irrigation companies. Where state law provides that such a company may be organized in a manner that permits voting on a basis that is pro rata to share ownership on corporate governance matters, the tax-exempt status of the mutual ditch or irrigation company must be determined without taking into account whether its member shareholders have one vote on corporate governance matters per share held in the corporation. <i>Note: This is similar to H.R. 4220 and S. 384 introduced in the 114th Congress</i>	1/13/17: H.R. 519 introduced in the House, referred to the Committee on Ways and Means	Representative Ken Buck (R-CO) introduced H.R. 519, with 6 Republican co-sponsors from AZ, CO, UT, and WA
H.R. 465	Issue: Clean Water Act Title: Water Quality Improvement Act. To provide an integrated planning and permitting process for municipalities facing financial challenges in Clean Water Act (CWA) compliance. It was referred to the House Committee on Transportation and Infrastructure. The bill would allow municipalities to obtain permits for wastewater and stormwater management with the most cost-effective, technically-feasible, and protective approaches to CWA compliance. In coordination with the State—or the Environmental Protection Agency (EPA), where the State does not have delegated authority—the municipality can develop a plan that prioritizes the maximum health benefits for the resources expended. In determining whether a plan is economically affordable, the state can take into consideration existing and potential future costs for implementation, including the economic and social impact on the service	1/12/17: H.R. 465 introduced in the House, referred to the Committee on Transportation & Infrastructure	Rep. Bob Gibbs (R-OH) introduced H.R. 465, with co-sponsors Rep. Steve Chabot (R-OH), James Renacci (R-OH), Jackie Walorski (R-IN), Glenn Grothman (R-WI), and Keith Rothfus (R-PA)

	area; low-income households and cumulative costs that exceed 2% of annual household income; impact of increased costs on local industry; unemployment rates; bond ratings; the legal ability to pass increased costs through to ratepayers; and whether compliance with the CWA would require a municipality to divert resources away from essential capital improvements that would provide core public services to the community. When evaluating the technical feasibility of a plan, the state would consider naturally-occurring pollutants; natural, ephemeral, intermittent, or low-flow conditions or water levels; human-caused pollution that cannot be remedied; dams, diversions, or other types of hydrologic modifications that make CWA compliance impracticable; or other physical conditions related to the natural features of a water body unrelated to water quality that preclude compliance with the CWA. The bill directs EPA to coordinate with states to select 15 eligible municipalities to develop and implement integrated plans and permits as pilot projects, with annual reports to Congress. The bill also directs EPA to update its 1997 financial capability assessment guidance, titled “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” (EPA-832-B-97-004). The update would occur in consultation with representative municipal and State officials, including their representative regional or national organizations. Consultations would focus on how to assess the financial capability of municipalities to implement effluent limitations and other CWA control measures. The updated guidance would also take into consideration relevant studies and reports, and would provide a consistent reference point to aid parties in negotiating reasonable and effective schedules for implementation. <i>Note: The bill is similar to H.R. 6182, introduced in the 114th Congress. About that bill, Rep. Gibbs said: “Too many cities and towns in America are facing expensive EPA mandates with no real way to achieve them. One-size-fits-all policies out of Washington do not work when American mayors and administrators need flexibility. The Water Quality Improvement Act will write into law the EPA’s Integrated Planning Process, providing that flexibility. Our communities need to be given flexibility in complying with mandates that may not even be technically achievable or economically affordable. I am proud to support our nation’s cities, mayors, and their residents by introducing this bill.”</i>		
S. 140	Issue: Indian Water Rights Settlements No Title. This bill amends the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to specify that settlement funds may be used for the planning, design, and construction of the tribe's rural water system. <i>Note: This Act is identical to S. 2959 passed by unanimous consent in the 114th Senate 9/29/16, and related to H.R. 5433 (introduced but no movement in committee)</i>	1/12/17: S. 140 introduced in the House, referred to Committee on Indian Affairs 2/8/17: S. 140 passed out of committee, order to be reported favorably. 3/21/17: Placed on Senate Legislative Calendar	Senator Jeff Flake (R-AZ) introduced S. 140 with co-sponsor John McCain (R-AZ)

H.R. 434	Issue: Infrastructure Financing Title: New Water Available To Every Reclamation State (New WATER) Act. The bill authorizes the Department of the Interior to provide financial assistance, including secured loans and loan guarantees, to non-federal entities that contract with the Bureau of Reclamation to carry out eligible water projects within the 17 Reclamation states, Alaska, or Hawaii. Eligible projects would cost at least \$20M, with maximum federal assistance up to 80% of the total cost, and include (1) infrastructure projects for domestic, agricultural, environmental, municipal or industrial water supply; (2) enhanced energy efficiency in the operation of a water system; (3) accelerated repair and replacement of aging water distribution facilities; (4) desalination; and (5) acquisition of real property for water storage, reclaimed or recycled water, or wastewater integral to such a project. Loan repayment would begin within 5 years of project completion and last no more than 35 years. Federal financial assistance under this Act would not qualify as a federal action that triggers a NEPA review, but does not supersede compliance with relevant state, tribal, and local laws and permitting requirements. The bill would appropriate annual funds in graduated amounts: \$20M for FY 2018; \$25M for FY2019; \$35M for FY2020; \$45M for FY2021; and \$50M for FY2022. <i>Note: This bill is similar to H.R. 6022 introduced in the 114th Congress.</i>	1/11/17: H.R. 434 introduced in the House, referred to Committee on Natural Resources	Rep Jeff Denham (R-CA) introduced H.R. 434 with bipartisan co-sponsors Rep. Doug LaMalfa (R-CA), Ken Calvert (R-CA), Jim Costa (D-CA), John Garamendi (D-CA) and Dan Newhouse (R-WA)
H.R. 417	Issue: Safe Drinking Water Act No Title. Amends Section 1414(c)(4) of the Safe Drinking Water Act (42 U.S.C. 300g-3(c)(4)) to require EPA, to revise regulations about consumer confidence reports in order to increase their effectiveness and understandability. Currently, each community water system must mail their customers an annual consumer confidence report that provides information about local drinking water quality.	1/10/17: H.R. 417 introduced in the House, referred to Committee on Energy and Commerce	Rep. Brenda Lawrence (D-MI) introduced H.R. 417
H.R. 353/S. 161	Issue: Weather Forecasting Title: Weather Research and Forecasting Innovation Act. NOAA would prioritize weather research through a focused, affordable, attainable, forward-looking research plan, while also encouraging innovations and new technology capacities, in order to restore our country's leadership in weather forecasting. It also directs NOAA to actively consider new commercial data and private sector solutions to further enhance our weather forecasting capacities. Under Title I, in conducting research, the Under Secretary shall prioritize improving weather data, modeling, computing, forecasting, and warnings for the protection of life and property and for the enhancement of the national economy. The Assistant Administrator for the Office of Oceanic and Atmospheric Research (OAR) shall conduct a program to develop improved understanding of and forecast capabilities for atmospheric events and their impacts, placing priority on developing more accurate, timely, and effective warnings and forecasts of high impact weather events. Program elements shall focus on advanced radar, radar networking technologies, and other ground-	1/6/17: H.R. 353 introduced in the House, referred to Committee on Science, Space, and Technology 1/9/17: House passed H.R. 353 on a motion by Rep. Lucas to suspend the rules for committee review due to bipartisan efforts over the past two Congresses to negotiate and compromise and move this legislation forward.	Rep. Frank Lucas (R-OK), introduced H.R. 353. with cosponsors Rep. Jim Bridenstine (R-OK), Lamar Smith (R-TX), Dana Rohrabacher (R-CA), Chris Stewart (R-UT), and Suzanne Bonamici (D-OR) Senator Marco Rubio (R-FL) introduced S. 161

	based technologies, including: (A) those emphasizing rapid, fine-scale sensing of the boundary layer and lower troposphere, and the use of innovative, dual-polarization, phased-array technologies; (B) aerial weather observing systems; (C) high performance computing and information technology and wireless communication networks; (D) advanced numerical weather prediction systems and forecasting tools and techniques that improve the forecasting of timing, track, intensity, and severity of high impact weather, including through -- (i) the development of more effective mesoscale models; (ii) more effective use of existing, and the development of new, regional and national cloud-resolving models; (iii) enhanced global weather models; and (iv) integrated assessment models; (E) quantitative assessment tools for measuring the impact and value of data and observing systems; (F) atmospheric chemistry and interactions essential to accurately characterizing atmospheric composition and predicting meteorological processes, including cloud microphysical, precipitation, and atmospheric electrification processes, to more effectively understand their role in severe weather; and (G) additional sources of weather data and information, including commercial observing systems. It also directs NOAA to issue a research and development and research to operations plan to restore and maintain United States leadership in numerical weather prediction and forecasting that describes forecasting skill and technology goals, objectives, and progress performance metrics. It also directs NOAA to collaborate with stakeholders, including the weather industry defined as individuals and organizations from public, private, and academic sector partners. Further, it directs the Under Secretary to develop and maintain a prioritized list of observation data requirements necessary to ensure weather forecasting capabilities to protect life and property to the maximum extent practicable; and identify current and potential future data gaps in observing capabilities. Title I authorizes for FY2017-FY2018 for the Office of Oceanic and Atmospheric Research \$111.5M, plus \$85.8M for weather laboratories and cooperative institutes; \$25.8M for weather and air chemistry research; and an additional \$20M for a joint technology transfer initiative. Title II addresses improving subseasonal and seasonal forecasts and directs that the Under Secretary, acting through the Director of the National Weather Service and the heads of such other programs of the National Oceanic and Atmospheric Administration as the Under Secretary considers appropriate, shall: (1) collect and utilize information in order to make usable, reliable, and timely foundational forecasts of subseasonal (2 weeks to 3 months) and seasonal (3 month to 2 years) temperature and precipitation; (2) leverage existing research and models from the weather industry to improve such forecasts; and (3) determine and provide information on how the forecasted conditions may impact -- the number and severity of droughts, fires, tornadoes, hurricanes, floods, heat waves, coastal inundation, winter storms, high impact weather, or other relevant natural disasters; as well as snowpack and sea ice conditions. Title II provides for Forecast Communication Coordinators. NOAA is also to foster effective communication, understanding, and use of the forecasts by the intended users of the information. Each state may request up to \$100,000 on a 50%-50% matching basis for assistance from NOAA including funds to support an individual to serve as a liaison with NOAA, other federal agencies, the weather industry, counties, tribes and other interests, and to receive and disseminate forecasts and information. Within 180 months, after enactment, NOAA is to submit a report to Congress with: (A) an analysis of the how information on subseasonal and seasonal forecasts	1/10/17: H.R. 353 received in the Senate. 1/17/17: S. 161 introduced in the Senate (Hurricane Forecasting Improvement Act) 3/29/17: H.R. 353 passed by the Senate, with an amendment by unanimous consent	
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	is used in public planning and preparedness; (B) specific plans and goals for the continued development of the subseasonal and seasonal forecasts and related products; and (C) an identification of research, monitoring, observing, and forecasting requirements to meet the goals. In developing the report, NOAA shall consult with relevant Federal, regional, State, tribal, and local government agencies, research institutions, and the private sector. Title III, NOAA Weather Satellite and Data Innovation, addresses completion and operationalization of the Constellation Observing System for Meteorology, Ionosphere, and Climate-1 and Climate-2 (COSMIC) by: (i) deploying constellations of microsatellites in both the equatorial and polar orbits; (ii) by integrating the resulting data and research into all national operational and research weather forecast models; and (iii) by ensuring that the resulting data are free and open to all communities. Also, Title III directs NOAA to: (A) integrate additional coastal and ocean observations, and other data and research, from the Integrated Ocean Observing System (IOOS) into regional weather forecasts to improve weather forecasts and forecasting decision support systems; and (B) support the development of real-time data sharing products and forecast products in collaboration with the private sector, academia, and research institutions to ensure timely and accurate use of ocean and coastal data in regional forecasts. It directs NOAA to identify degradation of existing monitoring and observation capabilities that could lead to a reduction in forecast quality, and develop specifications for new satellite systems or data determined by operational needs. It also calls for an independent study by the National Academy of Science or another appropriate organization of future satellite data needs and develop recommendations to make the data portfolio more "robust and cost-effective," including a review of the costs and benefits of moving toward a constellation of many small satellites, standardizing satellite bus design, relying more on the purchasing of data, or acquiring data from other sources or methods. Title IV maintains a standing Environmental Information Services Working Group to advise on prioritizing weather research initiatives to produce real improvement in forecasting, as well as evaluate incorporating existing or emerging technologies or techniques in private industry. The working group would further identify opportunities to improve communications between public and private entities, including emergency management personnel, and the public. It also provides for one-year interagency details between the National Weather Service (NWS) and Office of Oceanic and Atmospheric Research, as well as visiting academic researchers at the National Centers for Environmental Prediction. Another change is the designation of NWS Warning Coordination Meteorologists, in order to increase impact-based decision support services and products for users, including agricultural communities and forestry, land and water management interests. Another of the coordinators' responsibilities will be to work closely with State, local and tribal emergency management agencies and other disaster management agencies to "ensure a planned, coordinated, and effective preparedness and response effort." Title IV also addresses improving NOAA communication of hazardous weather and water events including its system for issuing watches and warnings to prevent loss of life and property. The intent is to focus on ways to communicate risks as broadly and rapidly as practicable, as well as encourage actions by the public to mitigate the risk, in consultation with a wide range of		
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	interests. Weather impacts in urban areas on infrastructure are also to be reviewed, "taking into account factors including varying building heights, impermeable surfaces, lack of tree canopy, traffic, pollution, and inter-building wind effects."		
H.R. 196/H.R. 250/S. 276/S. 295	Issue: Restructuring Circuit Court of Appeals Title: Ninth Circuit Court of Appeals Judgeship and Reorganization Act (H.R. 196). Divides the U.S. Court of Appeals for the Ninth Circuit into: (1) the Ninth Circuit, composed of California, Guam, Hawaii, and Northern Mariana Islands; and (2) the Twelfth Circuit, composed of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington. The President must appoint two additional judges for the former Ninth Circuit, three judges for the new Ninth Circuit, and two additional temporary judges for the former Ninth Circuit. The bill: (1) specifies the locations where new circuits are to hold regular sessions, (2) distributes active circuit judges of the former Ninth Circuit to the new circuits, (3) allows senior circuit judges of the former Ninth Circuit to elect assignment, and (4) authorizes administrative coordination between any two contiguous circuits. Title: Judicial Administration and Improvement Act (H.R. 250). Divides the U.S. Court of Appeals for the Ninth Circuit into: (1) a new Ninth Circuit, to be composed of California, Hawaii, Oregon, Washington, Guam, and the Northern Mariana Islands; and (2) a newly established Twelfth Circuit, to be composed of Alaska, Arizona, Idaho, Montana, and Nevada. Title: Judicial Administration and Improvement Act (S. 276). Divides the U.S. Court of Appeals for the Ninth Circuit into: (1) a new Ninth Circuit, to be composed of California, Hawaii, Oregon, Guam, and the Northern Mariana Islands; and (2) a newly established Twelfth Circuit, to be composed of Alaska, Arizona, Idaho, Montana, Nevada, and Washington. Title: Circuit Court of Appeals Restructuring and Modernization Act (S. 295). Divides the U.S. Court of Appeals for the Ninth Circuit into: (1) a new Ninth Circuit, to be composed of California, Guam, Hawaii, and Northern Mariana Islands; and (2) a newly established Twelfth Circuit, to be composed of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.	1/3/17: H.R. 196 introduced in the House, referred to the Committee on the Judiciary 1/13/17: H.R. 250 introduced in the House, referred to the Committee on the Judiciary 2/2/17: S. 276 introduced in the Senate 2/2/17: S. 295 introduced in the Senate	Rep. Michael Simpson (R-ID) introduced H.R. 196. Rep. Andy Biggs (R-AZ) introduced H.R. 250, with four Arizona Republican co-sponsors Senator Jeff Flake (R-AZ) introduced S. 276 with co-sponsor John McCain (R-AZ) Senator Steve Daines (R-MT) introduced S. 295, with co-sponsors Dan Sullivan (R-AK) and Lisa Murkowski (R-AK)
H.R. 26 S. 21	Issue: Regulatory Reform Title: Regulations from the Executive in Need of Scrutiny (REINS) Act. The bill would require agencies to report to Congress whether a rule is classified as major or non-major, as well as provide a cost-benefit analysis that includes any jobs added or lost as a result of the proposed rule. A major rule would result in: (1) an annual effect on the economy of \$100M or more; (2) a major increase in costs or prices for consumers, industries, agencies or regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.	1/3/17: H.R. 26 introduced in the House. 1/4/17: S. 21 introduced in the Senate, referred to the Committee on Homeland Security and Governmental Affairs 1/5/17: House passed H.R.	Representative Doug Collins (R-GA) introduced H.R. 26, with 160 Republican co-sponsors Senator Paul Rand (R-KY) introduced S. 21

		26 by a vote of 237-187. 1/6/17: H.R. 26 received in the Senate, referred to the Committee on Homeland Security and Governmental Affairs 3/29/17: Senate Committee on Small Business and Entrepreneurship held hearings	
H.R. 23	Issue: California Drought Title: Gaining Responsibility on Water (GROW) Act. The bill is intended to make more water available to communities in California and bordering Western states, providing relief to California families, farmers, and communities by restoring water deliveries that have been drastically reduced over the last two decades as a result of various environmental lawsuits and state and federal regulations. The legislation requires regulators to comply with the bipartisan Bay-Delta Accord, consistent with the requirements of the Endangered Species Act. The bill is intended to cut red tape holding back major water storage projects that have been authorized for over a decade, to aid the entire Western United States during dry years. The bill also contains provisions recognizing state authority to manage and allocate water, and provisions to facilitate water transfers, management decisions, and conservation. Rep. Valadao stated: “This Western drought has had devastating consequences on my constituents in California’s Central Valley; our economy is stagnant and parents are struggling to provide for their children. Now, the entire country feels the consequences of this drought. While we were able to implement temporary provisions in the 114th Congress, a complete and long term agreement is still needed. My bill, the GROW Act, will enact policies to expand our water infrastructure and allow for more water conveyance while protecting the water rights of users across the state.” <i>During the 114th Congress, H.R. 2989, the Western Water and American Food Security Act as well as H.R. 2749, the Dams Accountability Maintenance and Safety Act, were both aimed at improving water supply to the Central Valley.</i>	1/3/17: H.R. 23 introduced in the House, referred to the Committees on Natural Resources and Agriculture	Rep. David Valadao (R-CA) introduced the bill, co-sponsored by 12 Republican and 1 Democrat California co-sponsors
H.R. 21 S. 34	Issue: Regulatory Reform Title: Midnight Rules Relief Act. To amend the Congressional Review Act (5 U.S.C. §§801-808) to allow consideration of joint resolutions of disapproval of multiple rules at once rather than the current procedure of considering only one regulation at a time, for rules submitted during the final year of a	1/3/17: H.R. 21 introduced in the House 1/4/17: H.R. 21 passed the House by a vote of 238-	Representative Darrell Issa (R-CA) introduced H.R. 21 Senator Ron Johnson

	President's term.	184. 1/5/17: H.R. 21 received and S. 34 introduced in the Senate; both referred to the Committee on Homeland Security and Governmental Affairs	(R-WI), Chairman of the Senate Homeland Security and Governmental Affairs Committee, introduced S. 34
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NOTABLE LITIGATION

Case Name	Issue – Corps Water Storage and Allocation of Flow
<i>Cobb County-Marietta Water Authority v. U.S. Army Corps of Engineers</i> (1:17-mi-99999)	Plaintiff Cobb-Marietta Water Authority (CMWA) was granted water rights by the State of Georgia at Allatoona Lake, a reservoir operated by the Corps. A 1963 contract with the Corps granted the CMWA the right to utilize a portion of the Lake to store 13,140 acre-feet of water for its customers. After investing hundreds of millions of dollars to generate man-made inflows into the Lake with “return flows” of recycled water, as well as water released from a CMWA-owned water supply reservoir upstream, which flows when released through the natural river channel to be withdrawn through CMWA’s existing intake structure in the Lake. The Corps has rejected the State’s allocation of inflows to CMWA, adopting instead its own federal water allocation rule implemented through a “Storage Accounting System,” which would allow the Corps to allocate to itself almost 95% of the CMWA inflows. The Corps asserts that these inflows become the property of the federal government, subject to allocation by the Corps, simply because they entered the federal facility. CMWA asks the Court (1) to review the Corps’ adoption of the Storage Accounting System as a final agency action under the Administrative Procedures Act and find it arbitrary, capricious, and an abuse of discretion; (2) to find that the Corps’ decision to override the State of Georgia’s water allocation authority is a violation of the structural federalism provisions of the 10th Amendment; (3) to find that the Corps violated NEPA by failing to prepare an Environmental Impact Statement, or Environmental Assessment and finding of no significant impact, related to its decision to adopt and implement its Storage Accounting System.
Court	
U.S. District Court, Northern District of Georgia	
Relevant Dates	
2/1/17: Case filed	
Case Names	Issue – Water Rights and Physical v Regulatory Takings
<i>Klamath Irrigation v. U.S.</i> (No. 1-591)	On December 21, the Court of Federal Claims issued a procedural ruling on pre-trial motions in the Klamath Project takings litigation, <i>Klamath Irrigation v. U.S.</i> (No. 1-591). The ruling states that the irrigators’ claims for 5th Amendment compensation for water rights, deprived in 2001 on the basis of the Endangered Species Act, will be analyzed under physical rather than regulatory takings principles. Under a physical takings framework, the government has a categorical duty to compensate the owner for physically taking or destroying a private property interest for public use. A regulatory taking involves a more complex analysis to balance private and public interests—such as weighing the benefits to the endangered fish against the loss to the water rights owners for a restriction of their water use—before the court finds liability. The court rejected the government’s arguments for the court’s consideration under a regulatory taking framework, relying on <i>Casitas Municipal Water District v. United States</i>, 543 F.3d 1276 (Fed. Cir. 2008). The court noted that the irrigators had the right to use the water
Courts	
Court of Federal Claims	
Relevant Dates	

	fully prior to the 2001 Reclamation and FWS decision to prevent water from traveling out of the Upper Klamath Lake and the Klamath River into the water users' project canals, to preserve endangered species habitat. The physical taking of water away from the irrigators and its dedication to serve a public purpose prevented the irrigators from enjoying the rights to use the water. The case is scheduled for trial in January, and will determine whether the irrigators can establish a "legally cognizable property interest, such as the right of possession, use, or disposal of the property," and if so, what compensation may be due to the irrigators.
Case Names	Issue – Interstate Equitable Apportionment
Florida v. Georgia, #220142	On October 31, U.S. Supreme Court-appointed Special Master Ralph Lancaster heard opening remarks in <i>Florida v. Georgia</i> , regarding whether Florida is entitled to an equitable apportionment of the waters of the Apalachicola-Chattahoochee-Flint River Basin (ACF Basin), and for any injunctive relief against Georgia to sustain an adequate flow of fresh water into the Apalachicola Region.
Courts	
U.S. Supreme Court	
Relevant Dates	
11/3/14: Complaint filed	The ACF Basin covers nearly 20,000 square miles, and the U.S. Army Corps of Engineers (Corps) operates a system of five federal dams along the three rivers. About 11% of the tri-state ACF Basin lies in Florida, 74% in Georgia, and 15% in Alabama. Florida argued that the ecosystem and economy of its Apalachicola Region are suffering due to Georgia's unchecked upstream water consumption for its municipal, industrial, recreational, and agricultural uses, forcing Florida to shoulder the burden of Georgia's growth. Florida also accused Georgia of bad faith negotiations, causing the 1997 ACF Basin Compact to disintegrate and leaving Florida no alternative but to redress its harms before the Supreme Court. Florida is seeking a cap on Georgia's water withdrawals. Alabama, while not a party to the case, supports Florida's position. Georgia has countered that: (1) the Corps controls the reservoirs that release water to Florida, and is an indispensable party to the case; (2) that the ecological harms Florida alleges are not the result of Georgia's water withdrawals; and (3) that any economic benefits Florida might experience with the requested cap are outweighed by the economic harms Georgia would face. Equitable apportionment cases are predominantly between Western states, where the doctrine of prior appropriation often governs. The State of Colorado filed an amicus brief on October 21, where it: (1) noted the differences between prior appropriation and riparian laws and that "equitable apportionment must be guided by the affected States' laws governing the rights to use the waters;" (2) distinguished the facts and holding of Colorado v. New Mexico from the circumstances of Florida v. Georgia; and (3) emphasized that Florida, as the complaining state, has the burden to "prove by clear and convincing evidence that it has suffered injury as a result of Georgia's use of water within its own borders. Absent such proof, there is no basis for the Court to prevent Georgia from exercising sovereign control over the natural resources within the State." Colorado stated that a decision on the question of Florida's burden of proof "could potentially inform the limits and extent of Colorado's rights and obligations under its existing equitable apportionment decrees or interstate compacts, as well as options for apportioning water in the future." The Supreme Court received the Special Master's Report on February 21, 2017, and any Exceptions to the Report are due by May 2017. The Special Master recommended that the Supreme Court deny Florida's request for relief, finding that Florida had not met its burden. "Florida has failed to show that a consumption cap will afford adequate relief. The testimony and evidence submitted at trial demonstrates that the Corps can likely offset increased streamflow in the Flint River by storing additional water in its reservoirs along the Chattahoochee River during dry periods. The evidence also shows that the Corps retains extensive discretion in the operation of those federal reservoirs. As a result, the Corps can release (or not release) water largely as it sees fit, subject to certain minimum requirements under the RIOP. There is no guarantee that the Corps will exercise its discretion to release or hold back water at any particular time. Further, Florida has not shown that it would benefit from increased pass-through operations under normal conditions. Finally, without the Corps as a party, the Court cannot order the Corps to take any particular action. Accordingly, Florida has not proven by clear and
10/21/16: Colorado's Amicus Brief filed	
10/31/16: Trial before the Special Master begins	
2/21/17: S. Ct. receive the Special Master's Report	

	convincing evidence that any additional streamflow in the Flint River resulting from a decree imposing a consumptive cap on Georgia's water use would be released from Jim Woodruff Dam into the River at a time that would provide a material benefit to Florida." For more information, see the Special Master's website, http://www.pierceatwood.com/florida-v-georgia-no-142-original, or http://www.scotusblog.com/case-files/cases/florida-v-georgia-2/
Case Names	Issue – State Authority over Interstate Groundwater, Equitable Apportionment
<i>Mississippi v. Tennessee</i>, No. 220143 Earlier complaints dismissed: <i>Hood ex rel. Mississippi v. City of Memphis, Tenn.</i>, 533 F. Supp. 2d 646 (N.D. Miss. 2008) (aff'd 570 F.3d 625 (5th Cir. 2009)) <i>Mississippi v. City of Memphis</i>, 559 U.S. 901	On June 6, 2014, the State of Mississippi filed an original jurisdiction complaint against the State of Tennessee, the City of Memphis, and Memphis Light, Gas & Water Division (MLGW) for wrongful conversion of groundwater from the Sparta-Memphis Aquifer (Aquifer). Mississippi alleges that groundwater pumping by MLGW in Tennessee has depleted water that is subject to Mississippi's ownership and control because, absent the effects of the pumping, the water would remain in the Aquifer beneath Mississippi's territory. Mississippi seeks declaratory and injunctive relief, as well as over \$600 million in damages. Mississippi presented three questions: (1) Whether the Court will grant Mississippi leave to file an original action to seek relief from respondents' use of a pumping operation to take approximately 252 billion gallons of high-quality groundwater; (2) whether Mississippi has sole sovereign authority over and control of groundwater naturally stored within its borders, including in sandstone within Mississippi's borders; and (3) whether Mississippi is entitled to damages, injunctive, and other equitable relief for the Mississippi intrastate groundwater intentionally and forcibly taken by respondents. On August 12, the Special Master issued a Memorandum of Decision on various motions to dismiss and to exclude information from the record. The Special Master reviewed details of a previous complaint against the Memphis Defendants, <i>Hood ex rel. Mississippi v. City of Memphis, Tenn.</i> The U.S. District Court for the Northern District of Mississippi ruled that the doctrine of equitable apportionment has historically been the means by which disputes over interstate waters are resolved, that the aquifer in question had never been apportioned, and that, without an apportionment determining which portion of the aquifer's water is the property of which state, the Court could not grant relief on Mississippi's claims. The 5th Circuit affirmed, noting that the groundwater is an interstate source, and the amount of water to which each state is entitled must be allocated before one state may sue an entity for invading its share. The 5th Circuit also rejected Mississippi's argument that it owns a fixed portion of the aquifer because it controls the resources within its state boundaries, reasoning that the Supreme Court has consistently rejected the argument advanced by different states that state boundaries determine the amount of water to which each state is entitled from an interstate water source (citing <i>Hinderlider v. La Plata River & Cherry Creek Ditch Co.</i>, 304 U.S. 92, 102 (1938)). That case was dismissed for failure to join Tennessee as a required party. The Special Master noted that Mississippi's complaint explicitly disclaims a request for equitable apportionment and appears to implausibly allege that water in the aquifer lacks an interstate character. On its face, the complaint should probably be dismissed under FRCP 12(b). However, the Federal Rules of Civil Procedure are guidelines rather than strict mandates in original jurisdiction cases, and in the absence of an interstate compact, the Supreme Court has authorized only one avenue, equitable apportionment, for states to pursue a claim that another state has depleted the availability of interstate waters within its borders. The Special Master, tasked with erring on the side of over-inclusiveness to assist the Supreme Court in making its ultimate determination, recommended that an evidentiary hearing be held on the limited issue of whether the aquifer and the water constitutes an interstate resource. "Evidence that would likely be relevant to this determination includes the nature and extent of hydrological and geological connections between the groundwater in Memphis and that in Mississippi, the extent of historical flows in the aquifer between Mississippi and Tennessee, and similar considerations."
Courts	
U.S. Supreme Court	
Relevant Dates	
6/6/2014: Motion for leave to file complaint 6/29/2015: Motion granted 9/11/2015: Answer of Memphis Defendants filed 9/14/16: Answer of State of Tennessee filed. 11/10/2015: Special Master appointed 8/12/2016: Special Master's Memorandum of Decision on various motions	

	On October 26, 2016, the Special Master entered a Case Management Order in preparation for the evidentiary hearing, with discovery scheduled to be completed by July 30, 2017. For more information, see http://www.ca6.uscourts.gov/special-master
Case Name	Issue – Reserved Water Rights include Groundwater as a Potential Source
<i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.</i>	The Agua Caliente Band of Cahuilla Indians filed a lawsuit in May 2013, asking the Court to declare and quantify the existence of the tribe’s water rights as the senior rights in the Coachella Valley under federal law. In March 2015, the Court ruled on summary judgment that the Agua Caliente Band of Cahuilla Indians has a reserved right to water, and groundwater is a water source available to fulfill that right. The Court denied the Tribe’s claim for aboriginal title to groundwater. The water districts filed a petition with the 9th Circuit for interlocutory review of the portion of the District Court’s order addressing the inclusion of groundwater in the Tribe’s reserved right to water. The parties briefed the issue with written arguments by May 2016, and oral arguments are scheduled for October 18, 2016. The parties agreed to trifurcate the case, and proceeded forward with Phase 2 in a limited way. On February 23, the District Court ruled on the Motion for Partial Summary Judgment against the water district’s equitable defenses and arguments. The remainder of Phase 2 issues, which were stayed by the court pending the Ninth Circuit’s resolution of the water district’s appeal, will address whether the tribe owns pore space beneath the reservation, whether there is a right to water of a certain quality and how to quantify the tribe’s reserve water right. If necessary, Phase III will quantify the tribe’s rights to underground water and pore space and order injunctive relief. On March 7, 2017, the 9th Circuit upheld the California District Court’s summary judgment from Phase I of the trifurcated case. The 9th Circuit decision holds that the United States implicitly reserved a right to water when it created the Agua Caliente Reservation, and that the Tribe’s reserved water right extends to the groundwater underlying the Reservation. The court summarized hydrological considerations in the arid valley, noting that “even in a peak year the river system provides very little water for irrigation or human consumption.” Given the lack of perennial streams in the area and the importance of water for survival, “a reservation without an adequate source of surface water must be able to access groundwater.” The court expressed “no opinion on how much water falls within the scope of the Tribe’s federal groundwater right,” since that will be determined at a later phase of the case. However, even with water under state-law entitlements, “there can be no question that water [from the aquifer] in some amount was necessarily reserved to support the reservation created.” The court acknowledged that it was unable to find any controlling federal appellate authority explicitly holding that the federal reserved water rights doctrine in <i>Winters v. United States</i>, 207 U.S. 564 (1908), extends to groundwater. Instead, it pointed to <i>United States v. Cappaert</i>, 426 U.S. 128 (1976) and <i>In re General Adjudication of All Rights to Use Water in Gila River System and Source</i>, 989 P.2d 739 (Ariz. 1999) as persuasive and implied authority for its decision, emphasizing that <i>Winters</i> does not distinguish between surface and groundwater or prohibit the inclusion of groundwater among the reserved rights. “Apart from the requirement that the primary purpose of the reservation must intend water use, the other main limitation of the reserved rights doctrine is that the unappropriated water must be ‘appurtenant’ to the reservation.” The court determined that as long as the waters are attached to the reservation, it does not matter whether that water is above or below the ground.
Courts	
U.S. District Court, Central District of California, EDCV 13-883 9 th Circuit (for interlocutory review) 5:13-cv-883	
Relevant Dates	
5/2013: Agua Caliente filed suit 3/27/2015: Summary judgment re: groundwater available as part of reserved water right 10/18/16: Oral arguments on interlocutory appeal, 9th Cir.	

	The court noted that it previously held in its review of <i>Cappaert</i> “...that the <i>Winters</i> doctrine applies ‘not only to surface water, but also to underground water.... But on appeal, the Supreme Court did not reach this question.” Rather, the 9th Circuit panel said, Supreme Court hinted that reserved waters may include appurtenant groundwater when <i>Cappaert</i> held that “the United States can protect its water from subsequent diversion, whether the diversion is of surface or groundwater.” The 9th Circuit determined that “If the United States can protect against groundwater diversions, it follows that the government can protect the groundwater itself.” The court also held that federal reserved water rights preempt conflicting state law. The water district argued that the Tribe does not need a federal reserved right to prevent the purpose of the reservation from being defeated, because (1) the Tribe has a correlative right to groundwater under California law; (2) the Tribe has not historically used groundwater; and (3) the Tribe is entitled to surface water under the Whitewater River Decree. The court rejected these arguments, noting that state water entitlements do not affect the analysis of the Tribe’s federally reserved water right, and that states do not have power to dispose of reserved rights.
Case Names	Issues – Groundwater as a CWA Point Source/Conduit
<i>Sierra Club v. Virginia Electric and Power Company, CA 2:15cv112</i>	On November 6, 2015 the Court denied a motion to dismiss, finding that the Sierra Club had standing to bring a lawsuit alleging that the energy company was discharging coal ash, contaminating groundwater with arsenic that eventually leads to a navigable body of water. Rather than try to argue that the groundwater is part of the “waters of the U.S.” under the CWA, the Sierra Club asserted that the groundwater acted as a “conduit” for the pollution, reaching the navigable water and creating a point source, requiring an NPDES permit. Notably, the First, Fifth and Seventh Circuits have each held that the CWA does not cover discharges that enter surface waters through groundwater. Other courts have held that hydrologically-connected groundwater is covered under the CWA.
Courts	
U.S. District Court for the Eastern District of Virginia	
Relevant Dates	
11/6/15: Motion to Dismiss denied	On March 23, 2017, the District Court issued its ruling that the Coal Ash Piles constitute a point source that “channel and convey arsenic into groundwater that eventually discharges into the surrounding surface waters.” The defendant obtained discharge permits from the Virginia Department of Environmental Quality (VDEQ), for wastewater that enters the river through outfall pipes. The Sierra Club alleged violations of the CWA due to the unpermitted discharges into the groundwater. The Court agreed, holding that the arsenic discharge through hydrologically-connected groundwater is a violation of the CWA. Acknowledging that courts have disagreed on whether the CWA encompasses groundwater, the Court concluded, “Congress intended the CWA to protect the water quality of the nation’s surface water. Where the facts show a direct hydrological connection between ground water and surface water, that goal would be defeated if the CWA’s jurisdiction did not extend to discharges to that groundwater.”
5/20/16: Sierra Club filed a Motion for Partial Summary Judgment	
6/2/16: Virginia Electric and Power Company (dba Dominion Virginia Power) filed a Motion for Summary Judgement	
6/24/16: Four-day trial	The Court determined that Congress intended the definition of “point source” in 33 U.S.C. §1362 to be interpreted broadly, and that the 3 million tons of Coal Ash Piles are discrete conveyances that channel the pollutants away from the power plant and directly into the groundwater. The Court relied in part on an EPA pronouncement in the preamble to a 1991 final rule, Amendments to the Water Quality Standards Regulation That Pertain to Standards on Indian Reservations, 56 FR 64876, which says that “the affected groundwaters are not considered waters of the United States but discharges to them are regulated because such discharges are effectively discharges to the directly connected surface waters.”
July 2016: Parties submitted their post-trial briefs and proposed findings of fact	Given that the defendant cooperated with the VDEQ and has been a good corporate citizen, the Court held that the defendant should not suffer civil penalties “for doing things that it, and [Virginia] thought complied with state and federal law.” Instead, the Court requested the parties to submit a remedial plan, including site monitoring and an application for a revised solid waste permit.
	See prior summary of the Dominion Virginia Power case through the end of February 2016 in the Washington, D.C. briefing binder, Tab N, March 2016

Case Names	Issue - EPA's/USACE's Waters of the United States Rule
<i>North Dakota, et al. v. EPA et al.</i>, (D. N. Dak.), Case 3:15-cv-59 <i>Texas, et al. v. EPA et al.</i>, (S. D. Tex.), Case 3:15-cv-162 <i>Georgia et al. v. EPA</i> (11th Cir) Case 2:15-cv-79 Consolidated 33 USC §1369 Petitions in 6th Circuit (Ohio) (from 2nd, 5th, 6th, 8th, 9th, 10th 11th and D.C. Circuit Courts); <i>Murray Energy Corp. v. EPA</i> <i>National Association of Manufacturers v. Department of Defense, et al.</i> (#16-299)	On June 29, 2015, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) published their Final Rule on the Waters of the United States (WOTUS) in the Federal Register (80 Fed. Reg. 37054). From June 29 to July 31, 69 plaintiffs filed 11 lawsuits, including 15 WSWC member states: Alaska, Arizona, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico (agencies), North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming. Other plaintiffs include 15 additional states, 14 industrial groups, as well as environmental groups. Simultaneous petitions were filed in 2nd, 5th, 6th, 8th, 9th, 10th 11th and D.C. Circuit Courts from most of the same plaintiffs out of an “abundance of caution,” since certain EPA actions are generally exclusively reviewable by the Circuit Courts of Appeals under 33 USC §1369(b)(1). These petitions were consolidated before the 6th Circuit by order of the Multi-District Litigation (MDL) Panel. On February 22, a divided 6th Circuit panel ruled 2-1 that it has jurisdiction over the consolidated appellate court cases challenging the EPA and Corps’ WOTUS rule, rather than the District Courts, and denied the petitioners’ motions to dismiss. The 6th Circuit’s nationwide stay on the WOTUS rule implementation remains in effect. On July 1, Oklahoma’s Attorney General appealed the U.S. District Court for Northern Oklahoma decision that it lacked jurisdiction to hear the case following the 6th Circuit’s “splintered” decision ruling that it had jurisdiction to hear the WOTUS rule challenges. Oklahoma argued that the 6th Circuit’s decision does not control the outcome of the case, noting that “...courts are obligated to independently assess jurisdiction in each case that comes before them.” It also added that oral arguments regarding jurisdiction in the 10th Circuit would help the court make the determination whether the state’s challenge to the WOTUS rule falls within the narrow category of EPA Administrator actions subject to direct appellate court review.
Courts 6th Circuit, 11th Circuit, District North Dakota, Southern District of Texas U.S. Supreme Court	On August 16, the 11th Circuit stayed the WOTUS rule appeal proceedings in <i>Georgia et al. v. McCarthy</i>, ruling that, “It would be a colossal waste of judicial resources for both this Court and the Sixth Circuit to undertake to decide the same issues about the same rule presented by the same parties.” In the months since the 6th Circuit issued its order holding that it has original jurisdiction under CWA §1369(b)(1), the parties “have devoted considerable time and effort to the task of paring down the contents of the administrative record (which is more than a million pages long) and to developing a workable briefing schedule for briefing the merits of the challenges to the rule.” The 11th Circuit exercised its discretion to hold the appeal in abeyance, considering that a decision by the 6th Circuit would likely “narrow and refine, if not render moot, at least some of the issues we asked the parties to brief.”
Relevant Dates 6/29/15: EPA & Corps published WOTUS rule (80 Fed. Reg. 37054); various lawsuits filed, including 15 WSWC member states: Alaska, Arizona, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico (agencies), North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming, and 15 other states. 2/22/16: A divided 6th Circuit panel ruled 2-1 that it has jurisdiction over the MDL consolidated appellate court cases, under 33 USC §1369(b)(1); nationwide stay of WOTUS rule remains in effect 4/21/16: 6th Cir. denied 6 petitions for en banc hearing	On August 19, EPA and U.S. Army Corps of Engineers (Corps) filed their response brief to dismiss Oklahoma v. EPA, (10th Circuit), arguing that the 6th Circuit has exclusive jurisdiction over the challenges to the Clean Water Rule. “Plaintiffs are entitled to their day in court, and they shall have it—in the Sixth Circuit. They are not entitled to two separate days, in two separate courts, on the same claims.” They assert that even if the 6th Circuit’s decision were not controlling, under 33 U.S.C. §1369(b)(1), “...the Clean Water Act precludes district-court review of the limitations established by the Clean Water Rule.” Citing the recent decision in <i>Georgia et al. v. EPA</i>, they added, “Parallel court-of-appeals and district-court proceedings would also create protracted and duplicative litigation over preliminary matters in cases, such as this one, that are based on a large and complex administrative record.” On September 2, the National Association of Manufacturers (NAM) petitioned the U.S. Supreme Court for a writ of certiorari, appealing the 6th Circuit’s decision that the challenge to the Waters of the United States (WOTUS) rule, filed by states, municipalities, environmental groups, and industries, falls under the Clean Water Act’s (CWA) judicial review provision, 33 U.S.C. § 1369(b)(1). NAM noted, “Although two [of the three 6th Circuit] panel members concluded that §1369(b)(1) [should preclude 6th Circuit jurisdiction], one of them reasoned that he was bound by ‘incorrect’ circuit precedent to take jurisdiction under §1369(b)(1)(F), which requires that agency actions ‘in issuing or denying any permit under’ §1342 be reviewed by the court of appeals.” Arguing against this interpretation of the

5/5/16: Corps & EPA moved to dismiss <i>State of Texas v. EPA</i> from U.S. Dist. Ct. 5/9/16: 6th Cir. designated <i>Murray Energy Corporation v. EPA</i> (No. 15-3751) as the lead case for the 22 consolidated petitions for review 5/24/16: U.S. District North Dakota denies motion to dismiss, but issues a stay pending further 6th Cir. or S. Ct. decision 8/19/16: Additional briefing filed with 11th Cir. in <i>State of Georgia v. McCarthy</i> re: 6th Cir. §1396(b)(1) jurisdiction	statute, NAM said: “What should be a straightforward gatekeeping provision has in this and other cases generated widespread judicial disagreement, caused needless delay, and wasted valuable resources for no substantive purpose.” NAM also argued that allowing the 6th Circuit’s decision to stand denies the parties and the courts of the benefits of multilateral review of agency rulemaking. On October 4, the 6th Circuit excluded most of the agency materials that state and industry petitioners argued should be included in the administrative record for judicial review, including Corps memoranda that show internal disagreement with the EPA. The court deferred to EPA’s interpretation of its Administrative Records Guidance, and held that the materials are deliberative and exempt from inclusion in the record to protect the quality of agency decisions by ensuring open and candid communications. The court allowed portions of an April 24, 2015 Corps memo with a factual and technical analysis of the WOTUS rule. The document says that as much as 10% of wetlands previously covered by the CWA would be out of reach under the WOTUS rule, a contrast to EPA’s estimates of a 4.65% increase in federal jurisdiction. On October 7, 31 states filed a brief with the Supreme Court in support of the National Association of Manufacturers’ petition for writ of certiorari. The states note that EPA and the Corps have attempted to both expand their power under the WOTUS rule as well as narrowly restrict judicial review of the rule for those who would challenge it, limiting the broad definitional rule to a narrow class of specific EPA actions listed in 33 USC §1369(b)(1), reviewable only by Circuit courts. The states argue for: (1) a plain text reading of the statute that avoids rendering words or phrases superfluous; and (2) keeping the interpretation of the jurisdictional statute simple and straightforward to avoid the hazards of having to sue in multiple courts to protect their rights. On November 8, 2016, members of Congress, including 21 Senators and 67 Representatives, filed an amicus brief in support of state, business, and municipal petitioners in the 6th Circuit. The brief provides insights regarding congressional statutory intent and legislative history of the CWA, noting that the members “have strong institutional interests in preserving Congress’s role in making law for the nation.” The brief emphasizes that Congress expanded jurisdiction beyond traditionally navigable interstate waters to include tributaries for water quality purposes, but considered and declined to regulate land with ephemeral flows, non-point source precipitation runoff, wetlands, or groundwater, leaving these waters to state rather than federal control. The brief argues that the WOTUS rule “unlawfully expands federal jurisdiction to regulate land and water that is traditionally within the sole purview of the states, including wholly intrastate non-navigable ponds and wetlands as well as land over which water flows when it rains.” Congress intended to regulate water pollution with the CWA, not the quantity of flow nor wildlife habitat. EPA’s studies supporting the WOTUS rule, the brief continues, have no relevance to water quality in navigable waters, but to habitat studies and the role of ephemeral flows in recharging groundwater. Although “from a scientific standpoint, all water is connected....Congress did not grant the Agencies with limitless authority to regulate all water.” On December 7, 2016, the Administration filed a brief in opposition to the Supreme Court petition for certiorari in <i>National Association of Manufacturers v. Department of Defense, et al.</i> The Administration argued that jurisdiction over the challenges to the EPA and Corps’ WOTUS Rule belong in the 6th Circuit, noting that five U.S. District Courts have concluded that they lack jurisdiction to review the rule. Additionally, the Administration argued that the 6th Circuit is “significantly far along the decisional path in resolving the challenges to the Clean Water Rule on the merits” and that any challenges to the 6th Circuit’s decision, including over jurisdiction, may be brought to the Supreme Court at the same time. On December 20, the National Association of Manufacturers (NAM) filed its reply, emphasizing that the CWA §1369 jurisdiction question “is a swamp that routinely mires challenges to CWA rules in inefficient, multi-court litigation over where the challenge belongs,” and is therefore an important question for Supreme Court review. NAM also pointed out the potential waste
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	of taxpayer resources in continuing the 6th Circuit case, when President-Elect Donald Trump has promised to eliminate the WOTUS rule under his Administration. On January 13, 2017 the U.S. Supreme Court granted certiorari in <i>National Association of Manufacturers v. Department of Defense</i>. On March 6, 2017, the federal respondents filed a motion to hold the briefing schedule in abeyance due to the new Administration's review of the WOTUS Rule. The motion was opposed by several other parties, and on April 3, 2017, the Supreme Court denied the motion. See full summary of the WOTUS cases through the end of February 2016 in the Washington, D.C. briefing binder, Tab N, March 2016 and in the North Dakota briefing binder, Tab V, July 2016. For more information, see http://www.scotusblog.com/case-files/cases/national-association-of-manufacturers-v-department-of-defense/
Case Names	Issue – BLM's Hydraulic Fracturing Rule
<i>Wyoming and Colorado v. US Department of the Interior and Bureau of Land Management</i>, U.S. District Court Wyoming, Case 2:15-cv-43 <i>Wyoming et al. v. Zinke</i>, 10th Cir. #16-8068	On March 20, 2015, the Department of the Interior finalized regulations to govern hydraulic fracturing on federal land. (80 FR 16128). State, tribal, and industry plaintiffs sued over the rule, arguing that the rule exceeds the BLM's jurisdiction as limited by Congress under the 2005 Energy Policy Act, leading to the irreparable harm of an immediate loss of the states' "exclusive sovereignty over hydraulic fracturing," and that the rule is unnecessarily duplicative of state regulations On June 21, 2016 the U.S. District Court for Wyoming issued its decision, ruling that the DOI and BLM have no authority from Congress to regulate fracking on public and tribal lands. The Court explained that "regulation of an activity must be by Congressional authority, not administrative fiat." The Court reviewed agencies' sources of authority, noting that the provisions they cited merely: (1) dictated the terms of leases; (2) protected petroleum resources from the effects of water incursion and waste; and (3) required balanced management of the land to protect multiple uses and competing interests and prevent degradation of resources. The Court said none of the sources cited provided BLM with specific authority to regulate hydraulic fracturing or underground injections of any kind, nor did Congress delegate authority for environmental protection of underground water resources to BLM. On June 24, BLM appealed the decision to the 10th Circuit. On August 19, bipartisan former officials from the Department of the Interior (DOI) filed an amicus brief in <i>Wyoming et al. v. Jewel</i> (10th Circuit), arguing that the Bureau of Land Management (BLM) has solid legal grounds for authority "to promulgate uniform rules to protect federal lands and natural resources from the risks posed by hydraulic fracturing." The group asserts that the decision of the District Court of Wyoming threatens the ability of the DOI to fulfill Congress' mandate to protect federal lands. They argue that Congress' decision to remove fracking from U.S. Environmental Protection Agency's (EPA) oversight under the Safe Drinking Water Act has no bearing on Interior's long-standing authority over oil and gas activities on public lands that are under the stewardship of the federal government. The group relies on authorities granted by the Constitution's Property Clause, "which grants Congress plenary authority over the land that the federal government superintends on behalf of all Americans," as well as broad organic statutes, including the Mineral Leasing Act (MLA) and the Federal Land Policy and Management Act (FLPMA), which "grant the Department of the Interior broad authority to protect federal lands from injury caused by the activities of lessees of that land, including lessees who wish to conduct hydraulic fracturing operations on federal lands." On March 15, 2017 BLM filed a motion requesting the 10th Circuit to stay the case pending the outcome of new rulemaking efforts. The motion states that the BLM's 2015 Final Rule does not reflect the policies and priorities of the new Administration, and that BLM expects to issue a notice of proposed rulemaking within 90 days, which would rescind the 2015 Final Rule. The Court postponed the oral arguments that were scheduled for March 22, but will order supplemental briefing rather than staying the case for an indefinite period of
Courts	
U.S. District Court of Wyoming 10th Circuit	
Relevant Dates	
3/20/15: Final Rule on hydraulic fracturing on federal land (80 FR 16128) 3/26/15: Case filed (Plaintiffs: States of Wyoming, Colorado, and North Dakota, the Ute Indian Tribe, the Independent Petroleum Association of America, and the Western Energy Alliance) 4/29/15: North Dakota intervenes 05/29/15: Wyoming and Colorado file Motion for Preliminary Injunction to halt the June 24 implementation of BLM's hydraulic fracturing rule until the case is decided	

6/16/15: Utah intervenes 06/23/15: D. Wyo. issues temporary stay 9/30/15: D. Wyo. issues nationwide preliminary injunction. 12/10/15: Agencies appeal the injunction 6/21/16: D. Wyo. issues ruling that agencies lack authority from Congress to create fracking rule 6/24/16: BLM appeals the D. Wyo. decision to the 10th Circuit 8/19/16: Bipartisan amicus brief from former DOI officials in support of BLM regulation	time <i>*WGA’s energy resolution (#2013-09) recognizes that states have effectively regulated hydraulic fracturing and that “redundant federal regulation is not required.” (WSW #2019)</i> <i>See prior summaries of the BLM Fracking Rule case through September 2016 in the St. George, Utah briefing binder, Tab M, September 2016, and through the end of February 2016 in the Washington, D.C. briefing binder, Tab N, March 2016</i>
Case Names	Issue – EPA’s Water Transfers Rule
<i>Friends of the Everglades v. EPA</i>, 699 F.3d 1280 (11th Cir. 2009) <i>Catskills Mountains Chapter of Trout Unlimited, et al v. EPA</i>, (SDNY 2014) (appeal to 2nd Cir.) (#14-1823) <i>Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation</i>, No. 12-35831 (9th Cir. 2015)	In 2008, following a decision in <i>South Fla. Water Mgmt. Dist. v. Miccosukee Tribe</i>, 541 US 95 (2004), EPA promulgated its “Water Transfers Rule” (40 C.F.R. §122.3(i)) clarifying that certain water transfers do not require NPDES permits under the CWA. When EPA finalized the rule in 2008, opponents immediately challenged it in the Southern U.S. District Court of New York (SDNY). Protective challenges filed in multiple circuits were consolidated in the 11th Circuit, and the SDNY challenge was stayed pending the outcome of the 11th Circuit action. The 11th Circuit upheld the Rule in <i>Friends of the Everglades v. S. Fla. Water Mgmt. Dist.</i>, 570 F.3d 1210 (11th Cir. 2009). Following precedent in the related Lake Okeechobee case, the 11th Circuit dismissed the consolidated challenges for lack of original subject matter jurisdiction. The SDNY case was decided on March 28, 2014, vacating EPA’s rule to the extent it is inconsistent with the statute – in particular the phrase “navigable waters” – and remanded the Rule to the extent EPA did not provide a reasoned explanation for its interpretation. EPA subsequently appealed the SDNY’s decision to the 2nd Circuit, together with 11 western intervening states and western water providers. Opening briefs were filed by EPA and the western states in September 2014, and various parties involved in the action filed response and reply briefs in early 2015. The states assert <i>inter alia</i> that the Supreme Court’s Clear Statement Rule and Avoidance Canon preclude altering traditional federal deference to state water law by extending NPDES permitting to water transfers authorized by the States. On January 18, 2017, a 2nd Circuit panel of three judges issued a 2-1 decision in <i>Catskill</i>, reversing the judgment of SDNY. The decision allows the EPA’s Water Transfers Rule to stand. The Court noted that the EPA has historically “taken a hands-off approach to water transfers, choosing not to subject them to the requirements of the National Pollutant Discharge Elimination System (NPDES) permitting program established by the CWA in 1972.” Like SDNY, the 2nd Circuit panel applied the two-step <i>Chevron</i> analysis, but concluded that EPA’s interpretation of the CWA was reasonable and supported by valid considerations. “The Act does not require that water quality be improved whatever the cost or means, and the Rule preserves state authority over many aspects of water regulation, gives regulators flexibility to balance the need to improve water quality with the potentially high costs of compliance with an NPDES permitting program,
Courts	
Southern U.S. District Court of New York (SDNY) 2nd, 11th and 9th Circuit Courts of Appeals	
Relevant Dates	

	and allows for several alternative means for regulating water transfers. While we might prefer an interpretation more consistent with what appear to us to be the most prominent goals of the CWA, Chevron tells us that so long as the agency's statutory interpretation is reasonable, what we might prefer is irrelevant." The Court pointed to several alternative means to regulate pollution in water transfers, including state statutory and common law, interstate compacts, and international treaties. To read the 2nd Circuit opinion, see http://www.westernstateswater.org/wp-content/uploads/2017/03/Doc-506-1-OPINION_Catskill-Mountains.pdf <i>Special thanks to Peter Nichols, Special Asst. Attorney General for Colorado and New Mexico, who provided much of the information used in the summary of this litigation. See previous summary of Catskills Mountains Chapter of Trout Unlimited, et al v. EPA in the Tulsa, Oklahoma briefing binder, Tab U, April 2015 and through the end of February 2016 in the Washington, D.C. briefing binder, Tab N, March 2016, including related litigation in a 9th Circuit case, Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation.</i> *WSWC Policy #382, generally supporting EPA's water transfers rule. WGA Resolution #14-04, Paragraph B(2)(c), generally supporting EPA's water transfers rule. Joint letter from WGA and WSWC urging EPA to appeal the SDNY decision dated 5/12/14.
Case Names	Issue - Abandoned Hard Rock Mines
<i>New Mexico v. EPA et al.</i>, 1:16-cv-465 <i>New Mexico v. Colorado</i> (#220417) <i>Navajo Nation v. EPA</i>, 1:16-cv-931 (now consolidated with 1:16-cv-465)	In May and August 2016, New Mexico and the Navajo Nation filed lawsuits in the U.S. District Court in New Mexico against the EPA and mining companies for injuries relating to releases of heavy metals and waste from the Gold King Mine and Sunnyside Mine, requesting relief under CERCLA, RCRA, CWA, and various tort claims. The two cases were consolidated in November 2016. EPA filed a Motion to Dismiss in February 2017, arguing (1) that CERCLA does not waive EPA's sovereign immunity to suit when its sole connection to the site at issue arises from exercising its authority under CERCLA to respond to other entities' legacy contamination; (2) that EPA does not fit the definitions of a liable party under CERCLA; and (3) that EPA is already engaged in remediation efforts, and that judicial review of those efforts is premature or prohibited, and that the parties have other means of participating in and commenting on the agency remediation process. Both New Mexico and the Navajo Nation have filed responses to EPA's Motion to Dismiss, countering EPA's arguments. They have also requested leave of the court to file amended complaints. ~ ~ ~ On June 20, New Mexico filed a lawsuit in the U.S. Supreme Court against Colorado over responsibility for downstream contamination of New Mexico watersheds from the 2015 Gold King Mine spill, with similar CERCLA, RCRA, and tort claims. The CERCLA and RCRA statutes grant exclusive jurisdiction to U.S. District Courts, but the U.S. Supreme Court has exclusive jurisdiction over controversies between states under 28 USC §1251(a). New Mexico notes that this conflict of jurisdiction appears to be a matter of first impression for the Court. However, since its claims are intertwined with its EPA lawsuit, New Mexico suggested the Court consider referring the case to a Special Master for all discovery and pre-trial proceedings to conserve judicial resources and to ensure consistent pre-trial determinations in both lawsuits. On October 21, 2016 Colorado filed its brief opposing New Mexico's request for leave to file a complaint with the U.S. Supreme Court. Colorado notes that New Mexico's basis for relief is that two Colorado agencies have regulatory authority over abandoned and inactive
Courts	
U.S. Supreme Court	
U.S. District Court, District of New Mexico	
Relevant Dates	
5/23/16: New Mexico v. EPA filed 6/20/16: New Mexico v. Colorado filed (S.Ct.) 8/16/16: Navajo Nation v. EPA filed 10/21/16: Colorado brief opposing New Mexico's request for leave to	

file a complaint with the Supreme Court 11/28/16: New Mexico v. EPA and Navajo Nation v. EPA cases consolidated, with 1:16-cv-465 as the lead case 11/28/16: S.Ct. requested briefing from DOJ in the NM v. CO case 2/13/17: EPA Motion to Dismiss consolidated NM and NN cases.	mines within the state. Colorado argues that Congress did not authorize the Supreme Court to hear state-verses-state actions under CERCLA RCRA, and that Congress never contemplated that states would be liable under those statutes for engaging in regulatory activities to reclaim abandoned and inactive mines and protect water quality. Colorado also argues that allowing New Mexico to file its complaint would convert the Supreme Court's docket into a forum for interstate disputes regarding regulation of the countless number of potential sources of water pollution across the country. Colorado concludes by requesting that the Supreme Court either decline to exercise jurisdiction over the case, or allow Colorado to file a threshold dispositive motion to address New Mexico's novel legal theories before the Court commits time and resources necessary to proceed with the case. On November 28, 2016, the Supreme Court invited the acting U.S. Solicitor General to file a brief in the case expressing the views of the United States. <i>See previous summary of cases, including claims from each complaint, in the St. George, Utah briefing binder, Tab M, September 2016.</i>
Case Name	Issue – Rio Grande Compact
<i>Texas v. New Mexico and Colorado</i> (#220141)	The state of Texas filed a lawsuit in the United States Supreme Court against the states of New Mexico and Colorado alleging that New Mexico is violating the 1939 Rio Grande Compact, which governs the distribution of Rio Grande water among the three states. New Mexico denies this allegation. The United States filed a motion to intervene on the grounds that the case affects the Department of Interior's management of the Reclamation's Rio Grande Project, its calculation of diversion allocations, and its responsibility to deliver water to intended Project beneficiaries and to Mexico pursuant to Treaty. New Mexico filed a motion to dismiss on the grounds that the language of the compact could not provide the relief requested by Texas, and that the United States is not a party to the Compact. The case was referred to Special Master in November 2014. Two political subdivisions (water districts supplied by and the sole direct beneficiaries of the Rio Grande Project) of New Mexico and Texas also sought to intervene on the grounds that they have compelling interest in the case not properly represented by their respective states. On June 28, 2016, Special Master Gregory Grimsal issued the public draft of his first special report in <i>Texas v. New Mexico</i> (#220141). The draft report provides extensive historical context for the local, interstate, and international uses of and disputes over the Rio Grande, as well as attempts to resolve problems through treaty, compact and legislative efforts. The report makes recommendations to the U.S. Supreme Court on several preliminary motions, including: (1) denying New Mexico's Motion to Dismiss Texas' complaint, which alleges a claim under the text and structure of the compact; (2) rejecting the United States' federal Reclamation claims as outside the interstate compact, but recommending that the Supreme Court exercise its discretion to hear the claims together since they impact the same project; and (3) denying the motions to intervene from the Elephant Butte Irrigation District and the El Paso County Water Improvement District No. 1, as both districts failed to satisfy the burden to establish compelling interests separate from the interests of New Mexico or Texas. On February 9, 2017, the Special Master submitted the First Interim Report with the same conclusions to the Supreme Court, officially received on March 20, 2017. The parties have until June 9, 2017, to file any Exceptions to the Report. <i>See prior summary of the Rio Grande Compact case through the end of February 2016 in the Washington, D.C. briefing binder, Tab N, March 2016, including the positions of Texas and New Mexico. For more information, see the Special Master's website at http://www.gamb.law/?p=7235 and http://www.scotusblog.com/case-files/cases/texas-v-new-mexico-and-colorado/</i>
Courts	
U.S. Supreme Court	
Relevant Dates	
1/8/13: Texas filed its complaint (motion for leave to file granted 1/27/14) 2/27/14: United States Motion to Intervene 12/3/14: Elephant Butte Irrigation District Motion to Intervene 4/22/15: El Paso County Water Improvement District No. 1 Motion to Intervene 6/30/16: Status conference with the Special Master 3/20/17: Special Master Report received by the Supreme Court	Issue – Indian Water Rights On June 29, the Crow Creek Sioux Tribe filed suit in the U.S. Court of Federal Claims against the U.S. government, seeking damages of \$200M for failure to fulfill its trust responsibilities, which include "refraining from self-dealing" and "providing accountings and consulting with the tribe about management of water resources on its reservation." The tribe also sued for Fifth Amendment taking of the
Case Name	
Crow Creek Sioux Tribe v. U.S., 1:16-cv-760	
Court	

U.S. Court of Federal Claims	tribe’s water without just compensation. The complaint alleges that the U.S. has “squandered” the tribe’s water and ignored its reserved water rights in favor of non-Indian use, reclamation, urban development and consumption. Additionally, the U.S. has failed to appropriately manage and protect the tribe’s water rights, “and has never attempted to even quantify or render an accounting of those rights.” The U.S. government filed a 12(b)(1) jurisdictional Motion to Dismiss on the grounds that any breach of duty or taking of the tribe’s federal reserved water rights accrued five decades ago—with the authorization of the Pick-Sloan Plan and construction of the Big Bend and Fort Randall Dams—and that the claims are barred by the statute of limitations. The Tribe argued in response that the federal government’s duty to manage the Tribe’s natural resources is a continuing one, and that the breaches are accruing on a daily basis as the Corps of Engineers continues to manage water along the Missouri River with “diversions and releases of water for hydroelectric power, navigation, and other uses for the sole benefit of the Defendant and/or non-Indian uses.” The Motion to Dismiss makes several arguments that the Tribe does not own particular molecules of water, only a right to use water, and that the Tribe cannot show “that the United States has taken some action that limits or prevents Plaintiffs from fully exercising its unadjudicated <i>Winters</i> doctrine rights,” particularly where the Tribe doesn’t allege that it has ever attempted to divert or use water from the Missouri River. “Plaintiff’s water right remains intact and the United States’ use of Missouri River water has [not] altered or diminished Plaintiff’s right to use that quantity of water necessary to fulfill the purposes of the reservation.” The U.S. added that there is no allegation that the flows of the Missouri River have been insufficient to meet the unquantified water rights, assuming the Missouri River ultimately becomes the Tribe’s primary or sole source identified to meet those rights. The Tribe countered that the U.S. is a trustee with a duty to preserve, assert, or defend the Tribe’s right to use the water, and instead of doing so, the U.S. has invaded that legally-protected interest by putting the water to its own use. The U.S. government also argued that the Tribe cannot force it to devote its litigation resources to the quantification of the Tribe’s potential water rights claim to the Missouri River, noting that the Tribe may pursue water rights claims on their own behalf through an administrative adjudication or a congressionally approved settlement, but not through a federal lawsuit. The Tribe notes that accounting and quantification of the Tribe’s water rights are “merely incident of and collateral to a money judgment against the Defendant.”
Relevant Dates 6/29/16: Tribe filed suit 10/27/16: U.S. filed Motion to Dismiss 1/31/17: Tribe Memo in Opposition to MTD 3/3/17: U.S. Reply	

Tab V – State Reports

State Report - Arizona:

- **Governor's Water Augmentation Council:** The Council has formed four committees (Desalination, Finance, Long Term Augmentation and Recycled Water) that are working towards finding long-term water augmentation strategies and other opportunities, such as desalinating brackish water and increasing recycled water use, to secure water supplies for Arizona's future.
- **New Cooperative Water Conservation Partnership:** The Gila River Indian Community, the Arizona Department of Water Resources (ADWR), the City of Phoenix and the Walton Family Foundation signed a cooperative agreement to continue efforts to conserve water in the Colorado River system.
- **Arizona Executive Budget Recommendation for FY 2018 to increase ADWR funds:**
 - As part of the negotiation with California, Nevada and the Federal Government to protect the Colorado River and Lake Mead specifically, Arizona's share of funding is projected to be \$2M/yr for three years.
 - An additional \$850K to fund numerous new positions supporting ADWR's general stream adjudication, groundwater monitoring and other water planning efforts.

Important Water Topics for Arizona:

- **Completion of the Colorado River Lower Basin Drought Contingency Plan (DCP) and DCP Plus:** These plans will provide certainty that Arizona will meet its water needs now and into the future, even if it takes hard choices to achieve these outcomes.
 - **DCP:** Interstate Plan between the three Colorado River Lower Basin states and the Federal Government to protect Lake Mead by taking voluntary reductions sooner than needed to avoid larger mandatory reductions in future.
 - **DCP Plus:** Plan to minimize impacts to Arizona water users most affected by the DCP by storing water in Lake Mead through conservation efforts and in lieu of storing water underground.
- **Completion of Minute 32X:** As part of the efforts to protect water levels in Lake Mead, the Federal Government and Mexico to reach an agreement and sign Minute 32X, which would allow collaborations between Lower Basin states and Mexico on projects to store and/or conserve water in the Lake. When completed, ADWR Director has the authority, per HJR 2002, to sign domestic agreements related to this Minute.
- **Addressing Aquifer Levels Decline in Non-Managed Areas:** In some locations outside the Active Management Areas, where water is largely unregulated, declines in aquifer levels are being experienced. Increased farming and other water usage as well as domestic wells affected by these declining aquifers are a significant concern in these areas.

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

**CDWR Update**

► Water year 2017 to date has been one of the wettest years of record, bringing an end to the state's prior five years of drought.

► DWR flood fight staff responded to more than 60 Central Valley incidents during the February-March high water events. Five of DWR's 25-person incident response teams were deployed for flood emergency operations during this period.

► On February 7th, erosion damage was observed on DWR's Oroville Dam main spillway. Rising reservoir levels subsequently resulted in use of the reservoir's emergency spillway for the first time, causing erosion to the hillside below and resulting in the Butte County Sheriff's issuance of mandatory evacuation orders affecting about 180,000 people. Flows were increased down the damaged main spillway to reduce reservoir levels, and emergency spillway flows ended on February 13th, with the mandatory evacuation order being reduced to a warning on February 14th. Work has been performed around the clock to make repairs to various eroded areas, and to remove 1.26 million cubic yards of debris blocking the channel downstream from the dam's powerplant that prevented use of the plant to lower reservoir levels. DWR has been making plans for spillway repair work, which can begin once the need to make flood control releases has ended. For ongoing photographic coverage, see:

<https://pixel-ca-dwr.photoshelter.com/galleries/C0000OxvlqXq3yfg/G00003YCcmDTx48Y/Oroville-Spillway-Incident>.



► As part of drought emergency response activities, CDWR and SWRCB have been leading an effort to connect residents on dry private wells in the unincorporated East Porterville area of Tulare County to a public water system. The state has been expending about \$650,000 monthly in bottled and bulk water for these residents during the drought. DWR is managing design and construction for pipeline and connection work, with 290 homes having been connected so far and another 765 being eligible for the program.

► DWR announced awards of nearly \$18M in grants to agencies and organizations for projects that reduce greenhouse gas emissions and improve water and energy use efficiency. Fifteen grants were awarded.

► DWR released a NASA report summarizing satellite- and aircraft-based radar monitoring of California land subsidence due to groundwater extraction. Subsidence rates have been increasing due to the drought; NASA monitoring shows the most rapidly subsiding areas in the San Joaquin Valley experiencing rates of about a foot per year. DWR estimates that the most affected part of the California Aqueduct has lost 20% of its design capacity due to subsidence.

► DWR launched its new custom-built Bay-Delta water quality monitoring research vessel, the Sentinel. The 60-foot, 36-ton vessel is a floating water quality laboratory.

Nebraska – State Report – WSWC April 2017

Department of Natural Resources

Water Sustainability Fund – This is a new State cost share (60/40) water development program that was established in 2014 to provide important state resources in support of water resources projects across the State. For 2016, the first year of granting funds the Natural Resources Commission approved \$11.5 million for 17 water projects in the first cycle and \$19.5 million for 11 water projects in the second cycle.

The cooperative Federal/State/Local/NGO oversight governance committee for the Platte River Recovery Implementation Program approved a proposed plan to extend the 1st increment of recovery program currently scheduled through 2019, for an additional 13 years through 2032. Substantial work lies ahead for finalizing the program documentation, both federal and state cost sharing arrangements, and State and Federal legislative action authorizing the extension.

NeDNR is working collaboratively with all 23 Natural Resource Districts' in the state on a wide variety of water planning processes. This includes both statutorily required and authorized voluntary integrated water planning (IMP's) to complete the conjunctive management of surface and groundwater supplies.

In addition to individual IMP's, the Department is working on several river basin-wide water planning studies authorized by the legislature in the Republican, Upper Platte and Lower Platte River Basins. These broad based planning efforts also involve a full set of water user and related stakeholder interests from across the basin to participate in the planning process.

Nebraska Supreme Court issued a key decision on March 10, 2017 (Hall vs State) affirming a district court ruling in the States favor that denied a claim of a takings associated with the regulation of surface water rights that occurred in 2013 and 2014 and necessary to meet the State of Nebraska's interstate compact obligations under the Republican River Compact.

Department of Environmental Quality

NDEQ is developing a series of permit actions for (COSTCO) which will include a hatchery, processing plant and a series of dry litter broiler barns located approximately 60 miles away from the production complex in Fremont, NE. A general water quality state permit for NPDES application of poultry barns and waste is being developed. This allows DEQ to monitor land application of waste as fertilizer to help prevent over application and reduction of nutrients into streams and groundwater.

NDEQ is also working with two communities on a lime softening discharge permit. EPA is starting to drive a harder line on affordability findings and demand upgraded permit renewals on two PDW discharging facilities. It could cost up to 33 million dollars to modify the facilities, but this is also a low priority in terms of integrated planning. Stay tuned....

NIOCORP - The Elk Creek Carbonite, located in south eastern Nebraska is an hour south of Lincoln. The niobium deposit is roughly 800 x 400 x 400 meters. The proposed NIOCORP mine in Elk Creek, NE will produce 7,490 tons/yr Ferro Niobium, 97 tons/yr Scandium Trioxide and 23,960 tons/yr Titanium

Dioxide which are important in defense and steel manufacture. This facility projects a 32-Year Operating Life, 376 employees, Pre-tax NPV of US\$ 3.07 billion. The dewatering water discharged from this facility to the Missouri River contains (2,500,000 lb/day or 893 yd³) of chlorides. The discharge has the potential to slightly raise the background of chlorides in the River and likely faces permitting challenges.

Bazile - A **big thank-you** to Region 7 for their acceptance and support of the Bazile Ground Water Management Plan. This is the first nonpoint source (CWA Sec. 319) GROUND WATER plan EPA has recognized/accepted in the nation, making the area eligible for 319 “project” funds.

- ~7000+ population, rural + 7 towns (Creighton has RO treatment for DW, 2 other nitrate AOs in other towns in past)
- Small parts of 4 NRDs, 3 counties

First Priority is Wellhead Protection Areas

Best Management Practices encouraged (NRDs have required some of these BMPs)

- o Soil testing for N
- o Irrigation water testing for N
- o Split fertilizer application
- o Fall fertilization restrictions
- o “precision” agriculture
- o Irrigation well flow meters

Technology – we developed an on-line application & approval process in construction storm-water permits (recently introduced industrial storm-water permits, along with air pollution general permits for emergency generators, concrete and asphalt batch plants. 954 have been processed since November of 2015. This has saved 1 FTE in time to do other important tasks like helping communities with MS4 permits.

In June we plan to announce an on line applications process that will be the flagship for all NDEQ environmental permit submittals. The concept will be a hard stop, fillable forms that will not allow incomplete data submissions. It will be designed to reduce the redundant, back and forth experience between permit writers, consultants and applicants.

Oklahoma Water Issues

Julie Cunningham, Executive Director
Oklahoma Water Resources Board

Western States Water Council Meeting
Nebraska City, Nebraska, April 12-14, 2017



The mission of the Oklahoma Water Resources Board is to protect and enhance the quality of life for Oklahomans by managing and improving the state's water resources to ensure clean and reliable water supplies, a strong economy, and a safe and healthy environment.

Water Supply Planning

Oklahoma is focused on implementation of the Oklahoma Comprehensive Water Plan (updated in 2012) to ensure the long-term reliability of water supplies. This has included proactive studies and collaboration with water users, providers, and other partners to develop and implement local and regional water planning. The state promotes the goal of using no more fresh water in 2060 than was used in 2010, which was legislated by Oklahoma's Water for 2060 Act (passed in 2012). Necessary legislative and regulatory framework for the growth of water reuse in Oklahoma is under development, as well as amendments to Oklahoma's Water Quality Standards rules to allow consideration of aquifer storage and recovery projects. The Governor's Water for 2060 Produced Water Working Group is evaluating the reduction of produced water injection activities through economically viable alternatives.

Building Water and Wastewater Infrastructure Capacity

According to the Oklahoma Comprehensive Water Plan, water and wastewater infrastructure needs will total \$82 billion by 2060. The OWRB is focused on assisting water providers in identifying the best financing options, providing below-market interest rates by maintaining a strong bond credit rating and leveraging federal grants and Oklahoma's Water Infrastructure Credit Enhancement Reserve, and encouraging water system regionalization to increase reliability, public safety, and savings on operating costs. A new Bond Resolution provides potential borrowers with more options in order to satisfy local debt service reserve requirements. In addition to a cash reserve, the resolution now allows borrowers to maintain a slightly increased debt coverage ratio, provide a surety policy from a AA rated provider, or maintain their own bond rating of A.

Increased Accuracy in Determining Available Water

The OWRB appropriates 6.5 million acre-feet of groundwater and surface water per year through more than 13,000 water use permits. Hydrologic investigations are being conducted to determine the amount of water available for appropriation and the hydraulic properties of Oklahoma's groundwater systems. Streamflow modeling and watershed characterization studies are underway to develop better availability and use information for allocation of surface water. An instream flow investigation on the Illinois River is underway to determine how various flow scenarios would affect the region. Oklahoma's ongoing involvement in four federal stream compact commissions ensures equitable sharing of surface water with neighboring states.

Climate Issues: Drought, Flooding, and Dam Safety

Hazard mitigation is of particular interest to the OWRB as the state continues to cycle through weather extremes including record drought and flooding events. Drought planning for communities has become critical, and the state continues to build and improve access to planning tools, such as the Oklahoma Drought Portal at drought.ok.gov. As the number of heavy rainfall events increases, the OWRB's floodplain management team actively encourages enrollment in the National Flood Insurance Program (NFIP) and consults with communities to mitigate the catastrophic effects of flooding. The OWRB is increasing training opportunities for floodplain management by offering courses to tribes free of charge. Dam safety is an especially important issue for the state during flooding events. The OWRB has recently collected emergency action plans for all high-hazard dams and is offering free inspections and breach inundation mapping for low-hazard dams.

Water Monitoring

The OWRB has a statewide monitoring network to collect water quality and quantity data from 130 lakes and 84 stream sites. This data is used to determine impairments to beneficial uses of the water as set forth by Oklahoma's Water Quality Standards. Groundwater is now being sampled in 750 wells in all of Oklahoma's major aquifers. This data will be critical for identifying areas of concern regarding both water quality issues and water level changes. Groundwater quality protection is also promoted through required continuing education and licensing for well drillers.

State and Tribal Water Consultation and Resolution

The OWRB continues to support the Governor and Legislature in working to resolve the water rights and needs of Oklahoma-based tribal nations. In 2016, a momentous water rights settlement was reached by the Chickasaw Nation, Choctaw Nation, City of Oklahoma City, and State of Oklahoma regarding water rights and regulatory authority over waters of historic treaty territories, and area spanning approximately 22 counties in south central and southeastern Oklahoma. This achievement will set the stage for future state and tribal agreements with Oklahoma's 38 federally recognized tribes.

South Dakota State Report

- The 2017 South Dakota Legislative Session ended March 27, 2017. The following bills may be of interest:
 - SB32 made reductions to the current, FY 2017 budget due to decreasing sales tax:
 - Cuts 37 FTE,
 - Total reduction of \$37,633,374 in general, federal, and other funds
 - No amendments were made to DENR's existing FY 2017 budget
 - SB178 set the budget for FY 2018 that begins July 1, 2017:
 - Cuts 3.2 FTE from the Governor's recommended FY 2018 budget,
 - Total reduction of \$49,438,182 in general, federal, and other funds
 - No changes were made to DENR's no growth FY 2018 budget request
 - SB66, which incentivizes the establishment of riparian buffer strips on private land, was signed by the governor. To improve water quality, under SB 66 eligible riparian buffer strips are assessed at 60 percent of the land's agricultural income value. The bill specifies the 575 lake listings and 11,000 miles of streams that are included. Only land within 120 feet of a listed lake, river or stream may be classified as a riparian buffer strip and grazing is prohibited from May 1 through Sept. 30.
(http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=66&Session=2017)
 - SB70, the annual Omnibus Water funding bill, was signed by the Governor
(http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?File=SB70ENR.htm&Session=2017)
- Following a contested case hearing regarding the issuance of the General Water Pollution Control Permit for Concentrated Animal Feeding Operations on September 27-29, 2016, Secretary Pirner adopted *Findings of Fact and Conclusions of Law* and issued a final general permit on March 10, 2017. The parties to the hearing may appeal the decision to circuit court within 30 days. (<http://denr.sd.gov/ccdocs.aspx?CCID=CCID25>)
- On March 15, 2017, the South Dakota Supreme Court issued a decision in a case involving the use of non-meandered waters for recreational purposes. The justices indicated until the legislature acts, neither the public nor the landowners have a superior right to use the waters and ice overlying the landowners' private property. Similarly, until the legislature acts, the GF&P and other State defendants cannot facilitate access for members of the public to enter or use the waters and ice overlying the landowners' private property for recreational purposes. (<http://ujs.sd.gov/uploads/sc/opinions/27885.pdf>)
- One of four potential sites nationwide, backers of a proposed site near Phillip, South Dakota, are working to receive local community support and approval from the Department of Energy for its deep borehole research project. The proposed hole, which would be 8 inches in diameter and approximately 3 miles deep, will require 7 months of drilling and up to 2 years total, including the experiments. If the first borehole is successful, a second research borehole of 17-inch diameter may be considered to the same depth. Even though the contract with the Department of Energy would not allow nuclear waste disposal in the hole, that is one of the purposes for the project that has citizens concerned. HB1071, signed by the Governor, requires approval by both the governor and the legislature prior to the storage or disposal of high-level nuclear waste in South Dakota. (<https://drilldeepsd.com/>)

Texas Update

Western States Water Council - March 2017

Federal Budget

- President Trump's Blueprint for the FY18 federal budget would meaningfully impact Texas water programs. Federal funds support the agency's water program by approximately 31%. Overall, the TCEQ receives 8% of its budget from Federal Funds. We are closely monitoring budget activities at the federal level.

Drought Response

- **Revisiting Water Availability Models (WAMs)** -- TCEQ uses surface WAMs to evaluate water availability for new and amended water rights. There is interest in updating the naturalized flow data set to incorporate more recent drought flow data in the WAMs. Current WAMs were developed between 1998 and 2004 by consultants.
- **Addressing Water Shortages at Public Water Systems** -- TCEQ is working to develop resilience in public water systems to ensure alternatives when drought reduces supply. Alternatives include: regionalization, pipelines, hauling water, conservation measures, developing new sources of supply such as brackish groundwater, new reservoirs, and reuse.

USACE Water Supply Rule

- TCEQ is concerned that the proposed rule conflicts with Texas' absolute jurisdiction over allocation of state water. The rule would result in the Corps allocating water permitted under a Texas water right to other users.
- The discussion of consumptive and non-consumptive uses is inconsistent with Texas water law which allows both consumptive and non-consumptive uses be permitted under a Texas water right permit. In addition, we disagree with how the proposed rule considers certain uses as non-consumptive. TCEQ recommends that the discussion of state authority be modified throughout the preamble and proposed rule to ensure that nothing would suggest that the Corps has primacy in allocating water, permitting water rights, or determining the beneficial uses of water in a state.

Sludge

- There has recently been an increased interest in the land application of domestic septage and domestic sewage sludge. Complaints tend to be related to odor nuisance, as well as general opposition to the beneficial reuse of biosolids. TCEQ has rules in place to:
 - reduce pathogens and vector attraction;
 - implement detailed management practices for storage and application;
 - include buffers to protect waters in the state; and
 - require monitoring and reporting.

Wyoming State Report
WSWC – Nebraska City, NE
April 2017

1. **Budget** – The State of Wyoming General Fund is seeing a shortfall in the \$400M range for the current biennium. SEO has lost 12 positions (almost 10% of our staff) and 13% of its overall budget since late 2015. Our agency budget is now funded roughly 50% from General Funds, and 50% from Water Account 1 (an account funded by mineral severance tax and intended primarily to fund new water development projects). This is an awkward combination. From 1996 through 2003 our agency was entirely funded out of Water Account 1, although before and since we have been generally funded. Hiring freezes have been, and will continue to be, in effect, but some positions are being allowed to be refilled.

2. **Colorado River**

Drought Contingency Planning & Minute 32x - Drought contingency planning efforts are on-going throughout the basin. These include efforts in the Upper Basin (Colorado, New Mexico, Utah and Wyoming), the Lower Basin (Arizona, California and Nevada) and bi-nationally between the U.S. and Mexico. All efforts include both state and federal parties, as well as water contractors. Brief descriptions of each of these efforts are provided below.

- **Upper Basin Drought Planning** - The Upper Basin plan has three main components – weather modification, demand management and Colorado River Storage Project (CRSP) reservoir operations. The primary focus of current Upper Basin efforts has been on the development of a Memorandum of Agreement (MOA) on the operations of CRSP reservoirs to minimize the risk of Lake Powell falling below the minimum power pool elevation. The concept of demand management is still under development. The System Conservation Pilot Program discussed below could be considered a precursor to any larger demand management program.
- **Lower Basin Drought Planning** - The lower basin has been working on process documents to enable the conservation of additional water in Lake Mead. Ultimately, these efforts could conserve up to 1.2 million acre-feet of water in Lake Mead annually during times of drought and very low water levels, but would allow much of this water to be recovered once the system recovers.

Binational Negotiations with Mexico - Minute 319 to the Treaty between the United States and Mexico relative to utilization of the waters of the Colorado River was signed by representatives of the U.S. and Mexico in 2012 with a five-year term. Generally, the agreement outlined several actions to proactively manage the Colorado River system to obtain binational benefits and mitigate risks associated with variable water supplies and

growing demands. Minute 319 is set to expire at the end of 2017 and there are ongoing efforts to develop a succeeding minute (termed Minute 32x) which would extend portions of Minute 319 as well as add some additional components.

System Conservation Pilot Program (SCPP) - Facing declining levels in Lakes Mead and Powell, four of the largest water providers that depend on Colorado River Basin supplies entered into an agreement with the U.S. Bureau of Reclamation (Reclamation) to explore potential long-term solutions. Through this agreement (termed the “System Conservation Program”), Reclamation, Denver Water, the Southern Nevada Water Authority, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California and the Walton Family Foundation have contributed \$12.5 million to test and demonstrate the effectiveness of temporary, compensated, and voluntary demand management actions through pilot projects in both the Upper and Lower Basins, at least \$4.25 million has been marked for use in the Upper Colorado River Basin. This program supports water conservation and drought planning activities the Colorado River basin states and federal government have been focusing on the last few years.

The SCPP supports concepts the Upper Basin States are currently exploring as part of their overall drought contingency planning effort (discussed above). Originally designed as a two-year pilot (2015 – 2016), SCPP has been extended for a third year (2017) because some funds are still available. All parties have agreed that there needs to be a critical review of the program to see if and how the program may continue in to the future, both financially and administratively. This review will be completed in 2017. In general his program has proven very popular among constituents.

Wyoming and the Colorado River: A Report - In response to discussions with the Water Development Commission during the fall of 2015, the Wyoming State Engineer’s Office offered to prepare a “guidance document” regarding the Law of the Colorado River and current issues on the River particularly as they affect Wyoming. The document was completed in November 2016. It can be downloaded from the Wyoming State Engineer’s website (seo.state.wy.us).

3. **MT v WY**

The Special Master issued his Opinion on Remedies on December 20, 2016. There he granted Wyoming's motion regarding damages, and found that Montana is entitled to \$35,877.06 in damages, which includes interest. He found that Montana is not entitled to the disgorgement damages it sought and is also not entitled to injunctive relief. Montana has a right to fill the pre-Compact capacity of Tongue River Reservoir, or 72,500 acre-feet. The Special Master found that Montana is a prevailing party for the purposes of costs incurred through February 10, 2010

Montana and Wyoming had until February 10, 2017, to confer and agree with regard to the content of a decree which incorporates the legal rulings in the case. Unfortunately, the states were unable to agree. Montana filed its proposed judgment and decree on February

10, and Wyoming filed its proposed decree on February 27, 2017. Montana must file a Bill of Costs by April 3, 2017, to which Wyoming may respond. The states have proposed a hearing date of May 1, 2017, for the Special Master to hear arguments regarding the contents of a decree and Montana's Bill of Costs.

4. **Legislative update (2017 session ran from January 10 through March 3, 2017)**

Bills Supported by the Wyoming State Engineer's Office that passed:

- SF 4/SEA0011 - Map and Plat filing requirements – moved from Title 33 to Title 41
- HB 44/HEA0047 - Cleanup of the Board of Professional Engineer's and Professional Land Surveyors Practice Act (quorum, comity, licensure absent FE, evidence collection during investigation of complaints)
- HB 47/HEA0067 - Changed advertising procedures for proofs of appropriation. Appropriators now pay, not counties.

There were three different "temporary instream flow" bills that were filed but did not survive, as well as other bills related to state acquisition of some Lake DeSmet storage rights and the unlawful use of water.

5. **Bear River Compact, 20-year Review** – This Compact between Idaho, Utah and Wyoming requires a review every twenty years. The Bear River Compact Commission will begin its review this year for any possible changes in 2018.
6. **Laramie County Control Area and Horse Creek Groundwater Orders** - Full operation under the Order issued in 2015 for the Laramie County Control Area begins in 2017. The most critical operative Order requirements are the completion of adjudication of unadjudicated wells by the last quarter of 2017, and the installation of meters on all non-deminimus wells prior to use in water year 2017. The Horse Creek Order for the LaGrange aquifer in southeast WY (issued July 19, 2013) is set to be revisited on April 1, 2017. Data from the first three years of operation under the Order, and a public hearing, will determine whether the Order stays unchanged, is modified, or is terminated.
7. **Overall snowpack – statewide, reservoir conditions** – In general, WY anticipates a good water supply year given statewide snowpack. Western Wyoming has significant snowpack, and will likely see spring and early summer flooding. The central and eastern mountains have less snow but still are above normal. Only the Black Hills in the extreme northeast part of the state are particularly dry.

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**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
REGARDING PREEMPTION OF STATE LAW IN FEDERAL LEGISLATION
Helena, Montana
July 18, 2014**

WHEREAS, the future growth, prosperity and economic and environmental health of the West and the Nation depend upon the availability of adequate quantities of water for myriad uses; and

WHEREAS, Western states have primary authority and responsibility for the appropriation, allocation, development, conservation and protection of water resources, both groundwater and surface water, including protection of water quality, instream flows and aquatic species; and

WHEREAS, the Congress has historically deferred to state law as embodied in Section 8 of the Reclamation Act, Section 10 of the Federal Power Act, Section 101(g) and 101(b) of the Clean Water Act, and myriad other statutes; and

WHEREAS, any weakening of the deference to state water and related laws is inconsistent with over a century of cooperative federalism and a threat to water rights and water rights administration in all western states; and

WHEREAS, federal deference to state water law is based on sound principles for the protection of private property rights and the collective public interest in managing our water resources and the environment; and

WHEREAS, states are primarily responsible and accountable for their own water development, management and protection challenges, and are in the best position to identify, evaluate and prioritize their needs and plan and implement strategies to meet those needs; and

WHEREAS, any legislation related to any federal water policy, water plan or planning process must recognize, defer to and support State, tribal and local government water laws, agreements, and management processes; and

WHEREAS, the federal government should explicitly recognize and provide support for ongoing watershed and state water management efforts both in and between the states, tribes and local entities, closely consult with the states and provide appropriate technical and financial assistance; and

WHEREAS, the federal government should avoid strategies that increase unilateral mandates on state, tribal and local governments; and

WHEREAS, from time to time federal legislation and regulatory actions have been proposed that are not consistent with sound federalist principles and primary state water related laws, authorities and responsibilities; and

WHEREAS, legislation preempting or discharging requirements for compliance with state law is not consistent with a balanced federalism approach;

NOW, THEREFORE, BE IT RESOLVED, that nothing in any act of Congress should be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to: (a) water or watershed management; (b) the control, appropriation, use, or distribution of water used in irrigation, municipal, environmental, or any other purposes, or any vested right acquired therein; or (c) intending to affect or in any way to interfere with any interstate compact, decree or negotiated water rights agreement.

BE IT FURTHER RESOLVED, that the Administration and Congress should strive to ensure federal laws, policies, rules and regulations are consistent with the principles set forth herein.



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
supporting
FEDERAL RESEARCH AND DEVELOPMENT OF UPDATED HYDROCLIMATE
GUIDANCE FOR FLOODS & DROUGHTS
Helena, Montana
July 18, 2014

WHEREAS, Western states continue to experience extreme flooding, droughts, or wildfires that threaten public safety, tax aging water infrastructure, and/or have significant economic consequences; and

WHEREAS, according to the National Oceanic and Atmospheric Administration (NOAA), the nation's top ten multi-billion dollar disasters have occurred since 1980, with six of those in the last decade; and

WHEREAS, we must be prepared to effectively manage for frequent, extensive, and severe storms, floods, coastal inundation, and droughts; and

WHEREAS Western states experienced extreme drought in 2011-2014, as well as recent floods of record in areas such as parts of the Missouri River Basin in 2011 and Colorado in 2013, and further Winter Storm Atlas in 2013; and

WHEREAS, key long-term observation networks needed for monitoring extreme events, such as USGS streamgages and the NWS Cooperative Observer network, face continued funding and programmatic challenges that threaten the continuity of crucial long-term data records; and

WHEREAS, snow water content and soil moisture monitoring are also critical for drought and flood forecasting and management, but the NRCS snow survey and water supply forecasting program, related SNOTEL sites, and its Soil Climate Analysis Network remain underfunded; and

WHEREAS, some of NOAA's probable maximum precipitation estimates used by water agencies for dam safety and other analyses have not been updated since the 1960s and the federal Guidelines for Determining Flood Flow Frequency Analysis (published as Bulletin 17B) have not been revised since 1981; and

WHEREAS, flood frequency analyses are used by public agencies at all levels of government to design and manage floodplains, and for construction of flood control and stormwater infrastructure, with Bulletin 17B still representing a default standard of engineering practice; and

WHEREAS, federal funding for hydrology research has waned since the 1970s-1980s, and alternative statistical methodologies for flood frequency analyses or deterministic analytical procedures are not being supported and transitioned to common engineering practice; and

WHEREAS, the Federal Emergency Management Agency has adopted a process for local communities to explicitly incorporate "future conditions hydrology" in the national flood insurance program's flood hazards mapping; and

WHEREAS, the present scientific capability for forecasting beyond the weather time domain – beyond the ten day time horizon – and at the subseasonal to interannual timescales important for water management is not skillful enough to support water management decision-making; and

WHEREAS, the Council has co-sponsored a number of workshops on hydroclimate data and extreme events, to identify actions that can be taken at planning to operational time scales to improve readiness for extreme events; and

WHEREAS, multiple approaches have been identified at these workshops that could be employed at the planning time scale, including ensembles of global circulation models, paleoclimate analyses, and improved statistical modeling, that could be used to improve flood frequency analysis or seasonal forecasting; and

WHEREAS, advances in weather forecasting research, such as that of NOAA's Hydrometeorological Testbed program on West Coast atmospheric rivers, demonstrate the potential for improving extreme event forecasting at the operational time scale; and

WHEREAS, WGA and NOAA signed a Memorandum of Agreement in June 2014 on improving resilience to droughts and floods;

NOW, THEREFORE, BE IT RESOLVED, that the federal government should update and revise its guidance documents for hydrologic data and methodologies – among them precipitation-frequency estimates, flood frequency analyses, and probable maximum precipitation – to include subsequently observed data and new analytical approaches.

BE IT FURTHER RESOLVED, that the federal government should place a priority on improving subseasonal and seasonal precipitation forecasting capability that would support water management decisions.

BE IT FURTHER RESOLVED, that the Western States Water Council supports development of an improved observing system for Western extreme precipitation events such as atmospheric river storms, as well as baseline and enhanced stream, snow and soil moisture monitoring capabilities.

BE IT FURTHER RESOLVED, that the federal government should sustain and expand its Hydrometeorology Testbed – West program, in partnership with states and regional centers, to build upon the initial progress made in that program for developing and installing new technologies for precipitation observations.

BE IT FURTHER RESOLVED, that the Western States Water Council urges the federal government to support and place a priority on research related to extreme events, including research on better understanding of hydroclimate processes, paleoflood analysis, design of monitoring networks, and probabilistic outlooks of climate extremes.

BE IT FURTHER RESOLVED, that the Western States Water Council will work with NOAA and WGA in supporting efforts on climate extremes, variability, and future trends.



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
THE RECLAMATION FUND
Helena, Montana
July 18, 2014

WHEREAS, in the West, water is indeed our “life blood,” a vital and scarce resource the availability of which has and continues to circumscribe growth, development and our economic well being and environmental quality of life -- the wise conservation and management of which is critical to maintaining human life, health, welfare, property and environmental and natural resources; and

WHEREAS, recognizing the critical importance of water in the development of the West, the Congress passed the Reclamation Act on June 17, 1902 and provided monies “reserved, set aside, and appropriated as a special fund in the Treasury to be known as the ‘reclamation fund,’ to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of water for the reclamation of arid and semiarid land...” in seventeen western states, to be continually invested and reinvested; and

WHEREAS, then President Theodore Roosevelt stated, “The work of the Reclamation Service in developing the larger opportunities of the western half of our country for irrigation is more important than almost any other movement. The constant purpose of the Government in connection with the Reclamation Service has been to use the water resources of the public lands for the ultimate greatest good of the greatest number; in other words, to put upon the land permanent homemakers, to use and develop it for themselves and for their children and children’s children...;”¹ and

WHEREAS, the Secretary of the Interior was authorized and directed to “locate and construct” water resource projects to help people settle and prosper in this arid region, leading to the establishment of the Reclamation Service – today’s U.S. Bureau of Reclamation; and

WHEREAS, western states and the Bureau of Reclamation have worked in collaboration to meet the water-related needs of the citizens of the West, and protect the interests of all Americans, recognizing changing public values and the need to put scarce water resources to beneficial use for the “ultimate greatest good of the greatest number;” and

WHEREAS, the Bureau of Reclamation has built facilities that include 348 reservoirs with the capacity to store 245 million acre-feet of water, irrigating approximately 10 million acres of farmland that produce 60 percent of the nation’s vegetables and 25 percent of its fruits and nuts, as well as providing water to about 31 million people for municipal and industrial uses, while generating more than 40 billion kilowatt hours of energy each year from 53 hydroelectric power plants, enough to serve 3.5 million households, while providing 289 recreation areas with over 90 million visits annually, and further providing flood control, and fish and wildlife benefits; and

WHEREAS, project sponsors have and continue to repay the cost of these facilities, which also produce power receipts that annually return nearly one billion in gross power revenues to the federal

¹State of the Union Address, 1907

government, prevent millions in damages due to floods each year, and generate billions of dollars in economic returns from agricultural production; and

WHEREAS, the water and power resources developed under and flood control provided by the Reclamation Act over the last century supported the development and continue to be critical to the maintenance of numerous and diverse rural communities across the West and the major metropolitan areas of Albuquerque, Amarillo, Boise, Denver, El Paso, Las Vegas, Los Angeles, Lubbock, Phoenix, Portland, Reno, Sacramento, Salt Lake City, Seattle, Tucson and numerous other smaller cities; and

WHEREAS, western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet our present water needs in the West and those of future generations, within the framework of state water law, as envisioned by President Roosevelt and the Congress in 1902; and

WHEREAS, according to the Administration's FY 2015 request actual and estimated receipts and collections accruing to the Reclamation Fund are \$2.046 billion for FY 2013, \$2.002 billion for FY 2014, and \$2.037 billion for FY2015, compared to actual and estimated appropriations of \$858 million for FY 2013, \$913 million for FY 2014, and \$819 million for FY 2015 and as a result the unobligated balance at the end of each year respectively is calculated to be \$12.029 billion, \$13.118 billion and \$14.336 billion respectively; and

WHEREAS, this unobligated balance in the Reclamation Fund continues to grow at an increasing rate from an actual balance of \$5.67 billion at the end of FY 2006, to the estimated \$14.336 billion by the end of FY 2015, over a 150% increase; and

WHEREAS, under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principle means to finance federal western water and power projects with revenues from western resources and its receipts are derived from water and power sales, project repayments, certain receipts from public land sales, leases and rentals in the 17 western states, as well as certain oil and mineral-related royalties – but these receipts are only available for expenditure pursuant to annual appropriation acts; and

WHEREAS, with growing receipts in part due to high energy prices and declining federal expenditures for Reclamation purposes, the unobligated figure gets larger and larger, while the money is actually spent elsewhere for other federal purposes contrary to the Congress' original intent;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council asks the Administration and the Congress to fully appropriate the receipts and collections accruing to the Reclamation Fund subsequent to the Reclamation Act and other acts for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs -- recognizing and continuing to defer to the primacy of western water laws in allocating water among uses -- and work with the States to meet the challenges of the future.

BE IT FURTHER RESOLVED, that such "needs" may include the construction of Reclamation facilities incorporated as part of a Congressionally approved Indian water right settlement.

BE IT FURTHER RESOLVED, that the Administration and the Congress investigate the advantages of converting the Reclamation Fund from a special account to a true revolving trust fund with annual receipts to be appropriated for authorized purposes in the year following their deposit (similar to some other federal authorities and trust accounts).



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of the
WATER RESOURCES RESEARCH INSTITUTES
Helena, Montana
July 18, 2014

WHEREAS, in the West, water is a vital and scarce resource the availability of which has and continues to circumscribe growth, development, our economic well being and environmental quality of life; and

WHEREAS, the wise use, conservation, development and management of our water resources is critical to maintaining human life, health, safety and property; and

WHEREAS, water resources research, the dissemination and application of research results and technology transfer are increasingly important to meeting our present and future water needs; and

WHEREAS, the Water Resources Research Act of 1964 authorized a program that included the establishment of state water resources research institutes (WRRIs) or centers in each state to address our water resources challenges; and

WHEREAS, today's institutes and centers provide a research infrastructure that uses the capabilities of universities to greatly assist and provide important support to western state water agencies in long-term planning, policy development and management of the increasingly complex challenges associated with water in the West; and

WHEREAS, these challenges are exacerbated by the uncertainty surrounding population growth, climate, and economic and environmental water demands; and

WHEREAS, the Council and its member states continue to work with the institutes/centers and the academic community to ensure research investments are relevant to our most pressing water problems and allow each state to solve its problems by methods most appropriate to its own situation; and

WHEREAS, the institutes/centers' outreach and information transfer services and activities are very valuable to the water communities in the various western states; and

WHEREAS, this is a very worthwhile federal-state partnership that promotes collaboration, cooperation and the conservation of limited physical, financial and personnel resources;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council asks the Administration and the Congress to maintain the federal authorization and financial support for the state water resources research institutes program – requesting and appropriating funds as appropriate.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
CLEAN WATER ACT JURISDICTION
Helena, Montana
July 18, 2014**

WHEREAS, the Clean Water Act (CWA) is built upon the principle of cooperative federalism in which Congress intended the states, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers to implement the CWA as partners, delegating co-regulator authority to the states;

WHEREAS, the CWA's cooperative federalism framework has resulted in significant water quality improvements since the law's enactment in 1972, and western states have made great strides in protecting water quality and coordinating water quality and water quantity decisions; and

WHEREAS, states are best positioned to manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology, geology, and legal frameworks; and

WHEREAS, states have authority pursuant to their "waters of the state" jurisdiction to protect the quality of waters within their borders and such jurisdiction generally extends beyond the limits of federal jurisdiction under the CWA; and

WHEREAS, Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution;" and

WHEREAS, Section 101(g) of the CWA further provides that the primary and exclusive authority of each state to "allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act;" and

WHEREAS, current federal regulations, guidance, and programs pertaining to the CWA do not always recognize the specific conditions and needs in the West, where water can be scarce and a variety of unique waterbodies exist, including but not limited to small ephemeral washes, effluent-dependent streams, prairie potholes, playa lakes, and numerous man-made reservoirs, waterways, and water conveyance structures; and

WHEREAS, recent federal efforts to clarify the extent of CWA jurisdiction following the U.S. Supreme Court's decisions in *SWANCC v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006), have failed to include adequate state consultation in their development, despite repeated requests from the Western States Water Council to do so; and

WHEREAS, the considerable differences in hydrology, geology, and legal frameworks that exist among the western states mean that any effort to clarify CWA jurisdiction will invariably impact each state differently, thus underscoring the need to thoroughly involve states in developing regulatory language that clearly respects and avoids conflict with state authority over the regulation and allocation of waters within their respective borders; and

WHEREAS, any efforts to redefine or clarify CWA jurisdiction have, on their face, numerous federalism implications that have the potential to significantly impact states and alter the distribution of power and responsibilities among the states and the federal government, and therefore trigger federalism consultation with the states under Executive Order 13132; and

WHEREAS, as co-regulators, states are separate and apart from the general public, and deserve a unique audience with the federal government in the development and implementation of any federal effort to clarify or redefine CWA jurisdiction; and

WHEREAS, information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states;

NOW, THEREFORE BE IT RESOLVED that Congress and the Administration should ensure that any federal effort to clarify or define CWA jurisdiction:

1. Gives as much weight and deference as possible to state needs, priorities, and concerns;
2. Includes robust and meaningful state participation and consultation in its development and implementation. Such consultation should take place as early as possible and before the publication of any proposal for public comment, when irreversible momentum may preclude effective state participation and the consideration of alternate ways of meeting federal objectives. Federal CWA jurisdiction efforts should also acknowledge their inherent federalism implications and comply with Executive Order 13132's state consultation criteria.
3. Gives full force and effect to, and does not diminish or in any way detract from, the intent and purpose of CWA Sections 101(b) and 101(g).
4. Recognizes that Justice Kennedy's "significant nexus" test in *Rapanos* requires a connection between waters that is more than speculative or insubstantial to establish jurisdiction. Federal CWA jurisdiction efforts should also quantify "significance" to ensure that the term's usage does not extend jurisdiction to waters with a de minimis connection to jurisdictional waters.
5. Complies with the limits Congress and the U.S. Supreme Court have placed on CWA jurisdiction, while providing clear and recognizable limits to the extent of CWA jurisdiction.
6. Specifically excludes waters and features generally considered to be outside the scope of CWA jurisdiction, including:
 - (a) Groundwater;
 - (b) Farm ponds, stock ponds, irrigation ditches, and the maintenance of drainage ditches, as currently excluded under the CWA's agricultural exemption;
 - (c) Man-made dugouts and ponds used for stockwatering or irrigation in upland areas that are not connected to surface waters;
 - (d) Dip ponds that are excavated on a temporary, emergency basis to combat wildfires and address dust abatement; and
 - (e) Prairie potholes and playa lakes.
7. Acknowledges that states have authority pursuant to their "waters of the state" jurisdiction to protect excluded waters, and that excluding waters from federal jurisdiction does not mean that they will be exempt from regulation and protection.



W E S T E R N S T A T E S W A T E R C O U N C I L

5296 Commerce Drive, Suite 202 I Murray, Utah 84107 I (801) 685-2555 I FAX (801) 685-2559

Web Page: www.westernstateswater.org

August 11, 2014

Position No. 370

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW (1101A)
Washington, DC 20460

Jo Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

RE: Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices

Dear Administrator McCarthy and Assistant Secretary Darcy:

On behalf of the Western States Water Council, representing 18 western states on water policy issues, I am writing to comment on the interpretive rule your agencies adopted in March regarding agricultural exemptions under Section 404(f)(1)(A) of the Clean Water Act (CWA).

On June 3, EPA and Corps officials participated in a conference call with the Council to discuss the interpretive rule. The Council greatly appreciates your agencies' willingness to hold this call, which helped provide further clarification and insight into the intentions and motivations behind the rule. Based on the call, the Council understands that the rule is intended to identify agricultural exemptions under Section 404(f)(1)(A) that are in addition to existing agricultural exemptions under the CWA.

After further consideration, the Council believes the CWA's agricultural exemptions are operating appropriately. Notwithstanding your agencies' intentions, the interpretive rule has created a significant amount of confusion and uncertainty about the scope and applicability of the CWA's agricultural exemptions and their interaction with state water quality programs. Consequently, the Council respectfully requests that your agencies withdraw the interpretive rule to remove this uncertainty.

Please also note that the Council stands ready to help facilitate further dialogue between your agencies and the western states on ways to clarify and provide further guidance on the CWA's agricultural exemptions in a manner that creates less confusion.

Thank you for considering the Council's views on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick T. Tyrrell". The signature is fluid and cursive, with the first name "Patrick" being more prominent.

Patrick T. Tyrrell, Chairman
Western States Water Council



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
WATER-RELATED FEDERAL RULES, REGULATIONS,
DIRECTIVES, ORDERS and POLICIES
Helena, Montana
August 11, 2014**

WHEREAS, Presidential Executive Order 13132, issued on August 4, 1999, requires federal agencies to “have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications...”; and

WHEREAS, an increasing number of federal regulatory initiatives and directives are being proposed that threaten principles of federalism, an appropriate balance of responsibilities, and the authority of the states to govern the appropriation, allocation, protection, conservation, development and management of the waters within their borders; and

WHEREAS, taking such actions goes beyond the intent of the applicable laws; and

WHEREAS, a number of these recent proposals have been made with little substantive consultation with State Governments; and

WHEREAS, a Western Federal Agency Support Team (WestFAST) now comprised of twelve water-related federal agencies was created pursuant to a recommendation of the Western Governors’ Association and Western States Water Council to foster cooperation and collaboration between the federal agencies and States and state agencies in addressing water resource needs; and

WHEREAS, State consultation should take place early in the policy development process, with the States as partners in the development of policies; and

WHEREAS, federal agencies have inappropriately dismissed the need to apply this requirement to their rulemaking processes and procedures; and

WHEREAS, water quantity regulation and management are the prerogatives of States, and water rights are private property, protected and regulated under State law;

NOW, THEREFORE, BE IT RESOLVED, that nothing in any federal rule, regulation, directive, order or policy should affect, erode, or interfere with the lawful government and role of the respective States relating to: (a) the appropriation and allocation of water from any and all sources within their borders; and/or (b) the withdrawal, control, use, or distribution of water; and/or (c) affect or interfere with any interstate compact, decree or negotiated water rights agreement; and/or (d) application, development and/or implementation of rules, laws, and regulations related to water.

BE IT FURTHER RESOLVED, that federal agencies with water related responsibilities fully recognize and follow the requirements of Executive Order 13132 by establishing and implementing appropriate procedures and processes for substantively consulting with States, their Governors, as elected by the people, and their appointed representatives, such as the Western States Water Council, on the implications of their proposals and fully recognize and defer to States' prerogatives.