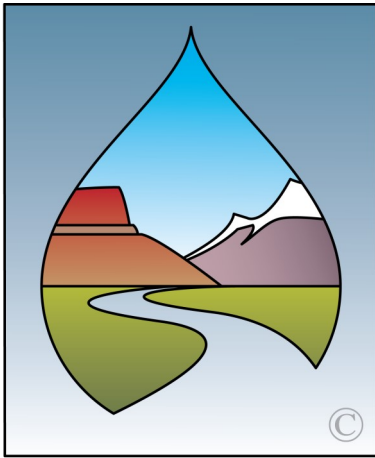


2018 WASHINGTON ROUNDTABLE



WESTERN STATES
WATER COUNCIL



Crystal Gateway Marriott
Arlington, Virginia
March 14-15, 2018



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: March 7, 2018
RE: Briefing Books for the 186th Council Meetings in Arlington, Virginia

This memorandum is notification that the briefing book for our meetings scheduled in Arlington, Virginia on March 14-15, 2018 is available on our meetings [webpage link](#). The minutes from our last meetings held in Albuquerque, New Mexico are posted on our website (under Past Meetings) for your review.

The meetings will begin on Wednesday morning, March 14, with abbreviated WSWC Committee meetings being held sequentially starting with the Water Resources Committee at 8:00 a.m. The Water Quality Committee meeting will begin at 8:45 a.m., followed by the Legal Committee, which will start at 9:30 am. The Interstate Council on Water Policy will be holding meetings concurrently in a different meeting room.

At 10:30 a.m. both organizations will join together for the joint ICWP-WSWC Water Planners' Conference. The morning session features panels on Data and Information Management and Groundwater Management.

The WSWC Executive Committee will meet over lunch at 12:00 p.m. All others will be on their own for lunch.

The joint ICWP-WSWC Water Planners' Conference continues in the afternoon with panels addressing: Water Supply Studies, Forecasting and Emergency Management; Landscape Conservation and Water Resources; Infrastructure; and Water and National Farm Policy.

The WSWC afternoon meetings will conclude with the Full Council meeting, which begins at 5:00 p.m.

A sponsored reception will be held at the hotel from 6:30 – 7:30 p.m., and all Council members and guests are invited to attend. Special thanks to our sponsors who include: Burns & McDonnell, HDR Engineering, Inc., Hazen & Sawyer, Olsson Associates, WilmerHale, and Xylem, Inc.

For your information, plans have not been made to provide our usual teleconference and webinars for these meetings. Due to the abbreviated schedule, powerpoint presentations have been eliminated. Special arrangements may be made for teleconferencing as appropriate, if requested.

On Friday morning, March 16 at 9:00 a.m., Council members are invited to meet with WestFAST agency principals at the Department of Commerce Herbert Hoover Building, Room 1412, located at 1401 Constitution Avenue, NW, Washington, D.C. The meeting will adjourn at 10:30 a.m.

We look forward to enjoyable and productive meetings in the Washington, DC area and hope you are able to join us. If you have any questions regarding these matters, please let us know.

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

**WESTERN STATES WATER COUNCIL
186th COUNCIL MEETING
Arlington, Virginia
March 14, 2018**

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- B. Membership List
- C. WSWC Policy Positions
Proposed Position
 - Wat Res - Supporting Forecast Informed Reservoir Operations (FIRO)
 - Wat Res - The Nation's Infrastructure Needs and Improvements
 - Wat Res - Supporting Critical Weather Station Networks and Related Data Programs

- Sunsetting Positions**
 - Wat Res #378 - Integrating Water and Energy Policy and Planning
 - Wat Res #379 - Supporting Federal Climate Adaptation Research
 - Legal #376 - Recognizing State Primacy over Ground Water

List of Current WSWC Policy Statements and Sunsetted Positions

- D. Budget
- E. WGA State-Federal Relationship Summit Update
- F. Wade Update / WSWC/WWAO Water Information Management Systems Workshop Report
- G. NOAA National Earth System Prediction Capability Workshop Report

FY2018-2019 Draft Committee Work Plans

- H. Water Resources
- I. Water Quality
- J. Legal
- K. Executive
- L. State Engagement with Federal Partners: Topics and Strategies
- M. Waters of the United States (WOTUS): State Outreach Meeting
- Mc. Western Governors' Association (WGA) Water-Related Policy Resolutions
- N. Waters of the United States (WOTUS): State Authorities
- O. Groundwater as a Conduit for Pollutants
- P. Water Quality-Quantity Nexus Workshop
- Q. WSWC-WestFAST Non-Tribal Federal Water Rights
- R. WSWC-NARF Tribal Water Rights Ad Hoc Group
- S. Legislation and Litigation Update
- T. Summary of WSWC Activities and Events
- U. Future WSWC Meetings
- V. State Reports
- W. Newsletter Index
- XYZ. Sunsetting Positions for Summer 2018 Meetings (#381 - #383)

SCHEDULE OF MEETINGS

WESTERN STATES WATER COUNCIL
186th COUNCIL MEETINGS
 Crystal Gateway Marriott Hotel
 Arlington, Virginia
 March 14-16, 2018

<u>Date</u>	<u>Time</u>	<u>Meeting</u>	<u>Room</u>	<u>Adjournment</u>
<u>Wednesday, March 14</u>				
	7:00 am	Registration and Continental Breakfast	Salons F & G	
	8:00 am	<i>ICWP Discussions (will be held concurrently)</i>	Salons F & G	10:25 am
	7:00 am	Registration and Continental Breakfast		
	8:00 am	Water Resources Committee	Salons J & K	8:40 am
	8:45 am	Water Quality Committee	Salons J & K	9:25 am
	9:30 am	Legal Committee	Salons J & K	10:15 pm
	10:30 am	Joint ICWP/WSWC Waster Planners' Conference	Salons J & K	12 00 pm
	12:00 pm	Executive Committee (<i>over lunch</i>)	Salon D	1:15 pm
	1:30 pm	Joint ICWP/WSWC Water Planner's Conference (<i>cont'd</i>)	Salons J & K	4:55 pm
	5:00 pm	Full Council Meeting	Salons J & K	6:25 pm
	6:30 pm	ICWP & WSWC Reception Sponsors: Burns & McDonnell HDR Engineering, Inc. Hazen & Sawyer Olsson Associates WilmerHale Xylem, Inc.	Rosslyn Room	7:30 pm
<u>Thursday, March 15</u>				
	8:00 am	Joint ICWP/WSWC Washington D.C. Roundtable - <u>Registration Required</u> (<i>Continental breakfast, lunch, break, and reception included</i>)	Salons J & K	4:00 pm
	4:45 pm	Congressional Panel Discussion with Key Committee Staff Rayburn House Office Building, Room 2403	Room 2403 RHOB	7:00 pm
<u>Friday, March 16</u>				
	9:00 am	WSWC and WestFAST Principals' Meeting		10:30 am
	10:30 am	WestFAST Principals Stand-Alone Meeting Room 1412, Department of Commerce Herbert C. Hoover Building 1401 Constitution Avenue, NW, Washington, DC		

AGENDA
WATER RESOURCES COMMITTEE
Crystal Gateway Marriott
Arlington, Virginia
March 14, 2018

Called to Order at: 8:00 a.m. (Eastern Time)
Conducting: Eric Millis, Vice Chair

Room: Salon J & K

TABS

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Proposed Positions –**
 - Supporting Forecast Informed Reservoir Operations (FIRO)
 - The Nation's Infrastructure Needs and Improvements
 - Supporting Critical Weather Station Networks and Related Data Programs

Sunsetting Positions –

#378	WR	4/17/2015	Integrating Water and Energy Policy and Planning
#379	WR	4/17/2015	Supporting Federal Climate Adaptation Research
#380	L	4/17/2015	Recognizing State Primacy over Groundwater
- E 4. **WGA State-Federal Relationship Summit Update – Tony Willardson**
- Mc 5. **Western Governors' Association (WGA) Water-Related Policy Resolutions – Tony Willardson**
- F 6. **WaDE Update/WSWC-WWAO Water Information Management Workshop Report – Sara Larsen**
- G 7. **NOAA National Earth System Prediction Capability Workshop Report – Tony Willardson**
8. **WSWC/CDWR S2S Precipitation Forecasting Workshop – Tony Willardson (May 14-17, 2018 in San Diego, CA)**
- H 9. **FY2018-2019 Water Resources Committee Work Plan – Eric Millis**
- L 10. **State Engagement with Federal Partners: Topics and Strategies – Eric Millis**
- XYZ 11. **Sunsetting Positions for 2018 Summer Meetings - #381 - #383**
12. **Other Matters/Adjourn**

AGENDA

WATER QUALITY COMMITTEE MEETING

Crystal Gateway Marriott

Arlington, Virginia

March 14, 2018

Call to Order at: 8:45 am (Eastern Time)
Conducting: Kent Woodmansey, Chair

Room: Salon J & K

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- M 3. **EPA WOTUS: State Outreach Meeting** – Tony Willardson
- N 4. **EPA WOTUS: State Authorities** – Michelle Bushman
- O 5. **Groundwater as a Conduit for Pollutants** – Kent Woodmansey
- Mc 6. **Western Governors' Association (WGA) Water-Related Policy Resolutions** –
Tony Willardson
- P 7. **Water Quality-Quantity Nexus Subcommittee** – David Schade
 - a. Oregon Workshop
- I 8. **FY2018-2019 Water Quality Committee Work Plan** – Kent Woodmansey
- L 9. **State Engagement with Federal Partners: Topics and Strategies** – Kent
Woodmansey
10. **Other Matters**

AGENDA

LEGAL COMMITTEE MEETING

Crystal Gateway Marriott

Arlington, Virginia

March 14, 2018

Call to Order at: 9:30 am (Eastern Time)
Conducting: Jennifer Verleger, Chair

Room: Salon J & K

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Position** – Jennifer Verleger
#380 – Recognizing State Primacy over Groundwater
4. **National Water Supply Alliance Update** – Jennifer Verleger
- Q 5. **WSWC-WestFAST Non-Tribal Federal Water Rights Workgroup** – Roger
Pierce
- R 6. **WSWC-NARF Tribal Water Rights Ad Hoc Group** – Michelle Bushman
- J 7. **FY2018-2019 Legal Committee Work Plan** – Jennifer Verleger
- S 8. **Legislation and Litigation Update / Catskills III** – Michelle Bushman
- L 9. **State Engagement with Federal Partners: Topics and Strategies** – Jen Verleger
10. **Other Matters**

AGENDA
EXECUTIVE COMMITTEE
Crystal Gateway Marriott
Arlington, Virginia
March 14, 2018

Call to Order at: 12:00 p.m. (Eastern Time)
Conducting: Jerry Rigby, Chair

Room: Salon D

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- D 3. **Report on Budget and Finances** – Tim Davis
 - a. FY2017-2018 Budget Update / Dues Report
 - F b. WaDE/EN Grants Status Report
 - c. NASA Grant Subaward on Cloud Technology and Specific Platforms
 - d. CDWR S2S Workshop Agreement
 - e. Proposed FY2018-2019 Budget
- C 4. **Proposed Positions** – Jerry Rigby
 - WR Supporting Forecast Informed Reservoir Operations (FIRO)
 - WR The Nation's Water Infrastructure Needs and Improvements
 - WR Supporting Critical Weather Station Networks and Related Data Programs

Sunsetting Positions – Tony Willardson

#378	WR	4/17/2015	Regarding Integrating Water and Energy Policy and Planning
#379	WR	4/17/2015	Supporting Federal Climate Adaptation Research
#380	WR	4/17/2015	Recognizing State Primacy over Groundwater
- Mc 5. **Western Governors' Association (WGA) Water-Related Policy Resolutions** – Tony Willardson
6. **Nominating Subcommittee** – Pat Tyrrell
- T 7. **Executive Director's Report/WSWC Activities and Events** – Tony Willardson
8. **WestFAST Liaison Position/Transition/Alternatives** – Tony Willardson
- U 9. **Future WSWC Meetings**
 - a. WSWC/CDWR S2S Precipitation Forecasting Workshop – May 14-17, 2018 – San Diego, CA
 - b. Summer Council Meetings and WQ2 Workshop – August 1-3, 2018 - Newport, Oregon
- K 10. **FY2018-2019 Executive Committee Work Plan** – Jerry Rigby
- L 11. **State Engagement with Federal Partners: Topics and Strategies** – Jerry Rigby
- XYZ 12. **Summer 2018 Meeting Sunsetting Positions** (adopted July 2015)

#381	WR	7/10/2015	Regarding the Rural Water Supply Project/Infrastructure Needs
#382	WQ	7/10/2015	Regarding Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
#383	E	7/10/2015	A Vision on Water
13. **Other Matters**

AGENDA

186th COUNCIL MEETING

Crystal Gateway Marriott
Arlington, Virginia
March 14, 2018

Call to Order at: 5:00 p.m. (Eastern Time)
Conducting: Jerry Rigby, Chair

Room: Salon J & K

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
3. **Committee Reports – Action Items**
 - C, H a. Water Resources Committee – Eric Millis
 - C, I b. Water Quality Committee – Kent Woodmansey
 - J c. Legal Committee – Jennifer Verleger
 - C, K d. Executive Committee – Tim Davis
4. **WestFAST Report** – Kevin Werner, WestFAST Chair, and Roger Pierce, WestFAST Liaison
- L 5. **State Engagement with Federal Partners: Topics and Strategies** – Jerry Rigby
- V 6. **State Reports**
- U 7. **Future Council Meetings** – Jerry Rigby
- XYZ 8. **Sunsetting Positions for Summer 2018 Meetings**
9. **Other Matters**



WESTERN STATES WATER COUNCIL

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Web Page: www.westernstateswater.org

MEMORANDUM

TO: Council Members
FROM: Tony Willardson, Executive Director
DATE: February 12, 2018
RE: **30-Day Notice of Spring (186th) Council Meetings and ICWP/WSWC DC Roundtable**

This memo is notification that the 186th meetings of the Western States Water Council will be held in Arlington, Virginia on March 14, 2018. In keeping with the WSWC rules of organization, any external policy positions to be proposed for Council consideration must be included with this 30-day notice.

Three newly proposed draft positions are attached for your consideration. The first concerns support of the use of innovative and forecast informed reservoir operations (FIRO) by public and private entities. The second supports collaboration and leadership at all government levels – federal, state, tribal, and local – and the private sector – to address the Nation’s infrastructure needs and establishing water infrastructure improvements as a public policy priority. A third proposed position supports federal funding and support for critical weather station networks and related data programs.

In addition, the following positions are scheduled to sunset at this meeting, if not renewed.

Position #378 - regarding integrating water and energy planning and policy;

Position #379 - supporting federal climate adaptation research; and

Position #380 – recognizing state primacy over groundwater.

All of the sunseting positions are also attached and are available on our [website](#). During the meetings, we will consider revision and readoption of the sunseting positions. 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 sunseting positions, as well as the draft proposed positions will be held on **Friday, February 16, at 10:30 a.m. Mountain Time** (9:30 am Pacific; 11:30 am 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 and the joint ICWP/WSWC Water Planners’ Conference and DC Roundtable are being held at the Crystal Gateway Marriott Hotel in Arlington, Virginia. The group room rate is \$253 per night. Room reservations at the Crystal Gateway Marriott may be secured online, within the WSWC room block, via this link: [online group reservations system](#). Alternatively, you may call Marriott’s Reservations toll free number – 1-800-228-9290, and be sure to mention the Western States Water Council block. **Please note that the cut-off date for booking your room is February 13, 2018.** After this date there is no guarantee for the special rate or room availability. Cancellation or changes in arrival and/or departure dates must be received by 3:00 pm EST 72 hours in advance to avoid one night’s room and tax charge to the guarantee credit card. Please secure your reservations by Tuesday, February 13th.

Registration is required for all meeting attendees. The early registration fee, by February 13th, is \$325 for representatives of the WSWC and ICWP. We're offering a "Colleague Discount" of \$50 each for two or more members/ reps from the same agency. The fee for non-members is \$375. For those registering for one day only, the Water Planners' Conference fee is \$175, while the Roundtable fee is \$200. The fees increase beginning February 14th. The registration form and link to online payment are available on our meetings [webpage link](#).

Attached is a draft agenda and schedule for the meetings. WSWC Committee meetings will be held on Wednesday morning and will follow an abbreviated schedule to allow time for a joint Interstate Council on Water Policy (ICWP) and WSWC Water Planners' Conference. The Water Resources Committee will meet at 8:00 a.m., followed by the Water Quality Committee at 8:45 am and the Legal Committee at 9:30 a.m. The joint Water Planners' Conference will begin at 10:30 a.m. with a break for lunch and will continue in the afternoon. Members of the WSWC Executive Committee will meet over lunch as is customary. Following the afternoon session of the Water Planners' Conference, the Full Council will meet at 5:00 p.m. A sponsored reception for all WSWC and ICWP members and guests will be held in the hotel starting at 6:30 p.m.

Each state is requested to 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**. Written state reports should be submitted no later than **February 28, 2018**. Given our abbreviated schedule, state reports may or may not be presented orally during the full Council meeting.

The WSWC Committee meetings will not involve powerpoint presentations, and no webinar services will be provided. Unless requested no teleconference service will be available for the Committee meetings. Please let us know in advance if you would like to participate by phone. Note, however, that the committee meetings are being held between 8:00 am – 10:15 am Eastern time.

Furthermore, briefing books will be made available for download from the meetings [webpage link](#). If you wish to receive a hard copy of the briefing book, please contact Julie at jgroat@wswc.utah.gov by **March 2nd** so that a book may be sent to you in advance of the meetings, or made available for pick-up on site.

The Joint ICWP-WSWC DC Roundtable on March 15th will provide an excellent opportunity for informal interchange and discussion with high level federal representatives of the Department of Agriculture, Department of the Interior, the National Aeronautic and Space Administration, the National Oceanic and Atmospheric Administration, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the White House Council on Environmental Quality. A panel discussion with key Congressional Committee staff will be held at 4:45 pm in Room 2043 Rayburn House Office Building (HOB). A reception in the same room will be held for all ICWP and WSWC members and guests and Congressional staff from 5:30 pm – 7:00 pm. We wish to acknowledge and express our appreciation to our meeting sponsors.

On Friday morning, Council members are invited to meet with WestFAST agency principals from 9:00 a.m. – 10:30 a.m. in the Department of Commerce Herbert C. Hoover Building located at 1401 Constitution Avenue, NW. in Room 1414.

We look forward to interesting and productive meetings in Washington, D.C. Please contact me at twillardson@wswc.utah.gov if we can be of any assistance or answer any questions.

Attachments

Tab B – Membership List

WESTERN STATES WATER COUNCIL

MEMBERSHIP LIST

March 7, 2018

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**
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ALASKA

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*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.

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MONTANA

***Honorable Steve Bullock**

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John Stulp - Colorado
Hal Simpson - Colorado
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Jerry Rigby - Idaho
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David Barfield - Kansas
Tim Davis - Montana
Jeff Fassett - Nebraska
Jason King - Nevada
Roland Westergard - Nevada
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Tom Blaine - New Mexico
Garland Erbele - North Dakota
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
Steve Pirner - South Dakota
Kent Woodmansey - South Dakota
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Jon Niermann - Texas
Eric Millis - Utah
Maia Bellon - Washington
Patrick T. Tyrrell - Wyoming

Management Subcommittee

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Jeanine Jones
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Tim Davis
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Tony Willardson
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Pat Tyrrell
 (Former Chair)

Nominating Subcommittee

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

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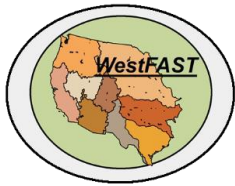
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Tab C – WSWC Policy Positions



DRAFT
RESOLUTION
of the
WESTERN STATES WATER COUNCIL
to Support the Use of
FORECAST INFORMED RESERVOIR OPERATIONS and INNOVATIONS
Arlington, Virginia
March 14, 2018

WHEREAS, Western States experience great variability in precipitation, with serious impacts and consequences for the operation of water projects, particularly aging water infrastructure, as well as water supply and emergency planning and management, drought and flood preparedness and response, and other public and private decisions; and

WHEREAS, decisions to operate water projects to protect life and property by reducing flood risks, while at the same time maximizing water supply storage, including carryover storage, impact billions of dollars of economic investments in the West to maintain and protect municipal and industrial centers, agriculture, hydropower generation, and fisheries; and

WHEREAS, these investments depend on our ability to observe, understand, model, predict, and adapt to precipitation variability on operational time scales ranging from hours to days, weeks and months, seasons and longer; and

WHEREAS, observations, modeling, high-performance computing capabilities, research, and demonstration projects are essential to significantly improving operational forecasting of precipitation to maximize the use of our existing water storage projects to reduce flood damages, mitigate economic and environmental damages, and maximize water storage and water use efficiently; and

WHEREAS, operating aging water infrastructure effectively in the face of growing and often competing water supply and water management and flood protection demands requires that state, federal, tribal, and local agencies optimize operations and seek innovative alternative strategies to support their decision-making; and

WHEREAS, project operations and alternatives may include, but are not limited to, using enhanced forecasting capabilities to better inform reservoir operators, operations, and actions – to dynamically determine reservoir levels to improve storage opportunities, and to alter static reservoir operating rule curves and requirements based on updated hydrologic information.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports the use of innovative and forecast informed reservoir operations by public and private entities at all levels to maximize the effective and efficient use of our existing and future infrastructure to benefit our myriad and growing economic uses of water, while at the same time balancing and protecting our need for public health and safety, as well as a resilient and healthy environment.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
WATER INFRASTRUCTURE FUNDING**

DRAFT

**Arlington, Virginia
March 17~~4~~, 2018**

WHEREAS, maintaining and delivering sufficient water supplies of suitable quality is key to the West's economic prosperity, environmental needs, and our quality of life, both now and in the future; and

WHEREAS, appropriate water-related infrastructure investments ensure our continued ability to store, manage, conserve, and control water during both floods and droughts – as well as protect and treat our water resources; and

WHEREAS, existing and new infrastructure is critical to meet drinking water, wastewater treatment, irrigation, hydropower, flood control, interstate compact, tribal and international treaty, fish and wildlife habitat needs; and

WHEREAS, the West depends on an intricate and aging system of weirs, diversions, dams, reservoirs, pipelines, aqueducts, pumps, canals, laterals, drains, levees, ~~stormwater works~~, wells, stormwater systems and water and wastewater treatment, ~~wastewater~~ and hydroelectric power plants; and

WHEREAS, water infrastructure in the West is financed and maintained under a complex network of state, tribal, local, private, and federal ownership, benefitting a broad segment of water users and other stakeholders;

WHEREAS, inconsistent, inadequate, and untimely funding increases project construction and financing costs, as well as risk, including the failure of critical infrastructure; and

WHEREAS, substantial and sustained investments in water project construction, maintenance, rehabilitation and replacement is necessary and pays long-term dividends to the economy, public health and safety, and the environment; and

WHEREAS, water infrastructure systems require ongoing, thoughtful investments to account for life-cycle costs, and should be managed with planned retirement or replacement in mind; and

WHEREAS, existing federal, state and local programs to publicly finance water-related infrastructure projects are crucial, but insufficient to meet water quality and water resources management challenges related to future growth, including municipal, industrial, agricultural, environmental, and energy needs; and

WHEREAS, the federal government has a significant role to play in financing and cost-sharing

| [for](#) water-related infrastructure given federal economic and environmental objectives, federal tribal trust and treaty obligations, other past commitments, and federal regulatory mandates; and

WHEREAS, aging federal water infrastructure has deteriorated – due to underfunded and deferred maintenance, repair, and replacement needs – and in many cases has exceeded its useful lifespan, raising public health and safety issues, risking loss of life and threatening public and private property; and

WHEREAS, federal financial resources are limited and many authorized federal water infrastructure projects have not been started or remain incomplete for decades due to inconsistent, incremental, or insufficient appropriations; permitting and licensing backlogs; duplicative environmental reviews; litigation delays; and oversight by multiple federal agencies without adequate interagency coordination; and

WHEREAS, current federal budget scoring guidelines assess the full cost of infrastructure investments up front, while disproportionately discounting long-term economic, public health and safety, and environmental benefits – sometimes making new water project investments challenging to justify financially; and

WHEREAS, local water district and state agency investments, private capital markets, performance-based contracting, and other alternatives offer help to close the federal funding, delivery, and maintenance gaps, and meet some of our national water infrastructure needs in partnership with federal agencies; and

WHEREAS, such partnerships have the potential to reduce overall project development costs and risks associated with such capital investments, expedite project delivery and associated water resource benefits, improve efficiencies and cost effectiveness, and maximize the respective strengths of the public and private sectors; and

WHEREAS, opportunities exist to leverage federal and non-federal funding through grants, loans and credit enhancements, as well as provide greater access to private sources of financing; and

WHEREAS, there is no one-size-fits-all program, but several federal financial and technical assistance programs, grants, loans, cost-share programs, and federal-state-local or public-private partnerships have proven beneficial to the timely completion and ongoing maintenance of infrastructure projects at all scales; and

WHEREAS, federal agencies often lack legislative authority to dedicate a sustained revenue stream to assure non-federal investors are fairly compensated for the costs and risks of constructing or maintaining federal water projects, sometimes requiring approval through an act of Congress to proceed.

NOW, THEREFORE, BE IT RESOLVED that the Council supports collaboration and leadership at all government levels – federal, state, tribal, and local – and the private sector – to address the Nation’s infrastructure needs and establish water infrastructure improvements as a public policy priority.

BE IT FURTHER RESOLVED that the Council supports appropriate federal investments in water-related infrastructure projects and programs that provide jobs and economic security, while protecting the environment.

BE IT FURTHER RESOLVED, that the Administration and Congress should work together to ensure adequate, stable, and continuing federal appropriations for constructing, maintaining, and replacing critical federal water projects and to assist States and local governments as they address their water infrastructure needs.

BE IT FURTHER RESOLVED that the Council encourage Congress and the Administration to continue to work together and with States to streamline permitting processes and coordinate environmental and other regulatory reviews to eliminate duplicative procedures, reduce costs of compliance and construction, and ensure timely completion, maintenance, or relicensing of authorized infrastructure projects so vital to the West and the Nation.

BE IT FURTHER RESOLVED that the Council supports the creation and maintenance of dedicated water infrastructure funding through special accounts with dedicated receipts to be promptly appropriated for authorized purposes following their deposit, as well as a variety of grant, loan, credit enhancement and other financial incentive programs to [help](#) meet diverse needs at all scales.

BE IT FURTHER RESOLVED that the Council supports appropriate infrastructure asset management and capital budgeting.

BE IT FURTHER RESOLVED that the Council supports a method of congressional budget scoring that considers the unique timing of the costs and benefits of water infrastructure investments, and accounts for long-term public health and safety, economic and environmental benefits, with fair and appropriate discounting.



DRAFT RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in Support of
WEATHER STATION NETWORKS
Arlington, Virginia
March 14, 2018

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

WHEREAS, sound decision-making to protect life and property and to inform decisions involving billions of dollars of economic activity involving urban centers, agricultural production, and fisheries depends on our ability to observe, understand, model, predict and adapt to precipitation variability; and

WHEREAS, data made available by weather station networks of all kinds operated by federal and state agencies, local interests, volunteer private observers, and universities that span the West is critical for sound decision-making; and

WHEREAS, at the local scale the National Weather Service's (NWS') Cooperative Observer Program – the nation's oldest and largest weather network -- collects critical information on precipitation intensity that supports design of community flood control infrastructure and planning for flood hazard mitigation, especially in rural areas; and

WHEREAS, at the global scale NWS geostationary and polar-orbiting weather satellites capture the data needed to make hourly to two-week forecasts, and issue public safety warning and watches; and

WHEREAS, the U.S. Bureau of Reclamation's Agrimet network is an example of an agroclimate network of weather stations whose data can be used for improving water planning and water use efficiency in the agricultural sector, conserving water, improving crop yields, reducing pesticide and fertilizer application, and reducing energy costs for growers; and

WHEREAS, weather station network data serve as an important and efficient ground-truthing, calibration, and model validation tool for analysis of information products derived from satellite and remote-sensing platforms such as Landsat and others; and

WHEREAS, network observations can provide near real-time information for estimation of vegetation evapotranspiration (ET) and in-the-field crop water use, that can be used to

optimize production and increase the efficiency of irrigation, and are used extensively by irrigation districts, farmers, resource conservation agencies, municipal and state entities, and agricultural consultants; and

WHEREAS, agricultural water use is the largest consumptive use of water in the West, and weather stations and other observing systems that aid in water conservation and more efficient use of water will be a critical tool for meeting future water supply and water quality challenges posed by growing needs for food and fiber; and

WHEREAS, many of the nation's weather observing networks suffer from the challenges of aging instrumentation infrastructure, deferred maintenance, need for technology upgrades, and budgets that fail to keep up with observing system needs, making it difficult to maintain data continuity for users; and

WHEREAS, weather station networks operate very efficiently and yield public safety and water supply benefits that are much greater than the cost of their operation providing significant value to their users.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council expresses its continuing support for critical weather station network observations and programs and urges the Administration, Congress, and supporting partners at all levels, to give a high priority to the allocation and appropriation of funds for their continued operation and expansion.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
Integrating Water and Energy Planning and Policy**
Tulsa, Oklahoma**Arlington, Virginia**
April 17, 2015**March 14, 2018**

WHEREAS, the West enjoys diverse and abundant energy resources, including renewable and non-renewable resources, but water is scarce in much of the region and may or may not be sufficient for all proposed uses; and

WHEREAS, power plant cooling and other energy resource development and related water requirements can be significant on state, local and westwide scales; and

WHEREAS, the West is a leader in the planning, development, diversification, management and protection of the Nation's water and energy resources; and

WHEREAS, in the West, maintaining adequate and sustainable supplies of clean water and energy present interrelated challenges given a growing population, increasing water and energy demands, and an uncertain climate subject to multi-year drought and other extremes; and

WHEREAS, an integrated approach to water and energy resource planning, development, diversification, management and protection is necessary to achieve a thriving and sustainable future for the West; and

WHEREAS, effectively planning for the future requires gathering and integrating data and information on past, present and future water and energy supplies and demands, including embedded demands by different sectors/uses and users; and

WHEREAS, in general, current water use data (especially consumptive water use data) are not sufficient for detailed and comprehensive analyses to support many water/energy decisions and policymakers' needs; and

WHEREAS, the Western Governors' Association (WGA), Western States Water Council (WSWC), Department of Energy (DOE), Sandia National Laboratories (and other DOE laboratories), Western Interstate Energy Board (WIEB), Western Electric Coordinating Council (WECC), Electric Reliability Council of Texas (ERCOT) and others have worked collaboratively to develop a better understanding of water and energy supplies and demands; and

WHEREAS, public-private partnerships are increasingly important in addressing our future water and energy challenges; and

WHEREAS, there is a continuing need for federal and state water and energy resource agencies, public utility commissions, and other planners, regulators and policymakers to better

define and consider the nexus between water and energy resources in their respective areas of jurisdiction; and

WHEREAS, continuing water and energy nexus research and development is needed to further our understanding and evaluate the effectiveness of different policies and programs given various future scenarios;

NOW THEREFORE BE IT RESOLVED, that western water and energy planners, policymakers, managers and regulators should consider the following:

- (1) integrating water and energy policies and engaging water and energy planners to maximize program and project effectiveness and efficiencies;
- (2) supporting new and continuing data gathering, analyses and research related to better understanding water and energy supplies and demands, and related science;
- (3) promoting integrated water and energy conservation and use efficiency;
- (4) seeking to minimize economic, environmental and other costs of providing adequate, reliable and sustainable supplies of water and energy;
- (5) expanding public education, engagement and outreach to highlight the importance, vulnerability and interrelated nature of our water and energy resources;
- (6) ensuring decisions related to the siting, construction and operation of water and energy development projects include an evaluation and appropriate consideration of the interrelated impacts of such development;
- (7) tailoring the use of alternative cooling technologies and other energy-related options to the availability of water, and the related opportunity costs related to other water uses;
- (8) seeking to develop a diversified portfolio of water and energy resources and assets to maximize reliability and flexibility;
- (9) taking advantage of synergies and economies of scale related to integrating water and energy conservation, development and protection programs and projects;
- (10) evaluating and integrating life-cycle costs related to water and energy supply development, conveyance and transmission;
- (11) integrating short and long-range water and energy supply planning;
- (12) promoting the development and use of “smart” technologies for management of water and energy demands and production; and
- (13) ensuring that the West maintains sustainable, reliable and robust infrastructure systems necessary to deliver adequate supplies of clean water and energy to meet present and future needs.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
SUPPORTING FEDERAL RESEARCH ON
CLIMATE ADAPTATION**

~~Tulsa, Oklahoma~~Arlington, Virginia
~~April 17, 2015~~March 14, 2018

WHEREAS, climate variability ~~and change~~ have serious potential consequences for water supply availability, water resources planning and management, water rights administration, flood management, and water quality management; and

WHEREAS, much of the West's water infrastructure was designed and constructed prior to our current understanding of climate variability ~~and change~~, often from short hydrologic records from the first half of the 20th century; ~~and~~

WHEREAS, ~~the~~ impacts of climate variability ~~and change~~ can include increased frequency and intensity of severe weather (droughts and floods), reduction of mountain snowpacks, changes in timing and amount of snowmelt runoff, and changes in plant and crop evapotranspiration resulting in changed water demand patterns; and

WHEREAS, climate variability ~~and change~~ are additional stressors on western water resources, which are already challenged by population growth, competition for scarce resources, increasingly stringent environmental regulations, and other factors; and

WHEREAS, water resources ~~management and~~ planning ~~and management~~ at all levels of government and sound future decision-making depend on our ability to understand, monitor, predict, and adapt to climate variability ~~and change~~; and

WHEREAS, the Council has over the years co-sponsored several workshops to gather input on climate adaptation and research needs, including research on extreme events; and

WHEREAS, these workshops and various federal reports have helped in identifying knowledge gaps, research needs, opportunities to improve planning capabilities, and other activities that would assist in climate ~~change~~ adaptation including those that could impact water quality and thus, available water supply; and

WHEREAS, applied research needs and improvements to water resources planning capabilities include subjects such as evaluation of modifications to reservoir flood control rule curves, evaluation of the adequacy of existing federal hydroclimate monitoring networks, improvements to extreme precipitation observing networks and forecasting capabilities, development and improvement of applications for remote sensing data (satellite imagery), preparation of reconstructed paleoclimate datasets for drought analyses, and development of new guidelines for estimation of flood flow frequencies; ~~and~~

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports state and federal applied research and hydroclimate data collection programs that would assist water agencies at all levels of government in adapting to climate variability and ~~change~~ making sound scientific decisions.



**POSITION
of the
WESTERN STATES WATER COUNCIL
on
STATE PRIMACY OVER GROUNDWATER**

**Tulsa, Oklahoma~~Arlington, Virginia~~
April 17, 2015~~March 14, 2018~~**

WHEREAS, groundwater is a critically important natural resource that is vital to the economy and environment of the arid West;

WHEREAS, the Desert Land Act of 1877 and the United States Supreme Court in *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935) recognize States have exclusive authority over the allocation and administration of rights to the use of the groundwater within their borders and States and their political subdivisions are primarily responsible for the protection, control and management of the resource;

WHEREAS, the Congress has created and the U.S. Supreme Court has recognized federal reserved rights to surface water, but no federal statute has addressed nor federal appeals court explicitly recognized any federal property or other rights related to groundwater; and

WHEREAS, the regulatory reach of federal statutes and regulations, including but not limited to the Clean Water Act, Endangered Species Act, Multiple-Use Sustained-Yield Act, National Environmental Policy Act, Organic Administration Act (USFS), Reclamation Act of 1902, Safe Drinking Water Act, Wild and Scenic Rivers Act, Wilderness Act and the Comprehensive Environmental Response, Compensation, and Liability Act, were never intended to infringe upon state ownership or control over groundwater; and

WHEREAS, States recognize the importance of effective groundwater management and are in the best position to protect groundwater quality and allow for the orderly and rational allocation and administration of the resource through state laws and regulations that are specific to their individual circumstances; and

WHEREAS, working cooperatively with their federal partners, states have shown that they have the ability and authority to address federal needs regarding groundwater within existing legal frameworks, including but not limited to memoranda of understanding, water rights compacts, stipulations, and other methods; and

WHEREAS, the conditions affecting groundwater supplies, demands, and impairments vary considerably across the West and within individual states; and

WHEREAS, federal efforts to exert control over or ownership interests related to groundwater or otherwise infringe upon or supersede state [rights to the use of groundwater or state groundwater management laws and authorities](#) are contrary to federal law and threaten effective groundwater management and protection; and

WHEREAS, nothing stated in this position is intended to apply to the interpretation or application of any interstate compact, [court decrees, international treaty or tribal settlement agreement](#).

~~**NOW THEREFORE BE IT RESOLVED**~~**WHEREAS**, states have exclusive authority over the allocation and administration of rights to the use of the groundwater located within their borders and are primarily responsible for allocating, protecting, managing and otherwise controlling the resource; and

~~**NOW THEREFORE BE IT FURTHER RESOLVED**~~, that the Western States Water Council opposes any and all efforts that would establish a federal ownership interest in groundwater not otherwise recognized or allowed under state law, or diminish the primary and exclusive authority of States over groundwater; and

BE IT FURTHER RESOLVED, that federal agencies should work cooperatively with appropriate state agencies and officials to address federal needs involving groundwater through state laws and authorities.

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.)
416	L	10/20/2017	Outlining actions Federal agencies should take to expedite State General Stream Adjudications
415	L	10/20/2017	Supports the Dividing the Waters Program
414	WQ	10/20/2017	Asserting state primacy on Protecting Ground Water Quality
413	WR	10/20/2017	Regarding Farm Bill conservation programs and water resources
412	L	10/20/2017	Supporting Indian Water Rights Settlements
411	E	6/29/2017	Emphasizes state primacy over water resources and request that federal agencies establish and implement appropriate procedures and processes for substantively consulting with the states
410	WQ	6/29/2017	sections 101(b) and 101(g), as well as robust and meaningful state participation and consultation
409	WR	6/29/2017	Requests Congress maintain federal authorization and financial support for the U.S. Geological Survey (USGS) State Water Resources Research Institutes program
408	WR	6/29/2017	Requests Congress fully appropriate receipts accruing to the Reclamation Fund for their intended purpose
407	WR	6/29/2017	Supports federal research and the development of updated hydroclimate guidance for floods and droughts
406	L	6/29/2017	Opposes any federal legislation intended to preempt state water law
405	WR	4/14/2017	Regarding the Rural water and wastewater project/infrastructure needs and U.S. Department of Agriculture programs
404	WQ	4/14/2017	Regarding the clean and drinking water state revolving funds and state and tribal assistance grants
403	WR	4/14/2017	Regarding the National Levee Safety Act of 2007, levees and canal structures
402	WR	4/14/2017	Regarding the transfer of federal water and power projects and related facilities
401	WR	4/14/2017	Regading the Reclamation Safety of Dams Act of 1978
400	WR	4/14/2017	Regarding the Bureau of Reclamation's maintenance, repair and rehabilitation needs
399	WR	4/14/2017	Urging Congress to support subseasonal to seasonal weather research, forecasting, and innovation
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, and provide for 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	3/22/3016	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

Sunsetted Positions

2017

- #373 Letter commenting on the proposed rule developed by the EPA and the USACE to clarify the scope of Clean Water Act jurisdiction.
- #372 Letter sending comments on the USFS Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560. (*Forest Service has withdrawn their activity*)
- #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. (*proposed rule was withdrawn*)

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. *(superseded 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 FY2018-2019 Budget

		FY 2017 Actual Total Income / Expense		FY 2017 Actual Jun - December 31. 2017	Approved Budget FY2018	Estimated FY2018 Expenses/Income		Proposed Budget FY2019	% Change from FY2018 Estimated Expenditures
INCOME									Over / -Under
Member States Assessments	1	\$ 510,000.00	1	\$ 435,000.00	\$ 510,000.00	\$ 510,000.00		\$ 510,000.00	0.00%
Newsletter		\$ 3,500.00		\$ 1,100.00	\$ 2,900.00	\$ 2,600.00		\$ 2,500.00	-3.85%
EPA EN Contracts		\$ 132,168.91		\$ 69,250.50	\$ 128,000.00	\$ 96,000.00		\$ 75,000.00	-21.88%
CDWR Contracts (CIMIS & S2S) / S2S		\$ 108,777.50		\$ -	\$ 46,000.00	\$ -		\$ -	#DIV/0!
NASA JPL Contract		\$ -		\$ -		\$ 40,000.00		\$ -	
Council Meeting Sponsors		\$ 6,376.06		\$ 2,000.00	\$ 7,000.00	\$ 6,500.00		\$ 6,000.00	-7.69%
Miscellaneous Income		\$ -		\$ 3,181.00	\$ -	\$ 3,181.00		\$ -	-100.00%
Symposium (WSWC / NARF)		\$ -		\$ 25,550.00	\$ 30,000.00	\$ 25,550.00		\$ -	\$ (1.00)
Symposium (Infrastructure)		\$ -		\$ -	\$ -	\$ -		\$ -	
Symposium/Workshop Sponsors		\$ -		\$ 2,500.00	\$ 20,000.00	\$ 19,500.00		\$ 20,000.00	
Interest		\$ 6,163.81		\$ 4,207.98	\$ 4,000.00	\$ 6,000.00		\$ 6,500.00	8.33%
Other - Water Funders Agreement		\$ -		\$ -	\$ -	\$ -		\$ 50,000.00	
TOTAL INCOME		\$ 766,986.28		\$ 542,789.48	\$ 747,900.00	\$ 709,331.00		\$ 670,000.00	-5.54%
EXPENSE									
Accounting		\$ 8,700.00			\$ 9,000.00	\$ 8,700.00		\$ 9,000.00	3.45%
Annual & Sick Leave Funding (HRA)				\$ 3,409.59	\$ -	\$ 3,410.00		\$ -	
Audit	2	\$ 8,540.00	2		\$ 8,670.00	\$ 8,670.00		\$ -	
Contingencies		\$ 4,072.98		\$ 2,624.10	\$ 5,800.00	\$ 5,800.00		\$ 5,800.00	0.00%
Contract Services		\$ 8,401.65		\$ 12,790.00	\$ 58,310.00	\$ 28,400.00		\$ 29,000.00	2.11%
Equipment Replacement Fund		\$ 3,000.00		\$ 1,500.00	\$ 3,000.00	\$ 3,000.00		\$ -	#DIV/0!
Furniture-Equipment		\$ 1,791.13		\$ 454.00	\$ 1,000.00	\$ 800.00		\$ 1,000.00	25.00%
Insurance		\$ 727.00		\$ 924.00	\$ 1,000.00	\$ 924.00		\$ 1,000.00	8.23%
Mainten Contracts-Pitney/Comcast Inter		\$ 7,222.57		\$ 2,741.90	\$ 6,000.00	\$ 6,000.00		\$ 6,000.00	0.00%
Meeting Expenses (WGA & Arkadin)		\$ 24,315.58		\$ 12,648.13	\$ 35,000.00	\$ 35,000.00		\$ 25,000.00	-28.57%
Office Supplies		\$ 2,205.20		\$ 687.60	\$ 2,800.00	\$ 2,200.00		\$ 2,000.00	-9.09%
Payroll Benefits		\$ 124,182.11		\$ 67,744.12	\$ 141,100.00	\$ 136,850.00		\$ 141,100.00	3.11%
Insurance				\$ 1,158.55					
Healthcare				\$ 38,944.59					
Pension				\$ 27,640.98					
Payroll Salaries		\$ 305,964.84		\$ 162,595.51	\$ 329,710.00	\$ 328,400.00		\$ 335,000.00	2.01%
Payroll Taxes		\$ 25,384.71		\$ 13,635.05	\$ 27,960.00	\$ 27,545.00		\$ 28,000.00	1.65%
Pension Management		\$ 3,370.05		\$ 3,022.91	\$ 3,400.00	\$ 3,400.00		\$ 3,400.00	0.00%
Postage & Freight		\$ 4,556.88		\$ 170.75	\$ 2,000.00	\$ 1,500.00		\$ 1,500.00	0.00%
Printing & Reproduction		\$ 3,628.21		\$ 2,093.02	\$ 5,000.00	\$ 4,200.00		\$ 4,200.00	0.00%
Rent Expense/HOA Fees/Property Tax		\$ 36,483.61		\$ 4,142.03	\$ 5,915.00	\$ 5,830.00		\$ 6,000.00	2.92%
Reports & Publications		\$ 5,704.10		\$ 919.54	\$ 6,500.00	\$ 5,800.00		\$ 6,200.00	6.90%
Symposium (CDWR)		\$ 3,967.01		\$ -	\$ 7,500.00	\$ -		\$ -	#DIV/0!
Symposium (WaDE)		\$ -		\$ -	\$ 7,500.00	\$ -		\$ -	
Symposium (WSWC / NARF)		\$ 27,463.52		\$ 28,050.00	\$ 27,500.00	\$ -		\$ -	
Symposium (Infrastructure)		\$ -		\$ -	\$ -	\$ -		\$ -	
Telephone (UBS/Comcast/Cellphone)		\$ 2,285.43		\$ 1,745.29	\$ 3,800.00	\$ 3,800.00		\$ 3,800.00	0.00%
Travel		\$ 58,737.31		\$ 30,702.12	\$ 47,435.00	\$ 60,000.00		\$ 60,000.00	0.00%
Utilities (Questar & Murray Power)				\$ 802.08	\$ 2,000.00	\$ 2,000.00		\$ 2,000.00	0.00%
TOTAL EXPENSES		\$ 670,703.89		\$ 421,145.86	\$ 747,900.00	\$ 682,229.00		\$ 670,000.00	-1.79%
NET RESERVE GAIN(LOSS)		\$ 96,282.39		\$ 121,643.62	\$ -	\$ 27,102.00		\$ -	

Reserve Funds \$176,112 \$224,000

- 1 Full dues from 17 states
- 2 Management subcommittee approved change to biannual audit

Tab E – WGA State-Federal Relationship Summit Update

ADMINISTRATION UPDATE/WESTERN GOVERNORS

State-Federal Relations

On February 27, the Western Governors' Association (WGA), Council of State Governments-West (CSG-West), and other members of the Western Policy Network held a State and Local Government Associations Summit in Washington, D.C. with a wide range of Administration officials. Jim Ogsbury, WGA Executive Director, opened the meeting and address its objectives. In 2017, WGA adopted a resolution that provided a "road map" for achieving a more functional state-federal relationship. CSG, the National Association of Counties and other organizations have adopted similar statements. A collaborative effort led to develop shared federalism principles, and a Summit of Federalism in February 2017. The participating organization carried these principles to the Administration and the Congress.

The objective of the current summit is to begin identifying specific opportunities for actions and foster a sense of partnership that will lead to improved and durable state-federal relationships. A slide "STATES NOT STAKEHOLDERS" captured the theme of the meeting. Jim noted the Constitutional division of State and Federal powers, between two sovereign levels of government, adding States are not stakeholders. Federal powers are limited and defined, while the 10th Amendment reserved broad powers for the States. The state-federal relationship is very complex. He specifically mentioned delegated authorities under the Clean Water Act and Clean Air Act. He also raised issues related to groundwater management, and federal and tribal reserved water rights. There are both legitimate and illegitimate impediments to building better, stronger and more collaborative state-federal relationships, and the meeting was intended to find common ground.

Special guest speakers included Utah Governor Gary Herbert and Rep. Rob Bishop (R-UT), Chairman of the House Natural Resources Committee. The Governor noted his 14-years of experience as a county commissioner, before also serving as Lieutenant Governor. He highlighted Constitutional history, referring to James Madison and the Federalist Papers #45 as designed to limit the power and authority of the federal government and reassure States reluctant to cede too much to the central government. He opined on how things have changed. James Madison must be "spinning in his grave." Today, the Federal budget is some \$4 trillion dollars, annually, compared to \$1.7 trillion for all 50 States combined. It's our money and the federal budget should reflect our priorities. Federal agency "mission creep" is in part due to our turning to the federal government to solve all our problems. One size doesn't fit all. He added States are the laboratories of democracy, and the most effective and cost effective level of government to meet most public needs. He asked, "Who cares about the education of our children more, the federal government or the people of the State of Utah?"

Congressman Bishop exclaimed, "We are trying to work together as States and the Federal Government." But if one is out of line, "How do we reign in their power?" Bishop chairs the Task Force on Intergovernmental Affairs for House Speaker Paul Ryan. He called for specific ideas on how to protect state primacy and proposals for statutory changes to empower States, recognize their special standing, and require meaningful consultation. He asked, "How do we define consultation?" He suggested that federal money is the tool used to get states to "do what we want you to do." We provide grants with little flexibility. How do we get away from that? If States leave the money on the table, they lose it. More and more we are looking at federal legislation in terms of Constitutional authority and the impacts on States. He also noted efforts to establish national goals and support state programs to achieve those goals

State representation at the summit included the National Governors' Association, Coalition of Northeast Governors, the Alaska, Guam and Nevada Governors' Offices, California Natural Resources Agency, the State of Colorado Office of the Attorney General, National Association of Counties, Council of Western State Foresters, Environmental Council of the States, the National Association of State Departments of Agriculture, Western States Air Resources Council, Western State Land Commissioners Association, and Western States Water Council.

Federal agency speakers represented the White House, Office of Management and Budget, Council on Environmental Quality, U.S. Departments of Agriculture, Education, Interior, and Homeland Security, as well as the Environmental Protection Agency.

Doug Heolscher, Special Assistant to the President and Deputy Director of Intergovernmental Affairs, declared, "States created the federal government and not the other way around." While recognizing there is more to do to repair state-federal relationships, he observed that in the first year of this Administration the President personally has interacted with state governors on 169 occasions, Vice President Pence (a former governor) 172 times, and cabinet members 840 times. Forty governors attended a White House campus meeting. He acknowledged, "We have to do this right. Governors want less talking to and more talking with." He suggested the need for a robust plan, as even those that come from states to the federal government forget. State associations need to be at the table.

Jessica Anderson, OMB Associate Director, Intergovernmental Affairs and Strategic Initiatives noted the need for innovative policy ideas and a firm structured relationship with States. "We want to talk early and often." She referred to federal government reorganization efforts, and legislative and policy work. She asked States for help in getting the President's infrastructure package "over the line" in this Congress.

Jeffrey Harris, OMB Assistant Administrator, Office of Information and Regulatory Affairs (OIRA), discussed efforts to review regulations with significant economic and policy or legal consequences, and ensure uniformity. OMB would like to complete its internal review proposed of proposed rules within 90 days. Director Mulvaney has emphasized the importance of operating within federal authority. "It is not our job to push the envelope." OMB will also respect State roles and ask, "Are States already doing the job?" He offered to help States understand where the decision points are within the White House and how to elevate policy questions. OMB is moving towards greater flexibility and improved federalism. He specifically noted "big ticket" items, including the Clean Power Plan and Waters of the United States. We want to stop bad rules, and push good rules.

Alex Herrgott, CEQ Associate Director for Infrastructure, also discussed the need for regulatory streamlining. "We need to get out of your way." He lamented the legacy "paper-based" networks, with no clearinghouse for permits for infrastructure projects to proceed expeditiously. One decision has to go through multiple agencies and offices. CEQ's goal is to reduce the time and costs related to permits, requiring one agency to take the lead on one project with no more than 21 months for review under the National Environmental Policy Act (NEPA) and another three months to issue the relevant permits. This will require institutional and behavioral changes, as well as changes in agency business plans. The White House is looking at things from the view of private investors with capital at risk. We should remove as many hurdles as possible. He mentioned the President's \$1.5T Infrastructure Initiative, on top of existing federal spending, and opportunities to leverage private investment.

Blake Rollins, USDA, Director of the Office of External & Intergovernmental Affairs, noted that Secretary Sonny Purdue is leading efforts to address rural prosperity, including integrating federal agency responses to cross cutting issues. The White House is emphasizing the "One Government, One Answer" theme. He noted 85% of impoverished U.S. counties are in rural America. Doug Crandall, USDA Acting Deputy Assistant Secretary, Office of Congressional Affairs, admitted, "Our forests are a mess." Some 80 million acres are at high risk, with over 50% of the U.S. Forest Service budget spent of firefighting and that cost is growing. "We share [problems with] fires, land, water, drought, invasives, beetles and disease. We can't solve these problems without help. We need discussions early and often with states." USDA is working to standardize environmental analysis and decisionmaking processes, including grazing permitting. He asked, "Where is it easy to work with us, and where is it hard?"

Todd Wynn, Department of the Interior, Director, Office of Intergovernmental and External Affairs, offer to serve as a liaison with senior officials. "I am actually reaching out, and not to just check a box." We want

to work with you and other state partners. "The White House demands it!" We want to hear what is important to you and help solve problems and get you answers. Reach out and don't assume we know your concerns. Our staff of five serves nine bureaus across five time zones! Casey Hammond, a newly confirmed Deputy Assistant Secretary Land and Minerals Management, worked on the Hill for Chairman Bishop. He said, "It is funny to be sitting on this side of the table banging on the same issues.... We know what States are. States are not stakeholders." However, he advised, "If you are going to be heard, you are going to have to raise your voice." He noted Secretary Zinke has put in place a state-centric team, and now is the time to move with urgency to make changes. The proposed reorganization of the Interior Department is of particular concern to governor's which have called for withdrawal of the current plan pending greater dialogue with the States.

Henry Darwin, EPA, Chief Operating Officer, served in the same position for Arizona Governor Doug Ducey. He said his most "disturbing" realization upon arriving at EPA was there is no comprehensive system to engage with the States. Most everything is done on a region-by-region and state-by-state basis with some openly treating State A differently than State B based on politics. "it was eye opening." EPA is now going to each region and asking about their relationships with States. The two issues he hears about most are first that States don't know how to elevate issues for a decision within EPA, and second that it takes too long to get a decision. He is working to set up management systems for accountability and review measurements on a monthly basis. This includes addressing overdue State requests, and legal or other deadlines. He concluded EPA partnerships with States are very important.

Tab F – WaDE Update / WSWC-WWAO
Water Information Management
Systems Workshop Report

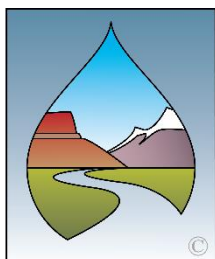
[HOME](#)[CONTACT](#)[NEWS & EVENTS](#)[ABOUT WADE](#)[Join the WaDE Community](#)

WaDE

The Water Data Exchange or WaDE project enables states to share data with each other and the public in a more streamlined and cost-effective way. WaDE provides access to water allocation, supply, and demand data that are maintained by state and other governmental agencies.

[LEARN MORE ABOUT HOW WADE WORKS >](#)

WSWC continues to work on better and easier access to WaDE data and developing specific use cases. Several related partnerships are also under development that could expand the program. WIDS will assist with these and other data-related efforts that are of interest to WSWC members....



WESTERN STATES
WATER COUNCIL

The WSWC's Water Information and Data Subcommittee (WIDS) was formed to oversee and direct present and future WSWC data-related efforts, including the Water Data Exchange (WaDE), and serve as a forum to discuss basic water data issues, data-sharing, best management practices, quality control, and publication. The WIDS has convened to provide feedback and guidance on WaDE and on the development of the WIMS workshop, held in January of 2018.

WIDS and the Water Information Management Workshop (WIMS)

With assistance and support from NASA's Western Water Applications Office (WWAO), WSWC and the WIDS subcommittee organized and convened a WIMS workshop at the Jet Propulsion Laboratory (JPL) on Jan. 16-18th, 2018. A summary of the meeting is included under this tab. Attendees were supportive of convening another workshop in 2019, and the WIDS will continue to assist with planning and refining workshop topics.

Partnerships and Funding Opportunities

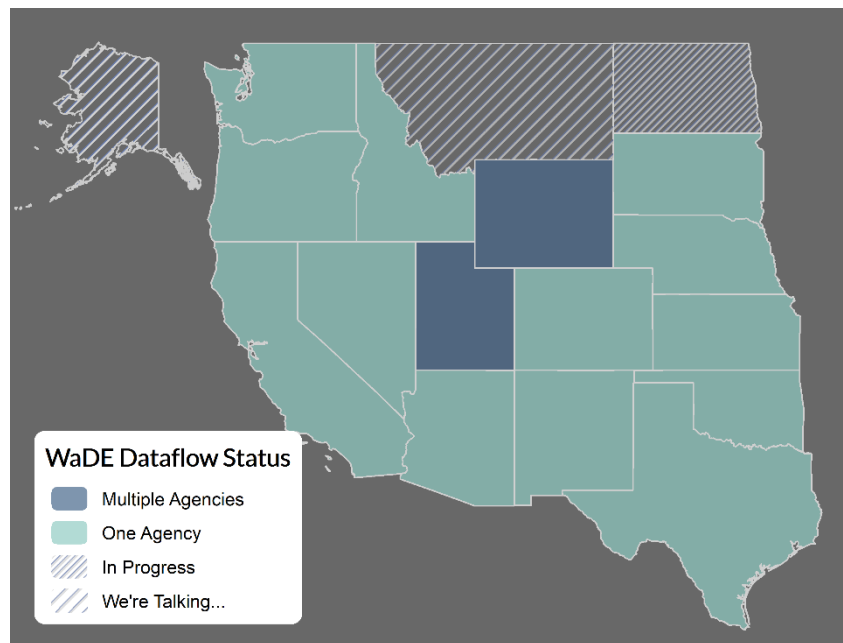
Over the past year, WSWC has been asked to contribute and partner on several data-related efforts. A survey of cloud platform usage by member states was conducted with NASA's WWAO office. A grant partnership with California Department of Water Resources (CDWR), Utah Division of Water Quality, and Utah State University

was formed to pilot the development of methods for sharing sensor-based continuous monitoring data. Notice of the successful grant applicants will be announced in July of 2018.

WSWC continues to partner with the U.S. Geological Survey on making water use data available as web services using WaDE components. Staff also contributes to the development of the Water Use Data and Research (WUDR) grant program. The WUDR proposal solicitation for this coming year is expected to be announced in the coming months.

More recently, WSWC has been working with CDWR on the implementation of AB1755, their new law concerning open and transparent water data. This effort allows WSWC to gather the best information from experts in the field of environmental data science and take those lessons back to the WaDE program.

WSWC is finalizing members' participation in the WaDE portal., and increased functionality of its interface. Users may now find data by "datatype," not just by location. This coming year will bring many other improvements to the infrastructure, the WaDE data schema, the front-end user interface, and user-oriented applications.



Administrative Goals for the Program in 2018 More recently, WSWC has begun collaborating with the Water Foundation, based in Sacramento, California, on how to take the WaDE platform to the next level, and greatly increase both the amount of data shared via the portal, and the ease with which it is accessed. Now that most WSWC members have a WaDE application, there is a need to evaluate what data may be included in the future, and to diversify the available datasets. Currently, the majority of datasets in WaDE are related to water rights, permits, and water allocation. Most of these are also only made available in the geospatial area that the state is most familiar with. Efforts for this year's data increase will focus on summarized/aggregated water supply and water use estimates on a standardized watershed scale (HUC-8 and larger), and site-specific diversion data.

- Site-Specific Water Rights (13)
- Site-Specific Diversions (3)
- Summarized Water Use (4)
- Summarized Water Supply (2)
- Site-Specific Return Flows (1)
- Summarized Water Availability (1)
- Regulatory Information (1)

- All members in WaDE, with two primary datasets
- Better/more summary water supply and water use data
- At least two datatypes available using HUC-8 and larger
- Increased engagement via the WEB, WIDS, and WIMS workshops

Technical Goals for 2018 This work will include finding an optimal infrastructure solution that will standardize performance and allow WSWC to monitor usage and program status more effectively. It will also include a reworking of the current WaDE data element schema based on feedback and suggestions from partners gathered over the past two years. A revised front-end user interface is also a significant task in the coming year's workplan.

- Research infrastructure options that resolve some issues with networked data (cloud survey, etc.)
- Finalize the WaDE schema version 1.0
- Deploy new schema and assist states with updates
- Demonstrate integration with other data portals
- New front-end interface
- Increased metadata, GIS, and WaterML support

WSWC will work with members to ensure the infrastructure and WaDE schema updates meet their needs, and that the work to implement any new tools will go smoothly. This work is made possible with support from the Environmental Information Exchange Network (EIEN), and WSWC would like to thank all partners in Exchange Network grants for their participation. The coming year's work will also include additional assistance from the Water Foundation, a network of philanthropic funders that are focused on solutions for water sustainability in the West.

2018 WSWC Water Information Management Systems (WIMS) Workshop

January 16-18th, 2018 | NASA JPL | Pasadena, CA

The WSWC and the NASA Western Water Applications Office (WWAO) hosted a Water Information Management Systems (WIMS) workshop at the Jet Propulsion Laboratory/Caltech (JPL) in Pasadena, CA on January 16-18th.



Stephanie Granger and other WWAO representatives welcomed over 70 public, private and academic representatives who attended. Over 27 state water agency staff participated from Arizona, California, Idaho, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah, and Wyoming. There were over 37 presentations on a series of panels addressing: (1) water rights and water

rights adjudications and data management strategies; (2) water use, permitting and reporting systems; (3) States' use of the "cloud;" (4) advances in remote sensing for water resources management; (5) federal data sources and applications; and (6) data access, visualization, and archiving. The goal of the workshop was to discover the needs of WSWC members regarding water data acquisition, quality control, and publication, and to generate a dialogue between states and the other attendees. The WIMS provided a forum for attendees to make new connections with other states agency staff and hear about many new resources and tools available to water planners and decision-makers, in addition to an optional tour of JPL facilities, dinner, and social hour.

During the first day of the workshop, representatives from western states presented on data management strategies that their offices were employing to improve adjudication processes, survey data collection in the field, online platforms for water permitting, and gathering reports from users. Specialty topics included use of the National Hydrography Dataset (NHD) for water rights routing – an innovation that allows for upstream/downstream investigation of water



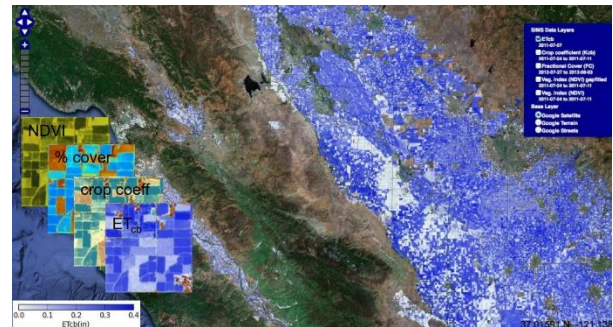
rights and diversions. The use of Unmanned Aerial Systems (UAS) for adjudication verification garnered many questions, as well as a presentation on updated methods for projecting future water demand in Texas. The day was concluded with a summary of California's implementation of the state's new Sustainable Groundwater Management Act (SGMA).



WSWC conducted an extensive survey of its member states concerning their use of the cloud, and staff presented their findings to the group. The survey results indicated that states were beginning to use the cloud but were not yet comfortable with the variability of its costs and performance. The relevance of these findings to the WWAO and NASA Applied Science Program (ASP), and the potential for the transition of cloud-based software, tools, and data systems, were discussed.

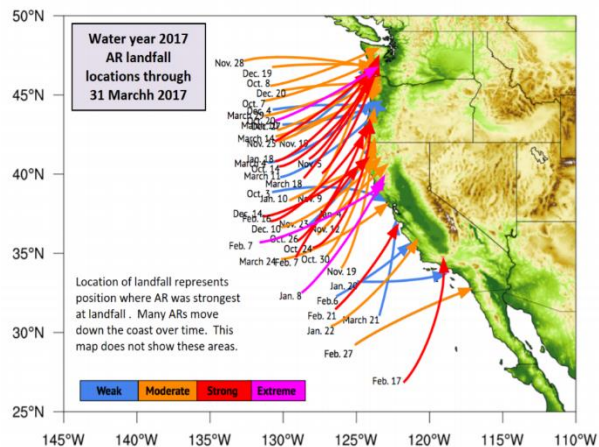
Attendees from the NASA-WWAO office had the opportunity to present on their ongoing collaboration and partnerships with state water resource management agencies. They gave a high-level overview of new research and tools useful for decision support. Remote-sensing for more precise Irrigation management was presented and shown to be a critical tool in managers' ability to adapt to drought and climate change in California. Other states are working to implement similar programs.

The following day provided a forum for "big data" topics, states' use of cloud computing platforms, and advances in remote sensing. Several state agency members presented on their state's use of cloud computing platforms in their day-to-day operations and for data publication. Attendees were able to discuss the return on investment for the agencies, costs, performance, and challenges related to cloud vendors and platforms.



New methods and new state partnerships for estimation of evapotranspiration and crop water use requirements were presented. Improvements in snowpack assessment and runoff forecasting were discussed. New tools that use radar-based measurements of surface land subsidence and recovery were shown to be an effective monitor or indicator of aquifer recharge and withdrawals. Methods for quantifying a variety of water quality parameters in larger water bodies via satellite imagery were presented, as well as assessments of soil moisture conditions on regional scales.

WSWC Vice Chair Jeanine Jones spoke over lunch on the merits of forecast informed reservoir operations (FIRO) with improved subseasonal to



seasonal (S2S) precipitation forecasting. These improvements have the potential to allow water managers to optimize their decisions and allocations, especially during periods of drought. Effective FIRO management has implications for other states in the West as well. In addition, examples of weather pattern anomalies that have the potential to increase the accuracy of seasonal forecasts were presented.



Breakout sessions for small group interactions with NASA-WWAO staff were held to determine states' needs and how research projects could be successfully and more easily transitioned to operations. The questions each group addressed included: what may be done at the beginning of projects to ease later transitions, key data standards or metadata that should be

considered, and other best practices when partnering with state agencies. The breakout sessions also brought to light approaches that should be avoided and gaps in data that presented difficulties for the state agency. Participants provided feedback during sessions, with some key takeaway practices and challenges for the WWAO office to consider:

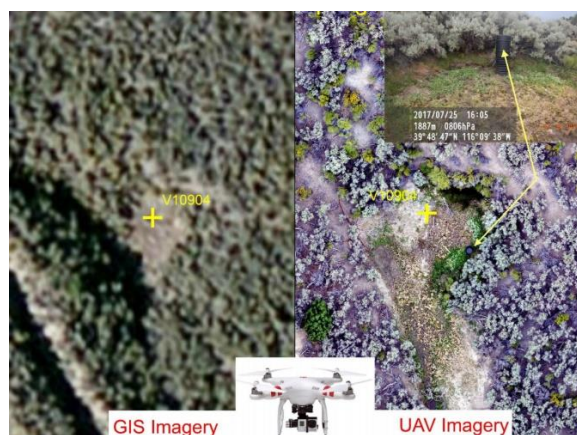
1) Management practices evolve over time, and the best results will be achieved with frequent communication and by staying engaged and looking for pilot opportunities collaboratively. Outreach and education will be key to engaging with new states and expanding partnerships. On-going training and support are necessary to a successful transition of research and tools.

2) Websites and tools for data accessibility and processing that are easy to use are very important. Working with the states to build processing tools they can support is very important. Having a strategy in place with respect to where software and tools will eventually reside is also a critical issue that should be addressed as projects commence. Some attendees expressed concern about fluctuating costs with cloud vendors and proprietary data formats.

3) There are myriad datasets that need further research, a majority concerning the agricultural sector in the West. Soil moisture, channel geometries, reservoir levels, water quality, vegetation mapping, groundwater modeling, especially at usable field-scale resolution would be very useful. Ensuring that, where applicable, datasets are delivered using widely adopted standards (e.g. the Open Geospatial Consortium (OGC) WaterML 2.0 or Federal Geographic Data Committee (FGDC) Geospatial Information System (GIS) standards) is paramount.

4) Reducing the difficulty related to working with a federal partner would be ideal. The ability to quantify benefits gained from the research for a state agency is highly desirable. It was suggested that co-mentoring between state agencies and NASA offices might be a good way to transfer knowledge and facilitate tool integration into agency operations.

The busy day ended with presentations on water data-related programs within federal agencies that would be useful to state agency IT staff. The U.S. Geological Survey, the Bureau of Reclamation, and the National Oceanic and Atmospheric Administration staff presented on water availability and use programs, the federally-led Open Water Data Initiative, the status of Agrimet, a significant weather station and irrigation management system network in the West, new data visualization tools for reservoir levels and diversions, and the National Integrated Drought Information System (NIDIS).



The final day's focus was on "open water data" concepts and discovering the value of shared data. Representing a year-long Dialogue Series conducted by the Aspen Institute, Lauren Patterson presented on the high-level intrinsic value of shared data and posited an "Internet of Water" framework for regional data sharing. Technologies and strategies available for data acquisition, publication, and storage were also presented by state agency staff, ranging from use of UAS for operations and project maintenance, to new statutory requirements for data in California (AB1755), to the challenges of migrating a state agency IT shop to strictly "open source" software.

New data accessibility and visualization tools, data services and HydroShare, were presented

by Jerad Bales, the Executive Director of the Consortium of Universities for the Advancement of Hydrologic Sciences, Inc. (CUAHSI). Successes and challenges of other data visualization platforms and decision support tools were presented and discussed by the attendees. The notion of a western water data archive was floated before the audience to gauge interest and determine what next steps may be. The meeting was concluded with a final discussion of future WIMS topics that attendees would like to see, and feedback on the format and timing of the meetings. The participants provided written feedback and suggestions for a more focused WIMS to be held in the future.

Overall, the WIMS tour, workshop, dinner, and social were successful largely due to interactions between state water resource agency program managers and specialists and the NASA-WWAO research team. There were many insightful presentations, questions, and conversations held over the course of the three-day meeting. Feedback received from participants indicated an average score of 6.4 out of 7-point scale for quality of the presentations, interactions, formatting, location, and logistics for the workshop. Participants requested specific topics for the next WIMS meeting, primarily centered on new methods/techniques related to remote-sensing, and water supply, water use, (water budgets generally), surface and groundwater interactions, and other monitoring programs and applications. Soil moisture and runoff forecasting also ranked high in the requested topics.

All WIMS presentations, photos, and other meeting materials are archived, and can be accessed on the WSWC's WIMS workshop webpage: <http://www.westernstateswater.org/upcoming-meetings/2018-water-information-management-systems-wims-workshop/>. Please watch for the next WIMS workshop announcement in early 2019.

Tab G – NOAA National Earth System
Prediction Capability Workshop
Report

Workshop on Metrics, Post-Processing, and Products for Subseasonal to Seasonal

Emphasizing, but not restricted to, S2S

28 February - 2 March 2018

National Center for Weather and Climate Prediction

College Park, Maryland

Purpose:

The recent Weather Act directs and authorizes NOAA to improve temperature and rainfall prediction as well as impacts, such as drought, sea-ice extent etc. at two weeks to two years, defined in the Act as sub-seasonal to seasonal (S2S). The act also directs NOAA define operational goals and objectives for these improvements and to reach out to other Agencies, academia and the private sector to help in defining the forecast, observing, monitoring, and research needs to meet these goals and objectives. This workshop is an initial meeting for a broad enterprise discussion of user needs, agency capabilities and products, gaps between needs and capabilities, and potential operational and technological solutions to address those gaps, especially potential post-processing solutions, developer metrics and reliability metrics. Metrics can be categorized in the following groups:

1. Input: observations, their quality, quantity, distribution etc.
2. Process: measuring characterization of physical processes. Can range from detailed (moisture, interface fluxes) to collective (el Nino, TC genesis)
3. Output: specific forecast variables, to include thresholds such as drought, flood, frost, monsoon, TC genesis)
4. Outcome: improved forecasts, increased reliability
5. Impact: user/customer benefit from decisions based on forecasts (safety, economy, preparedness).

This workshop will focus on (2) through (4).

This workshop will also provide an initial opportunity for community input to the draft S2S prediction report that NOAA is preparing in response to the Weather Act of 2017.

Attendance is by broad invitation with representation from all Federal agencies participating in FCMSSR and appropriate representatives from the science and commercial communities.

Expected results:

- Identification of current agency operational capabilities for S2S prediction and how the agencies evaluate them (current metrics they are using)
- Identification of user data (parameters, frequency, availability, reliability) and product needs
- Gaps between current capabilities and needs
- Potential operational solutions to gaps (i.e., more frequent NWP runs, more ensemble members, more output parameters, better product design, etc.)
- Potential technological solutions to gaps (i.e., post processing, analog, statistical/dynamical methods, AI, etc.)
- Discussion of usability, reliability and improved metrics (developer metrics and reliability metrics)
- Identification of required additional research

Key workshop output:

How to define a better approach to address needs of broader user community in support of usability, reliability, and timeliness of S2S products?

Post-workshop: (1) S2S plan outlining post processing and metrics to support the research and operational communities, etc; (2) Communicate to upper management direction for improvement to S2S prediction, and, (3) Identify additional research needed to provide effective S2S products.

Conference Center Connectivity:

WiFi: NOAAGuest

Type your email into browser

If you have difficulty with a particular browser, log in on Internet Explorer or Safari. You may use any browser after login is complete.

Remote Access:

Please register for Workshop on Metrics, Post-Processing, and Products for S2S on Feb 28, 2018 8:00 AM EST at:

<https://attendee.gotowebinar.com/register/1510760150751971073>

After registering, you will receive a confirmation email containing information about joining the webinar.

Agenda

Day 1	28 Feb 2018	
8:00	Check-in	
	<i>Opening Session</i>	
9:00	Welcome and Purpose	Jessie Carman, National ESPC
9:15	Next Generation Earth System Prediction: Strategies for S2S Forecasts	Raymond Ban, National Academy of Sciences
9:45	The Weather Act/NOAA S2S Report	David DeWitt, NOAA/CPC
10:15	Discussion of Purpose	Assembly
10:45	Morning Break	
	Agency capabilities (Products, Post-processing, and Metrics)	
11:00	CPC Current Capabilities and Metrics and Key Science Challenges to Improving S2S Forecast Skill	Dave DeWitt, NOAA/CPC
11:15	14 WS (USAF) Capabilities	Lt Col Rob Branham, USAF Air Staff
11:30	FNMOCC Current S2S Capabilities	Charles Skupniewicz, Navy
11:45	NOAA MAPP Program S2S Activities	Annarita Mariotti, NOAA/CPO
12:00	DOE Modeling Predictability Interests and Activities	Dorothy Koch, DOE
12:15	NASA	Andrea Molod, NASA
12:30	Lunch	
	<i>Afternoon Session</i>	
	User needs	
1:00	Next Generation Earth System Prediction: Recommendations of the Role of Forecast Users	Scott Sandgathe, APL Univ. of Washington
1:10	Regional Services: Moving into R2S for NOAA's Product Lines	Ellen Mecray, NOAA/NESDIS
1:20	AF Weather Interest in S2S Climate Prediction	Lt Col Rob Branham, USAF Air Staff
1:30	User Needs: US National Ice Center	CDR Ruth Lane, NIC
1:40	DHS and FEMA Use of Weather Forecasts	Michael Hurick, FEMA
1:50	Earth Observations and Diplomacy	Fernando Echavarria, DoS
2:00	User Needs: The U.S. Department of Agriculture	Mark Brusberg, USDA
2:10	Improving S2S Precip Forecasting for Water Supply Management	Jeanine Jones, Western States Water Council & CDWR
2:20	Transforming Risk Management with Probability Forecasts: Weeks to a Season or More	John Dutton, Prescient Weather Ltd
2:30	S2S Weather Forecast Data Needs and Climate FieldView	Ricardo Lemos, The Climate Service
2:40	Afternoon Break	
2:55	Breakout Sessions: Capabilities vs. Needs	
	Identification of gaps	Breakout Groups A, B, and C
4:25	Discussion: The Capability-Needs Gap	
	Breakout Sessions Review	Session Chairs/Rapporteurs
5:00	Adjourn Day 1	
6:30	No-host Dinner @ Franklins 5123 Baltimore Ave, Hyattsville, MD 20781	

Day 2	1 Mar 2018	
Morning Session		
8:30	Day 1 Review/Day 2 Goals	Jessie Carman, National ESPC
8:40	Operational and Technological Solutions	
	Potential Operational Capability for S2S Prediction	Yuejian Zhu, NOAA/EMC
8:50	FNMOCC Future S2S Capabilities	Charles Skupniewicz, Navy
9:00	Developments Needed to Generate High-quality S2S Products through Statistical Postprocessing	Tom Hamill, NOAA/ESRL
9:10	S2S Technological Improvement: Issues to Consider	Ben Kirtman, Univ. of Miami
9:20	Weather-to-Decadal Timescales: Enhancing Modeling for Predictions	V. Ramaswamy, NOAA/GFDL
9:30	SubX	Dan Barrie, NOAA/CPO
9:40		Robin Kovach, NASA
9:50	General discussion	
10:00	Morning Break	
10:15	S2S Opportunities	
	Research Opportunities for Advancing S2S Forecast	Chidong Zhang, NOAA/PMEL
10:45	S2S research opportunities	Annarita Mariotti, CPO/MAPP
11:00	Breakout Sessions: Solutions	
	Group D: Operational solutions and pros/cons	
	Group E: Technological solutions and pros/cons	
	Group F: Research solutions and pros/cons	
12:15	Lunch	
Afternoon Session		
12:45	Discussion: Summary of Solutions	Session Chairs/Rapporteurs
	Summarize and map against identified gaps	Scott Sandgathe, APL Univ. of Washington
1:45	Reliability and potential metrics for impact events	
	Short-term Climate Extremes: Probabilistic Forecasts from a Multi-model Ensemble	Emily Becker
2:00	S2S Verification Topics at the NOAA Environmental Modeling Center	Jason Levit, NOAA/EMC
2:15		Kathy Pegion, George Mason Univ.
2:30	Afternoon Break	
2:45		Dan Collins, NOAA
3:00	Convectively Coupled Equatorial Waves and the MJO in Subseasonal Forecasts	Matthew Janiga, NRL-MRY
3:15	S2S Verification Approaches: The Challenge to Provide Meaningful Information	Barbara Brown, NCAR
3:30		Caren Marzban, Univ. of Washington
3:45	S2S Metrics Issues	Ben Kirtman, Univ. of Miami
4:00	Recommendations on metrics and further work needed to improve them	
	Discussion	
5:00	Adjourn	

Day 3 (half day)	2 Mar 2018	
	<i>Closing Session</i>	
8:30	Workshop Summary/Next Steps	David McCarren, Navy Oceanography
9:30	Development of an S2S Validation/Verification plan for the needed capability	
	Review of gaps	
	Review of most fruitful leads	
	List of potential operational initiatives	
	List of potential research initiatives	
	Inputs/comments to draft NOAA S2S plan	
12:00	Adjourn	

Tab H – FY2018-2019 Draft Water
Resources Committee Work Plan

WATER RESOURCES COMMITTEE
WORK PLAN
2018/2019

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 “live” version has been released with fourteen states already sharing some data via WaDE. Alaska, Montana and North Dakota 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 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.

WaDE is consistent with and is seeking to collaborate with and 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.

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 #385 October 9, 2015 and # 396 September 30, 2016).

2017/2018: WSWC staff will continue working to help individual members states build their capacity to connect to and share data through WaDE. 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); 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 with~~ 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 prepared a report on these meetings and an outreach publication with recommendations to NOAA on improvements regarding sub-seasonal to seasonal precipitation forecasting. ~~Similarly, the Council coordinated an August 25-26 workshop on IMIS and prepared a summary report, completing our agreement with CDWR..~~ The Council also coordinated an S2S workshop in San Diego ~~in 2017 on May 17-19, and is preparing a report.~~

2018/2019: Future S2S workshops are anticipated, as is work to support federal efforts to improve our predictive capabilities and skill. (Position #399, April 14, 2017)

Subcommittee:

Timeframe:

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 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.

The Council has also urged the Administration and Congress to support Department of Energy hosted energy-water programs conducted at national laboratories (Position #395, July 15, 2016).

20187/20198: 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.

Subcommittee:

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 and #385 October 9, 2015). The Council also supports development of an improved western observing system for extreme precipitation events and research to better understand hydroclimate processes (Position #407366, June 2918, 20174). The Council's Executive Director serves as Co-Chair of the National Integrated Drought Information System (NIDIS) Executive Council with NOAA.

20187/20198: 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 work to evaluate proposed climate, drought and weather legislation and drought related authorities and programs of federal agencies.

Subcommittee:

Time Frame: Ongoing

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. The Council has also convened symposia and summarized the proceeding. . The Council also began compiling an updated summary of western state infrastructure financing authorities, funding sources, policies and programs (which has not been completed). 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.

| **20187/20198:** 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 #408367, June 2918, 20174). 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 include a focus on developing public-private partnerships to support this effort. The Council will sponsor a symposium on infrastructure needs, strategies, and federal and state programs, [under the direction of the Executive Committee](#).

Time Frame: Ongoing

6. STATE GROUNDWATER RECHARGE PROJECT PROGRAMS & POLICIES

Work to Date: The Council has in the past addressed groundwater management programs and policies, including recharge and aquifer storage and recovery projects. The Council prepared a number of reports covering financial feasibility, legal and institutional issues, and water reuse for recharge (1990-2012). Much of the work is now dated, and many changes have taken place.

2017/2018: Working with the Legal Committee and the Council, the Committee will update past reports on state groundwater management programs and especially efforts to promote conjunctive use of surface and groundwater resources through artificial aquifer storage and recovery projects.

Tab I – FY2018-2019 Draft Water Quality Committee Work Plan

WATER QUALITY COMMITTEE WORK PLAN

July 1, 201~~87~~ to June 30, 201~~98~~

1. 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.

201~~87~~-201~~98~~: The Committee ~~will produce findings and policy options from the WQ2 workshop for the WSWC to consider as it~~ supports WGA Resolution #2015-08, and will. ~~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 ~~(23)~~ 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, ~~(34)~~ provide updated information from states on current water quality-water quantity issues at Council meetings.

Time Frame: Ongoing

WQ2 Nexus Workgroup: Kent Woodmansey (SD), Tom Stiles (KS), David Schade (AK)

2. 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). This was followed by the WOTUS Rule, finalized on June 29, 2015 (80 FR 37054). Many of our member states filed lawsuits challenging the WOTUS Rule in federal court. ~~Subsequent motions centered primarily on the issue of which courts had jurisdiction to hear the lawsuits, and the procedural matter is now before the U.S. Supreme Court.~~ In 2018, the U.S. Supreme Court held that challenges to the WOTUS Rule belonged in the federal District Courts, overturning a 6th Circuit decision to consolidate the cases. *National Association of Manufacturers v. Department of Defense* (#16-299)

On February 28, 2017, the Trump Administration issued an Executive Order, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule, directing the EPA and Corps to review the WOTUS Rule for consistency with the stated policy of keeping the navigable waters free of pollution while also promoting economic growth, reducing regulatory uncertainty, and respecting the roles of Congress and the States. The EO specifically directs the agencies to interpret “navigable waters” consistent with the opinion of Justice Scalia in the *Rapanos* case. On March 6, 2017, the agencies published a *Notice of Intention to Review and Rescind or Revise the Clean Water Rule* in the Federal Register, 82 FR 12532.

On May 8, Scott Pruitt, the Environmental Protection Agency (EPA) Administrator, and Douglas Lamont, Senior Official for the U.S. Army Corps of Engineers (Corps), sent a letter to governors seeking input from the states on a new definition of “waters of the United States” protected under the Clean Water Act (CWA), including how each state “might respond to a reduced scope of federal jurisdiction under the [CWA].” The letter notes that consulting with state and local government officials--or their representative national organizations--before proposing regulations with federalism implications is a priority for this Administration. “We hope to keep the states at the forefront of our mission[,] and your input during the federalism process will enable us to do that effectively.”

As a first step, the agencies are “re-codifying the regulation that was in place prior to the issuance of the Clean Water Rule,” which is what the agencies are currently implementing under the 6th Circuit’s nationwide stay of the rule. [WSWC submitted comments on this proposed rule, 82 FR 34899.](#)

The second step for the agencies is to propose a new definition of protected waters that is consistent with the opinion of Justice Scalia in *Rapanos v. United States*, 547 U.S. 715

(2006). The agencies note that the federalism consultation began with an initial meeting on April 19, [2017](#) with state and local government associations. “In addition to discussions our respective staffs will have with associations and individual state environmental agencies, we are reaching out to you directly to ensure we received the benefit of your particular state’s experiences and expertise. The agencies are soliciting written comments from state and local governments until June 19, 2017.” [The WSWC submitted a letter outlining the states’ federalism concerns and requesting continued dialogue and collaboration throughout the development of a new WOTUS rule.](#)

[The agencies continued various levels of outreach through the end of 2017 and into the beginning of 2018, including a State Co-Regulators Meeting on March 8-9 to discuss policy direction, definitions of key terms, and the impact of WOTUS changes on states and their water quality authorities and programs. The WSWC Executive Director and representatives from the States of Arizona, Oregon, and Wyoming attended this meeting. Following that will be a public notice-and-comment rulemaking, anticipated during the summer of 2018.](#)

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 March 2014, the WSWC sent another letter 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 WSWC adopted Position #369 regarding CWA rulemaking efforts on July 18, 2014, during its summer meetings in Helena, Montana. The resolution 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. [This Position was revised and readopted as #410 during WSWC summer meetings in Rohnert Park, California in 2017.](#)

[WSWC has submitted comments and letters as noted above, and has continued to engage with EPA and the Corps at each opportunity](#)

20187-20198: 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), Julie Cunningham (OK), Todd Chenoweth (TX), Laura Driscoll (WA), and Kevin Frederick (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: (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.

On April 10, 2017, the Water Infrastructure Finance and Innovation Act (WIFIA) program closed its first selection round for credit assistance. EPA received 43 letters of interest from entities seeking loans to fund water infrastructure projects located all around the country. In this round, EPA will make available the up to \$17 million of budget authority appropriated to provide approximately \$1 billion in credit assistance. Prospective borrowers requested more than \$6 billion in credit assistance to support over \$12 billion in total infrastructure investment [press release](#).

WSWC Position #404 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 2017-04, Water Quality in the West, also supports the SRFs as “important tools” and requests greater flexibility and fewer restrictions on state SRF management.

2017-2018: 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. Some topics for discussion include state experiences with Buy American and Davis-Bacon, whether there are otherwise eligible entities, and how many, that are walking away from SRFs because of these restrictions, the right of first refusal of the SRF prior to funding projects by WIFIA, and first round funded WIFIA projects in member states.

Time Frame: Ongoing

c. EPA’s Water Transfers Rule

Background: On January 18, 2017, the 2nd Circuit upheld the EPA’s Water Transfers Rule, 40 CFR §122.3(i), in *Catskills Mountains Chapter of Trout Unlimited v. EPA*, No. 14-01991. The Court of Appeals reversed the decision of the U.S. District Court for the Southern District of New York, which previously vacated the EPA’s rule. [On February 26, 2018, the Supreme Court denied the petition for certiorari, allowing the Water Transfers Rule to stand.](#)

Paragraph B(2)(c) of WGA Resolution #2017-04 and WSWC Position #382 generally support EPA's Water Transfers Rule (40 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.

Efforts are underway to codify the Water Transfers Rule, seeking support from WGA, WSWC, and other state organizations.

2017-2018: 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 released the Nancy Stoner memo *Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions* on March 16, 2011, and the Joel Beauvais memo *Renewed Call to Action to Reduce Nutrient Pollution and Support for Incremental Actions to Protect Water Quality and Public Health* on September 22, 2016.

The Beauvais memo highlights the continued need for action by states and other stakeholders to reduce the threat of nutrients to water quality and public health by

- Reducing impacts to public health from nitrates in sources of drinking water and from nitrogen and phosphorus pollution contributing to harmful algal blooms;
- Reducing nutrients from point and nonpoint sources;
- Prioritizing watersheds and setting load reductions;
- Strengthening water quality standards;
- Highlighting high priority incremental actions of states;
- Issuing biennial reports that assess progress and provide accountability, and
- EPA continuing to provide support and financial assistance.

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.

2017-2018:

The Committee and WSWC staff will monitor any changes to EPA's nutrient efforts under the current administration, including those related to Harmful Algae Blooms

(HABs)/ EPA cyanotoxin criteria and inform members of ongoing developments. Each state is encouraged to develop its own strategy to control nutrient pollution. The Committee will ask states with a strategy to share highlights from their nutrient and HABs strategies and efforts that they think could benefit other Council members with the Committee.

The Association of Clean Water Administrators has a Nutrient Working Group developing a Nutrients Reduction Progress Tracker. The Committee's efforts will complement those of the ACWA Working Group, but may include information from ACWA's efforts of interest to Committee members.

Time Frame: Ongoing

e. Tribal Treatment as States

Background: In 2016, EPA finalized two separate but related rulemaking efforts regarding the tribes' ability to obtain "treatment as states" (TAS) status under CWA §518, necessary for delegation of regulatory programs to the tribes. The first involved an interpretive rule regarding inherent authority of tribes, considering CWA §518 an express delegation of authority from Congress. The second rule sets forth a regulatory process for TAS status to operate impaired listing and total maximum daily load (TMDL) programs. WSWC and various states sent letters commenting on concerns with how the programs would be implemented.

EPA also engaged in a pre-rulemaking outreach to states, tribes, and other stakeholders, soliciting input on setting federal baseline water quality standards for tribes without TAS status. WSWC submitted comments in December 2016, and the proposed rulemaking continued^{ds} on EPA's regulatory agenda in 2017.

2017-2018: The Committee will continue to monitor these rulemakings and their implementation 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 #2016-07).

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.

2017-2018: 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

3. **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.”

In December 2016, EPA published its report, Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States, available at <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990>

| The Western Governors’ Association (WGA) Resolution #2017-04 and WSWC Position #393 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.

2017-2018: 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: 2016-2018, pending available staff time and resources.

Tab J – FY2018-2019 Draft Legal Committee Work Plan

**LEGAL COMMITTEE
WORK PLAN
July 1, 2018⁷ to June 30, 2019⁸**

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

Work-to-Date: The Committee 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.

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. On November 10, 2015, the workgroup held a webinar presentation on state and federal perspectives of the McCarran Amendment. On July 13, 2016, the workgroup held a workshop in Bismark, North Dakota on Groundwater and Meeting Federal Water Needs. [On October 18, 2017, the workgroup held a workshop in Albuquerque, New Mexico, on Continuing State-Federal Relationships through the Implementation Phase of Decreed and Adjudicated Water Rights.](#)

2017-2018: The Committee will work to carry out the recommendations and next steps that emerged from the workshops and webinar. 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 a workshop on [how states and federal agencies approach grazing water rights. 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

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 Chris Carlson (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). This was followed by the WOTUS Rule, finalized on June 29, 2015 (80 FR 37054). Many of our member states filed lawsuits challenging the WOTUS Rule in federal court. ~~Subsequent motions centered primarily on the issue of which courts had jurisdiction to hear the lawsuits, and the procedural matter is now before the U.S. Supreme Court.~~ In 2018, the U.S. Supreme Court held that challenges to the WOTUS Rule belonged in the federal District Courts, overturning a 6th Circuit decision to consolidate the cases. *National Association of Manufacturers v. Department of Defense* (#16-299)

WSWC adopted positions #369 and #373 regarding CWA rulemaking efforts and state-federal collaboration. Position #369 was revised and readopted as Position #410, while Position #373 was allowed to sunset and acknowledged as a letter with continued historical value.

On February 28, 2017, the Trump Administration issued an Executive Order, *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule*, directing the EPA and Corps to review the WOTUS Rule for consistency with the stated policy of keeping the navigable waters free of pollution while also promoting economic growth, reducing regulatory uncertainty, and respecting the roles of Congress and the States. The EO specifically directs the agencies to interpret "navigable waters" consistent with the opinion of Justice Scalia in the *Rapanos* case. On March 6, 2017, the agencies published a *Notice of Intention to Review and Rescind or Revise the Clean Water Rule* in the Federal Register, 82 FR 12532. WSWC submitted a letter on June 19, 2017, outlining the states' federalism concerns and requesting continued dialogue and collaboration throughout the development of a new WOTUS rule. WSWC also submitted comments on a proposed rule (82 FR 34899) re-codifying the pre-2015 WOTUS Rule regulation, intended to maintain the status quo. WSWC has continued to engage with the agencies at each outreach opportunity during the rulemaking process.

20187-20198: The Committee will continue to work with the Water Resources and Water Quality Committees through the Workgroup to follow and comment on 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), Julie Cunningham (OK), Todd Chenoweth (TX), Laura Driscoll (WA), and Kevin Frederick (WY).

*See Item 2(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 #[412376](#)). 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.

20187-20198: 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, including possible modifications to the Criteria & Procedures; and (3) hold the 20197 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, [Dan Lewerenz](#), and David Gover. Other ex officio members include Susan Cottingham, [Nathan Bracken](#), Stanley Pollack, [David Mullan](#), Ryan Smith, [Michael Bogert](#), [Pamela Woodies](#), [Vanessa Ray-Hodge](#), [Jacob Schellinger](#), [Melanie Stansbury](#), and Arianne Singer.

4. 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.

2017-2018: 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 Supply Rulemaking

Work to date: On December 16, 2016, the Corps published its proposed surplus water rule, *Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply*. 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. On May 12, 2017, the Council sent a letter to the Corps expressing the states' concerns with the proposed rule.

2017-2018: The Committee will continue to work to address this issue and explore alternative solutions, including both administrative and congressional action.

5. Groundwater

There are a number of ongoing groundwater issues that pertain to WSWC policies or are otherwise of interest that the Committee will monitor and address on an as-needed basis.

A. Reserved Water Rights

Background: On March 7, the 9th Circuit upheld the California District Court’s summary judgment from Phase I of the trifurcated case, *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (No. 15-55896). 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 acknowledged that it was unable to find any controlling federal appellate authority explicitly holding that the federal reserved water rights doctrine in *Winters v. United States*, 207 U.S. 564 (1908), extends to groundwater. Instead, it pointed to *United States v. Cappaert*, 426 U.S. 128 (1976) and *In re General Adjudication of All Rights to Use Water in Gila River System and Source*, 989 P.2d 739 (Ariz. 1999) as persuasive and implied authority for its decision, emphasizing that *Winters* 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. 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. The water district ~~is~~ appealed the decision to the U.S. Supreme Court, and the petition for certiorari was denied.

Given that the federal agencies have relied on tribal water rights cases in the past to press for reserved water rights to groundwater, the implications of the 9th Circuit decision could be far reaching, not only for states and tribes outside the 9th Circuit’s jurisdiction, but also for federal agencies seeking to control groundwater appurtenant to federal lands.

As one example, the Forest Service issued a proposed groundwater directive May 6, 2014. Although the Forest Service asserted that the directive would not infringe on state-issued water rights or change how state groundwater and surface water quality regulations affect federal lands, the proposed directive would have: (1) required 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) required the Forest Service to evaluate all applications to states for water rights on lands adjacent to NFS lands; and (3) would have presumed that groundwater and surface water are connected unless proven otherwise. The Forest Service later withdrew this proposed directive.

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.”

20187-20198: The Committee will continue to work to ensure that state water rights and prerogatives are protected, specifically as they relate to tribal and non-tribal federal water rights and state authority over groundwater.

B. Groundwater Storage Projects

Background: In 1983, Congress passed the High Plains States Ground Water Demonstration Project Act, authorizing the Bureau of Reclamation to undertake a westwide groundwater recharge program. In 1989, WSWC and Reclamation entered a cooperative agreement to prepare a number of case studies to evaluate project effectiveness, identify economic and institutional problems such as the allocation of project costs and requisite legal authorities, and recommend alternative solutions to improve public policymaking with respect to future groundwater programs and projects. As a result of this agreement, WSWC prepared two reports in 1991 and 1998, titled Ground Water Recharge Projects in the Western United States. Among other recommendations to encourage recharge opportunities, the 1998 report suggested that each state examine its own legal and institutional systems to assure that they adequately address groundwater recharge, amending statutes as necessary to recognize it as a beneficial use, and reasonably protect the right to recover recharged waters.

| **20187-20198:** In coordination with the Water Resources Committee, the Legal Committee will work on updating the 20-year-old report. The Committee will query the states to review and update their relevant laws on groundwater storage, particularly as they relate to groundwater banking or Aquifer Storage Recovery projects.

Tab K – FY2018-2019 Draft Executive Committee Work Plan

**EXECUTIVE COMMITTEE
WORK PLAN
2018~~7~~/2019~~8~~**

1. WGA/WSWC COORDINATION and COLLABORATION

Work to date: The Western Governors' Association (WGA) has adopted two comprehensive policy statements, one focused on water quantity, Water Resource Management in the West (2015-08) and the other on water quality, Water Quality in the West (2017-04), as well as other policy statements with water-related implications.

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 WGA's and Council's concerns.

2018~~7~~/19~~8~~: The Council and the Committee will continue to coordinate and consult with the WGA on matters that come before the Council, and assist as requested in the development and implementation WGA water-related policies. WGA staff are invited to attend and participate in our meetings, workshops and symposia. WGA and WSWC staff collaborate on a continuing basis.

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 Western Federal Agency Support Team (WestFAST) activities and needs. [WGA and WSWC will also work together as part of the Western Policy Network.](#)

Subcommittee: Management Subcommittee

Time Frame: ongoing

2. WESTFAST

Work to date: WestFAST's creation in 2008 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 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 federalism principles to guide federal/state working relationships. WestFAST is now in its tenth year.

2018~~7~~/19~~8~~: 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, helping to build a sound foundation for continuing collaboration. The WSWC will meet with WestFAST principals, and will continue to seek

building closer ties with WestFAST principals. [The Council will also advocate for continued WestFAST funding.](#)

Time Frame: Ongoing

3. FEDERAL ADMINISTRATION and CONGRESSIONAL VISITS/CONTACTS

Work to date: In an ongoing effort to promote WSWC and WGA positions and priorities, Council officers, members and staff travel often to Washington, D.C. to visit with Administration officials and Congressional members and staff. 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 has 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 House and Senate members of western state delegations, as well as key committee leadership and staff.

2018/198: The Council's officers, members and staff again plan visits during the Council's Spring 2018 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. The WestFAST Liaison Officer and WestFAST members will assist with and participate in visits with Executive Branch agencies. The WSWC will meet with WestFAST principals. 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.

Subcommittee: Management Subcommittee

Time frame: Ongoing

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 WGA and WSWC procedures for policy coordination.

~~20187/20198: The Fall 2017 meetings will be held in Spring Albuquerque, New Mexico and the Spring 2018 meetings in Washington, D.C. including our biennial Washington, D.C. Roundtable, sponsored in cooperation with the Interstate Council on Water Policy (ICWP). The Summer 2018 meetings are scheduled for will be held in Newport, Oregon. The Fall 2018 meetings are scheduled for Idaho. The Spring 2019 meetings are scheduled for Arizona, and the Summer 2019 meetings are scheduled for Washington.~~

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).

~~20187/198:~~ 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. This includes a biennial Indian Water Rights Settlement Symposia cosponsored with the Native American Rights Fund. The next Council and NARF Symposium will be held in ~~2019, Great Falls, Montana on August 8-10, 2018.~~

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. **The next Symposium will be held in November 2018.**

The Committee considers hosting symposia on any topic related to tribal issues, data issues, or other topics and issues as their importance merits.

~~20187/198:~~ The Water Resources Committee, under the direction of the Executive Committee, will plan and host a symposium on infrastructure needs, strategies, and federal and state programs.

Time Frame – Winter-Spring 2017/2018

7. ANNUAL REPORT

Work to date: Since its organization in 1965, the Council has prepared and published an annual report, with 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 L – State Engagement with Federal Partners: Topics and Strategies

State Engagement with Federal Partners: Topics and Strategies

Data & Information Management - Development, Access, and Visualization

Weather and Water Monitoring Data Platforms (e.g., streamgaging, snowpack/runoff forecasting, precipitation, soil moisture, etc.)

Water Use Data Development

Drought/Disaster/Extreme Weather Event Information

Remotely-sensed Data Platforms

Data Standards and Data Publication Methods

Hydrologic Modeling/Flood Information (e.g., Bulletin 17C, etc.)

Groundwater Management

Conjunctive Use/Groundwater Recharge, Recovery and Banking

Special Management Areas

Interstate Disputes – *Mississippi v. Tennessee*

Ground Water Monitoring and Modeling

NASA's Gravity Recovery and Climate Experiment (GRACE) mission

Water Supply Studies, Forecasting & Emergency Management

Planning for Extreme Events

Sub-Seasonal to Seasonal (S2S)/Droughts/Floods

Forecast Informed Reservoir Operations/Reallocation Studies

Landscape Conservation and Water Resources

Landscape Conservation Cooperatives

Fire and Watersheds

Infrastructure: Past, Present and Future

Water Resources Development Act (WRDA)/ Water Infrastructure Improvements for the Nation Act(WIIN)

SRFs/Inland Waterways Trust Fund

USDA P.L. 566 Program

Aging Infrastructure / Dam Safety

Water Infrastructure Finance and Innovation Act (WIFIA)

Asset Management

Water and National Farm Policy

Farm Bill Reauthorization

Conservation Reserve Program (CRP)

Environmental Quality Incentives Program (EQIP)

Rural Development

Fire Funding

Tab M – Waters of the United States (WOTUS) 2.0 Timeline

WOTUS 2.0 Timeline

<u>Date</u>	<u>Process</u>
2/28/17	Executive Order 13778 Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule
3/6/17	82 Federal Register 12532 Intention to Review and Rescind or Revise the Clean Water Rule
4/10/17	EPA sent letters soliciting input from states and announced a two-step process: 1. Rescind 2015 Rule and recodify prior regulations 2. Propose a revised definition of “waters of the United States” and outreach
4/19/17 – 6/19/17	Federalism consultation briefing webinars/meetings (Step 2) <i>Held 24 meetings and received 169 letters, including from 19 Governors, 2 Lieutenant Governors, 1 State Senator, 20 Attorneys General, 63 state agencies/offices, 70 local government agencies, 10 water districts, and 6 state and professional associations.</i> WSWC Letter
7/14/17	EPA’s Local Government Advisory Committee (LGAC) issued its Waters of the United States 2017 Report (Step 2) <i>LGAC, consisting of 35 local, state, and tribal government officials, was charged to provide EPA with expeditious and meaningful recommendations on approaches EPA should consider when formulating a revised WOTUS rule.</i>
7/27/17	82 Federal Register 34899 Definition of “Waters of the United States” – Recodification of Pre-Existing Rules (Step 1) <i>Proposed to maintain the status quo. Comment period was extended to September 27, 2017; received 687,645 comments.</i> WSWC Comment
11/22/17	82 Federal Register 55542 Definition of “Waters of the United States” – Addition of an Applicability Date to 2015 Clean Water Rule (Step 0) <i>Proposed to postpone applicability date to two years from the date of final action on the Rule, accounting for the anticipated removal of the 6th Circuit’s nationwide stay of the Rule and maintaining the status quo to maintain the current level of regulatory certainty while the agencies review, rescind, or revise the Rule. Comment period closed December 13, 2017; received 4,680 comments</i>
2/6/18	83 Federal Register 5200 Definition of “Waters of the United States” – Addition of an Applicability Date to 2015 Clean Water Rule (Step 0) <i>Final rule, establishing February 6, 2020 as the date that the 2015 Rule would become effective unless otherwise rescinded or revised.</i>
3/8/18 – 3/9/18	“Waters of the United States” Step 2 Rulemaking: State Co-Regulators Meeting
Summer 2018	Target for new proposed definition of “waters of the United States” (Step 2)

Tab Mc – Western Governors' Association
(WGA) Water-Related Policy
Resolutions



**Western Governors' Association
Policy Resolution 2015 - 08**

Water Resource Management in the West

A. BACKGROUND

1. Water is a crucial resource for communities, industries, habitats, farms, and Western states. Clean, reliable water supplies are essential to maintain and improve quality of life. The scarce nature of water in much of the West makes it particularly important to our states.
2. States are the primary authority for allocating, administering, protecting, and developing water resources, and they are primarily responsible for water supply planning within their boundaries. States have the ultimate say in the management of their water resources and are best suited to speak to the unique nature of Western water law and hydrology.
3. Many communities in the West anticipate challenges in meeting future water demands. Supplies are nearly fully allocated in many basins across the West, and increased demand from population growth, economic development, and extreme weather and fire events places added stress on those limited water resources. Sustainability of our natural resources, specifically water, is imperative to the foundations upon which the West was developed. Growth and development can only continue upon our recognition of continued state stewardship of our unique resources and corresponding responsibilities.
4. Strong state, regional and national economies require reliable deliveries of good-quality water, which in turn depend on adequate infrastructure for water and wastewater. Investments in water infrastructure also provide jobs and a foundation for long-term economic growth in communities throughout the West. Repairs to aging infrastructure are costly and often subject to postponement.
5. Western Governors recognize the essential role of partnership with federal agencies in Western water management and hope to continue the tradition of collaboration between the states and federal agencies.
6. Tribal governments and Western states also share common water resource management challenges. The Western Governors Association and Western States Water Council have had a long and productive partnership with tribes, working to resolve water rights claims.

B. GOVERNORS' POLICY STATEMENT

1. **State Primacy in Water Management:** As the preeminent authority on water management within their boundaries, states have the right to develop, use, control and distribute the surface water and groundwater located within their boundaries, subject to international treaties and interstate agreements and judicial decrees.

- a. **Federal Recognition of State Authority:** The federal government has long recognized the right to use water as determined under the laws of the various states; Western Governors value their partnerships with federal agencies as they operate under this established legal framework.

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.

Reauthorization of the Water Resources Reform & Development Act, proposed federal surplus water rulemakings, and/or storage reallocation studies should recognize and defer to the states' legal right to allocate, develop, use, control, and distribute their waters, including but not limited to state storage and use requirements.

- b. **Managing State Waters for Environmental Purposes:** States and federal agencies should coordinate efforts to avoid, to the extent possible, the listing of water-dependent species under the Endangered Species Act (ESA). When ESA listings cannot be avoided, parties should promote the use of existing state tools, such as state conservation plans and in-stream flow protections, to conserve and recover species.
2. **Infrastructure Needs:** Aging infrastructure for existing water and wastewater facilities and the need for additional water projects cannot be ignored. Infrastructure investments are essential to our nation's continued economic prosperity and environmental protection, and they assist states in meeting federally-mandated standards.
 - a. **Federal Support for Infrastructure Investment:** Congress should provide adequate support for the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) State Revolving Funds. Further, Congress should fully utilize the receipts accruing to the Reclamation Fund for their intended purpose in the continuing conservation, development and wise use of western resources to meet Western water-related

needs, including the construction of Congressionally-authorized Bureau of Reclamation rural water projects and facilities that are part of a Congressionally-authorized Indian water rights settlement.

Congress should reauthorize Water Resources Reform & Development Act (WRRDA) legislation on a regular schedule and appropriate funding so all projects and studies authorized in WRRDA can be completed in a timely manner.

Congress also should consider facilitating greater investment in water infrastructure, utilizing such tools as loan guarantees, revolving funds, infrastructure banks and water trust funds.

Capital budgeting and asset management principles should be used to determine funding priorities based on long-term sustainability and not annual incremental spending choices. It should be accompanied by dedicated sources of funding with appropriate financing, cost-sharing, pricing and cost recovery policies.

- b. **Alternatives to Direct Federal Investment:** Federal and state policymakers should also consider other tools to promote investment in water infrastructure and reduce financing costs, including: public-private partnerships; bond insurance; risk pooling; and credit enhancements.

Congress should remove the state volume caps for private activity bonds used for water and wastewater projects, provide guaranteed tax-exempt status for bonds issued by state or local agencies to finance water infrastructure, provide loan guarantees, and otherwise support and encourage alternatives to direct federal investment of limited general funds.

- c. **Hydropower:** Congress and the Administration should authorize and implement appropriate hydropower projects and programs through efficient permitting processes that enhance renewable electric generation capacity and promote economic development, while ensuring protection of important environmental resources and indigenous people's rights.
- d. **Infrastructure Planning and Permitting:** Infrastructure planning and permitting guidelines, rules and regulations should be coordinated, streamlined and sufficiently flexible to: 1) allow for timely decision-making in the design, financing and construction of needed infrastructure; 2) account for regional differences; 3) balance economic and environmental considerations; and 4) minimize the cost of compliance.

- 3. **Western States Require Innovative and Integrated Water Management.** 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.

- a. **Water Transfers:** Western Governors recognize the potential benefits of market-based water transfers, meaning voluntary sales or leases of water rights. The Governors support water transfers that avoid or mitigate damages to agricultural economies and communities while preventing injury to other water rights, water quality and the environment.
- b. **Energy Development:** Western Governors recognize that energy development and electricity generation may create new water demands. Western Governors recommend increased coordination across the energy and water management communities, and support ongoing work to assess the interconnection of energy and water through the Regional Transmission Expansion Planning Project for the Western interconnection and similar efforts.
- c. **Conservation and Efficiency:** Because of diminished water resources and declining and inconsistent snowpack, Western Governors encourage adoption of strategies to sustain water resources and extend existing water supplies further through water conservation, water reuse and recycling, desalination and reclamation of brackish waters, and reductions in *per capita* water use. The Governors encourage the use of and research into promising water-saving strategies.
- d. **Local Watershed Planning:** Western Governors encourage federal agencies and Congress to provide resources such as technical support to states and local watershed groups. States may empower these watershed groups to address local water issues associated with water quality, growth and land management to complement state water needs.
- e. **Intergovernmental Collaboration and Conflict Resolution:** Western Governors support the negotiated settlement of interstate water disputes, Indian and Hawaiian water rights claims, and other federal water needs and claims, the settlement of which are in the best interest of Western states.

- f. **State-Federal Coordination:** Western Governors recognize the important role of federal agencies in advancing sound water resource management in the Western states. Governors appreciate the efforts of federal agencies to coordinate water-related activities, particularly through the Western States Water Council, and support the continuation of these key state-federal partnerships.
- 4. **Western States Need Reliable Water Resource Information:** Basic information on the status, trends and projections of water resource availability is essential to sound water management.
 - a. **Basic Water Data:** Western Governors support the U.S. Geological Survey's Cooperative Water Program and National Streamflow Information Program (NSIP), the Natural Resources Conservation Service's Snow Survey and Water Supply Forecasting Program, the National Oceanic and Atmospheric Administration's (NOAA) weather and hydrology-related data collection, monitoring, and drought information programs, and the National Aeronautics and Space Administration's National Land Imaging (Landsat) Program with its thermal infrared sensor. Western Governors support federal efforts to coordinate water data gathering and information programs across multiple agencies.
 - b. **Extreme Weather Events Planning:** Western Governors recognize the significant potential impacts of extreme weather events and variability in water supplies. Western Governors urge Congress and the Administration to work closely with states and other resource managers to improve predictive and adaptive capabilities for extreme weather variability and related impacts. We specifically urge the federal government to place a priority on improving the sub-seasonal and seasonal precipitation forecasting capabilities that could support water management decision-making.
 - c. **Water Data Exchange:** The Western Governors' Association and the Western States Water Council have worked together to create the Water Data Exchange, an online portal that will enable states to share their water data with each other, federal agencies, and the public via a common platform. The Governors encourage the use of state water data in planning for both the public and private sectors.
- 5. **Drought Preparedness and Response:** As exceptional levels of drought persist across the West, Governors are leading on drought preparedness and response through the Western Governors' Drought Forum. The Drought Forum provides a framework for leaders from states, businesses, non-profits, communities, research organizations and federal agencies to share best practices and identify policy options for drought management. The Governors have identified several areas in need of additional attention from Drought Forum partners, including:

- a. **Data and Analysis:** Basic data on snowpack, streamflow and soil moisture is essential to understanding drought. Though a great deal of information already exists, enhanced drought data collection and real-time analysis at a higher resolution is essential. Governors support state and federal efforts to maintain adequate collection of drought and water data, enhance data networks where appropriate, and facilitate better use of existing information.

The Governors appreciate the collaborative efforts on drought provided through NOAA's National Weather Service River Forecast Centers and Weather Forecast Offices, and the Office of Atmospheric Research's labs and programs, such as the National Integrated Drought Information System (NIDIS).

- b. **Produced, Reused and Brackish Water:** Technology exists to use produced, reused, recycled and brackish water—sources traditionally considered to be marginal or wastewater. Adoption of this technology has been limited by inadequate data, regulatory obstacles, financial barriers, public attitudes and logistical uncertainties. Governors support regulatory streamlining and policy options to encourage use of produced, brackish, and re-used water where appropriate.
- c. **Forest Health and Soil Stewardship:** Better land management practices for forests and farmland may help improve availability and soil moisture retention. Wildfires can cause sediment runoff in water systems, leading to problems for reservoir management and water quality. Governors support policies and practices that encourage healthy and resilient forests and soils in order to make the most of existing water supplies.
- d. **Water Use Efficiency and Conservation:** Public awareness of drought has directed increasing attention to water conservation strategies, both in-home and on-farm. Governors encourage municipal, industrial and agricultural water conservation strategies as drought management strategy.
- e. **Infrastructure and Investment:** Water infrastructure to store and convey water is crucial to drought management, but maintenance and expansion of that infrastructure is often difficult to fund. Governors support efforts to make the most of existing infrastructure, while seeking creative solutions to add more infrastructure with limited resources.
- f. **Working within Institutional Frameworks to Manage Drought:** Legal frameworks and regulatory regimes can sometimes limit the ability of state, local and federal agencies to respond quickly to drought conditions. Governors believe that

innovative, flexible policy solutions, such as streamlined processing of temporary water transfers, should be considered when managing drought.

- g. **Communication and Collaboration:** Communication among state officials, federal agency representatives, water providers, agricultural users and citizens is a crucial component of effective drought response. The Western Governors' Drought Forum will continue to provide a framework for sharing best practices through its online resource library, informational webinars, and strategy-sharing meetings for the duration of this resolution.

C. **GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult westgov.org/policies for the most current copy of a resolution and a list of all current WGA policy resolutions.



WESTERN
GOVERNORS'
ASSOCIATION

Western Governors' Association Policy Resolution 2017-04

Water Quality in the West

A. BACKGROUND

1. Clean water is essential to strong economies and quality of life. In most of the West, water is a scarce resource that must be managed with sensitivity to social, environmental, and economic values and needs. Because of their unique understanding of these needs, states are in the best position to manage the water within their borders.
2. States have federally-recognized authority to manage and allocate water within their boundaries. The Clean Water Act (CWA) Section 101(g) expressly says that "the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act."
3. States and the Environmental Protection Agency (EPA) work together as co-regulators under the CWA and the Safe Drinking Water Act (SDWA). The U.S. Congress has provided for, by statute, the authority for states to obtain approval to implement certain federal program responsibilities. When a state has been approved to implement a program and the state is meeting minimum program requirements, the role of federal agencies like EPA should be funding, technical assistance and research support. States should be free to develop, implement and enforce those requirements using an approach that makes sense in their specific jurisdiction, subject to the minimum requirements of the federal acts.
4. The CWA was last reauthorized in 1987; attempts to reauthorize the Act since then have failed. Current federal regulations, guidance and programs pertaining to the CWA do not always recognize the specific conditions and needs of most of the West, where water is scarce and even wastewater becomes a valuable resource to both humans and the environment. The West includes a variety of waters; small ephemeral washes, large perennial rivers, effluent-dependent streams, and wild, scenic rivers. In addition to natural rivers, streams and lakes, there are numerous man-made reservoirs, waterways and water conveyance structures. States need more flexibility to determine how to best manage these varying resources.

B. GOVERNORS' POLICY STATEMENT

Clean Water Act (CWA)

1. **State Authority and Implementation of CWA:** States have jurisdiction over water resource allocation decisions and are responsible for how to balance state water resource needs within CWA objectives. New regulations, rulemaking, and guidance should recognize this state authority.
 - a) **CWA Jurisdiction:** Western Governors urge EPA and the Corps to engage the states as co-regulators and ensure that state water managers have a robust and meaningful voice in the development of any rule regarding CWA jurisdiction, particularly in the early stages of development before irreversible momentum precludes effective state participation.
 - b) **Total Maximum Daily Loads (TMDLs)/Adaptive Management:** States should have the flexibility to adopt water quality standards and set total maximum daily loads (TMDLs) that are tailored to the specific characteristics of Western water bodies, including variances for unique state and local conditions.
 - c) **Anti-degradation:** CWA Section 303 gives states the primary responsibility to establish water quality standards (WQS) subject to EPA oversight. Given the states' primary role in establishing WQS, EPA should directly involve the states in the rulemaking process for any proposed changes to its existing regulations. Before imposing new anti-degradation policies or implementation requirements, EPA should document the need for new requirements and strive to ensure that new requirements do not interfere with sound existing practices.
 - d) **Groundwater:** States have exclusive authority over the allocation and administration of rights to use groundwater located within their borders and are primarily responsible for allocating, protecting, managing, and otherwise controlling the resource. The regulatory reach of the CWA was not intended to, and should not, be applied to the management and protection of groundwater resources. The federal government should not develop a groundwater quality strategy; instead, it must recognize and respect state primacy, reflect a true state-federal partnership, and comply with current federal statutory authorities.
2. **Permitting:** Actions taken by EPA in its CWA permitting processes should not impinge upon state authority over water management or the states' responsibility to implement CWA provisions.
 - a) **State Water Quality Certification:** Section 401 of the CWA requires applicants for a federal license to secure state certification that potential discharges from their activities will not violate state water quality standards. Section 401 of the CWA is

operating as it should and states' mandatory conditioning authority should be retained without amendment.

- b) **General Permits:** Reauthorization of the CWA must reconcile the continuing administrative need for general permits with their site-specific permitting requirements under the CWA. EPA should promulgate rules and guidance that better support the use of general permits where it is more effective to permit groups of dischargers rather than individual dischargers.
 - c) **Water Transfers:** Water transfers that do not involve the addition of a pollutant have not been subject to the permitting requirements of the CWA's National Pollutant Discharge Elimination System (NPDES). States already have authority to address the water quality issues associated with transfers. Western Governors believe that transporting water through constructed conveyances to supply beneficial uses should not trigger NPDES permit requirements simply because the source and receiving water contain different chemical concentrations and physical constituents. Western Governors generally support EPA's current water transfers rule, which exempts water transfers between waters of the United States from NPDES permitting requirements.
 - d) **Pesticides:** Western Governors generally support the primary role of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in regulating agriculture and public health related pesticide applications to waters of the U.S. and will seek state-based solutions that complement rather than duplicate FIFRA in protecting water supplies.
3. **Nonpoint Source Pollution:** Nonpoint source pollution requires state watershed-oriented water quality management plans, and federal agencies should collaborate with states to carry out the objectives of these plans. The CWA should not supersede other ongoing federal, state and local nonpoint source programs. Federal water policies must recognize that state programs enhanced by federal efforts could provide a firm foundation for a national nonpoint source policy that maintains the non-regulatory and voluntary nature of the program. In general, the use of point source solutions to control nonpoint source pollution is also ill-advised.
- a) **Forest Roads:** Stormwater runoff from forest roads has been managed as a nonpoint source of pollution under EPA regulation and state law since enactment of the CWA. Western Governors support solutions that are consistent with the long-established treatment of forest roads as nonpoint sources, provided that forest roads are treated equally across ownership within each state.
 - b) **Nutrient Pollution:** Nitrogen and phosphorus (nutrient) pollution is a significant cause of water quality impairment across the nation, and continued cooperation between states and EPA is needed. However, 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.

States should be allowed 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. Successful tools currently in use by states include best management practices, nutrient trading, controlling other water quality parameters, and other innovative approaches.

4. **CWA Reauthorization:** The Western Governors support reauthorization of the CWA, provided that it recognizes the unique hydrology and legal framework in Western states. Further, any CWA reauthorization should include a new statement of purpose to encourage the reuse of treated wastewater to reduce water pollution and efficiently manage water resources.
5. **Good Samaritan Legislation:** Congress should enact a program to protect volunteering remediating parties who conduct authorized remediation of abandoned hardrock mines from becoming legally responsible under the CWA and/or the Comprehensive Environmental Response, Compensation, and Liability Act for any continuing discharges after completion of a remediation project, provided that the remediating party – or “Good Samaritan” – does not otherwise have liability for that abandoned mine or inactive mine site.
6. **Stormwater (Wet Weather) Pollution:** In the West, stormwater discharges to ephemeral streams in arid regions pose substantially different environmental risks than do the same discharges to perennial surface waters. The Western Governors emphasize the importance of state primacy in water management, including management of ephemeral streams. State water agencies are well-equipped to provide tailored approaches that reflect the unique management needs of ephemeral streams.
7. **State-Tribal Coordination:** Western Governors endorse government-to-government cooperation among the states, tribes and EPA in support of effective and consistent CWA implementation. While retaining the ability of the Governors to take a leadership role in coordination with the tribes, EPA should promote effective consultation, coordination, and dispute resolution among the governments, with emphasis on lands where tribes have treatment-as-state status under Section 518 of the CWA.

Safe Drinking Water Act (SDWA)

8. **Federal Assistance in Meeting SDWA Standards:** Western Governors believe that the SDWA and its standards for drinking water contaminants have been instrumental in ensuring safe drinking water supplies for the nation. It is essential that the federal government, through EPA, provide adequate support to the states and water systems to meet federal requirements. Assistance is particularly needed for small and rural systems, which often lack the resources needed to comply with federal treatment standards.
9. **Drinking Water Standards:** Contaminants such as arsenic, chromium, perchlorate and fluoride often occur naturally in the West. Western Governors support EPA technical assistance and research to improve both the efficiency and affordability of treatment technologies for these contaminants. In any drinking water standards that the EPA may revise or propose for these and other contaminants, including disinfection byproducts, EPA should consider the disproportionate impact that such standards may have on Western states and give special consideration to feasible technology based on the resources and needs of smaller water systems.
10. **Risk Assessments:** Analysis of the costs of treatment for drinking water contaminants should carefully determine the total costs of capital improvements, operation and maintenance when determining feasible technology that can be applied by small systems. These costs should be balanced against the anticipated human health benefits before implementing or revising drinking water standards.
11. **Emerging Contaminants/Pharmaceuticals:** The possible health and environmental impacts of emerging contaminants and pharmaceuticals are of concern to Western Governors. Although states have existing authorities to address possible risks associated with emerging contaminants and pharmaceuticals, there is a need for more reliable science showing impacts on human health as more information regarding these contaminants becomes available.
12. **Hydraulic Fracturing:** States currently employ a range of effective programmatic elements and regulations to ensure that hydraulic fracturing does not impair water quality, including but not limited to requirements pertaining to well permitting, well construction, the handling of exploration and production waste fluids, the closure of wells, and the abandonment of well sites.

Federal efforts to study the potential impacts of hydraulic fracturing on water quality should leverage state knowledge, expertise, policies, and regulations. Such efforts should also be limited in scope, based upon sound science, and driven by the states. Western Governors oppose efforts that would diminish the primary and exclusive authority of states over the allocation of water resources necessary for hydraulic fracturing.

Compliance with Federal Water Quality and Drinking Water Requirements

13. **State Revolving Funds:** Western Governors support EPA's Clean Water State Revolving Fund (SRF) and Drinking Water SRF as important tools that help states and local communities address related water infrastructure needs and comply with federal water quality and drinking water requirements. Western Governors also urge Congress and the Administration to ensure that the SRF Programs provide greater flexibility and fewer restrictions on state SRF management.
14. **Restoring and Maintaining Lakes and Healthy Watersheds:** Historically, the Section 314 Clean Lakes Program and the Section 319 Nonpoint Source Management Program provided states with critical tools to restore and maintain water quality in lakes and watersheds. Western Governors urge the Administration and Congress to support these programs. Such support should not come at the expense of other federal watershed protection programs.
15. **EPA Support and Technical Assistance:** The federal government through EPA should provide states and local entities with adequate support and technical assistance to help them comply with federal water quality and drinking water requirements. EPA should also collaborate with and allow states to identify and establish priority areas, timelines, and focus on programs that provide the largest public health and environmental benefits.
16. **EPA Grant Funding for Primary Service: Rural Water Programs:** Some rural communities still lack basic water and sanitary services needed to assure safe, secure sources of water for drinking and other domestic needs. Adequate federal support, including but not limited to the Rural Utilities Service programs of the Department of Agriculture and State Revolving Funds through EPA, are necessary to augment state resources.

Water Quality Monitoring and Data Collection

17. **Water Data Needs:** Western water management is highly dependent upon the availability of data regarding both the quality and quantity of surface and ground waters. EPA should provide support to the states in developing innovative monitoring and assessment methods, including making use of biological assessments, sensors and remote sensing, as well as demonstrating the value to the states of the national probabilistic aquatic resource surveys.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult www.westgov.org/policies for the most current copy of a resolution and a list of all current WGA policy resolutions.

Tab N – WOTUS: State Authorities

Summary of State Authorities
For Discussion Purposes Only

	Colorado	Idaho	Kansas	Nebraska	South Dakota	Texas	Wyoming
State Constitution	Article XVI, §§ 5 and 6, unappropriated water the property of the Colorado public	Article XV, §7 authorizes the Idaho Water Resources Board's State Water Plan (water quality protections)	No references to water quality authority	Article XV-4 to -7 references water appropriations and uses	No references to water quality authority	Article 16, §59(a), Conservation and Reclamation	Article 1, §31 and Article 8, §1 address state control over waters within its boundaries
Statutes – Water Quality	Water Quality Control Act, C.R.S. §25-8-101 et seq. (includes scope of state jurisdiction)	Idaho Code, Titles 18, 22, 25, 31, 37, 38, 39, 41, 42, 47, 54, 55, 58, and 67	K.S.A. 65-164(a), -171a, -171d(a)	Neb. Rev. Stat. §81-1504	South Dakota Codified Laws SDCL 34A-2 Also SDCL 9-12-17	Various sections of the Texas Agriculture, Health & Safety, Local Gov't, and Water Codes	Wyoming Statute §§35-11-101 to -115 and §§35-11-301 to -318
Statutes – Define State Waters	C.R.S. §25-8-103 (19)	I.C. Titles 22, 25, 39, 42, 47, 58, and 67	K.S.A. 65-161 Also defined in K.A.R. 28-16-28b(ggg), (fff), (m) and 28-16-28e(b)	Neb. Rev. Stat. §81-1502(21)	SDCL 34A-2-2(12)	Texas Water Code §26.001(5), §11.021	Wyo. Stat. §§35-11-103(c)(vi) and -309(a) and Wyoming Water Quality Rules and Regulations
State Laws Dependent on CWA Authority	No. While state statutes implement delegated CWA authority, there is no explicit reference to that delegation or subjection or dependence of state authority listed in the statutes.	Some but not all of Idaho's water quality laws depend on delegated authority to implement the CWA; e.g., the underground injection program and Ground Water Quality Rule are not dependent.	Not explicitly dependent on CWA, but reference to CWA and its regulations allowed. K.S.A. 65-171d(b)	Neb. Rev. Stat. §81-1504(4) refers to CWA and powers of the state agency to carry out federal legislation for environmental protection	No.	Various TCEQ rules in Title 30 of the Texas Administrative Code adopt the federal regulations by reference to implement the Texas NPDES program	Some portions of statutes and regulations refer to CWA
State Laws Parallel to CWA sections (May Be Dependent or Independent)	C.R.S. §25-8-207 for classifications and standards (CWA §303) C.R.S. §25-8-501 et seq. for pollutant discharge (CWA §402)	I.C. §§39-3601 et seq. and IDAPA 58.01.02 (CWA §303) IDAPA 58.01.02.800 - .852 (CWA §311) I.C. §§39-175A to -175E and	K.A.R. 28-16-28b to 28h (WQS) (CWA §303) K.A.R. 82-3-603 (CWA §311) K.S.A. 65-165 to 170f and K.A.R. 28-16-1 to -7 (CWA §402)	See generally, §81-1501 to -1532 Nebraska Administrative Code Title 117 (CWA §303) (WQS but not TMDLs)	SDCL 34A-2-11, -11.1, -17, and -18 (WQS) and SDCL 34A-2-6 (TMDLs) (CWA §303) SDCL 34A-12 (reporting, response, remediation),	Texas Water Code §§26.023 - .026 and 30 TAC Chapter 307 (CWA §303) Texas Natural Resources Code Chapter 40, Texas Water Code §§26.261	Wyo. Stat. §35-11-302(a)(i) and WWQRR Chapter 1 (CWA §303) Wyo. Stat. §§35-11-301 and -302 and WWQRR Chapters 1 and 4 (CWA §311)

	Colorado Oil and Gas Conservation Commission, see e.g., C.R.S. §34-60-130 (CWA §311)	IDAPA 58.01.25 (CWA §402) I.C. §§42-3801 et seq. and IDAPA 37.03.07 (stream channel alterations) and I.C. §§58-1301 et seq. and IDAPA 20.03.04 (navigable lake encroachments) (CWA §404)	Although no dredge & fill program for environmental concerns, there is regulation of dams and obstructions for public safety and property, K.S.A. 82a-301 et seq.	N.A.C. Title 126, 153, 158, and 159 (CWA §311) Neb. Rev. Stat. §§81-1502, 81-1504(4), (11), (20), 81-1505(3-8), (11), 81-1506, and N.A.C. Title 119 (CWA §402) Neb. Rev. Stat. §81-1505(2)(e) and N.A.C. Title 120 (CWA §401)	SDCL 34A-2-96, -97, -101 and 34A-18 (CWA §311) SDCL 34A-2-36 (and surrounding sections) (CWA §402)	to .267 (CWA §311) Texas Water Code §§26.027, 26.121 and 30 TAC (CWA §402) 30 TAC Chapter 279 (CWA §404)	Wyo. Stat. §35-11-302(a)(ii) and (v) and WWQRR Chapter 2 (CWA §402) Dredge and fill for non-CWA wetlands: WWQRR Chapter 2 sections 2 and 7; also notification and mitigation §35-11-309 to -311 (CWA §404)
State Water Quality Protections Beyond CWA	Groundwater protection	Several state agencies protect water quality and voluntary nonpoint source management activities.	Permits for non-discharging wastewater treatment systems, and CAFO facilities under 1000 animal units.	Ground Water Management and Protection Act, (quality and quantity focus, including nonpoint source)	Groundwater protection (water quality standards and discharge permits)	Additional surface and ground water protections	Additional surface and ground water protections
State Limitations Beyond CWA	More stringent rules than CWA may be adopted if demonstrated to be necessary, plus limits on irrigation return flow and agricultural waste regulations	Various sections prohibited from being more stringent or broader in scope than applicable federal requirements	No limitations.	No limitations.	Several Titles restricted from being more stringent than corresponding federal law.	No limitations.	No limitations.
WOTUS Definition Impact	The Colorado Department of Public Health and Environment may have the burden of justifying stringent quality standards over waters once considered under federal jurisdiction	The geographic scope of the Idaho Water Quality Act is expressly limited to navigable waters of the United States as defined in the CWA.			The South Dakota legislature may change the waters of the state definition, with potential impacts on water rights, surface and groundwater programs, and recreational uses.		

Western States Water Council

Survey of State Authorities to Regulate Waters of the State

The states have authority pursuant to their “waters of the state” jurisdiction to regulate and protect waters excluded or exempt from federal jurisdiction. WSWC, Position #410.

The purpose of this brief survey is to identify each state’s constitutional, statutory, regulatory, case law, or other state authorities (collectively “state laws”) to protect the quality of waters within their boundaries, particularly any waters not covered by federal jurisdiction under the Clean Water Act (though the state and federal laws may overlap).

1. Does your **state constitution** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

The constitution of the state of Colorado defines the prior appropriation water rights system. See sections 5 and 6 of article XVI of the constitution of the state of Colorado.

Specifically article 16 sect 5 of the Colorado constitution. "The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided."

However, there are no constitutional provisions with respect to the regulation of water quality.

2. Do your **state statutes** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Yes, Colorado has the Water Quality Control Act (WQCA). The WQCA can be found at Title 25 section 8-101 et seq. of the Colorado Revised Statutes.

3. Do your **state laws** define “waters of the state” or delineate the scope of state jurisdiction over waters within state boundaries? Does this jurisdiction explicitly include water quality protection purposes? Please include relevant citation(s).

Yes, the WQCA delineates the scope of state jurisdiction over waters of the state. See C.R.S. §25-8-103(19) which defines state waters. The WQCA explicitly includes water quality protection.

4. Do any of your **state water quality laws** depend explicitly upon the authority of the Clean Water Act or delegated federal authority to implement Clean Water Act programs? Please include relevant citation(s).

Not sure I understand this question. The state of Colorado was delegated Clean Water Act authority for the issuance of NPDES permits and for the enforcement thereof in 1974. There is no explicit reference to that delegation or any additional dependent line of authority or subjugation of that authority listed in state statutes. However, C.R.S. §25-8-202(8)(a) says "the commission may adopt rules more stringent than corresponding enforceable federal requirements only if it is demonstrated at a public hearing, and the commission finds, based on sound scientific or technical evidence in the record, that state rules more stringent than the corresponding federal requirements are necessary to protect the public health, beneficial use of water, or the environment of the state...." The Water Quality Control Division takes the

position that this provision is only implicated when there is a specific (ie, numeric) federal requirement that applies (rather than just an obligation to adopt standards that protect uses). In addition, C.R.S. §25-8-504 prohibits state regulations more stringent than federal for irrigation return flow and agricultural waste.

5. Do your **state laws** contain any provisions for protecting water quality that are similar in purpose to the following sections¹ of the Clean Water Act? Please include relevant citation(s).
 - a. §303 – water quality standards (WQS) and total maximum daily load (TMDL) programs

Yes, WQCA C.R.S. §25-8-207 for classifications and standards.

- b. §311 – oil spill prevention and response program

Oil spill prevention and response programs fall under the authority of the Colorado Oil and Gas Conservation Commission.

- c. §402 – national pollutant discharge elimination system (NPDES) permit program

Yes, again Colorado was delegated NPDES authority in 1974. The relevant statute is again the WQCA, C.R.S. §25-8-501 et seq.

The Colorado Oil and Gas Conservation Commission (COGCC) assists with federal oversight under §311 by providing records and access to sites. C.R.S. §34-60-130 requires reporting of oil or E&P spills, and COGCC has adopted rules to prevent unauthorized discharges or disposals. In addition, COGCC is delegated state authority to implement standards and classifications for groundwater protection adopted by the Water Quality Control Commission and to oversee the investigation and remediation of spills or releases that impact surface water.

- d. §404 – dredge and fill permit program

No.

6. Do your **state laws** offer additional water quality protections beyond what is available under the Clean Water Act? Please include relevant citation(s).

Yes, in terms of groundwater protection. See C.R.S. §25-8-103(19) which defines state waters.

7. Do your **state laws** restrict or prohibit water quality protections from being more stringent than federal requirements? If yes, how might a revised “waters of the U.S.” definition impact the scope of your state water quality protections?

It seems this could be answered in two parts:

¹ These four Clean Water Act sections in particular, along with §401 (state and tribal certifications), have “navigable waters” language that is directly affected by the definition of “waters of the United States,” impacting the scope of federal jurisdiction to regulate waters under the Clean Water Act.

1) For standards where Colorado wants to be more stringent than the federal rule, as stated in the answer to question #4, it is a matter of having an evidence burden to justify that. My concern is if the EPA lowers any existing standards in the new rule, then CDPHE may have to go through the burden of justifying keeping the existing more stringent standard. (i.e. "the commission may adopt rules more stringent than corresponding enforceable federal requirements only if it is demonstrated at a public hearing, and the commission finds, based on sound scientific or technical evidence in the record, that state rules more stringent than the corresponding federal requirements are necessary to protect the public health, beneficial use of water, or the environment of the state....")

2) As it pertains to "irrigation return flow and agricultural waste," since Colorado is restricted to following the federal standards, whatever they come up with based upon the new EPA rule, will impact Colorado, we just cannot predict what that will be yet until we at least see their first draft.

See also provisions noted in question 4 above.

Western States Water Council

Survey of State Authorities to Regulate Waters of the State

The states have authority pursuant to their “waters of the state” jurisdiction to regulate and protect waters excluded or exempt from federal jurisdiction. WSWC, Position #410.

The purpose of this brief survey is to identify each state’s constitutional, statutory, regulatory, case law, or other state authorities (collectively “state laws”) to protect the quality of waters within their boundaries, particularly any waters not covered by federal jurisdiction under the Clean Water Act (though the state and federal laws may overlap).

1. Does your **state constitution** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Idaho Response: The Idaho Constitution does not expressly address water quality. However, Article XV, section 7 of the Idaho Constitution authorizes the Idaho Water Resource Board to “formulate and implement a state water plan for optimum development of water resources in the public interest” In turn, the State Water Plan recognizes that “[w]ater quality impacts the usability of water for a variety of purposes and it is essential that the quality of Idaho’s water resources be protected for public safety and economic stability and growth.” The Plan further provides implementation strategies and milestones for protecting and enhancing the quality and sustainability of Idaho’s surface and ground water supplies. Details on the State Water Plan are available at the following URL:
<https://www.idwr.idaho.gov/IWRB/water-planning/state-water-plan.html>

2. Do your **state statutes** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Idaho Response: Yes, the State of Idaho has a robust statutory scheme for the protection of water quality. Relevant citations are listed below with “Idaho Code” abbreviated as “I.C.”:

- Idaho criminal code, I.C. §§ 18-3905 (transportation of hazardous waste), -4301 et seq. (crimes related to irrigation works), -5501 (poisoning), -5803 (exposure of animal carcasses), -5807 (leaving carcasses near streams and pollution of water used for domestic purposes), -5901 et seq. (public nuisance), -6015 (disposal of human body waste from passenger trains), -7013 (pollution of fenced reservoirs), -7037 (unauthorized release of aquatic species).
- Duties of the Director of the Idaho Department of Agriculture, I.C. §§ 22-103, -110.
- Idaho Fertilizer Act of 2000 (as amended), I.C. §§ 22-601 et seq.
- The Idaho Invasive Species Act of 2008 (as amended), I.C. §§ 22-1901 et seq.
- Soil and Plant Amendment Act of 2001 (as amended), I.C. §§ 22-2201 et seq.
- Soil conservation district law, I.C. §§ 22-2715 et seq.
- Pesticide and chemigation law, I.C. §§ 22-3401 et seq.
- Beef Cattle Environmental Control Act, I.C. §§ 22-4901 et seq.
- The Poultry Environmental Act, I.C. §§ 25-4001 et seq.
- Sanitary inspection of dairy products law, I.C. § 37-401.
- Dairy Environmental Control Act, I.C. §§ 37-601 et seq.
- I.C. §§ 31-831 to -834 (relating to abatement of “catastrophic public nuisance” by county officials).

- Idaho Forest Practices Act, I.C. §§ 38-1301 et seq.
- Idaho Environmental Protection and Health Act, I.C. §§ 39-101 et seq.
- Aquifer protection district law, I.C. §§ 39-501 et seq.
- Water quality law, I.C. §§ 39-3601 et seq.
- Hazardous Waste Management Act of 1983 (as amended), I.C. §§ 39-4401 et seq.
- State Hazardous Waste Facility Siting Act, I.C. §§ 39-5801 et seq.
- Waste tire disposal law, I.C. §§ 39-6501 et seq.
- Big Payette Lake Water Quality Act, I.C. § 39-6601 et seq.
- Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River Commission law, I.C. §§ 39-8501 et seq.
- Idaho Solid Waste Facilities Act, I.C. §§ 39-7401 et seq.
- Local Option Swine Facilities Siting Act, I.C. §§ 39-7901 et seq.
- Idaho Underground Storage Tank Act, I.C. §§ 39-8801 et seq.
- Idaho Petroleum Clean Water Trust Fund Act, I.C. §§ 41-4901 et seq.
- Water appropriation law, I.C. §§ 42-201 et seq.
- Minimum stream flow law, I.C. §§ 42-1501 et seq.
- Powers and duties of the Idaho Water Resource Board, I.C. § 42-1734(15)
- State protected rivers designation, I.C. § 42-1734A(1) (*see also* https://www.idwr.idaho.gov/waterboard/WaterPlanning/Protected%20Rivers/protected_rivers.htm)
- Additional duties of the Director of the Idaho Department of Water Resources, I.C. § 42-1805(5).
- Bear River Compact (as amended), I.C. § 42-3402.
- Stream channel alteration law, I.C. §§ 42-3801 et seq.
- Injection well law, I.C. §§ 42-3901 et seq.
- Idaho Geothermal Resources Act, I.C. § 42-4001 et seq.
- Idaho Dredge and Placer Mining Protection Act, I.C. §§ 47-1312 et seq.
- Idaho surface mining act, I.C. §§ 47-1501 et seq.
- Drinking Water and Wastewater Professionals Licensing Act, I.C. §§ 54-2401 et seq.
- Uniform Conservation Easement Act, I.C. §§ 55-2102 et seq.
- Lake Protection Act, I.C. §§ 58-1301 et seq.
- Local Land Use Planning Act, I.C. §§ 67-6501 et seq.
- Marine Sewage Disposal Act, I.C. §§ 67-7501 et seq.

3. Do your **state laws** define “waters of the state” or delineate the scope of state jurisdiction over waters within state boundaries? Does this jurisdiction explicitly include water quality protection purposes? Please include relevant citation(s).

Idaho Response: Yes, certain Idaho statutes specifically define “waters of the state” or similar terms to delineate the scope of state jurisdiction over waters within the boundaries of Idaho. Whether such jurisdiction explicitly includes water quality protection purposes depends on the statute in which the definition is used. In addition, the term “waters of the state” is used but not defined in many other provisions of the Idaho Code. *See, e.g.,* I.C. §§ 18-8002(6)(iii)–(iv); 21-202 to -205; 36-406. Relevant citations to statutory definitions are listed below:

- Beef Cattle Environmental Control Act, I.C. § 22-4904(17) (defining “waters of the state” for purposes of Chapter 49, Title 22, I.C.)

- Poultry Environmental Act, I.C. § 25-4002(22) (defining “waters of the state” for purposes of Chapter 40, Title 25, I.C.)
 - Idaho Environmental Protection and Health Act, I.C. § 39-103(18) (defining “waters” for purposes of Chapter 1, Title 39, I.C.)
 - Idaho Water Quality Act, I.C. § 39-3602(34) (defining “waters of waterbody” for purposes of Chapter 36, Title 39, I.C.)
 - Local Option Swine Facilities Act, I.C. § 39-7903(31) (defining “waters of the state” for purposes of Chapter 79, Title 39, I.C.)
 - Minimum stream flow law, I.C. § 42-1502(e) (defining “stream” for purposes of Chapter 15, Title 42, I.C.)
 - Stream channel alteration law, I.C. § 42-3802(d) (defining “stream channel” for purposes of Chapter 38, Title 42, I.C.)
 - Injection well law, I.C. § 42-3902(1) (defining “aquifer” for purposes of Chapter 39, Title 42, I.C.)
 - Idaho Dredge and Placer Mining Protection Act, I.C. § 47-1313(f) (defining “natural watercourse” for the purposes of Chapter 13, Title 47, I.C.)
 - Lake Protection Act, I.C. § 58-1302(a) (defining “navigable lake”)
 - Idaho Safe Boating Act, I.C. § 67-7003(23) (defining “waters of the state” for purposes of Chapter 70, Title 67, I.C.)
 - Marine Sewage Disposal Act, I.C. § 67-7503(11) (defining “waters of the state” for purposes of Chapter 75, Title 67, I.C.)
4. Do any of your **state water quality laws** depend explicitly upon the authority of the Clean Water Act or delegated federal authority to implement Clean Water Act programs? Please include relevant citation(s).

Idaho Response: Some but not all of Idaho’s laws related to water quality depend on the Clean Water Act or delegated authority to implement the Clean Water Act. For example, Idaho’s programs for protecting ground water quality—including the underground injection control program (I.C. §§ 42-3901 et seq., IDAPA 37.03.03) and the Ground Water Quality Rule (IDAPA 58.01.11)—do not depend on Clean Water Act authority. The list below identifies relevant Idaho laws that depend on Clean Water Act authority.

- The definition of an “unauthorized discharge” in the Dairy Environmental Control Act is limited to discharges of pollutants to “waters of the United States as defined in the federal clean water act.” I.C. § 37-604(20). In addition, the Dairy Environmental Control Act provides that state enforcement actions are “deemed void” in the event the United States EPA initiates an enforcement action under the Clean Water Act. I.C. § 37-609(4).
- Certain powers and duties of the Director of the Idaho Department of Environmental Quality reference or are based upon the Clean Water Act. I.C. § 39-105(3)(e), (4).
- The Idaho Pollution Discharge Elimination System (IPDES) depends on delegated federal authority to implement a discharge permitting program under the Clean Water Act. EPA approval of the IPDES program is anticipated by July 1, 2018. See I.C. §§ 39-175A to -175E; IDAPA 58.01.25.
- The geographic scope of Idaho’s water quality law is expressly limited to the “navigable waters of the United States,” as defined in the Clean Water Act. I.C. §§ 39-3601, -3602(34). Further, the water quality law’s statement of legislative intent provides that the State of Idaho “fully meet the goals and requirements of the federal clean water act and that the rules promulgated under [Chapter 36, Title 39, I.C.,] not

- impose requirements beyond those of the federal clean water act.” I.C. § 39-3601. These provisions govern Idaho’s water quality standards, beneficial use assessment and monitoring, and total maximum daily load programs. *See* I.C. §§ 39-3601 et seq.; IDAPA 58.01.02 (Water Quality Standards).
- Two provisions in the Idaho Solid Waste Facilities Act incorporate Clean Water Act provisions. I.C. §§ 39-7403(50), -7409(4).
 - Idaho Code § 42-1763B(3)(d) requires compliance with Clean Water Act in connection with the rental and use of water for certain purposes.
 - The definitions of “manufacturer” and “other wastes” in the Marine Sewage Disposal Act incorporate or are subject to provisions in the Clean Water Act or its implementing regulations. I.C. § 67-7503(3), (5).
5. Do your **state laws** contain any provisions for protecting water quality that are similar in purpose to the following sections¹ of the Clean Water Act? Please include relevant citation(s).
- a. §303 – water quality standards (WQS) and total maximum daily load (TMDL) programs

Idaho Response: Yes, relevant statutory provisions are contained in the water quality law, I.C. §§ 39-3601 et seq., and the regulatory provisions are contained the Idaho Water Quality Standards, IDAPA 58.01.02.

- b. §311 – oil spill prevention and response program

Idaho Response: Yes, relevant regulatory provisions are contained the Idaho Water Quality Standards, IDAPA 58.01.02.800 to .852.

- c. §402 – national pollutant discharge elimination system (NPDES) permit program

Idaho Response: Yes, Idaho’s application for NPDES primacy pending before EPA and approval is anticipated by July 1, 2018. Relevant statutory provisions are Idaho Code §§ 39-175A to -175E, and the regulatory provisions are in the Rules Regulating the Idaho Pollutant Discharge Elimination System, IDAPA 58.01.25.

- d. §404 – dredge and fill permit program

Idaho Response: Yes, although the relevant State programs are not coextensive with permitting under Clean Water Act § 404 and the State of Idaho does not have delegated authority to issue § 404 permits. The Idaho Department of Water Resources administers Idaho’s stream channel alteration permitting program under Idaho Code §§ 42-3801 et seq. and IDAPA 37.03.07. In addition, the Idaho Department of Lands administers a permitting program for placement of certain navigational encroachments in navigable lakes under Idaho Code §§ 58-1301 et seq. and IDAPA 20.03.04. Permitting under both programs is, where applicable, coordinated with the Clean Water Act § 404 process through a joint application for permit (see <http://www.nww.usace.army.mil/Business-With-Us/Regulatory->

¹ These four Clean Water Act sections in particular, along with §401 (state and tribal certifications), have “navigable waters” language that is directly affected by the definition of “waters of the United States,” impacting the scope of federal jurisdiction to regulate waters under the Clean Water Act.

[Division/Joint-Application-for-Permit/](#)). In addition, the Idaho Department of Environmental Quality also plays an integral role in the Clean Water Act § 404 permitting process pursuant to Clean Water Act § 401.

6. Do your **state laws** offer additional water quality protections beyond what is available under the Clean Water Act? Please include relevant citation(s).

Idaho Response: Yes, relevant citations to non-Clean Water Act programs related to the protection of Idaho's water quality are listed below:

- The Idaho Department of Environmental Quality administers the following regulations:
 - o Individual/Subsurface Sewage Disposal Rules, IDAPA 58.01.03
 - o Rules and Standards for Hazardous Waste, IDAPA 58.01.05
 - o Solid Waste Management Rules, IDAPA 58.01.06
 - o Rules Regulating Underground Storage Tank Systems, IDAPA 58.01.07
 - o Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08
 - o Rules Regulating Swine Facilities, IDAPA 58.01.09
 - o Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended, IDAPA 58.01.10
 - o Groundwater Quality Rule, IDAPA 58.01.11
 - o Rules for Ore Processing by Cyanidation, IDAPA 58.01.13
 - o Rules Governing the Cleaning of Septic Tanks, IDAPA 58.01.15
 - o Wastewater Rules, IDAPA 58.01.16
 - o Recycled Water Rules, IDAPA 58.01.17
 - o Idaho Land Remediation Rules, IDAPA 58.01.18
 - o Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites, IDAPA 58.01.24
- The Idaho Department of Agriculture administers the following regulations:
 - o Rules Governing Pesticide Management Plans for Ground Water Protection, IDAPA 02.03.01
 - o Rules Governing Pesticide and Chemigation Use and Application, IDAPA 02.03.03
 - o Rules Governing Dairy Byproduct, IDAPA 02.04.14
 - o Rules Governing Beef Cattle Animal Feeding Operations, IDAPA 02.04.15
 - o Rules Governing Nutrient Management, IDAPA 02.04.30
 - o Rules Governing the Stockpiling of Agricultural Waste, IDAPA 02.04.31
 - o Rules Governing Poultry Operations, IDAPA 02.04.32
 - o Rules Governing Invasive Species, IDAPA 02.06.09
 - o Rules Pertaining to the Idaho Fertilizer Law, IDAPA 02.06.12
 - o Noxious Weed Rules, IDAPA 02.06.22,
 - o Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001, IDAPA 02.06.41
- The Idaho Department of Water Resources administers the following regulations:
 - o Rules and Minimum Standards for the Construction and Use of Injection Wells, IDAPA 37.03.03
 - o Drilling for Geothermal Resources Rules, IDAPA 37.03.04
 - o Mine Tailing Impoundment Structures Rule, IDAPA 37.03.05
 - o Safety of Dams Rules, IDAPA 37.03.06

- o Stream Channel Alteration Rules, IDAPA 37.03.07
 - o Water Appropriation Rules, IDAPA 37.03.08
 - o Well Construction Standards Rules, IDAPA 37.03.09
 - o Well Driller Licensing Rules, IDAPA 37.03.10
 - The Idaho Department of Lands administers the following regulations:
 - o Rules Pertaining to the Idaho Forest Practices Act, IDAPA 20.02.01
 - o Dredge and Placer Mining Operations in Idaho, IDAPA 20.03.01
 - o Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities, IDAPA 20.03.02
 - o Rules for the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho, IDAPA 20.03.04
 - o Rules Governing Conservation of Oil and Natural Gas in the State of Idaho, IDAPA 20.07.02
 - In addition to the regulatory programs listed above, the Idaho Soil and Water Conservation Commission supports voluntary nonpoint source management activities through the following programs:
 - o Resource Conservation and Rangeland Development Program, IDAPA 60.05.01
 - o The Antidegradation Plan for Agriculture for the Idaho Soil Conservation Commission and Soil Conservation Districts, IDAPA 60.05.02
 - o Rules for Administration of Agricultural Water Quality Cost-Share Program for Idaho, IDAPA 60.05.03
 - o Rules for Allocation of Funds to Conservation Districts, IDAPA 60.05.04
7. Do your **state laws** restrict or prohibit water quality protections from being more stringent than federal requirements? If yes, how might a revised “waters of the U.S.” definition impact the scope of your state water quality protections?

Idaho Response: Yes, certain programs related to protection of Idaho’s water quality are prohibited from being more stringent or broader in scope than applicable federal requirements. I.C. §§ 39-105(3)(g)(v), -175B, -3601, -4404, -7210, -7404, -8805(3); 42-3915. A revised “waters of the U.S.” definition would directly affect the geographic scope of Idaho’s water quality standards, beneficial use assessment and monitoring, and total maximum daily load programs, because, as noted above, the geographic scope of the Idaho Water Quality Act is expressly limited to the “navigable waters of the United States,” as defined in the Clean Water Act. I.C. §§ 39-3601, -3602(34). Likewise, the scope of Idaho’s proposed IPDES program is directly tied to the “waters of the U.S.” definition. I.C. § 39-175B; IDAPA 58.01.25.001.02.

Western States Water Council

Survey of State Authorities to Regulate Waters of the State

The states have authority pursuant to their “waters of the state” jurisdiction to regulate and protect waters excluded or exempt from federal jurisdiction. WSWC, Position #410.

The purpose of this brief survey is to identify each state’s constitutional, statutory, regulatory, case law, or other state authorities (collectively “state laws”) to protect the quality of waters within their boundaries, particularly any waters not covered by federal jurisdiction under the Clean Water Act (though the state and federal laws may overlap).

KANSAS

1. Does your **state constitution** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).
 - a. NO
2. Do your **state statutes** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).
 - a. YES
 - b. Kansas Statutes Annotated 65-164(a): *No person, company, institution or municipality shall place or permit to be placed or discharge or permit to flow into any of the waters of the state any sewage, except as hereinafter provided.*
 - c. K.S.A. 65-171a: *The authority of the secretary of health and environment in matters of stream pollution is hereby supplemented to include stream pollution found to be detrimental to the public health or detrimental to the animal or aquatic life of the state.*
 - d. K.S.A. 65-171d(a): *For the purpose of preventing surface and subsurface water pollutions and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect designated uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitation, the secretary of health and environment shall make such rules and regulations, including registration of potential source of pollution, as may in the secretary’s judgment be necessary to: (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both by them; and (3) establish water quality standards for the waters of the state to protect their designated uses.*
3. Do your **state laws** define “waters of the state” or delineate the scope of state jurisdiction over waters within state boundaries? Does this jurisdiction explicitly include water quality protection purposes? Please include relevant citation(s).
 - a. YES
 - b. **K.S.A. 65-161:** *“Waters of the State” means all streams and springs, and all bodies of surface and subsurface waters within the boundaries of the state;*
 - c. **Water Quality Standards at Kansas Administrative Regulations 28-16-28b(ggg):** *“Surface waters of the state” means all surface waters occurring within the borders of the state of Kansas or forming a part of the border between Kansas and one of the adjoining states.*

- d. **K.A.R. 28-16-28b(fff):** *“Surface waters” means all of the following: (1) Streams, including rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, and cavern streams and any alluvial aquifers associated with these surface waters; (2) lakes, including oxbow lakes and other natural lakes and man-made reservoirs, lakes and ponds; and (3) wetlands, including water bodies meeting the technical definition for jurisdictional wetlands given in the “corps of engineers wetlands delineation manual, “ as published in January 1987.*
 - e. **K.A.R. 28-16-28b(m):** *“Classified surface water” means any surface water or surface water segment that supports or, in the absence of artificial sources of pollution, would support one or more of the designated uses of surface water defined in K.A.R. 28-16-28d(b) or K.S.A. 82a-2001(c), and amendments thereto, and that meets the criteria for classification given in K.A.R. 28-16-28d(a).*
 - f. **K.A.R. 28-16-28e(b):** *General criteria for surface waters. The following criteria shall apply to all surface waters, regardless of classification.*
4. Do any of your **state water quality laws** depend explicitly upon the authority of the Clean Water Act or delegated federal authority to implement Clean Water Act programs? Please include relevant citation(s).
 - a. NOT EXPLICITLY DEPENDENT, BUT REFERENCE TO CWA AND ITS REGS ALLOWED
 - b. **K.S.A. 65-171d(b):** *The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act and amendments thereto, as in effect on January 1, 1989, which the secretary is otherwise authorized by law to adopt.*
 - c. **NOTE:** ANY STATE THAT HAS PRIMACY HAD TO SHOW EPA THAT THEIR PROGRAM MET THE REQUIREMENTS SET OUT BY EPA PURSUANT TO 40 CFR PART 123. SO IN THAT VIEW, ANY DELEGATED AUTHORITY FOR CWA PERMITTING IS DEPENDENT UPON FEDERAL LAW.
 5. Do your **state laws** contain any provisions for protecting water quality that are similar in purpose to the following sections¹ of the Clean Water Act? Please include relevant citation(s).
 - a. §303 – water quality standards (WQS) and total maximum daily load (TMDL) programs
 - i. WQS YES; TMDLs NO
 - ii. **K.A.R. 28-16-28b to 28-16-28h**
 - b. §311 – oil spill prevention and response program
 - i. YES, HANDLED BY KANSAS CORPORATION COMMISSION
 - ii. **K.A.R. 82-3-603**
 - c. §402 – national pollutant discharge elimination system (NPDES) permit program
 - i. YES
 - ii. **K.S.A 65-165 to 65-170f**
 - iii. **K.A.R. 28-16-1 to 28-16-7**

¹ These four Clean Water Act sections in particular, along with §401 (state and tribal certifications), have “navigable waters” language that is directly affected by the definition of “waters of the United States,” impacting the scope of federal jurisdiction to regulate waters under the Clean Water Act.

- d. §404 – dredge and fill permit program
 - i. NO
 - ii. HOWEVER, THE CHIEF ENGINEER OF THE DIVISION OF WATER RESOURCES DOES HAVE THE AUTHORITY TO PERMIT DAMS AND OTHER STREAM OBSTRUCTIONS OR CHANGES, PURSUANT TO **K.S.A. 82a-301**, et seq.
 - iii. THE PRIMARY CHARGE TO THE CHIEF ENGINEER IN REGULATING DAMS AND OBSTRUCTION IS TO PROTECT PUBLIC SAFETY AND PROPERTY, NOT ENVIRONMENTAL CONCERNS.
- 6. Do your **state laws** offer additional water quality protections beyond what is available under the Clean Water Act? Please include relevant citation(s).
 - a. YES, KDHE PERMITS NON-DISCHARGING WASTEWATER TREATMENT SYSTEMS AS WELL AS CAFO FACILITIES HOLDING LESS THAN 1000 ANIMAL UNITS OR THE HEAD COUNT EQUIVALENT (AND KDHE PERMITS CAFOs EVEN IF THEY DO NOT DISCHARGE)
 - b. NON-DISCHARGERS – **K.A.R. 28-16-160**
 - c. STATE CAFOs – **K.S.A. 65-171d(g)(3)(A)(i) & K.A.R. 28-18-2**
- 7. Do your **state laws** restrict or prohibit water quality protections from being more stringent than federal requirements? If yes, how might a revised “waters of the U.S.” definition impact the scope of your state water quality protections?
 - a. NO

Western States Water Council

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The purpose of this brief survey is to identify each state’s constitutional, statutory, regulatory, case law, or other state authorities (collectively “state laws”) to protect the quality of waters within their boundaries, particularly any waters not covered by federal jurisdiction under the Clean Water Act (though the state and federal laws may overlap).

1. Does your **state constitution** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

No.

2. Do your **state statutes** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Many of the protective directives reside in Neb. Rev Stat. §81-1504

<https://nebraskalegislature.gov/laws/statutes.php?statute=81-1504>

3. Do your **state laws** define “waters of the state” or delineate the scope of state jurisdiction over waters within state boundaries? Does this jurisdiction explicitly include water quality protection purposes? Please include relevant citation(s).

Waters of the State is defined in 81-1502(21)

<https://nebraskalegislature.gov/laws/statutes.php?statute=81-1502> as follows:

(21) Waters of the state shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state;

4. Do any of your **state water quality laws** depend explicitly upon the authority of the Clean Water Act or delegated federal authority to implement Clean Water Act programs? Please include relevant citation(s).

See 81-1504(4) which refers to the CWA, is as follows:

<https://nebraskalegislature.gov/laws/statutes.php?statute=81-1504>

[about the powers of the Department]..... (4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and any other federal legislation pertaining to loans or grants for environmental protection and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

5. Do your **state laws** contain any provisions for protecting water quality that are similar in purpose to the following sections¹ of the Clean Water Act? Please include relevant citation(s).

In general, much of our authority comes from the Nebraska Environmental Protection Act, 81-1501 to 81-1532.

- a. §303 – water quality standards (WQS) and total maximum daily load (TMDL) programs

State regulation Title 117 Nebraska Surface Water Quality Standards, Chapter 1, Section 65 defines “standards” as “065 “Standards” shall mean rules or regulations which are comprised of the water quality criteria that are necessary to protect the beneficial uses of surface waters.”

We do not have specific statutory or state regulation pertaining to TMDLs.

- b. §311 – oil spill prevention and response program

State Regulation Title 126 Rules and Regulations Pertaining to the Management of Wastes, Chapter 18 – Releases of Oil or Hazardous Substances, Section 001-Antidegradation (http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Environmental_Quality_Dept_of/Title-126/Chapter-18.pdf) covers releases, as follows:

001 Antidegradation. 001.01 No person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as the Department approves.

Title 126 also has Release Notification Requirements in Chapter 18.

The Nebraska State Fire Marshal (<https://sfm.nebraska.gov/regulations>) has some prevention regulations, mainly Title 159 Underground Storage Tanks, Title 158 Aboveground Storage Tanks Hazardous Substances, and Title 153 Nebraska State Fire Code Regulations.

- c. §402 – national pollutant discharge elimination system (NPDES) permit program

Authority for the NPDES program (Title 119 Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (http://deq.ne.gov/RuleAndR.nsf/Title_119.xsp)) comes from state statute 81-1502, 81-1504 (4), (11), (20), 81-1505 (3-8)(11), 81-1506, and, in general, from the Nebraska Environmental Protection Act.

- d. §404 – dredge and fill permit program

We do not have any state authority for the dredge and fill program. Nebraska issues 401 state water quality certification under state statute 81-1505 (2)(e) and Title 120 Rules in 401(1)a Certification.

¹ These four Clean Water Act sections in particular, along with §401 (state and tribal certifications), have “navigable waters” language that is directly affected by the definition of “waters of the United States,” impacting the scope of federal jurisdiction to regulate waters under the Clean Water Act.

6. Do your **state laws** offer additional water quality protections beyond what is available under the Clean Water Act? Please include relevant citation(s).

The Ground Water Management and Protection Act (46-701 to 46-756) (https://nebraskalegislature.gov/laws/search_range_statute.php?begin_section=46-701&end_section=46-756) has ground water quality and quantity focus. Nonpoint source ground water quality is addressed in this Act and in Title 196 Rules and Regulations Pertaining to Groundwater Management Areas (http://deq.ne.gov/RuleAndR.nsf/Title_196.xsp). Ground water point source contamination is dealt with in Title 118 Groundwater Quality Standards and Use Classification (http://deq.ne.gov/RuleAndR.nsf/Title_118.xsp). Statutory authority is from 81-1505 mainly (see previous links).

7. Do your **state laws** restrict or prohibit water quality protections from being more stringent than federal requirements? If yes, how might a revised “waters of the U.S.” definition impact the scope of your state water quality protections?

No.

Nebraska Constitution – Water Topics

XV-4. Water a public necessity.

The necessity of water for domestic use and for irrigation purposes in the State of Nebraska is hereby declared to be a natural want.

Source: Neb. Const. art. XIV, sec. 4 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 35; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 4.

Annotations

1. Natural want

2. Appropriation

3. Miscellaneous

1. Natural want

Ground waters, whether they be percolating waters or underground streams, are a natural want in this state. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966).

This section declares the necessity of water for domestic use and for irrigation purposes to be a natural want. *Hickman v. Loup River P. P. Dist.*, 176 Neb. 416, 126 N.W.2d 404 (1964).

Water for domestic use and for irrigation purposes is a natural want. *State v. Birdwood Irrigation District*, 154 Neb. 52, 46 N.W.2d 884 (1951).

2. Appropriation

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 5 or 6. *In re Application A-16642*, 236 Neb. 671, 463 N.W.2d 591 (1990).

Department of Water Resources initially determines right to an appropriation of water. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

Claim made and rejected that appropriation of surface and ground waters without compensation violated this section. *Dischner v. Loup River P. P. Dist.*, 147 Neb. 949, 25 N.W.2d 813 (1947).

Rights of irrigation in Nebraska exist only as created and defined in constitutional provisions and statutes, and right of appropriation for irrigation is

limited to natural streams. *Drainage Dist. No. 1 of Lincoln v. Suburban Irr. Dist.*, 139 Neb. 460, 298 N.W. 131 (1941).

Water rights become vested as of date of appropriation and junior appropriators may use available water within the limits of their appropriation as long as the rights of senior appropriators are not injured or damaged. *State ex rel. Cary v. Cochran*, 138 Neb. 163, 292 N.W. 239 (1940).

By adoption of this and two succeeding sections, Nebraska recognized the principle of prior appropriation of waters. *Nebraska v. Wyoming*, 325 U.S. 589 (1945).

3. Miscellaneous

The statutory law and judicial decisions of the Nebraska Supreme Court show a clear intention to enforce and maintain a rigid economy in the use of public waters in order to secure the greatest benefit possible from the waters available for irrigation. The state has the right, under both the police powers and the Nebraska Constitution, to regulate the use of natural rivers and streams so that waste is eliminated. *In re Water Appropriation Nos. 442A, 461, 462 & 485*, 210 Neb. 161, 313 N.W.2d 271 (1981).

Riparian rights were not abolished by this section. *Wassenburger v. Coffee*, 180 Neb. 149, 141 N.W.2d 738 (1966).

Legislative conservation and control of water by reclamation districts is a public purpose. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

Constitution as well as statutes recognizes and encourages irrigation. Landowner may improve land by artificial application of water in reasonable and careful manner, without liability to adjoining owner except for negligence or willful act proximately causing damage. *Spurrier v. Mitchell Irr. Dist.*, 119 Neb. 401, 229 N.W. 273 (1930).

XV-5. Use of water dedicated to people.

The use of the water of every natural stream within the State of Nebraska is hereby dedicated to the people of the state for beneficial purposes, subject to the provisions of the following section.

Source: Neb. Const. art. XIV, sec. 5 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 35; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 5.

Annotations

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 4 or 6. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

The state has the right, under both the police powers and the Nebraska Constitution, to regulate the use of natural rivers and streams so that waste is eliminated. In re Water Appropriation Nos. 442A, 461, 462 & 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

Riparian rights were not abolished by this section. Wassenburger v. Coffee, 180 Neb. 149, 141 N.W.2d 738 (1966).

The right to appropriate water for irrigation purposes is limited to waters of natural streams. Rogers v. Petsch, 174 Neb. 313, 117 N.W.2d 771 (1962); Drainage Dist. No. 1 of Lincoln v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

Department of Water Resources has authority to make findings and orders for appropriation of water. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Right to use of natural stream acquired prior to 1895 is a vested property right and may not be taken away by legislative action. City of Fairbury v. Fairbury Mill & Elevator Co., 123 Neb. 588, 243 N.W. 774 (1932).

Right to appropriate public waters of state for generating electrical energy is franchise, and taxable as such. Northern Nebraska Power Co. v. Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

XV-6. Right to divert unappropriated waters.

The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water

for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes. Provided, no inferior right to the use of the waters of this state shall be acquired by a superior right without just compensation therefor to the inferior user.

Source: Neb. Const. art. XIV, sec. 6 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 35; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 6.

Annotations

1. Appropriation for domestic purposes

2. Appropriation for irrigation

3. Compensation

4. State's powers

5. Miscellaneous

1. Appropriation for domestic purposes

Preference is given to appropriators using water for domestic and agricultural purposes. *Cozad Ditch Co. v. Central Neb. Public Power & Irr. Co.*, 132 Neb. 547, 272 N.W. 560 (1937).

2. Appropriation for irrigation

The right to appropriate water for irrigation purposes is limited to water of natural streams. *Rogers v. Petsch*, 174 Neb. 313, 117 N.W.2d 771 (1962).

Rights of irrigation in Nebraska exist only as created and defined in constitutional provisions and statutes, and right of appropriation for irrigation is limited to natural streams. *Drainage Dist. No. 1 of Lincoln v. Suburban Irr. Dist.*, 139 Neb. 460, 298 N.W. 131 (1941).

3. Compensation

Claim made and rejected that appropriation of surface and ground waters without compensation violated this section. *Dischner v. Loup River P. P. Dist.*, 147 Neb. 949, 25 N.W.2d 813 (1947).

While those using waters for irrigation purposes are entitled to preference over those using it for power purposes, waters previously appropriated for power purposes may be taken and appropriated by a junior appropriator in point of time for irrigation only upon due and fair compensation. *Loup River Public*

Power Dist. v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

4. State's powers

This provision does not require that the director engage in a particular sequential consideration of the issues presented by an application. This provision is not self-executing. *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W.2d 112 (1996).

This provision is not self-executing, and it is, therefore, within the Legislature's province to pass statutes to delineate the public interest. *In re Applications A-16027 et al.*, 242 Neb. 315, 495 N.W.2d 23 (1993).

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 4 or 5. *In re Application A-16642*, 236 Neb. 671, 463 N.W.2d 591 (1990).

The state has the right, under both the police powers and the Nebraska Constitution, to regulate the use of natural rivers and streams so that waste is eliminated. *In re Water Appropriation Nos. 442A, 461, 462 & 485*, 210 Neb. 161, 313 N.W.2d 271 (1981).

Allowance or denial of application for appropriation of water was within jurisdiction of Department of Water Resources. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

5. Miscellaneous

The use of the term "divert" in this provision is not intended to prohibit nondiversionary appropriations, but to stress that the appropriative right is independent of riparian ownership. There is nothing in the Constitution which indicates that this provision is the exclusive means of acquiring a water right. The adoption of this provision did not do away with riparian rights. *In re Application A-16642*, 236 Neb. 671, 463 N.W.2d 591 (1990).

Unappropriated water is that water which is available for appropriation because it is not subject to an existing appropriative right. *In re Application A-16642*, 236 Neb. 671, 463 N.W.2d 591 (1990).

Riparian rights were not abolished by this section. *Wassenburger v. Coffee*, 180 Neb. 149, 141 N.W.2d 738 (1966).

Water rights become vested as of date of appropriation and junior appropriators may use available water within limits of their appropriation as long as rights of senior appropriators are not injured or damaged. *State ex rel. Cary v. Cochran*, 138 Neb. 163, 292 N.W. 239 (1940).

XV-7. Use of water for power purposes.

The use of the waters of the state for power purposes shall be deemed a public use and shall never be alienated, but may be leased or otherwise developed as by law prescribed.

Source: Neb. Const. art. XIV, sec. 7 (1920); Adopted 1920, Constitutional Convention, 1919-1920, No. 36; Transferred by Constitutional Convention, 1919-1920, art. XV, sec. 7.

Annotations

Right to appropriate public waters of state for generating electrical energy is franchise, and taxable as such. *Northern Nebraska Power Co. v. Holt County*, 120 Neb. 724, 235 N.W. 92 (1931).

Western States Water Council

Survey of State Authorities to Regulate Waters of the State

The states have authority pursuant to their “waters of the state” jurisdiction to regulate and protect waters excluded or exempt from federal jurisdiction. WSWC, Position #410.

The purpose of this brief survey is to identify each state’s constitutional, statutory, regulatory, case law, or other state authorities (collectively “state laws”) to protect the quality of waters within their boundaries, particularly any waters not covered by federal jurisdiction under the Clean Water Act (though the state and federal laws may overlap).

1. Does your **state constitution** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

No.

2. Do your **state statutes** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

South Dakota Codified Laws (SDCL), Chapter [34A-2](#) is the South Dakota Water Pollution Control Act contains many provisions to protect the quality of waters within South Dakota’s borders. SDCL, Section [34A-2-1](#) states, “Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for water supplies, for the propagation of wildlife, fish, and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate uses; to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new and existing water pollution; and to cooperate with other agencies of the state, agencies of other states, and the federal government in carrying out these objectives.” Also, SDCL [9-12-17](#) provides municipalities the authority to adopt ordinances to implement and enforce wellhead protection programs.

3. Do your **state laws** define “waters of the state” or delineate the scope of state jurisdiction over waters within state boundaries? Does this jurisdiction explicitly include water quality protection purposes? Please include relevant citation(s).

“Waters of the state” is defined in South Dakota Codified Law, Section [34A-2-2 \(12\)](#) as “all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state”.

4. Do any of your **state water quality laws** depend explicitly upon the authority of the Clean Water Act or delegated federal authority to implement Clean Water Act programs? Please include relevant citation(s).

No.

5. Do your **state laws** contain any provisions for protecting water quality that are similar in purpose to the following sections¹ of the Clean Water Act? Please include relevant citation(s).

- a. §303 – water quality standards (WQS) and total maximum daily load (TMDL) programs

Water quality standards are addressed in SDCL, Sections [34A-2-11](#), [34A-2-11.1](#), [34A-2-17](#), and [34A-2-18](#). TMDLs are addressed in SDCL [34A-2-6](#).

- b. §311 – oil spill prevention and response program

Spill and discharge reporting, response, and remediation requirements are contained in SDCL [34A-12](#).

SDCL [34A-2-101](#) provides requirements for the safeguarding of public health and water pollution from leaking petroleum tanks. SDCL [34A-2-96](#), and [34A-2-97](#) contain language on response and protective measures to protect the environment from petroleum spills to waters of the state. SDCL [34A-18](#) contains requirements for the development and implementation of spill response plans for crude oil pipelines.

- c. §402 – national pollutant discharge elimination system (NPDES) permit program

There are many sections in SDCL, Chapter [34A-2](#), which address the state administration of the NPDES program. The main section is SDCL [34A-2-36](#).

- d. §404 – dredge and fill permit program

No.

6. Do your **state laws** offer additional water quality protections beyond what is available under the Clean Water Act? Please include relevant citation(s).

The state's definition of "Waters of the State" includes ground water. Therefore this definition is used in the issuance of water rights, ground water quality standards, and ground water discharge permits.

7. Do your **state laws** restrict or prohibit water quality protections from being more stringent than federal requirements? If yes, how might a revised "waters of the U.S." definition impact the scope of your state water quality protections?

¹ These four Clean Water Act sections in particular, along with §401 (state and tribal certifications), have "navigable waters" language that is directly affected by the definition of "waters of the United States," impacting the scope of federal jurisdiction to regulate waters under the Clean Water Act.

SDCL, Section 1-40-4.1, indicates, “No rule that has been promulgated pursuant to Title 34A, 45, 46, or 46A may be more stringent than any corresponding federal law, rule, or regulation governing an essentially similar subject or issue.”

A revised “Waters of the U.S.” definition could lead to the South Dakota legislature looking at changing the “Waters of the State” definition in statute which could have impacts on water rights, surface and ground water programs, and recreational uses.

Western States Water Council

Survey of State Authorities to Regulate Waters of the State

The states have authority pursuant to their “waters of the state” jurisdiction to regulate and protect waters excluded or exempt from federal jurisdiction. WSWC, Position #410.

The purpose of this brief survey is to identify each state’s constitutional, statutory, regulatory, case law, or other state authorities (collectively “state laws”) to protect the quality of waters within their boundaries, particularly any waters not covered by federal jurisdiction under the Clean Water Act (though the state and federal laws may overlap).

1. Does your **state constitution** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Texas Constitution

- **Article 16, § 59(a) – Conservation and Reclamation Amendment**

2. Do your **state statutes** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Texas Agriculture Code

Chapter 201–Soil and Water Conservation

- **§ 201.026 – Agricultural Non-Point Source Pollution**

Texas Health & Safety Code

Chapter 341, Subchapter C – Drinking Water Standards; Protection of Public Water Supplies and Bodies of Water

- **§ 341.037 – Protection from Sewage**
- **§ 341.039 – Greywater Standards**

Chapter 361 – Solid Waste Disposal Act

- **§ 361.121 - Class B Sludge**

Chapter 366-Onsite Sewage Facilities

Texas Local Gov’t Code

Chapter 551 – Water Control by Municip.

- **§ 551.002-Protection of Streams and Watersheds by Home Rule Municipality**

Texas Water Code

Chapter 26 - Water Quality Control

Chapter 27 – Injection Wells

Chapter 28A – Aggregate Production

Chapter 32 - Subsurface Area Drip Dispersal System

3. Do your **state laws** define “waters of the state” or delineate the scope of state jurisdiction over waters within state boundaries? Does this jurisdiction explicitly include water quality protection purposes? Please include relevant citation(s).

- **Texas Water Code Chapter 26, §26.001(5), defines “water” and “water in the state” in a manner that delineates the scope of state jurisdiction over such waters for water quality protection purposes.**
- **Texas Water Code Chapter 11, §11.021, defines “state water” or “waters of the state” for the purpose of administering and regulating water rights.**

4. Do any of your **state water quality laws** depend explicitly upon the authority of the Clean Water Act or delegated federal authority to implement Clean Water Act programs? Please include relevant citation(s).

The following TCEQ rules in the Texas Administrative Code (TAC) adopt by reference federal regulations to implement the NPDES program in Texas (TPDES):

- **30 TAC § 281.25– TPDES Permit Application and Stormwater Requirements**
- **30 TAC §§ 305.531- 305.539 – Additional Conditions for TPDES Permits**

- **30 TAC § 305.541 – Effluent Guidelines and Standards for TPDES Permits**
 - **30 TAC Chapter 308 – Criteria and Standards for NPDES**
 - **30 TAC Chapter 314 – Toxic Pollutant Effluent Standards**
 - **30 TAC Chapter 315 – General Pretreatment Regulations**
5. Do your **state laws** contain any provisions for protecting water quality that are similar in purpose to the following sections¹ of the Clean Water Act? Please include relevant citation(s).
- a. §303 water quality standards (WQS) and total maximum daily load (TMDL) programs
 - **Texas Water Code Chapter 26, §§26.023 -.026**
 - **30 TAC Chapter 307**
 - b. §311 – oil spill prevention and response program
 - **Texas Natural Resources Code Chapter 40**
 - **Texas Water Code Chapter 26, Subchapter G, §§26.261-267**
 - c. §402 – national pollutant discharge elimination system (NPDES) permit program
 - **Texas Water Code Chapter 26, §§26.027, 26.121**
 - **TCEQ rules cited in Response 4**
 - d. §404 – dredge and fill permit program
 - **30 TAC Chapter 279**
6. Do your **state laws** offer additional water quality protections beyond what is available under the Clean Water Act? Please include relevant citation(s).
- **Texas Water Code §26.121(a)(1) – unauthorized discharges prohibited into or adjacent to water in the state**
 - **Texas Water Code Chapter 27 – Injection Wells**
 - **Texas Water Code Chapter 28A – Aggregate Production Operations**
 - **Texas Water Code 32 – Subsurface Area Drip Dispersal System**
 - **Texas Health and Safety Code Chapter 366 – On-site Sewage Disposal**
 - **30 TAC Chapter 210 – Use of Reclaimed Water**
 - **30 TAC Chapter 213 – Edwards Aquifer**
 - **30 TAC Chapter 222 – Subsurface Area Drip Dispersal Systems**
 - **30 TAC Chapter 285 – On Site Sewage Facilities**
 - **30 TAC Chapter 307 – Texas Surface Water Quality Standards**
 - **30 TAC Chapter 309 – Domestic Wastewater Effluent Limits and Plant Siting**
 - **30 TAC Chapter 311 – Watershed Protection**
7. Do your **state laws** restrict or prohibit water quality protections from being more stringent than federal requirements? If yes, how might a revised “waters of the U.S.” definition impact the scope of your state water quality protections?
- No**

¹ These four Clean Water Act sections in particular, along with §401 (state and tribal certifications), have “navigable waters” language that is directly affected by the definition of “waters of the United States,” impacting the scope of federal jurisdiction to regulate waters under the Clean Water Act.

Western States Water Council

Survey of State Authorities to Regulate Waters of the State

The states have authority pursuant to their “waters of the state” jurisdiction to regulate and protect waters excluded or exempt from federal jurisdiction. WSWC, Position #410.

The purpose of this brief survey is to identify each state’s constitutional, statutory, regulatory, case law, or other state authorities (collectively “state laws”) to protect the quality of waters within their boundaries, particularly any waters not covered by federal jurisdiction under the Clean Water Act (though the state and federal laws may overlap).

1. Does your **state constitution** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Article 1, Section 31 of the Wyoming Constitution speaks to control of water: “Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the state, which, in providing for its use, shall equally guard all the various interests involved.” Article 8, Section 1 further states: “The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state.” The Wyoming Constitution can be accessed at: <https://soswy.state.wy.us/Forms/Publications/09WYConstitution.pdf>.

2. Do your **state statutes** contain any provisions to protect the quality of waters within your borders? Please include relevant citation(s).

Provisions for the protection of water quality within the State of Wyoming are found in the Wyoming Environmental Quality Act. Specifically, Wyoming Statute §§ 35-11-101 through -115 (Article 1: General Provisions) and Wyoming Statute §§ 35-11-301 through -318 (Article 3: Water Quality). The Wyoming Environmental Quality Act can be accessed at: <https://law.justia.com/codes/wyoming/2010/Title35/chapter11.html>.

3. Do your **state laws** define “waters of the state” or delineate the scope of state jurisdiction over waters within state boundaries? Does this jurisdiction explicitly include water quality protection purposes? Please include relevant citation(s).

Definitions of “waters of the state”:

Wyoming Statute § 35-11-103(c)(vi) – “waters of the state” means all surface and groundwater, including waters associated with wetlands, within Wyoming.

Wyoming Statute § 35-11-309(a) – all water, including collections of still water and waters associated with wetlands within the borders of this state are property of the state.

Wyoming Water Quality Rules and Regulations, Chapter 1, Section 2(b)(xlvii) “surface waters of the state” means all perennial, intermittent and ephemeral defined drainages, lakes, reservoirs and wetlands which are not man-made

retention ponds for the treatment of municipal, agricultural or industrial waste; and all other bodies of surface water, either public or private which are wholly or partially within the boundaries of the state.

The Wyoming Water Quality Rules and Regulations can be accessed at: <https://rules.wyo.gov/>.

Explicit water quality protection for “waters of the state”:

Wyoming Statute §§ 35-11-301 through -318 – *Authorizes the development of standards, rules, regulations and permits to protect and assess surface water quality; to regulate oil field waste disposal facilities; to regulate commercial waste treatment, storage and disposal; to provide for wetland drainage and mitigation; and to regulate geologic sequestration among other responsibilities.*

Wyoming Water Quality Rules and Regulations, Chapter 1 – *Regulations provide surface water quality standards applicable to all waters of the state.*

Wyoming Water Quality Rules and Regulations, Chapter 8 – *Regulations provide groundwater quality standards applicable to groundwater within the state.*

4. Do any of your **state water quality laws** depend explicitly upon the authority of the Clean Water Act or delegated federal authority to implement Clean Water Act programs? Please include relevant citation(s).

Some portions of statutes and regulations refer to the Clean Water Act. For example, Wyoming Water Quality Rules and Regulations, Chapter 1, Section 3 provides: “The objectives of the Wyoming water pollution control program... are designed to serve the interests of the state and achieve the related goals, objectives and policies of the Clean Water Act.” Statutory references also exist, such as Wyoming Statute § 35-11-302(a)(v), which establishes standards “for the issuance of permits as authorized pursuant to section 402(b) of the Federal Water Pollution Control Act.”

5. Do your **state laws** contain any provisions for protecting water quality that are similar in purpose to the following sections¹ of the Clean Water Act? Please include relevant citation(s).

- a. §303 – water quality standards (WQS) and total maximum daily load (TMDL) programs

Wyoming Statute § 35-11-302(a)(i) – *Provisions for development of water quality standards to protect waters of the state.*

Wyoming Water Quality Rules and Regulations, Chapter 1 – *Regulations pursuant to Wyoming Statute §§ 35-11-101 through -2005, specifically*

¹ These four Clean Water Act sections in particular, along with §401 (state and tribal certifications), have “navigable waters” language that is directly affected by the definition of “waters of the United States,” impacting the scope of federal jurisdiction to regulate waters under the Clean Water Act.

Wyoming Statute § 35-11-302(a)(i), § 35-11-302(b)(i), and § 35-11-302(b)(ii) to protect surface water quality in Wyoming.

b. §311 – oil spill prevention and response program

Wyoming Statute §§ 35-11-301 and -302 – Provisions that prohibit any pollution that alters the water quality properties of waters of the state.

Wyoming Water Quality Rules and Regulations, Chapter 1, Section 29 – Regulation that prohibits elevated oil and grease concentrations, visible sheen, or visible deposits of oil in surface waters of the state.

Wyoming Water Quality Rules and Regulations, Chapter 4 – Regulations for releases of oil and hazardous substances into waters of the state.

c. §402 – national pollutant discharge elimination system (NPDES) permit program

Wyoming Statute § 35-11-302(a)(ii) and § 35-11-302(a)(v) – Authorizes state to develop permit standards and effluent limits that specify maximum amounts or concentrations of pollution or wastes that may be discharged into waters of the state.

Wyoming Water Quality Rules and Regulations, Chapter 2 – Regulations specify procedures and standards for the issuance of discharge permits.

d. §404 – dredge and fill permit program

The State of Wyoming does not have delegated authority over Section 404 of the Clean Water Act and does not have state laws for dredge or fill activities similar in scope to the provisions described in Section 404. However, Wyoming water quality laws do regulate dredging and filling in wetlands that are not subject to Section 404 of the Clean Water Act:

Wyoming Water Quality Rules and Regulations, Chapter 2, Section 2 – Requires point source discharges of dredged or fill material into isolated wetlands which are not subject to Section 404 of the Clean Water Act to obtain a discharge permit from the State of Wyoming.

Wyoming Water Quality Rules and Regulations, Chapter 2, Section 7 – Requires mitigation of discharges into naturally occurring isolated or man-made wetlands used to mitigate the loss of naturally occurring wetlands.

Additionally, Wyoming law requires notification for drainage of wetlands and establishes a mitigation credit banking system for any required compensatory mitigation within the state:

Wyoming Statute §§ 35-11-309 through -311 – Provisions that recognize the importance of wetlands, water development and management;

provisions that require notification to drain waters; provisions that establish a mitigation credit banking system.

6. Do your **state laws** offer additional water quality protections beyond what is available under the Clean Water Act? Please include relevant citation(s).

Wyoming has provisions in statute and regulation that offer additional water quality protections to both surface water and groundwater in the State of Wyoming that go beyond requirements of the Clean Water Act. The relevant citations are:

Wyoming Water Quality Rules and Regulations, Chapter 1 – Applies water quality protections to surface waters of the state.

Wyoming Water Quality Rules and Regulations, Chapter 2 – Requires permits for discharges to surface waters of the state.

7. Do your **state laws** restrict or prohibit water quality protections from being more stringent than federal requirements? If yes, how might a revised “waters of the U.S.” definition impact the scope of your state water quality protections?

Wyoming’s laws do not prohibit establishing water quality protections that are more stringent than federal requirements.

ARIZONA

Waters of the State are defined as:

- all waters within the jurisdiction of the state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems, and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state¹

Surface water:

- waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, floodwaters, wastewaters, or surplus water, and of lakes, ponds and springs on the surface²;
- a water of the United States and includes the following:
 - a. A water that is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. An interstate water, including an interstate wetland;
 - c. All other waters, such as an intrastate lake, reservoir, natural pond, river, stream (including an intermittent or ephemeral stream), creek, wash, draw, mudflat, sandflat, wetland, slough, backwater, prairie pothole, wet meadow, or playa lake, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such water:
 - i. That is or could be used by interstate or foreign travelers for recreational or other purposes;
 - ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - iii. That is used or could be used for industrial purposes by industries in interstate or foreign commerce;
 - d. An impoundment of a surface water as defined by this definition;
 - e. A tributary of a surface water identified in subsections (a) through (d); and
 - f. A wetland adjacent to a surface water identified in subsections (a) through (e)³.

Wetlands are defined as:

- an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas⁴.

State-created Limitations on Regulations:

- State imposes limitations:

¹ Arizona Rev. Stat. tit. §49-201(41).

² Arizona Rev. Stat. tit. §45-101(9).

³ Arizona Admin. Code R-18-11-101(41).

⁴ Arizona Admin. Code R-18-11-101(49).

DRAFT WOTUS STATE SUMMARIES

- The Governor’s Regulatory Review Council is prohibited from approving a state rule that is more stringent than a “corresponding federal law” unless there is a statutory authority to exceed the requirements of that federal law;
- Arizona DEQ also must ensure that *all* state laws, rules, standards, permits, variances, and orders are adopted and construed to be consistent with and no more stringent than “the corresponding federal law that addresses the same subject matter.”
 - DEQ is specifically prohibited from adopting any requirement that is more stringent than the point source permitting requirements under the federal Clean Water Act⁵

State Programs:

- Arizona Water Initiative: water planning initiative for the state to maintain a sustainable water supply; involves AZ Department of Water Resources and works with stakeholders to address planning areas, water conservation opportunities and infrastructure needs⁶

401 Certification:

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

- Arizona operates its own program titled the Arizona Pollutant Discharge Elimination System (AZPDES) through the Department of Environmental Quality⁷.

404 Dredge and Fill Program:

- Has not assumed the 404 program;
 - ADEQ is actively pursuing 404 assumption; plans to submit an assumption application package in March 2019
- Does not have a state dredge and fill program for waters and wetlands
- Relies on federal permitting authority and CWA §401

Water Quality Standards:

- Has EPA-approved water quality standards

⁵ ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>

⁶ ADWR, 2017. Arizona Water Initiative, available at <https://new.azwater.gov/water-initiative>.

⁷ ADEQ, Arizona Pollutant Discharge Elimination System (2017), available at <http://legacy.azdeq.gov/environ/water/permits/azpdes.html>.

DRAFT WOTUS STATE SUMMARIES

Arizona Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal			X	
State Dredge and Fill Program for Wetlands		X		
404 Assumption		X		
Isolated Wetland Permitting		X		
State Wetland Permitting Fees		X		
WQS for Wetlands	X			Applies existing WQS to wetlands (not wetland-specific)
Wetland Monitoring & Assessment Program		X		Possibly monitor through other non-wetland monitoring programs

Source: ASWM (2015) Status and Trends Report

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ARKANSAS

Waters of the State are defined as:

- all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state⁸.

Wetlands are defined as:

- Arkansas has no state definition of wetlands⁹.
- According to the Multi-Agency Wetland Planning Team (MAWPT), a non-regulatory initiative, wetlands are:
 - areas where the periodic or permanent presence of water controls the characteristics of the environment and associated plants and animals. They include marshes, swamps, and similar areas found in flats, in depressions in the landscape, on slopes where groundwater emerges to the land surface, and between dry land and open water along the edges of streams, rivers, lakes, and coastlines¹⁰

State-created Limitations on Regulations:

- State imposes qualified stringency prohibitions
 - The Arkansas Pollution Control and Ecology Commission is subject to stringency requirements; prior to promulgating certain rules and regulations that are more stringent than “federal requirements” the Commission must consider its economic impact on and environmental benefit for the people of Arkansas¹¹

State Programs:

- Regulation 1: “Regulation for the Prevention of Pollution by Salt Water and other Oil Field Wastes Produced by Wells in All Fields or Pools”: water law that applies to all oil and gas wells in existing fields or pools and to waters of the state¹².
- Regulation 4: “Regulation to Require a Disposal Permit for Real Estate Subdivisions in Proximity to Lakes and Streams”¹³

401 Certification:

⁸ Arkansas Code Ann. §8-4-102(10).

⁹ ASWM, Arkansas State Wetland Program Summary (2015), available at https://www.aswm.org/pdf_lib/state_summaries/arkansas_state_wetland_program_summary_083115.pdf.

¹⁰ ELI, State Wetland Program Evaluation Phase I (2005), available at <https://www.eli.org/research-report/state-wetland-program-evaluation-phase-i>.

¹¹ ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

¹² Arkansas Pollution Control and Ecology Commission, 1993. Regulation No. 1, available at https://www.adeq.state.ar.us/regs/files/reg01_final_930316.pdf.

¹³ Arkansas Pollution Control and Ecology Commission, 1973. Regulation No. 4, available at https://www.adeq.state.ar.us/regs/files/reg04_final_730707.pdf.

DRAFT WOTUS STATE SUMMARIES

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

- Arkansas has state authority over NPDES program and permits are handled through the Arkansas Department of Environmental Quality¹⁴.
- EPA retains authority to issue NPDES permits in Arkansas for the use and disposal of sewage sludge

404 Dredge and Fill Permitting:

- Has not assumed the 404 program;
- Does not have a state dredge and fill program for waters and wetlands
- Relies on federal permitting authority and CWA §401

Water Quality Standards:

- Has EPA-approved water quality standards
- Unless otherwise indicated in Chapter 4: General Standards, or in Appendix A, the general standards outlined in Arkansas's Water Quality Standards (Regulation No. 2) are applicable to all surface waters of the State at all times. They apply specifically with regard to substances attributed to discharges, nonpoint sources or instream activities as opposed to natural phenomena. Waters may, on occasion, have natural background levels of certain substances outside the limits established by these criteria, in which case these criteria do not apply.

Other:

- The Multi-Agency Wetland Planning Team (MAWPT) is a consortium of Arkansas state agencies that work together on wetland restoration and conservation; this is a non-regulatory initiative;
- Mitigation: Arkansas Wetland Mitigation Bank Act: state acquires degraded wetlands, restores wetland functions, and sells credits to §404 permittees (for compensatory mitigation); Arkansas Private Wetland and Riparian Zone Creation and Restoration Incentive Act: creates a tax credit program targeted to private land owners¹⁵.
- Regulations: there are no state wetland regulations¹⁶

¹⁴ ADEQ, Water Quality Protection, Permits, and Planning (2017), available at <https://www.adeq.state.ar.us/water/>.

¹⁵ Environmental Law Institute, State Wetland Program Evaluation Phase I (2005), available at <https://www.eli.org/research-report/state-wetland-program-evaluation-phase-i>.

¹⁶ ASWM, Arkansas (2017), available at <https://www.aswm.org/aswm/58-wetland-programs/state-summaries/state-summaries/753-arkansas>.

DRAFT WOTUS STATE SUMMARIES

Arkansas Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal			X	
State Dredge and Fill Program for Wetlands		X		
404 Assumption		X		
Isolated Wetland Permitting		X		
State Wetland Permitting Fees		X		
WQS for Wetlands	X			Applies existing WQS for surface waters to wetlands (not wetland-specific).
Wetland Monitoring & Assessment Program		X		Possibly monitor through other non-wetland monitoring programs

Source: ASWM (2015) Status and Trends Report

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FLORIDA

Waters of the State are defined as:

- “Waters” include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural.¹⁷
- *Water or Waters in the State are defined as:* any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.¹⁸

Wetlands are defined as:

- those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.¹⁹

Stream is defined as:

- any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some part of the bed or channel has been dredged or improved does not prevent the watercourse from being a stream.²⁰

Other applicable terms defined in Florida regulations include:²¹

- Artificial Waters
- Canal
- Channel

¹⁷ 403.031(13) F.S.

¹⁸ 373.019(22) F.S.

¹⁹ 373.019(27) F.S.

²⁰ 373.019(20) F.S.

²¹ Environmental Resource Permit Applicant’s Handbook, Volume 1, incorporated by reference in F.A.C 62-330.010 & 62-330.021

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- Direct Hydrologic Connection
- Drainage Ditch / Irrigation Ditch
- Forested Wetlands
- Herbaceous Wetlands
- Impoundment
- Isolated Wetland
- Ordinary High Water Line
- Seasonal High Water Level
- Surface Water
- Swale
- Uplands

State-created Limitations on Regulations:

- Has qualified stringency prohibitions
 - Florida Stat. §403.804: requires that the state Department of Environmental Protection study the economic and environmental impact of any proposed standards that would be more stringent than federal law²².
 - “[f]or a Florida standard to be ‘a stricter or more stringent standard than one which has been set by federal agencies pursuant to federal law or regulation,’ the federal standard must be in *counterpoise* to the state standard.”²³

State Programs:

- Florida Water Resources Act
- Warren S. Henderson Wetland Protection Act
- Florida Environmental Reorganization Act
- Beach and Shore Preservation Act
- Florida Coastal Management Act

401 Certification:

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

- Florida has state authority over NPDES program and issues permits through the Florida Department of Environmental Protection²⁴

²² NCSL, 2014. State Agency Authority to Adopt More Stringent Environmental Standards, available at <http://www.ncsl.org/research/environment-and-natural-resources/state-agency-authority-to-adopt-more-stringent-environmental-standards.aspx>.

²³ ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>

²⁴ EPA, Florida NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/florida-npdes-permits>.

DRAFT WOTUS STATE SUMMARIES

- EPA issues permits to offshore oil and gas facilities operating in federal waters off the coast of Florida

404 Dredge and Fill Permitting:

- Has not yet assumed the 404 program, but began the process of seeking authorization to assume the program in 2017;
- Has a state dredge and fill permitting program for freshwater streams and for wetlands

Water Quality Standards:

- Has EPA-approved water quality standards

Other:

- The Uniform Mitigation Assessment Method (UMAM), F.A.C. 62-345, establishes a standardized procedure for assessing functions provided by wetlands and other surface waters, the amount those functions are reduced by proposed impact, and the amount of mitigation needed to offset that impact.²⁵

²⁵ Environmental Resource Permit Applicant's Handbook, Volume 1, Part III, 10.3.2, incorporated by reference in 62-330.301(4)

DRAFT WOTUS STATE SUMMARIES

Florida Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal	X			Informal "No Net Loss" goal; "an activity cannot cause a net adverse impact on wetland functions and other surface water functions that is not offset by mitigation."
State Dredge and Fill Program for Wetlands	X			
404 Assumption		X		Florida began the process of seeking authorization to assume the 404 program in 2017.
Isolated Wetland Permitting		X		
State Wetland Permitting Fees	X			
WQS for Wetlands	X			Applies existing WQS to wetlands (not wetland-specific)
Wetland Monitoring & Assessment Program		X		Possibly monitors through other non-wetland monitoring programs

Source: ASWM (2015) Status and Trends Report

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IOWA

Waters of the State are defined as:

- “Water of the state” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof²⁶

Wetlands are defined as:

- Lakes and wetlands (Class “B(LW)”). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.”²⁷

State-created Limitations on Regulations:

- State imposes limitations
 - The Iowa Environmental Protection Commission may not establish an effluent standard for a source that is more stringent than a federal effluent standard under the Clean Water Act for such source. However, the Commission may establish a more restrictive effluent limitation for a point source if doing so is necessary to meet water quality standards and the federal government has not established an effluent standard for that source or class of sources; (Iowa provision IA law- 455B.173)
 - Additionally, NPDES rules adopted by the Commission with respect to CAFOs can be no more stringent than requirements under the federal Clean Water Act.²⁸ (Iowa Code 459.311)
- State also imposes a qualified stringency prohibition:
 - When the Environmental Protection Commission proposes or adopts rules to implement a “specific federal environmental program,” and the rules are more restrictive than the federal program requires, the Commission must: (1) identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires; (2) state the reasons for proposing or adopting the more restrictive requirement; and (3) include with its reasoning a “financial impact statement” detailing the general impact of the rules on affected parties²⁹.

State Programs:

²⁶ Iowa's code 455B.171

²⁷ Iowa's WQS, IAC 567-61.3

²⁸ Iowa Code 455B.173; ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

²⁹ Iowa Code 455B. 105(3); ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

DRAFT WOTUS STATE SUMMARIES

- Iowa River Restoration Strategy³⁰
- Iowa Lake Restoration Program
 - Infrastructure Bill HF2782: provides additional funding to DNR and requires a science-based approach to achieve lake water quality improvements³¹

401 Certification:

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

- Iowa has state authority over NPDES program and issues permits through the Iowa Department of Natural Resources³²

404 Dredge and Fill Permitting:

- Has not assumed the 404 program
- Does not have a state dredge and fill program for waters and wetlands
- Relies on federal permitting authority and CWA §401

Water Quality Standards:

- Has EPA-approved water quality standards

³⁰ Iowa DNR, 2018. River Restoration, available at <http://www.iowadnr.gov/Environmental-Protection/Water-Quality/River-Restoration>.

³¹ Iowa DNR, 2018. Lake Restoration Program and Water Quality Improvement, available at <http://www.iowadnr.gov/Environmental-Protection/Water-Quality/Lake-Restoration>.

³² EPA, Iowa NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/iowa-npdes-permits>.

DRAFT WOTUS STATE SUMMARIES

Iowa Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal			X	
State Dredge and Fill Program for Wetlands		X		
404 Assumption		X		
Isolated Wetland Permitting		X		
State Wetland Permitting Fees		X		
WQS for Wetlands		X		Applies existing WQS to wetlands (not wetland-specific): this is mostly narrative not quantitative. They still have several critical steps to take in Tier 1 of the R7 ESTP CEF Tiering Chart-Wetland WQS.
Wetland Monitoring & Assessment Program		X		No formal RAM developed. They still have several steps to complete in Tier 1 of the R7 ESTP CEF Tiering Chart-Monitoring & Assessment.

Source: ASWM (2015) Status and Trends Report

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MARYLAND

Waters of the State are defined as:

- both surface and underground waters within the boundaries of the state subject to its jurisdiction; the portion of the Atlantic Ocean within the boundaries of the state (territorial seas); the Chesapeake Bay and its tributaries; all ponds, lakes, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems within the state (does not include public drainage systems designed and used to collect, convey, or dispose of sanitary sewage); and the floodplain of free-flowing waters determined by the department on the basis of the 100 year flood frequency.³³

Wetlands are defined as:

- “Nontidal wetland: (a) Means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support and that under normal circumstances does support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; (b) Is determined according to the Federal Manual; (c) Does not include tidal wetlands regulated under Environmental Article, Title 16, Annotated Code of Maryland.”³⁴

State-created Limitations on Regulations:

- State imposes a qualified stringency prohibition
 - By executive order, each unit of Maryland state government²⁷¹ is required to take certain steps when it proposes to adopt a regulation that “provides a standard that is more restrictive or stringent than an applicable standard established under a federal law or regulation which governs the same program or conduct.” The agency must: (1) identify the manner in which the proposed regulation is more restrictive than the applicable federal standard; (2) identify the benefit to public health, safety, welfare, or the environment, expected from adopting the standard; (3) in consultation with the Department of Business and Economic Development, identify whether having a more restrictive standard places an additional burden or cost on regulated persons; and (4) justify the need for the standard³⁵

State Programs:

- Maryland Nontidal Wetlands Protection Act
- Appropriation or Use of Waters, Reservoirs, and Dams Statute
- Wetlands and Riparian Rights Statute
- Tidal Wetlands Protection Act
- Chesapeake and Atlantic Coastal Bays Critical Area Protection Program
- Water Pollution Control Act

³³ COMAR 26.08.01.01.B(103)

³⁴ COMAR 26.23.01.01.B(62)

³⁵ ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>

DRAFT WOTUS STATE SUMMARIES

401 Certification:

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

- Maryland has state authority over NPDES program (except biosolids)³⁶ and issues permits through the Maryland Department of the Environment³⁷

404 Dredge and Fill Permitting:

- Has not assumed the 404 program
- Has state dredge and fill permitting programs for nontidal and tidal waters
- Implements a state programmatic general permit pursuant to CWA Section 404(e) for specified activities. The currently operative SPGP is MDSPGP-5 issued September 26, 2016.³⁸

Water Quality Standards:

- Has EPA-approved water quality standards

³⁶ <https://www.epa.gov/npdes/npdes-state-program-information>

³⁷ EPA, Maryland NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/maryland-npdes-permits>.

³⁸ <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/MDSPGP-5.pdf>

DRAFT WOTUS STATE SUMMARIES

Maryland Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal	X			Maryland (along with, among others, West Virginia, Virginia, Delaware and Pennsylvania) is one of the signatories to the Chesapeake Bay 2014 Agreement, which includes the following outcome for wetlands within the Chesapeake Bay watershed (which includes almost all of Maryland): "Continually increase the capacity of wetlands to provide water quality habitat benefits throughout the watershed. Create or re-establish 85,000 acres of tidal and non-tidal wetlands and enhance the function of an additional 150,000 acres of degraded wetlands by 2025
State Dredge and Fill Program for Wetlands	X			
404 Assumption		X		Has explored in the recent past and determined not to seek assumption
Isolated Wetland Permitting			X	
State Wetland Permitting Fees	X			
WQS for Wetlands	X			Applies existing WQS to wetlands (not wetland-specific)
Wetland Monitoring & Assessment Program	X			

Source: ASWM (2015) Status and Trends Report

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MINNESOTA

Waters of the State are defined as:

- surface or underground waters, except surface waters that are not confined but are spread and diffused over the land. Includes boundary and inland waters.

Wetlands are defined as:

- Minn. Stat. § 103G.005, subd. 19 “lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:
 - (1) have a predominance of hydric soils;
 - (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
 - (3) under normal circumstances support a prevalence of such vegetation.”
- Minn. Rules Chapter 7050.0186 - Wetland Standards and Mitigation, subd. 1a. Definitions):
 - B. “Wetlands” are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:
 - (1) a predominance of hydric soils;
 - (2) inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
 - (3) under normal circumstances, support a prevalence of such vegetation.
- Public waters wetlands are a subset of the state’s regulated wetlands and are defined in Minn. Stat. § 103G.005, subd. 15a, as follows: “Public waters wetlands means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.”

State-created Limitations on Regulations:

- State imposes a limitation in the case that Minnesota assumes the 404 program (therefore, this prohibition has not taken effect):
 - Minnesota law provides that in the event the state assumes responsibility for the federal 404 permitting program, the rules adopted to establish the program “may not be more restrictive” than the federal 404 program—or more restrictive than state law, if state law is more restrictive than the federal 404 program.³⁹

State Programs:

³⁹ ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>.

DRAFT WOTUS STATE SUMMARIES

- Public Waters Permit Law
- Wetlands Conservation Act

State Agencies involved with CWA:

- MN Board of Water and Soil Resources (BWSR)
- MN Department of Natural Resources (DNR)
- MN Pollution Control Agency (PCA)

401 Certification:

- MPCA has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

- Minnesota has state authority over NPDES program and permits are issued by the Minnesota Pollution Control Agency
- EPA issues all permits on tribal lands⁴⁰
- 2 petitions to withdraw state NPDES permitting, one on mining and one on nutrients and straight pipe discharges

404 Dredge and Fill Permitting:

- Has not assumed the 404 program
- Has a state dredge and fill permitting program for freshwater streams and for wetlands
- Completed a 404 Assumption Feasibility Study

Water Quality Standards:

- Has EPA-approved water quality standards
- Small number of wetlands are listed, narrative criteria in 305(b) reporting

Exempted Activities/Special Provisions:

- Exemptions more extensive than federal exemptions include treatment waters, activity based exemptions (silviculture, utilities, agricultural practices, drainage maintenance, and de minimis impact)⁴¹
- Permit exemptions for 14 activities⁴²

⁴⁰ EPA, Minnesota NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/minnesota-npdes-permits>.

⁴¹ ASWM, Minnesota State Wetland Program

https://www.aswm.org/pdf_lib/state_summaries/minnesota_state_wetland_program_summary_111815.pdf

⁴² Id

DRAFT WOTUS STATE SUMMARIES

Minnesota Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal	X			In addition, has a formal "Net Gain/Increase" goal at Minn. Statutes 103.201A
State Dredge and Fill Program for Wetlands	X			
404 Assumption		X		
Isolated Wetland Permitting		X		
State Wetland Permitting Fees	X			
WQS for Wetlands	X			Wetland-specific WQS
Wetland Monitoring & Assessment Program	X			

Source: ASWM (2015) Status and Trends Report

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OREGON

Waters of the State are defined as:

- Lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.
- All natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water in this state

Wetlands are defined as:

- Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions

State-created Limitations on Regulations:

- State imposes limitations:
 - The Oregon Environmental Quality Commission (EQC) and the Department of Environmental Quality are prohibited from promulgating or enforcing effluent limitations “upon nonpoint source discharges of pollutants resulting from forest operations on forestlands,” unless required to do so by the federal Clean Water Act;
- State also imposes qualified stringency prohibitions:
 - Oregon’s Administrative Procedure Act sets forth the state policy that agencies are to adopt rules that “correspond with equivalent federal laws and rules,” unless: (1) there is specific statutory direction to the agency that authorizes adoption of the rule; (2) a federal waiver authorizes the adoption of the rule; (3) local or special conditions in the state warrant a different rule; (4) the state rule clarifies federal rules, standards, procedures, or requirements; (5) the state rule achieves the goals of the federal and state law with the least impact on public and private resources; or (6) there is no corresponding federal regulation.⁴³

State Programs:

- Removal-Fill Law operated under the Oregon Department of State Lands requires a permit before an applicant may remove or fill 50 cubic yards or more of material in any waters of the state (except in designated essential salmonid habitat and state designated scenic waterways, where the 50 cubic yard exemption doesn’t apply)⁴⁴

⁴³ ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>

⁴⁴ ELI, 2013. State Constraints: State-Imposed Limitations on the Authority of Agencies to Regulate Waters Beyond the Scope of the Federal Clean Water Act, available at <https://www.eli.org/sites/default/files/eli-pubs/d23-04.pdf>

DRAFT WOTUS STATE SUMMARIES

401 Certification:

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

- Oregon has state authority over NPDES program and permits are issued through the Oregon Department of Environmental Quality;
- EPA issues permits on all tribal lands and in federal waters off the coast⁴⁵
- Oregon operates its own NPDES program (has state authority) through the Department of Environmental Quality⁴⁶

404 Dredge and Fill Permitting:

- Has not assumed the 404 program;
- Has a state dredge and fill permitting program for freshwater streams and for wetlands, and tidal/estuarine areas.

Water Quality Standards:

- Has EPA-approved water quality standards

Other:

- Has a state wetlands mitigation bank law (for wetland protection)

⁴⁵ EPA, Oregon NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/oregon-npdes-permits>.

⁴⁶ EPA, Wastewater Discharge Permits (2017), available at <https://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/Permits+Homepage>.

DRAFT WOTUS STATE SUMMARIES

Oregon Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal	X			Formal "No Net Loss" goal
State Dredge and Fill Program for Wetlands	X			
404 Assumption		X		Currently working towards assumption (as of 2017)
Isolated Wetland Permitting	X			
State Wetland Permitting Fees	X			
WQS for Wetlands		X		Applies existing WQS to wetlands (not wetland-specific)
Wetland Monitoring & Assessment Program	X			Wetland Monitoring and Assessment is a multi-agency effort.

Source: ASWM (2015) Status and Trends Report

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PENNSYLVANIA

Waters of the State are defined as:

- Pennsylvania's Clean Streams Law defines "waters of the Commonwealth" as "shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface or underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth"⁴⁷;
- For purposes of the Dam Safety and Encroachments Act, "regulated waters" of Pennsylvania are defined as: "watercourses, streams, or bodies of water and their floodways wholly or partly within or forming part of the boundary of this Commonwealth"⁴⁸ "Watercourse" or "stream" is defined as "any channel of conveyance of surface water having a defined bed and banks whether natural or artificial, with perennial or intermittent flow"⁴⁹

Wetlands are defined as:

- Dam Safety and Encroachment Regulations define wetlands as "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas"⁵⁰

State-created Limitations on Regulations:

- Has qualified stringency prohibitions
 - Pennsylvania EO 1996-1: state agencies may not exceed federal standards unless justified by a "compelling and articulable" interest or required by state law⁵¹.

State Programs:

- Clean Streams Law
- Dam Safety and Encroachments Act

401 Certification:

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits
- This is integrated with other programs, approvals, etc.

⁴⁷ 35 P.S. § 691.1.

⁴⁸ 25 Pa. Code § 105.1.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ NCSL, 2014. State Agency Authority to Adopt More Stringent Environmental Standards, available at <http://www.ncsl.org/research/environment-and-natural-resources/state-agency-authority-to-adopt-more-stringent-environmental-standards.aspx>.

DRAFT WOTUS STATE SUMMARIES

402 NPDES Program:

- Pennsylvania has state authority over NPDES program and permits are issued through the Pennsylvania Department of Environmental Protection⁵² except that Pennsylvania has not received authorization to implement the pretreatment and biosolids programs.⁵³

404 Dredge and Fill Permitting:

- Has not assumed the 404 program
- Has a state dredge and fill permitting program for freshwater streams and for wetlands
- Implements a State Programmatic General Permit pursuant to CWA 404(e) for specifically identified activities. The currently operative permit is PASPGP-5 (issued July 2016).⁵⁴

Water Quality Standards:

- Has EPA-approved water quality standards

⁵² EPA, Pennsylvania NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/pennsylvania-npdes-permits>.

⁵³ EPA, State Program Authority: <https://www.epa.gov/npdes/npdes-state-program-information>

⁵⁴ <http://www.nap.usace.army.mil/Portals/39/docs/regulatory/spgp/PASPGP-5.pdf?ver=2018-01-12-111748-487>

DRAFT WOTUS STATE SUMMARIES

Pennsylvania Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal			X	Pennsylvania (along with, among others, Maryland, Virginia, Delaware and West Virginia) is one of the signatories to the Chesapeake Bay 2014 Agreement, which includes the following outcome for wetlands within the Chesapeake Bay watershed (which includes portions of Pennsylvania): "Continually increase the capacity of wetlands to provide water quality habitat benefits throughout the watershed. Create or re-establish 85,000 acres of tidal and non-tidal wetlands and enhance the function of an additional 150,000 acres of degraded wetlands by 2025.
State Dredge and Fill Program for Wetlands	X			
404 Assumption		X		
Isolated Wetland Permitting			x	Pennsylvania defines wetlands in a such a way as to include wetlands that might be considered isolated under federal law
State Wetland Permitting Fees	X			
WQS for Wetlands		X		Under the Wetland Program Plan, there is a goal to develop wetland-specific WQS
Monitoring & Assessment Program	X			Under PA's Wetland Program Plan (prepared in connection with ESTP), there is a goal to develop a long-term assessment plan

Source: ASWM (2015) Status and Trends Report

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WYOMING

Waters of the State are defined as:

- All surface and groundwater, including waters associated with wetlands, within the state. Any waters within the jurisdiction of Wyoming.

Wetlands are defined as:

- “Wetlands” means those areas in Wyoming having all three (3) essential characteristics: (A) Hydrophytic vegetation; (B) Hydric soils; and (C) Wetland hydrology.
 - (xiv) “Natural wetlands” means those wetlands that occur independently of human manipulation of the landscape;
 - (xv) “Man-made wetlands” means those wetlands that are created intentionally or occur incidental to human activities, and includes any enhancement made to an existing wetland which increases its function or value;
 - (xvi) “Wetland value” means those socially significant attributes of wetlands such as uniqueness, heritage, recreation, aesthetics and a variety of economic values

State-created Limitations on Regulations:

- No limitations identified

State Programs:

- §35-11-310. Notice to drain waters required; exception.
 - (a) Except as provided in subsection (b) of this section, after July 1, 1996, no person shall drain water from a naturally occurring or man-made wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department that the water which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. Notification shall include the size and location of the wetland, and whether the wetland is natural or man-made.
 - (b) Subsections (a) and (c) of this section do not apply to disturbances of wetlands resulting from mining operations conducted pursuant to mining permits issued by the department of environmental quality.
 - (c) Any person draining, or causing to be drained, water of a naturally occurring wetland, or any series thereof, which has an area comprising five (5) acres or more, without first notifying the department as required by subsection (a) of this section, shall not be eligible to participate in the mitigation credit banking system as provided by W.S. 35-11-311. Failure to notify the department pursuant to this section does not constitute a violation for purposes of W.S. 35-11-901

401 Certification:

- Has adopted CWA §401, giving the state authority to certify, conditionally certify, or decline to certify federal permits

402 NPDES Program:

DRAFT WOTUS STATE SUMMARIES

- Wyoming has state authority over NPDES program and issues permits through the Wyoming Department of Environmental Quality⁵⁵
- EPA issues permits in Indian country.

404 Dredge and Fill Permitting:

- Has not assumed the 404 program;
- Does not have a state dredge and fill program for waters and wetlands
- Relies on federal permitting authority and CWA §401

Water Quality Standards:

- Has EPA-approved water quality standards

Wyoming Wetland Program Summary

	YES	NO	UNCLEAR/ UNKNOWN	NOTES
"No Net Loss" Goal		X		
State Dredge and Fill Program for Wetlands	X			
404 Assumption		X		
Isolated Wetland Permitting		X		
State Wetland Permitting Fees		X		
WQS for Wetlands	X			Applies existing WQS to wetlands (not wetland-specific)
Wetland Monitoring & Assessment Program		X		Conducts project-specific M&A only

Source: ASWM (2015) Status and Trends Report

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⁵⁵ EPA, Wyoming NPDES Permits (2017) available at <https://www.epa.gov/npdes-permits/wyoming-npdes-permits>.

Tab O – Groundwater as a Conduit for Pollutants

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA-HQ-OW-2018-0063; FRL-9973-41-OW]

Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on the Agency’s previous statements regarding the Clean Water Act (CWA) and whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional surface water may be subject to CWA regulation. EPA is requesting comment on whether the Agency should consider clarification or revision of those statements and if so, comment on how clarification or revision should be provided.

DATES: Comments must be received on or before May 21, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2018-0063, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Office of Wastewater Management, Water Permits Division (MC4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW,

Washington, DC 20460; telephone number: (202) 564-6087; email address: wilson.js@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

B. What should I consider as I prepare my comments for EPA?

II. Background

A. The Clean Water Act’s National Pollutant Discharge Elimination System Program

B. EPA’s Previous Statements Regarding the Clean Water Act’s “Discharge of a Pollutant” Provision Where There Is a Direct Hydrologic Connection

C. Direct Hydrologic Connection

III. Request for Comment

I. General Information

A. Does this action apply to me?

Tribes, states, local governments, the regulated community, and citizens interested in federal jurisdiction over activities that may release pollutants to groundwater may wish to provide input. Entities releasing pollutants to groundwater or other subsurface flow that has a direct hydrologic connection to jurisdictional surface waters may be affected by whether and how EPA clarifies when or if direct hydrologically connected releases are subject to regulation under the CWA. Potentially affected entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	State, Tribal, and Territorial water quality agencies and NPDES permitting authorities that may need to determine whether sources of pollutants should be addressed by standards or permitting actions.
Federal Agencies	Federal agencies with projects or other activities near surface waters.
Industry	Industries that may have releases that affect groundwater with connections to surface waters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by a potential clarification of EPA’s previous statements in response to comments received on this notice. Other types of entities not listed in the table could also be affected. If you have questions regarding the effect of this action on a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the

disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. The Clean Water Act's National Pollutant Discharge Elimination System Program

The CWA—initially enacted as the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and subsequent amendments—establishes the basic structure in place today for regulating discharges of pollutants to the waters of the United States. In the CWA, Congress established the national objective to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA Section 1251(a). Congress also expressly intended that states retain their traditional role in preventing, reducing and eliminating pollution: “It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources” CWA Section 1251(b).

The CWA National Pollutant Discharge Elimination System (NPDES) permitting authority, whether implemented by EPA or an authorized State, is limited to regulating the discharge of pollutants from point sources to navigable waters. Congress prohibited any “discharge of any pollutant” to “navigable waters” unless it is authorized by statute, generally by a permit. CWA Sections 1311, 1342, 1344, 1362. The CWA defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” CWA Section 1362(12)(A). Pollutant means “dredged spoil, solid waste, incinerator, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” CWA Section 1362(6). The CWA defines “navigable waters” as “the waters of the United States, including the territorial seas”; and a “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA Sections 1362(7), (14).

The CWA authorizes EPA to issue NPDES permits under Section 402(a), but EPA may authorize a state to

administer its own NPDES program if EPA determines that the program meets the statutory criteria. CWA Sections 1342(a), (b). When a state receives such authorization, EPA retains oversight and enforcement authorities. CWA Sections 1319, 1342(d).

B. EPA's Previous Statements Regarding the Clean Water Act's “Discharge of a Pollutant” Provision Where There Is a Direct Hydrologic Connection

EPA has previously stated that pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements. EPA has not stated that CWA permits are required for pollutant discharges to groundwater in all cases, but rather that pollutants discharged from point sources to jurisdictional surface waters that occur via groundwater or other subsurface flow that has a direct hydrologic connection to the surface water may require such permits. The Agency has made these statements in previous rulemaking, permitting, and guidance documents, although most of these statements were collateral to the central focus of a rulemaking or adjudication. *See* Final NPDES Permit Application Regulations for Storm Water Discharges, 55 FR 47,990, 47,997 (Dec. 2, 1990) (“[T]his rulemaking only addresses discharges to water of the United States, consequently discharges to ground waters are not covered by this rulemaking (unless there is a hydrological connection between the ground water and a nearby surface water body).”); 1991 Final Rule Addressing Water Quality Standards on Indian Lands, 56 FR 64,876, 64,892 (Dec 12, 1991) (“Notwithstanding the strong language in the legislative history of the Clean Water Act to the effect that the Act does not grant EPA authority to regulate pollution of groundwaters, EPA and most courts addressing the issues have recognized that . . . the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters. In these situations, 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.”); Final General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho ID–G–01–0000, 62 FR 20,178 (1997) (“the Clean Water Act does not give EPA the

authority to regulate groundwater quality through NPDES permits. The only situation in which groundwater may be affected by the NPDES program is when a discharge of pollutants to surface waters can be proven to be via groundwater. . . . [T]he permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.”). *See also* Proposed NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 66 FR 2,960, 3,017 (Jan. 12, 2001) (“As a legal and factual matter, EPA has made a determination that, in general, collected or channeled pollutants conveyed to surface waters via ground water can constitute a discharge subject to the Clean Water Act. The determination of whether a particular discharge to surface waters via ground water which has a direct hydrologic connection is a discharge which is prohibited without an NPDES permit is a factual inquiry”).

When taking final action on the proposed regulation of discharges from CAFOs, EPA rejected establishing nationally applicable effluent limitation requirements related to releases to groundwater with a direct hydrologic connection to jurisdictional water and recognized that “there are scientific uncertainties and site-specific considerations with respect to regulating discharges to surface water via groundwater with a direct hydrologic connection to surface water [and] conflicting legal precedents on this issue.” Final NPDES Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 FR 7,175, 7,216 (Feb. 12, 2003). EPA stated in the preamble to the final rule, in the context of ensuring proper closure of CAFOs, that the permitting authority may impose special permit terms and conditions addressing such circumstances on a case-by-case basis as appropriate. 68 FR at 7,229. The Agency further noted that “[n]othing in this rule shall be construed to expand, diminish, or otherwise affect the jurisdiction of the Clean Water Act over discharges to surface water via groundwater that has a direct hydrologic connection to surface water.” *Id.* at 7,216–17.

In CWA citizen suits against regulated entities, courts have faced the question of whether regulation under the CWA of point source discharges of pollutants includes regulation of releases to groundwater with a direct hydrologic connection to jurisdictional surface

waters. Some courts have determined that the statute does not explicitly answer this question, while others have held that the statute does not extend to releases to groundwater. Other courts have interpreted the CWA as covering not only discharges of pollutants to navigable waters, but also releases of pollutants that travel from a point source to navigable waters over the surface of the ground. *E.g., Sierra Club v. Abston Constr. Co.*, 620 F.2d 41, 44–45 (5th Cir. 1980). As one court noted, “the inclusion of groundwater with a hydrological connection to surface waters has troubled courts and generated a torrent of conflicting commentary.” *Potter v. ASARCO*, Civ. No. S:56–cv–555, slip op. at 19 (D. Neb. Mar. 3, 1998).

Certain courts have concluded that a hydrological connection between groundwater and surface waters is insufficient to justify CWA regulation. In *Village of Oconomowoc Lake v. Dayton Hudson Corporation*, the Seventh Circuit concluded that “[n]either the Clean Water Act nor the EPA’s definition [of waters of the United States] asserts authority over ground waters, just because these may be hydrologically connected with surface waters.” 24 F.3d 962, 965 (7th Cir. 1994), *cert. denied*, 513 U.S. 930 (1994). The court cited EPA’s statement in the preamble to the 1990 Final NPDES Permit Application Regulations for Storm Water Discharges noting the potential for a hydrologic connection between groundwater and jurisdictional surface water, but concluded that the reference was “collateral” and “not a satisfactory substitute for focused attention in rulemaking or adjudication.” *Id.* at 966. In *Rice v. Harken Exploration Co.*, the Fifth Circuit held that “a generalized assertion that covered surface waters will eventually be affected by remote, gradual, natural seepage from the contaminated groundwater” was outside the scope of the Oil Pollution Act in order “to respect Congress’s decision to leave the regulation of groundwater to the States.” 250 F.3d 264, 272 (5th Cir. 2001). In *Cape Fear River Watch v. Duke Energy Progress*, the district court held that “Congress did not intend for the CWA to extend federal regulatory authority over groundwater, regardless of whether that groundwater is eventually or somehow ‘hydrologically connected’ to navigable surface waters.” 25 F. Supp. 3d 798, 810 (E.D.N.C. 2014).

A number of other district courts have taken the view that Congress intended to regulate the release of pollutants that reach waters of the United States, whether the pollutants reach the surface

water directly, or through groundwater with a direct hydrologic connection. *E.g., Idaho Rural Council v. Bosma*, 143 F. Supp. 2d 1169, 1179–80 (D. Idaho 2001). Because these courts interpreted the term “discharge of a pollutant” to cover discharges that reach jurisdictional water over the ground and through other means, they concluded that exempting discharges through groundwater could lead to confusion and unintended results. One court noted that “it would hardly make sense for the CWA to encompass a polluter who discharges pollutants via a pipe running from the factory directly to the riverbank, but not a polluter who dumps the same pollutants into a man-made settling basin some distance short of the river and then allows the pollutants to seep into the river via the groundwater.” *N. Cal. River Watch v. Mercer Fraser Co.*, No. 04–4620, 2005 WL 2122052, at *2 (N.D. Cal. Sept. 1, 2005). And the Ninth Circuit recently held that a point source discharge to groundwater of “more than [a] de minimis” amount of pollutants that is “fairly traceable from the point source . . . such that the discharge is the functional equivalent of a discharge into a navigable water” is regulated under the Act. *Haw. Wildlife Fund v. Cty. of Maui*, No. 15–17447, slip. op. at 19 (9th Cir. Feb. 1, 2018).

C. Direct Hydrologic Connection

In addition to the mixed case law on whether certain releases of pollutants to groundwater are within the jurisdictional reach of the CWA, ascertaining whether there is a direct hydrologic connection such that a particular release to groundwater could be considered a “discharge of a pollutant” to a “water of the United States” and therefore subject to the CWA has been characterized previously by EPA as a fact-specific determination. See 66 FR at 3,017. EPA has stated that relevant evidence includes the time it takes for a pollutant to move to surface waters, the distance it travels, and its traceability to the point source. *Id.* These factors are affected by other site specific factors, such as geology, flow, and slope. *Id.*

III. Request for Comment

EPA is requesting comment from tribes, states, members of the public, and other interested stakeholders regarding whether EPA should review and potentially revise its previous statements concerning the applicability of the CWA NPDES permit program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic

connection to a jurisdictional surface water. Specifically, EPA seeks comment on whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA. If EPA has the authority to permit such releases, EPA seeks comment on whether those releases would be better addressed through other federal authorities as opposed to the NPDES permit program. Furthermore, EPA seeks comment on whether some or all such releases are addressed adequately through existing state statutory or regulatory programs or through other existing federal regulations and permit programs, such as, for example, state programs that implement EPA’s underground injection control regulations promulgated pursuant to the Safe Drinking Water Act.

EPA also seeks comment on whether EPA should clarify its previous statements concerning pollutant discharges to groundwater with a direct hydrologic connection to jurisdictional water in order to provide additional certainty for the public and the regulated community. Such a clarification could address the applicability of the CWA to groundwater with a direct hydrologic connection to jurisdictional water, or could define what activities would be regulated if not a discharge to a jurisdictional surface water (*i.e.*, placement on the land), or which connections are considered “direct” in order to reduce regulatory uncertainties associated with that term. EPA also seeks suggestions on what issues should be considered if further clarification is undertaken, including, for example, the consequences of asserting CWA jurisdiction over certain releases to groundwater or determining that no such jurisdiction exists. Finally, EPA seeks comment on what format or process EPA should use to revise or clarify its previous statements (*e.g.*, through memoranda, guidance, or in the form of rulemaking) if the Agency pursues further action in response to this request for comment.

Dated: February 12, 2018.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2018–03407 Filed 2–16–18; 8:45 am]

BILLING CODE 6560–50–P

Tab P – Water Quality-Quantity Nexus Workshop

WSWC Water Quality Committee
Water Quality-Quantity Nexus Workgroup
Conference Call January 8, 2018

Attendees

Kent Woodmansey
Dave Schade
Tom Stiles
Michelle Bushman

Summary of Call

Michelle briefly reviewed the purpose of the subcommittee from the Water Quality Committee Work Plan, to “provide a more focused review of the 1997 WSWC report on Water Quantity/Water Quality Interrelationships: Western State Perspectives.” The summary of our 2016 Water Quality-Quantity Nexus Workshop provides further clarification for the review:

- Are the issues identified in 1997 still pertinent today?
- What is it we are trying to fix? Can we distill an identifiable nexus?
- What progress has each state made to bridge quantity-quality gaps?
- How are we defining what “success” looks like as those gaps are filled?

Kent discussed the other items on the Work Plan under Water Quality/Quantity Nexus, regarding the creation of a toolbox of useful information, coordination with federal agencies and other organizations on workshops that address relevant nexus topics, and providing updated information from states on current quality-quantity issues at Council meetings.

Tom noted that the main takeaway he got from the 1997 workshop was that the state quality and quantity agencies didn’t communicate well or at all. During the 2015 workshop it was clear that the state agencies had much more interaction, both within states and between states. He suggested it might be most helpful to have a half day workshop, in conjunction with our regular Council meeting, and touch on the challenges and successes our states are facing now. Kent agreed that better communication seems to be the key message from both workshops. There isn’t a magical one-size-fits-all solution, but it’s a worthwhile topic to continue discussing at our meetings.

Kent, Tom, and Dave discussed that more of the friction now seems to be between state and federal agencies over implementation of the Clean Water Act while not impairing state jurisdiction. Back in the 1990s the focus was on federal efforts to impose instream flows, but the issues have matured over time. Today’s issues may revolve more around a sense of federal overreach in water management issues when it comes to water quality, CWA §404 issues between the states and the Corps on important projects, pass through water, permitting watersheds etc. It’s not just about the quality-quantity nexus, but where does federal authority hit the state wall.

They talked about focusing our discussions more on the weeds and the day-to-day issues. Rather than engaging in a WOTUS Rule harangue or a philosophical debate, we should focus on federal management policies and initiatives, and the interplay with state responsibilities. Examples given included (1) the EPA-tribal delegations of authority or federal water quality standards, and discussing the “now what” consequences for states; (2) Park City, UT effluent-dominated flow, and the consequences of increasingly stringent wastewater limits on ammonia and phosphorus; (3) imposing water quality/state pollution discharge limits on federal facilities; (4) Kansas has a more pragmatic low flow demarcation after which quality standards don’t apply, rather than EPA’s preference to apply an assumed flow; (5) Kenny Titus talked about Quivera National Refuge and augmentation wells at our last meeting, and aside from a water rights issue, there is a question of the quality of the groundwater, requiring them to advise the governor on antidegradation issues.

These anecdotes shed more light on our 21st version of those earlier fears of a few decades ago. We seem to be past the time when EPA wants to implement the Clean Water Act for us, but there are still

issues to overcome as the states interpret how to achieve the CWA goals. The water quality agencies are trying to keep EPA happy, and that impacts their relationships with the state engineers due to the differences in culture.

It would be good to hear from the states what their challenges, successes, and agreements are with the federal government so we know what's out there. It would be good to have WestFAST participate, and others as appropriate. We'd like to see more information about the interactions and collaborative efforts at the intersection of quality and quantity.

Water Quality-Water Quantity Nexus Workshop
Newport, Oregon
Wednesday, August 1, 2018

DRAFT AGENDA

*potential topics for this or future workshops

- 8:00 am **Introduction**
How to accomplish effective cooperation within states, between states, and between state-federal-tribal governments “to ensure that the West has an adequate, sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future”
- 8:15 am **State Presentations**
*Water Quality Impacts of Water Transfers – *moving water from its native basin to a segregated place of use, appropriations and state-federal WQ concerns*
*Water Quality and Water Resource Projects – *dams, fish bypass, dredging, pipes, levees, CWA 401 and 404, Corps, Reclamation, EPA, ESA*
*Low flow and effluent-dominated (ag-dominated) streams (water bodies) – *wastewater, water reuse, mixing zones, nutrients, HABs, fisheries, temperatures, diversions, return flows*
*State-Tribe conflicts, collaboration and coordination over quality of shared water resources – *jurisdiction, checkerboard, tribal industry, collaborative task force*
*Groundwater Resources and Water Quality – *injection wells, stressed aquifers, brackish water intrusion*
- 9:30 am *Group Discussion*
- 10:00 am Break
- 10:15 am **WestFAST Presentations**
*EPA Region resources for CWA implementation – *WQS approval, permits, backlogs, coordination with states in addressing diverse water resource uses and needs*
*Corps - *nationwide permits, delegation of 408 authority, jurisdictional determinations (mapping database of JDs for consistency and certainty)*
*Forest Service/NPS – *holistic watershed management across state-federal lands*
*USDA – *rural water resources, farmland and water quality*
*BLM, DOD?
*NASA, USGS – *water quality/quantity data (satellite, ground)*
- 11:30 am *Group Discussion*
- 12:00 pm Adjourn

Tab Q – WSWC-WestFAST Non-Tribal Federal Water Rights

WSWC Legal Committee
WSWC-WestFAST Non-Tribal Federal Water Rights Workgroup
Conference Call February 7, 2018

Attendees

Jeff Hughes, National Park Service
Peter Fahmy, National Park Service
Norm Johnson, Utah
Buck Smith, Washington
Andrew Hautzinger, Fish and Wildlife Service
Chris Carlson, Forest Service
Chris Brown, Wyoming
Lauren Dempsey, Air Force
Tony Willardson, WSWC
Michelle Bushman, WSWC
Roger Pierce, WestFAST Liaison

Summary of Call

The workgroup plans to hold its next workshop in conjunction with the Council's fall meetings in Idaho in 2018. Michelle discussed Workgroup's list of priority topics for upcoming workshops, with grazing water rights next on the list. She reviewed some of the past comments that have been made by members of the workgroup relating to grazing water rights, from dealing with a large number of claims in adjudications to issues over whether the water right is attached to grazing land or to stock owners.

The National Park Service has fewer than a dozen parks with grazing, some of them that have inherited grazing allotments, and there haven't been many problems. They occasionally deal with "interference" claims due to wildlife accessibility to the same water as the stock. Water rights are required to be in the name of the park. The adjudication of these claims takes considerable effort, and NPS would like to see more information about the adjudication procedures in the states. In Arizona they're working on an initiative to see if stock watering rights can be a *de minimus* class to expedite the process.

The Fish and Wildlife Service has refuges with stock water ponds, and end up working with private owners at times. The Air Force also has some grazing lands and concerns about issues of leases and putting water rights to beneficial use, and would like to participate and understand more about how the states and other federal agencies interpret the applicable laws. The Forest Service and the Bureau of Land Management have considerable grazing lands and associated stock watering rights. Internal interpretations of federal agency manuals can change over time and from one state to another. Federal agencies also face challenges from groups filing lawsuits to protect watersheds in riparian areas from grazing damage

Utah allows sub-basin claims, identifying all small, shallow surface water sources as points of diversion, recognizing that stock will drink from any available source on the grazing allotment. The Forest Service has made use of these claims, but BLM has not. Wyoming has MOUs with BLM and the Forest Service to establish the process for obtaining new water rights. The nature of the stock watering right can make a difference, whether it's a well or reservoir, the size and location. In Wyoming, some of those rights don't have to be adjudicated. In Idaho's Snake River Adjudication, a recent statute precludes the federal government from holding stock watering rights, and BLM and FS are navigating this new law, particularly when it comes to a change in ownership or location. Some states and federal agencies may allow joint stock permits, held by the federal agency and the grazing permittee. Some states allow the construction of wildlife watering dugouts, guzzlers, or define wildlife propagation as a beneficial use. There may be questions of what happens to the water right if stock is taken off the range and the water is shut off.

The Workgroup noted that it would be helpful and interesting to know how the other states and federal agencies are approaching grazing water rights, their policies in general and in the context of adjudications and reserved water rights. We discussed the utility of a survey of the states that could be compiled and

sent out to participants prior to the meeting. It would be helpful to talk during the meeting about some of the pinch points, legal and political challenges, and potential avenues to solve problems.

There was some discussion about inviting representatives from the Farm Bureau or other stock/rancher organizations to the workshop, either as audience or as potential presenters to bring their perspective to the table. There are sometimes misperceptions among cattlemen that the state/federal grazing policies are tied to water rights, and the education process to help organizations or individuals understand the interrelationships of the state and federal laws isn't always clear.

Roundtable

National Park Service: North Dakota and the Theodore Roosevelt National Park are looking at seepage runs, and the impacts of fracking on groundwater and low flow in the river. They're looking at a cooperative agreement to protect the water resources. In Utah, they're doing a cooperative study near Bryce Canyon to identify what is happening in terms of groundwater development.

Utah: They finished the Bryce Canyon water rights settlement, still working on Utah-Navajo at the moment, but will continue with further non-Indian settlements into the future. In their general adjudication, they're starting to take a look at the Forest Service claims.

Washington: They've had considerable debate over permit-exempt wells outside the priority water rights system. The Hirst case stopped development and sparked a legal and political battle. The Washington legislature recently passed a statute allowing exempt wells, allocating \$20M to work on watershed projects that will offset the impacts of exempt wells, from habitat programs to purchasing senior water rights.

Fish and Wildlife Service: In Arizona, the FWS is assisting the Department of Homeland Security with road maintenance work, which has a water well component for compaction. That has raised questions about taking water off-refuge for border road networks.

Wyoming: They've been starting collaborative discussions with NPS and FS about how to quantify and approach the 26 segments of rivers designated as wild and scenic. They're trying to wrap their heads around potential future uses, protecting compact and reservoir purposes, and state-based water rights.

Forest Service: Reported that the conversations with Wyoming have been good. In New Mexico they are challenging litigation on some decreed instream water rights for grazing, dealing with cattle water access through a riparian habitat. The Arizona adjudication process is picking up steam with a new Special master that is handling reserved water rights claims on a basin/sub-basin basis. Figuring out how to address those claims in a shortened timeframe has been a challenge. In Idaho they're trying to sort out how to proceed with stock water challenges, where change requests can't be processed. They're also running into ESA issues with stock water and other rights, challenged over claims that the FS hasn't followed Biological Opinions or for not consulting over the environmental effects of diversions.

Tab R – WSWC-NARF Tribal Water Rights Ad Hoc Group

WSWC Legal Committee
WSWC-NARF Ad Hoc Group on Indian Water Rights Settlements
Washington, D.C. Visits
October 7, 2017

Ad Hoc Group Participants

Tony Willardson, WSWC
Michelle Bushman, WSWC
Susan Cottingham, WSWC
John Echohawk, NARF
Steve Moore, NARF
Dan Lewerenz, NARF
Jay Weiner, Montana
Arianne Singer, New Mexico
Stanley Pollack, Navajo Nation
Vanessa Ray-Hodge, Sonosky Chambers
Jacob Schellinger, National Congress of American Indians (NCAI)

Summary of Visits

On October 23-25, the Western States Water Council and the Native American Rights Fund met with Congressional office staff and Administrative agencies to discuss the importance of Indian water rights settlements to Indian and non-Indian communities throughout the West. We delivered packets of information about completed and pending settlements, with supporting positions and resolutions from WSWC, NARF, and NCAI. We talked about the value of shovel-ready infrastructure projects that would benefit from inclusion in an anticipated infrastructure package. We addressed concerns over inflexible federal requirements that increase the costs and delays to build authorized infrastructure. We also discussed the Reclamation Fund and selectively offered some proposed language for extending or making permanent the transfers authorized in P.L. 111-11 for Indian water rights settlements. We had several discussions about budget scoring and possible drought, energy, infrastructure, public lands, water settlements, or other legislative vehicles where the Reclamation Fund language could be included.

Offices Visited

Senators:	McCain (R-AZ), Feinstein (D-CA), Gardner (R-CO), Schatz (D-HI), Risch (R-ID), Moran (R-KS), Daines (R-MT), Tester (D-MT), Fischer (R-NE), Udall (D-NM), Hoeven (R-ND), Heinrich (D-NV), Masto (D-NV), Lankford (R-OK), Wyden (D-OR), Merkley (D-OR), Lee (R-UT), Hatch (R-UT), Murray (D-WA), Barrasso (R-WY), Enzi (R-WY)
Representatives:	Huffman (D-CA), Harris (D-CA), Gianforte (R-MT), Lujan-Grisham (D-NM), Amodei (R-NV), Cole (R-OK), Bishop (R-UT)
House Natural Resources:	William Ball, Bryson Wong, Richie O'Connell, Matthew Muirriagi
Senate Energy and Natural Resources:	Lane Dickson, Camille Touton
Senate Indian Affairs:	Ken Rooney, Brandon Ashley, Anthony Sedillo
Senate Appropriations:	Jen Armstrong, Tyler Owens
Department of the Interior:	Allen Mikkelson, Pam Williams, Tracy Goodluck, Omero Martinez, Bob Wolf
Office of Management and Budget:	Aaron Ray, Alex Hettinger

Tab S – Legislation and Litigation Update / Catskills III

LEGISLATION AND LITIGATION UPDATE
186TH WSWC MEETINGS
ARLINGTON, VA – MARCH 13, 2018

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 February 1, 2018, 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)
H.R. 5127	Issue: Water Reuse No Title: To establish a grant program to fund water recycling and reuse projects	2/27/18: H.R. 5127 introduced in the House, referred to Natural Resources, Transportation and Infrastructure	Rep. Grace Napolitano (D-CA) introduced H.R. 5127 with 9 Democrat co-sponsors
H.R. 5073	Issue: Rural Infrastructure Title: Clean Water for Rural Communities Act. Would authorize the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System in the States of Montana and North Dakota.	2/20/18: H.R. 5073 introduced in the House, referred to Natural Resources	Rep. Greg Gianforte (R-MT) introduced H.R. 5073
H.R. 5030	Issue: CWA Technical Assistance Title: Small and Rural Community Clean Water Technical Assistance Act. To provide technical assistance for small treatment works that are publicly owned, serving under 10,000. Would authorize \$15M each year from FY2018-FY2022. For medium treatment works between 10,000 and 75,000, an additional \$10M per year is authorized. Assistance includes grants or cooperative agreements to provide onsite technical assistance, circuit rider technical assistance programs, multi-State, regional technical assistance programs, and onsite and regional training, to help treatment works achieve compliance with the Clean Water Act.	2/16/16: H.R. 5030 introduced in the House, referred to Transportation and Infrastructure	Rep. Gregg Harper (R-MS) introduced H.R. 5030
H.R. 4976	Issue: Forest Health Title: Empowering State Forestry to Improve Forest Health Act. The bill amends the Cooperative Forestry Assistance Act of 1978 to direct the Forest Service to establish a landscape-scale restoration program to provide financial and technical assistance for landscape-scale restoration projects on state and private forest lands. The program objectives	2/14/18: H.R. 4976 introduced in the House, referred to Agriculture and Natural Resources Committees	Rep. Peter Welch (D-VT) introduced H.R. 4976

	would include protecting or improving water quality or quantity, reducing wildfire risk, addressing invasive species, or protecting ecosystems or habitat. The bill would authorize \$30M to be appropriated each year from FY2018-2021		
H.R. 4947	Issue: Rural Infrastructure, Circuit Riders Title: Rural Infrastructure Development and Partnership Act. The bill is intended to improve infrastructure (water, wastewater, transportation, public buildings, utilities) by establishing an office with a liaison to facilitate and coordinate technical assistance with federal agencies and rural partners. Among other programs, the office and technical assistance teams would coordinate with the Rural Water and Wastewater Circuit Rider Program.	2/6/18: H.R. 4947 introduced in the House, referred to Agriculture	Rep. Elizabeth Esty (D-CT) introduced H.R. 4947 with 3 bipartisan co-sponsors from NY and VT
H.R. 4902/S. 2364	Issue: WIFIA Loans to State Financing Authorities Title: SRF WIN Act. The bill would amend the Water Infrastructure Finance and Innovation Act of 2014 to provide to State infrastructure financing authorities additional opportunities to receive loans under that Act to support drinking water and clean water State revolving funds to deliver water infrastructure to communities across the United States. The financial assistance may be used to pay the reasonable costs of administration related to that assistance, and the interest rates are equal to the Treasury security yield for similar maturity dates as the loan, with exceptions for states with a declared disaster or that received less than 2% of the total loan funds for the most recent fiscal year. States are limited to \$7B in loans per state between FY2019-2023. The bill would also remove the pilot project designation for the WIFIA program	1/30/18: H.R. 4902 introduced in the House, referred to Transportation and Infrastructure, Energy and Commerce; S. 2364 introduced in the Senate, referred to Environment and Public Works	Rep. John Katko (R-NY) introduced H.R. 4902 with three bipartisan co-sponsors from IL, NY, and OR Senator John Boozman (R-AR) introduced S. 2364 with 9 bipartisan co-sponsors from CA, MS, NJ, OK, PN, WI, WV, Wy
H.R. 4892	Issue: Source Water Protection Title: Collaborative Water and Soil Enhancement Act. The bill would encourage best practices relating to water quality and quantity that protect or improve source waters for drinking water while benefitting agricultural producers, under the direction of the Secretary of Agriculture in collaboration with drinking water utilities, community water systems, and State technical committees	2/8/18: H.R. 4892 introduced in the House, referred to Agriculture	Rep. Marcia Fudge introduced H.R. 4892
S. 2346	Issue: Water Infrastructure No Title. The bill is intended to establish an innovative water infrastructure workforce development program, investing federal resources into collaborating with States to improve water and wastewater utilities with a strong pipeline of skilled and diverse workers, with grants awarded to assist with training and education and improve community awareness.	1/25/18: S. 2346 introduced in the Senate, referred to Environment and Public Works	Sen. Cory Booker (D-NJ) introduced S. 2346
H.R. 4735	Issue: Gold King Mine Title: Gold King Mine Spill Accountability Act. The bill would provide compensation from the Environmental Protection Agency's (EPA) unobligated funds for injuries resulting	1/3/18: H.R. 4735 introduced, referred to Transportation and Infrastructure, Judiciary,	Rep. Stevan Pearce (R-NM) introduced H.R. 4735

	from the August 2015 spill, including business, financial, and property losses brought under the Federal Tort Claims Act (FTCA). The bill also requires EPA to fund implementation of the long-term water quality monitoring program for the Animas and San Juan Rivers, but does not specify any funding amounts. In order to be funded, the program must provide full public disclosure of water quality and sediment data, enable meaningful comparison between the data and the relevant water quality standards, and meet any other EPA requirements to administer the program.	Energy and Commerce, and Agriculture Committees	
H.R. 4696	Issue: Hydropower Title: Promoting Hydropower Development at Existing Nonpowered Dams Act. The bill would amend the Federal Power Act to expedite the licensing process through coordination of regulatory processes at federal, state, and tribal agencies, ensuring interagency communication and final decisions on applications within 2 years of completed applications.	12/22/17: H.R. 4696 introduced in the House, referred to Energy and Commerce	Rep. Larry Bucshon (R-IN) introduced H.R. 4696
H.R. 4492/S. 2329	Issue: Water Infrastructure Loans Title: Water Infrastructure Finance and Innovation Reauthorization Act. The bill is designed to accelerate water structure investments, and would extend authorization for EPA's water infrastructure federal loan guarantee pilot program five years, through 2024. It would double authorization for appropriations to \$90M, with incremental annual increases. The bill shifts primary administration of the WIFIA program to EPA rather than sharing the responsibility with the U.S. Army Corps of Engineers (Corps). Projects under the jurisdiction of the Corps must submit concurrent applications to the Corps.	12/1/17: H.R. 4492 introduced in the House, referred to Transportation and Infrastructure, and Energy and Commerce Committees 1/23/18: S. 2329 introduced in the Senate, referred to Environment and Public Works	Rep. Brian Mast (R-FL) introduced H.R. 4492, with 4 bipartisan co-sponsors from CA, NY, MI, and OH Sen. John Hoeven (R-ND) introduced S. 2329 with 2 bipartisan co-sponsors from IA and NJ
S. 2200	Issue: Drought Forecasting Title: National Integrated Drought Information System Reauthorization Act. The bill would authorize NIDIS program funding for FY2018-2023, in graduated amounts of \$13.5M to \$18.5M, and provides authority for soil moisture networks, cooperative partnerships, and improvements to seasonal, subseasonal, and low flow water predictions	12/13/17: S. 2200 introduced in the Senate, referred to Commerce, Science, and Transportation	Senator John Thune (R-SD) introduced S. 2200 with bipartisan co-sponsors from FL and NE
H.R. 4465	Issue: Upper Colorado River, Fish Recovery Title: Endangered Fish Recovery Programs Extension Act. The bill authorizes the Upper Colorado and San Juan River Basins Endangered Fish Recovery Programs Act (P.L. 106-392) passed by Congress in 2000. It would maintain base annual funding for the federal cost-share programs through FY2023, and extend the programs' authorization to use hydropower revenues. It would also require a report, prepared in consultation with program participants, on the implementation and effectiveness of those programs, including the listing status of four warm-water endangered fish, expenditures of appropriated funds broken down by activity categories, and contributions from States, Tribes, hydropower revenues, water users,	11/28/17: H.R. 4465 introduce, referred to Natural Resources Committee 2/16/17: Committee ordered reported by unanimous consent, H. Rept. 115-567	Rep. John Curtis (R-UT) introduced H.R. 4465 with 14 bipartisan co-sponsors from AZ, CO, NM, UT, and WY

	and environmental organizations.		
H.R. 4423	Issue: Judicial Review of NEPA Decisions on Reservoir Project Title: North Texas Water Supply Security Act. The bill would limit NEPA lawsuits for the environmental review for the Lower Bois d’Arc Creek Reservoir Project in Texas, requiring claims arising under federal law to be brought within 60 days of publication of the record of decision in the Federal Register. It also requires that the plaintiff have submitted comments during the public comment period, and that all actions be brought in the U.S. District Court for the Eastern District of Texas. To grant injunctive relief against federal or state agencies or the project sponsor, the North Texas Municipal Water District, the court must (a) consider the potential effects on public health, safety, and the environment, and the potential for significant negative economic effects of an injunction; (b) no presume that those harms are reparable; (c) not waive or limit the security requirement in FRCP 65(c) to pay the costs and damages sustained by any party wrongfully enjoined. The security must be posted within 15 days or the injunction would automatically terminate.	11/16/17: H.R. 4423 introduced in the House, referred to Judiciary	Rep. Sam Johnson (R-TX) introduced H.R. 4423, with 4 Texas co-sponsors
H.R. 4417	Issue: Harmful Algal Blooms Title: Harmful Algal Bloom and Hypoxia Research and Control Amendments Act. The bill would reauthorize the 1998 Act of the same name, which is currently set to expire at the end of FY2018, through FY2023. The bill would add the Corps to the algae bloom and hypoxia task force and would update some of the scientific language. It directs the National Oceanic and Atmospheric Administration (NOAA) to create a website to provide information to the public on program research and activities to monitor, mitigate, and intervene in HAB and hypoxia events. The bill directs future scientific assessments of HABs in marine coastal environments and freshwater lakes, rivers, and estuaries, and directs the program to accelerate the use of effective methods of intervention and mitigation. The bill requires the National Harmful Algal Bloom and Hypoxia Program to work cooperatively with and provide technical assistance to regional, state, tribal, and local government agencies and programs. It establishes a process for NOAA or the Environmental Protection Agency (EPA) to declare an “Event of National Significance” for HABs or hypoxia events with “a significant detrimental environmental, economic, subsistence use, or public health impact on an affected State.” The declaration may be made in the agencies’ discretion or at the request of a governor of an affected state, and would trigger access to disaster funds to assess and mitigate the damage. In making a national significance determination, the agencies are directed to consider toxicity, severity, potential spread, economic impact, size relative to past recurring events, geographic scope, and potential to cross municipal, state, or international boundaries. It limits the federal cost share to 50%, and allows private donations of funds, services, materials, or equipment to help with recovery. The bill authorizes appropriations of \$22M each year between FY2019 and FY2023.	11/16/17: H.R. 4417 introduced in the House, referred to Natural Resources, Science, Space and Technology Committees	Rep. Suzanne Bonamici (D-OR) introduced H.R. 4417, with 4 bipartisan co-sponsors from NY, OH, TX
S. 2154	Issue: Indian Water Rights Settlement	11/16/17: S. 2154 introduced, referred to	Senator Jerry Moran (R-KS) introduced S.

	Title: Kickapoo Tribe in Kansas Water Rights Settlement Act. The bill would approve the 2016 settlement agreement between the Tribe and the state of Kansas. The bill confirms the Tribal consumptive right of up to 4,705 acre-feet of water per year for any purpose. Allottee entitlements to water within reservation boundaries are to be fulfilled from the Tribe's water. The Tribe would have the authority "to use, allocate, distribute, and lease the Tribal water rights on or off the Reservation" under a Tribal Water Code, the settlement agreement, or other applicable federal law. The Tribe is directed to enact a Tribal Water Code within three years of the enforceability date, with provisions for permitting and limitations on diversion, storage and use of water; a due process system for disputed claims or contested administrative decisions; irrigation delivery and associated charges to allottees; and other requirements. The state of Kansas will continue to administer all Kansas water rights in the Delaware River Basin. The bill also directs the Department of Agriculture's Natural Resources Conservation Service and the Department of the Interior's Indian Water Rights Office to study the Upper Delaware and Tributaries Watershed Project. It would require them to make recommendations about the Project to Congress within 2 years on any changes necessary to effectuate the water rights confirmed by S. 2154	Indian Affairs Committee	2154
H.R. 4419	Issue: Water Infrastructure Title: Bureau of Reclamation and Bureau of Indian Affairs Water Project Streamlining Act. The bill applies "...the same streamlined water project development process for the [Bureaus] that the Water Resources Reform and Development Act (WRRDA) of 2014 (P.L. 113-121) provided for the U.S. Army Corps of Engineers. The goal of the legislation is to reform the current cumbersome, lengthy process so that there is a mechanism to build new water projects in the West." The bill requires expedited completion of ongoing feasibility studies for surface water projects, Title XVI water reclamation and reuse program projects (P.L. 102-575), rural water supply projects (P.L. 109-451), or the federal portion of integrated water resource management plans. For future projects, it limits the review period to three years, with extensions for a maximum of seven years for more complex projects with detailed justifications to Congress and any non-federal project sponsor. It directs Interior to develop a coordinated and expedited environmental review process, and to establish a completion schedule with financial penalties for Interior if timelines are not met. Similar to Corps feasibility studies, Interior is directed to develop and submit an annual report to the relevant Congressional committees of proposed water development projects, with cost estimates and proposed modifications. Interior would publish an annual Federal Register request for proposals from non-federal interests for project studies and modifications to authorized projects, which Interior would include in its annual report. H.R. 4419 lists four projects that meet the criteria of the bill that would be carried out: (1) Phase III of the Yakima River Basin Water Enhancement Project in Washington; (2) the Equus Beds Division of the Wichita Project in Kansas; (3) the Musselshell-Judith Rural Water System in Montana; and (4) the Shasta Lake Water Resources Investigation in California. The bill directs Interior to identify \$369M in Reclamation projects that are no longer feasible due to	11/16/17: H.R. 4419 introduced 11/30/17: Subcommittee hearings	Rep. Dan Newhouse (R-WA) introduced H.R. 4419

	lack of local support, lack of federal resources, or irrelevance, and develop a deauthorization list to offset federal costs for water development projects. See also, H.R. 23 (which incorporates H.R. 875)		
S. 1770, H.R. 4723	Issue: Indian Water Rights Title: Hualapai Tribe Water Rights Settlement Act. The bill would approve the settlement of water rights claims of the Hualapai Tribe and certain allottees in the State of Arizona, to authorize construction of a water project relating to those water rights claims. The settlement includes claims to water in the Verde River, the Bill Williams River, and the Colorado River. It would also authorize the Hualapai Water Project to divert, treat, and convey water from the Colorado River to the Reservation. The bill establishes a Hualapai Water Project Account and OM&R Trust Account. The tribe would be allowed to enter into contracts to lease the tribe's Central Arizona Project water within the lower basin in Arizona, with approval from Interior. The CAP water may not be permanently alienated, leased or transferred outside of Arizona, but may be stored as groundwater for the tribe's later use. All of the tribe's CAP water diverted directly from the Colorado River will be accounted for as deliveries of Arizona's CAP water for purposes of Colorado River accounting.	9/7/17: S. 1770 introduced in the Senate, referred to Indian Affairs 12/6/17: Senate Indian Affairs hearing 12/21/17: H.R. 4723 introduced in the House, referred to Natural Resources	Senator Jeff Flake (R-AZ) introduced S. 1770 with co-sponsor Senator John McCain (R-AZ) Rep. Paul Gosar (R-AZ) introduced H.R. 4723 with four bipartisan Arizona Representatives
H.R. 3646	Issue: Precision Conservation through Technology Title: Water Quality Conservation Act. The bill would take existing federal funds to create a precision conservation pilot program for up to ten states that would assist farmers to identify which soil and water conservation measures work best at the watershed level. It would provide cost-sharing grants to states with matching funds to participate in creating innovative programs in collaboration with tribes, local governments, academic institutions, soil and water conservation districts, producers, agricultural associations, and relevant nonprofit entities. The bill is intended to increase nutrient retention in soil, reduce soil erosion, improve soil health and improve overall water quality. Rep. Young said, "As new technology - such as satellite imaging - has allowed farmers to precisely target where to use yield enhancing applications, the same federal government one-size-fits-all conservation programs are in place. But they may not necessarily always work.... My legislation promotes conservation by harnessing new technology to pinpoint which water quality conservation practices will be the most effective in different places across the country." The legislation is intended to bring together stakeholders at the community level to engage in a process that will "precisely implement the right practices in the right place, at the right time and at the right scale."	9/1/17: H.R. 3646 introduced, referred to the House Committee on Agriculture	Rep. David Young (R-IA) introduced H.R. 3646
S. 1696	Issue: Energy-Water Nexus Title: Smart Energy and Water Efficiency Act. The bill would require DOE to establish	8/1/17: S. 1696 introduced in the Senate, referred to Energy and Natural	Senator Tom Udall (D-NM) introduced S. 1696

	and carry out a smart energy and water efficiency management pilot program to award grants to utilities, municipalities, tribes, water districts and other water authorities for demonstrating advanced and innovative technology-based solutions. DOE must annually evaluate each project for best practices. The projects are intended to increase the energy efficiency of water, wastewater, and water reuse systems; conserve water and save energy; implement automated systems with real-time data on energy and water; and improve energy and water conservation, water quality, and predictive maintenance through Internet-connected technologies.	Resources	
H.R. 3387	Issue: SDWA Amendments and SRFs Title: Drinking Water System Improvement Act. The bill is intended to improve public water systems and enhance compliance with the Safe Drinking Water Act. Section 2 would expand the requirements of consumer confidence reports to include exceedances with corrective action and violations during the monitoring period. Section 4 would require EPA in coordination with States, public water systems, and other interested stakeholders to develop a strategic plan for improving the accuracy and availability of monitoring data collected to demonstrate compliance with national primary drinking water regulations. Section 6 would authorize an increase in appropriations from \$100M to \$150M for FY2018-2022 for grants to States to carry out public water system supervision programs. Section 7 would expand the use of SDWA SRFs to include replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems. It would also expand the timing on the requirements to use American iron and steel products (42 U.S.C. 300j–12(a)(4)(A)) from FY2017 to continue through FY2018-2022. It makes amendments requiring cost-effective evaluations of projects, the payment of prevailing wages for SRF-funded construction projects, limiting loan subsidies to 35% of a State’s capitalization grant, allowing extended terms for loans to disadvantaged communities up to 40 years after project completion (depending on the expected design life of the project), and adding a requirement to EPA’s 4-year survey of water system capital improvement needs (42 U.S.C. 300j–12(h)) to include an assessment of costs to replace all lead service lines of eligible public water systems. It would also authorize incremental increases of \$200M in SDWA SRF appropriations, starting with \$1.2B in FY2018 and ending with \$2.0B in FY2022. It adds “best practices” for EPA oversight of State administration of SRFs. Section 11 would address source water used for drinking water in community systems, and notifications during emergencies.	7/25/17: H.R. 3387 introduced in the House, referred to Energy & Commerce. 7/27/17: Energy & Commerce held a mark-up session and ordered H.R. 3387 reported, H. Rept. 115-380	Rep. Gregg Harper (R-MS) introduced H.R. 3387
S. 1576	Issue: Use of Water Rights to Grow Hemp Title: Industrial Hemp Water Rights Act. The bill would allow farmers to use their water rights to cultivate industrial hemp in states where it is legal to do so, even if the water passes through federal facilities, and notwithstanding the Controlled Substances Act.	7/18/17: S. 1576 introduced in the Senate, referred to Judiciary	Senator Michael Bennett (D-CO) introduced S. 1576, with bipartisan co-sponsors from CO, MT,

			and OR
H.R. 3281	Issue: Reclamation Title Transfer Title: Reclamation Title Transfer Act. The bill would facilitate the transfer title of eligible Reclamation facilities—including dams and appurtenant works, water rights, infrastructure distribution and drainage works and associated lands—to qualified non-federal entities, such as State or local government, Indian tribe, municipal corporation, public agency or water district that held or holds a federal water service or repayment contract, water rights settlement contract or exchange contract for water from the eligible facility to be transferred. The Secretary of the Interior must determine that the entity has the capacity to manage the conveyed property for the same purposes under Reclamation Law. The bill would direct the Secretary of the Interior, without further authorization from Congress, to convey all right, title and interest by a written agreement. Not less than 30 days before any conveyance, the Secretary is to transmit to the House Natural Resources Committee and the Senate Energy and Natural Resources Committee notice including written consent from the qualifying entity and reasons for supporting the conveyance. The Secretary is to establish criteria for determining eligible facilities, including requirements that the transfer: (1) “will not have an unmitigated significant effect on the environment;” (2) it is “consistent with the Secretary’s responsibility to protect land and water resources held in trust for federally recognized Indian Tribes;” (3) ensures “compliance with international treaties and interstate compacts;” and (4) the qualifying entity provides “consideration for the assets to be conveyed, compensation to the United States worth the equivalent of the present value of any repayment obligation...or other income stream...from the assets to be transferred....” No conveyance may adversely impact power rates or repayment obligations. Proposals are to be considered a categorical exclusion process under the National Environmental Policy Act. The Secretary is to report annually as part of Interior’s budget submission on actions under the Act, including a list of conveyances. Following conveyance, the property “shall not be considered to be a part of a Federal reclamation project.” The entity receiving the property “shall comply with all applicable Federal, State, and local laws and regulations in its operation of the conveyed property.” The U.S. “shall not be liable for damages of any kind arising out of any act, omission, or occurrence based on its prior ownership or operation of the conveyed property, except for damages caused by acts of negligence...”	7/18/17: H.R. 3281 introduced in the House, referred to the Committee on Natural Resources 7/26/17: Committee marked up the bill, ordered to be reported by a vote of 17-12, H. Rept. 115-334	Rep. Doug Lamborn (R-CO) proposed the draft legislation before the House Natural Resources Committee; introduced H.R. 3281
H.R. 3275	Issue: WaterSMART, Energy-Water Nexus, Circuit Riders, Agriculture Efficiency, Water Data, SRFs, Groundwater Management Title: Water and Energy Sustainability through Technology (WEST) Act. The bill is intended to provide drought relief through innovation, increased water supply, and regional	7/17/17: H.R. 3275 introduced in the House, referred to 7 committees	Rep. Jerry McNerney (D-CA) introduced H.R. 3275, with 11 Democratic co-sponsors from CA, NY, OR

	adaptation and self-sufficiency. Title I supports advanced, integrated data, modeling, and analysis; investments in targeted technology research; and the DOE's Energy-Water Nexus Crosscut Team and mission, a collaboration of agencies, national laboratories, State and local governments, utilities, industry stakeholders, and the science and environmental community. It directs DOE to establish and maintain an energy-water nexus database, integrating data and information into an interoperable, national, geospatially-referenced data framework, using existing shared databases and tools and identifying new needs. It directs Reclamation to determine its annual energy consumption, broken down by pumping station. Section 1119 would amend the Reclamation Rural Water Supply Act (43 U.S.C. 2402(a)) to include a program similar to the circuit rider program established under the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(22)), in consultation with EPA, DOE, and the National Centers for Innovation in Small Drinking Water Systems. The focus of the program would be to provide technical and managerial assistance and improve energy efficiency for drinking water and wastewater utilities in rural and tribal areas. Section 1221 directs Interior, in collaboration with States that have or are developing groundwater management programs, to study the impact of Reclamation projects on groundwater resources. It also directs USGS to implement a groundwater information system for the purpose of advancing the availability, timely distribution, and widespread use of groundwater data for groundwater management, education, research, assessment, and monitoring purposes. Section 1223 directs the USGS to include estimates of the consumptive use of surface water, groundwater, and recycled water in its published survey on water uses, enter into cooperative agreements with the States to collect this data, and make the data available to the DOE's Energy-Water Nexus Data System. Section 1225 directs the USDA and DOI to coordinate efforts to improve agricultural efficiency in a way that protects wildlife. Such efforts would include coordinated grant programs, best known methods for water management, drought resilience guidelines, education, technical assistance, irrigation technology development, water application system maintenance, research into practices that improve soil health and safe and appropriate uses for recycled water on crops, evaluations of water delivery systems, and recommendations for improvements. Section 1226 would provide grants for agriculture technology centers, and section 1227 would provide grants for programs that offer technical assistance for efficient irrigation. Section 1228 would establish a water cooperation working group between the U.S. and Israel		
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	to improve the use of water resources through water-saving technologies and practices. Title II would reauthorize the WaterSMART program. It would expand the competitive grant program for water recycling and reuse projects to reimburse previous costs incurred. It directs EPA to assist states that are in the process of developing direct potable reuse regulations. Section 2004 directs EPA to consider the benefits of stormwater capture and reuse programs and their capacity to reduce pollutants when issuing NPDES permits for municipal and industrial stormwater discharges. It also directs EPA to provide technical assistance to communities to develop integrated plans for municipal wastewater and stormwater management for CWA compliance. Section 2005 directs USGS to provide technical assistance to develop and implement new and existing groundwater management plans, with priority given to drought-stricken areas as declared by States. Section 2006 would amend the Food Security Act (16 U.S.C. 3839bb et seq.) to add a new section on a groundwater recharge program. The USDA would provide grants to producers for groundwater recharge improvements to eligible land, including the installation of measurement devices on wells and pumps. Priority would be given to improvements that are implemented in conjunction with State groundwater recharge programs, and that provide habitat benefits and maintain groundwater quality without adversely impacting surface waters. Section 2007 expands the CWA pilot program for alternative water source projects to include consideration of rural community participation, particularly where projects are located in agricultural areas or provide benefits on a regional level. It also adds stormwater and conjunctively managed groundwater under the definition of alternative water sources. Section 2008 would provide grants to owners or operators of water systems to assist in efforts to improve resilience of systems to climate change, including mitigation measures to rapidly address impacts on the susceptible Colorado River Basin and coastal regions at risk from rising sea levels. The maximum federal cost-share is 50%. Section 2009 codifies EPA's WaterSense program. Section 2010 directs DOE to work with entities to establish residential financial incentive programs to purchase water-efficient products and services. Section 2011 directs the Treasury to clarify the Federal tax treatment of charitable donations of water rights acquired by appropriation. Section 2012 establishes a pilot program to study the feasibility of long-term cooperative		
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	agreements for the use of non-federal storage and conveyance facilities to supply water for National Wildlife Refuges, State wildlife areas, and private wetland areas as part of the Central Valley Project Improvement Act. Title III addresses infrastructure improvements. Section 3001 amends the Safe Drinking Water Act on the safety of public water systems by adding a section on water leak control technology. It directs EPA to study available and new technologies to improve location and mapping practices used by States and industry to monitor and regulate pressure and reduce water loss and leaks on transmission pipelines, water distribution systems, and aqueducts operated by public water systems. Section 3002 directs EPA to establish and maintain a publicly accessible data clearinghouse on reported water main breaks and associated repair activities for public water systems. It also directs EPA to promulgate a rule requiring public water systems serving 10,000+ to submit annual reports on the details of water main breaks. Section 3003, directs EPA to establish a program that makes grants to public water systems to undergo voluntary audits for water loss, and provide technical assistance to address any findings from the audit, including helping the system to establish a sustainable water loss control program. Section 3004 provides a tax exemption for water infrastructure bonds in areas with recent or current drought designations of D2 intensity or greater. Section 3005 would require CWA SRFs to ensure that at least 20% of funds are used to provide assistance for projects that address green infrastructure, water or energy efficiency improvements, or other environmentally-innovative activities, including sustainability, water efficiency or conservation, stormwater harvesting, reclaimed and recycled water, and pipes used for transporting recycled water. SDWA SRFs are permitted to prioritize projects that maximize the potential for efficient water use, reuse, recapture, and water-energy conservation. It would also fund CWA SRFs at \$2B for FY2018 and \$2.4B for FY2019. The SDWA SRFs would be funded at \$1.2B for FY2018, and \$1.3B for FY2019. Section 3006 would direct EPA to collect information from the States on the SRF programs (efforts to streamline the process, application assistance programs, incentives for small public water systems, and techniques to ensure obligated balances are liquidated in a timely fashion) and develop best practices for the administration of the programs. Title IV repeals tax preferences for oil and gas drilling, leaving them in place for geothermal energy.		
H.R. 3248	Issue: EPA WaterSense Title: Water Advanced Technologies for Efficient Resource Use Act. The bill would codify the EPA WaterSense program, which labels and promotes water-efficient products, buildings, landscapes, and services. It would provide financial incentives for consumers and	7/14/17: H.R. 3248 introduced in the House, referred to Energy & Commerce, Oversight & Gov't Reform, Armed	Rep. Matt Cartwright introduced H.R. 3248 with 31 Democratic co-sponsors

	amend the Internal Revenue Code to exclude incentive programs from the gross income of individual taxpayers. It would also require federal agencies to purchase WaterSense products or services, or Federal Energy Management Program designated products, in order to meet procurement requirements, as long as they are cost-effective and reasonably available. See also S. 1700, Water Efficiency Improvement Act, introduced on 8/2/17 by Senator Tom Udall (D-NM). It would codify WaterSense with different requirements.	Services, Ways & Means	
S. 1556	Issue: Rural Water Projects and Reclamation Fund Title: Authorized Rural Water Projects Completion Act. The bill would establish a Reclamation Rural Water Construction and Settlement Implementation Fund, and directs the Treasury to deposit specified revenues from the Reclamation Fund into two accounts, the Rural Water Project Account and the Reclamation Infrastructure and Settlement Implementation Account, between FY2018-FY2038. Interior is permitted to use the Rural Water Project Account to complete construction of rural water projects that are already authorized, or for Rural Water Supply Act of 2006 projects that have already completed a feasibility study, if Congress authorizes the project. Interior must develop (1) programmatic goals that would enable the completion of construction of the authorized rural water projects as expeditiously as practicable and that reflect the priorities identified in the laws authorizing the projects; and (2) funding prioritization criteria to serve as a methodology for distributing funds that take into account specified factors, including the need for potable water supplies in the affected rural and tribal communities. Interior is directed to use the Reclamation Infrastructure and Settlement Implementation Account to (1) provide authorized compensation to resolve all monetary claims of an Indian tribe against the United States relating to use of tribal land by the United States for the generation of hydropower; or (2) complete projects and implement provisions authorized by Congress that resolve litigation involving the United States and the water rights of Indian tribes or that implement approved agreements limiting such rights. See WSWC Position #381 and Position #390 supporting timely construction of rural water infrastructure projects and the use of the Reclamation Fund revenues for their intended purpose. Position #376 supports the use of the Reclamation Fund toward project construction related to Indian water rights settlements.	7/13/17: S. 1556 introduced in the Senate, referred to Energy and Natural Resources	Senator Jon Tester (D-MT) introduced S. 1556, with co-sponsor Senators Steve Daines (R-MT), Tom Udall (D-NM), Heidi Heitkamp (D-ND), Martin Heinrich (D-NM), Al Franken (D-MN), and Amy Klobuchar (D-MN)
H.R. 3156	Issue: USGS Water Science Data Centers No Title: “There are hereby established, within the United States Geological Survey, local Water Science Centers that shall collect and disseminate reliable, impartial, and timely information about the Nation's water resources.”	6/29/17: H.R. 3156 introduced in the House, referred to Natural Resources	Rep. Darren Soto (D-FL) introduced H.R. 3156

	<i>Note: See locations of USGS Water Science Centers: https://www.usgs.gov/science/mission-areas/water/centers</i>		
S. 1288/S.1289	Issue: CWA §404 Dredge and Fill Permits and Compensatory Mitigation for Tribes No title S. 1288 would amend the Clean Water Act §404 to allow preservation leasing as a form of compensatory mitigation for discharges of dredged or fill material affecting wetlands on Indian land. A preservation lease is an agreement allowing a permittee to lease wetlands or other aquatic sites on Indian land for the sole purpose of preserving the wetlands in an undisturbed state to mitigate for the duration of a permitted activity. The bill directs the U.S. Army Corps of Engineers to allow the permittee to satisfy the compensatory mitigation requirements of the permitted activity by entering into a preservation lease with an Indian tribe as long as the preserved wetlands are in the same watershed as the permitted activity. A permittee that abandons the permitted activity is required to obtain a permit modification from the Corps, which may require a plan for conducting restoration and rehabilitation of the area. The Corps is required to consult with the tribe before making a determination on whether and to what degree restoration and rehabilitation are required. S. 1289 would amend the Clean Water Act §404 to exempt Indian tribes from compensatory mitigation requirements as a condition of a permit for the tribe to discharge dredged or fill material. In evaluating a tribe's permit application, the Corps may not consider the exemption and nonavailability of compensatory mitigation as a factor in its decision. If the tribe ceases the permitted activity, the tribe must obtain a permit modification from the Corps, which may require restoration and rehabilitation of the area.	5/25/17: S. 1288 and S. 1289 were introduced in the Senate, referred to Environment and Public Works	Senator Dan Sullivan (R-AK) introduced S. 1288 and S. 1289, with co-sponsor Sen. Lisa Murkowski (R-AK)
H.R. 3106/S.519	Issue: EPA SDWA National MCLs and Perfluorinated Compounds No Title. Directs EPA to publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for perfluorinated compounds (including perfluorooctanesulfonic acid and perfluorooctanoic acid)	3/2/17: S. 519 introduced in the Senate, referred to Environment and Public Works 6/29/17: H.R. 3106 introduced in the House, referred to Energy & Commerce	Senator Kirsten Gillibrand (D-NY) with 2 Democratic co-sponsors from NY and NH Rep. Brendan Boyle (D-PA) introduced H.R. 3106 with 2 Democratic and 2 Republican co-sponsors from NJ, NY, and PA
H.R. 3043	Issue: Clean Water Act §401 and Hydropower Title: Hydropower Policy Modernization Act. The bill designates the Federal Energy Regulatory Commission (FERC) as the lead agency for coordinating all federal	6/23/17: H.R. 3043 introduced in the House, referred to Energy and Commerce	Rep. Cathy McMorris Rodgers (R-WA) introduced H.R. 3043

	authorizations and reviews related to hydropower license applications. It directs FERC to establish a timely application process, and requires FERC to consult with federal and state agencies and the public to compile best practices for performing studies and environmental reviews. The bill is intended to reduce the duration, complexity, and uncertainty of the licensing process. Rep. Fred Upton (R-MI) noted that this bill is similar to bills that passed both the House and Senate with bipartisan support during the last session of Congress, but ultimately did not get conferenced or signed into law. This bill has some significant changes based on feedback from stakeholders, he said. “The biggest change, frankly...was taking the hammer away from FERC to compel agencies to stick to a deadline. Consequently, no permits are going to be granted by default because of a missed deadline. But we also inserted new State and Tribal consultation requirements with a very strong savings clause that clarifies that nothing shall affect the Clean Water Act and other environmental laws.” Section 3 of H.R. 3043 would amend the Federal Power Act (16 U.S.C. 792 et seq.), including a new §34 on hydropower licensing and process improvements. Subsection (l) indicates that this section will not be construed to affect any requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Rivers and Harbors Appropriations Act, or the National Historic Preservation Act. Several letters raising concerns about the impact on state authorities were included in the House record, including the Western Governors’ Association letter from May 1. The California Water Resources Control Board noted that state and federal agencies serve an essential role in FERC’s hydropower licensing process. Making FERC the sole lead agency in control of the timeline could limit the other agencies’ time to complete their respective actions. Section 401 of the CWA “authorizes states to set conditions to protect the waters of their states, and provides that review of conditions of certification is in state court, not by federal agencies. In so doing, section 401 preserves both state authority and the integrity of state procedures and state institutions in overseeing how state agencies exercise that authority.” The Washington Department of Ecology also expressed concern that changes to FERC’s authority proposed by H.R. 3043 “would impede or invalidate states’ independent authority” under CWA §401. “We believe this bill provides enough ambiguity for individuals to attempt to preempt state CWA §401 authority. The bill as written could result in legal challenges and protracted litigation on how the extension of FERC’s authority conflicts with states’ rights to protect water quality and quantity.”	10/31/17: Committees discharged and reported, H. Rept. 115-377 11/8/17: Passed the House by vote of 257-166 11/9/17: H.R. 3043 received in the Senate, referred to Committee on Energy and Natural Resources	
H.R. 3009	Issue: Water Infrastructure/Tax Incentive Title: Sustainable Water Infrastructure Investment Act. The bill is intended to provide alternative financing for long-term infrastructure capital investment programs to restore safe drinking water and wastewater infrastructure capability. It would amend the Internal Revenue code to exempt tax-exempt facility bonds for sewage and water supply facilities from the state volume caps on private activity bonds. Section 2 on Congressional findings says: “The	6/22/17: H.R. 3009 introduced in the House, referred to Ways and Means	Rep. John Duncan (R-TN) introduced H.R. 3009, with 5 Republican and 3 Democratic co-sponsors from CA, IL, NJ, NY, OR, PA

	historical approach of funding infrastructure is insufficient to meet the investment needs of the future. The Federal partnership with State and local communities has played a pivotal role in improving the Nation’s water quality and drinking water supplies. Federal assistance under this partnership has been the linchpin of these improvements. In light of constrained Federal budgets, the availability of exempt-facility financing represents an important financing tool to help close the gap between funds currently being invested and water infrastructure needs, preserving the Federal partnership. Providing alternative financing solutions, such as tax-exempt securities, encourages investment in water and wastewater infrastructure that in turn creates local jobs and protects the health of our citizens. Federally mandated State volume cap restrictions in conjunction with other priorities have limited the use of tax-exempt securities on water and wastewater infrastructure investment. Removal of State volume caps for water and wastewater infrastructure will accelerate and increase overall investment in the Nation’s critical water infrastructure; facilitate increased use of innovative infrastructure delivery methods supporting sustainable water systems through public-private partnerships that optimize design, financing, construction, and long-term management, maintenance and viability; and provide for more effective risk management of complex water infrastructure projects by municipal utility and private sector partners.”		
H.R. 2799	Issue: Water Reuse and California Drought Title: Western Water Recycling and Drought Relief Act. The bill would amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Department of the Interior to participate in the design, planning, and construction of recycled water system facilities in California in cooperation with various California cities, water districts, and sanitation districts. The bill also authorizes Interior to participate in the design, planning, and construction of recycled water system facilities in Hawaii in cooperation with the local water utility. The federal cost share for each project is limited to 25%, and Interior’s agreements with the participating agencies and cities must include a provision for the reimbursement of design, planning, and construction costs. The bill also increases authorization for appropriations for certain California recycled water system facilities.	6/7/17: H.R. 2799 introduced in the House and referred to Natural Resources	Rep. Jerry McNerney (D-CA) introduced H.R. 2799 with 4 California Democratic co-sponsors
H.R. 2693	Issue: CWA Citizen Suits, Attorneys Fees, Affirmative Defenses No Title: The bill would amend the CWA to limit the amount that may be awarded for the costs of litigation in citizen suits. An award of litigation costs may not exceed: (1) an amount that is proportional to the number of successful claims included in the complaint, or (2) the amount of monetary penalties. The bill would also prohibit citizen suits if EPA or a state has commenced and is diligently prosecuting a civil or criminal action through the issuance of a compliance order. Section 3 provides affirmative defenses to liability for pollutant discharges where the immediate cause is an act of God, war, or certain unrelated third parties where there was due care and precautions against foreseeable acts or omissions of third parties.	5/25/17: H.R. 2693 introduced in the House, referred to T&I	Rep. Duncan Hunter (R-CA) introduced H.R. 2693, with California Republicans Tom McClintock and Ken Calvert
H.R. 2609	Issue: Authorized Purposes of Missouri River Mainstem Reservoir System	5/23/17: H.R. 2609 introduced in the House,	Rep. Sam Graves (R-MO) introduced H.R.

	No Title: Directs the Corps to revise the Missouri River Mainstem Reservoir System Master Water Control Manual, and any related regulations, to delete fish and wildlife as an authorized purpose of the Corps. <i>See WSWC Position #394, which opposes the removal of fish and wildlife as an authorized purpose for Corps reservoir system management, and urges Congress and the Administration to complete a comprehensive study of the System's authorized purposes and related benefits before addressing an appropriate balance and mix of uses.</i>	referred to T&I	2609
H.R. 2936	Issue: Forest management, wildfires, and health impacts on watersheds Title: Resilient Federal Forests Act. Title I creates several statutory categorical exclusions (CEs) – actions requiring no environmental assessment or environmental impact statement under NEPA – to expedite forest management activities for areas up to 10,000 acres. Section 111 authorizes CEs for critical response actions, including to protect municipal watersheds and to increase water yield, among other purposes. If a project under §111 is developed through a collaborative process, the CE acreage can be increased to 30,000. Other CEs include §112, salvage operations; §113, meeting forest plan goals for early successional forests; §114, road side projects; and §115, improvements to reduce the risk of wildfire. This title also expedites consultation requirements under the Endangered Species Act and the National Historic Preservation Act. When analyzing a forest management project proposed by a collaborative group, the Forest Service is limited to a choice of approval or no action. The no-action alternative must consider future impacts, including wildfire and its impacts on municipal watersheds. Title II expedites salvage and reforestation projects, in compliance with forest plans, following catastrophic wildfires. Title III prohibits attorneys' fees for plaintiffs challenging relevant forest management activities, and requires courts to weigh the potential long-term harm of inaction, such as wildfires, before granting injunctive relief. It establishes a pilot project to resolve lawsuits on forest management activities through arbitration. Title VI establishes a State-Supported Forest Management Fund, which allows state and other entities to contribute funds for forest management activities. Expenditures from the Fund are authorized to plan, carry out, or monitor forest management activities developed through collaborative processes. Title VIII makes clear that the development, maintenance, and revision of forest plans are not considered major federal actions and are not subject to NEPA. Title X would prohibit the transfer of funds between the wildfire suppression operations accounts and other non-wildfire accounts.	6/2/17: H.R. 2936 introduced in the House, referred to Agriculture, Natural Resources, Education and Workforce, Transportation and Infrastructure Committees 10/25/17: Committees discharged and ordered reported, H. Rept. 115-370, parts 1 and 2 11/1/17: House passed H.R. 2936 by a vote of 232-188 11/2/17: Senate received H.R. 2936, referred to Committee on Agriculture, Nutrition, and Forestry	Rep. Bruce Westerman (R-AR) introduced H.R. 2936 with co-sponsors from CA, CO, ID, MT, OR, TX, UT, WA, and WY
H.R. 2872	Issue: Exemptions from Dam Re-licensing Requirements Title: Promoting Hydropower Development at Existing Non-powered Dams Act. The bill would allow the Federal Energy Regulatory Commission to exempt qualifying facilities,	6/12/17: H.R. 2872 introduced in the House, referred to Energy and Commerce, Natural	Rep. Larry Bucshon (R-IN) introduced H.R. 2872

	in whole or in part, from any license requirements in consultation with relevant state and federal agencies (including the U.S. Fish and Wildlife and National Marine Fisheries Services, state fish and wildlife agencies, federal public land agencies), and any affected Indian tribe. The Commission may impose conditions “necessary to protect public safety,” and to prevent or mitigate direct adverse effects on fish and wildlife resources caused by construction and operation. However, the Commission may not require any “material change to the storage, control, withdrawal, diversion, release or flow operations of the qualifying Non-powered dam.” The bill requires only an environmental assessment under the National Environmental Protection Act (NEPA), unless the Commission determines a categorical exclusion is appropriate. For any facility at a non-federal dam, exemptees shall pay to the U.S. reasonable annual charges fixed by the Commission for the “purpose of funding environmental enhancement projects in watersheds in which facilities...are located...equivalent to annual charges for use of a Government dam under section 10(e) [of the Federal Power Act], unless the Commission determines...a lower charge is appropriate to protect exemptees’ investment in the project or avoid increasing the price to consumers of power due to such charges.” These miscellaneous receipts would be available through annual appropriations acts to state and federal fish and wildlife agencies. The Commission’s jurisdiction is limited to any “qualifying facility exempted and any associated primary transmission line, and shall not extend to any conduit, dam, impoundment, shoreline or other land, or any other project work associated with the qualifying facility....” Qualifying non-powered dams may include any dam completed before enactment, and operated for “agricultural, municipal, navigational, industrial, commercial, environmental, recreational, aesthetic, or flood control purposes.” Non-federal dams must be independently certified to comply with dam safety requirements.	Resource, Transportation and Infrastructure Committees 12/12/17: Committees discharged, ordered reported, H. Rept. 115-461, passed the House by voice vote 12/13/17: Received in the Senate, referred to Committee on Energy and Natural Resources	
H.R. 2510	Issue: SRFs and Rural Technical Assistance Title: Water Quality Protection and Job Creation Act. Title I would authorize grants to nonprofit organizations in consultation with the states/tribes to provide technical assistance and training for rural, small, and tribal municipalities in the planning, developing, and acquisition of eligible POTW and wastewater treatment system projects, to achieve and maintain compliance with the Clean Water Act. It also authorizes funding for the technical assistance, for state management assistance, for watershed pilot projects, and nonpoint source management programs. Section 121 would amend the CWA to require that at least 15% of the CWA capitalization grants to provide assistance to municipalities of fewer than 10,000, to the extent that there are sufficient applications for such assistance. Section 122 would expand the types of assistance allowed under CWA SRFs (33 USC §1383(d)), “to provide grants to owners and operators of treatment works that serve a population of 10,000 or fewer for obtaining technical and planning assistance and assistance in financial management, user fee analysis, budgeting, capital improvement planning, facility operation and maintenance, equipment replacement, and other activities to improve wastewater treatment plant management and operations,” up to 1% of a state’s preceding fiscal year assistance, or 2% of	5/18/17: H.R. 2510 introduced in the House, referred to T&I	Rep. Peter DeFazio (D-OR) introduced H.R. 2510, with 26 Democratic and 1 Republican co-sponsor.

	a state's preceding fiscal year received capitalization grants, whichever is greater. It would also expand §1383(d) to include "grants to owners and operators of treatment works for conducting an assessment of the energy and water consumption of the treatment works, and evaluating potential opportunities for energy and water conservation through facility operation and maintenance, equipment replacement, and projects or activities that promote the efficient use of energy and water by the treatment works," under the same 1%/2% conditions. Section 124 would require states to establish or update a list of SRF projects and activities beginning FY2019 and prepared annually thereafter, with funding priorities set for projects and activities that achieve the greatest water quality improvement that would not be achieved without SRF assistance. Title II would amend the pilot program for alternative water source projects (33 USC §1300(d) and (e)) to remove consideration of projects located within the geographic scope of the reclamation and reuse program conducted under the Reclamation Projects Authorization and Adjustment Act of 1992. It would also remove the requirement for House T&I Committee approval of projects over \$3M. It would expand the definition of "alternative water source project" to include stormwater, in addition to wastewater. Section 202 would expand the Sewer Overflow Control Grants (33 USC §1301) to include stormwater reuse. It directs states to use not less than 20% of EPA grants "to carry out projects to intercept, transport, control, treat, or reuse municipal combined sewer overflows, sanitary sewer overflows, or stormwater through the use of green infrastructure, water and energy efficiency improvements, and other environmentally innovative activities."		
S. 1137	Issue: SRFs and Wastewater Infrastructure Title: Clean Safe Reliable Water Infrastructure Act. The bill expresses a sense of Congress that SRFs should receive robust funding for capitalization grants to states. The bill amends the Safe Drinking Water Act to: (1) make the implementation of source water protection plans an eligible use of assistance from a drinking water state revolving fund; and (2) apply requirements about the qualifications-based selection of architects and engineers to contracts funded by state revolving funds, if the assistance is for a community with a population of more than 10,000 individuals. It codifies EPA's WaterSense program. And it amends the CWA sewer grant program (33 U.S.C. §1301) to address combined sewer overflows, sanitary sewer overflows, and stormwater discharges, authorizing the program through FY2021.	5/16/17: S. 1137 introduced in the Senate, referred to Environment and Public Works	Senator Ben Cardin (D-MD) introduced S. 1137 with 3 bipartisan co-sponsors from AR, OK, and IL.
H.R. 2328	Issue: EPA Sewer and Water Infrastructure Compliance Grants Title: Low-Income Sewer and Water Assistance Program Act. The bill would amend the Clean Water Act to establish a pilot program that awards grants to at least 10 eligible entities for assisting low-income households maintain access to sanitation (water and sewer) services. In order to be eligible for grants, entities must be municipalities, or public entities that own or operate public water systems, that are affected by consent decrees related to compliance with	5/3/17: H.R. 2328 introduced in the House, referred to Transportation & Infrastructure	Rep. Marcia Fudge introduced H.R. 2328 with 21 Democratic co-sponsors

	standards under that Act.		
H.R. 2371/S.930	Issue: Hydropower Title: Western Area Power Administration Transparency Act. The bill would require a pilot project to provide increased transparency on the WAPA's costs, rates, and other financial operational dealings for utility ratepayers and taxpayers.	4/25/17: S. 930 introduced in the Senate, referred to Energy and Natural Resources 5/4/17: H.R. 2371 introduced in the House and referred to Committee on Natural Resources 5/18/17: House Subcommittee on Water, Power, and Oceans held hearings 6/14/17: Senate Subcommittee on Water and Power held hearings 7/26/17: Natural Resources ordered reported by unanimous consent; H. Rept. 115-282 2/7/18: H.R. 2371 passed the House by voice vote. 2/8/18: H.R. 2371 received in the Senate, referred to Energy and Natural Resources Committee	Senator Jeff Flake (R-AZ) introduced S. 930, with co-sponsor Senators John McCain (R-AZ) and Angus King (I-ME) Representative Paul Gosar (R-AZ) introduced H.R. 2371 with 10 bipartisan co-sponsors from AZ, CA, and SD
H.R. 2266	Issues: Disaster Relief for Wildfires and Hurricanes Title: Additional Supplemental Appropriations for Disaster Relief Requirements Act. The act provides additional FY2018 emergency supplemental funding for hurricane and wildfire relief and recovery efforts. Congress appropriated \$18.7B to the Federal Emergency Management Agency's Disaster Relief Fund, particularly to assist local governments in providing essential services after Hurricanes Harvey, Irma, and Maria, and associated flooding, primarily impacting Texas, Florida, and Puerto Rico. The act also appropriates \$184.5M for Wildland Fire Management under the Department of Agriculture, to address urgent wildland fire suppression operations, with an additional \$50M for Wildland Fire Management under the Department of the Interior; and \$342M to the FLAME Wildfire Suppression Fund, to cover the costs of large or complex wildfire events. The funding is intended to address recent wildfires in Sonoma and Napa Counties, California.	5/1/17: H.R. 2266 introduced as the Bankruptcy Judgeship Act 10/12/17: During House consideration of Senate amendments, H.R. 2266 amended to make appropriations for disaster relief 10/26/17: President signed P.L. 115-72 into law	Rep. John Conyers (D-MI) introduced H.R. 2266 Rep. Rodney Frelinghuysen (R-NJ) made the motion to amend H.R. 2266 to provide disaster relief.
S. 1012	Issue: Drought	5/2/17: S. 1012 introduced	Senator Tom Udall (D-

	Title: New Mexico Drought Preparedness Act. The bill would provide for drought preparedness. Section 3 authorizes \$30M for the Secretary of Interior to carry out a water acquisition program in basins in New Mexico through lease, purchase or contract from willing lessors or sellers, consistent with state law, to enhance: (1) streamflow for fish and wildlife (including endangered species), water quality, and river ecosystem restoration; and (2) to “enhance stewardship and conservation of working land, water, and watersheds in the Basins....” The Secretary may provide funds to a federally established nonprofit entity with particular expertise in western water transactions. Section 4 authorizes \$18M so the Secretary of the Interior may, in cooperation with water districts and Pueblos, provide funding and technical assistance for the installation of metering and measurement devices and the construction of check structures on irrigation diversions, canals, laterals, ditches and drains intended to ensure efficient use, reduce actual consumptive use, or not increase the use of water, and improve the measurement and allocation of acquired water. Further, the Secretary “shall” provide for the development of a comprehensive plan for the San Acacia and Isleta reaches to balance river maintenance, water availability, use and deliver, as well as ecosystem benefits. Section 5 addresses Middle Rio Grande peak flow restoration and directs the Secretary of the Army to continue existing temporary deviations in operations of Cochoiti Lake and Jemez Canyon Dam, and evaluate the benefits with a report to Congress, while a permanent reauthorization of the reservoirs is pursued. The goal is to restore natural river processes, including a Spring peak flow, as a means of increasing the spawning and recruitment of the endangered Rio Grande silvery minnow and overbanking flows necessary to maintain a healthy bosque and Southwestern willow flycatcher habitat, as well as channel capacity, and to increase irrigation and municipal water projects operational flexibility. The Secretary is to first obtain approval for any deviation from the Cochitit and Santa Ana Pueblos and the Rio Grande Compact Commission. Section 6 directs the Secretary of the Army to enter into an arrangement with the National Academy of Sciences to carry out a study on water and reservoir management and operation issues for Rio Grande reservoirs, including: (1) an evaluation of reservoir authorizations and legal requirements; (2) physical-hydrologic understanding; (3) potential constraints in light of climate change projections; (4) opportunities to optimize storage; (5) identified water use, supply and accounting impacts; (6) operational considerations; and (7) recommendations for future management. The report merits “due deference.” Section 7 would authorize emergency financial assistance under the Reclamation States Emergency Drought Relief Act of 1991, Title XII of the Food Security Act of 1985, and other federal laws to assist New Mexico and other western states with eligible water projects	in the Senate, referred to Committee on Energy and Natural Resources 6/14/17: Senate Subcommittee on Water and Power held hearings on S. 1012	NM) introduced S. 1012, with co-sponsor Martin Heinrich (D-NM)
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	to assist in addressing “drought-related impacts to water supplies or any other immediate water-related crisis or conflict.” Financial assistance would also be available to organizations and entities, including tribal governments, engaged in collaborative processes for environmental restoration. Eligible water projects include: (1) installing pumps, temporary barriers or gates for water diversion and fish protection; (2) drought-relief ground-water wells for Indian tribes and wildlife refuges; (3) acquisition of water from willing sellers; (4) agricultural and urban conservation projects with multiple benefits; (5) emergency temporary water exchanges; (6) planting cover crops; (7) emergency pumping projects; (8) reducing demand consistent with a comprehensive program for environmental restoration and settlement of water rights claims; (9) innovative on-farm water conservation; (10) protect, restore or enhance fish and wildlife habitat or other environmental improvements; (11) promoting groundwater recharge and reducing groundwater depletion; (12) technical assistance for irrigation improvement practices; (13) brackish water development and aquifer storage and recovery; (14) lining ditches and canals; (15) municipal water supply planning assistance, including hydrological forecasting, identification of alternative water supplies, and guidance on potential water transfer partners; and (16) any other “assistance the Secretary determines to be necessary to increase available water supplies, maintain the health of river ecosystems, or mitigate drought impacts.” Section 8 reauthorizes the Secure Water Act (Section 9504 of the Omnibus Public Land Management Act of 2009) and provides that the Commissioner of the Bureau of Reclamation “may” waive cost-sharing requirement to address emergency drought situations and prioritize projects that “expeditiously yield multiple water supply benefits..., prevent any other immediate water-related crisis or conflict,” and demonstrate “innovative conservation tools or methods that balance instream and out-of-stream water supply needs, including water conservation and water marketing.” It also raised the authorized ceiling by \$100M. Section 9 authorizes another \$100M under the Reclamation States Emergency Drought Relief Act. Section 10 extends the Rio Grande Pueblo Irrigation Infrastructure Reauthorization through 2014, and authorizes another \$6M. The Secretary of Agriculture, under Section 11, may allocate financial assistance consistent with the Food Security Act of 1985 to establish “special conservation initiatives at the local, state or regional level to assist producers in implementing eligible activities on agricultural land in the western States” for: (1) mitigating the effects of drought on agriculture and the environment; (2) improving water quality and quantity, including reducing groundwater depletion; (3) restoring, enhancing, and preserving fish and wildlife habitat; and (4) promoting innovative and collaborative conservation tools and approaches. Section 12 expands authority under the Conservation Reserve Program to cover “water		
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	quantity, or habitat impacts related to agricultural production activities...,” as well as the Special Conservation Reserve Enhancement Program “including improving water conservation and drought mitigation.” Of particular note, Section 13 declares: “An action taken by any of the Secretaries or other entity under this Act or an amendment made by this Act shall comply with applicable State laws....” It further declares: “Nothing in this Act or an amendment made by this Act affects, is intended to affect, or interferes with a law of the State relating to the control, appropriation, use, or distribution of water, or any vested right acquired under the law.”		
H.R. 2116	Issue: Water Quality Financial Assistance Title: Perchlorate Reclamation and Water Replenishment Act. This bill amends the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Bureau of Reclamation to provide financial assistance (up to 25% cost share) to eligible local water authorities for perchlorate remediation projects in areas identified by the Bureau, the Army Corps of Engineers, or a state designating agency as having experienced an impact from perchlorate contamination to: (1) design and construct water replenishment and reclamation projects that are owned and operated by the local water authority, or (2) operate and maintain such projects. It directs Reclamation to give priority to projects that serve an area: (1) that has received federal authorization for projects associated with perchlorate contamination remediation programs under the Bureau or the Corps of Engineers, (2) for which a feasibility study for perchlorate remediation efforts that is acceptable to the Bureau or the Corps of Engineers has been completed, or (3) where the regional water agency that imports out-of-basin water supplies has a wholesale area that includes a population of not more than 350,000.	4/25/17: H.R. 2116 introduced in the House, referred to Natural Resources	Rep. Stephen Knight (R-CA) introduced H.R. 2116
S. 914	Issue: SDWA Compliance Assistance Title: Safe Drinking Water Assistance Act. The bill is intended to improve and coordinate interagency Federal actions and provide assistance to States for responding to public health challenges posed by emerging contaminants. Although the EOA is required to identify and publish a description of unregulated contaminants that may require contamination, the bill’s findings state that EPA has made limited progress in prioritizing drinking water contaminants due to lack of data regarding public exposure to contaminants, which may take decades without effective collaboration to complete. The bill establishes an interagency working group on emerging contaminants, including representatives from EPA, USGS, Health and Human Services, to work in collaboration with States, public water systems, and other interested stakeholders. It also establishes a federal research initiative with non-government participation, and requires a study on federal assistance and support for States in need of drinking water testing facilities.	4/24/17: S. 914 introduced in the Senate, referred to Environment and Public Works	Senator Jeanne Shaheen (D-NH) introduced S. 914 with 2 bipartisan co-sponsors from NH and OH
S. 880	Issue: SRFs	4/6/17: S. 880 introduced in the Senate, referred to	Senator Tammy Baldwin (D-WI)

	Title: Made in America Water Infrastructure Act. The bill would ensure the use of American iron and steel in public water systems under SDWA SRFs. Iron and steel products would include lined or unlined pipe and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. Any waivers would require EPA approval and public notice with written justification, with a minimum 15-day comment period.	Environment and Public Works	introduced S. 880 with 7 Democratic and 1 Independent co-sponsor
S .865/H.R. 2012	Issue: Hydraulic Fracturing Title: Fracturing Responsibility and Awareness of Chemicals (FRAC) Act. The bill would amend the Safe Drinking Water Act to repeal exemptions for hydraulic fracturing from the definition of underground injection (42 U.S.C. 300h(d)(1)), and define it instead as a federally-regulated activity. It would allow States to seek primary enforcement responsibility for hydraulic fracturing operations for oil and natural gas without seeking to assume primary enforcement responsibility for other types of underground injection control wells, including underground injection control wells that inject brine or other fluids that are brought to the surface in connection with oil and natural gas production or any underground injection for the secondary or tertiary recovery of oil or natural gas. It would require disclosures before and after hydraulic fracturing operations of the chemicals and proppants intended for use in any underground injection during the operations (including identification of the chemical constituents of mixtures, Chemical Abstracts Service numbers for each chemical and constituent, material safety data sheets if available, and the anticipated amount of each chemical to be used). It would not require public disclosure of any proprietary chemical formula.	4/6/17: S. 865 introduced in the Senate, referred to Environment and Public Works; H.R. 2012 introduced in the House, referred to Energy and Commerce	Senator Robert Casey (D-PA) introduced S. 865 with 10 Democratic co-sponsors, including from CA and OR Rep. Diana DeGette (D-CO) introduced H.R. 2012, with 60 Democratic cosponsors, including from AZ, CA, CO, OR, TX, and WA
H.R. 1893	Issue: Harmful Algal Blooms Title: Great Lakes and Fresh Water Algal Bloom Information Act. The bill would direct NOAA to create an electronic database of research and information on the causes of, and corrective actions being taken with regard to, algal blooms in the Great Lakes, their tributaries, and other surface fresh waters. The database would include relevant chemical, physical, and biological data that have been collected and voluntarily submitted by an accredited university, association or organization, research group, Federal agency, State, or local government in the United States or Canada. The database would be electronically available to the public, with appropriate confidentiality of information.	4/4/17: H.R. 1893 introduced in the House, referred to Natural Resources and to Science, Space & Technology	Rep. Robert Latta (R-OH) introduced H.R. 1893, with co-sponsors Matt Cartwright (D-PA) and Bob Gibbs (R-OH)
H.R. 1807/S.789	Issue: Water Transfers Title: Public Water Supply Invasive Species Compliance Act. This bill amends the Lacey Act to exempt certain water transfers between public water supplies located on, along, or across the boundaries of Texas, Arkansas, and Louisiana from prohibitions on illegal trade of plants and wildlife. Specifically, the prohibitions do not apply to covered water transfers containing a prohibited species if: (1) the species are present in both public water supplies	3/30/17: H.R. 1807 introduced in the House, Referred to Natural Resources and Judiciary 3/30/17: S. 789 introduced in the Senate, referred to Environment and Public	Rep. Louie Gohmert (R-TX) introduced H.R. 1807, with 8 Republican co-sponsors from AR, LA, and TX Senator Ted Cruz (R-

	before the transfer and the water is transferred directly between them; or (2) the water is transferred in a closed conveyance system (a closed system that collects, contains, and transports the flow of water, such as pipe systems) and sent directly to treatment facilities where the species will be destroyed.	Works. 4/27/17: Natural Resources held a mark-up session on H.R. 1807, ordered reported by a vote of 19-17, H.Rept. 115-278 8/25/17: Judiciary Committee discharged H.R. 1807, and the bill was placed on the House calendar	TX) introduced S. 789, with 3 Republican co-sponsors from AR and TX
H.R. 1769	Issue: Water Resources Title: San Luis Unit Drainage Resolution Act. The bill relates to the San Luis Unit of the Central Valley Project, and would direct the Department of the Interior to implement the Westlands Agreement between the U.S. and the Westlands Water District. It amends the San Luis Act of 1960 and makes adjustments to repayments and allocation of water resources, including a contract for CVP water delivered to the Lemoore Naval Air Station. It would transfer title of certain facilities to Westlands upon execution of repayment contracts.	3/28/17: H.R. 1769 introduced in the House, referred to Natural Resources Committee 4/27/17: Committee mark-up and ordered reported by a vote of 23-16 10/16/17: H. Rept. 115-349, placed on House calendar	Rep. David Valadao (R-CA) introduced H.R. 1769
S. 728/H.R. 1731/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 authorize the appropriation of \$200M each year from FY2018-FY2022, for projects reasonably likely to promote economic and community development in the area. S. 728 and H.R. 1731 are identical bills, and the Democrat version, S.738, differs in several policy details, but is identical to a bill introduced by Rep. Harold Rogers (R-KY) in the 114th Congress (H.R. 4456). “All funding under the Democrats' proposal would be based on how much coal a state mined in 1977, as states with more coal mining then are likely to have more eligible sites. Under the GOP bill, 80 percent of funding would be based on that calculation, with 20 percent distributed based on how much a state or tribe paid in reclamation fees between 2012 and 2016. Priority 1 and 2 sites — those posing a threat to public health, safety and property — would be eligible. While preferred, only Priority 3 sites — environmental restoration — would have to prove their economic impact. Eligible	3/27/17: S. 728 and S. 738 introduced in the Senate, referred to the Energy and Natural Resources Committee. H.R. 1731 introduced in the House, referred to Committees on Natural Resource and Transportation and Infrastructure. 4/5/17: House Natural Resources Subcommittee on Energy and Mineral Resources held hearings on H.R. 1731 6/27/17: House Natural Resources held mark-up session and ordered H.R.	Senator Mitch McConnell (R-KY) introduced S. 728 with co-sponsor Senator Shelley Moore (R-WV) Senator Joe Manchin (D-WV) introduced S. 738, with 4 Democrat co-sponsors from OH, PA, and VA Rep. Harold Rogers (R-KY) introduced H.R. 1731 with 23 Republican and 17 Democrat co-sponsors, including from CA, CO, and NM.

	communities would qualify based on local employment data, per-capita income and other economic indicators as well a demonstrated reliance historically on coal. The Republican bill also adds a planning requirement that public meetings should be held on project proposals. Republicans also tacked on a provision that would move the headquarters of the Appalachian Regional Commission out of Washington, D.C.” E&E News, Dylan Brown, 4/3/17	1731 reported, H. Rept. 115-351. 10/19/17: H.R. 1731 placed on the House calendar	
S.714	Issue: Water Resource Management Yakima River Basin Water Enhancement Project Phase III Act. 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 3/30/17: ENR reported S. 714 favorably without amendment; S. Rept. 115-107 6/13/17: S. 714 placed on Senate Legislative Calendar	Senator Maria Cantwell (D-WA) introduced S. 714 with co-sponsor Senator Patty Murray (D-WA)
S. 692/H.R. 1971/H.R. 2355	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. It also requires the revision of the financial capability guidance, “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” (February 1997) and “Financial Capability Assessment Framework” (November 2014). The bills S. 692 and H.R. 1971 are identical. H.R. 2355 is almost identical, but drops the provision that priority should be given to municipalities that demonstrate affordability concerns, and adds a provision about the guidance, to consider the degree to which customer assistance programs address the rates of low-income users. See also below, H.R. 465, Water Quality Improvement Act	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 (S. Hrg 115-12) 4/5/17: EPW ordered S. 692 reported with an amendment (report No. 115-87, with errata sheet) 4/6/17: H.R. 1971 introduced in the House, referred to Transportation and Infrastructure and	Senator Deb Fischer (R-NE) introduced S. 692, with 8 bipartisan co-sponsors from AR, MD, MI, MO, NJ, OH, and OK Rep. Lloyd Smucker (R-PA) introduces H.R. 1971, with co-sponsor Rep. Robert Latta (R-OH) Rep. Robert Latta (R-OH) introduced H.R. 2355 with 5 bipartisan co-sponsors from CA,

		Energy and Commerce 5/4/17: H.R. 2355 introduced in the House, referred to T&I and E&C 5/18/17: House T&I held a hearing on integrated infrastructure, including testimony on these bills. 5/25/17: S. 692 placed on legislative calendar 10/5/17: S. 692 passed Senate with an amendment 10/10/17: S. 692 received in the House, referred to Transportation and Infrastructure, and Energy and Commerce Committees	IL, OH, and PA
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 6/14/17: Subcommittee on Water and Power held hearings on S. 685	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. In general, Reclamation would serve as a point of contact for project applicants, State agencies, Indian tribes and others. It would coordinate preparation of unified environmental documentation and coordinate federal agency reviews, beginning with a preapplication meeting to explain applicable processes, data requirements, and submission necessary to complete required federal agency reviews. Reclamation would establish a schedule and timeframe for agency action, and consult with the cooperating agencies to set deadlines and a	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 4/27/17: House NR amended H.R. 1654, ordered reported by a vote of 24-16; H. Rept. 115-166	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

	project schedule. Reclamation would also prepare a unified environmental review document, maintain a consolidated administrative record, ensure that all project data is submitted and maintained in generally accessible electronic format (to the extent practicable) and make such data available to cooperating agencies, the project applicant and the public, as well as appoint a project manager. Cooperating agency responsibilities are also detailed. <i>H.R. 1654 was incorporated into H.R. 23 and passed again on 7/12/17.</i>	6/14/17: Senate Subcommittee on Water and Power held hearings on S. 677 6/22/17: House passed H.R. 1654 by a vote of 233-180 6/26/17: H.R. 1654 received in the Senate, referred to Energy and Natural Resources	
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 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.	3/15/17: S. 664 introduced in the Senate and referred to Committee on Indian Affairs 12/6/17: Indian Affairs hearing	Senator Orrin Hatch (R-UT) introduced S. 664
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 3/28/17: Subcommittee on Fisheries, Water, and Wildlife held hearings (S. Hrg. 115-12) 4/5/17: EPW ordered S. 518 reported with an amendment, S. Rept. 115-71	Senator Roger Wicker (R-MS) introduced S. 518, with 8 Democrat and 6 Republican co-sponsors from AR, HI, ID, MN, MT, ND, WV, and WY

	The bill was amended to add medium treatment works serving between 10,001 and 75,000, with authorization to appropriate \$10M each year for FY2018-FY2022.	5/17/17: S. 518 placed on legislative calendar	
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 40 Democrat co-sponsors, including from AZ, CA, NM, OR, 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 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.	3/21/17: H.R. 1653 introduced in the House, referred to Committee on Energy and Commerce	Rep. Robert Latta (R-OH) introduced H.R. 1653 with co-sponsor 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	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-sponsors Rep. John

	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)		Duncan (R-TN) and Daniel Lipinski (D-IL)
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. <i>See also H.R. 1068.</i>	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. 1269	Issue: Water Infrastructure Title: Sacramento Valley Water Storage and Restoration Act. Directs the Secretary of the Interior to take actions to support non-Federal investments in water infrastructure improvements in the Sacramento Valley. The Sites Project is an off-stream surface water storage project that includes the Sites Reservoir and associated water conveyance and hydropower facilities in Glenn and Colusa Counties, CA. The bill directs the completion of the feasibility study as a non-federal project with Reclamation partnership for designing and constructing the project, and future coordinated operations between the Central Valley Project and the Sites Project.	3/1/17: H.R. 1269 introduced in the House, referred to Natural Resources Committee	Rep. Doug LaMalfa (R-CA) introduced H.R. 1269 with 4 bipartisan California co-sponsors
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 12 Republican co-sponsors, including ND, NM, and TX
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;	2/27/17: S. 451 introduced in the Senate, referred to Committee on Environment and Public Works 3/21/17: H.R. 1663	Senator Benjamin Cardin (D-MD) introduced S. 451 with co-sponsor John Boozman (R-AR) Rep. Robert Whitman

	(2) require each water resources research and technology institute to arrange for research that fosters the exploration of new ideas that expand 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	introduced in the House, referred to the Natural Resources Committee	(R-VA) introduced H.R. 1663, with 8 bipartisan co-sponsors from CA, KY, MA, NC, VA, WI
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 65 Republican co-sponsors, including from AK, AZ, CA, MT, ND, NM, NV, OK, 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, with co-sponsor Blake Farenthold (R-TX)
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	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 19 Democratic co-sponsors, including from CA, CO, OR, and TX

	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. <i>See also H.R. 1068.</i>		
H.R. 1068	Issue: Safe Drinking Water Act 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.	2/15/17: H.R. 1068 introduced in the House and referred to the Committee on Energy and Commerce	Rep. Frank Pallone (D-NJ) introduced H.R. 1068 with 10 Democratic co-sponsors, including from CA, CO, and OR.
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	2/7/17: H.R. 953 introduced in the House,	Rep. Bob Gibbs (R-OH) introduced H.R.

	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. The bill would overturn <i>National Cotton Council v. EPA</i> (6th Cir. 2009) <i>Related to Position #359, allowed to sunset at the St. George, Utah meeting September 2016. See also S. 340.</i>	referred to Committees on Transportation and Infrastructure, and Agriculture 2/16/17: House Agriculture Committee held a mark-up session and ordered H.R. 953 reported. (H. Rept. 115-131) 5/24/17: H.R. 953 passed the House 256-165 5/25/17: H.R. 953 received in the Senate, referred to the Committee on Environment and Public Works	953, with 43 Republican and 4 Democrat co-sponsors
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). Would amend 41 USC 83 to increase the requirement for American-made content and strengthen the waiver provisions. 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 19 Democrat and 2 Republican co-sponsor Rep. Daniel Lipinski (D-IL) introduced H.R. 904, with 18 Democrat and 3 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 15 Republican and 3 Democrat co-sponsors, including from AZ, ID, KS, NE, ND, OK, SD, and WY
H.R. 689/S.285	Issue: Access to irrigation headgate on federal land for maintenance	1/24/17: H.R. 689 introduced in the House,	Rep. Jared Polis (D-CO) introduced H.R.

	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>	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 (reports 115-53 and 115-58) 5/9/17: Bills placed on Senate calendar	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: Authorizes the Department of the Interior, in cooperation with the state of Wyoming, to amend the Definite Plan Report for the Seedskaadee 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>	1/24/17: S. 199 introduced in the Senate, referred to the Committee on Energy 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 (115-96) 6/8/17: S. 199 placed on the Senate calendar	Senator John Barasso (R-WY) introduced the bill with co-sponsor Michael Enzi (R-WY) Rep. Liz Cheney (R-WY) introduced H.R. 648
H.R.	Issue: Reclamation Aging Infrastructure	1/24/17: H.R. 660	Senator John Barasso

660/S.216	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	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 reported S. 216 without amendment (115-97) 4/27/17: House NR ordered H.R. 660 reported (H. Rept. 115-156) 6/2/17: H.R. 660 placed on House calendar 6/8/17: S. 216 placed on Senate calendar	(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 121 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 #404.</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/S.1464	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. Senator Feinstein said: “Section 136 of the Internal Revenue Code already exempts energy conservation rebates from inclusion in gross income. However, there is no Federal exemption for water conservation or storm water management measures, which may undermine incentives for participation in these programs. These programs are just as valuable as energy conservation programs and should be treated equally in the tax code. This bill would simply exempt water conservation and storm water management rebates from being included in gross income and would be retroactive to 2015. This would maintain the important incentives for resident participation in critical water conservation measures. This bill is supported by a coalition of organizations and public utilities, including the Western Urban Water Coalition, Alliance for Water Efficiency, American Water Works Association, National Association of Water Companies, U.S. Water Alliance, Association of Water Agencies, WaterNow Alliance, Western Coalition of Arid States, and National Water Resources Association. This bill is crucial to ensuring residents continue participating in water conservation and storm water management programs.”	1/11/17: H.R. 448 introduced in the House, referred to the Committee on Ways and Means 6/28/17: S. 1464 introduced in the Senate, referred to Committee on Finance	Rep. Jared Huffman (D-CA) introduced H.R. 448, with 33 Democrat and 5 Republican co-sponsors, including from AZ, CA, CO, NV, and TX Senator Dianne Feinstein (D-CA) introduced S. 1464 with co-sponsor Senators Michael Bennet (D-CO), Cory Gardner (D-CO), and Dean Heller (R-NV)
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.	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	Senator John Cornyn (R-TX) introduced S. 90 with co-sponsor Senator Ted Cruz (R-TX)

	<i>Note: This is similar to H.R. 2130 and S. 1153 introduced in the 114th Congress, passed by the House 12/9/15.</i>	Committee on Natural 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 7/26/17: Senate Subcommittee on Public Lands, Forests, and Mining held hearings on S. 90	Rep. Mac Thornberry (R-TX) introduced H.R. 428 with 13 Republican co-sponsors from Texas and Oklahoma
S. Res. 12/H. Res. 152	Issue: Clean Water Act/WOTUS Rule A resolution expressing the sense of the Senate/House of Representatives 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 2/27/17: H. Res. 152 introduced in the House, referred to Transportation & Infrastructure	Senator Deb Fischer (R-NE) introduced S. Res. 12, with co-sponsor Joni Ernst (R-IA) Rep. Bob Gibbs (R-OH) introduced H. Res. 152, with 45 Republican and 1 Democratic co-sponsor
H.R. 519/S.1090	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 5/10/17: S. 1090 introduced in the House, referred to Finance	Representative Ken Buck (R-CO) introduced H.R. 519, with 13 bipartisan co-sponsors from AZ, CA, CO, UT, WA, and WY Senator Mike Crapo (R-ID) introduced S. 1090, with 4 co-sponsor Senators from CO, ID, and WY
H.R. 465	Issue: Clean Water Act	1/12/17: H.R. 465	Rep. Bob Gibbs (R-

	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 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</i>	introduced in the House, referred to the Committee on Transportation & Infrastructure	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), Keith Rothfus (R-PA), Fred Upton (R-MI), and Warren Davidson (R-OH)
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	<i>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 (115-7) 5/8/17: Passed Senate unanimously without amendment 5/11/17: House received S. 140 and referred to Committee on Natural Resources 12/6/17: S. 140 reported by House Natural Resources, H. Rept. 115-441, placed on Union 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.	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), David Valadao (R-CA), Stephen Knight (R-CA), Kevin Cramer (R-ND), Tom Cole (R-OK), and Dan Newhouse (R-WA)

	<i>Note: This bill is similar to H.R. 6022 introduced in the 114th Congress.</i>		
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, with co-sponsor Rep. Eleanor Norton (D-DC)
H.R. 360	Issue: Reserved Water Rights Title: Greater Grand Canyon Heritage National Monument Act. The purpose of the Monument is “to preserve and, if necessary, restore the native, cultural, sacred lands, and key tribal resources, nationally significant biological, ecological, including wildlife connectivity, cultural, historical, recreational, geological, hydrological, education, scenic and scientific values found in the Greater Grand Canyon ecosystem and watershed, including aboveground tributaries, springs and interconnected groundwater that contribute significantly to the Colorado River; and to secure now and for future generations the opportunity to experience and enjoy the diverse tribal resources, landscape, wildlife, water flows, and recreational use of the lands included in the national monument.” Notably, section 9 says that nothing in the Act authorizes or imposes any new reserved Federal water right, nor does it relinquish or reduce and water rights reserved or appropriated by the U.S. in Arizona before the date of enactment.	1/6/17: H.R. 360 introduced in the House, referred to Natural Resources	Rep. Raul Grijalva (D-AZ) introduced H.R. 360, with 13 Democratic co-sponsors.
H.R. 196/H.R. 250/S. 276/S. 295/H.R. 1598	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	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 3/17/17: H.R. 1598	Rep. Michael Simpson (R-ID) introduced H.R. 196. Rep. Andy Biggs (R-AZ) introduced H.R. 250, with 9 Republican co-sponsors from AK, AZ, SC, TX, and VA Senator Jeff Flake (R-AZ) introduced S. 276 with co-sponsors John McCain (R-AZ) and Dean Heller (R-NV) Senator Steve Daines

	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. Title: Ninth Circuit Court Modernization and Twelfth Circuit Court Creation Act (H.R. 1598). This bill divides the U.S. Court of Appeals for the Ninth Circuit into: (1) a new Ninth Circuit that consists of only California; and (2) a newly established Twelfth Circuit to be composed of Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Hawaii.	introduced in the House	(R-MT) introduced S. 295, with co-sponsors Dan Sullivan (R-AK) and Lisa Murkowski (R-AK) Rep. Louie Gohmert (R-TX) introduced H.R. 1598, with co-sponsor Jeff Duncan (R-SC)
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 Gov't Affairs (HSGA) 1/5/17: House passed H.R. 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 on H.R. 26, S.Hrg. 115-21	Representative Doug Collins (R-GA) introduced H.R. 26, with 160 Republican co-sponsors Senator Paul Rand (R-KY) introduced S. 21, with 38 Republican co-sponsors

		5/17/17: HSGA ordered S. 21 to be reported without amendment, S. Rept. 115-169 10/16/17: S.21 placed on Senate calendar	
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. H.R. 23 was amended to incorporate provisions from several other water-related bills before it was passed by the House. The seven titles of H.R. 23 are intended to provide both short and long-term solutions to expand water storage, improve infrastructure, restore reliability, protect privately-held water rights, and create more abundant and reliable water resources to benefit both communities and the environment. It is also intended to build on the water storage and delivery provisions of the Water Infrastructure Improvements for the Nation (WIIN) Act passed last December and give federal agencies the necessary tools to help safeguard communities from the effects of droughts. Title I addresses water reliability, predictability, and availability in California for the Central Valley Project (CVP) and the State Water Project (SWP). It amends the purposes and definitions of the Central Valley Project Improvement Act to facilitate water transfers, to authorize contracts for additional storage and water delivery, to ensure that water dedicated to fish and wildlife purposes is replaced and provided to water contractors at the lowest cost reasonably achievable, and clarifies the meanings of “anadromous fish” and “reasonable flows.” Under Section 108, if the CVP and SWP are operated consistent with the Bay-Delta Accord, they may operate without additional regard to Endangered Species Act compliance. The bill limits the mitigation measures and adjustments to operating criteria that may be imposed on diversions during water supply shortages. Section 113 amends the San Joaquin River Restoration Settlement Act, noting that the settlement cannot be implemented as originally authorized due to catastrophic species declines, cost estimates that have more than doubled, and scientific assessments that no amount of additional flow in the San Joaquin	1/3/17: H.R. 23 introduced in the House, referred to the Committees on Natural Resources and Agriculture 7/12/17: House amended and passed H.R. 23 by a vote of 230-190, largely along party lines 7/18/17: H.R. 23 received in the Senate, referred to Energy and Natural Resources	Rep. David Valadao (R-CA) introduced the bill, co-sponsored by 13 Republican and 1 Democrat California co-sponsors

	River will sustain Spring-run Chinook salmon. It provides an alternative settlement option that includes the development and implementation of a warm water fishery program, requiring California and the Secretary of the Interior to determine whether the changes are consistent with the settlement agreement. Title II sets deadlines for the completion of five feasibility studies relating to the coordinated CALFED surface storage projects in California. It prohibits Wild and Scenic River Act designations from hindering the completion of the proposed Temperance Flat Reservoir Project. It authorizes the Secretary of the Interior to enter agreements with local entities to advance water storage projects, to coordinate with state and local water agencies to conduct geophysical surveys of aquifers to consider the areas of greatest recharge potential, and to partner with state and local water agencies and academics to study ways of enhancing mountain runoff to reservoirs through headwater restoration. Title III protects the joint operation of the CVP and SWP, and includes protections for California senior water rights holders. Title IV requires an accounting of CVP water supply used for fishery beneficial purposes to fulfill any post-1992 agreements. It limits the volume of water that may be released from Lewiston Dam based on the type of water year (dry versus wet). It requires Interior, in coordination with other federal and state agencies, to publish an annual report on instream flow releases from CVP and SWP, including details about the measured environmental benefit of the releases. Section 405 requires the federal agencies to “recognize Congressional opposition to the violation of private property rights by the California State Water Resources Control Board in their proposal to require a minimum percentage of unimpaired flows in the main tributaries of the San Joaquin River; and recognize the need to provide reliable water supplies to municipal, industrial, and agricultural users across the State.” It also prohibits the use of the \$18M, authorized in section 4010(b) of WIIN Act to carry out activities to benefit endangered species, to acquire land or water already designated for other instream uses or environmental purposes. Title V incorporates the provisions of the Water Supply Permitting Coordination Act (H.R. 1654), was passed by the House on June 22, by a vote of 233-180. 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. In general, Reclamation would serve as a point of contact for project applicants, State agencies, Indian tribes and others. It would coordinate preparation of unified environmental documentation and coordinate federal agency reviews, beginning with a preapplication meeting to explain applicable processes, data requirements, and submissions necessary to complete required federal agency reviews. Reclamation would establish a schedule and timeframe for agency action, and consult with the cooperating agencies to set deadlines and a project schedule. Reclamation would also prepare a unified		
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	environmental review document, maintain a consolidated administrative record, ensure that all project data is submitted and maintained in generally accessible electronic format (to the extent practicable) and make such data available to cooperating agencies, the project applicant and the public, as well as appoint a project manager. Cooperating agency responsibilities are also detailed. Title VI, Bureau of Reclamation Project Streamlining Act (H.R. 875) , was introduced in the House in February. It is intended 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. The bill 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). It 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. It delineates factors for extending timelines 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 National Environmental Policy Act (NEPA) compliance, sets forth responsibilities of the lead agency, and provides for a reduction of funds for an agency that fails to render such a decision by a specified deadline. Title VI directs Interior to: (1) survey the use by the Bureau of categorical exclusions in projects since 2005 and propose a new categorical exclusion for 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. It 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 of 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. Title VII, the Water Rights Protection Act (H.R. 2939), was reintroduced as part of H.R. 23 on June 21. The bill would prohibit the Departments of the Interior and Agriculture from conditioning any permit, lease, or other use agreement on the transfer of any water right to		
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	the U.S. WGA provided testimony on H.R. 2939, stating that, “Nowhere is the need for substantive consultation between states and the federal government more critical than in the water arena.” Consultation requires each federal agency to have a clear and accountable process to provide each state with early, meaningful, and substantive input in the development of regulatory policies with federalism implications. “That process involves communicating with the governor and any state and local representatives the governor designates.” <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>		
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 President’s term.	1/3/17: H.R. 21 introduced in the House 1/4/17: H.R. 21 passed the House by a vote of 238-184. 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 5/17/17: HSGA ordered S. 34 reported without amendment, S. Rept. 115-164 10/5/17: S. 34 placed on Senate calendar	Representative Darrell Issa (R-CA) introduced H.R. 21, with 13 Republican and 1 Democratic co-sponsors, including TX Senator Ron Johnson (R-WI), Chairman of the Senate Homeland Security and Governmental Affairs Committee, introduced S. 34, with 6 Republican co-sponsors, including MT and WY

NOTABLE LITIGATION

Case Names	Issue – Yellowstone River Compact
Montana v. Wyoming	The Yellowstone River Compact provides for the continued enjoyment of Montana’s downstream appropriative rights existing as of 1950. Montana filed suit in 2008 over Wyoming diversions on the Tongue River, an interstate tributary to the Yellowstone River with multiple reservoirs that store extremely variable flows. The case was bifurcated into liability and remedy phases. The U.S. Supreme Court determined in 2016 that Wyoming violated the Compact, and was liable for the withdrawal of 1,300 acre-feet in 2004, and 56 acre-feet in 2006.
Courts	
U.S. Supreme Court, No. 137	
Relevant Dates	“This Report deals with the remedies that the Court should provide to Montana.” In addition to monetary damages of \$20,340 and certain costs of bringing the lawsuit, the Special Master recommended declaratory relief to “provide the parties with critical guidelines for their future management of the Tongue River and hopefully help avoid future disputes. I recommend against injunctive relief. Wyoming has repeatedly stated that it will comply with the Court’s orders and rulings and, although there is little history of cooperation between Montana and Wyoming in managing the Tongue River, the record fails to show a significant chance of repeat violations in the future.” The Special Master added that the nature of the Compact makes it difficult to avoid all future disputes. The two states made good faith efforts to settle the dispute, but as they pointed out to the Special Master, water in the West is “too controversial and too important to the people in both states for decision makers to compromise.” He noted that, “The Compact does not guarantee Montana a fixed quantity or flow of water, nor does it set out clear procedures for protecting Montana’s rights.” The continued enjoyment of pre-1950 rights is “in accordance with the laws governing acquisition and use of water under the doctrine of prior appropriation.” This doctrine is sometimes unclear, using vague concepts of reasonableness and beneficial use. “Although the general contours of the prior appropriation system are the same in all western states, the specific details of each state’s system can differ, sometimes substantially, from those of other states. For example, the states have adopted very different systems for administering appropriative rights. Wyoming closely polices the water use of prior appropriators, while Montana relies more on judicial enforcement and oversight. Montana and Wyoming also follow very different rules with respect to water storage, leading to quite different views on how the Compact handles reservoirs. Neither Wyoming’s nor Montana’s procedures and rules are inherently better, nor are they outliers in the western United States.” The Compact is also vague about quantities of water necessary for supplemental water supplies. The report recommended that Montana be entitled under its pre-1950 appropriative rights to store up to 72,500 acre-feet in the Tongue River Reservoir, the original capacity of the reservoir, subject to various restrictions and conditions. The reservoir has only rarely held more than 32,000 acre-feet for several decades, due in part to sedimentation and Montana’s water rights compact agreement with the Northern Cheyenne Tribe. Wyoming argued that the declaratory relief should be kept to the minimum necessary for the present lawsuit, and the issue of storage should be resolved if and when Montana seeks to fill the reservoir beyond 32,000 acre-feet over Wyoming’s anticipated objections. The Special Master noted that most of the disagreements between the two states concern appropriate procedures for “calling the river,” and that a concise decree providing guidance on rights and responsibilities would benefit both parties. Consequently, the proposed decree submitted to the Supreme Court includes details on: (1) how the States handle a call on the river going forward; (2) the effects of conservation through improved irrigation techniques on pre-1950 water rights; (3) various rights of the States to store water in reservoirs and to operate and manage the reservoirs under their respective laws and rules; and (4) the exchange of information, including pre-1950 water rights, relevant to implementation of the Compact. The Special Master indicated that this declaratory relief should help the parties reduce future controversy, however “effective implementation of the Compact and avoidance of
1/10/18: Special Master Final Report	

	future disputes will depend on both Montana’s and Wyoming’s good-faith cooperation.”
Case Names	Issue – EPA’s Water Transfers Rule
<i>Friends of the Everglades v. EPA</i>, 699 F.3d 1280 (11th Cir. 2009) <i>Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation</i>, No. 12-35831 (9th Cir. 2015) <i>Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA</i>, 846 F.3d 492 (2nd Cir. 2017) <i>New York et al. v. EPA</i> (pet for cert, #17-418) <i>Riverkeeper, Inc. et al. v. EPA</i> (pet for cert, #17-446)	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, 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, <i>Chevron</i> 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 On April 18, the 2nd Circuit Court denied petitions for rehearing <i>Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA</i> (Catskills III) (#14-1823), allowing a three-judge panel’s decision on deference to EPA’s Water Transfers Rule to stand. Petitioners sought rehearing on the grounds that Catskills III was inconsistent with the 2nd Circuit’s decisions in Catskills I and II. However, the panel distinguished the cases, concluding that the earlier decisions did not hold the plain language of the Clean Water Act to be unambiguous with regard to water transfers, which led to a <i>Chevron</i> analysis in Catskills III that defers to EPA’s expertise in promulgating the rule. The parties have until July 17 to file a petition for certiorari to the U.S. Supreme Court. This was extended by request and granted by court order on July 14.
Courts	
Southern U.S. District Court of New York (SDNY) 2nd, 11th and 9th Circuit Courts of Appeals	
Relevant Dates	
1/18/17: 2nd Circuit ruling allowing the Water Transfers Rule to stand. 4/18/17: 2nd Cir. denied en banc rehearing 9/15/17: Petitions for Cert filed by Riverkeepers et al., and by the states of NY, CT, DE, IL, ME, MI, WA, and Manitoba, Canada	

On September 15, the plaintiff states of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Washington, and the Canadian province of Manitoba filed a petition for a writ of certiorari against the Environmental Protection Agency (EPA), appealing the 2nd Circuit's decision in *Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA*, 846 F.3d 492 (2017).

The plaintiff States question whether the rule conflicts with the plain meaning of the Clean Water Act (CWA), which prohibits the addition of any pollutant to navigable waters from any point source without a permit. They also raise the issue of whether EPA may justify the Water Transfers Rule on the basis of the perceived costs and benefits caused by the CWA permitting process given the lack of actual assessment of those costs and benefits. They argue that the 2nd Circuit's decision conflicts with the decisions of other courts, that Congress did not authorize a water transfer exemption, and that EPA's rationale for the rule conflicts with Supreme Court precedent.

"This case is the culmination of a nationwide, decades-long battle over whether the Act requires a NPDES permit for interbasin water transfers," the brief says, citing cases that support their position from the 1st, 2nd, and 11th Circuits, as well as the state of Pennsylvania. "The current case has pitted seven states...against eleven other states and EPA." Notably, the states of Minnesota, Missouri have withdrawn from the coalition of eastern states.

The plaintiff states note that artificial water transfers of distinct water bodies can introduce salt water, fecal matter, algal blooms, or invasive species into previously unaffected waterways, and that the states and their residents rely on the NPDES program "to preserve the integrity of the country's navigable waters." They argue that the rule undermines the federal procedures for downstream states to resolve interstate disputes over water pollution.

Also on September 15, 2017 three environmental, conservation, and sporting plaintiffs filed a petition for a writ of certiorari, arguing that the 2nd Circuit's analysis of step two of *Chevron v. Natural Resources Defense Council* was inconsistent with the Supreme Court's reasoning in *Michigan v. EPA*, 135 S. Ct. 2699 (2015) and created a circuit split. They also raised the question of whether the 2nd Circuit erred in applying the CWA terms relating to the addition of pollutants to navigable waters "differently to discharges of dredged materials and transfers of polluted water between water bodies..." The two petitions are *New York et al. v. EPA and Riverkeeper, Inc. et al. v. EPA*.

On January 19, 2018, the federal government filed its brief in opposition to the petition for certiorari argues that the 2nd Circuit's decision does not conflict with relevant decisions of other appellate courts, EPA's interpretation of Congressional intent is reasonable, and further review of the rule is unwarranted. "In the absence of express statutory direction, EPA has long maintained" that water transfers do not entail the addition of pollutants to the waters of the United States "because any pollutants were already present in those waters. EPA's position reflects at least a permissible construction of the term 'discharge of any pollutant' and its statutory definition." The government's brief also notes that "Congress appreciated the significance of water transfers, which serve multiple important purposes, and state and local governments' roles in administering and regulating them. For example, Congress was aware that water transfers physically implement state regimes for allocating water rights, many of which existed long before the CWA's enactment. Far from displacing state and local governments' authority in this area, Congress expressly confirmed it" (internal quotes and citations omitted). In its own analysis leading to the rule, EPA identified Congressional concerns that the statute not unnecessarily burden water quantity management activities or interfere with water resource allocation.

Western states and western water providers also submitted a joint brief in opposition to the petition for certiorari. "Throughout the western United States, water transfers are integral to the delivery of essential water supplies for municipal, industrial, and agricultural use. These projects have always fallen under state regulatory authority – indeed, for nearly the entire 45-year history of the Clean Water Act, the

	Environmental Protection Agency has consistently interpreted the Act to defer to state administration of water transfers.” The brief argues that the 2nd Circuit’s decision is reasonable given the severe and cost prohibitive consequences of overturning EPA’s Rule. “Subjecting the thousands of western water transfers to the massive costs of a mandatory NPDES system, and requiring them to remove naturally occurring constituents from the transferred water, would yield far fewer benefits than one might assume.” Compliance costs for individual water providers could reach into hundreds of millions of dollars, which are not only infeasible, but would often treat water for natural erosive processes from mountain runoff rather than point source pollution. Additionally, most transferring waters are of equal or better quality than the receiving waters, and impairment of water bodies due to water transfers are rare. The western brief also argues there are other state and federal mechanisms available to protect water quality. “The Rule does not establish a regulation-free zone. To the contrary, the Rule was enacted in part because state and federal regulatory mechanisms are available to mitigate the potential environmental effects of water transfers.” States have water quality management plans, regulations for total daily maximum loads, and a variety of unique laws that are often substantially broader than regulation under the Clean Water Act. The federal government also has alternative tools such as the Safe Drinking Water Act, the Federal Energy Regulatory Commission’s regulation of non-federal hydropower dams, the National Environmental Policy Act, and the Endangered Species Act. Contrary to New York’s arguments that these tools are insufficient to resolve interstate disputes over water pollution, “more than a dozen interstate compacts involving more than twenty-five States facilitate interstate pollution control.” The brief describes the interstate cooperative efforts to address water quality concerns in the Colorado River Basin, as well as EPA’s basin-wide salinity control plan, and Congressional legislation on the issue. “As a result of these efforts, salinity levels in the basin have declined significantly.... In short, the States and the federal government have tools available to address water quality concerns in the context of water transfers, and they in fact employ those tools.” On February 23, the Supreme Court denied the petitions for certiorari, allowing the EPA’s Water Transfers Rule to stand. <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 full 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> <i>*WSWC Policy #342, 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.</i>
Case Name	Issue – Treaty Rights and State Water Resources
<i>Washington v. United States</i> (#17-269) <i>United States v. Washington</i>, (#13-35474) 853 F.3d 946 (2017)	On June 27, 2016, the 9th Circuit ruled that Washington’s barrier culverts are a violation of its obligations relating to off-reservation fishing under Tribal treaties, affirming the decision of the U.S. District Court in Washington. The 21 Tribes filed a Request for Determination in 2001 alleging that the barrier culverts prevented salmon from moving freely between the sea and upstream spawning grounds at various life stages, reducing the size of salmon runs. In 2007, the District Court entered an injunction directing the State of Washington to correct the culverts, which allow streams to flow underneath roads, within the next seventeen years; sooner for the approximately 1,000 culverts within a specific area of watersheds on former tribal lands that are still significant for fish. The 9th Circuit rejected Washington’s argument that the treaty rights impose no obligations that prevent the state from making land use decisions that could incidentally impact fish, holding that an implicit promise of the treaty rights was that the number of harvestable fish would be sufficient to provide a moderate living to the Tribes, not merely provide tribal access to usual and accustomed fishing places. The Court
Court	
U.S. District Court in Washington 9th Circuit U.S. Supreme Court	

Relevant Dates	
2007: Dist. Ct. injunction 6/27/16: 9th Cir. decision 8/17/17: Washington petition for cert to U.S. S. Ct. 1/12/18: Petition granted 4/18/18: Oral arguments	noted several alternatives to barrier culverts, including bridges that entirely span streams, culverts that allow unobstructed fish passage, or building roads away from streams. The Court also rejected Washington’s request for an injunction requiring the U.S. to fix its culverts first, noting that Washington didn’t have standing to bring the Tribe’s claims and that the U.S. didn’t waive sovereign immunity. The 9th Circuit also held that because treaty rights belong to the Tribes rather than the U.S., it is not the prerogative of the U.S. to waive those rights. On August 17, 2017, the State of Washington appealed the 9th Circuit’s decision. The petition for certiorari presents three questions: (1) whether the 9th Circuit’s interpretation of the treaties, guaranteeing sufficient fish to provide a “moderate living,” conflicts with the U.S. Supreme Court decision in <i>Washington v. Fishing Vessel</i>, 443 U.S. 658 (1979) that the tribes are guaranteed at most a 50% share of available fish; (2) whether the federal role in designing and permitting the culverts in question should require the court to consider a more equitable solution; and (3) whether the injunction to remove the culverts at great cost violates principles of federalism and comity, when there is no clear evidence of a connection to the tribal fisheries, or that culvert replacement will have an impact. Beginning in the 1990s, Washington took the initiative in its own economic self-interest to identify and replace fish-barrier culverts, becoming a national leader in developing new culvert designs that allow fish to pass. However, state-owned culverts are a small fraction (less than 25%) of the ubiquitous barrier culverts that are also owned by federal, tribal, municipal, and private landowners. Consequently, the state focused its voluntary replacement efforts on streams without non-state culverts, providing the most cost-effective replacement and meaningful access to habitat. Since 1991, Washington has spent over \$135M to replace culverts, and several hundred million dollars on other salmon recovery efforts. The 9th Circuit ordered the state to replace all 817 culverts by 2030, at a cost of several billion dollars, without regard to the fact that 90% of them are co-located on streams with non-state culvert barriers and would not increase available salmon habitat. The state argues that the cost will come at the expense of other salmon restoration efforts to the detriment of fish, the tribes and the state. The state also argues that the new interpretation of the treaty, requiring the state to ensure enough fish to enable a “moderate living” for the tribes, “is not only irreconcilable with precedent, it is also unworkable.” It ignores natural fluctuations in salmon runs, salmon prices, non-salmon tribal incomes, and tribal population. Further, the court’s broad decision could be used to attack a variety of development, construction, or farming practices perceived to diminish salmon harvest numbers, or to demand the removal of dams or the elimination of century-old water rights, significantly affecting the state’s natural resource management. Additionally, “the future reach of this decision extends far beyond the State of Washington, as the same fishing rights are reserved to tribes in Idaho, Montana, and Oregon.” On September 20, 2017, the States of Idaho, Kansas, Louisiana, Maine, Montana, Nebraska, and Wyoming filed an amicus brief in support of the petition for certiorari. The States argue that the 9th Circuit’s decision creates an environmental servitude that goes far beyond the removal of culverts, writing “a script for subjecting a broad swath of regulation by States...to like servitudes.” By way of example, the States point to recent EPA reliance on the 9th Circuit’s decision to impose federal water quality standards in Maine and Washington. “It is a short step from [transforming the treaty right] to creating a claim for injunctive relief against States...[for] any diminishment of fish runs subject to harvest and human consumption.” This has implications for dams, water diversions, increasing stream temperatures, timber harvests, grazing practices, and sediment-producing construction, among other things. The States also note the failure of the 9th Circuit to apply a more appropriate culvert-specific assessment of benefits and costs, or to take into consideration the fact that Washington is already two decades into the process of improving culvert fish passage. Also on September 20, a group of business, real estate, farming, and municipal organizations filed a separate amicus brief. They argue, “If tribes have a right to ensure that States maintain a particular number of fish for tribal interests, then few activities in the West will

	escape judicial superintendence at the behest of tribes.” The organizations’ brief explains that the 9th Circuit decision offers tribes a treaty-based guarantee of sufficient water to support salmon populations, undermining established water rights. “The Ninth Circuit has previously ruled that a tribally held reserved water right for aboriginal fishing uses would have a priority date of time immemorial. Such a priority date has the potential to displace every other water right lawfully created and recognized under Washington law. If tribes have an implied reserved water right for enough streamflow to support a quantity of fish that would provide for a ‘moderate living’ for each tribe in each of the tribes’ usual and accustomed places, there may be no surface water left in Washington to allocate to future users. Similarly, if there is not enough water to support the tribes’ implied reserved water rights, then junior users whose rights infringe the tribes’ water rights could see their perfected state-law water rights disappear.” This could create “ongoing uncertainty about the legal regime governing development throughout the West” and “holders of water rights will face doubt about whether their state-law property rights will be impaired to satisfy the court’s understanding of the treaty’s obligations.” The U.S. Supreme Court granted the petition on January 12, 2018, and oral arguments are set for April 18, 2018. See https://www.supremecourt.gov/docket/docketfiles/html/public/17-269.html; http://www.scotusblog.com/case-files/cases/washington-v-united-states/ 4696
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-cv-400)	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. On April 28, the Corps filed its Answer in response, largely denying CMWA’s characterization of the Storage Accounting System and other documents that speak for themselves. The Corps also raised the defenses that the court may lack subject matter jurisdiction, and that the court may not be able to grant the relief requested by CMWA, even if the court finds that the Corps has violated federal statutory provisions. The case was on hold for several months pending the administrative record from the Corps. In February 2018, the case was stayed for 90 days for settlement discussions. <i>Special thanks to Lewis Jones and John Fortuna from King & Spaulding for assisting with updates on the Cobb-Marietta case.</i>
Court	
U.S. District Court, Northern District of Georgia	
Relevant Dates	
2/1/17: Case filed 4/28/17: Corps filed Answer	
Case Names	Issue – Interstate Equitable Apportionment

Florida v. Georgia, #220142	On October 31, 2016 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 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 [Revised Interim Operations Plan, 2012]. 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 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." Florida filed exceptions to the report, emphasizing the ecological damage that occurs in Florida as flows decline, particularly along the Apalachicola River and Bay, and the Special Master's findings of substantial injury. The brief pointed out the weakness of Georgia's laws requiring irrigation permits that lack limits on amounts of consumptive use or any incentive to invest in efficiency, and the impact that widespread irrigation has had on the groundwater and surface water resources, particularly during times of drought. Florida downplayed the role of the Corps in the ACF system: "Unlike the situation in many western States, the United States does not own the water in the
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	
3/30/17: Corps updated and implemented the Master Water Control Manual, governing the projects in the ACF Basin	
5/31/17: Florida filed Exceptions to the Special Master's Report	
8/7/17: Colorado and Corps amicus briefs	
1/8/18: Oral argument before the Supreme Court on the exceptions to the Special Master's Report	

	ACF Basin and the Corps has no authority to apportion water among States or determine water rights.” The Corps has exercised its discretion in the past to release more water than the required minimum, when it is available. Florida argues that the Special Master was wrong to focus on the uncertainty of whether the Corps would exercise that discretion in Florida’s favor in the future, and to require a guarantee of redressability. Even if the Corps does not, with a finite storage capacity behind the dams, additional water foregone by Georgia would eventually make its way to Florida, benefit the system as a whole, and provide at least partial relief for Florida. Citing <i>Idaho ex rel. Evans v. Oregon</i>, 444 U.S. 380 (1980) and <i>Washington v. Oregon</i>, 297 U.S. 517 (1936), Florida argued that the equitable standard to remedy a finding of injury is to grant the relief unless the proposed remedy is certain to fail. Citing <i>Colorado v. New Mexico</i>, 459 U.S. 176 (1982), Florida argued that as the downstream state that has established injury, the burden should shift from Florida to Georgia to prove that its conduct should be allowed to continue under an equitable balancing, even under a riparian water rights system. The Corps filed an amicus brief to ensure that the Court understands the operational protocols for its system of five dams in the ACF Basin, noting that it has an interest in protecting its ability to operate the dams for congressionally authorized purposes and in compliance with other federal statutes, including the Endangered Species Act, Fish & Wildlife Coordination Act, Water Supply Act, and Flood Control Act. The newly revised Master Manual changed drought operations to more proactively retain water in the system to minimally satisfy project purposes if drought conditions persist. Despite Florida’s assumptions about how the Corps would exercise its authority, given additional flows produced by a cap on Georgia’s consumption, the Corps argued that (1) releases above the 5000 cfs minimum flow requirement has not historically occurred based on the basin inflow, but on other project considerations; (2) since the Corps would not be bound by an equitable apportionment decree to which it is not a party, the decision to alter operational protocols to provide Florida with additional flows would require public administrative processes and environmental reviews to amend operating procedures. Without taking a position on whether Florida’s requested relief should be granted, the Corps noted that it cannot prejudge the outcome of those processes and determine whether Florida would benefit in a timely way from a consumption cap in Georgia, particularly during a time of drought. The Supreme Court heard oral arguments on the Special Master’s Report and related briefings on January 8, 2018. 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.
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 2/28/18: Joint Statement of Stipulated and Contested Facts	On August 12, 2016, 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." 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. On May 25, 2017, the Special Master extended the discovery deadline to August 31. On July 19, 2017, that deadline was further extended to September 30. On February 28, 2018, the parties submitted a 108-page Joint Statement of Stipulated and Contested Facts. The parties were able to stipulate to several details, locations, and definitions about the aquifer and associated well fields, but most of the facts are contested. The joint proposed plan for the evidentiary hearing and any pre- or post-hearing briefing is due March 20. 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
Courts U.S. District Court, Central District of California, EDCV 13-883	

9 th Circuit (for interlocutory review) 5:13-cv-883	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.
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. 3/7/17: 9th Circuit panel decision on Phase I reserved groundwater appeal from CA court 6/5/17: Tribe's Motion to Lift Stay granted; CA Dist. Ct. proceeding with Phase II 7/5/17: Petition for Certiorari from DWA and CVWD 8/7/17: Amicus brief in support of Petition for Cert, filed by NV, AZ, AR, ID, NE, ND, SD, TX, WI, WY	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. 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. The water district is appealing the 9th Circuit decision to the U.S. Supreme Court (petition for cert. due by July 5.) In the meantime, the

	California District Court has granted the Tribe’s motion to lift the stay and proceed with Phase II of the case, which deals with whether the Tribe beneficially owns the “pore space” of the groundwater basin underlying the Reservation, and whether a tribal right to groundwater includes the right to receive water of a certain quality. Phase III will focus on the quantification of the Tribe’s right. On July 5, the Desert Water Agency (DWA) petitioned the U.S. Supreme Court for a Writ of Certiorari related to the Ninth Circuit Court’s decision in <i>Agua Caliente</i>, with the band of Cahuilla Indians and the United States as respondents. Roderick E. Walston, DWA Counsel of Record is a former WSWC member. The Coachella Valley Water District (CVWD) separately petitioned. Petitioners’ contend that the Court has never decided whether the reserved rights doctrine applies to groundwater, and the questions presented include whether or not the federal government, in reserving lands, impliedly reserves ground water to accomplish the reservation purposes. In <i>U.S. v. New Mexico</i>, 438 U.S. 696 (1978), the Court limited the reserved rights doctrine, according to the DWA brief, “...because it conflicts with Congress’ deference to state water law,” and held that federal water rights are impliedly reserved only as “necessary” to accomplish the primary purposes of the reservation and prevent them from being “entirely defeated.” <i>New Mexico</i>, 438 U.S. at 700,702. The Ninth Circuit held that New Mexico’s limitations apply in quantifying an existing federal reserved right, but not in determining whether a right exists – and whether the right exists depends on whether the reservation purpose “envisions” use of water. The Ninth Circuit held that in this case the reservation of land “envisions” use of water, and thus the tribe has a reserved right in groundwater. The petitioners contend a federal reserved right exists only if the reservation of water is “necessary,” so as not to be “entirely defeated.” Then, the question remains, whether the reserved rights doctrine applies to groundwater. Finally, does the Tribe have a reserved right in groundwater, in light of the fact that the Tribe has the right to use groundwater under California law. The DWA states that the most significant issue is whether the existence of a water right under state law is relevant in determining whether a federal reserved water right exists under federal law. DWA argues that since the Tribe has the same right to use groundwater under California law, as other overlying landowners, the Tribe’s claimed reserved right is not “necessary,” and does not meet the Supreme Court’s standard in <i>New Mexico</i> for an implied reserved right. The Tribe also has a 1938 decreed right to the use of surface water from the Whitewater River that includes the precise amount of water that the United States had “suggested” during the adjudication proceeding was necessary to meet the Tribe’s reservation needs. Historical documents surrounding the creation of the reservation by Executive Orders signed by Presidents Grant and Hayes in the 1870s, indicate that the Tribe was not using groundwater, which DWA contends defeats any implication that they intended to create a reserved right in groundwater. Even today, the Tribe does not use groundwater, but instead purchases DWA and CVWD water. Therefore, DWA argues, the Tribe’s failure to use or attempt to use groundwater demonstrates that their prosperity and success is not dependent on whether or not the Tribe has a reserved right in groundwater. “Notably, the Tribe’s complaint does not allege otherwise. Instead, the complaint alleges that DWA and CVWD are required to compensate the Tribe for importing and storing water [from the Colorado River] into the groundwater basin that the Tribe allegedly ‘owns’.” On August 7, the States of Nevada, Arizona, Arkansas, Idaho, Nebraska, North Dakota, South Dakota, Texas, Wisconsin, and Wyoming filed an amicus curiae brief with the U.S. Supreme Court in support of the petition for writ of certiorari, appealing the 9th Circuit’s decision. The brief argues that the 9th Circuit’s expansion of the federal reserved water rights doctrine unsettles the scope of the states’ authority over groundwater resources, and that the decision is inconsistent with caution courts must exercise when altering the federal-state balance by interfering with state sovereign power, particularly when applying implied Congressional intent. It calls the decision an “indiscriminate application of the Winters doctrine to groundwater” that ignores the nuances of past court decisions and expressed Congressional intent. The brief describes three factors that the 9th Circuit ignored: (1) the long historical differential treatment of surface water and groundwater by most states, in part due to the fact that “never before has any court recognized an unqualified reserved right in the groundwater disconnected from any consideration of the protections already offered by the state;” (2) the primary purposes of the reservation should inform whether a reserved groundwater right exists at all, not just the quantity of the right; and (3) a
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	primary purpose need for surface water is distinguishable from whether that purpose included a need for groundwater. Water that is valuable for secondary use purposes on federal reservations may still be acquired in the same manner as any other public or private appropriator. Western states have vast quantities of federal land withdrawn from the public domain, and states have allocated and adjudicated groundwater rights with a “legitimate expectation that they had primary control over their groundwater” based on past court decisions. “If a federal reservation can assert absolute preemption over state groundwater allocation laws and regulations, a state’s effort to effectively manage those limited water resources will be thrown out of balance.” While the states have adopted various approaches to managing and allocating water rights, many of their existing water rights holders have relied on the availability of water and invested heavily in putting their water rights to beneficial use. A newly-created, previously unknown federal senior water right, which cannot be lost through non-use unlike other water rights in the system, has the ability to curtail or dispossess those established rights under the 9th Circuit’s decision. Especially troubling to the amicus states is the 9th Circuit’s holding that the implied reservation of water may be flexible and change over time, expanding beyond the original purpose and expected beneficial use at the time the reservation was created. “It leaves States facing a possible tide of federal reserved water rights claims in excess of those rights already allocated, and budgeted, in the States’ respective water allocation system.” Agua Caliente also has the potential to create uncertainty for states that do not rely on a temporal priority system of rights. Using Minnesota’s administrative process of addressing riparian water-use conflicts as an example, the brief illustrates federalism and domestic water supply concerns that would arise if an implied federal reserved water right unnecessarily preempted applicable state law. The Supreme Court extended the petition response deadline to September 6, and then again to October 6. The Supreme Court denied the petition for cert on November 27, 2017. http://www.scotusblog.com/case-files/cases/coachella-valley-water-district-v-agua-caliente-band-cahuilla-indians/
Case Names	Issues – Groundwater as a CWA Point Source/Conduit
<i>Sierra Club v. Virginia Electric and Power Company</i>, CA (2017) <i>Hawaii Wildlife Fund v. County of Maui</i> (2018)	On November 6, 2015 the U.S. District Court for the Eastern District of Virginia 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 (2:15cv112) Fourth Circuit Court of Appeals (0:17-cv-1539) Ninth Circuit, #15-17447	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.”
Relevant Dates	
11/6/15: Motion to Dismiss denied	

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 3/23/17: District Court ruling 4/25/17: Virginia Electric and Sierra Club appeal to 4th Circuit (#17-1539 and # 17-1537) 5/22/17: Virginia Electric and Sierra Club filed motions to dismiss the appeals. 7/13/17: 4th Circuit granted the motions to dismiss both appeals for lack of jurisdiction.	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.” 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. Virginia Electric and the Sierra Club appealed the to the 4th Circuit. The Court dismissed both appeals, noting that the District Court ordered the parties to submit a plan, and did not yet enter an appealable judgement or issue an injunction. <i>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</i> On February 1, 2018, the 9th Circuit ruled that the County of Maui violated the CWA when it indirectly discharged treated wastewater from its injection wells through a groundwater conduit into the Pacific Ocean, a “navigable water.” Dye tracer tests showed the connection between the four wells at the Lahaina Wastewater Reclamation Facility and the ocean, and the court held that the wells were point sources, the effluent was a pollutant, and the county was subject to the National Pollutant Discharge Elimination System (NPDES) permitting requirements under the CWA. Although the U.S. District Court of Hawaii held that the groundwater is both a point source and navigable water under the CWA, the 9th Circuit declined to decide whether groundwater is a navigable water under the statute, and referred to the wells themselves as the point source. The county argued in its opening brief on appeal that the “conduit theory” ignores the text of the CWA and express congressional intent, and obliterates the distinction between “point source” and “nonpoint source” pollution, a distinction made no less than 11 times in the CWA. “How pollutants travel from the original point source to navigable water matters. They must travel to navigable water through a ‘discernible, confined and discrete conveyance,’ i.e., a point source.” The county also argued that such nonpoint sources of pollutants are regulated by the states. Protection of navigable water is only one of the purposes of the CWA. “A co-equal goal is the preservation of the states’ authority over the regulation of groundwater.... Courts cannot override this congressional decision to further the goal they think deserves priority.” The county cited decisions from the 1st , 5th, and 7th Circuits that “conclude that discharges into groundwater do not require an NPDES permit regardless of any hydrologic connection between groundwater and navigable water.” The 9th Circuit disagreed and noted that the county released the discharge through the wells, resulting in a pollutant that was confined, contained, and discharged from a discernable source. The court distinguished this from nonpoint source pollution that is widely dispersed and exempt from NPDES permits under the CWA. “That the groundwater plays a role in delivering the pollutants from the wells to the navigable water does not preclude liability under the statute.” The court held that the plain language of the statute does not require a direct connection between the point source and the navigable water, and cited several cases from the 9th, 2nd, 5th Circuits supporting the interpretation that indirect conveyance of pollutants through air or groundwater is subject to permitting. “The County could not under the CWA build an ocean outfall to dispose of pollutants directly into the Pacific Ocean without an NPDES permit. It cannot do so indirectly
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	either to avoid CWA liability. To hold otherwise would make a mockery of the CWA's prohibitions."
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, 2016 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	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
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.	“narrow and refine, if not render moot, at least some of the issues we asked the parties to brief.” 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.”
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	On September 2, 2016, 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 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.
4/21/16: 6th Cir. denied 6 petitions for en banc hearing	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.
5/5/16: Corps & EPA moved to dismiss <i>State of Texas v. EPA</i> from U.S. Dist. Ct.	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.
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	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,
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	
9/2/16: NAM petition for cert	
11/8/16: Minnesota District Court	

dismissed WOTUS case without prejudice due to 6th Cir. Jurisdiction (<i>Washington Cattlemen's Association et al. v. EPA</i>, 0:15-cv-03058) 1/13/17: S. Ct. grants cert for NAM 1/25/17: 6th Circuit stay pending S. Ct. decision on jurisdiction 4/27/17: Opening round of briefs in NAM appeal. 5/4/17: EPA Administrator Pruitt recuses himself from the WOTUS cases in which Oklahoma is involved. 1/22/18: S. Ct. reversed 6th Circuit ruling, jurisdiction over WOTUS Rule challenges belongs in Dist. Ct.	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 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 (NAM) 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. On January 25, 2017, the 6th Circuit held the WOTUS cases in abeyance pending the Supreme Court ruling in <i>NAM v. Department of Defense</i>. On April 3, 2017, the Supreme Court denied the Trump Administration’s request to stay proceedings on whether the 6th Circuit has jurisdiction to hear challenges of the WOTUS Rule. A hearing before the Court is expected to take place in October. On April 27, 2017, several briefs were submitted to the Supreme Court in <i>NAM v. Department of Defense</i>, including NAM’s opening brief and a supporting amicus brief from 30 states. The parties request a reversal of the 6th Circuit’s decision that it has subject matter jurisdiction over the consolidated petitions. The briefs argue that the federal rule redefining the Waters of the United States (WOTUS) does not fall within the exclusive, original jurisdiction of the circuit courts of appeals under 33 U.S.C. §1369(b)(1), because the rule does not fit within one of the seven actions listed for judicial review. They oppose the federal argument that policy concerns for judicial efficiency should grant immediate appellate jurisdiction, noting the wisdom in allowing difficult issues to mature through full consideration by different courts. NAM pointed out that, “Stretching the text of §1369(b) past its breaking point to increase efficiency undermines the very purpose of the [law].” The U.S. Supreme Court granted cert to review the 6th U.S. Circuit Court of Appeals determination that it has jurisdiction to hear challenges to the WOTUS rule, and whether federal or district courts are the right venue for such legal challenges. Oral arguments are set
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for October 11.

On January 22, 2018, the U.S. Supreme Court reversed the 6th Circuit’s ruling that challenges to EPA’s 2015 WOTUS Rule belong in the appellate court. The Court held that the rule falls outside the scope of CWA §1369(b)(1), so challenges to the rule must be filed in the federal district courts. The Supreme Court noted that the WOTUS Rule announces a regulatory definition for a statutory term; it is not an effluent limitation or other restriction of pollutant discharge under subparagraph (E), nor is it an action that issues or denies a permit under subparagraph (F), the two subparagraphs that the 6th Circuit relied on for jurisdiction and exclusive judicial review of the rule. The Court also rejected the federal government’s arguments that appellate court jurisdiction would be efficient and provide a consistent and orderly judicial review. The Court said, “Congress could have funneled all challenges to national rules to the courts of appeal, but it chose a different tack here: It carefully enumerated the seven categories of EPA action for which it wanted immediate circuit court review and relegated the rest to the jurisdiction of the federal district courts. Ultimately, the Government’s policy arguments do not obscure what the statutory language makes clear: Subparagraphs (E) and (F) do not grant courts of appeals exclusive jurisdiction to review the WOTUS rule.”

The Supreme Court is expected to issue a certified judgment returning the petitions to the 6th Circuit in late February, and the 6th Circuit is expected to dismiss the petitions and dissolve its nationwide stay of the WOTUS Rule.

On February 6, the states of Texas, Louisiana, and Mississippi filed a motion with the U.S. District Court for the Southern District of Texas for a nationwide preliminary injunction of the WOTUS Rule. *Texas et al. v. EPA et al.*, 3:15-cv-162

The same day, the states of Georgia, West Virginia, Alabama, Florida, Indiana, Kansas, South Carolina, Kentucky, Wisconsin, and Utah filed a motion with the 11th Circuit to issue a mandate to allow the states to request the U.S. District Court for the Southern District of Georgia to rule on their previously briefed motion for a preliminary injunction of the WOTUS Rule. *Georgia et al. v. Pruitt et al.*, #15-14035 (Dist. Ct. Case No. 2:15-cv-79)

See summary of the WOTUS cases through 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/> and https://www.americanbar.org/groups/environment_energy_resources/resources/wotus/wotus-rule.html#status

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.
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 in District Court 3/13/17: NM and NN file opposition to EPA's MTD in Dist. Ct. 4/6/17: EPA reply on MTD in Dist. Ct. 5/23/17: US amicus brief, NM v. CO 6/26/17: S. Ct. dismissed NM v. CO	Both New Mexico and the Navajo Nation filed responses to EPA's Motion to Dismiss, countering EPA's arguments. They also requested leave of the court to file amended complaints to add tort claims and certain factual allegations. As of May 24, 2017, the briefing is complete on EPA's Motion to Dismiss and New Mexico and the Navajo Nation's motions for leave to file an amended complaints. On July 28, 2017, the Court noted that EPA argues that its removal action precludes the plaintiffs' claims, and that discovery limited to the jurisdictional issue may be required. The parties conferred, and on August 22, the Court granted EPA until October 2, 2017 to produce documents relevant to the jurisdictional issue and the scope of EPA's response action. The parties are directed to submit a status report by October 19th, advising the Court whether further discovery is requested on the jurisdictional issue. On December 11, 2017, defendant Environmental Restoration filed a motion with the U.S. Judicial Panel on Multi-District Litigation, requesting a transfer of the cases for coordinated or consolidated pre-trial proceedings. EPA filed a motion on January 17, 2018, to stay the cases in New Mexico pending a decision on the transfer. On December 22, 2017, New Mexico filed a motion to conduct jurisdictional discovery. On February 12, 2018, the New Mexico District Court entered an order on several of Environmental Restoration's motions to dismiss and motions to strike, denying most of the requests, holding in abeyance the decision on whether the plaintiffs are barred from requesting injunctive relief, and striking the plaintiff's joint and several liability claims under state tort law. <i>For more information, see http://www.scotusblog.com/case-files/cases/new-mexico-v-colorado/. See previous summaries of cases, including claims from each complaint, through September 2016 in the St. George, Utah briefing binder, Tab M, September 2016 and through June 2017 in the Rohnert Park, California briefing binder, Tab U, June 2017.</i>

7/28/17: Court reviewed the various MTDs and advised the parties to confer on whether discovery was needed on the limited issue of jurisdiction over the claims.	
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.
Courts	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. Exceptions to the Report were filed in June, and Kansas filed an amicus brief in August.
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 5/22/17: U.S. filed an Exception to the Report 6/9/17: New Mexico and Colorado filed Exceptions to the Report, and several amicus briefs were filed by New Mexico entities 7/28/17: Replies to Exceptions filed by U.S., New Mexico, Colorado, and Texas; amicus briefs of TX and NM entities 8/4/17: Kansas amicus brief in support of Texas re: interstate	The Supreme Court heard oral arguments on the Special Master’s Report and related briefings on January 8, 2018. 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 Supreme Court documents at http://www.scotusblog.com/case-files/cases/texas-v-new-mexico-and-colorado/

compacts and impact of upstream groundwater diversions 9/1/17: Sur Replies filed.	
Case Names	Issue – ANILCA §103(c), NPS Authority to Regulate State Navigable Water as an Inholding within Park Boundaries
<i>Sturgeon v. Masica, Sturgeon v. Frost</i>	The 1980 Alaska National Interest Lands Conservation Act (ANILCA), 16 USC §1301 et seq., created/expanded the 150 million acres of National Park Service (NPS) land in Alaska, with boundaries of “conservation system units” (CSUs) enclosing State, Tribal, and privately-owned land. The non-federal enclaves were made exempt from federal regulations otherwise applicable to federal land within the CSU pursuant to ANILCA §103(c). In 2007, while John Sturgeon was stopped on a gravel to make repairs to his hovercraft, NPS law enforcement employees told Sturgeon it was a federal crime to operate the hovercraft within the boundaries of the Yukon-Charley, an ANILCA CSU. Sturgeon subsequently filed suit, arguing that the Nation River is a State-owned navigable river, exempt from NPS regulations against hovercraft under ANILCA §103(c). The 9th Circuit held that ANILCA §103(c) only exempted the State, Tribal and privately-owned land from regulations “solely” applicable to CSUs in Alaska. Since the NPS hovercraft ban (36 CFR 1.2(a), 2.17(e)) is applicable nationwide and not just in Alaska, the 9th Circuit held that the hovercraft ban applied to Alaskan land owned by the State, Native Corporations and individuals within the CSU boundaries.
Courts	
U.S. District Court of Alaska, 3:11-cv-0183	On March 22, 2016 the U.S. Supreme Court issued a unanimous 8-0 opinion by Chief Justice John Roberts rejecting the 9th Circuit’s interpretation of Section 103(c) of the Alaska National Interest Lands Conservation Act (ANILCA) in <i>Sturgeon v. Frost</i>. The Supreme Court held that the 9th Circuit’s interpretation of the statute is implausible and inconsistent with both the text and context of ANILCA, violating a fundamental canon of statutory construction. The Supreme Court noted that ANILCA repeatedly recognizes that Alaska is different and carves out numerous Alaska-specific exceptions to the National Park Service’s (NPS) general authority over federally managed preservation areas. Section 103(c) clearly draws a distinction between public and non-public lands. The 9th Circuit’s reading would prevent the NPS from recognizing Alaska’s unique conditions and would allow NPS to regulate non-public lands only through rules applicable outside Alaska, while public lands could be regulated through Alaska-specific provisions. Notably, the Supreme Court declined to decide: (1) whether the waters of the Nation River qualify as “public land” or belong to the State of Alaska for purposes of ANILCA; (2) whether the NPS has authority under Section 100751(b) to regulate Sturgeon’s hovercraft activities on the Nation River regardless of whether it is “public land;” or (3) whether the NPS has authority under ANILCA over both public and non-public lands within the boundaries of conservation system units in Alaska. The Court left those issues to be resolved on remand. The 9th Circuit held oral arguments October 25, 2016 to address the issues that remain, but no further briefing was filed. On January 2, 2018, John Sturgeon filed a new petition for certiorari with the U.S. Supreme Court, seeking to overturn the 9th Circuit’s October ruling that the National Park Service properly exercised its authority to regulate hovercraft use on the Nation River within the Yukon-Charley in Alaska. The 9th Circuit relied on an implied reservation of water rights, noting that one of the reservation’s primary purposes is to protect fish, and any diminution of water would impact that purpose. Sturgeon argued that this is an indefensible expansion of the reserved water rights doctrine, and a subversion of Alaska’s absolute sovereign right to its navigable waters and the soils under
9 th Cir., #13-36165, 768 F.3d 1066	
U.S. Supreme Court, #14-1209, 136 S. Ct. 1061 (2016) #17-949	
Relevant Dates	
10/30/13: District Court decision	
10/6/14: 9 th Cir. Decision	
10/1/15: Petition for writ of certiorari granted	
1/20/16: Oral arguments by Sturgeon, Alaska, NPS	
3/22/16: S. Ct. decision, remand to 9 th Cir.	
10/25/16: Oral arguments scheduled before 9 th Cir.	
10/_/17: 9 th Cir. Decision	
1/2/18: New petition for writ of certiorari (#17-949)	

them.

On January 5, 2018, Alaska filed its amicus brief in support of the petition. The state argued that the right to regulate and manage state-owned resources is an essential component of Alaska's sovereignty. The 9th Circuit's holding that the Nation River qualifies as public lands because Congress implicitly reserved an undefined and unquantified level of instream flow when it created the Yukon-Charley preserve "stretches the federal reserved water rights doctrine beyond all recognition." Alaska argued that a federal reserved water right is a limited, non-ownership right to use or preserve a specific volume of water necessary to fulfill the purpose of the reservation. The 9th Circuit's holding that the NPS reserved water right prevents any water use that would merely impact the purposes of the reservation defeats Alaska's rights in its waters "just because there may be some federal interest in some use of the water." The 9th Circuit did not limit the right to the use of a particular amount of water, but "invoked the doctrine to justify a wholesale grant of federal management authority over Alaska's navigable waters." The 9th Circuit went a step beyond the use of water, ruling that with its vested interest, the U.S. has "title" to the water, transforming state waters into federal lands subject to ANILCA's definitions, without explaining how a federal reserved water right eclipses the state's sovereign interests in managing its waters. "The Ninth Circuit's ruling subverts not only ANILCA, but also the constitutional equal footing doctrine, the Submerged Lands Act, and the Alaska Statehood Act."

See the Supreme Court docket at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-949.html> See summary of the ANILCA case through the end of February 2016 in the [Washington, D.C. briefing binder, Tab N, March 2016](#)

Tab T – Summary of WSWC Activities and Events

**Western States Water Council
Summary of Activities
October 2017 – March 2018**

WASHINGTON, DC VISITS

October 23-26, 2017 – WSWC Executive Director and Legal Counsel visited numerous Administration and Congressional offices with representatives of the Native American Rights Fund on tribal water rights settlement issues.

WSWC MEETINGS, SYMPOSIA AND WORKSHOPS

October 18-20, 2017 – The WSWC held its 185th Council Meetings in Albuquerque, New Mexico.

WGA COORDINATION

WGA Water Policy Advisor Ward Scott and WSWC Executive Director have frequent calls.

December 1-2, 2017 – WSWC Executive Director attended WGA's Annual Meeting in Phoenix, Arizona.

February 27, 2018 – WSWC Executive Director attended the State and Local Governmental Associations Summit.

WaDE DEVELOPMENT

October 10, 2017 - WaDE Program Manager addressed the Wyoming State Engineers Office Water Forum in Cheyenne, Wyoming.

February 5, 2017 – WaDE Program Manager met with the Water Foundation and participated in a California AB1755 Implementation Workgroup Meeting in Sacramento, California.

November 27-30, 2017 – WSWC WaDE Program Manager attended the Water Use Data and Research (WUDR) Program Review in San Antonio, Texas.

December 10-11, 2017 – WSWC WaDE Program Manager attended the American Geophysical Union (AGU) in New Orleans, Louisiana.

COORDINATION WITH WESTFAST AGENCIES

October 24, 2017 – WSWC Executive Director co-chaired the NIDIS Executive Council Meeting in Washington, DC.

January 16-18, 2018 – WSWC and NASA’s Western Water Applications Office (WWAO) co-sponsored a Water Information Management Systems Workshop in Pasadena, California.

February 7, 2018 - WSWC-WestFAST Federal Non-Tribal Water Rights Workgroup quarterly conference call and planning the Fall 2018 workshop.

February 28-March 2, 2018 - WSWC Executive Director attended the NOAA National Earth System Prediction Capability Workshop (Metrics & S2S Products) - College Park, Maryland.

March 8-9, 2018 - WSWC Executive Director attended an EPA/States WOTUS Consultation Meeting in Washington, D.C.

COORDINATION WITH OTHER ORGANIZATIONS

October 3-5, 2017 – WSWC Executive Director attended the Interstate Council on Water Policy (ICWP) Annual Meeting in Baltimore, Maryland.

October 6, 2017 – WSWC Executive Director presented at the WaterSMART Innovations Conference on a “Water Efficiency and the Colorado River Basin: New Landscape?” panel, in Las Vegas, Nevada.

November 6-10, 2017 – WSWC Executive Director attended AWRA’s Annual Meeting, participating on panels and a state water planning workshop in Portland, Oregon.

November 13-16, 2017 – WSWC Legal Counsel attended the National Association of Clean Water Agencies (NACWA) National Clean Water Law Seminar in Savannah, Georgia.

November 29-30, 2017 – WSWC Executive Director attended WRP Annual Meeting in Phoenix, Arizona.

December 12-15, 2017 – WSWC Executive Director attended the Colorado River Water Users Association Annual Conference in Las Vegas, Nevada.

December 19, 2017 – WSWC Executive Director participated in a Western Policy Network webinar on the Farm Bill.

February 27, 2018 – WSWC Executive Director attended the State and Local Governmental Associations Summit.

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) – WSWC Executive Director

Climate Adaptation Workgroup – WSWC Member Jeanine Jones of California

Subcommittee on Spatial Water Data, USGS Groundwater and Streamflow Information Program

Collaborative Working Group, Open Water Data Initiative (OWDI) Technical Development

Workgroup – 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 and WaDE Program Manager

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

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

Western Policy Network – WSWC Executive Director

Tab U – Future WSWC Meetings

WESTERN STATES WATER COUNCIL

FUTURE MEETINGS

Upcoming Council Meetings/Host States

2018 Meetings

Summer – Newport, Oregon
Best Western Agate Beach Inn
August 1-3, 2018

Fall – Idaho (last hosted 10/7/11 in Idaho Falls)

2019 Meetings

Spring –	Arizona	Last Hosted 10/10/14 in Scottsdale
Summer –	Washington	6/8/12 in Seattle
Fall –	Colorado	4/5/13 in Denver

2020 Meetings Projections

Spring –	Washington, D.C.	
Summer –	Wyoming	6/26/13 in Casper
Fall –	Texas	10/12/12 in San Antonio

2021 Meetings Projections

Spring –	Oklahoma	4/17/15 in Tulsa
Summer –	Montana	7/18/14 in Helena
Fall –	South Dakota	10/4/13 in Deadwood

2018 Symposia/Workshops

WSWC/CDWR S2S Precipitation Forecasting Workshop (continuing series)
San Diego, California
Doubletree San Diego Downtown
May 14-17, 2018

WSWC Water Quality-Quantity Nexus Workshop
Newport, Oregon
Best Western Agate Beach Inn
August 1, 2018

WSWC/WestFAST Non-Tribal Federal Water Rights Workshop
Idaho
TBD

MEETING SCHEDULE

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Tab V – State Reports

Nebraska State Report to WSWC

March 14-16, 2018

Washington D.C.

2018 Nebraska Legislative Session – Scheduled through April 18, 2018

- Budget reductions of some 4% to 6% are anticipated for most general funded agencies; on top of 8% reduction in past 2 years.
- Quiet session for water rights related matters proposed by agency.

Governor Ricketts Executive Order in July 2017 on Rules

- Imposed a 6 month moratorium on new rule-making and required an overall review of all existing rules. NeDNR review resulted in a proposed overall 20% reduction of existing rules to simplify and clarify agency customer service to water users. NeDEQ also had similar recommended changes, although many state rules are tied to federal rules. Implementation of proposed changes will take several years.

Republican River Compact

- Nebraska and Colorado executed a settlement on January 31, 2018 resolving potential claims for past alleged non-compliance with certain provisions of the interstate Compact. Subject to appropriation by Colorado, funds secured through settlement will be invested by Nebraska in projects targeting improved water management and control for surface water uses in the Republican River basin.

Platte River Recovery Implementation Program

- The States of Colorado, Wyoming and Nebraska are developing legislation for action by Congress during the next year or so, which will seek approval for the extension of the existing 13 year recovery program (2007 – 2019), for an additional 13 years, through 2032.

Nebraska DEQ continues to remain active in all matters related to WOTUS, including monitoring and influencing rule-making and the status of various litigation proceedings.

**Western States Water Council
North Dakota State Report
March, 2018**

Drought Conditions Continue

Starting with the Spring 2017, drought conditions developed over much of western and central North Dakota. These conditions persisted through the year, with 2017 being one of the most severe droughts the state has experienced in recent memory. While conditions have improved some, the dryness continues with the western 2/3rds of the state being in moderate drought and with a small exception in the northeast, the remaining portion being abnormally dry.

Bismarck has received 17.5 inches of snow this winter which is roughly 50% of average year to date. The National Weather Service is predicting a significant moisture event for next week with the potential for 1-1.5 inches of moisture over much of the central and eastern parts of North Dakota.

In response to the drought, the State Water Commission activated the Livestock Water Supply Assistance Program which provides a 50% cost share up to \$3,500 per project to livestock producers for development of sustainable livestock water supplies. To date the Commission has committed \$2,025,000 towards this program and has funded 514 projects.

State Water Commission Budget

The SWC is funded primarily through receipt of 20% of the oil extraction tax paid to the state through oil production. The increase in oil prices above \$60/ barrel has resulted in increased activity in the Baaken. The SWC has seen a corresponding increase in monthly revenue with actual revenue exceeding projected revenue with the increased activity. North Dakota currently has 877 wells awaiting completion, i.e. fracking.

South Dakota State Report

This year's legislature is almost over. Bills that might be of specific interest to Council member are:

- House Bill 1098 - Governor Daugaard's 2018 Water & Environment Funding Bill – The bill provides 13 million dollars for water, wastewater and solid waste projects. The bill unanimously passed the legislature and was signed by the governor.
- Senate Bill 25 – Updates NPDES permit fees that have not been changed since first adopted in 1992. The bill revises the current wastewater fees for the discharge of treated domestic wastewater to be based on current population data, rather than the 1990 Census, requires construction sites with a stormwater permit to begin paying a stormwater fee based on the size of the project, and authorizes DENR to develop administrative rules for stormwater fees on industrial sites, following stakeholder review and input. Despite support for the bill from municipalities and other groups that would pay the increased fees, the bill had to be reconsidered to pass the House. The bill has been delivered to the Governor for signature. Without this fee increase due to flat or decreasing federal funding, we would have been talking to EPA about returning stormwater delegation.
- House Bill 1081 – This was banner year for bills dealing with nonmeandered waters, as there were at least six different bills because during a 2017 special session, the Legislature passed an act containing certain provisions regarding the recreational use of nonmeandered waters that included a sunset clause so the issue would be revisited during the 2018 legislative session. All bills either died or are still waiting for final action except House Bill 1081, which deletes the sunset clause from the original act. It has passed both houses of the legislature and will be delivered to the Governor for signature.
- DENR opposed a number of bills that dealt with oil pipelines and gold exploration, to include one bill that would have required full public notice and opportunity for contested case hearings on applications for temporary water rights. The legislature defeated all bills opposed by DENR.

Texas Update

Western States Water Council - March 2018

Freshwater Mussels and the Endangered Species Act

The Texas hornshell was listed as an endangered species in February 2018. Texas, through the Texas Comptroller, will now need to designate critical habitat and develop a recovery plan. Even though the issue of state's jurisdiction over surface water was not addressed in the final rule, flow was identified as being a component to the survival and recovery of the Texas hornshell in the Rio Grande, Pecos River, and Devils River. Accordingly, a recovery plan could impact the agency's management of surface water in affected streams. Impacts could also be felt on individual wastewater discharge permit applications, where EPA and FWS provide comments. In addition, these permits may become more stringent, and new or expanding discharges could be challenged. These impacts are complicated by the limited information on mussel environmental sensitivities (e.g., ammonia, chlorine residual).

There are an additional 11 freshwater mussels in Texas under evaluation.

Drought Development

Although for the time being reservoir levels are generally good, drought is beginning to develop across the state. TCEQ is closely monitoring the progression of the drought, including actively monitors stream flow, reservoir levels, and the status of public water systems (systems). The TCEQ has Watermaster Programs in most of the areas where shortages regularly occur. These programs are dedicated to the management and enforcement of surface water rights. In addition, the TCEQ tracks systems that self-report having 180 days or less of available water. TCEQ works with these systems to restore their existing water supply or obtain a new supply, and helps with emergency drinking water planning, alternative water source identification, and development of potential funding options. As of February 14, 2018, there were:

- 3 systems on the High Priority 180-day or less list;
- 1,060 systems asking customers to follow outdoor water use restrictions;
- 405 systems asking customers to follow a voluntary watering schedule; and
- 655 systems implementing mandatory watering schedules, with 31 prohibiting all outside watering.

The TCEQ formed two task forces to provide focused drought response. The Emergency Drinking Water Task Force was formed to provide technical assistance, identify alternative water sources, and identify funding sources for drought stricken public water supply systems. The Drought Response Task Force was created to facilitate response to surface water right priority calls.

Small Water Systems

As of February 12, 2018, there are 6,976 systems serving a total population of 27,796,185 in Texas. Of those, 4,180 (60%) of the systems serve populations less than 500. These small communities face the greatest difficulty in supplying water of adequate quality and quantity because they have small customer bases and therefore often lack the revenues needed to hire and retain experienced managers, and to maintain and upgrade their facilities. Some owners even abandon these small public water systems (systems).

TCEQ has a dedicated "at-risk" team to assist troubled and non-functioning systems. The assistance includes: technical support, coordination with funding agencies, managerial and administrative training, locating temporary managers/receivers, and guidance/coordination to provide a path to compliance.

- As of February 14, 2018, there are 9 systems in receivership and 8 systems that are being operated by a temporary manager. The "at-risk" team is currently working with 74 systems.
- Through a contract with the Texas Rural Water Association, TCEQ provides approximately 700 free on-site technical/managerial assistance visits per year, most of which are for systems with less than 3,300 customers.

Wyoming State Report
WSWC – Arlington, Virginia
March 2018

1. **Snake River Wild & Scenic Act:** The Wyoming State Engineer's Office is in preliminary discussions with the Bridger-Teton National Forest and Grand Teton National Park on how to proceed with the water rights quantification of 26 wild and scenic stream segments (390 miles) in Wyoming, all within the state's water rights permitting system. This is a result of the Craig Thomas Snake Headwaters Legacy Act of 2008.
2. **Montana v. Wyoming:** In early 2007, Montana sued Wyoming in the United States Supreme Court alleging violations of the Yellowstone River Compact within the Tongue and Powder River basins. The breadth of the case shrunk considerably in 2012 when Montana dropped all of its claims related to the Powder River, leaving only the Tongue River and its tributaries at issue. After eleven years of litigation, in January the Special Master appointed in the case filed his Final Report and proposed Judgment and Decree with the Supreme Court. That Judgement and Decree was entered by the U.S. Supreme Court in February.
3. **Revised Stock & Domestic Wells Policy:** The Wyoming State Engineer's Office recently revised its policy on permitting and adjudication of stock and domestic wells. The new policy has removed limitations on the number of tanks or family dwellings each permitted well could serve. In addition, the new policy has removed the requirement of a Beneficial Use map and adjudication. The primary requirement is that the well produce no more than 25 gpm at all times, a value the appropriator may be asked to verify during a field inspection.
4. **Weather Modification Funding:** Funding for Wyoming's weather modification program in the Colorado River basin has received much discussion in this year's legislative session. The discussion has centered around what percentage of the total program costs should the state fund and what level should be funded by downstream interests. The funding bill is still under consideration.
5. **Primacy of Underground Injection Control (UIC) Program Class VI Wells:** The Wyoming Department of Environmental Quality (DEQ) Water Quality Division (WQD) has submitted its application for primacy of UIC Program Class VI, Carbon Sequestration wells to the U.S. EPA. Primacy of the Class VI program would allow WQD to issue and enforce permits for facilities designed for the purposes of geologic sequestration of carbon dioxide. Wyoming DEQ has been assembling the required program elements since 2008 and has requested an expedited review and approval of the primacy application.

Tab W – Newsletter Index

WESTERN STATES WATER NEWSLETTER INDEX

January 5, 2018 - March 2, 2018

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Tab XYZ – Sunsetting Positions for Summer
2018 Meetings (#381 - #383)



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RURAL WATER SUPPLY PROJECT/INFRASTRUCTURE NEEDS
Stateline, Nevada
July 10, 2015**

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

WHEREAS, there are eight authorized and active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota that have yet be completed at an estimated cost of around \$2.6 billion – while costs continue to increase due to delays, inflation and the rising costs of materials and labor – and at current levels of funding could completion of some project could be delayed beyond 2063; and

WHEREAS, there is a Federal responsibility to complete authorized rural water projects, particularly those intended to fulfill in part a solemn Federal promise and trust responsibility to compensate States and Tribes for lost resources as a result of the construction of Federal flood control projects and other actions; and

WHEREAS, recognizing Federal budget constraints, a modest increase in Federal expenditures would expedite completion of authorized projects and in the long run save taxpayer money while inadequate funding levels and untimely appropriations only increase delays and Federal costs and perpetuates rural and tribal communities’ hardships; and

WHEREAS, authorizing the increased use of Reclamation Fund revenues to expedite completion of these projects fulfills both financial and moral obligations that some beneficiaries have waited decades to see honored; and

WHEREAS, the Congress enacted the Rural Water Supply Act of 2006 (P. L. 109-451) and established the Bureau of Reclamation’s Rural Water Supply Program authorizing the agency to work with rural communities, states and tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies; and

WHEREAS, federal expenditures for rural water projects actually generate significant returns on the investment through increased national and local economic benefits, as well as improvements in quality of life; and

WHEREAS, Reclamation Fund receipts are largely derived from water and power sales, project repayments, and receipts from public land sales and leases, as well as oil and mineral-leasing and related royalties, from western lands adjacent to rural and tribal communities; and

WHEREAS, western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet our present rural water needs in the West for present and future generations, within the framework of state water law, as envisioned in Reclamation Act of 1902; and

WHEREAS, under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principle means for financing federal western water and power projects with revenues from western resources – but these receipts are only available for expenditure pursuant to annual appropriation acts; and

WHEREAS, with growing receipts -- in part due to energy development and high energy prices across the rural West -- and declining federal appropriations for Reclamation Act purposes, the unobligated balance grows larger and larger (and is expected to soon exceed \$16 billion), while the money is actually spent elsewhere for other federal purposes contrary to the Congress' original intent; and

WHEREAS, the WSWC has a long-standing policy in support of using receipts accruing to the Reclamation Fund for authorized projects, including rural and tribal water supply projects;

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.

BE IT FURTHER RESOLVED, that the Council recommend 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).



(See also No. 342, revised and reaffirmed June 8, 2012)

(See also No. 316, revised and reaffirmed July 17, 2009)

(See also No. 278, revised and reaffirmed July 21, 2006)

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
WATER TRANSFERS
and
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE PERMITS
Stateline, Nevada
July 10, 2015
(revised and reaffirmed)

WHEREAS, on August 1, 2003 the Western States Water Council adopted a resolution regarding water transfers and National Pollutant Discharge Elimination System (NPDES) discharge permits; and

WHEREAS, on July 21, 2006, the Western States Water Council adopted a resolution that generally supported the U.S. Environmental Protection Agency's (EPA) proposed amendment to its Clean Water Act regulations as published on the June 7, 2006 Federal Register (Vol. 71, No. 109), which exempted water transfers from the NPDES permitting program.

WHEREAS, in those resolutions the Western States Water Council declared its position that the transport of water through constructed conveyances to supply beneficial uses should not trigger federal NPDES permit requirements, simply because the transported water contains different chemical concentrations and physical constituents; and

WHEREAS, in those resolutions the Western States Water Council also expressed support for the ability of each Western State to use available authorities to place appropriate conditions on water transfers to protect water quality; and

WHEREAS, on June 13, 2008, the EPA published in the Federal Register (Vol. 73, No. 115) a final amendment to its Clean Water Act regulations (40 CFR Part 122.3(i)) that expressly excludes water transfers from regulation under the NPDES permitting program, and defines water transfers as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use; and

WHEREAS, the final rule relies on EPA's interpretation of the federal Clean Water Act and does not limit any ability of a State to use any available authority, including authority regarding nonpoint sources of pollution, to protect the water quality of the receiving water body in a water transfer;

WHEREAS, water transfers and water quality are essential to the social, economic and environmental well-being of the Western States, and

WHEREAS, the United States Court of Appeals in the case of *Friends of the Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009), upheld EPA's Water Transfer Rule holding it to be a reasonable construction of the Clean Water Act and therefore entitled to deference by the Federal Courts, and on which decision the United States Supreme Court subsequently denied a Petition for Writ of Certiorari;

Position No. 382
(See also No. 342, revised and reaffirmed June 8, 2012)
(See also No. 316, revised and reaffirmed July 17, 2009)
(See also No. 278, revised and reaffirmed July 21, 2006)

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council generally supports EPA's amendment to its Clean Water Act regulations as codified in 40 CFR 122.3(i).

BE IT FURTHER RESOLVED that the Western States Water Council supports the use by a State of available authorities to protect the water quality of the receiving water body in a water transfer.

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Position No. 383
Readopted
(formerly Position No. 344, June 8, 2012)

A VISION ON WATER

Adopted by the

Western States Water Council

July 10, 2015

Our Present Condition

Water in the West is an increasingly scarce and precious resource, given population growth and an expanding range of often competing economic and ecological demands, as well as changing social values. Surface and ground water supplies in many areas are stressed, resulting in a growing number of conflicts among users and uses. A secure and sustainable future is increasingly uncertain given our climate, aging and often inadequate water infrastructure, limited knowledge regarding available supplies and existing and future needs and uses, and competing and sometimes un-defined or ill-defined water rights. Effectively addressing these challenges will require a collaborative, cooperative effort among states and stakeholders that transcends political and geographic boundaries.

Our Vision

- State primacy is fundamental to a sustainable water future. Water planning, policy, development, protection, and management must recognize, defer to, and support state laws, plans, and processes. The federal government should streamline regulatory burdens and support implementation of state water plans and state water management.
- Given the importance of the resource to our public health, economy, food security, and environment, water must be given a high public policy priority at all levels.
- An integrated and collaborative approach to water resources management is critical to the environmentally sound and efficient use of our water resources. States, tribes, and local communities should work together to resolve water issues. A grassroots approach should be utilized in identifying problems and developing optimal solutions.
- Any approach to water resource management and development should accommodate sustainable economic growth, which is enhanced by the protection and restoration of significant aquatic ecosystems, and will promote economic and environmental security and quality of life.
- There must be cooperation among stakeholders at all levels and agencies of government that recognizes and respects national, regional, state, local and tribal differences in values related to water resources and that supports decision-making at the lowest practicable level.