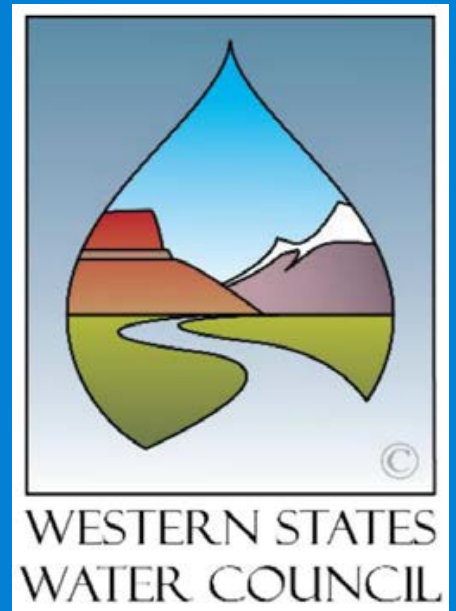
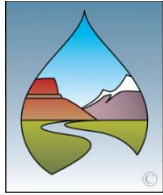




WESTERN STATES WATER COUNCIL
196TH Meeting
June 23-25, 2021 Cody, Wyoming





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: Western States Water Council Members and Others

FROM: Tony Willardson, Executive Director

DATE: June 16, 2021

RE: Briefing Materials for the 196th Western States Water Council Meetings

This is to advise you that briefing materials have been prepared for our summer meetings, being held in Cody, Wyoming as a hybrid in-person and virtual event on June 23-25, and may be downloaded on our [meetings webpage](#). The minutes from our Spring 2021 meetings held last March are available on our website (under Past Meetings) for your review. As you review the minutes, please bring any necessary changes to the attention of staff.

The Executive Committee met on June 3rd and reviewed and recommended the rewritten sunsetting positions for Council consideration. As marked up, these positions are included under Tab C in the briefing materials. All positions will be considered by the respective Committees and voted on during the Full Council meeting. As presented under Tab D, the Executive Committee also discussed and approved the FY2021/22 budget, while authorizing the Management Subcommittee to approve changes as needed.

All meeting agenda are posted on our [meetings webpage](#).

As a reminder, in order to participate in these meetings, all must register. Registration links are found on our [meetings webpage](#) for both in person and virtual attendance. When registering for remote attendance, please register separately for each day of the meetings. A confirmation email will be sent containing directions to join the meetings via Zoom webinar. As the links in the confirmation emails are unique to each individual registrant, they should not be shared. However, the meetings are open to the public and you are free to direct others to the [meetings webpage](#) to register.

On Wednesday, June 23rd, the meetings will begin at 1:30 p.m. with the Wyoming host state presentation. Brandon Gebhart, Director of the Wyoming Water Development Office, will address us. The Water Resources Committee meeting will be held directly following the host state presentation, starting no later than 2:30 p.m. Of note, a drought planning and response roundtable discussion will be held.

The Water Quality Committee meeting will commence on Thursday morning, June 24 at 9:00 a.m. and adjourn around 11:30 a.m. All will be on their own for an extended lunch break. The Legal Committee will start at 1:30 p.m. and adjourn around 4:00 p.m.

A sponsored reception will be held in the Holiday Inn Ballroom from 5:00 – 6:00 p.m. on Thursday. All Council members and guests attending in person are invited. We wish to acknowledge our reception sponsors who include: *Burg Simpson; Hinckley Consulting; Engineering Associates; Tyrrell Resources, LLC*; and the *Wyoming State Engineer's Office*.

The WSWC meetings will conclude with the Full Council meeting on Friday morning, June 25th begins at 9:00 a.m. and will adjourn by 11:30 a.m. A remote video presentation from Governor Mark Gordon will be a highlight. We will also have a presentation from Dr. Erin White, National Park Service Hydrologist at the Yellowstone Center for Resources. Next, Peter Colohan, Executive Director of the Internet of Water, will address members. Roger Gorke, the incoming WestFAST Chair (U.S. Environmental Protection Agency), will report on recent activities and planned listening sessions.

NOTE: In addition to our meetings, **on Wednesday, June 23 from 11:00 am-12:00 pm**, Roger Gorke and EPA have arranged for a special virtual listening session to hear from our states on their Clean Water Act §401 concerns. This is open to all WSWC states and provides an opportunity to deliver comments to EPA longer than the 3-minute time window during the scheduled public listening sessions. **If your state is interested in participating, please email Jessica Reimer (jreimer@wswc.utah.gov) by Tuesday, June 22 for additional information.**

We look forward to seeing many of you once again in Cody, and anticipate delightful and dynamic meetings. 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
196th WSWC MEETINGS
Summer Meetings – Cody, Wyoming
June 23-25, 2021

TABLE OF CONTENTS

TAB

- A. Schedule of Meetings – Agenda – 30-Day Notice
- B. Membership List
- C. WSWC Policy Positions

Sunsetting Positions

- WR [Position #423](#) – Rural Water Supply Project/Infrastructure Needs
- WQ [Position #424](#) - Water Transfers and National Pollutant Discharge Elimination System (NPDES)
Discharge Permits
- WR [Position #425](#) – Endangered Species and State Water Rights

List of Current WSWC Policy Statements

List of Sunsetting Positions

- D. Budget
- E. WSWC Activities and Events
- F. Future WSWC Meetings

Draft FY 2021-2022 Committee Workplans

- G. Executive
- H. Water Resources
- I. Water Quality
- J. Legal
- K. Drought Update
- L. Arizona’s Colorado River Shortage Mitigation Measures
- M. Subseasonal to Seasonal (S2S) Precipitation Forecasting Pilot Projects
- N. Western State Water Partnership
- O. Water Data Exchange (WaDE) 2.0 Update
- P. EPA Update
- Q. Western Governors’ Association Resolution, 2018-11 Cleaning Up Abandoned Mines
- R. Water Reuse and Grazing Reports
- S. Symposium on the Settlement of Reserved Indian Water Rights Claims
- T. Administration / Legislation / Litigation Update
- U. State Reports
- V. - *intentionally left blank* -
- W. Newsletter Index
- XYZ. Sunsetting Positions for 2021 Fall Meetings (#426 - #431)



SCHEDULE OF MEETINGS

WESTERN STATES WATER COUNCIL

Cody, Wyoming

Holiday Inn at the Buffalo Bill Village Resort

June 23-25, 2021

<u>Date</u>	<u>Time</u>	<u>Meeting</u>	<u>Room</u>	<u>Adjournment</u>
<i>(Mountain Daylight Time)</i>				
<u>Wednesday, June 23</u>				
	11:00 am	Section 401 Comment Opportunity with EPA	Ballroom	12:00 pm
	1:30 pm	Wyoming Host State Presentation and Water Resources Committee Meeting	Ballroom	5:00 pm
<u>Thursday, June 24</u>				
	9:00 am	Water Quality Committee Meeting	Ballroom	11:30 am
		- Lunch Break (on your own) -		
	1:30 pm	Legal Committee Meeting	Ballroom	4:00 pm
	5:00 pm	Social Hour sponsored by: <i>BurgSimpson</i> <i>Hinckley Consulting</i> <i>Engineering Associates</i> <i>Tyrrell Resources, LLC</i> <i>Wyoming State Engineer's Office</i>	Taggart's	6:00 pm
<u>Friday, June 25</u>				
	9:00 am	WSWC Full Council (196 th) Meeting	Ballroom	11:30 am

Thursday, June 3

(Mountain Standard Time)

2:30 pm	Executive Committee (via Zoom)	3:15 pm
---------	--------------------------------	---------

NOTE: The Executive Committee met virtually separately in advance of the meeting dates to address the sunseting resolutions, proposed budget and Committee work plan for the coming fiscal year, and other matters. A report to the Full Council will be provided at the meeting on June 25th.

AGENDA
EXECUTIVE COMMITTEE
Host State - Wyoming
Virtual Meeting
June 3, 2021

Call to Order at: 2:30 p.m. (Mountain Daylight Time)
Conducting: Jen Verleger, Chair

Zoom Meeting

TAB

1. **Welcome and Introductions**
 2. **Approval of Minutes**
 - D 3. **Report on Budget and Finances** – Tony Willardson
 - a. FY2020-21 Budget Report & Proposed FY2021-22 Budget
 - b. WaDE Grant Status and Applications
 - IOW (BHP & Moore)
 - Walton Foundation, NASA OpenET, USBR WaterSMART Applied Science
 - C 4. **Sunsetting Positions** – Jen Verleger
 - WR [Position #423](#) – Rural Water Supply Project/Infrastructure Needs
 - WQ [Position #424](#) - Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
 - L [Position #425](#) – Endangered Species and State Water Rights
 - E 5. **Executive Director’s Report/WSWC Activities and Events** – Tony Willardson
 - F 6. **Future WSWC Meetings** – Jen Verleger
 - 2021**
Fall – Deadwood, South Dakota – September 14-16, 2021
 - 2022 Meetings Projections**
Spring – Washington, D.C. – week of April 4-8
Summer – Montana (last held 7/18/14 in Helena)
Fall – Oklahoma (last meeting on 4/17/15 in Tulsa)
 - B 7. **Council Membership Update** – Tony Willardson
 - G 8. **Draft FY2021-2022 Executive Committee Work Plan** – Jen Verleger
 - XYZ 9. **Fall 2021 Meeting Sunsetting Positions** (all adopted on October 26, 2018)
 - WQ [Position #426](#) – supporting State Clean Water Act Section 401 Certification Authority
 - WQ [Position #427](#) – regarding Clean Water Act Jurisdiction
 - WR [Position #428](#) – regarding Federal Water and Climate Data Collection and Analysis Programs
 - WR [Position #429](#) – regarding Drought Preparedness, Prediction and Early Warning Programs
 - WR [Position #430](#) – regarding Bureau of Reclamation Drought Response program
 - L [Position #431](#) – regarding States’ Water Rights and Natural Flows
 10. **Other Matters**
- 4:00 p.m. Adjourn

AGENDA
WATER RESOURCES COMMITTEE
Holiday Inn at Buffalo Bill Village
Cody, Wyoming
June 23, 2021

Called to Order at: 2:30 p.m. (Mountain Daylight Time)
Conducting: Mary Verner, Committee Chair

Ballroom

TABS

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Position –**
Position #423 – Rural Water Supply Project/Infrastructure Needs (August 3, 2018)
- K 4. **Drought Update**
 - a. **NIDIS Drought.gov** – Veva Dehaza/Elisabeth Ossowski
 - b. **NWWC Water Supply Outlook** – Cara McCarthy, Team Leader/Hydrologist, Water and Climate Services, National Water and Climate Center, Natural Resources Conservation Service
- L 5. **Arizona Colorado River Shortage Mitigation Measures** – Tom Buschatzke/Amanda Long Rodriguez
6. **Drought Planning & Response Roundtable** – Discussion
- M 7. **Subseasonal to Seasonal (S2S) Forecasting Pilot Projects** – Jeanine Jones
8. **Wyoming Weather Modification Program** – Julie Gondzar, Cloud Seeding Program Manager, Wyoming Water Development Commission
- N 9. **Western States Water Partnership** – Vern Tharp, Manager
- O 10. **WaDE Dashboard & Stan the State Engineer** – Tony Willardson and Adel Abdallah
- H 11. **FY2021-2022 Water Resources Committee Work Plan** – Mary Verner
- XYZ 12. **Sunsetting Positions for 2021 Fall Meetings** – (all adopted October 26, 2018)
Position #428 – regarding Federal Water and Climate Data Collection and Analysis Programs
Position #429 – regarding Drought Preparedness, Prediction and Early Warning Programs
Position #430 – regarding Bureau of Reclamation Drought Response program
13. **Other Matters**

Adjourn by 5:00 p.m.

WATER QUALITY COMMITTEE MEETING

Holiday Inn at Buffalo Bill Village

Cody, Wyoming

June 24, 2021

Call to Order at: 9:00 a.m. (Mountain Daylight Time)

Conducting: Erica Gaddis, Chair

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Positions for Summer 2021 Meetings**
 - a. Resolution #424 - Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
- P 4. **EPA Update** – Roger Gorke
 - a. WOTUS Rule Withdrawal Announcement (*will discuss when EPA speakers join*)
 - b. Section 401 Certification Rule (*will discuss when EPA speakers join*)
 - c. Environmental Justice efforts
 - d. PFAS
 - e. Use of SRF Funds Factsheets
- Q 5. **Abandoned Hardrock Mines**
 - a. Erica Gaddis, Utah Department of Environmental Quality
 - b. Trevor Baggione, Arizona Department of Environmental Quality
 - c. Jennifer Carr, Nevada Division of Environmental Protection
 - d. Roger Gorke (*delivering remarks from Office of Mountains, Deserts and Plains*)
 - e. Roundtable Discussion
6. **Managing Sediment at Willwood Dam to Protect Downstream Fisheries** – David Waterstreet, Wyoming Department of Environmental Quality
7. **Water Quality and Wildfires**
 - a. Chris Carlson, U.S. Forest Service
 - b. Jeremy Neustifter, Colorado Department of Public Health and Environment
- T 8. **Staff Update** – Jessica Reimer
 - a. Legislation and Administration Update
- I 9. **FY 2021-22 Water Quality Committee Work Plan** – Erica Gaddis
- XYZ 10. **Sunsetting Positions for Fall 2021 Meetings**
 - a. [Position #426](#) – supporting State Clean Water Act Section 401 Certification Authority
 - b. [Position #427](#) – regarding Clean Water Act Jurisdiction
11. **Other Matters**
Adjourn by 11:30am

AGENDA
LEGAL COMMITTEE MEETING
Holiday Inn at Buffalo Bill Village
Cody, Wyoming
June 24, 2021

Call to Order at: 1:30 pm (Mountain Daylight Time)
Conducting: Chris Brown, Chair

Room: Ballroom

TAB

1. **Welcome and Introductions**
 2. **Approval of Minutes**
 - C 3. **Sunsetting Position**
Position #425 – Endangered Species and State Water Rights
 4. **Glen Canyon Dam Spillway (1983-84)** – Bill McCormick, Reclamation Civil Engineer, ret., and Gary Boring, President of Keo Civil, LLC
 5. ***Audubon of Kansas v. Department of the Interior et al. (Impairment of Quivira National Wildlife Refuge in Kansas)*** – Kenneth Titus
 6. **Department of Justice Western Water Update** – Stephen Bartell
 7. **New Mexico Courts and Water Rights Settlements** – Arianne Singer
 8. **Roundtable: Water Administration in Drought**
 - S 9. **17th Biennial Symposium on the Settlement of Reserved Indian Water Rights Claims** – Michelle Bushman
 - T 10. **Staff Updates** – Michelle Bushman
 - a. State Surveys
 - b. Grazing Water Rights
 - c. Legislation and Litigation
 - J 11. **Draft Committee FY2021-2022 Work Plan** – Chris Brown
 - XYZ 12. **Sunsetting Positions for Fall 2021 Meetings** – Chris Brown
 - a. Position #431 – regarding States' Water Rights and Natural Flows
 13. **Other Matters**
- 4:00 p.m. **Adjourn**

AGENDA

196th COUNCIL MEETING Holiday Inn at Buffalo Bill Village Cody, Wyoming June 25, 2021

Call to Order at: 9:00 a.m. (Mountain Daylight Time)
Conducting: Jen Verleger, WSWC Chair

Ballroom

TAB

1. **Welcome to Wyoming** – the Honorable Mark Gordon, Governor
 - a. Introductions
2. **Approval of Minutes**
3. **Water Resources Stewardship in Yellowstone National Park** - Erin B. White, Ph.D., P.E. Hydrologist, National Park Service, Yellowstone Center for Resources
4. **The Internet of Water** – Peter Colohan, Executive Director
5. **Committee Reports** – Action Items
 - C, H a. Water Resources Committee – Mary Verner
 - C, I b. Water Quality Committee – Erica Gaddis
 - C, J c. Legal Committee – Chris Brown
 - C, G d. Executive Committee – Jon Niermann
6. **WestFAST Report** – Roger Gorke, WestFAST Vice-Chair
- U 7. **State Reports**
- F 8. **Future Council Meetings** – Jen Verleger
- XYZ 9. **Sunsetting Positions for Fall 2021 Meetings** - #426- #431
10. **Other Matters**
- 11:30 a.m. Adjourn



WESTERN STATES WATER COUNCIL

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

Web Page: www.westernstateswater.org

MEMORANDUM

TO: Council Members

FROM: Tony Willardson, Executive Director

DATE: May 26, 2021

RE: **30-Day Notice of Summer 2021 (196th) WSWC Meetings – Cody, Wyoming**

This memorandum is notification that the 196th meetings of the Western States Water Council will be held on June 23-25, 2021 in Cody, Wyoming. Virtual meeting attendance will also be accommodated. In keeping with our Rules of Organization, any external policy positions to be proposed for WSWC consideration must be noticed 30-days in advance of the meeting.

Three positions are scheduled to sunset at this meeting if no action is taken to update them.

WR [Position #423](#) – Rural Water Supply Project/Infrastructure Needs
WQ [Position #424](#) - Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
WR [Position #425](#) – Endangered Species and State Water Rights

All of the positions are attached and are also available on our [website](#). In keeping with our usual practice, any recommended changes will be brought up for action during the Full Council meeting. We would encourage you to consult with your respective Governor's office and Western Governors' Association Staff Advisory Council (SAC) member, regarding the sunseting policy positions in advance.

Please note that the Executive Committee will meet virtually to discuss the sunseting positions on Thursday, June 3rd at 2:30 p.m. Mountain (1:30 p.m. Pacific; 3:30 p.m. Central). The Committee will also discuss the budget, the proposed FY2022 work plan, and address internal Council matters. Executive Committee members may designate an alternate if unable to join. The WSWC's internal policy specifies that for participation by persons who are not Governor-appointed WSWC representatives, the appointed member must provide written notification of any designee to act on their behalf. An email to Tony with the name of your designee is sufficient.

As is our usual practice, any changes in the policy positions discussed by the Executive Committee or the working committees will be brought up for action at the Full Council meeting on June 25th.

All meeting participants, whether attending in-person or virtually, must register in advance. Registration is available on our [meetings webpage](#). For those attending virtually, please note that on the Zoom registration form you will need to mark each session that you plan to attend, and you will

receive a confirmation email which contains a link to join. Do not share the link received in the email. If you are aware of anyone else wishing to participate remotely, please advise them to go to our meetings webpage to register for themselves.

The meetings will span three days, and the schedule has been designed to accommodate the hybrid format and to avoid conflicts some members have with other meetings. The meetings will commence on Wednesday, June 23 at 1:30 p.m. Mountain Time with the Wyoming Host State Presentation, followed immediately by the Water Resources Committee meeting, which will adjourn around 5:00 p.m. The Water Quality Committee meeting will begin Thursday, June 24 at 9:00 a.m. and end at 11:30 a.m. Following a two-hour lunch break (on your own), the Legal Committee will meet from 1:30 p.m. to 4:00 p.m. A sponsored social hour will be held at the Holiday Inn from 5:00 – 6:00 p.m. for WSWC members and their guests. The meetings will conclude with the Full Council meeting on Friday, June 25 from 9:00 a.m. to 11:30 a.m.

Special thanks to our social hour sponsors: Tyrrell Resources LLC; Engineering Associates; BurgSimpson; Hinckley Consulting; and the Wyoming State Engineer's Office.

The meetings are being held at the Holiday Inn at Buffalo Bill Village located at 1701 Sheridan Avenue in Cody, Wyoming. Guest room accommodations are at the Buffalo Bill Village cabins nearby and are held in the name of the Western States Water Council. The negotiated guest room rates are \$172 per night for one room cabins (1-4 persons). Please contact the hotel directly at **1-307-587-5544** to secure a reservation. The quoted rates will be extended one day prior and one day after the event to accommodate travel needs. Rooms are still available and the reservations cut-off date **has been extended until June 1, 2021**. Following the cut-off date, reservations will be accepted, based on availability, and at the Hotel's prevailing rates.

WSWC briefing materials will be available for download electronically on our website prior to the meetings. If you desire to receive a hard copy of the briefing materials, please contact Julie at jgroat@wswc.utah.gov by June 11, so that a book may be prepared and sent to you in advance of the meetings.

We look forward to seeing many of you in person in Cody!

Please contact me at twillardson@wswc.utah.gov with any questions.

Tab B – Membership List

WESTERN STATES WATER COUNCIL

MEMBERSHIP LIST

June 11, 2021

OFFICERS

Chair - **Jennifer Verleger**
Vice-Chair - **Jon Niemann**
Secretary-Treasurer - **John D'Antonio**

STAFF

Executive Director - **Tony Willardson**
Assistant Director/General Counsel - **Michelle Bushman**
Policy Analyst - **Jessica Reimer**
Wade Program Manager - **Adel Abdallah**
Data Analyst/Hydroinformatics Specialist - **Ryan James**
Office Manager - **Cheryl Redding**
Administrative Assistant - **Julie Groat**
WestFAST Federal Liaison - **Heather Hofman**

Staff E-mail: twillardson@wswc.utah.gov
mbushman@wswc.utah.gov
jreimer@wswc.utah.gov
adelabdallah@wswc.utah.gov
rjames@wswc.utah.gov
credning@wswc.utah.gov
jgroat@wswc.utah.gov
hhofman@wswc.utah.gov

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

ALASKA

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

****†Tom Barrett**, Chief
Water Resources Section
Division of Mining Land & Water
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1020
Anchorage, AK 99501-3579
(907) 269-8645
tom.barrett@alaska.gov

†Brent Goodrum, Deputy Commissioner
Office of the Commissioner
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, AK 99501
(907) 269-8431
brent.goodrum@alaska.gov

†Marty Parsons, Director
Division of Mining, Land & Water
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1070
Anchorage, AK 99501-3579
(907) 269-8600
marty.parsons@alaska.gov

†David Schade, Director
Division of Agriculture
Alaska Department of Natural Resources
1800 Glenn Highway, Suite 12
Palmer, AK 99645
(907) 761-3867
david.w.schade@alaska.gov

ARIZONA

***Honorable Doug Ducey**
Governor of Arizona
Statehouse
Phoenix, AZ 85007
(602) 542-4331

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

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

*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.

Ayesha Vohra, Deputy Counsel
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
(602) 771-8472
avohra@azwater.gov

Kelly Brown, Deputy Counsel (Alt.)
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
(602) 771-8646
kbrown@azwater.gov

Amanda Long-Rodriguez (Alt.)
Management Plans Coordinator
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
(602) 771-8420
along@azwater.gov

CALIFORNIA

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

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

†Karla Nemeth, Director
California Department of Water Resources
1416 Ninth Street
P.O. Box 942836
Sacramento, CA 95814
(916) 653-5791
knemeth@water.ca.gov

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

†Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
(916) 341-5161
(916) 341-5620 (fax)
eileen.sobeck@waterboards.ca.gov

COLORADO

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

****Rebecca Mitchell**, Director
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203
(303) 866-3441
rebecca.mitchell@state.co.us

Trisha Oeth, Director
Environmental Policy
Colorado Dept. of Public Health & Environment
4300 Cherry Creek Drive South, A-5
Denver, CO 80246-1530
(303) 692-3468
trisha.oeth@state.co.us

Kevin Rein, State Engineer/Director
Colorado Division of Water Resources
1313 Sherman Street, Room 318
Denver, CO 80203
(303) 866-3581
kevin.rein@state.co.us

Jeremy Neustifter, Policy Advisor (Alt.)
Water Quality Control Commission
Colorado Dept. of Public Health & Environment
4300 Cherry Creek Drive South, A-5
Denver, CO 80246
(303) 692-3478
jeremy.neustifter@state.co.us

Scott Steinbrecher (Alt.)
Assistant Deputy Attorney General
Natural Resources and Environment Section
Colorado Department of Law
1300 Broadway, 9th Floor
Denver, CO 80203
(720) 508-6287
scott.steinbrecher@coag.gov

IDAHO

***Honorable Brad Little**

Governor of Idaho
State Capitol
Boise, ID 83720
(208) 334-2100

****Jerry R. Rigby**

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

†Jess Byrne, Director

Idaho Department of Environmental Quality
Statehouse Mail
1410 North Hilton Street
Boise, ID 83706-1255
(208) 373-0240
jess.byrne@deq.idaho.gov

John Simpson

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

Gary Spackman, Director (Alt.)

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

KANSAS

***Honorable Laura Kelly**

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

****Earl Lewis, Chief Engineer (Alt.)**

Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6658
earl.lewis@ks.gov

Connie Owen, Director

Kansas Water Office
900 SW Jackson Street, Suite 404
Topeka, KS 66612
(785) 296-3185
connie.owen@kwo.ks.gov

Kenneth Titus, Chief Counsel

Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6700
kenneth.titus@ks.gov

Chris W. Beightel (Alt.)

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

Cara Hendricks, Assistant Director (Alt.)

Kansas Water Office
900 SW Jackson Street, Suite 404
Topeka, KS 66612
(785) 296-3185
cara.hendricks@kwo.ks.gov

Tom Stiles (Alt.)

Chief, Office of Watershed Planning
Kansas Department of Health & Environment
Signature Building
1000 SW Jackson Street
Topeka, KS 66612-1367
(785) 296-6170
tom.stiles@ks.gov

MONTANA

***Honorable Greg Gianforte**

Governor of Montana
State Capitol
Helena, MT 59620
(406) 444-3111

†Anna Pakenham Stevenson

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

†Chris Dorrington, Director (Alt.)

Montana Department of Environmental Quality
P.O. Box 200901,
Helena, MT 59620-1601
(406) 444-0496
cdorrington2@mt.gov

†**Amanda Kaster**, Director (Alt.)
MT Dept. of Natural Resources & Conservation
P.O. Box 201601,
Helena, MT 59620-1601
(406) 444-1948
amanda.kaster@mt.gov

Jay Weiner (Alt.)
Administrative Law Judge
MT Dept. of Natural Resources & Conservation
1539 11th Avenue
Helena, MT 59601
(406) 444-1510
jay.weiner@mt.gov

NEBRASKA

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

****Tom Riley**, Director
Nebraska Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676
(402) 471-2366
tom.riley@nebraska.gov

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

Jesse Bradley, Deputy Director (Alt.)
Nebraska Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676
(402) 471-2366
jesse.bradley@nebraska.gov

NEVADA

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

****Micheline Fairbank**
Deputy Administrator, Water Rights
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701
(775) 684-2872
mfairbank@water.nv.gov

Jennifer Carr, Deputy Administrator
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249
(775) 687-9302
jcarr@ndep.nv.gov

Adam Sullivan, State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701-9965
(775) 684-2861
asullivan@water.nv.gov

James Bolotin (Alt.)
Sr. Deputy Attorney General
Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701
(775) 684-1231
jbolotin@ag.nv.gov

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

Greg Lovato, Administrator (Alt.)
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249
(775) 687-9373
glovato@ndep.nv.gov

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

NEW MEXICO

***Honorable Michelle Lujan Grisham**
Governor of New Mexico
State Capitol
Santa Fe, NM 87501
(505) 476-2200

****John D'Antonio**, State Engineer
New Mexico Office of the State Engineer
Concha Ortiz y Pino Building
130 South Capitol Street, NEA Building
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6175
john.dantonio@state.nm.us

Greg Ridgley, General Counsel
New Mexico Office of the State Engineer
130 South Capitol Street
Santa Fe, NM 87506-5108
(505) 827-6150
greg.ridgley@state.nm.us

Rebecca Roose, Director
Water Protection Division
New Mexico Environment Department
1190 Street Francis Drive, N4050
P.O. Box 26110
Santa Fe, NM 87502-0110
(505) 827-2855
rebecca.roose@state.nm.us

NORTH DAKOTA

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

****†John Paczkowski**, Interim State Engineer
North Dakota State Water Commission
900 East Boulevard Avenue
Bismarck, ND 58505-0850
(701) 328-2750
jpaczowski@nd.gov

L. David Glatt, Director
North Dakota Dept. of Environmental Quality
Gold Seal Center
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501-1947
(701) 328-5152
dglatt@nd.gov

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

OKLAHOMA

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

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

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

†Sara Gibson, General Counsel
Oklahoma Water Resources Board
3800 North Classen Boulevard
Oklahoma City, OK 73118
(405) 530-8800
sara.gibson@owrb.ok.gov

OREGON

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

****Thomas M. Byler**, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
(503) 986-0900
thomas.m.byler@oregon.gov

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

SOUTH DAKOTA

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

****Hunter Roberts**, Secretary
SD Dept. of Agriculture & Natural Resources
523 East Capitol Avenue
Pierre, SD 57501-3181
(605) 773-5559
hunter.roberts@state.sd.us

Nakaila Steen, Natural Resources Engineer
SD Dept. of Agriculture & Natural Resources
523 East Capitol
Pierre, SD 57501
(605) 773-3352
nakaila.steen@state.sd.us

Kelli Buscher, Engineer Manager (Alt.)
Surface Water Quality
SD Dept. of Agriculture & Natural Resources
523 East Capitol
Pierre, SD 57501
(605) 773-3351
kelli.buscher@state.sd.us

Jeanne Goodman, Director (Alt.)
Division of Environmental Services
SD Dept. of Agriculture & Natural Resources
523 East Capitol Avenue
Pierre, SD 57501-3181
(605) 773-3153
jeanne.goodman@state.sd.us

Eric Gronlund, Chief Engineer (Alt.)
Water Rights Program
SD Dept. of Agriculture & Natural Resources
523 East Capitol Avenue
Pierre, SD 57501-3181
(605) 773-3352
eric.gronlund@state.sd.us

TEXAS

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

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

†Brooke Paup, Chairwoman
Texas Water Development Board
1700 North Congress Avenue
P.O. Box 13231
Austin, TX 78711-3231
(512) 463-7847
brooke.paup@twdb.texas.gov

Charles Perry, Senator (Alt.)
Texas State Senate
P.O. Box 12068
Austin, Texas 78711-2068
(512) 463-0128
charles.perry@senate.texas.gov

UTAH

***Honorable Spencer Cox**
Governor of Utah
State Capitol
Salt Lake City, UT 84114
(801) 538-1000

****Todd Adams**, Director
Utah Division of Water Resources
1594 West North Temple, Suite 310
P.O. Box 146201
Salt Lake City, UT 84114-6201
(801) 538-7230
toddadams@utah.gov

†Kimberly Shelley, Executive Director
Utah Department of Environmental Quality
195 North 1950 West
P. O. Box 144870
Salt Lake City, Utah 84114-4870
(801) 536-0095
kshelley@utah.gov

Norman K. Johnson
Natural Resources Division Director
Utah Attorney General's Office
1594 West North Temple, Suite 300
Salt Lake City, UT 84116
(801) 538-7227
normanjohnson@agutah.gov

Erica Gaddis, Director (Alt.)
Division of Water Quality
Utah Department of Environmental Quality
195 North 1950 West
P. O. Box 144870
Salt Lake City, Utah 84114-4870
(801) 536-4300
egaddis@utah.gov

Todd Stonely (Alt.)
Assistant Director of Planning
Division of Water Resources
Utah Department of Natural Resources
1594 West North Temple, Suite 310
Salt Lake City UT, 84116
(801) 538-7277
toddstonely@utah.gov

WASHINGTON

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

****Mary Verner**
Water Resources Program Manager
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6672
mary.verner@ecy.wa.gov

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

†Laura Watson, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-7009
laura.watson@ecy.wa.gov

Mike Gallagher (Alt.)
Water Resources Section Manager
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6058
mike.gallagher@ecy.wa.gov

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

WYOMING

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

****†Greg Lanning**, State Engineer
Wyoming State Engineer's Office
Herschler Building, 4th Floor East
122 West 25th Street
Cheyenne, WY 82002
(307) 777-1942
greg.lanning@wyo.gov

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

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

†Jennifer Zygmunt, Interim Administrator (Alt.)
Water Quality Division
Wyoming Department of Environmental Quality
200 West 17th Street, 4th Floor
Cheyenne, WY 82002
(307) 777-7072
jennifer.zygmunt@wyo.gov

WESTERN STATES WATER COUNCIL COMMITTEE ASSIGNMENTS

EXECUTIVE COMMITTEE

Tom Barrett - Alaska
Thomas Buschatzke - Arizona
Amanda Long-Rodriguez - Arizona
(Alternate)*
Jeanine Jones - California
Karla Nemeth - California
(Alternate)*
Becky Mitchell - Colorado
Jerry Rigby - Idaho
Earl Lewis - Kansas
Vacant - Montana
Tom Riley - Nebraska
Micheline Fairbank - Nevada
Bradley Crowell - Nevada
(Alternate)*
Roland Westergard - Nevada
(Alternate)*
John D'Antonio - New Mexico
John Paczkowski - North Dakota
Jennifer Verleger - North Dakota
(Chair) (Alternate)*
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
Hunter Roberts - South Dakota
Nakaila Steen - South Dakota
(Alternate)*
Jon Niermann - Texas
(Vice-Chair)
Todd Adams - Utah
Mary Verner - Washington
Greg Lanning - Wyoming

Management Subcommittee

Jennifer Verleger
(Chair)
Jon Niermann
(Vice-Chair)
John D'Antonio
(Secretary/Treasurer)
Tony Willardson
(Executive Director)
Jeanine Jones
(Former Chair)

Ex-Officio Representatives

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

LEGAL COMMITTEE

David Schade - Alaska
Ayesha Vohra - Arizona
Kelly Brown - Arizona
(Alternate)*
Jeanine Jones - California
Kevin Rein - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho
(Alternate)*
Kenneth Titus - Kansas
Jay Weiner - Montana
Jim Macy - Nebraska
Micheline Fairbank - Nevada
James Bolotin - Nevada
(Alternate)*
Greg Ridgley - New Mexico
Jennifer Verleger - North Dakota
Rob Singletary - Oklahoma
Thomas Byler - Oregon
Nakaila Steen - South Dakota
Hunter Roberts - South Dakota
(Alternate)*
Jon Niermann - Texas
Norman Johnson - Utah
Alan Reichman - Washington
Chris Brown - Wyoming
(Chair)

Clean Water Act Jurisdiction

Trisha Oeth - Colorado
Barry Burnell - Idaho
Tom Stiles - Kansas
Jennifer Carr - Nevada
Micheline Fairbank - Nevada
Jennifer Verleger - North Dakota
Allison Woodall - Texas
Lauren Driscoll - Washington
Bill DiRienzo - Wyoming

Non-Tribal Federal Water Needs Subcommittee

Jay Weiner - Montana
Micheline Fairbank - Nevada
Adam Sullivan - Nevada
Greg Ridgley - New Mexico
Jennifer Verleger - North Dakota
Jonathan Allen - Oklahoma
Dwight French - Oregon
Jesse Ratcliff - Oregon
Kathy Alexander - Texas
Norm Johnson - Utah
Buck Smith - Washington
Abigail Boudewyns - Wyoming
Chris Brown - Wyoming

Ex-Officio Representatives

BLM - Paul Curtis
BOR -Owen Walker
DOD - Marc Kodack
Lauren Dempsey
USFS - Michael Eberle
Chris Carlson
NPS - Jeff Hughes
Peter Fahmy

Tribal Reserved Water Rights Subcommittee

Jay Weiner - Montana
Greg Ridgley - New Mexico
Arianne Singer - New Mexico
Norman Johnson - Utah

WRDA/Corps Policies

Tom Stiles - Kansas
Jennifer Verleger - North Dakota
Kathy Alexander - Texas

WATER QUALITY COMMITTEE

Vacant - Alaska
Trevor Baggione - Arizona
Eileen Sobeck - California
Betty Olson - California
(Alternate)*
Trisha Oeth - Colorado
Jeremy Neustifter - Colorado
(Alternate)*
Jess Byrne - Idaho
Tom Stiles - Kansas
(**Vice-Chair**)
Vacant - Montana
Jim Macy - Nebraska
Jennifer Carr - Nevada
Greg Lovato - Nevada
(Alternate)*
Rebecca Roose - New Mexico
David Glatt - North Dakota
Julie Cunningham - Oklahoma
Shellie Chard - Oklahoma
(Alternate)*
Jennifer Wigal - Oregon
Nakaila Steen - South Dakota
Jeanne Goodman - South Dakota
(Alternate)*
Kelli Buscher - South Dakota
(Alternate)*
Jon Niermann - Texas
Earl Lott - Texas
(Alternate)*
Kimberly Shelley - Utah
Erica Gaddis - Utah
(**Chair**) (Alternate)*
Mary Verner - Washington
Todd Parfitt - Wyoming

Clean Water Act Subcommittee

Trisha Oeth - Colorado
Barry Burnell - Idaho
Tom Stiles - Kansas
Jennifer Carr - Nevada
Greg Lovato - Nevada
Jennifer Verleger - North Dakota
Allison Woodall - Texas
Lauren Driscoll - Washington

Water Quality/Quantity Nexus Workgroup

Tom Stiles - Kansas

WATER RESOURCES COMMITTEE

Tom Barrett - Alaska
Thomas Buschatzke - Arizona
Amanda Long-Rodriguez - Arizona
(Alternate)*
Karla Nemeth - California
Jeanine Jones - California
(Alternate)*
Rebecca Mitchell - Colorado
John Simpson - Idaho
Jerry Rigby - Idaho
(Alternate)*
Chris Beightel - Kansas
Vacant - Montana
Tom Riley - Nebraska
Adam Sullivan - Nevada
John D'Antonio - New Mexico
John Paczkowski - North Dakota
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
Nakaila Steen - South Dakota
Eric Gronlund - South Dakota
(Alternate)*
Jon Niermann - Texas
Earl Lott - Texas
(Alternate)*
Todd Adams - Utah
Mary Verner - Washington
(Chair)
Greg Lanning - Wyoming

Climate Adaptation and Drought Subcommittee

Jeanine Jones - California (Chair)

Ex-Officio Representatives

Corps - Rolf Olsen
NRCS - Mike Strobel

Water Information and Data Subcommittee (WIDS)

Lisa Williams - Arizona
Mathew Weaver - Idaho
Lane Letourneau - Kansas
Ginger Pugh - Kansas
Julie Cunningham - Oklahoma
Kent Wilkins - Oklahoma
Ken Stahr - Oregon
Kathy Alexander - Texas
Todd Adams - Utah
Candice Hasenyager - Utah

Ex-Officio Representatives

USACE - Steve Ashby
USBOR - Allison Danner
USEPA - Dwane Young
USGS - Nancy Barber
NASA - Brad Doorn
NOAA - DeWayne Cecil
NRCS - Mike Strobel

Committee Assignments

EXECUTIVE COMMITTEE

Tom Barrett - Alaska
Thomas Buschatzke - Arizona
Amanda Long-Rodriguez - Arizona (Alternate)*
Jeanine Jones - California
Karla Nemeth - California (Alternate)*
Becky Mitchell - Colorado
Jerry Rigby - Idaho
Earl Lewis - Kansas
Vacant - Montana
Tom Riley - Nebraska
Micheline Fairbank - Nevada
Bradley Crowell - Nevada (Alternate)*
Roland Westergard - Nevada (Alternate)*
John D'Antonio - New Mexico
John Paczkowski - North Dakota
Jennifer Verleger - North Dakota (Chair)
(Alternate)*
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
Hunter Roberts - South Dakota
Nakaila Steen - South Dakota (Alternate)*
Jon Niermann - Texas (Vice-Chair)
Todd Adams - Utah
Mary Verner - Washington
Greg Lanning - Wyoming

LEGAL COMMITTEE

David Schade - Alaska
Ayesha Vohra - Arizona
Kelly Brown - Arizona (Alternate)*
Jeanine Jones - California
Kevin Rein - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho (Alternate)*
Kenneth Titus - Kansas
Jay Weiner - Montana
Jim Macy - Nebraska
Micheline Fairbank - Nevada
James Bolotin - Nevada (Alternate)*
Greg Ridgley - New Mexico
Jennifer Verleger - North Dakota
Rob Singletary - Oklahoma
Thomas Byler - Oregon
Nakaila Steen - South Dakota
Hunter Roberts - South Dakota (Alternate)*
Jon Niermann - Texas
Norman Johnson - Utah
Alan Reichman - Washington
Chris Brown - Wyoming (**Chair**)

WATER QUALITY COMMITTEE

Vacant - Alaska
Trevor Baggione - Arizona
Eileen Sobeck - California
Betty Olson - California (Alternate)*
Trisha Oeth - Colorado
Jeremy Neustifter - Colorado (Alternate)*
Jess Byrne - Idaho
Tom Stiles - Kansas (**Vice-Chair**)
Vacant - Montana
Jim Macy - Nebraska
Jennifer Carr - Nevada
Greg Lovato - Nevada (Alternate)*
Rebecca Roose - New Mexico
David Glatt - North Dakota
Julie Cunningham - Oklahoma
Shellie Chard - Oklahoma (Alternate)*
Jennifer Wigal - Oregon
Nakaila Steen - South Dakota
Jeanne Goodman - South Dakota (Alternate)*
Kelli Buscher - South Dakota (Alternate)*
Jon Niermann - Texas
Earl Lott - Texas (Alternate)*
Kimberly Shelley - Utah
Erica Gaddis - Utah (**Chair**) (Alternate)*
Mary Verner - Washington
Todd Parfitt - Wyoming

WATER RESOURCES COMMITTEE

Tom Barrett - Alaska
Thomas Buschatzke - Arizona
Amanda Long-Rodriguez - Arizona (Alternate)*
Karla Nemeth - California
Jeanine Jones - California (Alternate)*
Rebecca Mitchell - Colorado
John Simpson - Idaho
Jerry Rigby - Idaho (Alternate)*
Chris Beightel - Kansas
Vacant - Montana
Tom Riley - Nebraska
Adam Sullivan - Nevada
John D'Antonio - New Mexico
John Paczkowski - North Dakota
Julie Cunningham - Oklahoma
Thomas Byler - Oregon
Nakaila Steen - South Dakota
Eric Gronlund - South Dakota (Alternate)*
Jon Niermann - Texas
Earl Lott - Texas (Alternate)*
Todd Adams - Utah
Mary Verner - Washington (**Chair**)
Greg Lanning - Wyoming

**WESTERN STATES WATER COUNCIL
NON-APPOINTED MEMBERS
June 2021**

ALASKA

†**David Schade**, Director
Division of Agriculture
Alaska Department of Natural Resources

†**Tom Barrett**, Chief
Water Resources Section
Division of Mining Land and Water
Alaska Department of Natural Resources

†**Brent Goodrum**, Deputy Commissioner
Office of the Commissioner

†**Marty Parsons**, Director
Division of Mining, Land and Water
Alaska Department of Natural Resources

CALIFORNIA

†**Karla Nemeth**, Director
California Department of Water Resources

†**Eileen Sobeck**, Executive Director
State Water Resources Control Board

IDAHO

†**Jess Byrne**, Director
Idaho Department of Environmental Quality

MONTANA

†**Anna Pakenham Stevenson**
Administrator, Water Resources Division
MT Dept. of Natural Resources and Conservation

†**Chris Dorrington**, Director
Montana Department of Environmental Quality

†**Amanda Kaster**, Director
MT Dept. of Natural Resources and Conservation

NORTH DAKOTA

†**John Paczkowski**, Interim State Engineer
North Dakota State Water Commission

OKLAHOMA

†**Shellie Chard**, Director
Water Quality Division
Oklahoma Dept. of Environmental Quality

†**Sara Gibson**, General Counsel
Oklahoma Water Resources Board

OREGON

†**Jennifer Wigal**
Water Quality Program Manager
Oregon Department of Environmental Quality

TEXAS

†**Brooke Paup**, Chairwoman
Texas Water Development Board

UTAH

†**Kimberly Shelley**, Executive Director
Utah Department of Environmental Quality

WASHINGTON

†**Laura Watson**, Director
Washington Department of Ecology

WYOMING

†**Greg Lanning**, State Engineer
Wyoming State Engineer's Office

†**Jennifer Zygmunt**, Interim Administrator
Water Quality Division
Wyoming Department of Environmental Quality

WESTERN STATES
FEDERAL AGENCY SUPPORT TEAM
(Updated 02/12/2021)

DEPARTMENT OF AGRICULTURE

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

Michael Eberle (FS)
National Water Uses and Rights Program Leader
Washington Office, Watershed, Fish, Wildlife,
Air and Rare Plants Staff
U.S. Forest Service
201 14th Street, SW
Washington, DC 20250
(202) 205-1093
michael.eberle2@usda.gov

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

Hofman, Heather (NRCS, Federal Liaison Officer
to WSWC and WestFAST)
Natural Resources Specialist
National Water and Climate Center
Natural Resources Conservation Service
1201 NE Lloyd Boulevard, Suite 802
Portland, OR 97232
503-414-3030
971-325-5171 (mobile)
heather.hofman@usda.gov
hhofman@wswc.utah.gov

DEPARTMENT OF COMMERCE

Werner, Kevin (NOAA, WestFAST Former Chair)
Director, Science and Research
Northwest Fisheries Science Center
National Oceanic and Atmospheric
Administration
2725 Montlake Blvd. East
Seattle, WA 98112
(206) 860-6795
kevin.werner@noaa.gov

Deheza, Veva (NOAA/NIDIS)
Executive Director, National Integrated Drought
Information System
National Oceanic and Atmospheric
Administration
325 Broadway
R/PSD, DSRC/GD104
Boulder, CO 80305-3337
(303) 497-3431
veva.deheza@noaa.gov

Clark, Edward (NOAA/NWS)
Director, National Water Center & Deputy
Director Office of Water Prediction
Office of Hydrologic Development
National Weather Service
205 Hackberry Lane
Tuscaloosa, AL 35401
(205) 347-1360
edward.clark@noaa.gov

WESTERN STATES
FEDERAL AGENCY SUPPORT TEAM
(Updated 02/12/2021)

DEPARTMENT OF DEFENSE

McInnis, Marissa (DOD)
Program Director, Water Resources and Climate
Resilience
Department of Defence
Pentagon, Washington, DC 20310
(571) 372-5001
Marissa.k.mcinnis.civ@mail.mil

Dempsey, Lauren M. (DOD)
Water Manager
United States Air Force
1690 Air Force Pentagon
Washington, DC 20310
(800) 525-0102
lauren.dempsey@us.af.mil

Benavides, Ada L. (USACE)
Senior Policy Advisor Planning and Policy
Division Headquarters
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314
(202) 761-0415
(202) 367-5571 (mobile)
Ada.Benavides@usace.army.mil

DEPARTMENT OF THE INTERIOR

Boyd, Robert (BLM)
Chief, Assessment and Monitoring Branch
National Operations Center
Bureau of Land Management
Denver Federal Center, Building 50
Denver, Colorado 80225-0047
(303) 236-5428
rboyd@blm.gov

Cuttillo, Paula PhD (BLM)
Senior Water Resources Specialist
Division of Wildlife Conservation, Aquatics, and
Environmental Protection
BLM Headquarters
Lakewood, CO 80215
303.239.3873
pcuttillo@blm.gov

Yontz, Travis (BOR)
Management Analyst
Bureau of Reclamation
1849 C Street. NW
Washington, D.C. 20240
(916) 764-1166 (mobile)
tyontz@usbr.gov

Harvey, Forrest "Ed" (NPS)
Chief, Water Resources Division
Natural Resource Stewardship & Science
Directorate
National Parks Service
1201 Oakridge Drive, Suite 250-8
Ft. Collins, CO 80525
(970) 214-5870 (mobile)
forrest_harvey@nps.gov

Higgins, Mike (FWS)
Water Resources Coordinator
National Wildlife Refuge System
U.S. Fish and Wildlife Service
1201 Oakridge Drive, Ste. 320
Fort Collins, CO 80525
(970) 266-2924
mike_j_higgins@fws.gov

Wolaver, Brad (FWS)
Chief Hydrologist, Division of Water Resources,
U.S. Fish and Wildlife Service
National Wildlife Refuge System
Southwest Region (AZ, NM, OK, TX)
500 Gold Ave SW, Albuquerque, NM 87102
505-239-9524 (mobile)
brad_wolaver@fws.gov

WESTERN STATES
FEDERAL AGENCY SUPPORT TEAM
(Updated 02/12/2021)

Esralew, Rachel (FWS)
Regional Hydrologist USFWS National Wildlife
Refuge System: Natural Resources Program
Pacific Southwest Region (CA, NV, Klamath
Basin)
3020 State University Drive East
Sacramento, CA 95670
916-790-0645 (mobile)
916-278-9420
rachel_esralew@fws.gov

Dalton, Melinda (Mindi) (USGS)
Deputy Director
Office of Programming and Planning
Water Mission Area
U.S. Geological Survey
1770 Corporate Drive, Suite 500
Norcross, GA 30093
(770) 283-9728
msdalton@usgs.gov

Lambert, Patrick (USGS, WestFAST Chair)
Program Manager
Integrated Water Availability Assessments
(IWAAs)
Water Mission Area
U.S. Geological Survey
2329 West Orton Circle
Salt Lake City, UT 84119
(801) 908-5053
(801) 755-4105 (mobile)
plambert@usgs.gov

McHale, Timothy (USGS)
Senior Science Advisor
Water Mission Area
Denver Federal Center, Bldg 67
Denver, CO
(303) 236-1225
tmchale@usgs.gov

ENVIRONMENTAL PROTECTION AGENCY

Gorke, Roger (EPA)
Senior Policy Advisor, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 591-5680
gorke.roger@epa.gov
NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION

Doorn, Bradley (NASA)
Program Manager, Water Resources
National Aeronautics and Space Administration
300 E Street, SW
Washington, DC 20546
(202) 358-2187
bradley.doorn@nasa.gov

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

DEPARTMENT OF JUSTICE

Bartell, Stephen G. (DOJ)
Assistant Chief, Natural Resources Section
U.S. Department of Justice
150 M Street NE, Suite 3.1611
Washington, DC 20001
(202) 305-0234
202-532-3079 (mobile)
stephen.bartell@usdoj.gov

Tab C – WSWC Policy Positions



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RURAL WATER SUPPLY PROJECT/INFRASTRUCTURE NEEDS

~~Newport, Oregon~~Cody, Wyoming
~~August 3, 2018~~June 25, 2021

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 six authorized and active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota ~~that of which five~~ have yet to be completed at an estimated federal cost of around \$~~1.2898~~ 1.2898 billion – while costs continue to increase due to delays, inflation and the rising costs of materials and labor – and at current levels of funding completion of some project could be delayed by decades; 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 the 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~~ limited federal appropriations for Reclamation Act purposes, the unobligated balance grows larger and larger (and is expected to soon exceed \$168 billion), while the money is actually spent elsewhere for other federal purposes contrary to the Congress' original intent; and

WHEREAS, the Western States Water Council (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).

Reclamation Rural Water Overview

2022 BUDGET SUMMARY

(dollars in thousands)				
<u>Rural Water Project</u>	<u>State</u>	<u>FY 2021 President's Budget</u>	<u>FY 2021 Enacted</u>	<u>FY 2022 Request</u>
Pick-Sloan Garrison Diversion Unit Construction	ND	\$3,538	\$35,746	\$20,398
Pick-Sloan Garrison Diversion Unit O&M	ND	7,684	7,684	7,749
Mni Wiconi Rural Water System O&M	SD	14,491	14,491	17,010
Fort Peck Reservation / Dry Prairie Rural Water System	MT	2,431	30,731	17,191
Rocky Boys / North Central Montana Rural Water System	MT	1,984	23,984	13,504
Lewis and Clark Rural Water System	IA, SD, MN	100	17,500	9,220
Eastern New Mexico Water Supply Project	NM	50	14,850	7,790
Total Construction Projects		\$8,103	\$122,811	\$68,103
Total O&M (Tribal)		<u>22,175</u>	<u>22,175</u>	<u>24,759</u>
Total Rural Water Program		\$30,278	\$144,986	\$92,862

Key Points:

- The FY 2022 Reclamation budget request funds the tribal and non-tribal portion of administration, construction, and operation, maintenance, and rehabilitation (OM&R) at six rural water projects for a total of \$92.9 million, which is \$52.1 million below the FY 2021 Enacted budget for these projects, and \$62.6 million above the FY 2021 President's Budget.
- No construction funding is requested for the Mni Wiconi project because it has completed construction. Mni Wiconi funds are only for OM&R.
- Reclamation is directed through individual project authorizations to provide OM&R funding for Tribal portions of Garrison Diversion Unit and Mni Wiconi Tribal systems in perpetuity.

Current Status:

Excluding the non-rural water component of the Garrison Diversion Unit project, the projects requested to be funded in FY 2022 as follows:

- **Mni Wiconi Project (South Dakota):** \$17.0 million for OM&R of tribal facilities on the Indian reservations.
- **Garrison Diversion Unit (rural-water component) (North Dakota):** \$20.4 million for

oversight and technical assistance of pre-construction, limited construction activities on tribal and non-tribal systems, and OM&R of completed tribal systems. Of critical need under the State Municipal & Industrial is the Biota Water Treatment Plant within the Northwest Area Water Supply (NAWS) Project, phase I is estimated at approximately \$32 million. Planned construction activities for FY 2022 include the NAWS Biota Water Treatment Plant, Cannonball Community upgrades, Kennel Community upgrades, the Fort Berthold System expansion, and the expansion of the Solen Service Area.

- **Fort Peck Reservation/Dry Prairie Rural Water Systems (Montana):** \$17.2 million for program administration and contract oversight by Reclamation and the Tribe on tribal systems, and limited construction on tribal and non-tribal systems. Project sponsors estimate that if the Project receives approximately \$17.8 million in FY 2022, the Project would be fully funded.
- **Rocky Boy's/North Central Montana Rural Water System (Montana):** \$13.5 million for program administration and contract oversight by Reclamation and the Tribe, and limited construction on tribal and non-tribal systems. Phase I of the water treatment plant construction is schedule for completion in 2022; Phase II is approximately \$17 million. Planned construction activities include: the Tribal Core Pipeline Segment number 7, the non-Tribal Big Sandy and Tiber County Water District components of Segment E1-B.
- **Lewis and Clark Rural Water System (Iowa, Minnesota, and South Dakota):** \$9.2 million for administration of the program, easement acquisition and construction of the Iowa-4, Iowa-5, and Sibley Service Line.
- **Eastern New Mexico Rural Water System (New Mexico):** \$7.8 million is requested in FY 2022 to cover part of the construction of FW1 and basic administrative activities related to the project in the event no additional funding is available.

(See also No. 382, revised and reaffirmed July 10, 2015)
(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

Newport, Oregon
Cody, Wyoming
August 3, 2018
June 25, 2021
(revised and reaffirmed)

WHEREAS, the Western States Water Council has long declared its position that the transport of water through constructed conveyances to supply beneficial uses should not trigger federal National Pollutant Discharge Elimination System (NPDES) ~~NPDES~~ permit requirements, simply because the transported water contains different chemical concentrations and physical constituents; and

WHEREAS, the Western States Water Council supports the ability of each Western State to use available authorities to place appropriate conditions on water transfers to protect water quality; and

WHEREAS, the Environmental Protection Agency (EPA) published 40 CFR Part 122.3(i), expressly excluding water transfers from regulation under the NPDES permitting program, and defining water transfers as an activity that conveys or connects 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 cases of *Friends of the Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009), and *New York State et al. v. Environmental Protection Agency*, 846 F.3d 492 (2nd Cir. 2017), 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 decisions the United States Supreme Court subsequently denied Petitions for Writ of Certiorari.

(See also No. 382, revised and reaffirmed July 10, 2015)

(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.

BE IT FURTHER RESOLVED that the Western States Water Council supports the codification of 40 CFR 122.3(i) into statute by the Congress.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
ENDANGERED SPECIES AND STATE WATER RIGHTS
~~Newport, Oregon~~Cody, Wyoming
~~August 3, 2018~~June 25, 2021**

WHEREAS, Section 2(c)(2) of the Endangered Species Act declares it is the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species (16 U.S.C. 1531); and

WHEREAS, water in the West is often a scarce resource critical for both a healthy economy and healthy environment, including protected endangered and threatened species; and

WHEREAS, water is both a public and a private resource, with some uses reserved for the public good, while others are recognized as protected private property rights; and

WHEREAS, the States are primarily responsible for the allocation, administration, management, and protection of the water resources and rights to the use of water within their borders, as well as the management and protection of diverse fish and wildlife species and the aquatic and terrestrial environments upon which they depend; and

WHEREAS, many, if not most, of the senior state granted rights to the use of waters in western rivers and streams predate federal environmental protections by decades, and the certainty provided by early water rights continues to be the foundation for past, present and future investments; and

WHEREAS, the West and its flora and fauna, including protected species, are part of a unique and unparalleled heritage reflecting the Nation's value for wild and open spaces, as well as a western conservation ethic; and

WHEREAS, western States and many western water uses are also committed to the preservation of western species through reasonable, transparent and effective regulatory protections and restrictions, as well as conservation incentives for private property owners; and

WHEREAS, opportunities exist for greater cooperation to conserve threatened and endangered species, while recognizing state granted water rights and addressing western water issues, without unmitigated or uncompensated "takings" of either.

NOW, THEREFORE, BE IT RESOLVED that the Council calls upon federal agencies to engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress' intent to resolve water and species protection issues.

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.)
467	L	3/25/2021	regarding the Dividing the Waters program
466	L	3/25/2021	on State primacy over groundwater
465	L	3/25/2021	supporting universal access to reliable, clean drinking water for federally recognized Indian tribes and Alaska native communities
464	WR	3/25/2021	supporting federal research on climate adaptation
463	WR	3/25/2021	regarding water and energy planning and policy
462	WR	3/25/2021	supporting water infrastructure funding
461	WR	3/25/2021	supporting weather station networks
460	WR	3/25/2021	supporting the use of Forecast Informed Reservoir Operations and Innovations
459	WR	3/25/2021	regarding probable maximum precipitation standards
458	L	10/15/2020	outlining actions Federal agencies should take to expedite State General Stream Adjudications
457	L	10/15/2020	supports the Dividing the Waters Program
456	WQ	10/15/2020	asserting state primacy on Protecting Ground Water Quality
455	WR	10/15/2020	supporting U.S. Department of Agriculture (USDA) Conservation Programs and Water Resources
454	L	10/15/2020	supporting Indian Water Rights Settlements
453	WR/E	7/22/2020	emphasizes state primacy over water and call for cooperative federalism and substantive consultation by federal agencies regarding water-related rules, regulations, directives, orders and policies
452	WR	7/22/2020	support federal authorization and financial support through the U.S. Geological Survey (USGS) for State Water Resources Research Institutes
451	WR	7/22/2020	requests Congress fully appropriate receipts accruing to the Reclamation Fund for their intended purpose
450	WR	7/22/2020	supporting NOAA data, forecasting, and research programs
449	L	7/22/2020	opposes any federal legislation intended to preempt state water law
448	WR	7/22/2020	supporting national dam safety programs
447	WR	3/6/2020	regarding the rural water and wastewater project/infrastructure needs and U.S. Department of Agriculture programs
446	WQ	3/6/2020	regarding the clean and drinking water state revolving funds and state and tribal assistance grants
445	WR	3/6/2020	regarding the National Levee Safety Act of 2007, levees and canal structures
444	WR	3/6/2020	regarding the transfer of federal water and power projects and related facilities
443	WR	3/6/2020	regarding the Reclamation Safety of Dams Act of 1978
442	WR	3/6/2020	regarding the Bureau of Reclamation's maintenance, repair and rehabilitation needs
441	WR	3/6/2020	urging Congress to support subseasonal to seasonal weather research, forecasting, and innovation
440	L	10/18/2019	supporting legislation requiring the federal government to pay state filing fees in state general stream adjudications
439	WR	10/18/2019	expressing support for implementation of the SECURE Water Act
438	WR	10/18/2019	urges the Administration and NASA to enhance focus on research for water resources applications and promote long term engagement with the WSWC
437	WR	7/18/2019	urging the Administration and Congress to Support Water Research and Development Programs at the Department of Energy National Laboratories
436	WR	7/18/2019	regarding Hydraulic Fracturing
435	WR	7/18/2019	supporting Strengthening the Resiliency of Our Nation to the Impacts of Extreme Weather Events
434	WR	7/18/2019	on the Preservation of Radio Frequencies necessary for Weather forecasting and Water Management
433	WR	3/22/2019	supporting Renewable Hydropower Development
432	WR	3/22/2019	supporting Rural Water Infrastructure Needs & Projects
431	L	10/26/2018	regarding States' Water Rights and Natural Flows
430	WR	10/26/2018	regarding Bureau of Reclamation Drought Response Program
429	WR	10/26/2018	regarding Drought Preparedness, Prediction and Early Warning Programs
428	WR	10/26/2018	regarding Federal Water and Climate Data Collection and Analysis Programs
427	WQ	10/26/2018	regarding Clean Water Act Jurisdiction
426	WQ	10/26/2018	supporting State Clean Water Act Section 401 Certification Authority

WSWC POLICY STATEMENTS

425	L	8/3/2018	regarding Endangered Species and State Water Rights
424	WQ	8/3/2018	regarding Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
423	WR	8/3/2018	regarding the Rural Water Supply Project/Infrastructure Needs

Sunsetted Positions

2020

- #410 Acknowledges state authority over “waters of the State” and called for recognizable limits to federal Clean Water Act jurisdiction. (*superseded by more recent position*)

2019

- #394 Urging Congress to authorize and the Administration to complete a comprehensive study of the Missouri River Mainstem Reservoir System’s authorized purposes and related benefits before addressing an appropriate balance and mix of uses. (*outdated*)
- #389 Urging Congress and the Administration to prioritize federal programs that provide the translation function between basic scientific research on climate and weather extremes to water resources management actions. (*positions more recently adopted*)

2017

- #373 Letter commenting on the proposed rule developed by the EPA and the USACE to clarify the scope of Clean Water Act jurisdiction. (*proposed rule became the 2015 Clean Water Rule*)
- #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. (*superceded by more recent position statements and letters*)
- #299 Supporting S. 2842, the Aging Water Infrastructure and Maintenance Act. (*enacted*)
- #300 Regarding introduction of the Cooperative Watershed Management Act of 2008 (S. 3085). (*enacted*)
- #301 Commenting on H.R. 135, the "21st Century Water Commission," specifically declaring that the WSWC be involved in the selection of members and that it include State and Native American involvement. (*Bill has not been reintroduced*)
- #302 Supporting the enactment of S. 895 to provide the Bureau of Reclamation with authority to assess rural water supply needs and for sufficient funding. (*enacted*)
- #303 Revised resolution in support of the Weather Modification Research and Technology Transfer Act. (*No federal research program or legislation has been reintroduced*)
- #306 Urging support for full funding of the USGS National Streamflow Information Program (NSIP) and sufficient funding for the Cooperative Water Program to match non-USGS contributions. (*outdated*)
- #307 Letter to Senator Bingaman, Senate Energy and Natural Resources Committee, expressing interest in S. 3231, the Omnibus Public Lands Management Act. (*outdated*)
- #311 Letter to Steve Stockton offering assistance to the Corps in their water planning initiative. (*outdated*)

2010

- #287 Setting forth the Council's past perspectives on a proposed "Twenty-First Century Water Commission." (*outdated - see #301 above*)
- #289 Support of the proposed Water Conservation, Efficiency and Management Act, to specifically authorize the Bureau of Reclamation's water conservation programs. (*separately authorized*)
- #290 Concern over the Administration's decision to zero out funding for the U.S. Bureau of Reclamation's Technical Assistance to States (TATS) Program. (*outdated*)
- #291/#292 Regarding the proposed Agricultural Water Enhancement Program. (*enacted*)

#295 Concern over budget request for federal funding for water and wastewater treatment, specifically EPA's State Revolving Fund (SRF) Capitalization Grants. (*combined with #296 and replaced with #330 – Apr 15, 2011*)

#296 Concern with OMB directive to EPA disallowing the use of SRF revenues to repay bonds. (*combined with #295 and replaced with #330 – Apr 15, 2011*)

2009

#276 Urging the Congress and Administration to Continue to Recognize State Primacy Regarding Water Rights and Water Quality Certification in the Federal Licensing of Hydroelectric Projects. (*supplanted by WGA resolution*)

#277 Letter commending the American Indian Environmental Office of EPA for its efforts in establishing the Tribal Water Program Council and expressing a hope that it would "offer an ongoing opportunity for state-tribal cooperation on issues of mutual interest." (*outdated*)

#279 Support for legislation (S. 2751 and H.R. 5136) to create a National Integrated Drought Information System within the National Oceanic and Atmospheric Administration. (*authority enacted*)

#280 Strong support for federal legislation, the National Drought Preparedness Act, to establish a national policy for drought and coordinate "proactive measures at all levels of government to plan, prepare and mitigate the serious impacts of drought." (*deferred to WGA resolution*)

#281 Support for Reclamation's Water Conservation Field Services Program and "Bridging-the-Headgate" Partnerships. (*outdated*)

#282 Regarding Federal Non-Tribal Fees in General Adjudications asking the Congress to pass legislation requiring the Federal government, when a party to a general water rights adjudication, to pay fees for costs imposed by the state to conduct the proceedings to the same extent as all other users. (*deferred to WGA resolution*)

#283 Reiterating strong support for maintaining a thermal band as part of the Landsat Data Continuity Mission, and the necessary funding. (*separately updated*)

2008

#262 Support for the U.S. Geological Survey's Cooperative Water Program (CWP) and opposes any effort to force the privatization of related USGS services. (*separately updated*)

#268 The WSWC 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

Comparison.xlsx

FY2021 Approved Budget/Expenditures & FY2022 Budget Projections

	FY2021 Approved Budget		WSWC FY2021 Budget Estimates	Proposed FY 2022 Budget (Projections)	% Change from FY2021 Budget
<u>INCOME</u>					Over / -Under
Member States Assessments	\$ 561,000.00	1	\$ 561,000.00	\$ 561,000.00	0.00%
Newsletter	\$ 2,200.00		\$ 2,200.00	\$ -	-100.00%
EPA EN Contracts	\$ -		\$ -	\$ -	
CDWR Contracts (S2S)	\$ -		\$ -	\$ -	
NASA JPL WWA0 (Tech Xfer) Wkshp	\$ 30,000.00		\$ -	\$ -	
Council Meeting Sponsors	\$ 3,500.00		\$ -	\$ -	
Miscellaneous Income	\$ -		\$ 1,229.00	\$ -	
Symposium (WSWC / NARF) Net Income	\$ -		\$ -	\$ -	
Symposium (Infrastructure)	\$ -		\$ -	\$ -	
Symposium/Workshop Sponsors	\$ -		\$ -	\$ -	
Interest	\$ 14,550.00		\$ 3,215.18	\$ 3,500.00	8.86%
Moore Foundation - Internet of Water w/Q4	\$ 308,195.00		\$ 329,154.27	\$ 195,393.00	-40.64%
New WaDE Agreement(s)	\$ -		\$ -	\$ 125,000.00	
TOTAL INCOME	\$ 919,445.00		\$ 896,798.45	\$ 884,893.00	-1.33%
<u>EXPENSE</u>					
Accounting	\$ 9,900.00		\$ 9,600.00	\$ 10,000.00	4.17%
Annual & Sick Leave Funding (HRA)	\$ -		\$ -	\$ -	0.00%
Audit	\$ 6,750.00		\$ 6,500.00	\$ 3,250.00	-50.00%
Contingencies	\$ 8,000.00		\$ 2,780.00	\$ 2,000.00	-28.06%
Contract Services	\$ 16,500.00		\$ 3,080.00	\$ 12,700.00	312.34%
Equipment Replacement Fund	\$ 3,000.00		\$ -	\$ -	-100.00%
Furniture-Equipment	\$ 2,500.00		\$ 500.00	\$ 1,526.00	-100.00%
Insurance	\$ 1,320.00		\$ 1,156.00	\$ 1,215.00	5.10%
Maintenance Contracts	\$ 6,000.00		\$ 4,987.00	\$ 5,000.00	0.26%
Meetings & Arrangements	\$ 15,000.00		\$ 4,991.00	\$ 16,000.00	220.58%
Office Supplies	\$ 2,500.00		\$ 1,002.00	\$ 2,000.00	99.60%
Payroll Benefits	\$ -		\$ -	\$ -	-
Insurance (Life & LT Disability)	\$ -		\$ -	\$ -	-
Healthcare (Med, Dental) +5.5%	\$ -		\$ -	\$ -	-
Pension	\$ -		\$ -	\$ -	-
Payroll Salaries (++ benefits & taxes)	\$ 737,130.00		\$ 707,495.00	\$ 760,997.00	3.24%
Payroll Taxes	\$ -		\$ -	\$ -	-
Pension Management	\$ 9,000.00		\$ 5,791.00	\$ 5,690.00	-1.74%
Postage & Freight	\$ 1,800.00		\$ 600.00	\$ 1,000.00	66.67%
Printing & Reproduction	\$ 3,500.00		\$ 1,476.00	\$ 2,000.00	35.50%
HOA Fees/Property Tax	\$ 7,000.00		\$ 6,838.00	\$ 7,000.00	2.37%
Storage Rent	\$ 3,500.00		\$ 3,288.00	\$ 3,500.00	6.45%
Reports & Publications	\$ 7,000.00		\$ 1,773.00	\$ 7,200.00	306.09%
Symposium (CDWR-S2S)	\$ 15,000.00		\$ -	\$ 5,000.00	-66.67%
Symposium (WIMS/WaDE)	\$ 15,000.00		\$ -	\$ -	0.00%
Symposium (WSWC / NARF)	\$ -		\$ -	\$ -	0.00%
Telephone (UBS/Comcast/Cellphone)	\$ 5,300.00		\$ 3,888.00	\$ 4,000.00	2.88%
Travel	\$ 20,000.00		\$ 3,594.00	\$ 10,000.00	178.24%
Utilities (Questar & Murray Power)	\$ 2,195.00		\$ 1,432.00	\$ 1,600.00	11.73%
Other - Software & Licensing	\$ -		\$ 900.00	\$ 7,220.00	
WaDE DPL Payments	\$ -		\$ 119,145.00	\$ 15,995.00	-86.58%
WaDE State Assistance	\$ 21,550.00		\$ 6,991.00	\$ -	-100.00%
TOTAL EXPENSES	\$ 919,445.00		\$ 897,807.00	\$ 884,893.00	-1.44%
			\$1,008.55	\$0.00	

Reserve Funds

1 Full dues from 17 states

Tab E – WSWC Activities and Events

Western States Water Council

Summary of Activities

March 2021 – June 2021

WASHINGTON, DC – ADMINISTRATION/CONGRESSIONAL OUTREACH

Since February, the Council has sent support request letters to 25 Senators and 12 members of the House Representatives, along with formal appropriations requests to 13 Senators and nine Representatives, asking for a \$15M National Weather Service Fiscal Year 2022 increase to begin a western S2S precipitation pilot for improving sub-seasonal to seasonal (S2S) precipitation forecasting.

Follow-up on those letters led to Zoom meetings with staff for eight Senators and four Representatives. Several WSWC members joined their respective State's congressional meeting. Rep. Grace Napolitano (D-CA) circulated a Dear Colleague letter in the House of Representatives, gathering 12 signatures from Democrats. We have not yet found a sponsor of a Dear Colleague letter on the Senate side.

Additionally, S2S support letters were submitted by the Association of California Water Agencies, California Chamber of Commerce, Central Utah Water Conservancy District, Interstate Council on Water Policy (ICWP), Salt River Project, Six Agency Committee (California's Colorado River contractors), Truckee Meadows Water Authority, Upper Colorado River Commission, and the Wyoming State Engineer's Office.

On March 19, the Executive Director wrote EPA Acting Assistant Administrator, Office of Water, Radhika Fox summarizing the WSWC's positions on various issues noting, "States have primacy to manage water resources and water quality within their borders, and most States employ delegated authority under the Clean Water Act (CWA). This state-federal relationship is especially important in light of the recent changes to the CWA Section 401 Implementation Rule and the new definition of "Waters of the United States" (WOTUS) under the Navigable Waters Protection Rule. The Council maintains that state engagement and meaningful state consultation regarding the implementation of these rules, and any potential changes to these rules, is critical."

On April 6, the Executive Director wrote House and Senate Appropriations Committee, Subcommittee on Energy and Water, leadership in support of a \$5M request for an Open Evapotranspiration (OpenET) software system and data platform through an operational use partnership (<https://openetdata.org/>), as well as a \$1M request for the Bureau of Reclamations Agrimet weather data observing system.

On April 13, Council Chair Jen Verleger joined the heads of the Association of State Drinking Water Administrators (ASDWA), Association of Clean Water Administrators (ACWA), Environmental Council of the States (ECOS), and Council of Infrastructure Financing Authorities (CIFA), representing State agencies and programs, in signing a letter to House and Senate leadership strongly expressing support for increased funding for drinking water, wastewater and stormwater infrastructure that protects public health and the environment.

On April 14, the Council signed an ICWP coalition letter supporting USGS streamgauge networks and modernization calling for a FY2022 request for Federal Priorities Streamgages of \$28.7M;

Cooperative Matching Funds for the Streamgauge Network of \$33M; and \$20M for the Next Generation Water Observing System (NGWOS) and Data Delivery Modernization.

On April 21, WSWC leadership wrote EPA Administrator Michael Regan raised concerns regarding their experiences implementing the Clean Water Act (CWA) 401 Certification Final Rule, finalized June 1, 2020. Outstanding uncertainty regarding the fate of the rule under the new Administration “makes it difficult for state agencies to adjust their programs appropriately. As review of the rule and any subsequent rulemaking will take some time, the Council urges EPA to collaborate with the Army Corps of Engineers and with states to develop, publish for comment, and issue interim guidance that provides States with the time, information and flexibility needed to make informed decisions, within the statutory limitations. If EPA decides to leave the rule as-is, States would request prompt communication of that decision combined with clear guidance on implementation of the rule going forward.”

On May 27, after consulting with Colorado WSWC member Becky Mitchell and consistent with existing Council positions, the Executive Director wrote Colorado Senators Mike Bennet and John Hickenlooper in support of funding for the Western States Water Partnership, an innovative, non-traditional public-private initiative to address gaps in the existing network of weather radar and improve water and weather-related predictive capabilities within Colorado and the West. In the past, the Colorado Water Conservation Board has provided funding for this initiative related to the Rio Grande basin.

On May 27, the Native American Rights Fund (NARF), the National Congress of American Indians (NCAI), and the Western States Water Council (WSWC), wrote House and Senate committee leadership to express and reiterate our strong support for construction, operation, and maintenance of critical water infrastructure, particularly in tribal and rural regions of the West. The letter noted our organizations have long supported negotiated settlements of Indian water rights claims, and expressed support for an extension of the Reclamation Water Settlements Fund to ensure that future water settlements have access to funding. Relevant WSWC positions were attached.

On June 1, the Council submitted written testimony to the House Appropriations Committee Agriculture

Subcommittee, in general support of “...the role of Conservation Title Programs in providing solutions to resolve water supply reliability, water quality impairments, groundwater recharge, and other water resource concerns facing agricultural water users and agricultural producers. These programs provide financial assistance that is particularly important to producers and rural communities, water users and water quality managers.”

WESTERN GOVERNORS’ ASSOCIATION COORDINATION

The Executive Director keeps in contact with the WGA’s Water Policy Advisor on various water issues.

The Council is also a member of the Western Policy Network. Led by WGA, and participates in quarterly calls.

The Council attends/participates virtually in WGA’s meetings.

Council staff have reviewed and shared with members WGA's sunseting positions of water resources and water quality.

WSWC CALLS, MEETINGS, SURVEYS, SYMPOSIA AND WORKSHOPS

March 23-25 - WSWC Spring 195th Meetings were hosted virtually by the State of Texas.

The Legal Committee has a number of outstanding surveys on numerous topics (ongoing)

June 3 - WSWC Executive Meeting held virtually

June 23-25 – WSWC Summer 196th Meetings held in Cody, Wyoming [w/virtual participation option].

COORDINATION WITH WESTFAST AGENCIES

On May 4, the Executive Director co-chaired the virtual National Integrated Drought Information System (NIDIS) Executive Council meeting.

On May 27, the final report of a Stakeholder Panel Review of the Western Water Applications Office – NASA/JPL Program was submitted with recommendations. The WSWC the Executive Director was one of eight outside experts asked to participate in this internal review of WWAO operations.

NASA Applied Sciences Program, WWAO & Water Resources Team collaboration (ongoing)

WSWC/NASA WWAO co-authoring paper of Research to Operations (R2O) (ongoing)

WSWC, USGS, USBOR, NASA, and others co-authoring paper on Water Use Estimates and Data Sharing in the US: Challenges and Future Directions (ongoing).

Western Regional Partnership (WRP) collaboration and Water Resources “Deep Dive” (ongoing)

WestFAST WEBINARS

March 17 - Southwest Oklahoma Water Supply Action Plan (SWAP)

April 21 - Crop Condition and Soil Moisture Analytics (Crop-CASMA) System for Agriculture

COORDINATION WITH OTHER ORGANIZATION

On April 13, Council Chair Jen Verleger joined the heads of the Association of State Drinking Water Administrators (ASDWA), Association of Clean Water Administrators (ACWA), Environmental Council of the States (ECOS), and Council of Infrastructure Financing Authorities (CIFA), representing State agencies and programs, in signing a letter to House and Senate leadership strongly expressing support for increased funding for drinking water, wastewater and stormwater.

On April 14, the Council signed an ICWP coalition letter supporting USGS streamgauge networks.

April 15-16 - WSWC/ICWP/NWSA Washington, DC Roundtable

May 27 letter of support for tribal water infrastructure with the Native American Rights Fund (NARF), the National Congress of American Indians (NCAI), and the Western States Water Council (WSWC).

Numerous calls, webinars and discussions with the Western Regional Partnership (on Department of Defense related water and readiness issues) as part of their Water Deep Dive.

COMMITTEES, TASK FORCES AND WORK GROUPS

Ad Hoc Group on Indian Water Rights Settlements – WSWC Executive Director/Assistant Director

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

AWRA 2021 Summer Land and Water Conference Program Planning Committee – WSWC Executive Director

CUAHSI Hydroinformatics Conference Planning Committee – WaDE Program Manager

Internet of Water Advisory Board (IoW) – WSWC Executive Director, Board Member

National Integrated Drought Information System (NIDIS) Executive Council – WSWC Executive Director, Co-Chair

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 Association of Fish and Wildlife Agencies (WAFWA) – WSWC Executive Director (liaison)

Western Policy Network – WSWC Executive Director

Western Regional Partnership – WSWC Executive Director/Assistant Director

WaDE DEVELOPMENT AND OUTREACH

Working with the Interstate Council on Water Policy (ICWP) Water Data Committee (ongoing)

WaDE and Internet of Water (IOW) discussion about connecting WaDE and the Geoconnex project to make WaDE data interoperable with USGS, EPA, and US Bureau of Reclamation data (ongoing)

WSWC discussions with Olsson and Sitka on Open Water Accounting and Trading Platform (ongoing)

WaDE 2.0 Portal design with the IT contractor, Don't Panic Labs (ongoing)

March 3 - Bureau of Reclamation WaterSMART-Applied Science Grants Webinar

March 3 - WaDE, WSWC, Wyoming State Engineer's Office, and Wyoming Water Development Office: Water Rights Data Discussion

March 15 - WaDE and USGS Coordination regarding Texas Water Development Board data

March 15 - WSWC/WaDE and Internet of Water Discussion for a third Colorado Roundtable

March 25 - WSWC/WaDE-Reclamation Water Rights Technical Discussion

March 25 - WSWC-Reclamation Water Rights Data Coordination

March 30 - Internet of Water, WaDE, and Lincoln Institute of Land Policy discussion on the Community Water Use Data that is developed for the Colorado River Basin

April 7 - WSWC, CUASHI, and IOW: Discussion on the Interim Deliverables to the Moore Foundation

April 9 - WSWC-Reclamation Water Rights Technical Discussion

April 9 - Demo WaDE Meeting with the Nature Conservancy- Thomas Iseman

April 12 - Reclamation Webinar: West-Wide Climate and Hydrology Assessment

April 14 - WSWC/WaDE and USGS Call to discuss states feedback on USGS Water-Use Data and Research (WUDR) grants and if WSWC can apply on their behalf

April 15-16 - Washington DC Roundtable (Virtual) Meeting

April 20 - WSWC/WaDE and Western Regional Partnership (WRP) Tribal Funding Subcommittee

April 21 - WSWC submitted proposal to the Bureau of Reclamation Applied Science Program seeking funding for the development of the Western Water Rights and Aggregate Water Use Data Access and Analysis Tool (WestDAAT)

April 22 - Washington State Department of Ecology and WSWC/WaDE Discussion

April 23, 2021; WSWC Water Information and Data Subcommittee (WIDS) Kickoff Meeting

April 23, 2021: SECURE Water Report - Colorado River Basin Webinar

April 28, 2021: WSWC/WaDE and OpenET Team discussion on a NASA Research Opportunities in Space and Earth Science (ROSES) Request for proposals

May 3 - WaDE/IOW and Walton Foundation Meeting to discuss funding WaDE

May 5 - Texas Water Right Data and WaDE Discussion

May 5 - OpenET Webinar: Filling One of the Biggest Data Gaps in Water Management

May 7 - WaDE Call with NASA and EPA partners to discuss Research To Operations (R2O) paper resubmission

May 12 - WaDE Presentation to the WRP Water Security Data Webinar

May 18 - OpenET API Working Group Meeting

May 21 - WSWC submitted a concept note proposal to the Walton Foundation to fund WaDE development.

May 24 - WaDE presentation to the Internet of Water Webinar

Tab F – Future WSWC Meetings

WESTERN STATES WATER COUNCIL

FUTURE MEETINGS

Upcoming Council Meetings/Host States

Fall – Deadwood, South Dakota
 September 14-16, 2021
 Gold Dust Casino & Hotel

2022 Meetings Projections

Spring –	Washington, D.C.	week of April 4-8
Summer –	Montana	last held 7/18/14 in Helena
Fall –	Oklahoma	last held 4/17/15 in Tulsa

2023 Meetings Projections

Spring –	Kansas	last held 10/9/15 in Manhattan
Summer –	North Dakota	last held 7/15/16 in Bismarck
Fall –	Nevada	last held 7/10/15 in Stateline

2021 Symposia/Workshops

Biennial Indian Water Rights Settlement Symposium – Virtual - August 24-25, 2021

*Improving Subseasonal to Seasonal Forecasts – Washington, DC - Fall

** Depending on existing and future state travel and meeting restrictions.*

MEETING SCHEDULE

W:\USERS\CHERYL\COMTGE\EL PASO_2021 MARCH\FUTURE MEETINGS CHART_2021.DOCX

[illegible]

	Alaska	Arizona	California	Colorado	Idaho	Kansas	Montana	Nebraska	Nevada	New Mexico	North Dakota	Oklahoma	Oregon	South Dakota	Texas	Utah	Washington	Wyoming	Other
180																			Wash. DC 3/22/16
181											Bismarck 7/15/16								
182																St. George 9/30/16			
183								Nebraska City 4/14/17											
184			Eohmert Park 6/29/17																
185										Albuquerque 10/20/17									
186																			Wash. DC 3/14/18
187													Newport 8/3/2018						
188					Coeur d'Alene 10/26/8														
189		Chandler 3/22/19																	
190																	Leavenworth 7/18/19		
191				Breckenridge 10/18/19															
192																			Cancelled - Wash.-DC 4/1/20 COVID-19
193																			No Host 7/22/20
194																			No Host 10/15/20
195															Virtual Texas 3/25/21				
196																		Cody 6/25/21	

Tab G – Draft FY2020-2021 Executive Committee Work Plan

**DRAFT
EXECUTIVE COMMITTEE
WORK PLAN
2021/2022**

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 (2018-08) and the other on water quality, Water Quality in the West (2018-12), 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 (CWA) jurisdiction and the definition of Waters of the United States, as well as the CWA 401 State Water Quality Certification.

WGA has deferred to the Council to take the lead on some issues, such as tribal water rights settlements.

2021/22: 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 of 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.

2021/22: 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 regularly with WestFAST representatives and will continue building and maintaining 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 often travel 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 of federal data gathering activities, including Landsat thermal data, U.S. Geological Survey streamgaging programs, USDA's National Weather and Climate Center and its snow survey activities, National Oceanic and Atmospheric Administration programs (including the National Integrated Drought Information System and improving subseasonal to seasonal (S2S) forecasting), 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, key Congressional leadership and staff, and senior Administration officials. Due to the Corona-19 pandemic and related restrictions on travel and meetings, the Council cancelled its Spring 2020 meetings in the Washington, D. C. area, but followed up with a number of virtual webinars with Administration officials. Following the elections, members and staff met virtually with a leader of the Biden transition team for the Department of the Interior.

2021/22: The Council will continue to communicate our positions with the new Administration and the Congress. Future meetings when appropriate will be scheduled with 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. Given the current pandemic, meetings have been held virtually. One benefit has been expanded participation and reduced meeting and travel costs. 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.

2021/22: The Summer 2021 meetings are scheduled to be held in Cody, Wyoming. The Fall 2021 meetings are scheduled to be held in Sioux Falls, South Dakota.

5. NEWSLETTER

Work to date: *Western States Water* provides members and others with accurate and timely information on various water resources topics, activities and events 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).

2021/22: 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 2021.

In 2019, the Council held a number of meetings and webinars in collaboration with relevant federal agencies, multiple stakeholders, and public and private experts on water resources infrastructure needs and financing strategies. This included exploring state financing authorities, policies, programs and projects, as well as public-private financing and cost sharing mechanisms. One goal is identifying common interests and promoting partnerships.

The Water Resources Committee, under the direction of the Executive Committee, and working with WestFAST, had planned to co-host a symposium on infrastructure with members of the

federal Water Subcabinet during the cancelled 2020 Spring meetings, and will continue to pursue future options to address infrastructure needs, strategies, and federal and state programs.

The Executive Committee considers hosting symposia on any topic and issues as their importance merits.

2021/22: The Legal Committee, under the direction of the Executive Committee, will coordinate with NARF in sponsoring the next Indian Water Rights Settlement Symposium.

Time Frame – Fall 2021

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: January – September

8. HISTORICAL REVIEW: ISSUES & OUTCOMES

Background: The Council has positions addressing numerous issues and has taken various actions and invested significant resources in attempting to influence outcomes. While the annual report, newsletter, meeting minutes and other sources document such work, there has never been a comprehensive review of some of the major topics addressed and outcomes achieved. Such a summary evaluating the influence the Council has had on outcomes would be useful. The Council has been active in both administrative and congressional affairs, including federal regulatory matters and federal budgeting and appropriations processes. The Council has also provided a forum for states to learn from each other, as well as serving as a resource and catalyst for innovation, such as the WSWC Water Data Exchange. Selecting appropriate metrics for measuring results could be challenging.

2021/22: The Committee will consider the best means of undertaking such a review and metrics for evaluating the Council's influence on matters that have been brought before the Council. The Committee, given its oversight functions, will use the results of any summary to guide the investment of Council staff and budgetary resources.

Subcommittee:

Time frame:

DRAFT
EXECUTIVE COMMITTEE
WORK PLAN
20210/20221

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 (2018-08) and the other on water quality, Water Quality in the West (2018-12), 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 (CWA) jurisdiction and the definition of Waters of the United States, as well as the CWA 401 State Water Quality Certification.

WGA has deferred to the Council to take the lead on some issues, such as tribal water rights settlements.

20210/221: 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 of 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 twelfth year.~~

20210/221: 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 regularly with WestFAST representatives and will continue building [and maintaining](#) 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 often travel 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 of federal data gathering activities, including Landsat thermal data, U.S. Geological Survey streamgaging programs, USDA's National Weather and Climate Center and its snow survey activities, ~~U.S.~~ National Oceanic and Atmospheric Administration programs (including the National Integrated Drought Information System and improving subseasonal to seasonal (S2S) forecasting), 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, key ~~committee~~ [Congressional](#) leadership and staff, and senior Administration officials. Due to the Corona-19 pandemic and related restrictions on travel and meetings, the Council cancelled its Spring 2020 meetings in the Washington, D. C. area, [but followed up with a number of virtual webinars with Administration officials.](#) [Following the elections, members and staff met virtually with a leader of the Biden transition team for the Department of the Interior.](#)

2021/22: [The Council will continue to communicate our positions with the new Administration and the Congress.](#) Future meetings when appropriate will be scheduled ~~to meet~~ with 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. [Given the current pandemic, meetings have been held virtually. One benefit has been expanded participation and reduced meeting and travel costs.](#) 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.

2021/22: The Summer 2021 meetings are scheduled to be held in Cody, Wyoming. The Fall 2021 meetings are scheduled to be held in [El Paso, Texas](#) [Sioux Falls, South Dakota](#).

5. NEWSLETTER

Work to date: *Western States Water* provides members and others with accurate and timely information on various water resources topics, [activities and events](#) –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).

2021/22: 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 2021.

In 2019, the Council held a number of meetings and webinars in collaboration with relevant federal agencies, multiple stakeholders, and public and private experts on water resources infrastructure needs and financing strategies. This included exploring state financing authorities, policies, programs and projects, as well as public-private financing and cost sharing mechanisms. One goal is identifying common interests and promoting partnerships.

[The Water Resources Committee, under the direction of the Executive Committee, and working with WestFAST, had planned to co-host a symposium on infrastructure with members of the federal Water Subcabinet during the cancelled 2020 Spring meetings, and will continue to pursue future options to address infrastructure needs, strategies, and federal and state programs.](#)

The [Executive](#) Committee considers hosting symposia on any topic and issues as their importance merits.

20210/224: [The Legal Committee, under the direction of the Executive Committee, will coordinate with NARF in sponsoring the next Indian Water Rights Settlement Symposium.](#)

Time Frame – Fall 20210

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: January – September

8. HISTORICAL REVIEW: ISSUES & OUTCOMES

Background: The Council has positions addressing numerous issues and has taken various actions and invested significant resources in attempting to influence outcomes. While the annual report, newsletter, meeting minutes and other sources document such work, there has never been a comprehensive review of some of the major topics addressed and outcomes achieved. Such a summary evaluating the influence the Council has had on outcomes would be useful. The Council has been active in both administrative and congressional affairs, including federal regulatory matters and federal budgeting and appropriations processes. The Council has also provided a forum for states to learn from each other, as well as serving as a resource and catalyst for innovation, such as the WSWC Water Data Exchange. Selecting appropriate metrics for measuring results could be challenging.

20210/224: The Committee will consider the best means of undertaking such a review and metrics for evaluating the Council's influence on matters that have been brought before the Council. The Committee, given its oversight functions, will use the results of any summary to guide the investment of Council staff and budgetary resources.

Subcommittee:

Tab H – Draft FY2020-2021 Water
Resources Committee Work Plan

DRAFT
WATER RESOURCES COMMITTEE
WORK PLAN
2020/2021

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

Background/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 a robust and performant architecture for accessing and sharing water data – Phase 2. WaDE 2.0 is a cloud-based schema centered around supporting use cases for data queries to support decision making within and across state boundaries. Along with the development of the WaDE 2.0 system, WSWC have been working on connecting publicly available water rights and water use datasets as published by our member state agencies into the WaDE SQL database. WSWC is working towards a user-friendly portal to access, filter, and analyze water rights and water use data.

With WSWC assistance, Member States are developing WaDE-compliant data services that will feed directly into the new WaDE platform. Some eastern states have expressed interest in deploying to the WaDE platform also, with a proto-type completed for New Jersey. WSWC will work with ICWP and through the USGS Water Use Data and Research (WUDR) program to engage states and other entities that wish to serve data in the WaDE platform.

WaDE is collaborating with and seeking to help integrate other national efforts, including the Water Availability and Use Program (WAUSP), which is led by the U.S. Geological Survey (USGS), as well as federal and non-federal open water data initiatives. WaDE supports these efforts by laying the groundwork for exchanging the core state data. Greater interoperability and consistent data standards are goals of the program.

The WSWC co-hosted a Water Information Management System (WIMS) workshop with NASA's Western Water Applications Office (WWAO) in 2018 and in September 2019 cohosted a WIMS workshop with USGS. Other events were planned, before meeting and travel restrictions were imposed due to the Covid-19 pandemic.

2021/2022: WSWC is work with its renovated WaDE architecture using cloud computing technology and adapting the current system to support specific use cases of the data, including a streamlined, spatially and temporally consistent water budget implementation for selected states. WSWC will also continue assisting participating member states to refine their data, find optimal ways to publish those data that are compatible with WaDE, as well as providing funding and internship support for states' data programs (subject to available funding). A WaDE beta portal with water rights and water use data is nearing completion.

The Council will also continue working with member states, USGS, NASA 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 through the WUDR program.

The Committee, through the Water Information and Data Subcommittee (WIDS) and various other work groups, will continue to gather information on state water availability and use data and summarize existing state capabilities. Work to help states develop, disseminate, visualize and review data on water availability will continue. The WSWC is seeks resources to maintain current efforts and assist states. A number of foundations are providing support.

Further, WSWC will assist CUAHSI by advising on data-standards and interoperability, reviewing their data products, assisting with the planning of data-related workshops.

Subcommittee: Sam Hermitte (TX), Lisa Williams, Natalie Mast (AZ), Mat Weaver, Linda Davis (ID), Ken Stahr (OR), Julie Cunningham, Kent Wilkins (OK), Gary Darling (CA), Steve Wolff (WY), Todd Adams, Candice Hasenyager (UT), Lane Letourneau, Ginger Pugh (KS), Nancy Barber (USGS), Allison Danner (USBOR), Dwane Young (USEPA), Forrest Melton (NASA)

Timeframe: Ongoing

2. WESTERN WATER OBSERVING SYSTEMS

Background/Work-to-date: The Council has a long history of working to support federal programs to maintain and improve the observation, measurement, monitoring and management of western water resources and related data, including related Interior, NASA, NOAA and USDA programs (see Positions #450, July 2020; #438 and #439, October 2019; and #428, October 2018). Such programs include but are not limited to USGS cooperative streamgaging and groundwater monitoring, NRCS snow survey and water supply forecasting, NASA/USGS Landsat, and EPA water quality monitoring. These data are important for a number of applications. Some examples include, but are certainly not limited to: (a) state and regional water planning and water rights administration; (b) local watershed and urban planning and development; (c) analyzing water balances and water budgets; (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.

2021/2022: The Council will 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:

Timeframe: Ongoing

3. SUB-SEASONAL to SEASONAL PRECIPITATION FORECASTING

Work to date: The Western States Water Council (WSWC) and California Department of Water Resources (CDWR) have entered into a number of agreements to assist with efforts to improve sub-seasonal to seasonal (S2S) forecasting skill (2 weeks to one year). Several workshops were held in between 2015 and 2019. 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. Additional workshops in 2020 were precluded by the pandemic. In 2020, NOAA released a report to Congress on efforts to improve S2S forecasting, as required by the Weather Research Act of 2017. The report recommendations included developing four pilot projects.

2021/2022: Additional S2S workshops are anticipated, and the Council will otherwise work to support federal efforts to improve our predictive capabilities and skill. The Council will support efforts to acquire sufficient federal appropriations for appropriate programs. The WSWC will work to promote federal funding to implement the 2017 Act, and the recommended S2S pilot projects in the West. (Position #441, March 2020)

Subcommittee:

Timeframe:

4. RESEARCH to OPERATIONS (R2O)/TECHNOLOGY TRANSFER

Background: Too often promising water resources related discoveries and scientific advances fail to lead to widespread improvements, for a variety of reasons, some technical, but often institutional, financial, economic or political. Research to Operations (R2O) and technology transfer success requires advance planning and effective partnerships that are often lacking. Academic and government research agencies may focus on important basic research, but even applied research organizations are generally not designed and staffed to bridge the so-called “valley of death” between researchers and those entities and individuals that can successfully envision and leverage resources to add value to that research through management, policy and operational changes.

Work to date: In August 2019, in cooperation with NASA’s Western Water Applications Office (WWAO), the Council sponsored a workshop intended to identify and begin to address the challenges inherent in effectively moving research advances towards improvements in water resources management and project operations. The workshop brought together partners from federal and state agencies that have experience with technology transfer, or that have programs that could be adopters of new technology and remotely sensed information products. Next steps were outlined in the workshop summary report.

2021/2022: A second planned WSWC/NASA workshop was postponed due to the pandemic. Future workshops will build upon the insights identified and connections established to: (1) Strengthen agency partnerships and continue building an inter-agency community to facilitate R2O in water resource management; . (2) Develop WSWC’s WestFAST network to help transition new technologies and information products for water resources management to operational federal

programs, including, but not limited to, remote sensing-based measurement technologies and sub-seasonal to seasonal (S2S) weather forecasting; and (3) Develop a strategy for raising awareness and support within state and federal government for R2O. Together we will identify best practices to transfer applied research to operational programs in western federal, state, and local water agencies and tribes.

5. 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 #421, March 14, 2018 and #428 October 26, 2018). The Council also supports development of an improved western observing system for extreme precipitation events and research to better understand hydroclimate processes (Position #450, July 2020). The Council's Executive Director serves as Co-Chair of the National Integrated Drought Information System (NIDIS) Executive Council with NOAA and USDA.

2021/2022: 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, and support appropriate authorizing legislation and appropriations.

Subcommittee:

Time Frame: Ongoing

6. 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.

2021/2022: 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. This may include the use or reuse of waters of impaired quality.

Subcommittee:

Timeframe:

7. 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, which 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 workshops and summarized the proceedings. Further, the Council has compiled summaries of western state infrastructure financing authorities, funding sources, policies and programs. Further, the Council has 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.

2021/2022: 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 #451, July 2020). 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 promote development of public-private partnerships to support this effort. As conditions permit, the Council will sponsor a symposium on infrastructure needs, strategies, and federal and state programs, under the direction of the Executive Committee, with WestFAST's assistance and in cooperation with other non-federal and federal interests. Regulatory streamlining is also important for water resource projects. The Council will work with the Administration and Congress towards successful water project development. Finally, the Council will provide a summary of western state water financing authorities and programs, as time and resources permit.

Subcommittee:

Time Frame:

8. 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. 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 #437, July 2019). The Council has participated with the Western Electric Coordinating Council (WECC) and related State Provincial Steering Group and Environmental Data Work Group.

2020/2021: 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, as well as related water quality concerns. The Council will evaluate as appropriate specific energy and water-related issues as they arise, such as hydraulic fracturing, hydropower licensing, Clean Water Act Section 401 certification, and other practices.

Subcommittee:

Timeframe: Ongoing

DRAFT
WATER RESOURCES COMMITTEE
WORK PLAN
2019/2020/2021

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

Background/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 the existing WaDE data sharing platform and update it to a more~~ robust and performant architecture ~~for accessing and sharing water data~~ – Phase 2. WaDE 2.0 is a cloud-based schema ~~_. The entire design of WaDE 2.0 has been~~ centered around supporting use cases for data queries to support decision making within and across state boundaries. Along with the development of ~~the~~ WaDE 2.0 system, WSWC have been working on connecting publicly available water rights and water use datasets as published by our member state agencies into the WaDE SQL database. WSWC is working ~~on developing towards~~ a user-friendly portal ~~to allow farmers, decision makers, managers, and researchers~~ to access, filter, and analyze water rights and water use data. ~~Nine WSWC members states water rights data has been transitioned to the new WaDE 2.0 and four more are in the process. Aggregate water use data for five states has been transitioned, and three more are in process.~~

~~The original WaDE portal supported data from sixteen states and eighteen WSWC state water agencies. With WSWC assistance, Montana is Member States are~~ developing WaDE-compliant data services that will feed directly into the new WaDE platform. ~~North Dakota is revamping their data program and has deferred their implementation at this time.~~ Some eastern states have expressed interest in deploying to the WaDE platform also, with a proto-type completed for New Jersey. WSWC will work with ICWP and through the USGS Water Use Data and Research (WUDR) program to engage states and other entities that wish to serve data in the WaDE platform.

WaDE is collaborating with and seeking to help integrate other national efforts, including the Water Availability and Use Program (WAUSP), which is led by the U.S. Geological Survey (USGS), as well as federal and non-federal open water data initiatives. WaDE supports these efforts by laying the groundwork for exchanging the core state data ~~that may be used to support these studies~~. Greater interoperability and consistent data standards ~~between federal data portals and other sensor-based, time-series portals under development by the Consortium of Universities for the Advancement of Hydrologic Science, Inc. (CUAHSI)~~ are goals of the program.

The WSWC co-hosted a Water Information Management System (WIMS) workshop with NASA's Western Water Applications Office (WWAO) in 2018 and ~~in September 2019 cohosted a WIMS workshop with USGS. plans to continue hosting Other events were planned, before meeting and travel restrictions were imposed due to the Covid-19 pandemic. these events every one to two years into the future (with the next one planned in mid-2019).~~

20210/20221: WSWC ~~is is work with its~~ renovateding the ~~WaDE~~ architecture ~~for a more robust and centralized application~~ using cloud computing technology and adapting the current system to support specific use cases of the data, including a streamlined, spatially and temporally consistent

water budget implementation for selected states. WSWC will also continue assisting participating member states to refine their data, find optimal ways to publish those data that are compatible with WaDE, as well as providing funding and internship support for states' data programs (subject to available funding). A WaDE beta portal with water rights and water use data is expected this Fall nearing completion.

~~The Council will collaborate with other states who are implementing new "open water data" legislation with interoperability and data standards setting guidance.~~ The Council will also continue working with member states, USGS, NASA 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 through the WUDR program.

The Committee, through the Water Information and Data Subcommittee (WIDS) and various other work groups, will continue to gather information on state water availability and use data and summarize existing state capabilities. Work to help states develop, disseminate, visualize and review data on water availability will continue. The WSWC is seeks resources to maintain current efforts and assist states. A, and a number of foundations are providing support.

~~The WIDS and WIMS will encourage dialogue on water data and science related topics between both WSWC appointees and their IT and data program management staff. Topics include water use reporting/permitting systems, IT related adjudications topics, cloud and on-site architectures for data management, use of sensor based and "big data," remote sensing innovations and tools under development.~~

Further, WSWC will assist CUAHSI by advising on data-standards and interoperability, reviewing their data products, assisting with the planning of data-related workshops.

Subcommittee: Sam Hermitte (TX), Lisa Williams, Natalie Mast (AZ), Mat Weaver, Linda Davis (ID), Ken Stahr (OR), Julie Cunningham, Kent Wilkins (OK), Gary Darling (CA), Steve Wolff (WY), Todd Adams, Candice Hasenyager (UT), Lane Letourneau, Ginger Pugh (KS), Nancy Barber (USGS), Allison Danner (USBOR), Dwane Young (USEPA), Forrest Melton (NASA)

Timeframe: Ongoing

2. WESTERN WATER OBSERVING SYSTEMS

Background/Work-to-date: The Council has a long history of working to support federal programs to maintain and improve the observation, measurement, monitoring and management of western water resources and related data, including related Interior, NASA, NOAA and USDA programs (see Positions #450, July 2020; #438 and #439, October 2019; 396 September 30, 2016; and #428, October 26, 2018). Such programs include but are not limited to -USGS cooperative streamgaging and groundwater monitoring, NRCS snow survey and water supply forecasting, NASA/USGS Landsat, and EPA water quality monitoring. These data are important for a number of applications. Some examples include, but are certainly not limited to: (a) state and regional water planning and water rights analysesadministration; (b) local watershed and urban planning

and development; ~~(c) via more consistent~~analyzing water balances and water budgets; (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.

20210/20224: The Council will 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:

Timeframe: Ongoing

3. SUB-SEASONAL to SEASONAL PRECIPITATION FORECASTING

Work to date: The Western States Water Council (WSWC) and California Department of Water Resources (CDWR) have entered into a number of agreements to assist with efforts to improve sub-seasonal to seasonal (S2S) forecasting skill (2 weeks to one year). ~~Several Two~~workshops were held in ~~between~~ 2015 ~~and~~ 2019. ~~Two additional workshops were held in 2016.~~ 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. ~~Other S2S workshops were held in San Diego in 2017, 2018 and 2019.~~ Additional workshops in 2020 were precluded by the pandemic. In 2020, NOAA released a report to Congress on efforts to improve S2S forecasting, as required by the Weather Research Act of 2017. The report recommendations included developing four pilot projects.

20210/20224: Additional S2S workshops are anticipated, and the Council will ~~otherwise~~ work to support federal efforts to improve our predictive capabilities and skill. ~~(Position #399, April 14, 2017)~~ The Council will support efforts to acquire sufficient federal appropriations for appropriate programs. The WSWC will work to promote federal funding to implement the 2017 Act, and the recommended S2S pilot projects in the West. (Position #441, March 2020)

Subcommittee:

Timeframe:

4. RESEARCH to OPERATIONS (R2O)/TECHNOLOGY TRANSFER

Background: Too often promising water resources related discoveries and scientific advances fail to lead to widespread improvements, for a variety of reasons, some technical, but often institutional, financial, economic or political. Research to Operations (R2O) and technology transfer success requires advance planning and effective partnerships that are often lacking. Academic and government research agencies may focus on important basic research, but even

applied research organizations are generally not designed and staffed to bridge the so-called “valley of death” between researchers and those entities and individuals that can successfully envision and leverage resources to add value to that research through management, policy and operational changes.

Work to date: In August 2019, in cooperation with NASA’s Western Water Applications Office (WWAO), the Council sponsored a workshop intended to identify and begin to address the challenges inherent in effectively moving research advances towards improvements in water resources management and project operations. The workshop brought together partners from federal and state agencies that have experience with technology transfer, or that have programs that could be adopters of new technology and remotely sensed information products. Next steps were outlined in the summary-workshop summary report.

2021/2022:—A second planned WSWC/NASA workshop was postponed due to the pandemic. Future workshops will build upon the insights identified and connections established to advance workshop objectives to: (1) Strengthen agency partnerships and continue building an inter-agency community to facilitate R2O in water resource management; by—(a) including participants across Federal agencies that have research and/or operational involvement in water resource management, including representatives from USGS, NOAA, NASA, and USBR; (b) structuring the workshop to be interactive and dialogue-based; and (3) soliciting feedback and follow-up engagement from participants in the development of a workshop report that synthesizes the current shared challenges, best practices, and pathway forward for R2O in water resource management. (2) Develop WSWC’s WestFAST network to help transition new technologies and information products for water resources management to operational federal programs, including, but not limited to, remote sensing-based measurement technologies and sub-seasonal to seasonal (S2S) weather forecasting; and —by—(a) engaging WestFAST members in the workshop Steering Committee; and (b) identifying technologies that meet water resource management needs and have high potential for R2O. (3) Develop a strategy for raising awareness and support within state and federal government for R2O. —through—(a) defining what “success” looks like; (b) discussing and documenting a pathway and associated timeline for financial planning for R2O, learning from projects that have been successful in R2O;(c) discussing and documenting a pathway and associated timeline for technical planning and coordination, learning from successful projects; and (d) helping the research community understand the process and lead times necessary for successful transition of projects to operational federal agency programs Together we will identify best practices to transfer applied research to operational programs in western federal, state, and local water agencies and tribes.

5. 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 #421, March 14, 2018 and #428 October 26, 2018). The Council also supports development of an improved western observing system for extreme precipitation events and research to better understand hydroclimate processes (Position #450, July 202007, June 29, 2017).

The Council's Executive Director serves as Co-Chair of the National Integrated Drought Information System (NIDIS) Executive Council with NOAA and USDA.

2021/2024: 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, and support appropriate authorizing legislation and appropriations.

Subcommittee:

Time Frame: Ongoing

6. 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.

2021/2024: 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. This may include the use or reuse of waters of impaired quality.

Subcommittee:

Timeframe:

7. 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, which 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 workshops and summarized the proceedings. Further, the Council has also compiled summaries of western state infrastructure financing authorities, funding sources, policies and programs. Further, the Council has 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.

2021/2024: 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 #451, ~~July 202008, June 29, 2017~~). 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 promote development of public-private partnerships to support this effort. As conditions permit, tThe Council will sponsor a symposium on infrastructure needs, strategies, and federal and state programs, under the direction of the Executive Committee, with WestFAST's assistance and in cooperation with other non-federal and federal interests. Regulatory streamlining is also important for water resource projects. The Council will work with the Administration and Congress towards successful water project development. Finally, the Council will provide a summary of western state water financing authorities and programs, as time and resources permit.

Subcommittee:

Time Frame:

8. 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. 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 #437, ~~July 2019395, July 15, 2016~~). The Council has participated with the Western Electric Coordinating Council (WECC) and related State Provincial Steering Group and Environmental Data Work Group.

2020/2021: 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, as well as related water quality concerns. The Council will evaluate as appropriate specific energy and water-related issues as they arise, such as hydraulic fracturing, hydropower licensing, Clean Water Act Section 401 certification, and other practices.

Subcommittee:

Timeframe: Ongoing

~~2019 Items 7. and 8. have been included in the Legal Committee workplan~~

Tab I – Draft FY2020-2021 Water Quality Committee Work Plan

**WATER QUALITY COMMITTEE
WORK PLAN
July 1, 2020 to June 30, 2021
Adopted July 22, 2020**

1. WATER QUALITY/QUANTITY NEXUS

Background: Western Governors’ Association (WGA) Policy Resolution 2018-08, Water Resource Management in the West, 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 preserve state authority to manage water through policies which recognize state law and the financial, environmental and social values of water to citizens of western states today and in the future.” (Paragraph (B)(3), emphasis added)

Work-to-Date: 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 (WQ2) 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.

During the WSWC October 2019 meeting in Breckenridge, Colorado the Committee heard a presentation from Alex Davis, Deputy Director of Water Resources for the City of Aurora about the city’s challenges related to the water quantity-quality nexus and the complex efforts to ensure adequate source water protection across several water basins.

2021-2022: The Committee supports WGA Resolution 2018-08, and directs staff to follow up on the next steps recommended in the 2015 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) 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; and (3) provide updated information from states on current water quality-water quantity issues at Council meetings. Initial conversations with the subcommittee have occurred.

Time Frame: Ongoing

WQ2 Nexus Workgroup – goal to re-establish in 2021

2. CLEAN WATER ACT ISSUES

There are several 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: On January 23, 2020, the Environmental Protection Agency and the Army Corps of Engineers finalized the Navigable Waters Protection Rule to create a new definition of protected waters consistent with the opinion of Justice Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006). The rule defines four categories of waters subject to federal jurisdiction:

- Territorial seas and traditional navigable waters
- Perennial and intermittent tributaries to those waters
- Certain lakes, ponds, and impoundments
- Wetlands adjacent to jurisdictional waters

There are 12 exclusions that narrow the scope of the new rule compared to the 2015 Waters of the United States (WOTUS) rule and prior laws and guidance.

The new rule was initiated after Executive Order 13788, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule was signed by President Trump on February 28, 2017. EPA and the Corps engaged in various levels of outreach in 2017 and 2018, including a State Co-Regulators meeting on March 8-9, 2017 that the WSWC Executive Director and representatives from Arizona, Oregon, and Wyoming participated in. The 2015 WOTUS rule was formally repealed on December 23, 2019, which re-codified the 1986 WOTUS definition to be informed by applicable guidance documents, legal definitions, and longstanding agency action (84 FR 56626). The new final rule was published in the Federal Register on April 21, 2020 (85 FR 22250).

On January 20, 2021, President Joe Biden rescinded EO 13788, though it is not anticipated to have any impacts since the Navigable Waters Protection Rule has been finalized.

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. 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 several requested changes. This Position was revised and readopted as #410 during WSWC summer meetings in Rohnert Park, California in 2017. In anticipation of the new proposed rule, the position was revised and readopted as #427 during WSWC fall meetings in Coeur d'Alene, Idaho in 2018. The State of Washington abstained from the vote. On April 12, 2019, WSWC submitted a comment letter with Position #427 to the proposed rule docket.

2021-2022: The Committee will continue to work with the Water Resources and Legal Committees through the Workgroup to understand and share how states are affected by and dealing with the changes to the “waters of the United States” definition. Staff will track any developments in agency actions regarding the WOTUS definition, and report on potential impacts to states.

Time Frame: Ongoing

CWA Rulemaking Workgroup: Tom Stiles (KS), Jennifer Verleger (ND), Julie Cunningham (OK), Todd Chenoweth (TX), Laura Driscoll (WA), Jennifer Carr (NV), and Kevin Frederick (WY).

*See Item 2 of the Legal Committee Workplan

b. Water Reuse

Background: In 2011, the WSWC prepared a report summarizing state responses to survey questions on water reuse standards, regulations, issues, projects and funding titled “Water Reuse in the West: State Programs and Institutional Issues.” Given that it has been nearly a decade since those responses were compiled, the Committee decided to update the report. At the October 2019 meeting in Breckenridge, the Committee expressed interest in coordinating survey responses with the Association of Clean Water Administrators (ACWA) and other organizations. Additionally, the Environmental Protection Agency recently unveiled their Water Reuse Action Plan (WRAP), a collaborative effort across federal agencies, water organizations and the private water sector. This is the first of its magnitude, intended to innovate, scale and implement water reuse technologies and policies. The WRAP identifies 37 actions and 200 implementation milestones. WSWC’s and ACWA’s survey update will help implement action 2.2.1: Compile Existing State Policies and Approaches to Water Reuse.

Work-to-Date: From November 2019 – January 2020, WSWC staff and council members worked with ACWA and other organizations to update survey questions. These questions were somewhat different from the 2011 questions and provided a comprehensive picture of what is happening in water reuse across the states. States submitted responses to the survey in mid-2020, and staff compiled these into a final report. This report will be available on the WSWC website.

2021-2022: With the report finalized, staff will work with ACWA to determine next steps, including potential publication in a national water policy or law journal.

Time Frame: 2021-2022

c. State Revolving Funds (SRFs) and Infrastructure Financing

Background: The Clean Water and Drinking Water SRFs provide states with capitalization grants that are leveraged with state contributions to offer financial assistance to cities, towns, communities and others to improve and construct water quality infrastructure. These programs are widely used and have been critically important for improving and maintaining water infrastructure at the local level. 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.

When Congress enacted the Water Infrastructure Finance and Innovation Act (WIFIA) in 2014, there was some concern that the subsequent WIFIA loan and guarantee program would redirect critical funds from the SRF programs. Thus far, this has not been the case (see table below). Since 2017, the WIFIA program has invited a total of 89 projects to apply for funding, with over \$13B in financing requests. SRFs have access to this funding and are also able to jointly fund projects in conjunction with WIFIA loans. In 2019, both types of funding mechanisms were used by projects. To date, 16 WIFIA loans have been closed totaling over \$3.5B in credit assistance to help finance \$8B for water infrastructure projects and create 16,000 jobs.

Congressional Appropriations for Water Infrastructure (FY2017-19), in millions

	Clean Water SRF & Title II	Drinking Water SRF	WIFIA
FY2017	\$1,393.9	\$863.2	\$30.0
FY2018	\$1,696.9	\$1,163.2	\$63.0
FY2019	\$1,694.0	\$1,164.0	\$68.0

Source: Congressional Research Service Report R43871

Work-to-Date: During the July 2018 meeting in Newport, Oregon, the Committee heard reports from Kansas and Washington on the process they went through to apply for WIFIA loans during the first round, and on the water projects that were built with these low-interest loans. Since then, projects in member states Arizona, California, Nebraska, North Dakota, Oklahoma, Oregon and Utah have been funded. Overall, WIFIA funded projects are larger than typical SRF-funded projects, while both programs prioritize those that are shovel-ready and credit-worthy.

WSWC Position #446 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 and meet federal mandates. WGA Policy Resolution 2018-12, Water Quality in the West, also supports the SRFs as “important tools” and requests greater flexibility and fewer restrictions on state SRF management.

2021-2022: The Committee will continue to support the WGA and WSWC positions. WSWC staff will update the Committee on developments within Congress and the Administration that have potential to impact SRFs. As needed, Committee members and WSWC staff will meet with the Administration and Congress officials 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, but for the limitations, and how many are walking away from SRFs because of these restrictions, as well as options for a right of first refusal by the SRFs prior to funding projects through WIFIA.

Time Frame: Ongoing

d. 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.

WGA Policy Resolution 2018-12 (paragraph B(2)(c)) and WSWC Position #424 support EPA's Water Transfers Rule, 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.

On February 18, 2020, WGA sent a letter to the Committee on Energy and Natural Resources in support of the Drought Resiliency and Water Supply Infrastructure Act (S. 1932), in which it suggested including language to affirm the rule in federal statute in order to "add a needed measure of stability and certainty to western water planning and drought mitigation efforts." WSWC and other state organizations also signed onto this letter.

2021-2022: 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 future 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

e. 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 nitrates in sources of drinking water and 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
- Encouraging EPA to continue to provide support and financial assistance.

Work-to-Date: The Committee and WSWC staff continue to follow and update the WSWC on EPA efforts involving nutrients. Various Committee meetings have featured presentations from EPA and state officials on federal and state nutrient management efforts. At the October 2019 meeting in Breckenridge, the Committee heard from Jennifer Carr, Deputy Administrator of the Nevada Division on Environmental Protection, on multi-agency coordination on harmful algal blooms in several water bodies in Nevada.

Remote sensing is also becoming an increasingly important method for monitoring water quality and water supplies. Landsat 8 can provide images in near-real time that provide water quality managers with information on where harmful algal blooms may be forming and allows them to rapidly respond. WSWC was instrumental in ensuring Landsat 8 was equipped with the data collection tools needed for these assessments.

On August 14, 2019, EPA and USDA co-hosted a workshop titled Innovative Financing Strategies for Reducing Nutrients. The workshop explored private, state, and federal funds that could be combined and leveraged for nutrient reduction projects, and ways that the agencies could increase funding opportunities and awareness of innovative funding approaches.

2021-2022: The Committee and WSWC staff will monitor and update the Council on any changes to EPA's nutrient efforts, including those related to Harmful Algal Blooms (HABs) and cyanotoxin criteria. 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 member states. The Association of Clean Water Administrators has a Nutrients Reduction Progress Tracker that has some state strategies that the Committee can use as a starting point.

Time Frame: Ongoing

f. Section 401 Certifications

Background: In early 2019, WSWC and WGA became aware of a potential executive order from the White House to address energy infrastructure development that would

have included provisions affecting the implementation of state water quality certification programs under Section 401 of the CWA. This was in response to denials by some states, based on section 401 authority, for permits to build energy infrastructure that would allow other states to export coal and natural gas. WGA sent a letter strongly opposing “any changes to agency rules, guidance, or policy that may diminish, impair, or subordinate states’ well-established sovereign and statutory authorities to protect water quality within their boundaries.”

On April 10, 2019, President Trump issued an Executive Order 13878, Promoting Energy Infrastructure and Economic Growth, in which EPA was directed to review regulations and guidance, in consultation with states, tribes, and federal agencies, on state certification under section 401. WSWC and WGA submitted comments during the pre-proposal period in April and May 2019 expressing continued concern over changes to section 401. Following this consultation, EPA released new guidance on implementing 401, including statutory and regulatory timelines for 401 certification requests, the appropriate scope of 401 certification conditions, and the scope of a state or authorized tribe’s 401 review. In early August, the Corps also released guidance on “Timeframes for Clean Water Act Section 401 Water Quality Certifications and Clarifications of Waiver Responsibility,” establishing a 60-day window for 401 certification review by the states, despite statutory allowance of a year-long timeframe the state agencies have to act.

On August 22, 2019, EPA issued a proposed rule to include definitions of various terms to provide greater clarity. The proposed rule limited the scope of certification to assuring that any discharge from a federal project will comply with state and federal water quality requirements, changed the definition of a “complete application” and placed a mandatory maximum timeframe on certification of one year from submission of the application, which is consistent with the Clean Water Act. It required justification for conditions imposed on licenses or permits, and limit conditions only to water-related concerns. It also removed the enforcement authority from the certifying body, and instead placed that responsibility on the federal agency issuing the permit. The final rule was published in the Federal Register on July 13, 2020 (85 FR 42210).

The WSWC closely followed this issue, given the implications for state authority over water quality certification requests provided under Section 401. The Council submitted numerous letters to the Administration and Congress, and formal comments during the public comment periods both individually and in conjunction with WGA and other stakeholders.

Work-to-Date: In 2020, the Committee formed a workgroup to explore the possibility of developing a template for Memorandums of Understanding between states and federal agencies that will be implementing the new 401 certification rule. The new rule expands the number of federal agencies responsible for obtaining 401 certifications, many of which have not previously engaged in this process. States are concerned about maintaining and opening lines of communication regarding project activities so that they can conduct their process to certify projects without waiving their ability to do so due to the strict time constraints. This workgroup has created a list of needs and wants from such a document, and are now moving towards determining what outputs would be most helpful.

2021-2022: Staff will continue to facilitate the 401 MOU workgroup, track the implementation of the rule, and report on challenges or experiences that states have had regarding how the changes are working on-the-ground.

Timeframe: 2021-22

g. 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 Section 518, necessary for delegation of regulatory programs to the tribes. The first involved an interpretive rule regarding inherent authority of tribes, considering CWA Section 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. EPA heard from 12 tribal governments and associations and 11 state officials, agencies and associations, among others, and reported that most tribes were largely supportive while most states raised concerns. As of Fall 2020, the proposed rulemaking is not part of the Regulatory Plan.

2020-2021: The Committee will continue to monitor the potential rulemakings and their implementation and engage with EPA as appropriate.

Time Frame: Ongoing

h. Abandoned Hardrock Mine Remediation

Background: The West has an undetermined number of abandoned hardrock mines that have the potential to or unknowingly already do affect water quality. "Good Samaritan" bills have been introduced in Congress over the years to protect public entities that are willing to voluntarily clean up these sites from legal liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the CWA. These bills have been unsuccessful due to concerns about the potential impacts of amending the CWA and perceptions that sufficient protections already exist under CERCLA. However, considerable uncertainty exists as to whether CERCLA and other existing authorities provide Good Samaritans with sufficient protection.

In December 2012, EPA issued a memorandum to clarify administrative protections for Good Samaritans. It clarified 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.”

In September 2020, EPA announced a new office, the Office of Mountains, Deserts, and Plains, to primarily work with Good Samaritan organizations and tribes, and ensure more efficient clean-up of both Superfund and non-Superfund sites in the West, including abandoned mines.

Work-to-Date: The WGA and WSWC have long supported legislation to amend the CWA to protect Good Samaritans from inheriting perpetual liability for the site under the CWA (WGA Policy Resolution 2018-11 and 2018-12, Paragraph (B)(5)). 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 former WGA-organized Task Force focused on crafting an exemption for Good Samaritan activities by state governments.

At the Fall 2020 WSWC meeting, Roger Gorke presented an update on the creation of the new Office, including that it will be lead by Shamid Mahmud. Mahmud has decades of experience leading the Good Samaritan Abandoned Mine Internal Working Group.

2021-2022: The Committee will continue to 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. 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 reactivation of a workgroup and/or developing a workshop to bring together interested stakeholders to identify ways to facilitate abandoned hardrock mine remediation. Staff will also track activities of the Office of Mountains, Deserts, and Plains and report back to the Committee any developments of interest.

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>

On December 28, 2017, BLM rescinded the 2015 hydraulic fracturing rule, noting that “all 32 of the 32 states with federal oil and gas leases have regulations that address hydraulic fracturing” and that “since the 2015 final rule was published, more companies are using state regulatory agencies and/or databases such as FracFocus to disclose the chemical content of hydraulic fracturing fluids.” Litigation pending in the U.S. District Court for the Northern District of California (*California v. Bureau of Land Mgmt.*, #18-521) seeks to vacate the rescission and reinstate all of the 2015 rule’s provisions. The Court heard arguments on motions for summary judgment in February 2020, and a decision is still pending.

The Western Governors’ Association (WGA) Resolution #2018-12 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.

2021-2022: 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 use 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: 2016-2020, pending available staff time and resources.

**WATER QUALITY COMMITTEE
WORK PLAN**

July 1, 2020 to June 30, 2021

Adopted July 22, 2020

1. WATER QUALITY/QUANTITY NEXUS

Background: Western Governors' Association (WGA) Policy Resolution 2018-08, Water Resource Management in the West, 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 preserve state authority to manage water through policies which recognize state law and the financial, environmental and social values of water to citizens of western states today and in the future." (Paragraph (B)(3), emphasis added)

Work-to-Date: 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 (WQ2) 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.

During the WSWC October 2019 meeting in Breckenridge, Colorado the Committee heard a presentation from Alex Davis, Deputy Director of Water Resources for the City of Aurora about the city's challenges related to the water quantity-quality nexus and the complex efforts to ensure adequate source water protection across several water basins.

2021-2024: The Committee supports WGA Resolution 2018-08, and directs staff to follow up on the next steps recommended in the 2015 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) 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; and (3) provide updated information from states on current water quality-water quantity issues at Council meetings. Initial conversations with the subcommittee have occurred.

Time Frame: Ongoing

~~WQ2 Nexus Workgroup: Kent Woodmansey (SD), Tom Stiles (KS), David Schade (AK)~~
[WQ2 Nexus Workgroup – goal to re-establish in 2021](#)

2. CLEAN WATER ACT ISSUES

There are several 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: On January 23, 2020, the Environmental Protection Agency and the Army Corps of Engineers finalized the Navigable Waters Protection Rule to create a new definition of protected waters consistent with the opinion of Justice Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006). The rule defines four categories of waters subject to federal jurisdiction:

- Territorial seas and traditional navigable waters
- Perennial and intermittent tributaries to those waters
- Certain lakes, ponds, and impoundments
- Wetlands adjacent to jurisdictional waters

There are 12 exclusions that narrow the scope of the new rule compared to the 2015 Waters of the United States (WOTUS) rule and prior laws and guidance.

The new rule ~~comes about~~[was initiated](#) after Executive Order 13788, Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule was signed by President Trump on February 28, 2017. EPA and the Corps engaged in various levels of outreach in 2017 and 2018, including a State Co-Regulators meeting on March 8-9, 2017 that the WSWC Executive Director and representatives from Arizona, Oregon, and Wyoming participated in. The 2015 WOTUS rule was formally repealed on December 23, 2019, which re-codified the 1986 WOTUS definition to be informed by applicable guidance documents, legal definitions, and longstanding agency action (84 FR 56626). ~~These documents will be used for WOTUS reviews until the new rule is implemented.~~

The [new](#) final rule was published in the Federal Register on April 21, 2020 (85 FR 22250).

[On January 20, 2021, President Joe Biden rescinded EO 13788, though it is not anticipated to have any impacts since the Navigable Waters Protection Rule has been finalized.](#)

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. 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 several requested changes. This Position was revised and readopted as #410 during WSWC summer meetings in Rohnert Park, California in 2017. In anticipation of the new proposed rule, the position was revised and readopted as #427 during WSWC fall meetings in Coeur d'Alene, Idaho in 2018. The State of Washington abstained from the vote. On April 12, 2019, WSWC submitted a comment letter with Position #427 to the proposed rule docket.

2021-2024: The Committee will continue to work with the Water Resources and Legal Committees through the Workgroup to understand and share how states are affected by and dealing with the changes to the "waters of the United States" definition. [Staff will track any developments in agency actions regarding the WOTUS definition, and report on potential impacts to states.](#)

Time Frame: Ongoing

CWA Rulemaking Workgroup: Tom Stiles (KS), Jennifer Verleger (ND), Julie Cunningham (OK), Todd Chenoweth (TX), Laura Driscoll (WA), Jennifer Carr (NV), and Kevin Frederick (WY).

*See Item 2 of the Legal Committee Workplan

b. Water Reuse

Background: In 2011, the WSWC prepared a report summarizing state responses to survey questions on water reuse standards, regulations, issues, projects and funding titled "Water Reuse in the West: State Programs and Institutional Issues." Given that it has been nearly a decade since those responses were compiled, the Committee decided to update the report. At the October 2019 meeting in Breckenridge, the Committee expressed interest in coordinating survey responses with the Association of Clean Water Administrators (ACWA) and other organizations. Additionally, the Environmental Protection Agency recently unveiled their Water Reuse Action Plan (WRAP), a collaborative effort across federal agencies, water organizations and the private water sector. This is the first of its magnitude, intended to innovate, scale and implement water reuse technologies and policies. The WRAP identifies 37 actions and 200 implementation milestones. WSWC's and ACWA's survey update will help implement action 2.2.1: Compile Existing State Policies and Approaches to Water Reuse.

Work-to-Date: From November 2019 – January 2020, WSWC staff and council members worked with ACWA and other organizations to update survey questions. These questions ~~were~~ somewhat different from the 2011 questions and ~~will~~ provided a comprehensive picture of what is happening in water reuse across the states. ~~The survey was sent out on February 4, 2020, together with each state's response from 2011. New~~

~~responses are requested by April 30, 2020. States submitted responses to the survey in mid-2020, and staff compiled these into a final report. This report will be available on the WSWC website.~~

~~20210-20224: With the report finalized, staff will work with ACWA to determine next steps, including potential publication in a national water policy or law journal. The staff will compile responses for WSWC states and prepare a draft report for Committee review. In conjunction with ACWA, staff will work to develop a report that reflects water reuse policies and practices nationwide. This joint product could be something we potentially seek to publish in a national water policy journal.~~

~~Time Frame: 20210-20224~~

c. State Revolving Funds (SRFs) and Infrastructure Financing

Background: The Clean Water and Drinking Water SRFs provide states with capitalization grants that are leveraged with state contributions to offer financial assistance to cities, towns, communities and others to improve and construct water quality infrastructure. These programs are widely used and have been critically important for improving and maintaining water infrastructure at the local level. 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.

When Congress enacted the Water Infrastructure Finance and Innovation Act (WIFIA) in 2014, there was some concern that the subsequent WIFIA loan and guarantee program would redirect critical funds from the SRF programs. Thus far, this has not been the case (see table below). Since 2017, the WIFIA program has invited a total of 89 projects to apply for funding, with over \$13B in financing requests. SRFs have access to this funding and are also able to jointly fund projects in conjunction with WIFIA loans. In 2019, both types of funding mechanisms were used by projects. To date, 16 WIFIA loans have been closed totaling over \$3.5B in credit assistance to help finance \$8B for water infrastructure projects and create 16,000 jobs.

Congressional Appropriations for Water Infrastructure (FY2017-19), in millions

	Clean Water SRF & Title II	Drinking Water SRF	WIFIA
FY2017	\$1,393.9	\$863.2	\$30.0
FY2018	\$1,696.9	\$1,163.2	\$63.0
FY2019	\$1,694.0	\$1,164.0	\$68.0

Source: Congressional Research Service Report R43871

Work-to-Date: During the July 2018 meeting in Newport, Oregon, the Committee heard reports from Kansas and Washington on the process they went through to apply for WIFIA loans during the first round, and on the water projects that were built with these

low-interest loans. Since then, projects in member states Arizona, California, Nebraska, North Dakota, Oklahoma, Oregon and Utah have been funded. Overall, WIFIA funded projects are larger than typical SRF-funded projects, while both programs prioritize those that are shovel-ready and credit-worthy.

WSWC Position #446 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 and meet federal mandates. WGA Policy Resolution 2018-12, Water Quality in the West, also supports the SRFs as “important tools” and requests greater flexibility and fewer restrictions on state SRF management.

2021-2024: The Committee will continue to support the WGA and WSWC positions. WSWC staff will update the Committee on developments within Congress and the Administration that have potential to impact SRFs. As needed, Committee members and WSWC staff will meet with the Administration and Congress officials 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, but for the limitations, and how many are walking away from SRFs because of these restrictions, as well as options for a right of first refusal by the SRFs prior to funding projects through WIFIA.

Time Frame: Ongoing

d. 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.

WGA Policy Resolution 2018-12 (paragraph B(2)(c)) and WSWC Position #424 support EPA’s Water Transfers Rule, 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.

[On February 18, 2020, WGA sent a letter to the Committee on Energy and Natural Resources in support of the Drought Resiliency and Water Supply Infrastructure Act \(S. 1932\), in which it suggested including language to affirm the rule in federal statute in order to “add a needed measure of stability and certainty to western water planning and drought mitigation efforts.” WSWC and other state organizations also signed onto this letter.](#)

Work-to-Date: Efforts are underway to codify the Water Transfers Rule, seeking support from WGA, WSWC, and other state organizations. On February 18, 2020, WGA sent a letter to the Committee on Energy and Natural Resources in support of the Drought Resiliency and Water Supply Infrastructure Act (S. 1932), in which it suggested including language to affirm the rule in federal statute in order to “add a needed measure of stability and certainty to western water planning and drought mitigation efforts.”

Formatted: Indent: Left: 0"

20210-20221: 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 future 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

e. 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 nitrates in sources of drinking water and 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
- Encouraging EPA to continue to provide support and financial assistance.

Work-to-Date: The Committee and WSWC staff continue to follow and update the WSWC on EPA efforts involving nutrients. Various Committee meetings have featured presentations from EPA and state officials on federal and state nutrient management efforts. At the October 2019 meeting in Breckenridge, the Committee heard from Jennifer Carr, Deputy Administrator of the Nevada Division on Environmental Protection, on multi-agency coordination on harmful algal blooms in several water bodies in Nevada.

Remote sensing is also becoming an increasingly important method for monitoring water quality and water supplies. Landsat 8 can provide images in near-real time that provide water quality managers with information on where harmful algal blooms may be forming and allows them to rapidly respond. WSWC was instrumental in ensuring Landsat 8 was equipped with the data collection tools needed for these assessments.

On August 14, 2019, EPA and USDA co-hosted a workshop titled Innovative Financing

Strategies for Reducing Nutrients. The workshop explored private, state, and federal funds that could be combined and leveraged for nutrient reduction projects, and ways that the agencies could increase funding opportunities and awareness of innovative funding approaches.

2021-2024: The Committee and WSWC staff will monitor and update the Council on any changes to EPA's nutrient efforts, including those related to Harmful Algal Blooms (HABs) and cyanotoxin criteria. 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 member states. The Association of Clean Water Administrators has a Nutrients Reduction Progress Tracker that has some state strategies that the Committee can use as a starting point.

Time Frame: Ongoing

f. Section 401 Certifications

Background: In early 2019, WSWC and WGA became aware of a potential executive order from the White House to address energy infrastructure development that would have included provisions affecting the implementation of state water quality certification programs under Section 401 of the CWA. This was in response to denials by some states, based on section 401 authority, for permits to build energy infrastructure that would allow other states to export coal and natural gas. WGA sent a letter strongly opposing "any changes to agency rules, guidance, or policy that may diminish, impair, or subordinate states' well-established sovereign and statutory authorities to protect water quality within their boundaries."

On April 10, 2019, President Trump issued an Executive Order 13878, Promoting Energy Infrastructure and Economic Growth, in which EPA was directed to review regulations and guidance, in consultation with states, tribes, and federal agencies, on state certification under section 401. WSWC and WGA submitted comments during the pre-proposal period in April and May 2019 expressing continued concern over changes to section 401. Following this consultation, EPA released new guidance on implementing 401, including statutory and regulatory timelines for 401 certification requests, the appropriate scope of 401 certification conditions, and the scope of a state or authorized tribe's 401 review. In early August, the Corps also released guidance on "Timeframes for Clean Water Act Section 401 Water Quality Certifications and Clarifications of Waiver Responsibility," establishing a 60-day window for 401 certification review by the states, despite statutory allowance of a year-long timeframe the state agencies have to act.

On August 22, 2019, EPA issued a proposed rule to include definitions of various terms to provide greater clarity. The [proposed](#) rule limited the scope of certification to assuring that any discharge from a federal project will comply with state and federal water quality requirements, [changed the definition of a "complete application" and placed a mandatory maximum timeframe on certification of one year from submission of the application, which is consistent with the Clean Water Act.](#) ~~It would replace the states' required "complete application," which varied by state, with a nationally applicable "certification request," the submission of which would trigger the statutory clock to complete the~~

~~certification process. It would also~~ required justification for conditions imposed on licenses or permits, and limit conditions only to water-related concerns. ~~It also removed the enforcement authority from the certifying body, and instead placed that responsibility on the federal agency issuing the permit. The final rule was published in the Federal Register on July 13, 2020 (85 FR 42210). The public comment period closed on October 21, 2019. A final rule is slated to be issued in May 2020.~~

~~The WSWC has been closely following~~ closely followed this issue, given the implications for state authority over water quality certification requests provided under Section 401. The Council submitted numerous letters to the Administration and Congress, and formal comments during the public comment periods both individually and in conjunction with WGA and other stakeholders. ~~Overall, these comments emphasized the critical importance of cooperative federalism, respecting state sovereign authority to protect water quality within their boundaries, and recognized that states and localities are in the best position “to design and implement regulatory strategies and certification programs to protect human health and the environment in a manner that appropriately accounts for local needs and conditions.”~~

Work-to-Date: In 2020, the Committee formed a workgroup to explore the possibility of developing a template for Memorandums of Understanding between states and federal agencies that will be implementing the new 401 certification rule. The new rule expands the number of federal agencies responsible for obtaining 401 certifications, many of which have not previously engaged in this process. States are concerned about maintaining and opening lines of communication regarding project activities so that they can conduct their process to certify projects without waiving their ability to do so due to the strict time constraints. This workgroup has created a list of needs and wants from such a document, and are now moving towards determining what outputs would be most helpful. ~~The WSWC has been closely following this issue, given the implications for state authority over water quality certification requests provided under Section 401. The Council submitted numerous letters to the Administration and Congress, and formal comments during the public comment periods both individually and in conjunction with WGA and other stakeholders. Overall, these comments emphasized the critical importance of cooperative federalism, respecting state sovereign authority to protect water quality within their boundaries, and recognized that states and localities are in the best position “to design and implement regulatory strategies and certification programs to protect human health and the environment in a manner that appropriately accounts for local needs and conditions.”~~

2021-2024: The Committee and staff will continue to closely monitor the rulemaking and provide updates when the final rule is published. The Committee will also consider co-hosting a workshop or webinar with the Legal Committee on how individual states will be affected by and responding to changes in Section 401 authority. Staff will continue to facilitate the 401 MOU workgroup, track the implementation of the rule, and report on challenges or experiences that states have had regarding how the changes are working on-the-ground.

Timeframe: 2021-2024

g. 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 Section 518, necessary for delegation of regulatory programs to the tribes. The first involved an interpretive rule regarding inherent authority of tribes, considering CWA Section 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. EPA heard from 12 tribal governments and associations and 11 state officials, agencies and associations, among others, and reported that most tribes were largely supportive while most states raised concerns. [As of Fall 2020, Currently](#), the proposed rulemaking is [not still](#) part of the Regulatory Plan [though no actions are in the pipeline](#).

2020-2021: The Committee will continue to monitor the [potential](#) rulemakings and their implementation and engage with EPA as appropriate.

Time Frame: Ongoing

h. Abandoned Hardrock Mine Remediation

Background: The West has an undetermined number of abandoned hardrock mines that have the potential to or unknowingly already do affect water quality. "Good Samaritan" bills have been introduced in Congress over the years to protect public entities that are willing to voluntarily clean up these sites from legal liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the CWA. These bills have been unsuccessful due to concerns about the potential impacts of amending the CWA and perceptions that sufficient protections already exist under CERCLA. However, considerable uncertainty exists as to whether CERCLA and other existing authorities provide Good Samaritans with sufficient protection.

In December 2012, EPA issued a memorandum to clarify administrative protections for Good Samaritans. It clarified 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."

In September 2020, EPA announced a new office, the Office of Mountains, Deserts, and Plains, to primarily work with Good Samaritan organizations and tribes, and ensure more efficient clean-up of both Superfund and non-Superfund sites in the West, including abandoned mines.

Work-to-Date: The WGA and WSWC have long supported legislation to amend the CWA to protect Good Samaritans from inheriting perpetual liability for the site under the CWA (WGA Policy Resolution 2018-11 and 2018-12, Paragraph (B)(5)).

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 former WGA-organized Task Force focused on crafting an exemption for Good Samaritan activities by state governments.

At the Fall 2020 WSWC meeting, Roger Gorke presented an update on the creation of the new Office, including that it will be lead by Shamid Mahmud. Mahmud has decades of experience leading the Good Samaritan Abandoned Mine Internal Working Group.

Formatted: Tab stops: 1", Left + 1.5", Left + 2", Left + 2.5", Left + 3", Left + 3.5", Left + 4", Left + 4.5", Left + 5", Left + 5.5", Left + 6", Left + 6.5", Left

20210-20221: The Committee will continue to 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. 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 reactivation of a workgroup and/or developing a workshop to bring together interested stakeholders to identify ways to facilitate abandoned hardrock mine remediation. Staff will also track activities of the Office of Mountains, Deserts, and Plains and report back to the Committee any developments of interest.

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>

Formatted: Indent: Left: 0"

On December 28, 2017, BLM rescinded the 2015 hydraulic fracturing rule, noting that “all 32 of the 32 states with federal oil and gas leases have regulations that address hydraulic fracturing” and that “since the 2015 final rule was published, more companies are using state regulatory agencies and/or databases such as FracFocus to disclose the chemical content of hydraulic fracturing fluids.” Litigation pending in the U.S. District Court for the Northern District of California (*California v. Bureau of Land Mgmt.*, #18-521) seeks to vacate the rescission and reinstate all of the 2015 rule’s provisions. The Court heard arguments on motions for summary judgment in February 2020, and a decision is still pending.

The Western Governors’ Association (WGA) Resolution #2018-12 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.

2021-2024: 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 use 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: 2016-2020, pending available staff time and resources.

Formatted: Indent: Left: 0"

Tab J – Draft FY2020-2021 Legal Committee Work Plan

**DRAFT
LEGAL COMMITTEE
WORK PLAN
July 1, 2020 to June 30, 2021**

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

Background: 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.

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 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. On October 24, 2018, the workgroup held a workshop in Coeur d’Alene, Idaho, on State and Federal Agencies’ Approach to Grazing Water Rights. On October 15, 2019, the workgroup held a second Grazing Water Rights workshop in Breckenridge, Colorado, including state and federal agencies as well as national and local ranching and agricultural organizations. As of March 24, 2020, the WSWC-WestFAST Clearinghouse is available on the Council’s website under Member Resources, and additional documents may be added by contacting Council staff.

2021-2022: 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 continue to hold workshops. Additional topics to pursue include (1) water rights related to Wild and Scenic Rivers, and (2) identifying useful principles for state-federal memoranda of understanding to develop a useful framework and recommended approaches.

Time Frame: Ongoing

Federal Non-Tribal Water Claims Subcommittee: David Schade (AK), Jay Weiner (MT), Greg Ridgley (NM), Jennifer Verleger (ND), Micheline Fairbank (NV), Todd Chenoweth (TX), Norm Johnson (UT), Buck Smith (WA), and Chris Brown (WY). WestFAST members and agency staff participating in the Subcommittee in an *ex officio* capacity include: Paul “Doug” Curtis (Bureau of

Land Management), Michael Higgins (U.S. Fish and Wildlife Service), Donald Anderson (Bureau of Reclamation), (National Park Service), Stephen Bartell (Department of Justice), Lauren Dempsey (Air Force) and Chris Carlson (U.S. Forest Service). Other *ex officio* members of the Subcommittee include 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 Clean Water Rule (2015 WOTUS Rule), finalized on June 29, 2015 (80 FR 37054). Many of our member states filed lawsuits challenging the 2015 WOTUS Rule in federal court. The 2015 WOTUS Rule was rescinded, and was replaced by the Navigable Waters Protection Rule (2020 WOTUS Rule), finalized on April 21, 2020 (85 FR 22250). Several of our member states filed lawsuits challenging the 2020 WOTUS Rule in federal court. On January 20, 2021, President Biden issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, directing EPA and the Corps to review the 2020 WOTUS Rule. On June 9, 2021, the EPA and Corps announced their intent to revise the definition of WOTUS, and filed motions seeking a remand of the 2020 WOTUS Rule in various courts. The 2020 WOTUS Rule will remain effective until a court remand or other rulemaking steps are taken.

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. At the October 2018 meeting in Coeur d’Alene, Idaho, Position #410 was revised and readopted as #427, with the State of Washington abstaining from the vote.

2021-2022: 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, as well as consider the impacts of the new rule(s) on state policies, programs and regulations.

Time Frame: Ongoing

CWA Rulemaking Workgroup:, Tom Stiles (KS), Jennifer Verleger (ND), and Julie Cunningham (OK).

*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 #454). 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 and legislation that facilitate settlements. A biennial symposium on settlements is held by the WSWC and NARF 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 and Department of Justice officials engaged in Indian water rights settlement 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.

The 116th Congress passed legislation approving the Navajo-Utah settlement, the Confederated Salish and Kootenai settlement in Montana, increased funding and a time extension for the settlement in Aamodt in New Mexico, and approval for a 2-year NRCS study for a dam that would help settle the Kickapoo tribe water claims in Kansas.

2021-2022: 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 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) prepare to hold the 2021 virtual Symposium on the Settlement of Indian Reserved Water Rights Claims in partnership with the Native American Rights Fund on August 24-25.

Time Frame: Ongoing

Reserved Rights Subcommittee: Jay Weiner (MT), Greg Ridgley and Arianne Singer (NM), and Norman Johnson (UT). NARF members participating in the Subcommittee in an *ex officio* capacity include: John Echohawk, Joel Williams, Steve Moore, Dan Lewerenz, and David Gover. Other *ex officio* members include Stanley Pollack, Ryan Smith, Vanessa Ray-Hodge, and Melanie Stansbury.

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 U.S. Army Corps of Engineers' approach to identifying and regulating the use of "surplus waters," and Corps drought authorities related to Corps projects. The Council also worked successfully to exclude irrigation water supply canals from federal levee safety program, and to encourage the Corps to withdraw the Surplus Water Supply rulemaking.

2021-2022: The Council will continue to work with the Congress and Corps on WRDA and Corps-related issues, 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)

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, 2017 the 9th Circuit (849 F.3d 1262) 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.

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. Western Governors strongly objected to the directive, as did the WSWC, which worked with the Forest Service to modify it. The Forest Service later withdrew this proposed directive.

WSWC position #466 notes that no federal statute has addressed any federal property or other rights 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."

Subsequent court decisions that have cited to *Agua Caliente*'s groundwater holding include: (1) *Silver v. Pueblo Del Sol Water Co.*, 423 P.3d 348, 353 (Ariz. 2018); (2) *State ex rel. State Eng'r v. United States*, 425 P.3d 723, 733-734 (N.M. Ct. App. 2018) (oblique reference, as the settlement at issue included reserved groundwater); (3) *United States v. State (In re CSRBA Case No. 49576 Subcase No. 91-7755)*, 448 P.3d 322, 350-351 (Idaho 2019); (4) *Baley v. United States*, 942 F.3d 1312, 1338, (Fed Cir. 2019) (although for the discussion on groundwater this case cites to *Cappaert v. United States*, 426 U.S. 128, 142-43 (1976)); (5) *United States v. Walker River Irrigation Dist.*, 473 F. Supp. 3d 1150, 1156-1157 (D. Nev. 2020).

2021-2022: 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.

2021-2022: In coordination with the Water Resources Committee, the Legal Committee will work on updating the information in the old reports, and prepare a new summary 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 and Recovery (ASR) projects.

6. WATER RIGHTS

Some of our states have expressed interest in understanding how other states approach different aspects of the management and administration of water rights, including what qualifies as beneficial uses, extensions of time to prove beneficial use to perfect a water right application, and statutes or rules or court procedures governing curtailments in times of scarce water resources, and regulation of water wells. In December 2020, Council staff began distributing a series of survey questions to member states to facilitate this understanding.

A. State Water Well Construction Rules and Regulations

Background: The State Engineer, or other state official, is required to make rules regarding well construction and related regulated activities and the licensing of water well drillers and pump installers. Various states have varying requirements, which may change from time to time. The purpose of these rules is to: (1) assist in the orderly development of underground water; (2) insure

that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells; (3) prevent pollution of aquifers within the state; (4) prevent wasting of water from flowing wells; (5) obtain accurate records of well construction operations; and (6) insure compliance with the state's authority for appropriating water. The rules establish administrative procedures for applications, approvals, hearings, notices, revocations, orders and their judicial review, as well as requirements related to well construction standards, such as casing, and procedures for monitoring, reporting and criteria for the waivers of certain requirements.

2020-2021: The Committee will prepare and distribute a series of survey questions to address member states' interests related to administering water and related well drilling programs and then compile and report on the results. This will include the types of wells covered or excluded from registration and regulation. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

B. Proof of Beneficial Use of Water and Extension Criteria

Background: Beneficial use is the measure of any right to the use of water in the West. The State Engineer, or other state official, on behalf of the State, may grant a permit to put water to beneficial use but evidence or proof of completion of the work necessary to then actually put the water to use is also required. Only after development is done and the water is being fully put to beneficial use, will a water right be granted, which will be limited to the extent and nature of use in the accepted proof. This also applies to requests to change the use of a water rights, whether changing the point of diversion, use or purpose of use, or location water is returned to a natural source. Generally, some specific period of time will be allowed to complete the work, and if needed applicants may request an extension of time. The specific criteria for proof of beneficial use and extending timelines may vary by state.

2020-2021: The Committee will prepare and distribute a series of survey questions to address member states' interests related to administering proof of beneficial use requirements, and criteria for granting extensions to complete necessary work, then compile and report on the results. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

C. Calls and Curtailments

Background. Droughts in many areas of the West have highlighted state procedures and methods of enforcing curtailment of water uses and administration of water rights in a priority system, particularly where junior groundwater pumping, insufficient carriage water, instream flow for fish and wildlife, junior municipal supply, and federal reserved rights are at issue.

2020-2021. The Committee will prepare and distribute a series of questions to address member states' interests related to state procedures and methods of enforcing water rights, including administrative and court processes related to calls and curtailments during times of scarcity, then compile a report on the results. The Committee and Council will also provide a forum for a discussion of water rights enforcement.

Subcommittee:

Timeframe:

**DRAFT
LEGAL COMMITTEE
WORK PLAN
July 1, 2020 to June 30, 2021**

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

Background: 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.

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 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. On October 24, 2018, the workgroup held a workshop in Coeur d’Alene, Idaho, on State and Federal Agencies’ Approach to Grazing Water Rights. On October 15, 2019, the workgroup held a second Grazing Water Rights workshop in Breckenridge, Colorado, including state and federal agencies as well as national and local ranching and agricultural organizations. As of March 24, 2020, the WSWC-WestFAST Clearinghouse is available on the Council’s website under Member Resources, and additional documents may be added by contacting Council staff.

~~2019-2020~~2021-2022: 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 continue to hold workshops. Additional topics to pursue include (1) water rights related to Wild and Scenic Rivers, and (2) identifying useful principles for state-federal memoranda of understanding to develop a useful framework and recommended approaches.

Time Frame: Ongoing

Federal Non-Tribal Water Claims Subcommittee: David Schade (AK), Jay Weiner (MT), Greg Ridgley (NM), Jennifer Verleger (ND), Micheline Fairbank (NV), Todd Chenoweth (TX), Norm Johnson (UT), Buck Smith (WA), and Chris Brown (WY). WestFAST members and agency staff participating in the Subcommittee in an *ex officio* capacity include: Paul “Doug” Curtis (Bureau of

Land Management), Michael Higgins (U.S. Fish and Wildlife Service), Donald Anderson (Bureau of Reclamation), (National Park Service), Stephen Bartell (Department of Justice), Lauren Dempsey (Air Force) and Chris Carlson (U.S. Forest Service). Other *ex officio* members of the Subcommittee include 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 Clean Water Rule (2015 WOTUS Rule), finalized on June 29, 2015 (80 FR 37054). Many of our member states filed lawsuits challenging the 2015 WOTUS Rule in federal court. [The 2015 WOTUS Rule was rescinded, and was replaced by the Navigable Waters Protection Rule \(2020 WOTUS Rule\), finalized on April 21, 2020 \(85 FR 22250\).](#) Several of our member states filed lawsuits challenging the 2020 WOTUS Rule in federal court. On January 20, 2021, President Biden issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, directing EPA and the Corps to review the 2020 WOTUS Rule. On June 9, 2021, the EPA and Corps announced their intent to revise the definition of WOTUS, and filed motions seeking a remand of the 2020 WOTUS Rule in various courts. The 2020 WOTUS Rule will remain effective until a court remand or other rulemaking steps are taken.

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. At the October 2018 meeting in Coeur d'Alene, Idaho, Position #410 was revised and readopted as #427, with the State of Washington abstaining from the vote.

~~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. 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 (82 FR 12532). 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. On February 14, 2019, the agencies published the proposed rule for a Revised Definition of Waters of the United States (84 FR 4154), and WSWC submitted comments. The final Navigable Waters Rule (2020 WOTUS Rule) was published (85 FR 22250). WSWC has continued to engage with the agencies at each outreach opportunity during the rulemaking process.~~

2019-2020/2021-2022: 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, as well as consider the impacts of the new rule(s) on state policies, programs and regulations.

Time Frame: Ongoing

CWA Rulemaking Workgroup: ~~Barry Burnell (ID)~~, Tom Stiles (KS), Jennifer Verleger (ND), and 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 #454412). 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 and legislation that facilitate settlements. A biennial symposium on settlements is held by the WSWC and NARF 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 and Department of Justice officials engaged in Indian water rights settlement 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.

The 116th Congress ~~introduced bills to extend or make permanent the Reclamation Water Settlement Fund. WSWC testified before the House Natural Resources Committee and has been in ongoing communication with House and Senate staff in support of the legislation.~~ passed legislation approving the Navajo-Utah settlement, the Confederated Salish and Kootenai settlement in Montana, increased funding and a time extension for the settlement in Aamodt in New Mexico, and approval for a 2-year NRCS study for a dam that would help settle the Kickapoo tribe water claims in Kansas.

~~2020-2021~~2021-2022: 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 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) prepare to hold

the 2021 [virtual](#) Symposium on the Settlement of Indian Reserved Water Rights Claims in partnership with the Native American Rights Fund [on August 24-25](#).

Time Frame: Ongoing

Reserved Rights Subcommittee: Jay Weiner (MT), Greg Ridgley and Arianne Singer (NM), and Norman Johnson (UT). NARF members participating in the Subcommittee in an *ex officio* capacity include: John Echohawk, Joel Williams, Steve Moore, Dan Lewerenz, and David Gover. Other *ex officio* members include ~~Susan Cottingham~~, Stanley Pollack, Ryan Smith, Vanessa Ray-Hodge, ~~Jacob Schellinger~~, and Melanie Stansbury.

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 U.S. Army Corps of Engineers' approach to identifying and regulating the use of "surplus waters," and Corps drought authorities related to Corps projects. The Council also worked successfully to exclude irrigation water supply canals from federal levee safety program, [and to encourage the Corps to withdraw the Surplus Water Supply rulemaking](#).

~~2020-2021~~2021-2022: The Council will continue to work with the Congress and Corps on WRDA and Corps-related issues, 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)~~

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, [2017](#) the 9th Circuit ([849 F.3d 1262](#)) 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.

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. Western Governors strongly objected to the directive, as did the WSWC, which worked with the Forest Service to modify it. The Forest Service later withdrew this proposed directive.

WSWC position #46622 notes that no federal statute has addressed any federal property or other rights 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."

Subsequent court decisions that have cited to *Aqua Caliente's* groundwater holding include: (1) *Silver v. Pueblo Del Sol Water Co.*, 423 P.3d 348, 353 (Ariz. 2018); (2) *State ex rel. State Eng'r v. United States*, 425 P.3d 723, 733-734 (N.M. Ct. App. 2018) (oblique reference, as the settlement at issue included reserved groundwater); (3) *United States v. State (In re CSRBA Case No. 49576 Subcase No. 91-7755)*, 448 P.3d 322, 350-351 (Idaho 2019); (4) *Baley v. United States*, 942 F.3d 1312, 1338, (Fed Cir. 2019) (although for the discussion on groundwater this case cites to *Cappaert v. United States*, 426 U.S. 128, 142-43 (1976)); (5) *United States v. Walker River Irrigation Dist.*, 473 F. Supp. 3d 1150, 1156-1157 (D. Nev. 2020).

~~2020-2021~~2021-2022: 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.

~~2020-2021~~2021-2022: In coordination with the Water Resources Committee, the Legal Committee will work on updating the information in the old reports, and prepare a new summary 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 and Recovery (ASR) projects.

6. WATER RIGHTS

Some of our states have expressed interest in understanding how other states approach different aspects of the management and administration of water rights, including what qualifies as beneficial uses, extensions of time to prove beneficial use to perfect a water right application, and statutes or rules or court procedures governing curtailments in times of scarce water resources, and regulation of water wells. In December 2020, Council staff began distributing a series of survey questions to member states to facilitate this understanding.

A. State Water Well Construction Rules and Regulations

Background: The State Engineer, or other state official, is required to make rules regarding well construction and related regulated activities and the licensing of water well drillers and pump installers. Various states have varying requirements, which may change from time to time. The purpose of these rules is to: (1) assist in the orderly development of underground water; (2) insure that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells; (3) prevent pollution of aquifers within the state; (4) prevent wasting of water from flowing wells; (5) obtain accurate records of well construction operations; and (6) insure compliance with the state's authority for appropriating water. The rules establish administrative procedures for applications, approvals, hearings, notices, revocations, orders and their judicial review, as well as requirements related to well construction standards, such as casing, and procedures for monitoring, reporting and criteria for the waivers of certain requirements.

2020-2021: The Committee will prepare and distribute a series of survey questions to address member states' interests related to administering water and related well drilling programs and then compile and report on the results. This will include the types of wells covered or excluded from registration and regulation. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

B. Proof of Beneficial Use of Water and Extension Criteria

Background: Beneficial use is the measure of any right to the use of water in the West. The State Engineer, or other state official, on behalf of the State, may grant a permit to put water to beneficial use but evidence or proof of completion of the work necessary to then actually put the water to use is also required. Only after development is done and the water is being fully put to beneficial use, will a water right be granted, which will be limited to the extent and nature of use in the accepted proof. This also applies to requests to change the use of a water rights, whether changing the point

of diversion, use or purpose of use, or location water is returned to a natural source. Generally, some specific period of time will be allowed to complete the work, and if needed applicants may request an extension of time. The specific criteria for proof of beneficial use and extending timelines may vary by state.

2020-2021: The Committee will prepare and distribute a series of survey questions to address member states' interests related to administering proof of beneficial use requirements, and criteria for granting extensions to complete necessary work, then compile and report on the results. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

C. Calls and Curtailments

Background. Droughts in many areas of the West have highlighted state procedures and methods of enforcing curtailment of water uses and administration of water rights in a priority system, particularly where junior groundwater pumping, insufficient carriage water, instream flow for fish and wildlife, junior municipal supply, and federal reserved rights are at issue.

2020-2021. The Committee will prepare and distribute a series of questions to address member states' interests related to state procedures and methods of enforcing water rights, including administrative and court processes related to calls and curtailments during times of scarcity, then compile a report on the results. The Committee and Council will also provide a forum for a discussion of water rights enforcement.

Subcommittee:

Timeframe:

Tab K – Drought Update

SNOTEL Current Snow Water Equivalent (SWE) Percent of Normal

Jun 01, 2021

Current SWE Percent of 1981-2010 Median

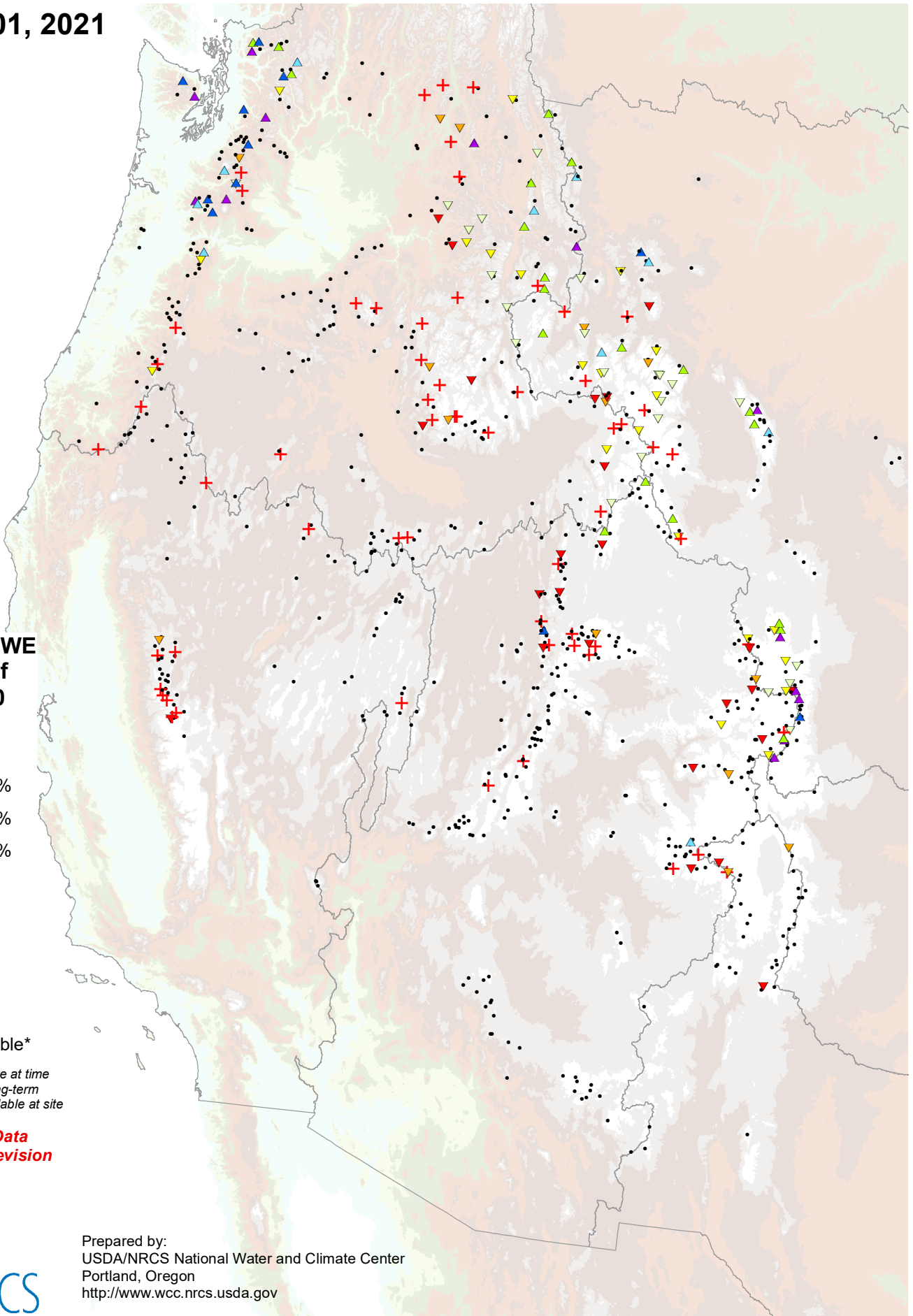
- ▲ > 200%
- ▲ 150-200%
- ▲ 125-149%
- ▲ 100-124%
- ▼ 75-99%
- ▼ 50-74%
- ▼ 25-49%
- ▼ 1-24%
- + 0%
- Unavailable*

* Data unavailable at time
of posting or long-term
normal not available at site

**Provisional Data
Subject to Revision**



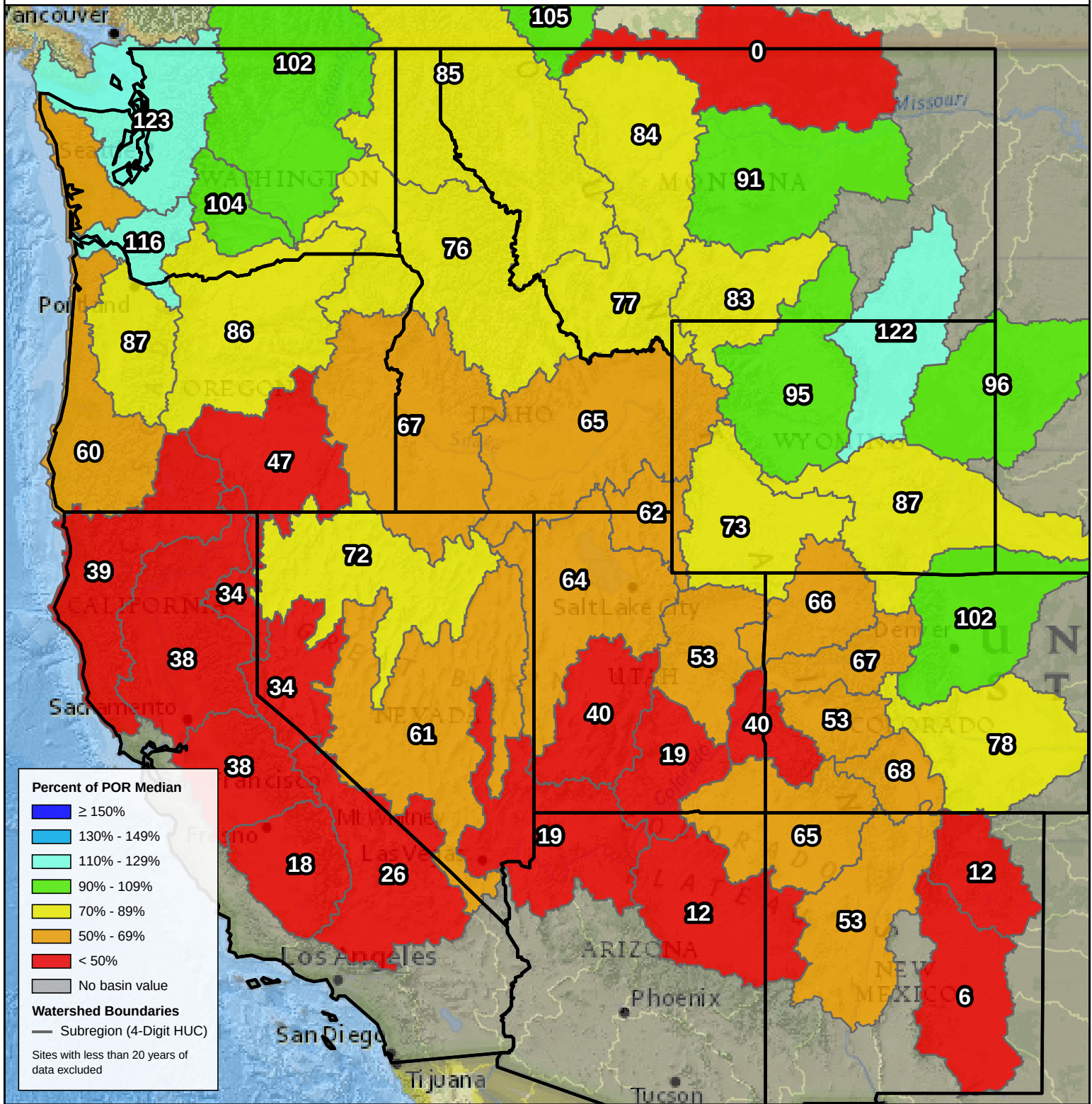
Prepared by:
USDA/NRCS National Water and Climate Center
Portland, Oregon
<http://www.wcc.nrcs.usda.gov>



Snow Water Equivalent

Percent of POR Median

May 1st, 2021



Drought Update

Please use the link below for the most up-to-date drought conditions across the Nation.

<https://www.drought.gov/current-conditions>

Basinwide Summary: June 1, 2021
(averages based on 1981-2010 reference period)

Reservoir Storage Summary for the end of May 2021

ARIZONA	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Lyman Reservoir	5.8	15.7	14.7	30.0	19%	52%	49%	39%	107%
Salt River Reservoir System		1947.7	1381.0	2025.8		96%	68%		141%
San Carlos Reservoir	0.1	178.2	380.9	875.0	0%	20%	44%	0%	47%
Verde River Reservoir System		268.9	191.6	287.4		94%	67%		140%
Basin-wide Total	5.8	193.9	395.6	905.0	1%	21%	44%	1%	49%
# of reservoirs	2	2	2	2	2	2	2	2	2
COLORADO	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Adobe Creek Reservoir	23.9	32.8	41.4	62.0	39%	53%	67%	58%	79%
Antero Reservoir	20.1	20.0	15.2	19.9	101%	101%	76%	132%	132%
Barr Lake	29.9	24.1	28.2	30.1	99%	80%	94%	106%	85%
Beaver Reservoir	3.6	4.5	4.2	4.5	79%	99%	93%	85%	106%
Black Hollow Reservoir		5.8	3.6	6.5		90%	55%		162%
Blue Mesa Reservoir	350.0	549.7	575.3	830.0	42%	66%	69%	61%	96%
Boyd Lake	47.3	38.6	35.4	48.4	98%	80%	73%	134%	109%
Cache La Poudre		10.6	8.8	10.1		105%	87%		121%
Carter Lake	99.4	98.5	95.2	108.9	91%	90%	87%	104%	103%
Chambers Lake		8.1	5.5	8.8		92%	63%		147%
Cheesman Lake	65.9	46.5	70.3	79.0	83%	59%	89%	94%	66%
Clear Creek Reservoir	6.3	8.0	7.5	11.4	55%	70%	66%	84%	107%
Cobb Lake		18.7	12.6	22.3		84%	57%		148%
Continental Reservoir	11.2	8.2	7.7	27.0	42%	31%	29%	146%	107%
Crawford Reservoir	4.9	10.9	12.5	14.0	35%	78%	89%	39%	87%
Crystal Reservoir	9.4	9.7	9.0	17.5	53%	55%	51%	104%	108%
Cucharas Reservoir			6.0	40.0			15%		
Dillon Reservoir	218.0	240.7	227.8	249.1	88%	97%	91%	96%	106%
Elevenmile Canyon Reservoir	97.0	99.6	97.3	98.0	99%	102%	99%	100%	102%
Elkhead Reservoir			24.9	25.6			97%		
Empire Reservoir	32.6	27.8	29.4	36.5	89%	76%	81%	111%	95%
Fossil Creek Reservoir		9.2	8.3	11.1		83%	75%		110%
Fruitgrowers Reservoir	1.4	2.3	4.0	3.6	39%	65%	111%	35%	58%
Fruitland Reservoir	0.0	3.1	6.2	9.2	0%	34%	67%	0%	50%
Great Plains Reservoir	0.0	0.0	37.4	150.0	0%	0%	25%	0%	0%
Green Mountain Reservoir	63.9	100.3	84.9	146.8	44%	68%	58%	75%	118%
Gross Reservoir	17.3	25.9	17.6	29.8	58%	87%	59%	98%	147%
Groundhog Reservoir	7.1	19.2	18.2	26.3	27%	73%	69%	39%	105%
Halligan Reservoir		6.4	6.0	6.4		100%	94%		107%
Holbrook Lake	3.0	1.6	4.1	7.0	43%	23%	59%	73%	39%
Homestake Reservoir	19.5	29.1	24.7	42.6	46%	68%	58%	79%	118%
Horse Creek Reservoir	0.0	0.3	9.9	27.0	0%	1%	37%	0%	3%
Horse Creek Reservoir	12.3	9.2	12.9	14.7	84%	63%	88%	95%	71%
Horsetooth Reservoir	146.6	146.6	114.2	149.7	98%	98%	76%	128%	128%
Jackson Gulch Reservoir	4.1	6.1	9.5	10.0	41%	61%	95%	43%	64%
Jackson Lake Reservoir	26.1	25.3	26.1	26.1	100%	97%	100%	100%	97%
John Martin Reservoir	65.3	90.0	141.9	616.0	11%	15%	23%	46%	63%
Julesburg Reservoir	20.4	19.4	19.0	20.5	100%	95%	93%	107%	102%
Lake Granby	327.1	404.0	313.6	465.6	70%	87%	67%	104%	129%
Lake Henry	7.5	3.2	6.3	9.4	80%	34%	67%	119%	50%
Lake Loveland Reservoir	10.1	9.6	8.5	10.3	98%	93%	83%	119%	113%
Lemon Reservoir	18.6	28.9	32.1	40.0	46%	72%	80%	58%	90%
Lone Tree Reservoir	8.6	8.6	8.1	8.7	99%	99%	93%	106%	106%
Mariano Reservoir	5.1	5.1	4.7	5.4	94%	94%	87%	109%	109%
Marshall Reservoir	9.2	9.1	8.8	10.0	92%	91%	88%	105%	103%
Marston Reservoir	11.3	8.0	9.7	13.0	87%	62%	75%	116%	82%
Mcphee Reservoir	189.0	283.4	344.7	381.0	50%	74%	90%	55%	82%
Meredith Reservoir	21.1	29.6	26.8	42.0	50%	70%	64%	79%	110%
Milton Reservoir	23.6	21.2	19.8	23.5	100%	90%	84%	119%	107%
Morrow Point Reservoir	113.1	106.5	113.2	121.0	93%	88%	94%	100%	94%
Mountain Home Reservoir	4.5	5.3	6.4	18.0	25%	30%	36%	71%	83%
Narraguinnep Reservoir	5.4	18.9	17.3	19.0	28%	99%	91%	31%	109%
Paonia Reservoir	15.5	15.6	14.9	15.4	101%	101%	97%	104%	104%
Platoro Reservoir	16.7	19.4	28.7	60.0	28%	32%	48%	58%	68%
Point Of Rocks Reservoir	71.2	61.4	63.2	70.6	101%	87%	90%	113%	97%
Prewitt Reservoir	24.9	22.3	22.0	28.2	88%	79%	78%	113%	101%
Pueblo Reservoir	198.6	234.6	186.4	354.0	56%	66%	53%	107%	126%
Ralph Price Reservoir	16.2	13.7		16.2	100%	85%			
Ridgway Reservoir	61.4	67.9	70.6	83.0	74%	82%	85%	87%	96%
Rio Grande Reservoir	18.8	8.4	23.9	51.0	37%	16%	47%	79%	35%
Riverside Reservoir	55.6	46.4	48.5	55.8	100%	83%	87%	115%	96%
Ruedi Reservoir	68.3	78.4	78.0	102.0	67%	77%	76%	88%	100%

Sanchez Reservoir	6.1	6.6	30.8	103.0	6%	6%	30%	20%	22%
Santa Maria Reservoir	13.0	16.1	11.3	45.0	29%	36%	25%	115%	143%
Shadow Mountain Reservoir	16.9	17.0	16.9	18.4	92%	92%	92%	100%	101%
Silverjack Reservoir	7.6	9.4	11.8	12.8	59%	74%	92%	64%	80%
Spinney Mountain Reservoir	35.9	45.1	33.1	49.0	73%	92%	68%	108%	136%
Stagecoach Reservoir nr Oak Creek	33.8	35.8	32.1	36.5	93%	98%	88%	105%	112%
Standley Reservoir	39.8	42.2	39.1	42.0	95%	100%	93%	102%	108%
Taylor Park Reservoir	70.1	85.9	74.7	106.0	66%	81%	70%	94%	115%
Terrace Reservoir	8.1	8.4	9.1	18.0	45%	47%	51%	89%	92%
Terry Reservoir		7.9	4.9	8.0		98%	61%		160%
Trinidad Lake	28.3	21.6	29.3	167.0	17%	13%	18%	97%	74%
Trout Lake Reservoir	2.2	2.6	2.2	3.2	70%	80%	69%	102%	117%
Turquoise Lake	73.1	80.2	82.3	127.0	58%	63%	65%	89%	97%
Twin Lakes Reservoir	37.9	44.5	54.9	86.0	44%	52%	64%	69%	81%
Union Reservoir	11.3	12.5	11.7	13.0	87%	96%	90%	96%	107%
Vallecito Reservoir	76.6	123.7	100.7	126.0	61%	98%	80%	76%	123%
Vega Reservoir	16.7	25.1	31.3	32.9	51%	76%	95%	53%	80%
Williams Fork Reservoir	73.0	88.3	73.0	97.0	75%	91%	75%	100%	121%
Willow Creek Reservoir	5.9	7.4	7.9	9.1	65%	81%	87%	74%	93%
Windsor Reservoir		14.2	12.5	15.2		93%	82%		114%
Wolford Mountain Reservoir	64.6	65.8	59.9	65.9	98%	100%	91%	108%	110%
Yamcolo Reservoir	8.3	9.8	7.4	8.7	95%	112%	85%	112%	132%
Basin-wide Total	3320.5	3941.7	3962.7	6068.9	55%	65%	65%	84%	99%
# of reservoirs	73	73	73	73	73	73	73	73	73

IDAHO	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
American Falls Reservoir	1034.5	1667.9	1459.0	1672.6	62%	100%	87%	71%	114%
Anderson Ranch Reservoir	329.7	380.0	375.3	450.2	73%	84%	83%	88%	101%
Arrowrock Reservoir	156.2	215.9	198.1	272.2	57%	79%	73%	79%	109%
Bear Lake	804.3	1122.4	710.6	1302.0	62%	86%	55%	113%	158%
Blackfoot Reservoir		337.0	235.2	337.0		100%	70%		143%
Brownlee Reservoir	1339.5	1379.5	1343.0	1420.0	94%	97%	95%	100%	103%
Cascade Reservoir	623.7	680.1	625.3	693.2	90%	98%	90%	100%	109%
Lake Coeur d' Alene	234.5	231.1	265.5	238.5	98%	97%	111%	88%	87%
Deadwood Reservoir	131.2	146.2	145.5	161.9	81%	90%	90%	90%	101%
Dworshak Reservoir	3034.7	3231.0	3113.0	3468.0	88%	93%	90%	97%	104%
Henrys Lake	90.8	90.6	85.6	90.4	100%	100%	95%	106%	106%
Island Park Reservoir	135.4	135.0	133.4	135.2	100%	100%	99%	101%	101%
Lake Lowell	129.3	143.3	122.9	165.2	78%	87%	74%	105%	117%
Little Wood Reservoir	14.1	26.1	27.3	30.0	47%	87%	91%	51%	96%
Lucky Peak Reservoir	282.9	288.0	262.1	293.2	96%	98%	89%	108%	110%
Mackay Reservoir	21.8	40.3	34.6	44.4	49%	91%	78%	63%	116%
Magic Reservoir	21.7	130.5	130.3	191.5	11%	68%	68%	17%	100%
Mann Creek Reservoir	10.5	10.9	10.5	11.1	94%	98%	95%	100%	104%
Montpelier Reservoir		4.1	3.4	4.0		101%	85%		119%
Oakley Reservoir	25.5	42.5	37.4	75.6	34%	56%	49%	68%	114%
Palisades Reservoir	1219.9	1133.7	1027.0	1400.0	87%	81%	73%	119%	110%
Lake Pend Oreille	1382.9	1302.2	1337.0	1561.3	89%	83%	86%	103%	97%
Priest Lake	128.7	151.0	137.2	119.3	108%	127%	115%	94%	110%
Ririe Reservoir	67.5	81.3	69.6	80.5	84%	101%	86%	97%	117%
Salmon Falls Reservoir	45.8	107.8	82.7	182.6	25%	59%	45%	55%	130%
Basin-wide Total	11265.1	12737.4	11732.9	14058.9	80%	91%	83%	96%	109%
# of reservoirs	23	23	23	23	23	23	23	23	23

MONTANA	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Ackley Lake	5.3	5.3	4.6	7.0	76%	76%	66%	116%	116%
Bair Res	5.3	7.3	4.9	7.0	76%	104%	70%	108%	149%
Bighorn Lake	796.1	810.3	848.0	1356.0	59%	60%	63%	94%	96%
Camas (4)			28.6	45.2			63%		
Canyon Ferry Lake	1557.7	1630.0	1639.0	2043.0	76%	80%	80%	95%	99%
Clark Canyon Res	131.9	150.2	137.1	255.6	52%	59%	54%	96%	110%
Cooney Res	27.6	28.1	23.7	27.4	101%	103%	86%	116%	119%
Deadman's Basin Res	65.4	76.0	49.2	72.2	91%	105%	68%	133%	154%
East Fork Rock Creek Res	11.2	13.9	10.6	16.0	70%	86%	66%	105%	131%
Ennis Lake		35.8	35.6	41.0		87%	87%		101%
Flathead Lake	1519.9	1444.3	1538.0	1791.0	85%	81%	86%	99%	94%
Fort Peck Lake	14787.2	15865.9	13383.0	18910.0	78%	84%	71%	110%	119%
Four Horns Lake	8.8	7.7	11.6	19.2	46%	40%	60%	75%	66%
Fresno Res	73.0	87.0	71.9	127.0	57%	69%	57%	102%	121%
Georgetown Lake	28.5	30.2	29.1	31.0	92%	97%	94%	98%	104%
Gibson Res	82.9	90.3	89.8	99.1	84%	91%	91%	92%	101%
Hauser Lake & Lake Helena		74.4	73.8	74.6		100%	99%		101%
Hebgen Lake		352.0	336.2	378.8		93%	89%		105%
Helena Valley Reservoir	9.1	8.9	7.9	9.2	99%	97%	86%	115%	113%
Holter Lake		81.5	80.4	81.9		99%	98%		101%

Hungry Horse Lake	3096.4	3048.1	2733.0	3451.0	90%	88%	79%	113%	112%
Lake Como	37.1	38.7	33.2	34.9	106%	111%	95%	112%	117%
Lake Elwell (Tiber)	811.6	878.2	796.1	1347.0	60%	65%	59%	102%	110%
Lake Frances	101.3	101.7	73.9	112.0	90%	91%	66%	137%	138%
Lake Helena		11.0	10.9	12.7		87%	86%		101%
Lake Koocanusa	3849.5	4137.7	3736.0	5748.0	67%	72%	65%	103%	111%
Lima Reservoir	62.4	71.7	61.4	84.0	74%	85%	73%	102%	117%
Lower Jocko Lake			3.7	6.4			58%		
Lower Two Medicine Lake	10.3	11.7	12.0	11.9	86%	99%	101%	86%	98%
Lower Willow Creek Reservoir			4.7	4.9			96%		
Martinsdale Res	21.0	23.3	15.2	23.1	91%	101%	66%	138%	153%
Middle Creek Res	9.6	10.4	8.6	10.2	94%	102%	84%	111%	121%
Mission Valley (8)			63.0	100.0			63%		
Mystic Lake		4.3	5.8	21.0		20%	28%		74%
Nelson Res	37.0	57.3	40.0	66.8	55%	86%	60%	92%	143%
Nevada Creek Res	11.5	11.4	10.9	12.6	91%	90%	87%	105%	105%
Nilan Reservoir	4.1	9.9	8.5	11.0	38%	89%	77%	49%	116%
Noxon Rapids Reservoir	332.2	331.1	324.2	335.0	99%	99%	97%	102%	102%
Painted Rocks Lake	33.1	34.0	32.3	31.7	104%	107%	102%	102%	105%
Pishkun Res	29.9	30.2	29.8	32.0	93%	94%	93%	100%	101%
Ruby River Reservoir	35.7	38.3	37.1	38.8	92%	99%	96%	96%	103%
Lake Sherburne	30.2	46.9	31.8	64.3	47%	73%	49%	95%	148%
Smith River Res	11.6	11.6	9.9	10.6	109%	109%	93%	117%	117%
Swift Res	28.8	30.3	23.1	30.0	96%	101%	77%	125%	131%
Tongue River Res	78.1	80.7	52.6	79.1	99%	102%	66%	148%	154%
Willow Creek Res - Augusta	29.1	25.8	28.3	32.2	90%	80%	88%	103%	91%
Basin-wide Total	27770.1	29284.5	25946.3	36337.0	76%	81%	71%	107%	113%
# of reservoirs	36	36	36	36	36	36	36	36	36

NEVADA	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Lahontan Reservoir	112.0	213.5	219.2	313.0	36%	68%	70%	51%	97%
Marlette Lk nr Carson City	11.6	12.2	12.0	11.8	98%	104%	102%	97%	102%
Rye Patch Re nr Rye Patch, NV	47.2	153.3	92.6	194.3	24%	79%	48%	51%	166%
Topaz Lk nr Topaz	16.8	39.6	34.4	59.4	28%	67%	58%	49%	115%
Wild Horse Reservoir	51.6	73.4	52.0	71.5	72%	103%	73%	99%	141%
Basin-wide Total	239.2	491.9	410.2	650.0	37%	76%	63%	58%	120%
# of reservoirs	5	5	5	5	5	5	5	5	5

NEW MEXICO	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Abiquiu Reservoir	66.5	90.1	188.6	1198.5	6%	8%	16%	35%	48%
Bluewater Lake	2.7	5.7	9.9	38.5	7%	15%	26%	28%	57%
Brantley Lake nr Carlsbad	14.9	19.7	23.3	1008.2	1%	2%	2%	64%	85%
Caballo Reservoir	47.4	77.4	106.5	332.0	14%	23%	32%	45%	73%
Cochiti Lake	41.8	44.6	81.0	491.0	9%	9%	16%	52%	55%
Conchas Lake	12.9	57.2	201.5	254.4	5%	22%	79%	6%	28%
Costilla Reservoir	6.0	8.1	10.4	16.0	38%	51%	65%	58%	78%
Eagle Nest Lake nr Eagle Nest, NM	38.7	46.7	59.9	79.0	49%	59%	76%	65%	78%
El Vado Reservoir	14.0	60.4	153.1	184.8	8%	33%	83%	9%	39%
Elephant Butte Reservoir	234.4	402.2	1293.0	2195.0	11%	18%	59%	18%	31%
Heron Reservoir	89.4	133.0	318.0	400.0	22%	33%	80%	28%	42%
Lake Avalon	1.1	1.9	1.6	4.0	28%	48%	40%	70%	120%
Lake Sumner	6.4	16.6	22.9	102.0	6%	16%	22%	28%	73%
McClure Reservoir	0.4	2.6	2.5	3.3	11%	79%	77%	15%	103%
Nambe Falls Reservoir	1.5	2.0	1.9	1.7	91%	122%	113%	81%	108%
Navajo Reservoir	1104.9	1366.7	1430.0	1696.0	65%	81%	84%	77%	96%
Santa Rosa Reservoir	3.6	42.5	61.2	432.2	1%	10%	14%	6%	69%
Basin-wide Total	1686.7	2377.3	3965.3	8436.5	20%	28%	47%	43%	60%
# of reservoirs	17	17	17	17	17	17	17	17	17

OREGON	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Applegate	46.3	36.7	64.9	75.2	62%	49%	86%	71%	57%
Beulah	33.1	47.2	46.7	59.2	56%	80%	79%	71%	101%
Bully Creek	17.3	20.8	23.2	23.7	73%	88%	98%	75%	90%
Clear Lake	3.5	2.4	6.5	13.1	27%	18%	50%	54%	37%
Cold Springs	17.6	16.5	28.2	38.6	46%	43%	73%	63%	59%
Cottonwood	1.4	4.7	7.0	9.3	15%	50%	75%	21%	66%
Crane Prairie	47.9	47.0	42.8	55.3	87%	85%	77%	112%	110%
Crescent Lake	24.5	47.2	54.4	86.9	28%	54%	63%	45%	87%
Drews	3.8	41.0	45.5	63.5	6%	65%	72%	8%	90%
Emigrant Lake	13.4	25.6	35.5	39.0	34%	66%	91%	38%	72%
Fish Lake	3.8	4.9	6.2	7.9	47%	62%	78%	61%	78%
Fourmile Lake	4.1	5.9	10.7	15.6	27%	38%	69%	39%	56%
Gerber	20.6	62.4	65.0	94.3	22%	66%	69%	32%	96%

Henry Hagg Lake	50.1	51.6	52.5	53.3	94%	97%	98%	95%	98%
Howard Prairie	5.1	15.5	48.3	62.1	8%	25%	78%	11%	32%
Hyatt Prairie	3.5	6.7	13.2	16.2	21%	41%	81%	26%	50%
Lake Owyhee	352.7	576.5	536.2	715.0	49%	81%	75%	66%	108%
Lost Creek	224.5	283.1	302.6	315.0	71%	90%	96%	74%	94%
Mckay	63.8	65.2	57.0	71.5	89%	91%	80%	112%	114%
Ochoco	9.7	21.9	34.6	44.2	22%	49%	78%	28%	63%
Phillips Lake	12.5	38.6	58.7	73.5	17%	52%	80%	21%	66%
Prineville	80.4	101.4	140.5	148.6	54%	68%	95%	57%	72%
Thief Valley	11.7	14.1	13.6	13.3	88%	106%	102%	86%	104%
Timothy Lake	63.3	61.9	62.3	63.6	99%	97%	98%	102%	99%
Unity	22.4	24.9	22.4	25.5	88%	98%	88%	100%	111%
Upper Klamath Lake	298.0	396.7	445.2	523.7	57%	76%	85%	67%	89%
Wallowa Lake	23.9	31.3	27.2	37.5	64%	83%	73%	88%	115%
Warm Springs	68.0	128.8	122.4	169.6	40%	76%	72%	56%	105%
Wickiup	66.6	103.3	159.7	200.0	33%	52%	80%	42%	65%
Willow Creek	5.7	6.1	5.9	9.8	59%	62%	60%	97%	103%
Wolf Creek	7.1	11.1	9.7	11.1	63%	100%	87%	73%	114%
Basin-wide Total	1606.3	2300.8	2548.6	3135.3	51%	73%	81%	63%	90%
# of reservoirs	31	31	31	31	31	31	31	31	31

UTAH	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Bear Lake	804.3	1122.4	710.6	1302.0	62%	86%	55%	113%	158%
Big Sand Wash Reservoir	15.2	21.1		25.7	59%	82%			
Causey Reservoir	7.0	7.1	7.0	7.1	99%	99%	99%	101%	101%
Cleveland Lake	2.3	5.4		5.4	43%	100%			
Current Creek Reservoir	14.7	14.7	15.2	15.5	95%	95%	98%	97%	97%
Deer Creek Reservoir	118.4	147.9	132.8	149.7	79%	99%	89%	89%	111%
East Canyon Reservoir	36.9	49.0	46.7	49.5	75%	99%	94%	79%	105%
Echo Reservoir	33.1	65.4	67.0	73.9	45%	89%	91%	49%	98%
Flaming Gorge Reservoir	3148.8	3227.6	3070.0	3749.0	84%	86%	82%	103%	105%
Grantsville Reservoir	2.2	2.1	2.8	3.3	65%	65%	85%	77%	76%
Gunlock	4.7	9.1	7.9	10.4	45%	87%	76%	59%	115%
Gunnison Reservoir	0.0	6.7	14.7	20.3	0%	33%	72%	0%	45%
Huntington North Reservoir	3.0	3.2	3.7	4.2	72%	77%	88%	81%	87%
Hyrum Reservoir	13.3	14.6	14.6	15.3	87%	96%	95%	91%	100%
Joels Valley Reservoir	37.6	55.8	51.0	61.6	61%	91%	83%	74%	109%
Jordanelle Reservoir	226.0	307.6	274.4	314.0	72%	98%	87%	82%	112%
Ken's Lake	0.9	1.7	2.0	2.3	38%	74%	87%	44%	85%
Kolob Reservoir	3.0	5.6		5.6	54%	100%			
Lost Creek Reservoir	15.7	22.6	18.7	22.5	70%	100%	83%	84%	121%
Lower Enterprise	0.8	1.0	1.2	2.6	31%	38%	45%	68%	85%
Miller Flat Reservoir	1.8	4.2		5.2	34%	80%			
Millsite	6.1	12.5	15.9	16.7	37%	75%	95%	38%	79%
Minersville Reservoir	6.9	17.5	15.0	23.3	30%	75%	64%	46%	117%
Moon Lake Reservoir	13.8	37.0	28.6	35.8	38%	103%	80%	48%	129%
Otter Creek Reservoir	25.6	48.3	43.7	52.5	49%	92%	83%	59%	111%
Panguitch Lake	17.5	24.4	18.1	22.3	79%	109%	81%	97%	135%
Pineview Reservoir	60.2	100.9	97.8	110.1	55%	92%	89%	62%	103%
Piute Reservoir	13.7	62.1	53.0	71.8	19%	87%	74%	26%	117%
Porcupine Reservoir	8.8	13.1	10.8	11.3	78%	116%	96%	81%	121%
Quail Creek	30.9	31.3	31.5	40.0	77%	78%	79%	98%	99%
Red Fleet Reservoir	17.1	23.4	23.5	25.7	67%	91%	91%	73%	100%
Rockport Reservoir	33.5	55.6	50.8	60.9	55%	91%	83%	66%	109%
Sand Hollow Reservoir	41.8	49.8		50.0	84%	100%			
Scofield Reservoir	33.3	58.9	48.7	65.8	51%	90%	74%	68%	121%
Settlement Canyon Reservoir	0.4	0.6	0.9	1.0	45%	61%	85%	52%	72%
Sevier Bridge Reservoir	62.6	104.2	159.0	236.0	27%	44%	67%	39%	66%
Smith And Morehouse Reservoir	4.8	8.5	6.7	8.1	59%	105%	83%	72%	127%
Starvation Reservoir	150.6	162.7	154.8	164.1	92%	99%	94%	97%	105%
Stateline Reservoir	8.3	14.3	10.2	12.0	69%	119%	85%	81%	140%
Steinaker Reservoir	10.1	15.8	29.2	33.4	30%	47%	87%	35%	54%
Strawberry Reservoir	902.7	1003.1	714.9	1105.9	82%	91%	65%	126%	140%
Upper Enterprise	2.3	5.1	4.8	10.0	23%	51%	48%	48%	106%
Upper Stillwater Reservoir	21.2	19.3	15.7	32.5	65%	59%	48%	135%	123%
Utah Lake	614.6	846.7	864.9	870.9	71%	97%	99%	71%	98%
Willard Bay	136.0	192.4	164.5	215.0	63%	89%	77%	83%	117%
Woodruff Creek	1.7	4.0	3.8	4.0	42%	100%	95%	45%	105%
Basin-wide Total	6650.3	7920.2	7007.0	9032.3	74%	88%	78%	95%	113%
# of reservoirs	41	41	41	41	41	41	41	41	41

WASHINGTON	Current (KAF)	Last Year (KAF)	Average (KAF)	Capacity (KAF)	Current % Capacity	Last Year % Capacity	Average % Capacity	Current % Average	Last Year % Average
Bumping Lake	33.3	34.1	32.3	33.7	99%	101%	96%	103%	106%
Cle Elum	388.1	408.9	383.4	436.9	89%	94%	88%	101%	107%
Conconully Lake (Salmon Lake Dam)	6.6	8.6	8.3	10.5	63%	82%	79%	80%	104%

Conconully Reservoir	9.9	11.1	10.1	13.0	76%	86%	78%	98%	110%
Diablo Reservoir			86.6	90.6			96%		
Kachess	228.7	209.3	204.0	239.0	96%	88%	85%	112%	103%
Keechelus	135.1	141.1	135.9	157.8	86%	89%	86%	99%	104%
Rimrock	180.7	193.8	183.1	198.0	91%	98%	92%	99%	106%
Ross	998.1	1125.3	1050.0	1404.1	71%	80%	75%	95%	107%
Basin-wide Total	1980.6	2132.2	2007.1	2493.0	79%	86%	81%	99%	106%
# of reservoirs	8	8	8	8	8	8	8	8	8

[illegible]

Tab L – Arizona's Colorado River Shortage Mitigation Measures



colorado river shortage

FACT SHEET

ARIZONA – STRONGER TOGETHER

We anticipate the first-ever “Tier 1” shortage declaration on the Colorado River beginning in 2022. The shortage will result in a substantial cut to Arizona’s share of the river, with reductions falling largely to central Arizona agricultural users. Water supplies for cities will not be affected and tribal supplies remain secure.

These reductions are painful, but we are prepared. We have long understood the risks to Arizona’s Colorado River supplies and have been planning for decades, including the successful efforts to help craft the Drought Contingency Plan for the Colorado River system in 2019.

As we face the prospect of a hotter and drier future, we are confident that with our long history of successful collaboration among our diverse stakeholders – agriculture, tribes, cities, environment and industry – we will continue to find innovative and effective solutions to sustain Arizona’s Colorado River supply.

YOU SHOULD KNOW

- Arizona is prepared for a Colorado River shortage.
- Water interests from throughout the state worked collectively to share the risks and benefits of the Drought Contingency Plan (DCP).
- Together, these efforts reduce the pain of the near-term reductions while addressing risks of future shortages.
- We are taking steps and participating in partnerships to make the river more sustainable during drought and the reality of a hotter and drier future.

While we may have less water coming to Arizona from the Colorado River in 2022, Arizona’s water managers and suppliers have been taking measures to prepare and will continue to work to ensure the river remains stable for generations to come.

WHAT IS A COLORADO RIVER SHORTAGE?

A shortage means a reduction in the Colorado River supply available to Arizona.

In 2020 and 2021, the river has been operating in a “Tier Zero” status, requiring the State to forego 192,000 acre-feet of Arizona’s 2.8-million acre-foot annual entitlement to Lake Mead. This reduction is coming entirely from the Central Arizona Project (CAP) system.

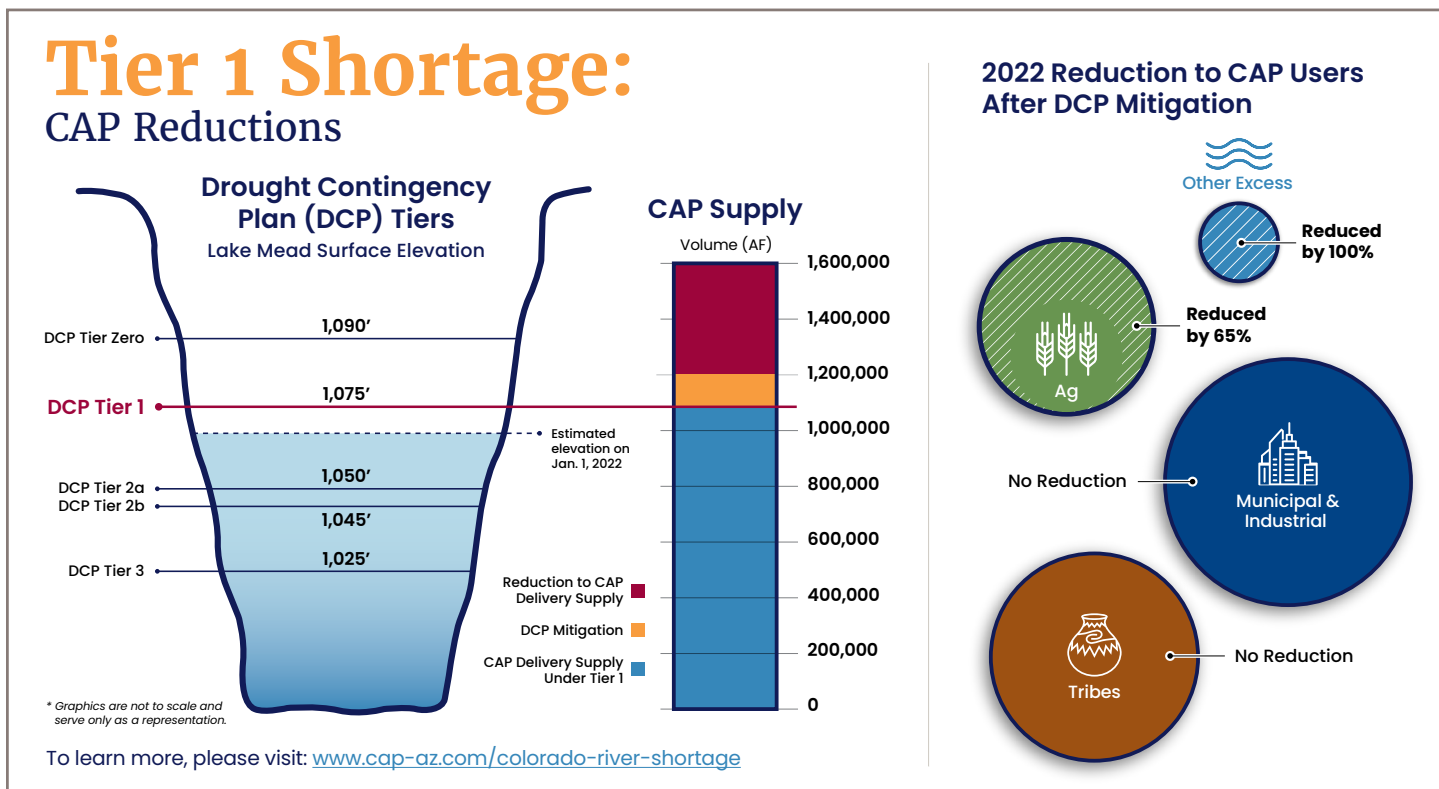
Based on the current hydrology, it is likely that the U.S. Bureau of Reclamation will announce a “Tier 1” shortage level for 2022. This will require Arizona to further reduce uses to a total of 512,000 acre-feet, again borne almost entirely by the CAP system.

The “Tier 1” reductions would constitute about 30% of CAP’s normal supply; about 18% of Arizona’s Colorado River supply; and less than 8% of Arizona’s total water use.

WHO WILL BE IMPACTED BY A LOWER BASIN COLORADO RIVER SHORTAGE?

The shortage will result in a substantial cut to Arizona's share of the river, with reductions falling largely to central Arizona agricultural users. Water supplies for cities will not be affected and tribal supplies remain secure.

The following infographic shows CAP reductions for 2022 in a Tier 1 Shortage:



HOW HAS THE DROUGHT CONTINGENCY PLAN PREPARED ARIZONA FOR SHORTAGE?

Prior to DCP, Arizona water users voluntarily conserved a portion of the State's allocation in Lake Mead. The DCP formalized that practice, requiring that Arizona leave specified volumes of water in the reservoir as surface levels dipped below designated tiers.

Arizona's DCP Steering Committee included about 40 representatives of tribes, cities, agriculture, developers, environmental organizations and elected officials. This Committee worked collectively to share the risks and benefits of the DCP.

Arizona's DCP implementation plan represents the best of Arizona water management: collaboration, cooperation, and innovation. The plan shares resources and mitigates the impacts of shortage reductions. In the plan, some are committing to leaving extra water in Lake Mead to reduce future risks, while others are sharing water with the most severely impacted of the state's water users. Together these efforts reduce the pain of the near-term reductions while addressing risks of future shortages.





HOW ARE WE FOCUSING ON THE HEALTH OF THE COLORADO RIVER FOR THE FUTURE?

The successful process that was used for DCP is being replicated by the Arizona Reconsultation Committee, which is again being led by the Arizona Department of Water Resources and CAP. That process will prepare Arizona for new Colorado River operating rules to be developed in the coming years, after 2026.

ADWR and CAP also participated in the Colorado River Climate and Hydrology Work Group that published its report titled the “Colorado River Basin Climate and Hydrology: State of the Science.” The report integrated nearly 800 peer-reviewed studies, agency reports and other sources to assess the state of the science and the technical methods relevant to water resources in the Colorado River Basin. ADWR Director Buschatzke identified the report as one that “...serves as a foundational knowledge base for water resources managers and researchers to help navigate the future of the Colorado River.”

In addition, ADWR and CAP are taking steps and participating in partnerships to make the river more sustainable during drought and the reality of a hotter/drier future. For CAP, this includes its Climate Adaptation Plan, participation in the Water Utility Climate Alliance and a partnership with ASU and NASA to study to effects of climate change in the Colorado River Basin with research that will be relevant to the ARC process.



new.azwater.gov



www.CentralArizonaProject.com
www.KnowYourWaterNews.com

April, 2021

Tab M – Subseasonal to Seasonal (S2S)
Precipitation Forecasting/Pilot
Projects

Subseasonal to Seasonal Precipitation Forecasting Funding Efforts

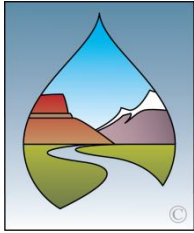
Since February 2021, Council staff, in coordination with former WSWC Chair Jeanine Jones, has worked to garner support for appropriating funds for the Western Winter Subseasonal to Seasonal (S2S) precipitation forecasting pilot program, as recommended in the National Oceanic and Atmospheric Administration's (NOAA) 2020 report to Congress under Public Law 115-25. Forecasts at S2S time scales (weeks to a year or more) are needed to support water project operations, drought preparedness and response, and innovative water management strategies such as forecast-informed reservoir operations.

Staff have been requesting support for a \$15 million increase for the U.S. Weather Research Program budget within NOAA's Office of Oceanic and Atmospheric Research appropriations account, along with submitting proposed committee report language describing how the \$15 million should be focused (see below).

Thus far, the Council has sent support request letters to 25 Senators and 12 House Representatives, along with formal appropriations requests to 13 Senators and 9 Representatives. Follow-up on those letters has led to Zoom meetings with 8 Senators and 4 Representatives. Several WSWC members joined during their respective State's congressional meeting. Meetings include those with Sen. Jerry Moran and Sen. Jeff Merkley, members of the Senate Commerce, Justice, Science and Related Agencies (CJS) Appropriations Committee, as well as Rep. Mike Garcia who is on the House CJS Appropriations Committee.

Representative Grace Napolitano (D-CA) circulated a Dear Colleague letter in the House of Representatives, gathering 12 signatures from Democrats. We have not yet found a sponsor of a Dear Colleague letter on the Senate side.

Additionally, partners throughout the West have submitted letters of support for the S2S appropriation request. These include the Association of California Water Agencies, Truckee Meadows Water Authority, Central Utah Water Conservancy District, Upper Colorado River Commission, Six Agency Committee (California's Colorado River contractors), Instate Council on Water Policy, Wyoming State Engineer's Office, Salt River Project, and the California Chamber of Commerce.



WESTERN STATES WATER COUNCIL

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

Web Page: www.westernstateswater.org

April 26, 2021

The Honorable Catherine Cortez Masto
United States Senate
313 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cortez Masto:

On behalf of the Western States Water Council, a government entity advising the governors of eighteen states, I am writing to request your support for a National Oceanic and Atmospheric Administration (NOAA) Fiscal Year 2022 appropriation to begin the western pilot for improving sub-seasonal to seasonal (S2S) precipitation forecasting recommended in NOAA's 2020 report to Congress under Public Law 115-25. (<https://repository.library.noaa.gov/view/noaa/27408>)

The purpose of the pilot project is to improve precipitation forecasting for water management. As the report notes, NOAA pilot projects were chosen "...based on the existence of major climate phenomena that have huge economic impacts and for which current S2S predictive skill is too low to be effectively used by many stakeholders." Forecasts at S2S time scales (weeks to a year or more) are needed to support water project operations, drought preparedness and response, and innovative water management strategies such as forecast-informed reservoir operations.

NOAA's Climate Prediction Center has been issuing S2S precipitation outlooks since the mid-1990s. Their skill for the western U.S. has been minimal, just slightly better than predicting average weather conditions, and has shown little improvement over time. Forecasting precipitation at S2S timescales is scientifically challenging and has historically received little federal research support.

Currently, 100% of Nevada is experiencing at least moderate drought, with over 40% of the state in exceptional drought (www.drought.gov/states/nevada). The tools and data that would result from this pilot project would help water managers make important decisions regarding water resources with a longer lead time than is currently feasible.

The Council requests your support for a \$15 million increase in the U.S. Weather Research Program line item within NOAA's Office of Oceanic and Atmospheric Research appropriations account. (In fiscal year 2021 this line item was budgeted at \$26.5 million.) I have attached proposed committee report language describing how the \$15 million should be focused.

We appreciate your consideration and hope you will include S2S pilot project funding in your appropriations requests. Please feel free to contact our office with any questions. Further, we would welcome an opportunity to meet virtually and discuss this project with your staff.

Sincerely,

Tony Willardson
Executive Director

cc: Kyle Chapman - kyle_chapman@cortezmasto.senate.gov
Joleen Rivera - joleen_rivera@cortezmasto.senate.gov

Improving Sub-Seasonal to Seasonal Precipitation Forecasting for Water Management



WESTERN
STATES
WATER
COUNCIL

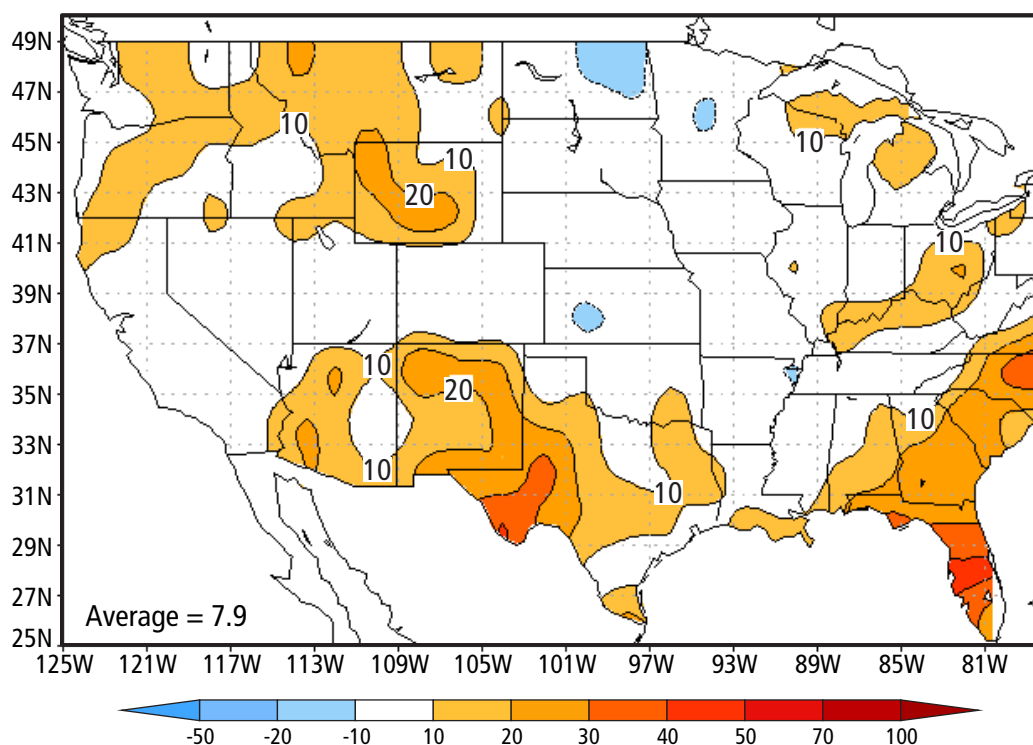
The Western States Water Council asks that the federal government provide resources for pilot projects to improve subseasonal to seasonal (S2S) precipitation forecasting to support water management in the western states, pursuant to the Weather Research and Forecasting Innovation Act. Pilot projects are needed for forecasts of winter precipitation (which provides the snowpack sustaining water supplies in mountain areas) throughout the West, and spring/summer precipitation for agricultural water supply in the Plains states.

Western States experience great subseasonal, seasonal, and annual variability in precipitation, with serious impacts and consequences for water supply planning and management, drought and flood preparedness and response, water rights administration, and operation of water projects. Sound decision-making to protect life and property by reducing flood risks and to inform decisions involving billions of dollars of economic activity for urban centers, agriculture, hydropower generation, and fisheries depends on our ability to observe, understand, model, predict, and adapt to precipitation variability

Public Law 115-25, Weather Research and Forecasting Innovation Act of 2017

This statute, enacted in 2017 and reauthorized in 2019 as part of National Integrated Drought Information System reauthorization, directs NOAA to “collect and utilize information in order to make usable, reliable, and timely foundational forecasts of subseasonal and seasonal temperature and precipitation.” The statute further requires submission of a report to Congress that describes “specific plans and goals for the continued development of the subseasonal and seasonal forecasts” and “an identification of research, monitoring, observing, and forecasting requirements” needed to meet the statutory goals.

Seasonal (Lead 0.5 months) Precipitation Heidke Skill Score DJF Manual Forecasts from 1995 to 2019



Historical skill of NOAA’s three-month precipitation outlook for the December, January, and February period. White areas on the map denote no more skill than simply predicting the historical average climate conditions. Figure credit: NOAA



The international Colorado River Basin has experienced prolonged drought conditions, resulting in declining reservoir elevations in Lake Mead and Lake Powell. Water agencies in the seven Colorado River Basin states have been taking unprecedented steps to manage the risk of shortage, including executing historic drought contingency plans with the Department of the Interior in 2019. Drought risk management programs in the contingency plans cost money and/or water. Skillful seasonal precipitation forecasts would help support decisions to balance costs against risks of shortage. Photo credit: U.S. Bureau of Reclamation



on operational time scales ranging from a few weeks to a season or more.

Current skill in S2S forecasting is not adequate to support water management decision-making, and **the federal government should place a priority on improving S2S precipitation forecasting capability to support water management.** Water is the life-blood of the West, which experiences far greater variability in annual precipitation than does the eastern half of the country. Managing water in the West is about managing for the extremes of droughts and floods, and the need to store water when available to manage it during drier times for cities, farms, energy, and the environment. Better longer-term precipitation forecasts are a necessary tool for more efficient water resource management.

Will this winter (or summer) be wet or dry?

This is a critical question asked every year by state, local, federal, and tribal water managers, as well as by cities, farmers, and hydroelectric powerplant operators. Although the skill of conventional short-term weather forecasts (which go out as far as two weeks in advance) has

improved over the past several decades, the same cannot be said for the critical longer-term forecasts important for water management. These longer forecasts – called subseasonal to seasonal (S2S) forecasts by atmospheric scientists – span time periods of several weeks out to one or two years. The skill of available forecasts, such as those produced by the National Weather Service’s (NWS’) Climate Prediction Center (CPC), is minimal.

As documented by NOAA’s National Centers for Environmental Information, disasters at both wet and dry extremes of the hydrologic cycle are responsible for billions of dollars in losses. Water managers could employ improved S2S forecasts to prepare for and respond to drought and flooding, reducing loss of lives and property, as well as economic and environmental losses. Similarly, decision makers in other sectors affected by water management (agriculture, fisheries, hydroelectric power generation, emergency management) share a common interest in more skillful and useful forecasts.

Lead time is critical in making water management decisions. Improving seasonal precipitation forecasts would

National Weather Service California Drought – 2014 Service Assessment

In 2015 NOAA released its first-ever service assessment for drought, for the California drought which had then completed its third year. NOAA conducts service assessments to evaluate its performance after significant hydrometeorological, oceanographic, or geologic events. The assessments are triggered by factors such as major economic impacts to a large area or population, or extensive national public interest. Assessments are used to evaluate the effectiveness of products and services made available to stakeholders, to help NOAA continuously improve the services it provides. The drought assessment’s top finding was the input received from numerous stakeholders regarding the need for seasonal prediction capability focused on cool-season mountain precipitation, both in California and in the Colorado River Basin.

“A majority of the stakeholders interviewed for this assessment noted one of the best services NOAA could provide is improved seasonal predictions with increased confidence and better interpretation. These seasonal precipitation products, produced by NOAA’s Climate Prediction Center (CPC), are national in scale and are not designed to provide regional forecast information – information which is most relevant to decision makers interviewed by this team. For instance, state and federal officials managing California’s water supply have a major unmet need for skillful predictions targeted at cool-season snowpack for the Sierra Nevada Mountains.”

Improving the skill of S2S precipitation forecasting to make it usable for water management is scientifically challenging. In 2016 the National Academy of Sciences released a report on a national research agenda for improving S2S forecasting. The report identified key strategies for the next decade and made 16 specific recommendations for a research agenda. It noted that: “More skillful and useful S2S forecasts – developed through sustained engagement with users and advances in basic knowledge and technological capabilities – could radically improve the basis for decision making on S2S timescales. There are also emerging science and technical capabilities that make rapid advances in S2S forecasts more likely than envisioned even 5 years ago.”

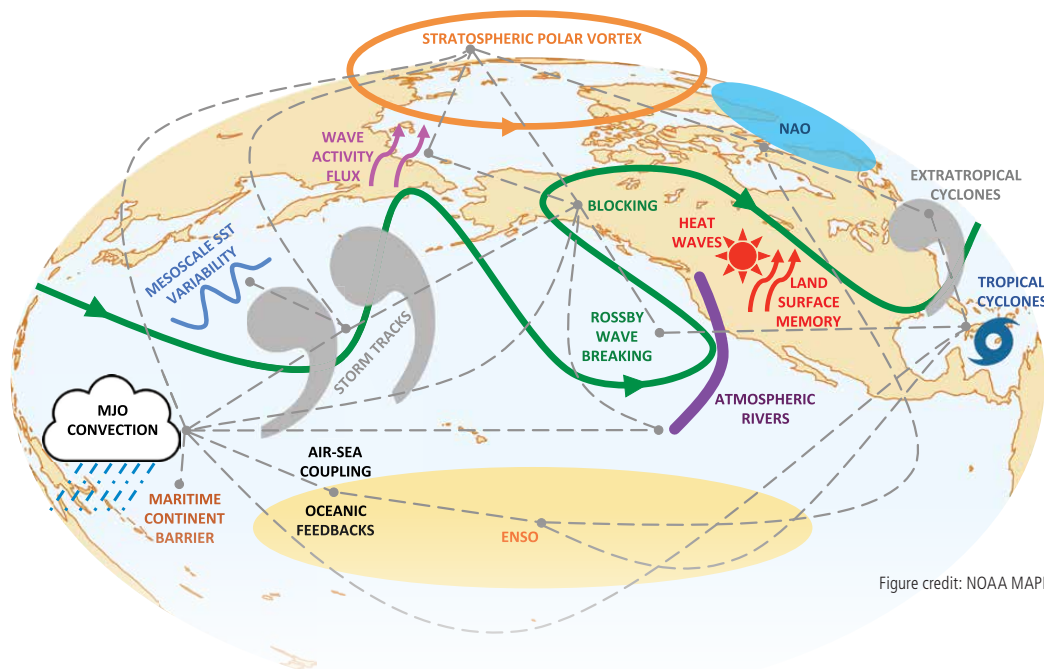


Figure credit: NOAA MAPP

Examples of Subseasonal and Seasonal Water Management Decisions

Subseasonal Decisions

Will the rest of this winter be wet or dry?

- » How much water will we be able to provide to our wholesale customers this spring? When can we plan to make an announcement?
- » Will we hit hydrologic shortage triggers that require extraordinary conservation measures, or a need to negotiate contracts or adopt special regulations?
- » Could we have an unusually wet late spring that would result in elevated flood risks or reduced agricultural irrigation needs?
- » If it looks like the rest of the winter will be dry, can we use some of the flood control storage space to save more water for our customers?
- » The winter has been very dry through December; are dry conditions likely to persist the rest of the winter?
- » When will we have to begin curtailing surface water rights and diversions on intensively used rivers?

Seasonal Decisions

Will this winter be wet or dry?

- » Do we need to seek drought response funding, reprogram other funds, or raise water rates?
- » Do we need to budget for enhanced water conservation outreach activities?
- » Should we make plans and adopt regulations for operating a drought water bank?
- » Should we purchase supplemental water supplies from groundwater or other sources to be able to meet our needs?
- » Should we begin negotiating contracts for one-time sale of surplus wet-weather water?
- » Can we set up a temporary groundwater recharge and banking program to take advantage of expected wet conditions?
- » Should we intensify flood fighting training and emergency preparedness outreach in vulnerable areas?

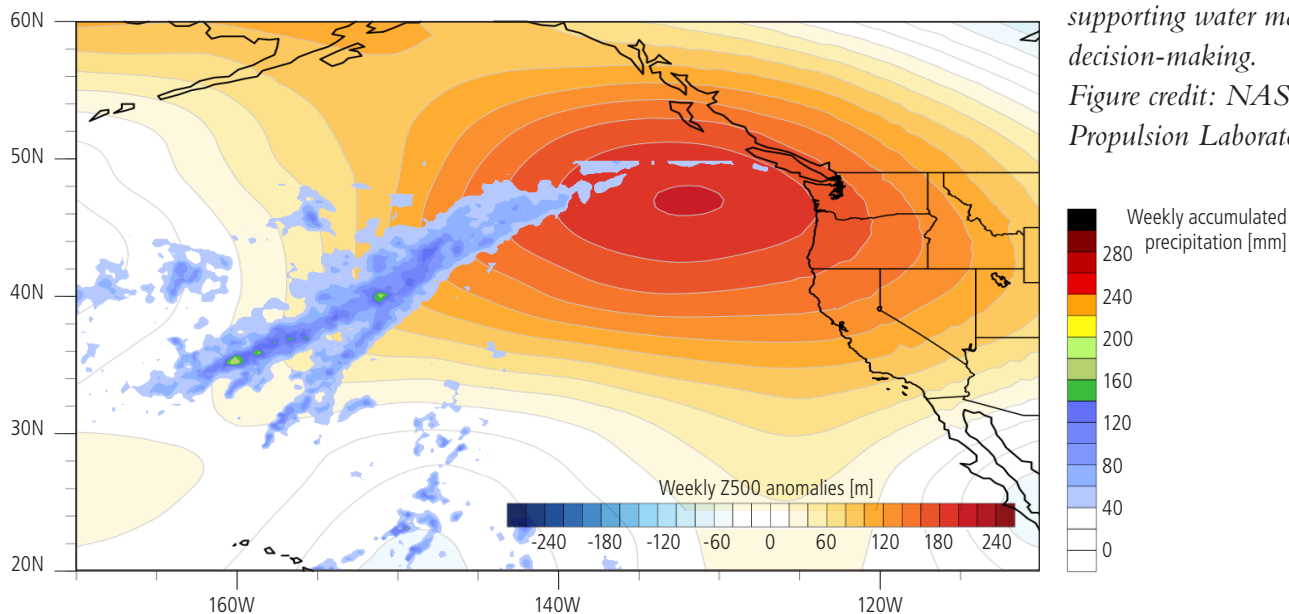
provide longer lead times for decision-making. Longer lead times are especially useful in planning and managing for the extremes of droughts and floods. Skillful subseasonal forecasts would allow for more efficient operation of water infrastructure, such as balancing reservoir operations between the competing objectives of flood control and water storage. Absent good predictive capability weeks ahead, reservoir operators must manage as conservatively as possible to ensure that space will be available to hold winter-spring runoff and manage floods. Better forecasts would allow

Atmospheric ridging blocks precipitation from reaching the West Coast during a drought year. The atmospheric feature nicknamed the “Ridiculously Resilient Ridge” was a key feature of the driest years of California’s 2012-16 drought. California Department of Water Resources (CDWR) has contracted with the National Aeronautics and Space Administration (NASA) for research on development of experimental subseasonal forecasts of winter ridging, to explore

the skill of this approach for supporting water management decision-making.

Figure credit: NASA Jet Propulsion Laboratory

24-30 December 2013



operators to retain more water in storage while still providing flood protection – the equivalent of developing new water supplies at minimal cost.

Opportunities for improving forecasting

S2S forecasting has historically occupied a research gap between conventional numerical weather modeling and century-scale climate modeling. Significant scientific progress has been achieved at the weather and century-scale ends of this spectrum, thanks to ongoing federal investment. According to the American Meteorological Society, the skill of five- to six-day NWS temperature forecasts in 2012 is equivalent to that of three- to four-day forecasts in 1992. Substantial federal support from 1990 onwards for the U.S. Global Change Research Program resulted in major progress in developing increasingly complex climate models. However, similar progress and investment have not occurred at the S2S time scale so important for western water management.

Improving S2S precipitation forecasting is a scientifically challenging subject that will require a commitment of dedicated, sustained funding. There is precedent within NOAA, given its Hurricane Forecasting Improvement Program (HFIP), for a similar



Late winter/early spring in South Dakota farm country in 2019. The Great Plains have been hit by devastating floods and droughts in the last decade. The flash drought of 2017 caused an estimated \$2.5 billion in damages to agriculture in the Dakotas and Montana; neither the drought's swift onset nor its severity was forecast. The flash drought was sandwiched between massive flooding in 2011 and 2019 that also caused billions of dollars in damages to communities and farms. Photo credit: South Dakota State Climatologist

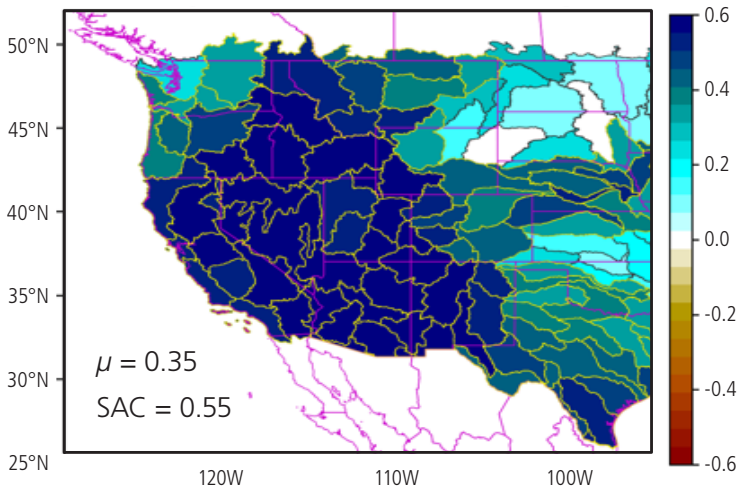


The U.S. Bureau of Reclamation's (USBR's) dry Folsom Lake in 2014. NOAA outlooks rely heavily on the El Niño-Southern Oscillation (ENSO) as a source of predictability. NOAA's early winter forecast in 2014 called for a weak to moderate El Niño with above-normal precipitation for California; ENSO conditions were neutral and California had one of its driest years on record. In 2015, NOAA correctly predicted the onset of strong El Niño conditions, but the expectation of a wet Southern California and dry Pacific Northwest was met with continued drought in Southern California and flooding in the Pacific Northwest, illustrating how much work remains to be done to improve seasonal forecasting. Photo credit: CDWR

Drought in the Western and Plains states in 2013 caused an estimated \$11.7 billion in losses. Numerous states, including Texas where this photo was taken, were affected. U.S. Department of Agriculture (USDA) disaster assistance payments are typically the federal government's greatest costs associated with droughts. Photo credit: USDA

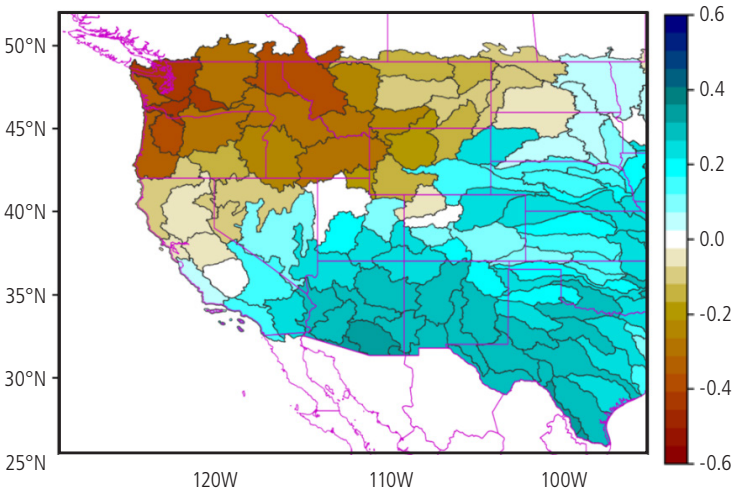
Preliminary experimental work being performed by NOAA's Earth Systems Research Laboratory (ESRL) under a contract with CDWR is compared to observed precipitation. ESRL developed a preliminary statistical model for S2S precipitation using sea surface temperatures and sea level pressure. This work demonstrates a potential opportunity for improving S2S forecasting precipitation through NOAA investment in statistical modeling. Figure credit: NOAA

Precipitation Anomaly Correlation with Merged SST/SLP model (1981-2018)



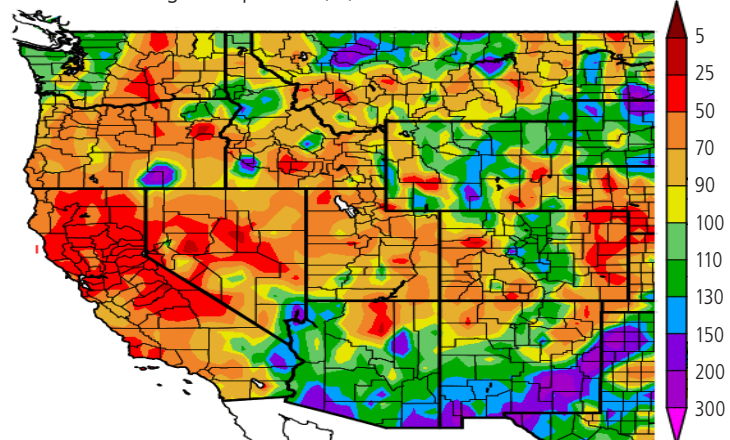
Skill of ESRL model tested against historical conditions (dark blue areas have greatest skill).

Precipitation Anomaly Correlation with Merged SST/SLP model forecast 2019/2020



Experimental forecast made in early October 2019 for the 2019-2020 winter; brown areas represent dry, blue areas wet.

Percent of Average Precipitation (%) 10/1/2019 – 3/8/2020



Observed water year precipitation.

Generated 3/9/2020 at WRCC using provisional data. NOAA Climate Centers

focused commitment of resources for improving forecasting skill. As with HFIP, there is no silver bullet for improving S2S forecasting. Necessary ingredients for making progress include investment in all aspects of the subject (human resources, high-performance computing, observing systems, and transition of research innovations to operations), well-defined metrics and timelines for evaluating success, and strong project management focused on operational outcomes. Regional pilot projects in areas where NOAA's current predictive skill is minimal are key to accelerating advancement of forecasting skill. Pilots provide opportunities to test tools such as statistical models or hybrid statistical-dynamical tools that can enhance information provided by NOAA's dynamical models.

The vision in a 2016 National Academy of Sciences report that S2S forecasts could be as widely used a decade from now as conventional weather forecasts are today needs to be realized. The Weather Research and Forecasting Innovation Act provides a path forward. The Western States Water Council asks that the federal government provide resources to implement the act.

Member states:



WESTERN STATES
WATER COUNCIL

Tab N – Western States Water Partnership



Western States
WATER PARTNERSHIP

The Growing Importance of Stream Flow Forecasting





First-ever Colorado River water shortage is now almost certain, new projections show

By Pedram Javaheri and Drew Kann, CNN

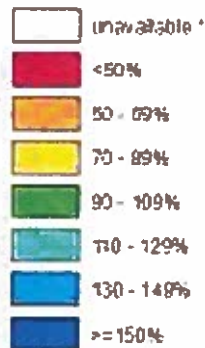
Thu May 27, 2021



Jan 05, 2018

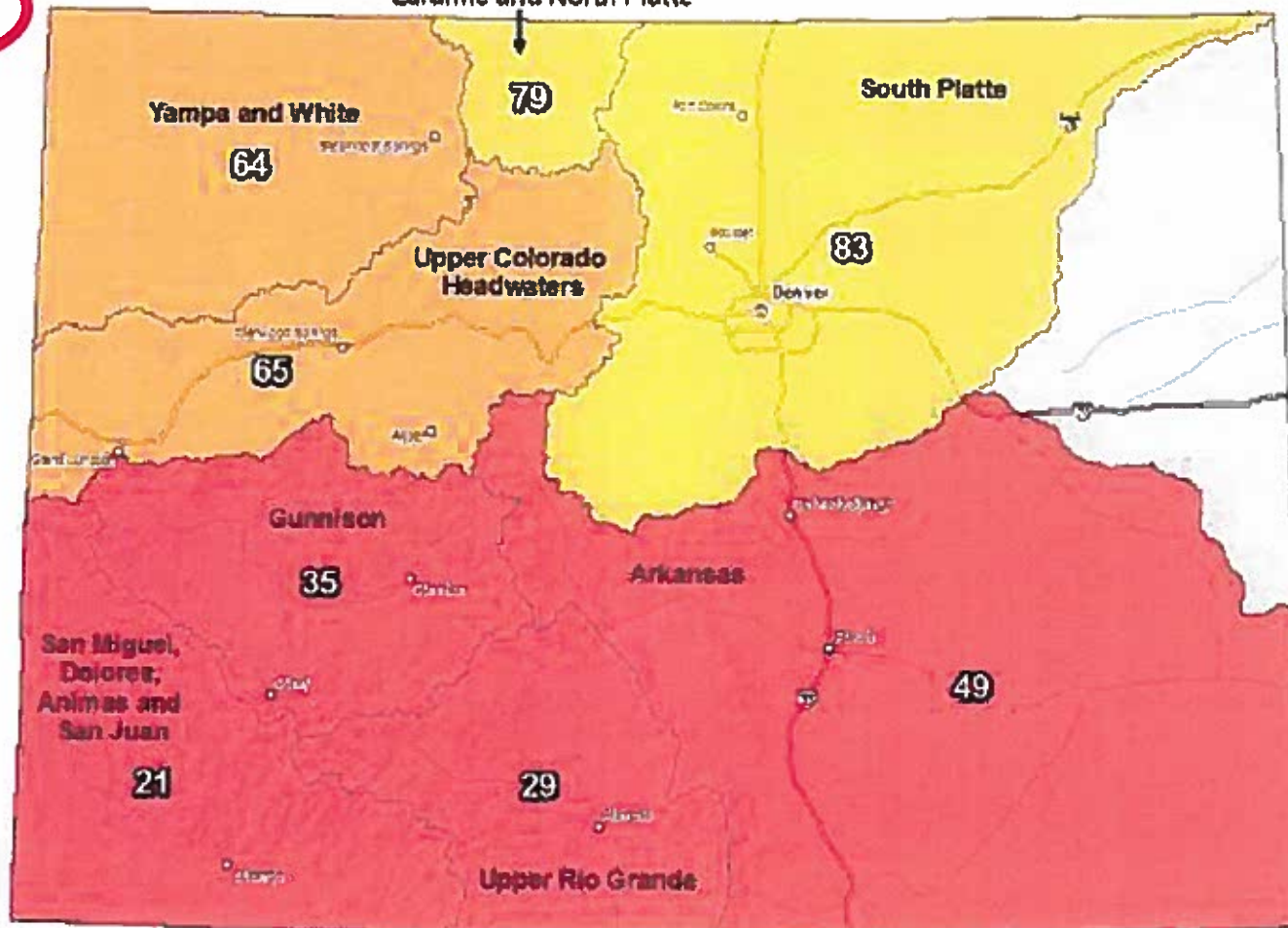
Colorado
SNOTEL Current Snow Water Equivalent (SWE) % of Normal
Laramie and North Platte

Current Snow Water
Equivalent (SWE)
Basin-wide Percent
of 1981-2010 Median



* Data unavailable at time
of posting or measurements
not reported below a 10%
base of year

Provisional Data
Subject to Revision



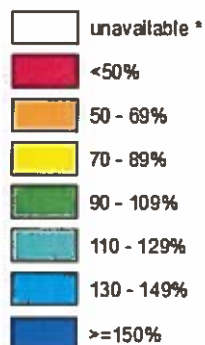
The snow water equivalent percent of normal represents the current
snow water equivalent found at selected SNOTEL sites in or near the basin
compared to the average value for those sites on this day. Data based on
the first reading of the day (typically 00:00).

Prepared by
USDA NRCS National Water and Climate Center
Portland, Oregon
<http://www.wcc.nrcs.usda.gov>

Jun 08, 2021

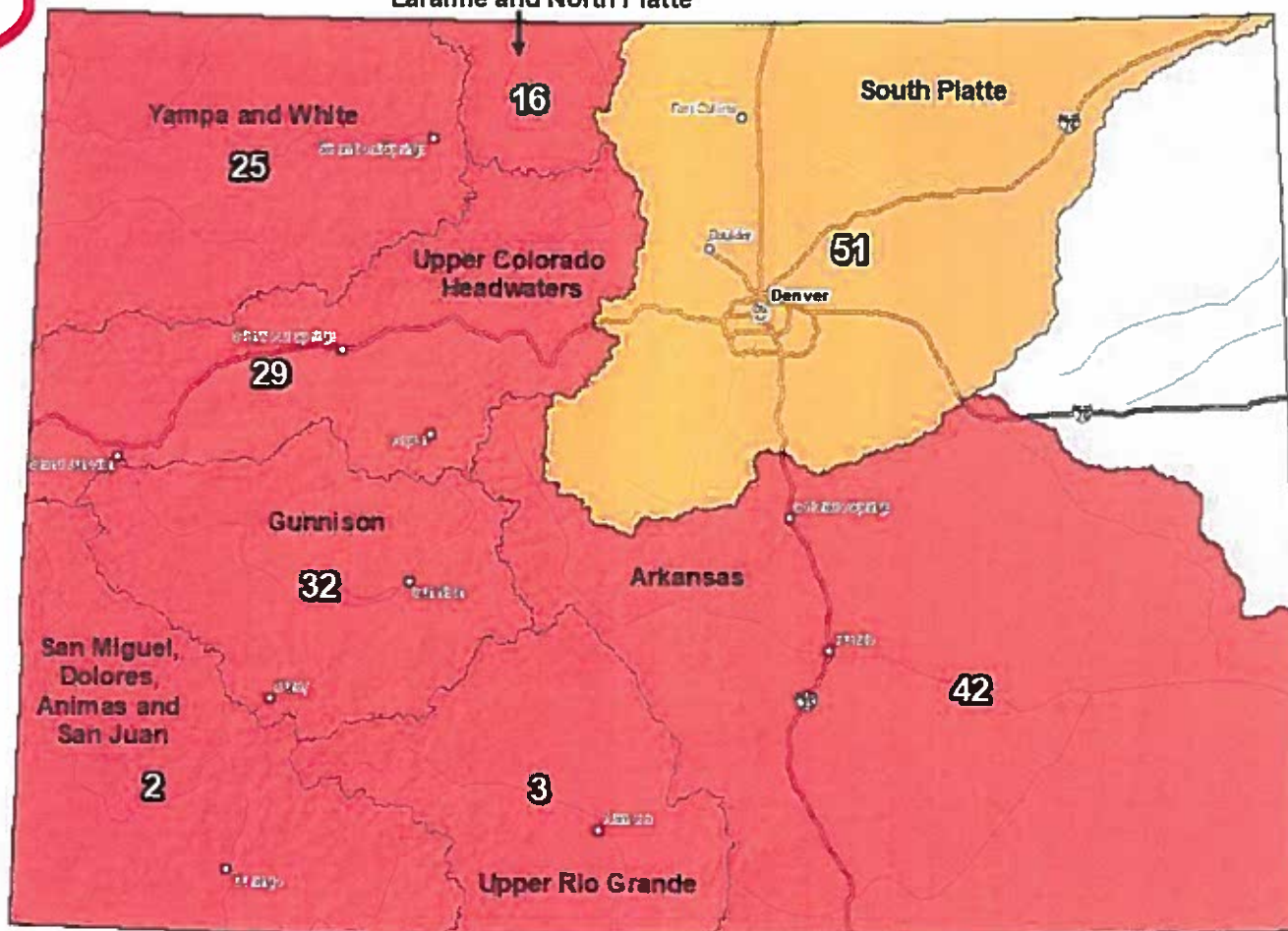
Colorado
SNOTEL Current Snow Water Equivalent (SWE) % of Normal
Laramie and North Platte

Current Snow Water
Equivalent (SWE)
Basin-wide Percent
of 1981-2010 Median



* Data unavailable at time
of posting or measurement
is not representative at this
time of year

Provisional Data
Subject to Revision



The snow water equivalent percent of normal represents the current
snow water equivalent found at selected SNOTEL sites in or near the basin
compared to the average value for those sites on this day. Data based on
the first reading of the day (typically 00:00).

Prepared by:
USDA/NRCS National Water and Climate Center
Portland, Oregon
<http://www.wcc.nrcs.usda.gov>

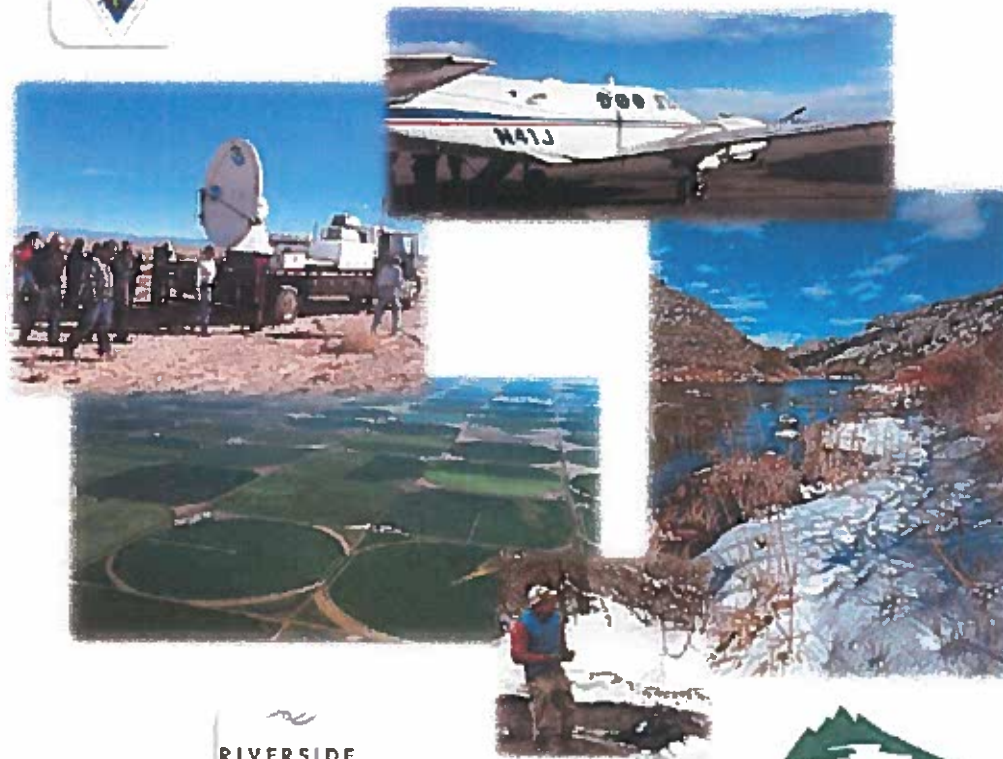
Upper Rio Grande Basin Snowfall Measurement and Streamflow (RIO-SNO-FLOW) Forecasting Improvement Project



COLORADO
Division of Water Resources
Department of Natural Resources



COLORADO
Colorado Water
Conservation Board
Department of Natural Resources



January 22, 2016

Prepared by:

David J. Gochis, National Center for Atmospheric Research

Joe Busto, Colorado Water Conservation Board

Kenneth Howard, NOAA National Severe Storms Laboratory

Jeff Deems, National Snow and Ice Data Center



January 22, 2016

**The Graphic Below – the State of Colorado is outlined in white –
Shows that Vast Majority of Western Colorado has Poor to No Radar
Coverage**

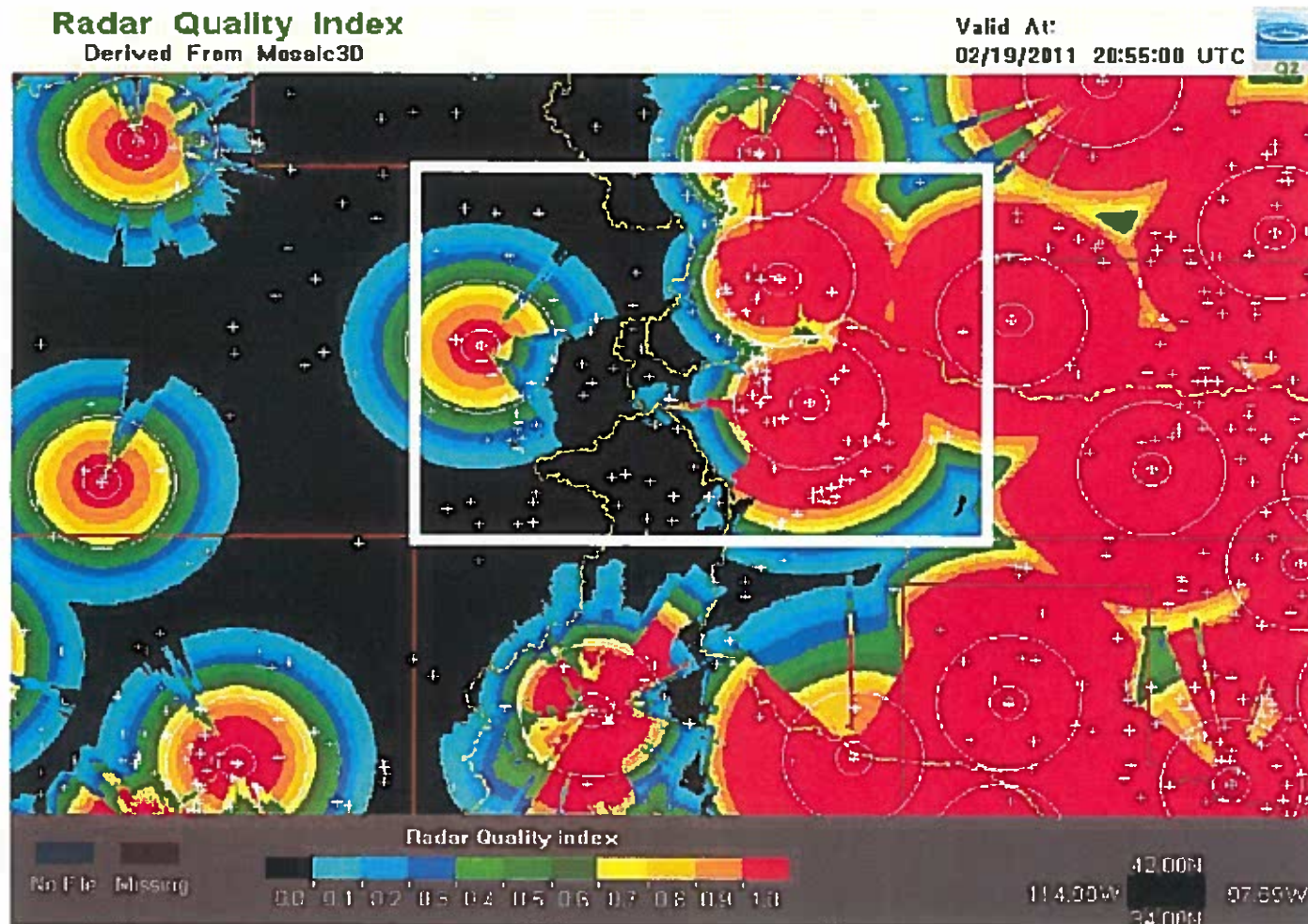
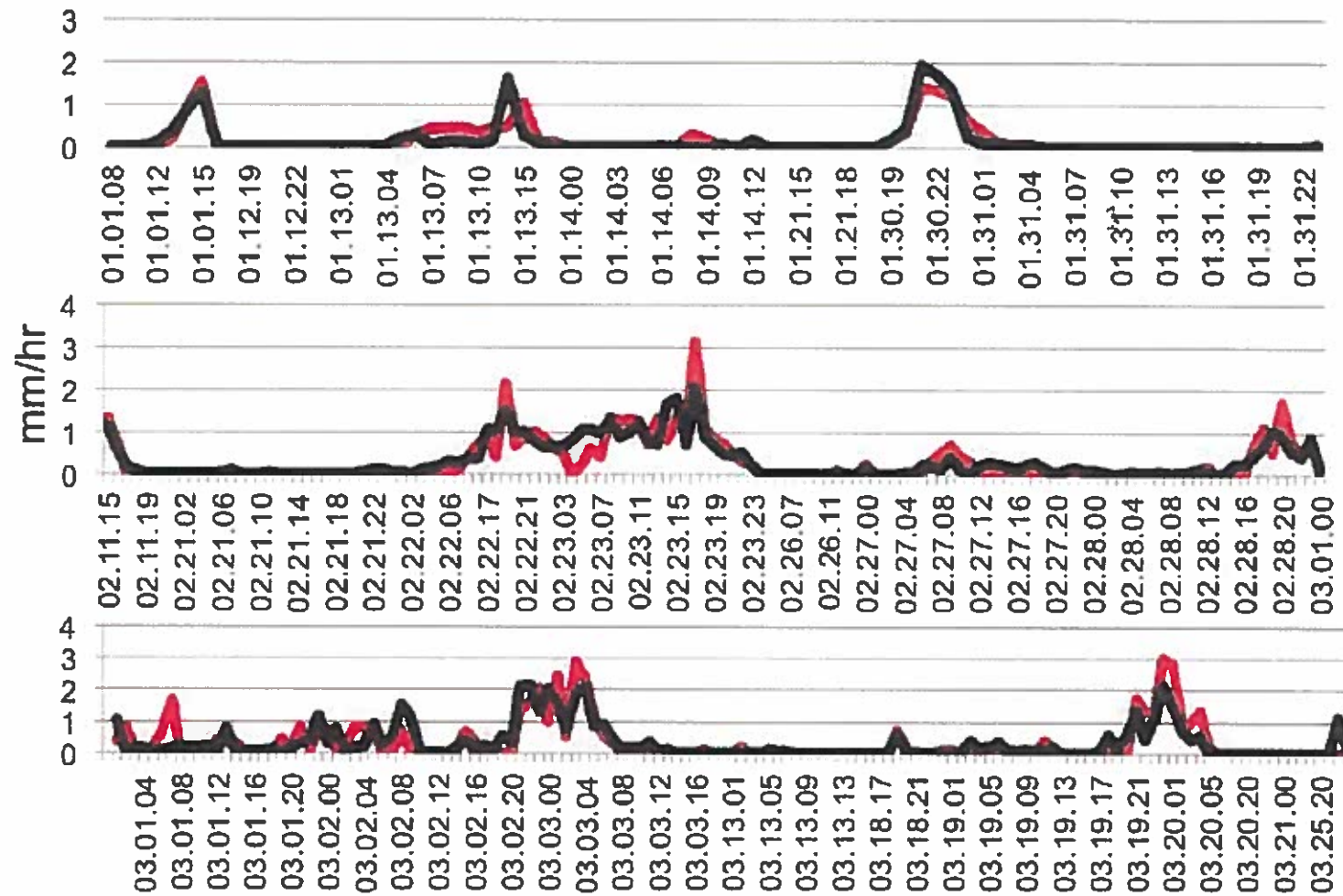


Figure 2. The RQI shows red as good radar coverage and black as no or poor radar coverage. 80% of Colorado's snowpack and water comes from the mountains that are poorly covered by existing NWS radars.

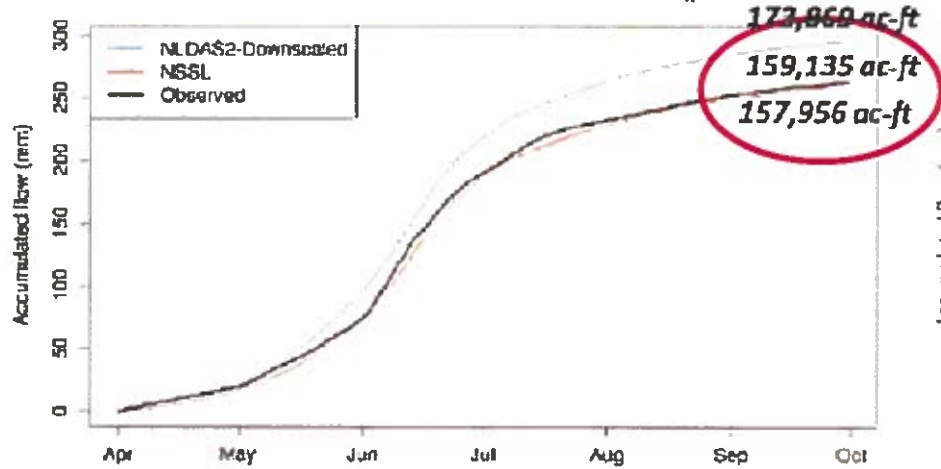
RIO-SNO FLOW SUMMARY REPORT

URG6 1hr accumulation vs. QPE 1h accumulation

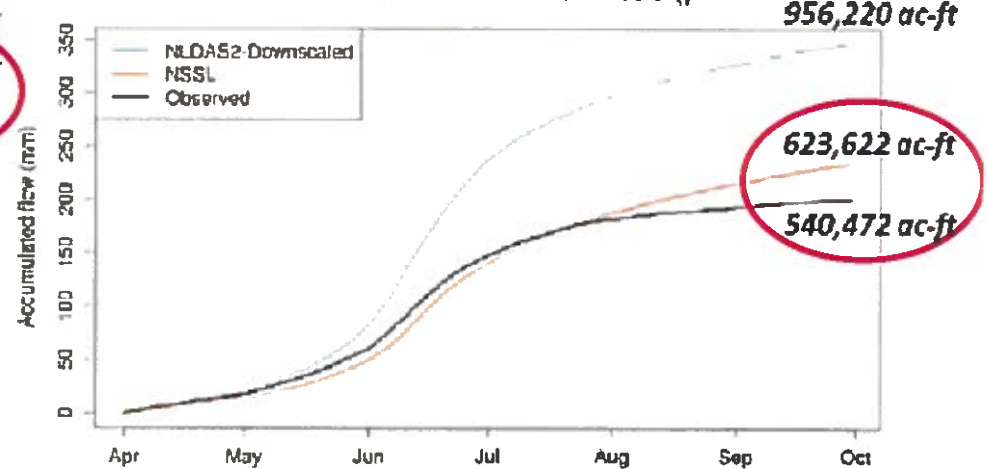


RIO SNO FLOW SUMMARY REPORT

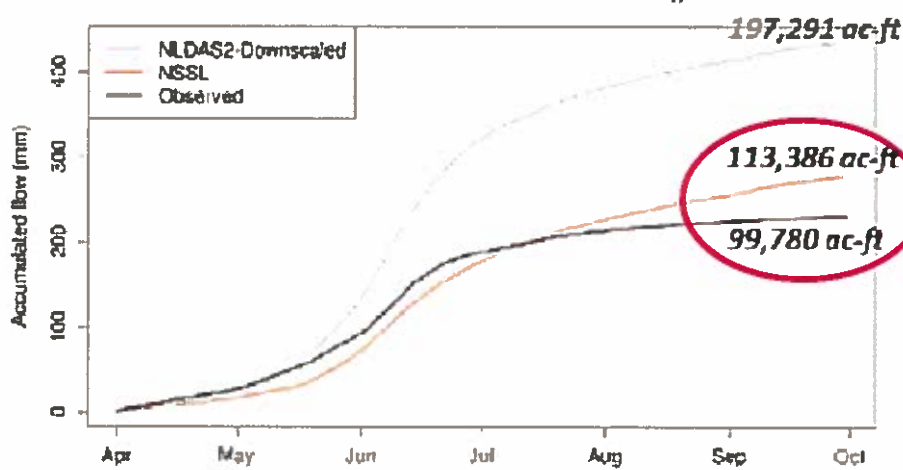
Accumulated Flow: CONMOGCO ()



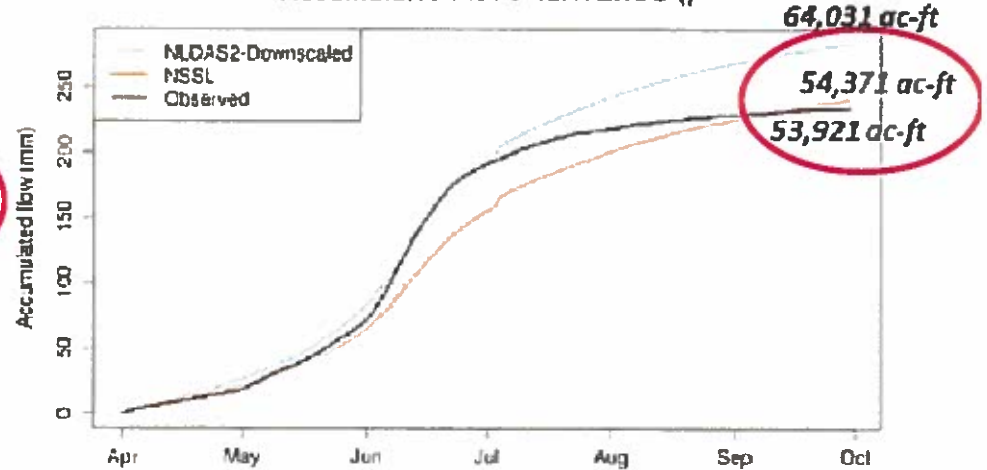
Accumulated Flow: RIODELCO ()



Accumulated Flow: RIOSFKCO ()



Accumulated Flow: ALATERCO ()



Black – Actual

Blue – Existing Models

Orange – WRF Hydro

7. Conclusions and Recommendations

As a team that worked on this from all levels from water users, water administrators, water planners, research and development agencies, forecasters, and consultants, the following are our recommendations:

- Accurate determination of snowfall liquid water, snowpack and associated runoff remains a significant challenge in the local, state and federal water communities and only through collaborations and sponsorships, as fulfilled in the project, would fundamental progress be realized.
- Gap-filling, watershed-based radars would provide great benefit to Colorado for land, water, and weather management. Local, state, and federal coalitions should be built to purchase and maintain permanent and mobile radars to provide a more complete depiction of precipitation for use in hydrologic models such as WRF-Hydro and for flash flood prediction.



Western States
WATER PARTNERSHIP

OUR MISSION

**Furthering the Organizational Goals
of our Founding Member,
the [Colorado Wildlife Foundation](#),
by using innovation, Public Private Partnerships
and
non-traditional funding sources to address
unresolved legacy water and weather
related issues within
Colorado and the Western US.**



Western States
WATER PARTNERSHIP

OUR APPROACH

**Western States Water Partnership
is designed to fill the
“Mission, Timing and Funding Gaps”
that exist within
local, county, state and federal agencies
and
that impede their ability to effectively address
legacy water issues
critical to Colorado and other Western States.**



Western States
WATER PARTNERSHIP

OUR TECHNICAL PARTNER



ADVANCED RADAR COMPANY

ARC was founded in 2006 by the UCAR Foundation to commercialize a new generation of advanced weather radars (hardware, software and customized products). These systems are simple to maintain, calibrate and operate while maintaining accuracy and reliability.

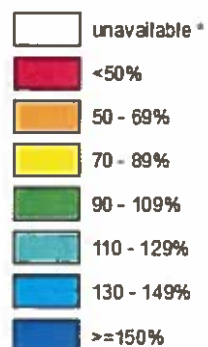
Jun 08, 2021

Colorado SNOTEL Current Snow Water Equivalent (SWE) % of Normal

Laramie and North Platte

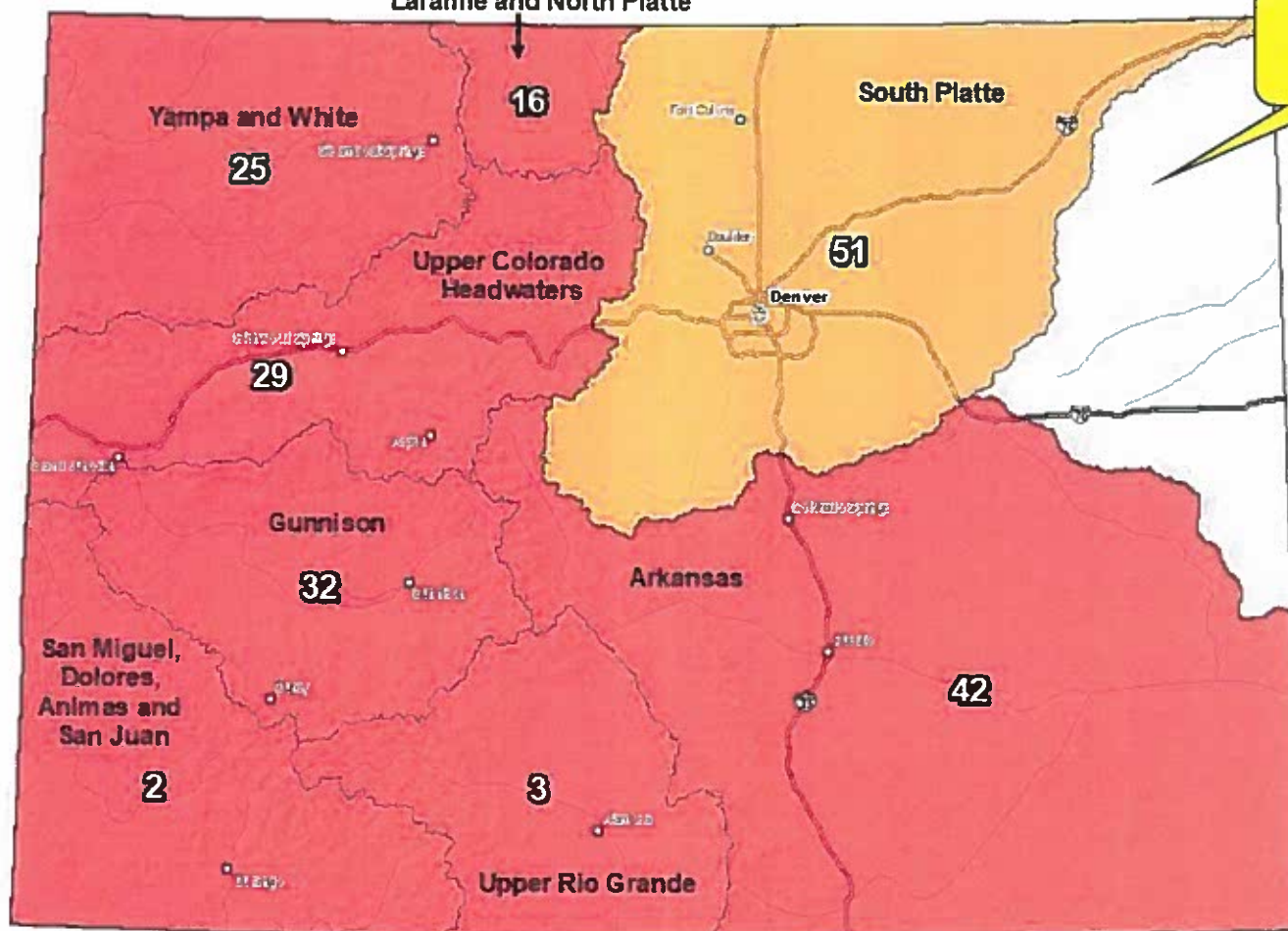
Gap
Radar

Current Snow Water
Equivalent (SWE)
Basin-wide Percent
of 1981-2010 Median



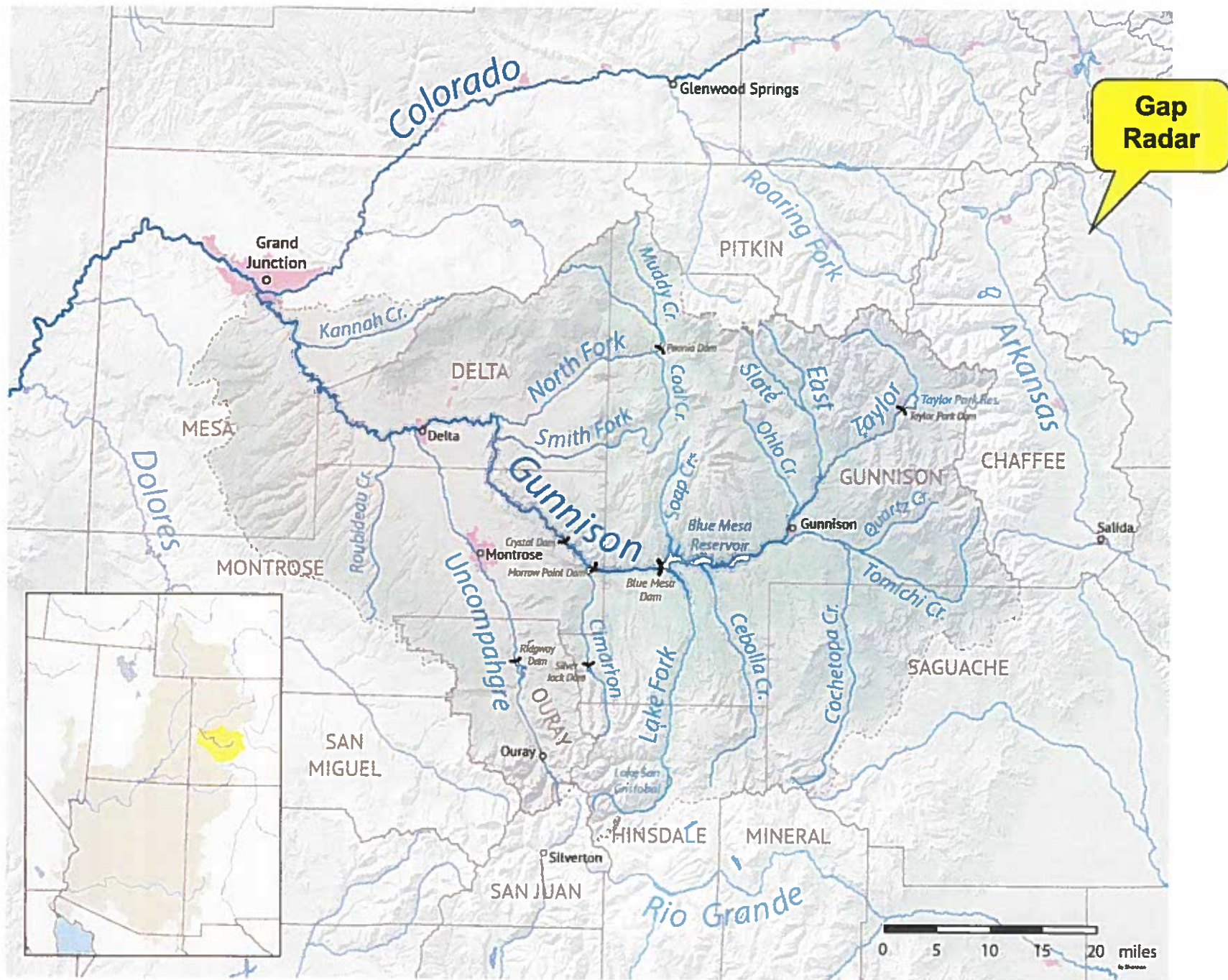
* Data unavailable at time
of posting or measurement
is not representative at this
time of year

Provisional Data
Subject to Revision



The snow water equivalent percent of normal represents the current
snow water equivalent found at selected SNOTEL sites in or near the basin
compared to the average value for those sites on this day. Data based on
the first reading of the day (typically 00:00)

Prepared by:
USDA/NRCS National Water and Climate Center
Portland, Oregon
<http://www.wcc.nrcs.usda.gov>





WE WORK IN PARTNERSHIPS

Upper Gunnison Water Conservation District

Colorado River Water Conservation District

Gunnison County

US DOE – Surface Atmosphere Integrated Field Laboratory (SAIL)

USGS – Next Generation Water Observing System (NGWOS)



Western States
WATER PARTNERSHIP

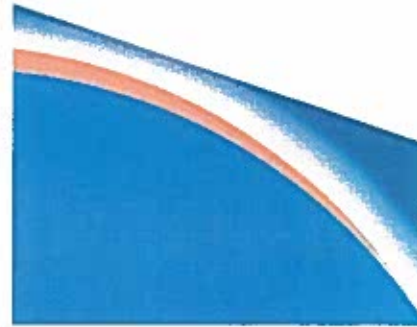
WHAT OUR RADAR CAN DO

Radar Data Enhance by Advanced Forecasting Software Products

- Streamflow Forecasting {Spring thru Fall}
- Forecasting Roadway Weather – From Rain to Freezing Drizzle to Snow
- Forecasting Severe Weather Events – 30 to 60 minutes in advance
- Flash Flood Forecasting
- Precipitation (Rain / Snow) Accumulation daily / monthly
- Windshear Detection and Warning



THE BOTTOM LINE



NCAR

NATIONAL CENTER FOR ATMOSPHERIC RESEARCH

**Better Data + Better Forecasting Tools = Better Asset
Management**

Tab O – Water Data Exchange (WaDE) 2.0 Update

June 2021

Water Data Exchange (WaDE) Program Update for Summer 2021

Adel Abdallah: WaDE Program Manager

Ryan James: Data Analyst / Hydroinformatics Specialist

Tony Willardson: Western States Water Council Executive Director

The WaDE Program is committed to assisting WSWC member states in publicly sharing water allocation, supply, and use data through a common streamlined and standardized service that enables regional analyses to inform water resources planning and policies.

This report provides a brief update of the WaDE Program's progress over the period from March 2021 through early June 2021 in the following five areas: (1) WaDE Management Activities and Plans; (2) Technical Activities; (3) Financial Activities; (4) Summary of the Existing WaDE Data System Resources; and (5) Key Outreach and Coordination Activities.

1. WaDE Management Activities and Plans

- We have re-established the Water Information and Data Subcommittee (WIDS) with a Kickoff Meeting on April 23rd, 2021. The last WIDS call was in January 2019 and since then most of the previous members have been promoted to other positions or retired. The primary purpose of WIDS is to provide advice on present and future WSWC data-related efforts, including the Water Data Exchange (WaDE). WIDS also provides a forum for WSWC members to learn, share, and exchange ideas specific to water information and data management. The kickoff meeting was attended by 36 representatives from across the Western States and many federal agencies and non-governmental organizations (NGOs). The WSWC and WaDE staff presented an update on WaDE and a demo of its upcoming Western States Water Data Access and Analysis Tool (WestDAAT) dashboard which was followed by comments and a discussion on the importance of WaDE work and its next steps. The next WIDS call is planned on August 16, 2021. We have re-designed the WIDS webpage to reflect updates on recent activities: <https://westernstateswater.org/wids>. The Kickoff Spring Meeting materials

along with its agenda and minutes are posted here <https://westernstateswater.org/wade-updates/2021/wids-kickoff-spring-meeting-april-2021/>

- We are planning to facilitate discussions with the WIDS group and others to evaluate how the proposed WestDAAT dashboard meets the needs of a wide range of users that include state and federal agencies along with NGOs and researchers. The Fall WaDE Update report will elaborate on these discussions and how WaDE will use this information to help our member states and their staff.
- We are drafting a 5-year work plan for the years 2021-2026 for the WaDE Program. The work plan consists of 15 main tasks that are further detailed to over 60 sub-tasks. We plan to solicit feedback and suggestions to improve the work plan and align it with the interests of our member states, federal partners, and philanthropic organizations. We will release the work plan later this fall.
- We are coordinating with the Bureau of Reclamation on their own internal water rights and asset management support tool project. We have shared with them a copy of the WaDE water rights data, including the owner classification categorization, especially for state-recognized federal government water rights. We will continue to collaborate with Reclamation's team, especially on classifying water right ownership, as it relates to water received from Reclamation such as by farmers and water districts (note: Reclamation delivers water to some 140,000 farmers). At this time, we identified around 2,000 water rights in the WaDE database where the states explicitly recognize Reclamation as the water right owner.

2. Technical Activities

- We have worked with our IT contractor (*Don't Panic Labs*) and implemented three WaDE database schema changes to address the following USGS "*Water Availability and Use Science Program: National Water Census*" data needs and other issues or improvements. We have made three changes. First, we allow a many-to-many relationship between water rights and water sources in the database and Application Programming Interface (API), as a single water right may have multiple water sources, and a single water source (e.g., reservoir) may also supply many water rights). We can

now reference site-specific water rights data to track the sources of water and their type (e.g., surface water, groundwater, etc.). Second, we have added a new field that categorizes water rights owners in a consistent way, which will be used to support higher level data filtering for the online WestDAAT dashboard tool. As part of this effort, we have compiled a keyword search algorithm that identifies and classifies water rights owners into separate groups. Group examples include: Privately Owned, Commercial, US Forest Service, US Bureau of Reclamation, US Bureau of Land Management, etc. Third, we have added a new field to the sites data that will help support connecting regulatory overlays to a water data site, which will allow users to filter water rights data that reside within a regulatory agency overlay area. The user could also instead query all the regulatory overlays that apply to a water right. Examples of regulatory overlays include the Active Management Areas (AMA) in Arizona, and the Sustainable Groundwater Management Act (SGMA) basins in California.

- We have revised and updated all of our states' existing datasets to comply with the new schema changes and uploaded them back to the WaDE Quality Assurance (QA) database. We also have updated the prototype WestDAAT dashboard to reflect these database and schema changes.
- We have imported Place of Use (POU) geospatial data layers and joined them with the existing water right data in the WaDE database for the following eight states: Idaho, Montana, Nevada, Oklahoma, Oregon, Utah, Washington, and Wyoming. POU data for other states has yet to be made available to us or the states do not yet have that data readily available in a digitized format. We plan to add this data layer to the WestDAAT dashboard, which will allow a user to view and query POU polygons alongside with Points of Diversion sites.
- We have drafted a persona use case document that describes the potential use and benefits of the WestDAAT dashboard for six distinct fictional personas, each of whom represent a variety of users (e.g., governor, state engineer, farmer, etc). The document will be the basis for upcoming focus group discussions on how WestDAAT will be able to help our member states and others. Personas can be viewed with an accompanying StoryMaps for WaDE and its use cases:

<https://storymaps.arcgis.com/stories/cef4c6fd3be84b4dba953f4287cc0501>

- Earlier this year we developed a WestDAAT prototype to be used as a proof-of-concept and basic features application that connects the WaDE database to an online visualization environment (Mapbox) <https://wade-mapbox-prototype.azureedge.net/>. During the spring we followed up by specifying the features and desired full functionality of the desired application by building a mockup of WestDAAT, which is not connected to any data but simulates the user experience for each of our persona use cases. This mockup will be used to facilitate feedback from participants in our focus groups, which will later be used as a blueprint for the final WestDAAT product that our contractor DPL will build later this year or next depending on the availability of funding. The mockup is available here <https://xd.adobe.com/view/b5bc36d8-d490-473b-905a-deefba319a15-e0ef/?fullscreen>
- We are updating the WaDE website to reflect the major overhaul and changes we have made to the WaDE system, including the transformation from a distributed database system to the centralized cloud-based system. The draft WaDE webpage is accessible at <https://westernstateswater.org/wade/>. We anticipate making an announcement about this new webpage design later this summer.

3. Financial Activities

The current WaDE funding from the Moore Foundation through the Internet of Water organization grant extends through September 15, 2021 and was just recently extended by one year. The Internet of Water organization has secured another major corporate philanthropic commitment that will include another grant to partially support WaDE for the next five years. In addition, we have worked hard on securing future funding to sustain the WaDE Program from other sources. Below is a list of proposals that we have already submitted to further support the WaDE program and develop its dashboard.

- On April 21, 2021, we submitted a proposal to the Bureau of Reclamation Applied Science Program seeking a 2-year grant for the development of the Western Water Data Access and Analysis Tool (WestDAAT) dashboard. We are very thankful and excited to report that we have received letters of support from twelve member states in addition to the Upper Colorado River Commission, Environmental Defense Fund, and the Nature Conservancy, all within a 24-hour window. We believe this quick response reflects the

interest in the kind of information that WaDE can provide and how valuable this information is going to be moving into the future. We anticipate hearing back about the initial selection for this funding later this fall of 2021, and the actual release of the grant money in the spring of 2022.

- On May 20, 2021, the OpenET team submitted a collaborative joint first-stage proposal with the WSWC to the NASA Research Opportunities in Space and Earth Science (ROSES) grants. The proposed project seeks to accomplish the following: (1) aggregate OpenET consumptive water use estimates from field boundaries to different spatial hydrologic or administrative spatial data layers as needed by our member states for their water budget models; (2) allow comparisons between permitted water rights and estimated consumptive use in a watershed through the WestDAAT dashboard; and (3) allow states to share consumptive use estimates with the USGS Water Use Research Program through WaDE. The OpenET project (<https://openetdata.org/>) has developed an operational system for mapping evapotranspiration (ET) and consumptive use for the 17 western states. OpenET provides daily, monthly and annual ET data at a spatial resolution of 30 m x 30 m (0.22 acres) using an ensemble of well-established satellite-driven ET models implemented on the Google Earth Engine cloud computing platform (<https://earthengine.google.com/>) which allows for interoperability across different datasets, massive parallel processing, storage, and scalability in time and space, and automated operational updates with new observations that would otherwise be very costly and burdensome for state and federal agencies to develop, operate and maintain.
- On May 21, 2021, we submitted a concept note proposal to the Walton Foundation to fund one of several WaDE activities which will collectively launch our third phase to operationalize WaDE data services and its online data dashboard query and analysis tool (i.e., the WestDAAT dashboard). The proposed activities also align with the Environment Initiatives in the 2025 Walton Family Foundation Strategy by providing new streamlined access to different types of regional water data that is expected to drive innovation in sustainable water management and inform market-based water transfers in the western United States.

4. Summary of the Existing WaDE Data System Resources

- WaDE Website
<https://westernstateswater.org/wade/>
- WaDE Application Programming Interface (API)
<https://app.swaggerhub.com/apis/WesternStatesWater/WaDE2.0/1.0.0>
- GitHub for WaDE Data System Open-Source code and documentation
<https://github.com/WSWCWaterDataExchange>
- WaDE Schema Diagrams
<https://schema.westernstateswater.org/diagrams/index.html>
- WaDE Controlled Vocabularies
<http://vocabulary.westernstateswater.org/>
- Western Water Data Access and Analysis Tool (WestDAAT) proof-of-concept prototype
<https://wade-mapbox-prototype.azureedge.net/>
- WestDAAT Mockup for the planned final design
<https://xd.adobe.com/view/b5bc36d8-d490-473b-905a-deefba319a15-e0ef/?fullscreen>

5. Key Outreach and Coordination Activities

Technical Discussions and Work

1. Ongoing -- WaDE 2.0 Schema change implementation and WestDAAT dashboard design with the IT contractor, "Don't Panic Labs."
2. Ongoing -- WaDE and Internet of Water organization staff discussions about connecting WaDE with the Geoconnex project to make WaDE data interoperable with USGS, EPA, and Bureau of Reclamation data.

State and Federal Activities

1. Ongoing -- WaDE and the USGS Water Availability and Use Science Program discussion about streamlining access to states' water use data by USGS.
2. Ongoing -- WaDE and Reclamation Water Rights Database Project coordination discussions.
3. March 3 -- WaDE, Wyoming State Engineer's Office, and Wyoming Water Development Office water rights and water use data discussion.
4. March 15 -- WaDE and USGS coordination regarding Texas Water Development Board data.

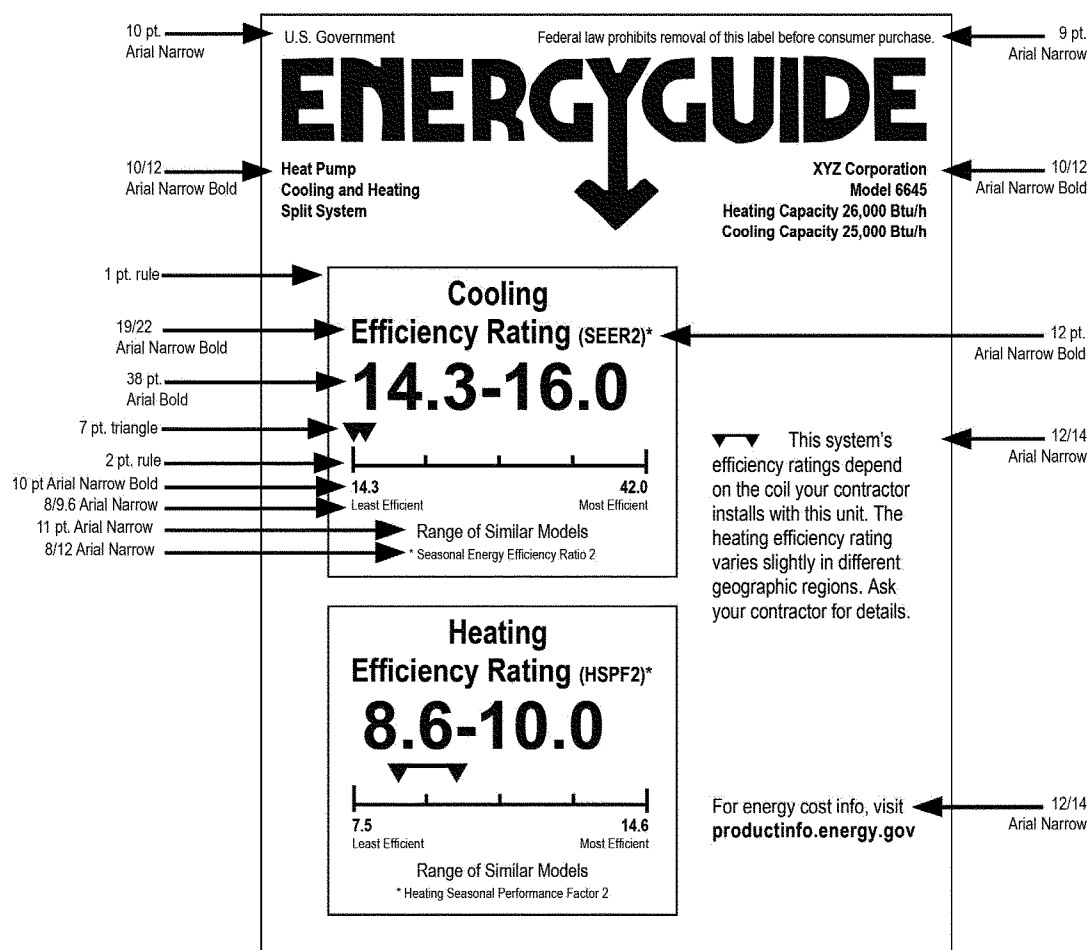
5. April 14 -- WaDE and USGS call to discuss states feedback on USGS Water-Use Data and Research (WUDR) grants and if WSWC can apply on their behalf.
6. April 22 -- WaDE and Washington State Department of Ecology discussion
7. April 23 -- WSWC Water Information and Data Subcommittee (WIDS) Kickoff Meeting
8. May 5 -- WaDE and Texas water right data discussion
9. June 4 -- WaDE and Nebraska Department of Natural Resources discussion on WUDR grants
10. June 8 -- WaDE Presentation to the Bureau of Reclamation staff

Activities with Organizations, Academics, and Groups

1. March 1 -- WaDE and Internet of Water discussion for a third Colorado River Basin Roundtable
2. March 30 -- Internet of Water, WaDE, and Lincoln Institute of Land Policy discussion on the Community Water Use Data that is developed for the Colorado River Basin
3. April 9 -- Demo WaDE Dashboard to the Nature Conservancy - Thomas Iseman
4. April 13 -- WaDE and Internet of Water bimonthly coordination call
5. April 20 -- WaDE and Western Regional Partnership (WRP) Tribal Funding Subcommittee discussion on WestFAST repository of "Federal Programs, Grants, & Tools - Water Infrastructure"
6. May 6 -- WaDE and OpenET Team discussion on a NASA Research Opportunities in Space and Earth Science (ROSES) request for proposals
7. May 6 -- WaDE and Internet of Water discussion on an engagement activity with The Colorado River Water Users Association (CRWUA) meeting in December 2021
8. May 7 -- WaDE call with NASA and EPA partners to discuss "Research To Operations" (R2O) paper resubmission
9. May 12 -- WaDE Presentation to the Western Region Partnership Water Security Data Webinar
10. May 18 -- OpenET API Working Group Meeting
11. May 24 -- WaDE Team presentation to the Internet of Water monthly webinar on the WaDE Project
12. May 26 -- WaDE Program Manager call with Amanda Quay at Stanford University and Gabe Fierro at Colorado School of Mines about their project: Uniform Metadata Schema for Water Treatment Facilities.

Tab P – Environmental Protection Agency (EPA) Update

Attachment 1



[FR Doc. 2021-11498 Filed 6-1-21; 8:45 a.m.]

BILLING CODE 6750-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 121****[EPA-HQ-OW-2021-0302; FRL-10023-97-OW]****Notice of Intention To Reconsider and Revise the Clean Water Act Section 401 Certification Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of intent.

SUMMARY: In accordance with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (Executive Order 13990), the U.S. Environmental Protection Agency (EPA) announces its intention to reconsider

and revise the Clean Water Act Section 401 Certification Rule. In addition, EPA will initiate a series of stakeholder outreach sessions and invite written feedback on how to revise the requirements for water quality certifications under the Clean Water Act. EPA intends to revise the Clean Water Act Section 401 Certification Rule in a manner that is well informed by stakeholder input on the rule's substantive and procedural components; is better aligned with the cooperative federalism principles that have been central to the effective implementation of the Clean Water Act; and is responsive to the national objectives outlined in President Biden's Executive Order 13990.

DATES: Written feedback must be received on or before August 2, 2021.

ADDRESSES: You may send written feedback, identified by Docket ID No.

EPA-HQ-OW-2021-0302, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting written feedback.

- **Email:** OW-Docket@epa.gov. Include Docket ID No. EPA-HQ-OW-2021-0302 in the subject line of the message.

Instructions: All submissions received must include the Docket ID Number. Written feedback received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform.

We encourage the public to submit written feedback via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Lauren Kasparek, Oceans, Wetlands and Communities Division, Office of Water (4502-T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-3351; email address: cwa401@epa.gov.

SUPPLEMENTARY INFORMATION: Clean Water Act (CWA) Section 401 provides states¹ and tribes² with a powerful tool to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects. Under CWA Section 401, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into navigable waters, unless the state or tribe where the discharge would originate either issues a CWA Section 401 water quality certification finding “that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307” of the CWA, or certification is waived. 33 U.S.C. 1341(a)(1). When granting a CWA Section 401 certification, states and tribes are directed by CWA Section 401(d) to include conditions, including “effluent limitations and other limitations, and monitoring requirements” that are necessary to assure that the applicant for a federal license or permit will comply with applicable provisions of CWA Sections 301, 302, 306, and 307, and with “any other appropriate requirement of State law.” *Id.* at 1341(d).

EPA promulgated implementing regulations for water quality certification (1971 regulation)³ prior to the 1972 amendments to the Federal Water Pollution Control Act (commonly known as the Clean Water Act or CWA), which created Section 401. In 2020, EPA revised these regulations found at

40 CFR part 121. Clean Water Act Section 401 Certification Rule (“401 Certification Rule”), 85 FR 42210 (July 13, 2020).

On January 20, 2021, President Biden signed Executive Order 13990 directing federal agencies to review rules issued in the prior four years that are, or may be, inconsistent with the policy stated in the order. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, Executive Order 13990, 86 FR 7037 (published January 25, 2021, signed January 20, 2021). The order provides that “[i]t is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.” *Id.* at 7037, Section 1. The order “directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” *Id.* “For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.” *Id.* at 7037, Section 2(a). The 401 Certification Rule was identified for review under the Executive Order. See Fact Sheet: List of Agency Actions for Review, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/> (last visited on April 26, 2021).

EPA has completed its initial review of the 401 Certification Rule and determined that it will propose revisions to the rule through a new rulemaking effort. The agency has considered the following factors in making this determination, including but not limited to: The text of CWA Section 401; Congressional intent and the cooperative federalism framework of CWA Section 401; concerns raised by stakeholders about the 401 Certification Rule, including implementation related

feedback; the principles outlined in the Executive Order; and issues raised in ongoing litigation challenges to the 401 Certification Rule. As described below, the agency has identified substantial concerns with a number of provisions of the 401 Certification Rule that relate to cooperative federalism principles and CWA Section 401’s goal of ensuring that states are empowered to protect their water quality.

Agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“*Fox*”); *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983) (“*State Farm*”). Importantly, such a revised decision need not be based upon a change of facts or circumstances. A revised decision based “on a reevaluation of which policy would be better in light of the facts” is “well within an agency’s discretion” *National Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 (D.C. Cir. 2012) (citing *Fox*, 556 U.S. at 514–15).

EPA does not intend to replace the 401 Certification Rule with the 1971 regulation. Instead, EPA plans to reconsider and revise the 401 Certification Rule consistent with the principles outlined in the Executive Order and the agency’s legal authority. Additionally, EPA seeks to revise the rule in a manner that promotes efficiency and certainty in the certification process, that is well-informed by stakeholder input on the 401 Certification Rule’s substantive and procedural components, and that is consistent with the cooperative federalism principles central to CWA Section 401.

Questions for Consideration

The issues EPA intends to reconsider include, but are not limited to, whether the rule appropriately considers cooperative federalism principles central to CWA Section 401. EPA has substantial concerns about whether portions of the rule impinge on those principles. EPA also intends to reconsider whether certain procedural components of the rule improve, or impede, the certification and licensing/permitting processes. To assist in its development of a proposed revision, EPA is considering specific provisions of the rule for potential revision. EPA welcomes feedback related to key issues identified during implementation of the 401 Certification Rule, including but not limited to, the following:

¹ The CWA defines “state” as “a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.” 33 U.S.C. 1362(3).

² Tribes refers to tribes that have been approved for “treatment in a manner similar to a State” status for CWA Section 401. See 33 U.S.C. 1377(e).

³ 36 FR 22487, November 25, 1971, redesignated at 37 FR 21441, October 11, 1972, further redesignated at 44 FR 32899, June 7, 1979.

1. *Pre-filing meeting requests.* The rule requires project proponents to submit a “pre-filing meeting request” to certifying authorities at least 30 days prior to submitting a certification request. 40 CFR 121.4. EPA is interested in the utility of the pre-filing meeting process to date, including but not limited to, whether the pre-filing meetings have improved or increased early stakeholder engagement, whether the minimum 30 day timeframe should be shortened in certain instances (e.g., where a certifying authority declines to hold a pre-filing meeting), and how certifying authorities have approached pre-filing meeting requests and meetings to date.

2. *Certification request.* The rule defines a certification request as “a written, signed, and dated communication that satisfies the requirements of [section] 121.5(b) or (c).” *Id.* at 121.1(c). Among other issues, EPA is concerned that the rule constrains what states and tribes can require in certification requests, potentially limiting state and tribal ability to get information they may need before the CWA Section 401 review process begins. EPA is interested in stakeholder input on this definition and the elements of a certification request contained at 40 CFR 121.5, including but not limited to, the sufficiency of the elements described in 40 CFR 121.5(b) and (c), and whether stakeholders have experienced any process improvements or deficiencies by having a single defined list of required certification request components applicable to all certification actions.

3. *Reasonable period of time.* CWA Section 401 requires a certifying authority to act on a certification request within a defined time period known as the “reasonable period of time.” The rule requires the federal licensing or permitting agency to determine the reasonable period of time using a series of factors, provided that the time does not exceed one year from the date a certifying authority receives a certification request. *Id.* at 121.6. Additionally, the rule allows federal agencies to extend the reasonable period of time within that one year time period at a certifying authority or project proponent’s request, but does not allow certifying authorities to take any other action to extend or modify the reasonable period of time. *Id.* Among other issues, EPA is concerned that the rule does not allow state and tribal authorities a sufficient role in setting the timeline for reviewing certification requests and limits the factors that federal agencies may use to determine the reasonable period of time. EPA is

seeking stakeholder input on the process for determining and modifying the reasonable period of time, including but not limited to, whether additional factors should be considered by federal agencies when setting the reasonable period of time, whether other stakeholders besides federal agencies have a role in defining and extending the reasonable period of time, and any implementation challenges or improvements identified through application of the rule’s requirements for the reasonable period of time.

4. *Scope of certification.* The rule limits the scope of certification, which includes both the scope of certification review under CWA Section 401(a) and the scope of certification conditions under CWA Section 401(d), to “assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements.” *Id.* at 121.3. The rule defines “water quality requirements,” as the “applicable provisions of [sections] 301, 302, 303, 306, and 307 of the Clean Water Act, and state or tribal regulatory requirements for point source discharges into waters of the United States.” *Id.* at 121.1(n). Among other issues, EPA is concerned that the rule’s narrow scope of certification and conditions may prevent state and tribal authorities from adequately protecting their water quality. EPA is seeking stakeholder input on the rule’s interpretation of the scope of certification and certification conditions, and the definition of “water quality requirements” as it relates to the statutory phrase “other appropriate requirements of state law,” including but not limited to, whether the agency should revise its interpretation of scope to include potential impacts to water quality not only from the “discharge” but also from the “activity as a whole” consistent with Supreme Court case law, whether the agency should revise its interpretation of “other appropriate requirements of State law,” and whether the agency should revise its interpretation of scope of certification based on implementation challenges or improvements identified through the application of the newly defined scope of certification.

5. *Certification actions and federal agency review.* The rule provides that certifying authorities may take one of four actions on a certification request, including granting certification, granting certification with conditions, denying certification, or waiving certification. *See id.* at 121.7, 121.9. The rule requires that certifying authorities include specific information when granting certification, granting certification with

conditions or denying certification. *Id.* at 121.7(c)–(e). Additionally, the rule requires federal agencies to review certifying authority actions to determine whether they comply with the procedural requirements of CWA Section 401 and the 401 Certification Rule. *Id.* at 121.9. Among other issues, EPA is concerned that a federal agency’s review may result in a state or tribe’s certification or conditions being permanently waived as a result of nonsubstantive and easily fixed procedural concerns identified by the federal agency. EPA is seeking stakeholder input on the certification action process steps, including but not limited to, whether there is any utility in requiring specific components and information for certifications with conditions and denials, whether it is appropriate for federal agencies to review certifying authority actions for consistency with procedural requirements or any other purpose, and if so, whether there should be greater certifying authority engagement in the federal agency review process including an opportunity to respond to and cure any deficiencies, whether federal agencies should be able to deem a certification or conditions as “waived,” and whether, and under what circumstances, federal agencies may reject state conditions.

6. *Enforcement.* The rule provides that federal agencies are responsible for enforcing certification conditions that are incorporated into a federal license or permit. *Id.* at 121.11(c). The rule does not provide a role for certifying authorities to enforce certification conditions under federal law. Additionally, the rule restates the statutory provision that provides certifying authorities with the ability to inspect certified projects prior to their initial operation. *Id.* at 121.11(a). EPA is interested in stakeholder feedback on enforcement of CWA Section 401, including but not limited to, the roles of federal agencies and certifying authorities in enforcing certification conditions, whether the statutory language in CWA Section 401 supports certifying authority enforcement of certification conditions under federal law, whether the CWA citizen suit provision applies to Section 401, and the rule’s interpretation of a certifying authority’s inspection opportunities.

7. *Modifications.* The rule removed the 1971 regulation’s provision that allowed for modifications where agreed upon by the certifying authority, federal agency, and EPA. *See* 85 FR 42220 (July 13, 2020). Additionally, the rule prevents certifying authorities from extending the reasonable period time

unilaterally, including but not limited to, the use of conditions intended to reopen a certification (“reopeners”). Among other issues, EPA is concerned that the rule’s prohibition of modifications may limit the flexibility of certifications and permits to adapt to changing circumstances. EPA is interested in stakeholder feedback on modifications and “reopeners,” including but not limited to, whether the statutory language in CWA Section 401 supports modification of certifications or “reopeners,” the utility of modifications (e.g., specific circumstances that may warrant modifications or “reopeners”), and whether there are alternate solutions to the issues that could be addressed by certification modifications or “reopeners” that can be accomplished through the federal licensing or permitting process.

8. *Neighboring jurisdictions.* The rule addresses the so-called “neighboring jurisdiction” process in CWA Section 401(a)(2), including interpreting the timeframe in which a federal agency must notify EPA for purposes of Section 401(a)(2) and providing process requirements for the agency’s analysis and the neighboring jurisdictions’ review and response. EPA is interested in stakeholder feedback on the neighboring jurisdiction process, including but not limited to, whether the agency should elaborate in regulatory text or preamble on considerations informing its analysis under CWA Section 401(a)(2), whether the agency’s decision whether to make a determination under CWA Section 401(a)(2) is wholly discretionary, and whether the agency should provide further guidance on the Section 401(a)(2) process that occurs after EPA makes a “may affect” determination.

9. *Data and other information.* EPA is interested in receiving any data or information from stakeholders about the application of the 401 Certification Rule, including but not limited to, impacts of the rule on processing certification requests, impacts of the rule on certification decisions, and whether any major projects are anticipated in the next few years that could benefit from or be encumbered by the 401 Certification Rule’s procedural requirements. Additionally, EPA is interested in stakeholder feedback about existing state CWA Section 401 procedures, including whether the agency should consider the extent to which any revised rule might conflict with existing state CWA Section 401 procedures and place a burden on those states to revise rules in the future.

10. *Implementation coordination.* EPA is interested in hearing from stakeholders about facilitating implementation of any rule revisions. For example, given the relationship between federal provisions and state processes for water quality certification, should EPA consider specific implementation timeframes or effective dates to allow for adoption and integration of water quality provisions at the state level. Similarly, EPA is interested in receiving feedback on whether concomitant regulatory changes should be proposed and finalized simultaneously by relevant federal agencies (e.g., the Army Corps of Engineers, Federal Energy Regulatory Commission) so that implementation of revised water certification provisions would be more effectively coordinated and would avoid circumstances where regulations could be interpreted as inconsistent with one another.

Outreach

EPA is aware that CWA Section 401 and the 401 Certification Rule are of interest to many states, tribes, federal agencies, project proponents, and the public because of the relationship between water quality certifications and federal licensing and permitting processes. As a result, EPA wants to ensure that it has the opportunity to consider stakeholder input prior to revising the 401 Certification Rule. EPA intends to have multiple webinar-based listening sessions to solicit feedback on potential approaches to revise the 401 Certification Rule. During these listening sessions, EPA will provide background information on the prior rulemaking effort. Stakeholders will have the opportunity to provide input to EPA on the topics provided above and any other relevant information on the 401 Certification Rule for the agency’s consideration. Information on the listening session dates, times, and registration instructions will be made available on EPA’s website, located at <https://www.epa.gov/cwa-401>. Persons or organizations wishing to provide verbal input during a listening session will be selected on a first-come, first-served basis, with consideration given to hearing from different stakeholder groups. Due to the expected number of participants, individuals will be asked to limit their oral presentation to three minutes. Further instructions on signing up and participating in listening sessions will be made available on EPA’s website above at a later date. Supporting materials and written feedback from those who do not have an

opportunity to speak can be submitted to the docket as described above.

Michael S. Regan,
Administrator.

[FR Doc. 2021–11513 Filed 6–1–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[RTID 0648–XA696]

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 21 to the Pacific Coast Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) has submitted Amendment 21 to the Pacific Coast Salmon Fishery Management Plan (FMP) to the Secretary of Commerce for review. If approved, Amendment 21 would set an annual Chinook salmon abundance threshold below which the Council and NMFS would implement specific management measures, through the annual ocean salmon management measures, to limit ocean salmon fishery impacts on the availability of Chinook salmon as prey for endangered Southern Resident killer whales (SRKW).

DATES: Comments on Amendment 21 must be received by August 2, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0006, by the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA–NMFS–2021–0006 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be

Tab Q – Western Governors' Association
Resolution – 2018-11
Cleaning Up Abandoned Mines



Policy Resolution 2018-11

Cleaning Up Abandoned Mines in the West

A. BACKGROUND

1. Hardrock mining has a long history in the West, which is rich in hardrock minerals like gold, silver, and copper. As part of this past, the West contains historically mined and abandoned hardrock mines, which were abandoned prior to present day regulation and have no responsible or solvent party to perform the cleanup and reclamation.
2. The cleanup of abandoned hardrock mines is hampered by two issues – lack of funding and concerns about liability. These issues are compounded by complex land and mineral ownership patterns in mining districts and the operational histories associated with a given site.
3. There are numerous economic, environmental, and social benefits from remediating lands and waters impaired by abandoned hardrock mines. In recognition of these benefits, states, municipalities, federal agencies, volunteer citizen groups, and private parties that have no liability or responsibility requiring them to cleanup abandoned mines have engaged in or are interested in voluntarily cleaning up abandoned mines; these parties are referred to in this resolution as Good Samaritans. However, questions of liability stemming from this voluntary cleanup have stymied many of these efforts.
4. Good Samaritans currently have potential liability for their voluntary cleanup under Sections 301 and 402 of the Clean Water Act (CWA), because they can inherit liability for any discharges from an abandoned mine. In addition, Good Samaritans have potential liability for their voluntary cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).
5. Good Samaritans are exposed to these liability risks despite the fact that: they did not previously operate or own the mine; they would voluntarily bear the costs of the cleanup; and they could provide numerous benefits if they were able to remediate the abandoned mine, such as improving water quality, facilitating beneficial land use, and securing the site.
6. Liability concerns also prevent mining companies from remining or voluntarily cleaning up abandoned mines. While remediation could result in an improved environment, companies that are interested are justifiably hesitant to incur liability for voluntary efforts.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors call on Congress to legally protect Good Samaritans that cleanup abandoned mines, including local and state government agencies, from becoming legally responsible under Sections 301 and 402 of the CWA for any continuing discharges from the abandoned mine.

2. Western Governors call on Congress and federal agencies to develop legislative and administrative remedies to address potential CERCLA and RCRA liabilities for Good Samaritans. The federal government should also develop remedies for liabilities associated with re-mining, which deter those best-equipped with technology and expertise (i.e., state and local governments, non-governmental, the mining industry) from improving conditions at abandoned mines.
3. As the costs to clean up abandoned hardrock mines are significant, Western Governors support efforts by Congress and the Administration that would facilitate cleanups by Good Samaritans. To this end, the requirements for Good Samaritan project approvals and reviews should not deter cleanups, while still ensuring there are significant measurable environmental gains from the project. Governors would also support legislation establishing pilot projects to address liability issues for Good Samaritans at individual sites to help pave the way for comprehensive legislation, if comprehensive legislation addressing these issues is not possible in the short term.
4. Many states have agencies that administer the CWA, regulate and require financial assurance for reclamation of hardrock mines, remediate impacted waters, and implement abandoned mine programs. These states are best suited to determine what entities are eligible for Good Samaritan status and review and determine the adequacy of Good Samaritan reclamation plans.

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 R – WSWC Water Reuse and Grazing Reports

HISTORY OF THE WSWC REPORTS ON WATER REUSE

The Western States Water Council (WSWC, the Council) was established by western governors in 1965 to advise them on water issues. The members of the Council are appointed by the governors. The Council's purpose is "to accomplish effective cooperation among western states in matters relating to the planning, conservation, development, management, and protection of their water resources, in order 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."

In 2006-2008, the Council worked together with the Western Governors' Association to identify water management challenges in the West, and to recommend steps that states and federal agencies could implement to solve problems in effective and complementary ways. The organizations hosted workshops and symposia to gather input and develop their *Water Needs and Strategies for a Sustainable Future* (2006) and *Water Needs and Strategies for a Sustainable Future: Next Steps* (2008) reports. Many of those recommendations require long-term effort and are ongoing.

The 2008 report found that as traditional surface and groundwater supplies become stressed, alternative evolving technologies, including water reuse, offer opportunities for augmentation and increased efficiency. As new water supplies become scarcer, water reuse is becoming an increasingly practical and cost-effective option for meeting demands. The report recognized legal, institutional, social, financial, and technological constraints that needed to be overcome. Legal constraints to water reuse include federal and state provisions regulating content and quality of effluent and recycled water, questions about who has rights to effluent, and uncertainties about the reuse of agricultural water rights without injuring other users. Institutional or societal constraints to water reuse include educating for public acceptance of recycled water, health risks associated with reuse, potential environmental effects of water recycling, and the cost of implementing water recycling systems. Financial constraints have been addressed in some cases through state and local financial incentives, and with partnerships and economies of scale that transcend jurisdictional boundaries and simultaneously provide multiple benefits. Technological constraints include the need for coordinated research and development at all levels of government, including financial assistance toward new technology and identification of the scope and effect of emerging contaminants.

Among the recommendations on reuse, the 2008 *Water Needs and Strategies for a Sustainable Future: Next Steps* report suggested that: (1) the WSWC should explore the relative merits and obstacles related to various programs, technologies, and legal and institutional means to augment existing water supplies, including reuse; and (2) the WSWC should look into the differences between individual state reuse standards and consider whether or not federal treatment standards would be beneficial.

In 2010, in partial fulfillment of those recommendations, the WSWC surveyed its member states on their reuse programs and institutional issues, leading to a WSWC 2011 Water Reuse Report, *Water Reuse in the West: State Programs and Institutional Issues*. In 2020, the WSWC again surveyed its members with the intent to update changes and progress in state policies and programs over the past decade.

This report also coincides with the Environmental Protection Agency's 2020 release of the National Water Reuse Action Plan (WRAP), "a coordinated and collaborative effort across the water user community to advance consideration of water reuse to ensure the security, sustainability, and resilience of our nation's water resources."¹ Action 2.2.1 is to compile existing state policies and approaches to water reuse, including statutes, regulations, policies, programs, frameworks, and other approaches to address water reuse activities. During the development of the WRAP, "Many docket commenters, including states, affirmed the value as a beneficial resource and priority of having a searchable compilation of state policies and approaches for water reuse."²

Sharing information across states on how water reuse is being addressed from a legal and regulatory perspective is increasingly useful, especially as potable reuse becomes a more accepted and desired practice. In the past, water reuse conferences focused heavily on the technology that could enable this practice. Urban and rural population growth and development, as well as extreme weather and climate conditions, have necessitated the consideration of new sources of water. As the regulatory environment has built up around reuse, there has been more interest in learning how state agencies are addressing issues on the ground. This is evidenced by the development of the WRAP, as well as the inclusion of the State Summit on Water Reuse in 2019 and 2020, as part of the annual WaterReuse Association's Annual WaterReuse Symposium.³ For many years, the state of Idaho hosted an annual conference on water reuse that many western states participated in, and which was eventually integrated with the larger symposium.

This report serves to provide a comprehensive look at the legal and regulatory landscape of reuse across 18 western states in 2020, as well as provide context and discussion on the opportunities and challenges states face as water reuse continues to grow. For an overview of the statutes, regulations, and guidance within a state, or for detail on the treatment requirements for different types of reuse, please refer to Appendices A & B. Survey questions are provided in Appendix C.

¹ See EPA's description at <https://www.epa.gov/waterreuse/water-reuse-action-plan>

² See Description and Background of Section 2.1 at <https://www.epa.gov/waterreuse/national-water-reuse-action-plan-online-platform>

³ See <https://watereuse.org/news-events/conferences/> for links to past conferences.

2020 SUMMARY OF STATE RESPONSES

Water reuse in the West, collectively, is a relatively young but growing practice. Some states have been practicing various forms of water reuse for decades, whereas others are just starting to explore the practice on the ground. Some have robust legal and regulatory frameworks, whereas others have not yet defined reuse or water reuse practices within their statutes and rules. Regardless of where individual states are along this spectrum, most western states recognize the potential of water reuse to contribute additional water resources to meet growing urban and rural demands as the West experiences continued drought and as climate and weather patterns become increasingly variable and extreme. During the first six months of 2021, 12 of the 18 western states represented by the WSWC had at least “below average” precipitation, with five of those states categorized at “much below average.” In 2020, two of those states had record dry precipitation for the year.⁴

Many states have moved or are moving beyond the basic regulatory framework for reusing water for land application and irrigation provided through National Pollutant Discharge Elimination System (NPDES) permits to developing state frameworks that include fit-for-purpose specifications and initiating discussions on how to regulate potable reuse (see Figure 1; 56% of states have specific state reuse statutes, 72% have specific state reuse regulations, and 83% have specific reuse guidance documents; see also Appendix A). Water reuse is also increasingly being built into state water planning documents and recognized as an important strategy for efficiently using existing water resources. This is highlighted by the participation of many western states in the efforts to develop and participate in the Environmental Protection Agency’s (EPA) Water Reuse Action Plan (WRAP).

One notable development since the WSWC 2011 Report has been the number of states pursuing potable water reuse, both direct potable reuse (DPR) and indirect potable reuse (IPR) (see Figure 2; 56% of states have made progress on DPR or IPR at the state level). According to EPA, potable reuse refers to the process of using treated wastewater for drinking. DPR “involves the treatment and distribution of water without an environmental buffer,” while IPR “uses an environmental buffer, such as a lake, river or groundwater aquifer, before the water is treated at a drinking water treatment plant.”⁵ While nascent, interest in potable reuse is growing, and state agencies want to be ready for it.

States committed to growing reuse in their state have made the biggest strides in this area over the past decade. For example, Texas has implemented two DPR projects, with one still in

⁴ Statewide Precipitation Ranks, January-December 2020. National Centers for Environmental Information, National Oceanic and Atmospheric Administration. <https://www.ncdc.noaa.gov/temp-and-precip/us-maps/>. Accessed June 15, 2021.

⁵ “Potable Water Reuse and Drinking Water.” United States Environmental Protection Agency. <https://www.epa.gov/ground-water-and-drinking-water/potable-water-reuse-and-drinking-water>, accessed December 3, 2020.

operation; Oregon has implemented one DPR project in association with a beer brewing operation; and Arizona has permitted a mobile treatment facility for demonstration purposes and public education on potable reuse. Several states are in the process of developing regulations and guidance to implement DPR, as they are anticipating it will become more popular in the coming years. However, many states have expressed that the public is still concerned about potable reuse and the idea that the water they could be drinking was recently sewage. This messaging is something that agencies are thinking about and starting to determine how to best frame the conversation and engage the public proactively.

While reuse is increasingly included in state water plans and guidance, states are also grappling with some real barriers to its growth. A major hurdle is the interaction with water rights (see Figure 2; 72% of states acknowledge water rights issues can impair development of reuse). As municipalities look to increase the efficiency of their water resources through water reuse projects, it means that not as much water may return to the waterway and once again be available to other water users and the environment. Downstream users, and potentially more senior water rights holders, may have their allocations impacted if this is not addressed upfront. Some states address this by requiring projects to acquire water rights prior to applying for a water reuse permit. Others, like North Dakota, issue water rights permits that are fully consumptive and do not require wastewater to be returned to the waterway. Regardless of how state laws address water rights and reuse, most states require their water resources department or state engineer to review any water reuse project application to ensure there are no conflicting issues for existing water users. While this is one way to ensure that water reuse does not interfere with previously established water rights, it does mean that some desired projects may not be able to be developed.

Permitting water reuse projects typically falls to the state department of environmental quality, though, as mentioned, water resources departments are integral to the process as well. In some states, the state health department is also involved, especially as it relates to potable reuse projects or practices. Reuse in a majority of states is multi-jurisdictional (see Figure 1; 82% require multiple agency approvals for reuse projects), but few departments have positions dedicated to reuse (states reported 0-30 FTEs that support reuse permitting and practices). In fact, few states have a dedicated reuse program, and instead integrate it into the larger existing water permitting programs.

Water reuse projects are almost exclusively funded through the federal Clean Water State Revolving Fund (CWSRF) program (see Figure 3; 94% of states use the CWSRF to finance and fund reuse projects). Rarely do states have state or local funds to fully finance projects, which highlights the importance of federal funding in supporting the growth and development of water reuse throughout the West. In fact, some states (33%) acknowledged that increased federal financing for water reuse projects would be beneficial, and 44% mentioned that additional federal technical assistance would be helpful (Figure 3). For the past ten years, the CWSRF has included a Green Project Reserve requirement that 10% of funds go to “green” projects defined

as those that increase water efficiency, energy efficiency, green infrastructure or use or develop innovative approaches. Water reuse projects fall within these guidelines, and this requirement can potentially help increase the funding available for reuse projects.

The states reported that the public is, overall, very supportive of water reuse projects, especially when they are engaged in the development of a project from the outset (see Figure 2; 67% of states said the public was supportive, while the other 33% did not mention strong public support or opposition). Many state agencies reported that the cultural ethic in local communities can affect the public's willingness to accept a reuse project, and that public outreach and engagement is a critical component to a successful water reuse program. Successful development of many reuse laws, regulations, and projects has been attributed to active stakeholder engagement processes. As agencies are exploring potable reuse, stakeholder engagement has been critical in ensuring the public's health and safety concerns are addressed in the policies and guidance documents being developed.

Some states are exploring reuse of produced waters, or water from oil and gas operations (see Figure 3; 27% of states are exploring produced water reuse). This is particularly relevant in states like New Mexico and Wyoming that have a large oil and gas sector, and are also experiencing the effects of drought. While there are concerns about the potential public health impacts from reusing produced water, investments in scientific, health and policy research are underway to explore this potential and develop a suitable regulatory framework (see individual state narratives for more details on these efforts).

Overall, water reuse is an exciting and growing practice in the West. With the momentum from EPA's WRAP and interest in potable reuse, the regulatory environment around water reuse is evolving. While potable reuse is not yet a largely accepted practice, states are preparing for this as growth and drought continue to concern western states. As seen through the state narratives, each state has a different approach relevant to the local water challenges and opportunities, which gives rise to innovation and also highlights the importance of sharing experiences across state boundaries.

Stock Water Rights for Grazing Livestock on Federal Lands

The following is an excerpt of the report. The full report is available at:

<https://westernstateswater.org/publications/2021/stock-water-rights-for-grazing-livestock-on-federal-lands/>

Executive Summary

The Non-Tribal Federal Water Rights Workgroup (Workgroup) comprised of members of the Western States Water Council (WSWC)¹ and Western Federal Agency Support Team (WestFAST)² has held workshops over the past several years focused on stock water rights for grazing livestock on federal lands. The workgroup's primary purpose is to facilitate state-federal communication and to share perspectives, constraints, and opportunities to work together to resolve concerns over federal water rights in western states. Litigation may not always be avoidable since it can serve a useful purpose, to clarify laws and to bring the right parties to the table to resolve ongoing problems. However, to the extent that alternative means of resolving conflicts exist, the Workgroup participants are interesting in pursuing those opportunities as appropriate.

In October 2018 (Coeur d'Alene, Idaho) and October 2019 (Breckenridge, Colorado), the workgroup held workshops on stock water rights. The first workshop focused on state and federal laws, policies, perspectives, and approaches to stock water rights for grazing on federal lands. These vary from one state to another, from one federal agency to another, and sometimes from one district to another within the same agency. Speakers included representatives from the Idaho Department of Water Resources, the Utah and Wyoming Attorneys General Offices, the New Mexico State Engineer Office, the U.S. Forest Service, and the Bureau of Land Management. The second workshop included representative organizations for stock owners who use water rights and grazing permits on federal lands. This workshop was a Collaborative Action and Dispute Resolution (CADR)-facilitated discussion to improve understanding of the different perspectives (state agencies, federal agencies, stockowner associations and organizations) and identify areas where the Workgroup can potentially work together to reduce conflicts. Pat O'Toole from the Ladder Ranch and President of the Family Farm Alliance offered introductory remarks at both meetings, providing a valuable perspective as a western stock owner.

In addition to benefit of sharing different perspectives on grazing water rights, the workshop participants identified some key issues that lead to conflicts and misunderstandings, such as federal or private ownership of stock water rights, the value of personal relationships, and the constraints imposed by state and federal laws that can impact the ability to work together. Participants also discussed some more collaborative ways of approaching the underlying issues that lead to conflicts.

¹ <https://westernstateswater.org/>

² <https://westernstateswater.org/westfast/>

Key Issues

Grazing and water rights are inextricably linked, because grazing stock must have accessible water to drink. Many conflicts over grazing on federal land—and any associated water rights—stem from who controls the right to access and use the water. One critical issue is how western states define water rights. Many states require the water right holder to put the water to beneficial use. Generally speaking, a landowner will hold a right to divert water and will put it to beneficial use at some specific location on the land. Providing drinking water for grazing stock raises complex questions when the landowner and the stock owner are not the same. Is the landowner putting the water to beneficial use by leasing the land for the use of grazing stock, or is the stock owner? Which party should obtain the water right for purposes of demonstrating beneficial use?

Ownership of the Stock Water Right

- Beneficial use
- Prior appropriation
- Access to water
- Changes to permits

Western states also have a system of prior appropriation, where water rights with the earliest or most senior dates will be fulfilled first, before later or more junior water rights. This priority system becomes critically important during times of drought, when the most junior water users in the system may not have a right to any water at all. Maintaining valuable senior water rights requires that the water right holder continuously put that water to beneficial use. If the water is not put to beneficial use for a certain period of time (usually defined by statute, and which varies from one state to another), the water right may be lost through non-use, and along with it, the value of the early priority date. Any subsequent water right application would then have a more junior priority date assigned. In the context of grazing, this raises the question of which party should hold the water right in order to preserve the priority date: the landowner with the access to the water who may or may not continue to allow grazing, or the stock owner with the animals using the water, who may or may not continue to graze animals on that land?

Other issues arise related to the ownership of stock water rights. In some states, water is appurtenant to the land specified in the water right, which can mean that if grazing occurs on other land, the water right may require a change in the point of diversion or place of use. Federal agencies sometimes make changes to grazing allotment permits, and this can affect water rights. Changes in ownership of land, stock, grazing permits, and water rights can lead to inaccurate information about water rights that accumulates over time.

When it comes to grazing and water, relationships are almost more important than the law. Good relationships enable good things to get done. Complex projects requiring collaboration across multiple government agencies, for example, can be quickly facilitated when those making decisions already know the people involved and are already aware of the problems the project is seeking to solve. Similarly, when simple changes need to be made to permits to ensure that stock have water this season, having those personal relationships seems to cut down on wasteful delays.

The high turnover in agencies means the need to develop new relationships is ongoing. Putting a personal face to what seems like a “black box” of bureaucracy helps relationships stay positive. Some provisions of law can be ambiguous and subject to interpretation, and may be applied differently from time to time depending on the perspectives of those interpreting and applying the law. Management

perspectives can change along with agency personnel. Avoiding conflicts can depend on the ability to understand diverse perspectives, and longstanding relationships can help those other perspectives to feel more familiar and accessible. On the other hand, bad relationships can create long-lasting damage and result in reactive demands for changes in the law.

Relationships

- Personal face to bureaucracy
- Simple changes so stock get water
- Project collaboration
- High turnover
- Ambiguous laws and rules

Collaborative efforts and understanding perspectives can greatly improve relationships and reduce conflict, but state and federal agencies also operate under the constraints of state and federal law, including statutes, regulations, and the decisions of various courts as lawsuits are decided. As state and federal administrations change over time, so do policies and priorities. Agencies are directed to implement those policies and priorities, while still complying with other laws. Court decisions may interpret or re-interpret laws from time to time. Regional variations also occur within the same agency, sometimes due to an effort to apply laws in a way that makes the most sense given the unique features of that region, and other times simply because different regions operate as separate siloes. Serious consequences can develop with such a haphazard approach that keeps changing over time. The historical development of the law can have a strong impact on whether new changes can be effectively implemented, particularly where existing property rights must still be protected.

Legal Constraints

- Statutes and regulations
- Case law
- Policies and priorities
- Regional variations

Next Steps

Recommendations for next steps included regular communications and educational workshops and webinars to facilitate perspective sharing, opportunities to build trust, and improving understanding of complex laws. This could include state-hosted workshops on state and federal law, with Colorado and Wyoming as examples, and WSWC-WestFAST-hosted webinars and workshops. Several states and federal agencies expressed interest in developing state-federal MOUs in each state, having a co-applicant process that involves both the grazing allotment permittee and the federal landowner. Participants expressed interest in engaging through dispute resolution programs such as DOI and BLM’s Collaborative Action and Dispute Resolution programs. Work can be done on multiple fronts to ensure more accurate data on water rights and points of diversion. Having an ombudsman or single point of contact to address conflicts may be helpful as well.

Tab S – WSWC /NARF Symposium on the
Settlement of Indian Reserved
Water Rights Claims



2021 Symposium on the Settlement of Indian Reserved Water Rights Claims

The Western States Water Council (WSWC) and Native American Rights Fund (NARF) will cosponsor their 17th Biennial Symposium on the Settlement of Indian Reserved Water Rights Claims on August 24-25, 2021. Due to COVID19 travel restrictions and concerns, the symposium will be hosted virtually. The Symposium will address several topics related to negotiated water rights settlements most recently authorized in the 117th Congress, the Administration's policy on Indian water rights settlements, and getting settlements through Congress.

We expect another excellent conference. Successful symposia have been held since 1991. Our abbreviated agenda will include presenters who have been involved in negotiated settlements, with speakers representing tribal, state, local, and federal governments, interest groups, congressional staff, and others. We are applying for Continuing Legal Education credit in Colorado and Utah for lawyers who attend.

While the symposium is being held virtually, you must register in advance and pay the registration fee to join the meeting. The registration fee to attend one or both days is \$60 through Monday, August 16; thereafter the fee will increase to \$100. For any questions regarding registration, please contact Julie Groat at jgroat@wswc.utah.gov.

For those attending, please complete: [Zoom Webinar Registration](#)

<https://westernstateswater.org/events/2021-symposium-on-the-settlement-of-indian-reserved-water-rights-claims/>

DRAFT AGENDA

SYMPOSIUM ON THE SETTLEMENT OF INDIAN RESERVED WATER RIGHTS CLAIMS

AUGUST 24, 2021

9:00 am ***Introductory Remarks***

John Echohawk, Executive Director, Native American Rights Fund

Tony Willardson, Executive Director, Western States Water Council

NEGOTIATION OF INDIAN WATER RIGHTS CLAIMS

9:30 am **Navajo Nation**

Stanley Pollack, Contract Attorney, Navajo Nation Department of Justice

Norman Johnson, Natural Resources Division Director, Utah Attorney General's Office

Justin Record, Water Rights Coordinator, Bureau of Reclamation (invited)

10:30 am **Confederated Salish and Kootenai Tribes**

TBA

11:30 am **Aamodt**

Arianne Singer, General Counsel, New Mexico Office of the State Engineer

Jennifer Faler, Bureau of Reclamation (invited)

Jennifer Waters, Bureau of Reclamation (invited)

Alice Walker, Pueblo of Nambe (invited)

Maria O'Brien, Pueblo of Pojoaque (invited)

Richard Hughes, Pueblo of Tesuque (invited)

Peter Chestnut, Pueblo of San Ildefonso (invited)

12:30 am **Kickapoo**

Burke Griggs, Associate Professor, Washburn University School of Law

Scott Bergstrom, Assistant Solicitor, U.S. Department of the Interior

Kickapoo Chairman Lester Randall (invited)

1:30 pm **Adjourn**

AUGUST 25, 2021

9:00 am **THE ADMINISTRATION'S SETTLEMENT POLICY**

Deb Haaland, Secretary of the Interior (invited)

Tanya Trujillo, Principal Deputy Assistant Secretary for Water and Science, Department of the Interior (invited)

Elizabeth Klein, Senior Counselor to the Secretary of Interior, and Chair of the Working Group on Indian Water Settlements

Pamela Williams, Director, Secretary's Indian Water Rights Office, Department of the Interior

11:30 am **SETTLEMENT LEGISLATION: GETTING BILLS THROUGH CONGRESS**

Melanie Stansbury, U.S. Representative, New Mexico Congressional District 1 (invited)
Matthew Muirragui, Staff Director, Sub. on Water, Oceans and Wildlife, House Natural
Resources Committee

Kiel Weaver, Senior Policy Advisor and Staff Director, Sub. on Water, Oceans and
Wildlife, House Natural Resources Committee (invited)

Jennifer Romero, Staff Director and General Counsel, Senate Indian Affairs (invited)

Brandon Ashely, Deputy Staff Director, Senate Indian Affairs (invited)

Melanie Thornton, Professional Staff, Senate Committee on Energy and Natural Resources
(invited)

Brain Clifford, Professional Staff, Senate Committee on Energy and Natural Resources
(invited)

2:00 pm **COLORADO RIVER WATER & TRIBES INITIATIVE**

Bidtah Becker, Associate Attorney, Navajo Tribal Utility Authority

3:00 pm Adjourn

Tab T – Administration, Legislation, and Litigation Update

**Administration Update
196th WSWC Meeting
Cody, Wyoming**

Complied By:
Jessica Reimer
WSWC Policy Analyst
jreimer@wswc.utah.gov

This summary describes developments regarding notable rules, guidance, and executive orders that pertain to WGA/WSWC policies or are otherwise of interest. It focuses primarily on developments that have taken place since March 2021, and is organized in reverse chronological order.

			NOTABLE ADMINISTRATION ACTIONS	
FR Citation	Date Published	WSWC Keywords	Title	Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning With Reporting Year 2021 The Environmental Protection Agency (EPA) is adding three per- and polyfluoroalkyl substances (PFAS) to the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). This action implements the statutory mandate in the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) enacted on December 20, 2019. The PFAS added are: Perfluorooctyl iodide (507-63-1), Potassium perfluorooctanoate (2395-00-8) and Silver(I) perfluorooctanoate (335-93-3)
86 FR 29698	6/3/2021	water quality, PFAS		
Agency/Office	Action			
Environmental Protection Agency	Final Rule			
Public Comment Deadline	Effective Date			
NA	6/3/2021			
FR Link	https://www.federalregister.gov/documents/2021/06/03/2021-11586/implementing-statutory-addition-of-certain-per-and-polyfluoroalkyl-substances-pfas-to-the-toxics			
FR Citation	Date Published	WSWC Keywords	Title	Notice of Intention To Reconsider and Revise the Clean Water Act Section 401 Certification Rule The pre-publication version of the review announcement stated, "EPA has completed its initial review of the 401 Certification Rule and determined that it will propose revisions to the rule through a new rulemaking effort. The agency has considered the following factors in making this determination, including but not limited to: the text of CWA Section 401; Congressional intent and the cooperative federalism framework of CWA Section 401; concerns raised by stakeholders about the 401 Certification Rule, including implementation related feedback; the principles outlined in Executive Order [13990]; and issues raised in ongoing litigation challenges to the 401 Certification Rule." EPA is not going to revert back to the former rule, originally published in 1971, but is considering specific provisions within the 2020 rule for revision. These include: 1) Effectiveness of pre-filing meeting requests; 2) Constraints associated with certification requests and if they limit the ability of the state to get the necessary information to make a certification decision; 3) Provisions around defining a "reasonable period of time" for states to certify; 4) Scope of certification; 5) Certification actions and the federal agency review process; 6) Enforcement; 7) Lack of the ability to modify certifications if the certifying authority, federal agency and EPA agree; 8) Timeframe for notifying and receiving feedback from neighboring jurisdictions; 9) General impacts of the rule on the certification process and project development; and 10) Coordinating implementation of rule revisions and whether other relevant federal agencies, such as the Army Corps of Engineers, should propose and finalize concomitant regulatory changes for consistency.
86 FR 29541	6/2/2021	Section 401, water quality		
Agency/Office	Action			
Environmental Protection Agency	Notice of Intent			
Public Comment Deadline	Effective Date			
8/2/2021	NA			
FR Link	https://www.federalregister.gov/documents/2021/06/02/2021-11513/notice-of-intention-to-reconsider-and-revise-the-clean-water-act-section-401-certification-rule			
FR Citation	Date Published	WSWC Keywords	Title	Proposals by Non-Federal Interests, for Feasibility Studies, Proposed Modifications to Authorized Water Resources Development Projects and Feasibility Studies, and Proposed Modifications for an Environmental Infrastructure Program for Inclusion in the Annual Report to Congress on Future Water Resources Development The Water Resources Reform and Development Act (WRRDA) 2014, as amended, requires the Secretary of the Army annually submit to the Congress a report (Annual Report) that identifies feasibility reports, proposed feasibility studies submitted by non-Federal interests, proposed modifications to authorized water resources development projects or feasibility studies, and proposed modifications to environmental infrastructure program authorities that meet certain criteria. The Annual Report is to be based, in part, upon requests for proposals submitted by non-Federal interests. Proposals must be submitted online by August 30, 2021. Submit at https://www.usace.army.mil/Missions/Civil-Works/Project-Planning/WRRDA-7001-Proposals/
86 FR 22943	4/30/2021	water infrastructure		
Agency/Office	Action			
Army Corps of Engineers	Notice			
Public Comment Deadline	Effective Date			
8/30/2021	NA			
FR Link	https://www.federalregister.gov/documents/2021/04/30/2021-09042/proposals-by-non-federal-interests-for-feasibility-studies-proposed-modifications-to-authorized			
FR Citation	Date Published	WSWC Keywords	Title	Notification of Funding for Credit Assistance Under the Water Infrastructure Finance and Innovation Act (WIFIA) Program In the Further Consolidated Appropriations Act, 2021, signed by the President on December 27, 2020, Congress provided \$54.5 million in budget authority for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) program to cover the subsidy required to provide a much larger amount of credit assistance. EPA estimates that this budget authority may provide approximately \$5.5 billion in credit assistance and may finance approximately \$11 billion in water infrastructure investment. The purpose of this NOFA is to solicit letters of interest (LOIs) from prospective borrowers seeking credit assistance from EPA. The submittal period is open from April 30, 2021 to July 23, 2021
86 FR 22612	4/29/2021	water infrastructure, funding		
Agency/Office	Action			
Environmental Protection Agency	Notification of funding availability			
Public Comment Deadline	Effective Date			

NA	NA		
FR Link	https://www.federalregister.gov/documents/2021/04/29/2021-08867/notification-of-funding-for-credit-assistance-under-the-water-infrastructure-finance-and-innovation		
FR Citation	Date Published	WSWC Keywords	Title Notification of Funding for Credit Assistance Under the State Infrastructure Fiance Autority Water Infrastructure Finance and Innovation Act (SWIFIA) Program The state infrastructure financing authority WIFIA (SWIFIA) program will use the \$5M authorized in the Consolidated Appropriations Act, 2021 to cover the subsidy required to provide a much larger amount of credit assistance. Environmental Protection Agency (EPA or Agency) estimates that this budget authority may provide approximately \$1 billion in credit assistance and may finance approximately \$2 billion in water infrastructure investment. The purpose of this NOFA is to solicit letters of interest (LOIs) from prospective state infrastructure financing authority borrowers seeking credit assistance from EPA under the SWIFIA program. Letters of interest are due by June 25, 2021 at 11:59p EDT.
86 FR 22617	4/29/2021	water infrastructure, funding	
Agency/Office	Action		
Environmental Protection Agency	Notification of funding availability		
Public Comment Deadline	Effective Date		
NA	NA		
FR Link	https://www.federalregister.gov/documents/2021/04/29/2021-08865/notification-of-funding-for-credit-assistance-under-the-state-infrastructure-finance-authority-water		
FR Citation	Date Published	WSWC Keywords	Title Revolving Fund Program - Water and Environmental Provisions of the Agricultural Improvement Act of 2018 This final rule modifies the Revolving Funds for Financing Water and Wastewater Projects Program (7 CFR part 1783) within USDA's Rural Development, pursuant to the Agriculture Improement Act of 2018, to increase the amount allowed for total project costs from \$100,000 to \$200,000. This will allow Rural Development's Water and Environment Program to fully carry out the program changes made with the passage of the 2018 Farm Bill.
86 FR 14525	3/17/2021	water infrastructure, funding, USDA, agriculture	
Agency/Office	Action		
Department of Agriculture	Final Rule		
Public Comment Deadline	Effective Date		
NA	3/17/2021		
FR Link	https://www.federalregister.gov/documents/2021/03/17/2021-05418/revolving-fund-program-water-and-environmental-provisions-of-the-agricultural-improvement-act-of		
FR Citation	Date Published	WSWC Keywords	Title National Primary Drinking Water Regulations; Lead and Copper Rule Revisions; Delay of Effective Date EPA issued a short delay of the effective date of the Lead and Copper Rule Revisions. The new effective date is June 17, 2021, pushed back from March 16, 2021. This does not change the compliance date of January 16, 2024. The purpose of the delay was to enable EPA to review the rule "in a deliberate and thorough manner consistent with the public health purposes of the Safe Drinking Water Act and the terms and objectives of recent Presidential directives and in consultation with affected stakeholders."
86 FR 14003	3/12/2021	water quality	
Agency/Office	Action		
Environmental Protection Agency	Final rule, delay of effective date		
Public Comment Deadline	Effective Date		
NA	6/17/2021		
FR Link	https://www.federalregister.gov/documents/2021/03/12/2021-05271/national-primary-drinking-water-regulations-lead-and-copper-rule-revisions-delay-of-effective-date		
FR Citation	Date Published	WSWC Keywords	Title Revisions to the Unregulated Contaminant Monitoring Rule (UCMR 5) for Public Water Systems and Announcement of Public Meeting EPA proposed a Safe Drinking Water Act (SDWA) rule that would require public water systems to collect national occurrence data for 29 per- and polyfluoroalkyl substances (PFAS) and lithium. This proposed rule would require all community and non-transient non community water systems serving 3,300 or more people, and a representative sample of smaller water systems, to conduct monitoring. PFAS and lithium are not currently subject to national primary drinking water regulations, and EPA is proposing to require the collection of drinking water occurrence data to inform EPA decisions.
86 FR 13846	3/11/2021	water quality, PFAS	
Agency/Office	Action		
Environmental Protection Agency	Proposed Rule and notice of public meeting		
Public Comment Deadline	Effective Date		
5/10/21 (passed)	NA		
FR Link	https://www.federalregister.gov/documents/2021/03/11/2021-03920/revisions-to-the-unregulated-contaminant-monitoring-rule-ucmr-5-for-public-water-systems-and		
FR Citation	Date Published	WSWC Keywords	Title Announcement of Final Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List EPA announced the final regulatory determinations for eight of 109 contaminants listed on the Fourth Contaminant Candidate List. These include determinations to regulate perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), and to not regulate 1,1-dichloroethane, acetochlor, methyl bromide (bromomethane), metolachlor, nitrobenzene, and RDX. EPA will begin the process to propose national regulations for PFOS and PFOA shortlv.
86 FR 12272	3/3/2021	water quality, PFAS	
Agency/Office	Action		

Environmental Protection Agency	Regulatory Determination		metolachlor, trichlorobenzene, and DCA. EPA will begin the process to propose national regulations for PFOS and PFOA shortly.
Public Comment Deadline	Effective Date		
NA	3/3/2021		
FR Link	https://www.federalregister.gov/documents/2021/03/03/2021-04184/announcement-of-final-regulatory-determinations-for-contaminants-on-the-fourth-drinking-water		
FR Citation	Date Published	WSWC Keywords	Title National Primary Drinking Water Regulations: Lead and Copper Rule Revisions
86 FR 4198	1/15/2021	water quality	The rule: (1) requires community water systems to test the drinking water of 20% of the schools and child care facilities in their service area for five years and provide results and recommendations to the facilities in a timely manner; (2) codifies tap sampling procedures for testing for lead in water; (3) establishes a "trigger level" of 10 parts per billion (ppb) that requires water systems to more rapidly identify, implement or optimize corrosion control treatments, and requires that water systems work with states to begin a LSL replacement program when exceeded; (4) requires water systems to replace 3% of their LSLs per year when 10% of sampling results are above the "action level" of 15 ppb, effectively extending the amount of time for replacement from 14 to 33 years; and (5) requires water systems to develop public inventories of the locations of LSLs, and to notify occupants of a home within three days if their result exceeds 15 ppb. If there is a system-wide exceedance, customers must be notified within 24 hours. The rule maintains the current "action level" for lead at 15 ppb and does not establish a maximum contaminant level (MCL).
Agency/Office	Action		
Environmental Protection Agency	Rulemaking		
Public Comment Deadline	Effective Date		
Complete	3/16/2021		
FR Link	https://www.federalregister.gov/documents/2021/01/15/2020-28691/national-primary-drinking-water-regulations-lead-and-copper-rule-revisions		
FR Citation	Date Published	WSWC Keywords	Title Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges from the Application of Pesticides; Reissuance
86 FR 4070	1/15/2021	water quality, agriculture	All ten Environmental Protection Agency (EPA) Regions are proposing for public comment the draft 2021 National Pollutant Discharge Elimination System (NPDES) pesticide general permit (PGP)—the draft 2021 PGP. The draft 2021 PGP covers point source discharges from the application of pesticides to waters of the United States. Once finalized, the draft 2021 PGP will replace the existing permit, the 2016 PGP, which was issued for a five-year term in the Federal Register on October 31, 2016, and expires October 31, 2021, at midnight. The draft 2021 PGP has the same conditions and requirements as the 2016 PGP and would authorize certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA proposes to issue this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority. EPA solicits public comment on all aspects of the draft 2021 PGP.
Agency/Office	Action		
Environmental Protection Agency	Notice; Public comment request		
Public Comment Deadline	Effective Date		
3/16/2021	na		
FR Link	https://www.federalregister.gov/documents/2021/01/15/2021-00834/draft-national-pollutant-discharge-elimination-system-npdes-pesticide-general-permit-for-point		
FR Citation	Date Published	WSWC Keywords	Title Proposed Information Collection Request; Comment Request; Clean Water Act 404 State-Assumed Programs
86 FR 4068	1/15/2021	water quality, CWA Section 404	Section 404(g) of the Clean Water Act authorizes States and Tribes to assume the section 404 permit program for discharges of dredged or fill material into certain waters of the United States. The ICR covers the collection of information EPA needs to perform its program approval and oversight responsibilities and the State or Tribe needs to implement its program. The ICR will be submitted to the Office of Budget and Management (OMB), but prior to submission EPA is soliciting public comments on specific aspects of the proposed information collection. The current ICR is approved through July 31, 2021, and EPA is proposing an extension. There are some proposed changes in the estimated respondent burden based on information provided by Michigan and New Jersey, the two states currently approved to administer a 404 program and changes to endangered species and historic preservation requirements.
Agency/Office	Action		
Environmental Protection Agency	Notice		
Public Comment Deadline	Effective Date		
3/16/2021	na		
FR Link	https://www.federalregister.gov/documents/2021/01/15/2021-00904/proposed-information-collection-request-comment-request-clean-water-act-404-state-assumed-programs		
FR Citation	Date Published	WSWC Keywords	Title Interim PFAS Destruction and Disposal Guidance; Notice of Availability for Public Comment
85 FR 83554	12/22/2020	water quality, PFAS	The guidance provides information on technologies that may be feasible and appropriate for the destruction or disposal of PFAS and PFAS-containing materials. It also identifies needed and ongoing research and development activities related to destruction and disposal technologies, which may inform future guidance.
Agency/Office	Action		
Environmental Protection Agency	Public comment		
Public Comment Deadline	Effective Date		
2/22/2021	na		

FR Link	https://www.federalregister.gov/documents/2020/12/22/2020-28376/interim-pfas-destruction-and-disposal-guidance-notice-of-availability-for-public-comment
----------------	---

**Legislation Update
196th WSWC Meeting
Cody, Wyoming**

Complied By:
Michelle Bushman
WSWC Assistant Director and General Counsel
mbushman@wswc.utah.gov

This summary describes developments regarding notable legislation that pertains to WGA/WSWC policies or are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of the 117th Congress, and 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 H.R. 3267 Bill Title No title Passed (S/H) Bill Sponsor Rep. Boyle, Brendan F. [D-PA-2]	Date Introduced 05/17/21 Assigned Committee(s) Energy and Commerce Hearing(s) Co-sponsors 11 Democrats co-sponsors, including one from CA and one from AZ	WSWC Keywords water quality; PFAS Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3267	Summary of Bill To amend the Safe Drinking Water Act to require the Administrator of the Environmental Protection Agency to publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for total per- and polyfluoroalkyl substances, and for other purposes.
Bill Number H.R. 3238 Bill Title No title Passed (S/H) Bill Sponsor Rep. Escobar, Veronica [D-TX-16]	Date Introduced 05/14/21 Assigned Committee(s) Energy and Commerce; Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3238	Summary of Bill To amend the SDWA to reauthorize certain grant programs providing assistance to colonias.
Bill Number H.R. 3228 Bill Title No title Passed (S/H) Bill Sponsor Rep. Velazquez, Nydia M. [D-NY-7]	Date Introduced 05/13/21 Assigned Committee(s) Natural Resources; Science, Space and Technology Hearing(s) Co-sponsors 3 Democrat co-sponsors, including CA	WSWC Keywords data Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3228	Summary of Bill Directs NOAA to improve science, data, and services that enable sound decision-making in response to coastal flood risk, including impacts of sea level rise, storm events, changing Great Lakes water levels, and land subsidence

Bill Number H.R. 3218 Bill Title Wastewater Infrastructure Improvement Act of 2021 Passed (S/H) Bill Sponsor Rep. Rouzer, David [R-NC-7]	Date Introduced 05/13/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors Sam Graves (MO) and Don Young (AK)	WSWC Keywords SRF Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3218	Summary of Bill Amends the CWA to reauthorize the Clean Water State Revolving Fund for the first time since 1994 and authorizes \$14B in spending for this fund over the next 5 years.
Bill Number H.R. 3132 Bill Title No title Passed (S/H) Bill Sponsor Rep. Amodei, Mark E. [R-NV-2]	Date Introduced 05/13/21 Assigned Committee(s) Natural Resources; Transportation and Infrastructure; Agriculture Hearing(s) Co-sponsors 4 Democrat co-sponsors in NV and CA	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3132	Summary of Bill Reauthorizes the Lake Tahoe Restoration Act
Bill Number S. 904/H.R. 3113 Bill Title MAPLand Act Passed (S/H) Bill Sponsor Sen. Risch, James E. [R-ID], Rep. Moore, Blake [R-UT-1]	Date Introduced 05/11/21 Assigned Committee(s) Natural Resources; Agriculture; Transportation and Infrastructure; Energy and Natural Resources Hearing(s) Co-sponsors Rep. Fulcher, Russ [R-ID-1], Rep. Neguse, Joe [D-CO-2], Rep. Schrier, Kim [D-WA-8]	WSWC Keywords WOTUS(?), mapping, water resources, water ... Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3113 ; https://www.congress.gov/bill/117th-congress/senate-bill/904	Summary of Bill This bill directs the Department of the Interior, the Forest Service, and the U.S. Army Corps of Engineers to jointly develop and adopt interagency standards to ensure compatibility and interoperability among federal databases for the collection and dissemination of outdoor recreation data related to federal lands. Interior, the Forest Service, and the Corps of Engineers must digitize and publish geographic information system mapping data that includes federal interests, including easements and rights-of-way, in private land; status information as to whether roads and trails are open or closed; the dates on which roads and trails are seasonally opened and closed; the types of vehicles that are allowed on each segment of roads and trails; the boundaries of areas where hunting or recreational shooting is regulated or closed; and the boundaries of any portion of a body of water that is closed to entry, is closed to watercraft, or has horsepower limitations for watercraft.

Bill Number H.R. 3112 Bill Title No title Passed (S/H) Bill Sponsor Rep. McNerney, Jerry [D-CA-9]	Date Introduced 05/11/21 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors Rep. Swalwell, Eric [D-CA-15], Rep. Panetta, Jimmy [D-CA-20], Rep. Eshoo, Anna G. [D-CA-18]	WSWC Keywords water reuse Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3112	Summary of Bill To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain recycled water projects, and for other purposes.
Bill Number H.R. 3023 Bill Title No title Passed (S/H) Bill Sponsor Rep. Costa, Jim [D-CA-16]	Date Introduced 05/07/21 Assigned Committee(s) Transportation and Infrastructure; Energy and Commerce Hearing(s) Co-sponsors Rep. Curtis, John R. [R-UT-3] and Rep. Garamendi, John [D-CA-3]	WSWC Keywords WIFIA Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/3023	Summary of Bill To amend WIFIA 2014 with respect to budgetary treatment of certain amounts of financial assistance
Bill Number H.R. 2979 Bill Title No title Passed (S/H) Bill Sponsor Rep. Garamendi, John [D-CA-3]	Date Introduced 05/04/21 Assigned Committee(s) Transportation and Infrastructure; Energy and Commerce Hearing(s) Co-sponsors Rep. Newhouse, Dan [R-WA-4]*	WSWC Keywords water supply, water resources, WIFIA Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2979	Summary of Bill To amend the Water Infrastructure Finance and Innovation Act of 2014 with respect to the final maturity date of certain loans, and for other purposes. Would extend length of loan repayment to 55 years (from 35 years) and open the program to water supply projects such as reservoirs and aquifer storage
Bill Number H.R. 2952 Bill Title No title Passed (S/H) Bill Sponsor Rep. Williams, Nikema [D-GA-5]	Date Introduced 05/03/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2952	Summary of Bill To amend the CWA to require a certain percentage of funds appropriated for revolving fund capitalization grants be used for green projects

Bill Number S. 1455 Bill Title Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act Passed (S/H) Bill Sponsor Sen. Manchin, Joe, III [D-WV]	Date Introduced 04/29/21 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors	WSWC Keywords abandoned mines Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/1455	Summary of Bill To amend the Surface Mining Control and Reclamation Act of 1977 (30 USC 1231) 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. Authorizes \$200M annually for FY22-26.
Bill Number H.R. 2895 Bill Title No title Passed (S/H) Bill Sponsor Rep. Peters, Scott H. [D-CA-52]	Date Introduced 04/28/21 Assigned Committee(s) Transportation and Infrastructure; Ways and Means; Budget Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2895	Summary of Bill To facilitate efficient investments and financing of infrastructure projects and new, long-term job creation through the establishment of an Infrastructure Financing Authority
Bill Number H.R. 2810 Bill Title No title Passed (S/H) Bill Sponsor Rep. Ryan, Tim [D-OH-13]	Date Introduced 04/22/21 Assigned Committee(s) Transportation and Infrastructure; Energy and Commerce Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2810	Summary of Bill To ensure that certain Federal infrastructure programs require the use of materials produced in the United States
Bill Number H.R. 2781 Bill Title No title Passed (S/H) Bill Sponsor Rep. Harder, Josh [D-CA-10]	Date Introduced 04/22/21 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors	WSWC Keywords water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2781	Summary of Bill To amend the Water Resources Research Act of 1984 to reauthorize grants for and require applied water supply research regarding the water resources research and technology institutes established under that Act

Bill Number S. 1341 Bill Title No title Passed (S/H) Bill Sponsor Sen. Cardin, Benjamin L. [D-MD]	Date Introduced 04/22/21 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors	WSWC Keywords water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/1341	Summary of Bill To amend the Water Resources Research Act of 1984 to reauthorize grants for and require applied water supply research regarding the water resources research and technology institutes established under that Act
Bill Number H.R. 2660 Bill Title No title Passed (S/H) Bill Sponsor Rep. Latta, Robert E. [R-OH-5]	Date Introduced 04/19/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors 19 Republican co-sponsors	WSWC Keywords WOTUS Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2660	Summary of Bill To amend the CWA to codify the definition of "waters of the United States"
Bill Number S. 1214 Bill Title State Grazing Management Authority Act Passed (S/H) Bill Sponsor Sen. Lee, Mike [R-UT]	Date Introduced 04/19/21 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors	WSWC Keywords grazing Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/1214	Summary of Bill Amends FLPMA section 402 (43 USC 1752) to authorize the Departments of Interior and Agriculture to enter into cooperative agreements with states to provide for state administration of allotment management plans.
Bill Number S. 1179 Bill Title Canal Conveyance Capacity Restoration Act Passed (S/H) Bill Sponsor Sen. Feinstein, Dianne [D-CA]	Date Introduced 04/15/21 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors	WSWC Keywords groundwater Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/1179	Summary of Bill To provide financial assistance for projects to address certain subsidence impacts in the State of California

Bill Number H.Res. 320 Bill Title No title Passed (S/H) Bill Sponsor Rep. Neguse, Joe [D-CO-2]	Date Introduced 04/15/21 Assigned Committee(s) Natural Resources; Energy and Commerce Hearing(s) Co-sponsors	WSWC Keywords tribal drinking water Congress.gov Link https://www.congress.gov/bill/117th-congress/house-resolution/320	Summary of Bill Recognizing the critical importance of access to reliable, clean drinking water for Native Americans and Alaska Natives and confirming the responsibility of the Federal Government to ensure such water access.
Bill Number H.Res. 318 Bill Title No title Passed (S/H) Bill Sponsor Rep. Miller-Meeks, Mariannette [R-IA-2]	Date Introduced 04/14/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords WOTUS Congress.gov Link https://www.congress.gov/bill/117th-congress/house-resolution/318	Summary of Bill Expressing the sense of the House of Representatives that clean water is a national priority and that the April 21, 2020, Navigable Waters Protection Rule should not be withdrawn or vacated.
Bill Number H.R. 2513 Bill Title No title Passed (S/H) Bill Sponsor Rep. Garcia, Jesus G. "Chuy" [D-IL-4]	Date Introduced 04/14/21 Assigned Committee(s) Financial Services Hearing(s) Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2513	Summary of Bill Authorizes HUD grants to replace lead-based water service pipes for federal assisted housing.
Bill Number H.R. 2468 Bill Title No title Passed (S/H) Bill Sponsor Rep. Garamendi, John [D-CA-3]	Date Introduced 04/13/21 Assigned Committee(s) Transportation and Infrastructure; Agriculture; Energy and Commerce; Financial Services; Homeland Security; Natural Resources Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2468	Summary of Bill To ensure that certain materials used in carrying out Federal infrastructure aid programs are made in the United States

Bill Number H.R. 2467 Bill Title No title Passed (S/H) Bill Sponsor Rep. Dingell, Debbie [D-MI-12]	Date Introduced 04/13/21 Assigned Committee(s) Energy and Commerce; Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2467	Summary of Bill To require EPA to designate PFAS as hazardous substances under CERCLA
Bill Number H.R. 2202 Bill Title No title Passed (S/H) Bill Sponsor Rep. DeGette, Diana [D-CO-1]	Date Introduced 03/26/21 Assigned Committee(s) Energy and Commerce Hearing(s) Co-sponsors	WSWC Keywords fracking Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2202	Summary of Bill To repeal the exemption for hydraulic fracturing in the Safe Drinking Water Act
Bill Number H.R. 2197 Bill Title No title Passed (S/H) Bill Sponsor Rep. Cicilline, David N. [D-RI-1]	Date Introduced 03/26/21 Assigned Committee(s) Transportation and Infrastructure; Science, Space, and Technology; Energy and Commerce Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2197	Summary of Bill To encourage the research and use of innovative materials and associated techniques in the construction and preservation of the domestic transportation and water infrastructure system
Bill Number S. Res. 141 Bill Title No title Passed (S/H) Bill Sponsor Sen. Bennet, Michael F. [D-CO]	Date Introduced 03/25/21 Assigned Committee(s) Indian Affairs Hearing(s) Co-sponsors	WSWC Keywords tribal drinking water Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-resolution/141	Summary of Bill A resolution recognizing the critical importance of access to reliable, clean drinking water for Native Americans and Alaska Natives and confirming the responsibility of the Federal Government to ensure such water access.

Bill Number S. 953 Bill Title Water for Conservation and Farming Act Passed (S/H) Bill Sponsor Sen. Wyden, Ron [D-OR]	Date Introduced 03/24/21 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/953	Summary of Bill Establishes a Bureau of Reclamation Infrastructure Fund and transfers \$300M annually from the Reclamation Fund from FY2031-FY2061. A third of that amount would be spent annually on each of (1) water reclamation and reuse projects, (2) water management (WaterSMART) grants under 42 USC 10364, and (3) dam safety. It expands and extends the WaterSMART program and authorizes \$700M to be available until expended. It establishes a program to compensate the eligible agricultural producers for the creation and maintenance of waterbird and shorebird habitats. It reauthorizes the Cooperative Watershed Management Program (16 USC 1015a). It establishes a competitive grant program for the design, implementation, and monitoring of conservation outcomes of habitat restoration projects that improve watershed health. It directs FWS to develop a drought plan for critically important fisheries. And it reauthorizes the Fisheries Restoration and Irrigation Mitigation Act.
Bill Number S. 939 Bill Title Innovative Materials for America's Growth and Infrastructure Newly Expanded (IMAGINE) Act Passed (S/H) Bill Sponsor Sen. Whitehouse, Sheldon [D-RI]	Date Introduced 03/24/21 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/939	Summary of Bill (1) to encourage the research and use of innovative materials, in concert with traditional materials, and associated techniques in the construction and preservation of the domestic infrastructure network; (2) to accelerate the deployment and extend the service life, improve the performance, and reduce the cost of infrastructure projects; and (3) to improve the economy, resilience, maintainability, sustainability, and safety of the domestic infrastructure network. Directs EPA to establish a "Water Infrastructure Innovation Program", to provide grants for the design and installation of water infrastructure projects, including wastewater transport and treatment systems and drinking water treatment and distribution systems, that use innovative materials to reduce total costs, including operation and preservation expenses, and extend the service life of installed structures.
Bill Number S. 914 Bill Title Drinking Water and Wastewater Infrastructure Act Passed (S/H) 4/29/21: Senate passed 89-2 Bill Sponsor Sen. Duckworth, Tammy [D-IL]	Date Introduced 03/23/21 Assigned Committee(s) Environment and Public Works Hearing(s) 4/14/21: EPW reported with amendment; S. Rept. 117-20 Co-sponsors 6 Democrat and 7 Republican co-sponsors, including AK, AZ, CA, ND, OK, WY	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/914	Summary of Bill This bill reauthorizes through FY2026 or establishes a variety of programs for water infrastructure. Specifically, it supports programs to provide safe drinking water or treat wastewater, such as sewer overflows or stormwater. For example, the bill reauthorizes and revises the clean water state revolving fund (SRF) and the drinking water SRF.
Bill Number H.R. 2173 Bill Title No title Passed (S/H) Bill Sponsor Rep. Stanton, Greg [D-AZ-9]	Date Introduced 03/23/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2173	Summary of Bill To amend the CWA with respect to wastewater infrastructure workforce development.

Bill Number H.R. 2164 Bill Title No title Passed (S/H) Bill Sponsor Rep. Schakowsky, Janice D. [D-IL-9]	Date Introduced 03/23/21 Assigned Committee(s) Energy and Commerce Hearing(s) Co-sponsors 35 Democrats from CA, NY, VA, CO, CT, OR, AZ, DC, FL, IL, MD, MA, MI, MN, NJ, PA, TN, VT, WA, WI	WSWC Keywords fracking Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2164	Summary of Bill To amend the Safe Drinking Water Act to require testing of underground sources of drinking water in connection with hydraulic fracturing operations.
Bill Number H.R. 2155 Bill Title No title Passed (S/H) Bill Sponsor Rep. Mast, Brian J. [R-FL-18]	Date Introduced 03/23/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords HABs Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2155	Summary of Bill To require the Corps of Engineers to notify affected communities before releasing water contaminated with cyanobacteria from flood risk management projects.
Bill Number H.R. 2133 Bill Title No title Passed (S/H) Bill Sponsor Rep. Cartwright, Matt [D-PA-8]	Date Introduced 03/23/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors 35 Democrats from CA, NY, VA, CO, CT, OR, AZ, DC, FL, IL, MD, MA, MN, NJ, TN, VT, WA	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/2133	Summary of Bill To amend the CWA and direct the Secretary of the Interior to conduct a study with respect to stormwater runoff from oil and gas operations.
Bill Number S. 855 Bill Title Water Rights Protection Act Passed (S/H) Bill Sponsor Sen. Barrasso, John [R-WY]	Date Introduced 03/18/21 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors	WSWC Keywords water rights Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/855	Summary of Bill Prohibits Departments of the Interior and Agriculture from conditioning permits, leases, etc., on the transfer of any water right to the United States or on any impairment of title granted or otherwise recognized under state law by federal or state action. Any related rules or actions: (1) shall recognize the longstanding water use authority of the states and coordinate with the states to ensure that any federal action is consistent with applicable state water law, and (2) shall not adversely affect the authority of a state in permitting the beneficial use of water or adjudicating water rights.

Bill Number H.R. 1954 Bill Title Harmful Algal Bloom Essential Forecasting Act Passed (S/H) Bill Sponsor Rep. Donalds, Byron [R-FL-19]	Date Introduced 03/17/21 Assigned Committee(s) Science, Space, and Technology; Committee on Natural Resources Hearing(s) Co-sponsors 2 Democrats and 5 Republicans from MI, FL, OH	WSWC Keywords HABs Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1954	Summary of Bill To amend the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998 to clarify that during a lapse in appropriations certain services relating to the Harmful Algal Bloom Operational Forecasting System are excepted services under the Anti-Deficiency Act.
Bill Number H.R. 2008 Bill Title Local Water Protection Act Passed (S/H) Bill Sponsor Rep. Craig, Angie [D-MN-2]	Date Introduced 03/18/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors Rep. Mast, Brian J. [R-FL-18]	WSWC Keywords water quality Congress.gov Link 	Summary of Bill This bill reauthorizes through FY2026 grants to states for (1) programs that manage and control nonpoint source pollution (e.g., runoff from a variety of sources) added to navigable waters, and (2) groundwater quality protection activities to advance state implementation of such programs. Directs \$200M for programs in FY22-26.
Bill Number S. 755 Bill Title Emergency Water Infrastructure Improvements Act Passed (S/H) Bill Sponsor Sen. Hyde-Smith, Cindy [R-MS]	Date Introduced 03/16/21 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/755	Summary of Bill Authorizes funds for public water systems damaged by Winter Storms Uri and Viola, or not fewer than five Presidentially declared disasters. Eligible states would be authorized to use SRF funds to address contaminants in drinking water, including repair and replacement of water distribution systems. Authorizes \$150M for additional DWSRF capitalization grants.Requires states file an intended use plan with EPA and not duplicate work already undertaken by another federal agency.
Bill Number H.R. 1915 Bill Title Water Quality Protection and Job Creation Act Passed (S/H) Bill Sponsor Rep. DeFazio, Peter A. [D-OR-4]	Date Introduced 03/16/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) 6/9/21: T&I markup session, ordered reported, vote 42-25 Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1915	Summary of Bill Amends the CWA to authorizes various programs and funding: CWA 106(a) state management assistance grants are authorized at \$500M annually FY22-26; CWA 122 watershed pilot projects are authorized at \$200M for FY22-26; it deletes the western regional consideration for the CWA 220(d) alternative water source pilot projects and authorizes \$200M annually FY22-26. It authorizes CWA 221 sewer overflow and stormwater reuse municipal grants at \$400M annually for FY22-26. It adds a section on grants for POTWs implementing pretreatment standards for PFAS or any contaminant of emerging concern, and authorizes \$200M annually for FY22-26. For SRFs, CWA 607 would be amended to authorize \$8B annually for FY22-26. It also authorizes \$500M annually (FY22-26) for CWA 518(c)(3) grants to tribes for projects, training, technical assistance and O&M educational programs.

Bill Number H.R. 1869 Bill Title Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act Passed (S/H) Bill Sponsor Rep. Amodei, Mark E. [R-NV-2]	Date Introduced 03/12/21 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors	WSWC Keywords Indian water rights Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1869	Summary of Bill This bill directs the Department of the Interior to deposit specified interest payments into the Shoshone-Paiute Tribes Water Rights Development Fund and the Shoshone-Paiute Tribes Operation and Maintenance Fund. These funds were established under the water rights settlement agreement for the Shoshone-Paiute Tribes of the Duck Valley Reservation.
Bill Number H.R. 1881 Bill Title No title Passed (S/H) Bill Sponsor Rep. Garamendi, John [D-CA-3]	Date Introduced 03/12/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors Rep. Calvert, Ken [R-CA-42], Rep. LaMalfa, Doug [R-CA-1], Rep. Schiff, Adam B. [D-CA-28]	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1881	Summary of Bill To amend the CWA with respect to permitting terms.
Bill Number H.R. 1820 Bill Title Revoking EPA's Tyrannical Ruling Over Approved Commercial Tasks Involving no Violations of Environmental (RETROACTIVE) Policy Act Passed (S/H) Bill Sponsor Rep. Gibbs, Bob [R-OH-7]	Date Introduced 03/12/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords wetlands Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1820	Summary of Bill To amend the CWA to clarify when the Administrator of the Environmental Protection Agency has the authority to prohibit the specification of a defined area, or deny or restrict the use of a defined area for specification, as a disposal site under section 404 of such Act.
Bill Number S. 722 Bill Title Wastewater Efficiency and Treatment Act Passed (S/H) Bill Sponsor Sen. Merkley, Jeff [D-OR]	Date Introduced 03/11/21 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors	WSWC Keywords energy-water nexus Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/722	Summary of Bill To amend the Energy Policy Act of 2005 to establish a program to provide grants and loan guarantees to improve the energy efficiency of publicly owned wastewater treatment facilities. It authorizes \$5M each fiscal year for grants up to \$25,000 to carry out energy audits and projects to replace equipment or update components based on the results of the audit. Intended for facilities that serve populations under 10,000 or disadvantaged communities.

Bill Number H.R. 1821 Bill Title Reducing Unnecessary Regulations on Agricultural Lands (RURAL) Act Passed (S/H) Bill Sponsor Rep. Gibbs, Bob [R-OH-7]	Date Introduced 03/11/21 Assigned Committee(s) Transportation and Infrastructure; Agriculture Hearing(s) Co-sponsors	WSWC Keywords FifRA Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1821	Summary of Bill To amend FIFRA and CWA to clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters (so that pesticides covered by FIFRA are not also regulated by CWA).
Bill Number H.R. 1734 Bill Title Surface Mining Control and Reclamation Act Amendments Passed (S/H) Bill Sponsor Rep. Cartwright, Matt [D-PA-8]	Date Introduced 03/10/21 Assigned Committee(s) Natural Resources; Budget Hearing(s) Co-sponsors	WSWC Keywords abandoned mines Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1734	Summary of Bill Authorizes Interior to delegate certain emergency reclamation activities relating to abandoned mines to states and tribes
Bill Number S. 668 Bill Title Endangered Species Management Self-Determination Act Passed (S/H) Bill Sponsor Sen. Paul, Rand [R-KY]	Date Introduced 03/10/21 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors	WSWC Keywords ESA Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/668	Summary of Bill To amend the Endangered Species Act of 1973 to permit Governors of States to regulate intrastate endangered species and intrastate threatened species, to amend the Migratory Bird Treaty Act to permit the taking of certain black vultures and ravens.
Bill Number H.R. 1679 Bill Title Western Water Security Act Passed (S/H) Bill Sponsor Rep. Boebert, Lauren [R-CO-3]	Date Introduced 03/09/21 Assigned Committee(s) Natural Resources; Agriculture Hearing(s) Co-sponsors	WSWC Keywords water rights Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1679	Summary of Bill To prohibit the Secretary of the Interior and the Secretary of Agriculture from conditioning any permit, lease, or other use agreement on the transfer of any water right to the United States

Bill Number S.648 Bill Title Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act Passed (S/H) Bill Sponsor Sen. Cortez Masto, Catherine [D-NV]	Date Introduced 03/09/21 Assigned Committee(s) Indian Affairs Hearing(s) Co-sponsors	WSWC Keywords Indian water rights Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/648	Summary of Bill This bill directs the Department of the Interior to deposit specified interest payments into the Shoshone-Paiute Tribes Water Rights Development Fund and the Shoshone-Paiute Tribes Operation and Maintenance Fund. These funds were established under the water rights settlement agreement for the Shoshone-Paiute Tribes of the Duck Valley Reservation.
Bill Number H.R. 1663 Bill Title Border Water Quality Restoration and Protection Act Passed (S/H) Bill Sponsor Rep. Vargas, Juan [D-CA-51]	Date Introduced 03/08/21 Assigned Committee(s) Transportation and Infrastructure; Energy and Commerce; Natural Resources; Foreign Affairs; Budget Hearing(s) Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1663	Summary of Bill Directs EPA to establish the Tijuana River Public Health and Water Quality Restoration Program. Under the program, the EPA must plan, implement, coordinate, and provide grants for public health and water quality restoration and protection activities in the Mexican Tijuana River watershed and the American Tijuana River watershed in California. In addition, the EPA must establish the California New River Public Health and Water Quality Restoration Program to plan, implement, coordinate, and provide grants for water quality restoration and protection activities in the New River watershed. Finally, the bill provides statutory authority for the U.S.-Mexico Border Water Infrastructure Program to provide assistance for activities related to the construction of infrastructure for drinking water treatment or distribution, wastewater management, or stormwater management.
Bill Number H.R. 1660 Bill Title Stop Sewage Overflow Act Passed (S/H) Bill Sponsor Rep. Trahan, Lori [D-MA-3]	Date Introduced 03/08/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1660	Summary of Bill Amends CWA 221 (33 USC 1301) for sewer overflow and stormwater reuse municipal grants up to 75% of the cost for eligible municipalities
Bill Number S. 572 Bill Title Border Water Quality Restoration and Protection Act Passed (S/H) Bill Sponsor Sen. Feinstein, Dianne [D-CA]	Date Introduced 03/03/21 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors Sen. Padilla, Alex [D-CA]	WSWC Keywords floods, data, NOAA, water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/572	Summary of Bill A bill to provide for the water quality restoration of the Tijuana River and the New River.

Bill Number S. 558 Bill Title Flood Level Observation, Operations, and Decision Support (FLOODS) Act Passed (S/H) Bill Sponsor Sen. Wicker, Roger [R-MS]	Date Introduced 03/03/21 Assigned Committee(s) Commerce, Science and Transportation Hearing(s) 4/28/21: CST ordered reported with an amendment Co-sponsors Sen. Peters, Gary [D-MI]	WSWC Keywords floods, data, NOAA, water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/558	Summary of Bill A bill to establish a national integrated flood information system within NOAA.
Bill Number H.R. 1588 Bill Title Hydropower Clean Energy Future Act Passed (S/H) Bill Sponsor Rep. McMorris Rodgers, Cathy [R-WA-5]	Date Introduced 03/03/21 Assigned Committee(s) Energy and Commerce, Oversight and Reform Hearing(s) Co-sponsors Rep. Newhouse, Dan [R-WA-4], Rep. Curtis, John [R-UT-3], Rep.. Duncan, Jeff [R-SC-3], Rep. Bucshon, Larry [R-IN-8]	WSWC Keywords energy, hydropower Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1588	Summary of Bill To modernize the hydropower licensing process and to promote next generation hydropower projects.
Bill Number H.R. 1563 Bill Title No title Passed (S/H) Bill Sponsor Rep. Garcia, Mike [R-CA-25]	Date Introduced 03/03/21 Assigned Committee(s) Natural Resources, Science, Space and Technology Hearing(s) Co-sponsors 10 Republicans, all from CA	WSWC Keywords drought, water financing Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1563	Summary of Bill To extend the authorities under the Water Infrastructure Improvements for the Nation Act of 2016 providing operational flexibility, drought relief, and other benefits to the State of California.
Bill Number H.R. 1352 Bill Title Water Affordability, Transparency, Equity and Reliability Act (WATER Act) of 2021 Passed (S/H) Bill Sponsor Rep. Lawrence, Brenda [D-MI-14]	Date Introduced 2/25/2021 Assigned Committee(s) Transportation and Infrastructure, Energy and Commerce, Ways and Means, Agriculture Hearing(s) Co-sponsors 80 Democrats, including Representatives from AZ, CA, NM, OR, TX	WSWC Keywords infrastructure Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1352	Summary of Bill Establishes the WATER Trust Fund with \$35B/year to go towards the CWSRF, DWSRF and other water grant programs, funded by a 3.5% increase on the corporate tax rate. Expands use of SRF funds to acquire private water treatment works, or change/cancel contract terms with operators of publicly owned treatment works. Proposes several changes to the DWSRF program, including requiring 50% of capitalization grants to go towards disadvantaged communities (depending on applications), and allowing funds to be used for lead service line replacement and PFAS treatment. Increases funding for technical assistance to rural and tribal communities to \$175M/year. Commissions a study on equity in water and sewer services industry.

Bill Number S. 421 Bill Title Western Tribal Water Infrastructure Act Passed (S/H) Bill Sponsor Sen. Ron Wyden	Date Introduced 2/24/2021 Assigned Committee(s) Indian Affairs Hearing(s) 3/24/21: SIA ordered reported, S. Rept. 117-17 Co-sponsors Sen. Jeff Merkley	WSWC Keywords drinking water, tribes, AWIA Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/421	Summary of Bill A bill to amend the America's Water Infrastructure Act of 2018 to reauthorize and expand the Indian reservation drinking water program. It directs EPA to connect, expand, or repair existing public water systems that are on Indian reservations or off-reservation sites that serve tribes in the Columbia River Basin or its adjacent coastal river basins. Currently, only projects that are on Indian reservations in the Upper Missouri River Basin or the Upper Rio Grande Basin are eligible for the program.
Bill Number H.R. 1146 Bill Title Community Reclamation Partnerships Act Passed (S/H) Bill Sponsor Rep. LaHood, Darin [R-IL-18]	Date Introduced 2/18/2021 Assigned Committee(s) Natural Resources Hearing(s) 3/18/21: Subcommittee hearing Co-sponsors	WSWC Keywords water quality, mining Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1146	Summary of Bill To amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between States and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977
Bill Number H.R. 1144 Bill Title Promoting United Government Efforts to Save Our Sound (PUGET SOS) Act Passed (S/H) Bill Sponsor Rep. Kilmer, Derek [D-WA-6]	Date Introduced 2/18/2021 Assigned Committee(s) Transportation and Infrastructure Hearing(s) 3/24/21: T&I ordered reported, passed 54-3 Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1144	Summary of Bill To amend the CWA to provide assistance for programs and activities to protect the water quality of Puget Sound, including a replacement federal task force.
Bill Number H.R. 1015 Bill Title Water Recycling Investment and Improvment Act Passed (S/H) Bill Sponsor Rep. Napolitano, Grace F. [D-CA-32]	Date Introduced 2/11/2021 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors 13 Democrats, all from CA	WSWC Keywords water reuse, water financing Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/1015	Summary of Bill The bill revises and makes permanent the Bureau of Reclamations grant program (43 USC 390h) for funding water recycling and reuse projects. It removes drought and disaster declarations as priorities, and replaces them with projects that (A) provide more reliable water supply for states and local governments; (B) increase water management flexibility and reduce environmental impacts; (C) are regional in nature; (D) have multiple stakeholders; and (E) provide multiple benefits. It increases funding from \$50M to \$500M, available until FY2025.

Bill Number H.R. 988 Bill Title Recreational Lands Self-Defense Act Passed (S/H) Bill Sponsor Rep. Gibbs, Bob [R-OH-7]	Date Introduced 2/11/2021 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors 22 Republicans, including Representatives from TX, AZ, CA, WA, AK, KS, NM	WSWC Keywords water resources, Corps, Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/988	Summary of Bill To protect the right of individuals to bear arms at water resources development projects administered by the Corps.
Bill Number H.R. 931 Bill Title Public Water Supply Invasive Species Compliance Act Passed (S/H) Bill Sponsor Rep. Gohmert, Louie [R-TX-1]	Date Introduced 2/8/2021 Assigned Committee(s) Natural Resources, Judiciary Hearing(s) Co-sponsors	WSWC Keywords water transfers Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/931	Summary of Bill To exempt from the Lacey Act and the Lacey Act Amendments of 1981 certain water transfers between any of the States of Texas, Arkansas, and Louisiana.
Bill Number S. 277 Bill Title Public Water Supply Invasive Species Compliance Act Passed (S/H) Bill Sponsor Sen. Cruz, Ted [R-TX]	Date Introduced 2/8/2021 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors	WSWC Keywords water transfers Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/277	Summary of Bill To exempt from the Lacey Act and the Lacey Act Amendments of 1981 certain water transfers between any of the States of Texas, Arkansas, and Louisiana.
Bill Number H.R. 895 Bill Title Emergency Assistance for Rural Water Systems Act Passed (S/H) Bill Sponsor Rep. Rouzer, David [R-NC-7]	Date Introduced 2/5/2021 Assigned Committee(s) Agriculture Hearing(s) Co-sponsors	WSWC Keywords water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/895	Summary of Bill To provide for assistance to rural water, wastewater, and waste disposal systems affected by the COVID-19 pandemic.

Bill Number H.R. 866 Bill Title Federally Integrated Species Health (FISH) Act Passed (S/H) Bill Sponsor Rep. Calvert, Ken [R-CA-42]	Date Introduced 2/5/2021 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors Rep. Costa, Jim [D-CA-16], Rep. McClintock, Tom [R-CA-4], Rep. Simpson, Michael K. [R-ID-2], Rep. Steel, Michelle [R-CA-48], Rep. Valadao, David G. [R-CA-21]	WSWC Keywords environment, fish Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/866	Summary of Bill To amend the Endangered Species Act of 1973 to vest in the Secretary of the Interior functions under that Act with respect to species of fish that spawn in fresh or estuarine waters and migrate to ocean waters, and species of fish that spawn in ocean waters and migrate to fresh waters.
Bill Number H.R. 803 Bill Title Protecting America's Wilderness and Public Lands Act Passed (S/H) 2/26/21: House passed with amendmen Bill Sponsor Rep. DeGette, Diana [D-CO-1]	Date Introduced 2/4/2021 Assigned Committee(s) Natural Resources, Armed Services, Energy and Natural Resources Hearing(s) Co-sponsors	WSWC Keywords reserved water rights Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/803	Summary of Bill Designates certain lands (managed by BLM, USFS, Reclamation) in the State of Colorado as components of the National Wilderness Preservation System. The bill explicitly states that it does not create or impose any new federal reserved water rights, nor a relinquishment of existing federal reserved water rights. Any water rights needed to fulfill the purposes of the designated wilderness areas are to be acquired and administered under state law. DOI "may appropriate and seek adjudication of water rights to maintain surface water levels and stream flows on and across the wilderness" areas, and directs DOI to engage in "cooperative enforcement" of federal instream flow water rights. As amended, the bill provides for the preservation, conservation, and recreational use of public lands, including in Arizona, California, Maine, North Carolina, Oregon, Virginia, Washington, and the U.S. Virgin Islands. It also withdraws specific federal lands in AZ and OR, and designates wild and scenic rivers, wilderness, and recreational rivers in WA. Similar provisions on respecting state processes and not creating new water rights are included in the new sections of the amended bill.
Bill Number H.R. 751 Bill Title Protecting American Energy Production A Passed (S/H) Bill Sponsor Rep. Duncan, Jeff [R-SC-3]	Date Introduced 2/3/2021 Assigned Committee(s) Natural Resources, Energy and Commerce Hearing(s) Co-sponsors 39 Republicans, including Representatives from AZ, CA, CO, KS, NM, OK, TX, WA, WY	WSWC Keywords Hydraulic Fracturing Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/751	Summary of Bill To prohibit a moratorium on the use of hydraulic fracturing.
Bill Number S. 192 Bill Title River Democracy Act Passed (S/H) Bill Sponsor Sen. Shaheen, Jeanne [D-NH]	Date Introduced 2/3/2021 Assigned Committee(s) Energy and Natural Resources Hearing(s) Co-sponsors Sen. Merkley, Jeff [D-OR]	WSWC Keywords water resources, environment Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/192	Summary of Bill A bill to amend the Wild and Scenic Rivers Act to designate certain river segments (numerous creeks and tributaries) in Oregon as components of the National Wild and Scenic Rivers System. It authorizes \$30M for FY22 to restore components of the system that provide drinking water for downstream communities or have been degraded by catastrophic wildfire. The bill explicitly states that nothing in the Act affects any existing valid or vested water right, or preempts Oregon's ability to administer water rights pursuant to state law.

Bill Number S. 209 Bill Title Emergency Assistance for Rural Water Systems Act Passed (S/H) Bill Sponsor Sen. Shaheen, Jeanne [D-NH]	Date Introduced 2/3/2021 Assigned Committee(s) Agriculture, Nutrition and Forestry Hearing(s) Co-sponsors Sen. Tillis, Thom [R-NC]	WSWC Keywords water resources, water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/209	Summary of Bill A bill to provide for assistance (grants and no interest loans, forgiveness, or term modifications) to rural water, wastewater, and waste disposal systems affected by the COVID-19 pandemic. The bill authorizes \$1B through FY22, with 3% for administrative expenses.
Bill Number H.R. 737 Bill Title Responsible, No-Cost Extension of Western Water Infrastructure Improvements (RENEW WIIN) Act Passed (S/H) Bill Sponsor Rep. Valadao, David G. [R-CA-21]	Date Introduced 2/2/2021 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors	WSWC Keywords water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/737	Summary of Bill This bill extends the January 2021 deadline (WIIN Act section 4007, PL 114-322) for DOI to determine which federally-owned or state-led water storage projects are feasible for construction or expansion with a 50% federal cost share, to 2031.
Bill Number H.R. 660 Bill Title Shovel-Ready Restoration Grants for Coastlines and Fisheries Act Passed (S/H) Bill Sponsor Rep. Plaskett, Stacey E. [D-VI-At Large]	Date Introduced 2/1/2021 Assigned Committee(s) Natural Resources; Transportation and Infrastructure Hearing(s) Co-sponsors Rep. Young, Don [R-AK-At Large]	WSWC Keywords environment, fish Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/660	Summary of Bill Establishes a NOAA grant program (\$3B for FY21) to provide technical assistance and funding to benefit coastal habitats, resiliency, and the economy
Bill Number H.R. 616 Bill Title Emergency Water is a Human Right Act Passed (S/H) Bill Sponsor Rep. Tlaib, Rashida [D-MI-13]	Date Introduced 02/28/21 Assigned Committee(s) Energy and Commerce, Education and Labor Hearing(s) Co-sponsors 86 Democrat co-sponsors	WSWC Keywords water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/616	Summary of Bill This bill creates a grant program, administered by the Department of Health and Human Services, to provide funds to states and Indian tribes to assist low-income households that pay a high proportion of household income for drinking water and wastewater services. Further, any entity receiving financial assistance under this grant program must ensure that no home energy service or public water system service is or remains disconnected or interrupted during the COVID-19 public health emergency.

Bill Number H.R. 610 Bill Title San Francisco Bay Restoration Act Passed (S/H) Bill Sponsor Rep. Speier, Jackie [D-CA-14]	Date Introduced 01/28/21 Assigned Committee(s) Transportation and Infrastructure, Budget Hearing(s) 3/24/21: T&I ordered reported with an amendment Co-sponsors 10 Democrats, all Representatives from CA	WSWC Keywords water quality, environment Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/610	Summary of Bill Directs EPA to establish a San Francisco Bay Program Office and establishes a grant program with a list of project priorities that must be reviewed every five years. The list must include projects and studies for water quality improvement; wetland restoration and protection; endangered species recovery; and adaptation to climate change.
Bill Number H.R. 587 Bill Title Ocean Pollution Reduction Act II Passed (S/H) Bill Sponsor Rep. Peters, Scott H. [D-CA-52]	Date Introduced 1/28/2021 Assigned Committee(s) Transportation and Infrastructure Hearing(s) 3/24/21: T&I ordered reported, passed 54-2 Co-sponsors 4 bipartisan co-sponsors from CA	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/587	Summary of Bill To modify CWA 402 permitting requirements with respect to the discharge of any pollutant from the Point Loma Wastewater Treatment Plant (CA) in certain circumstances, including monitoring requirements and milestones toward full compliance by 2035.
Bill Number H.R. 519 Bill Title Safeguarding Oil and Gas Leasing and Permitting Act Passed (S/H) Bill Sponsor Rep. Cheney, Liz [R-WY-At Large]	Date Introduced 1/28/21 Assigned Committee(s) Natural Resources Hearing(s) Co-sponsors 32 Republicans, including Representatives from CO, KS, OK, TX, WA	WSWC Keywords water quality, wells Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/519	Summary of Bill Provides that any order by the President or DOI imposing a moratorium on Federal oil and gas leasing or permitting on BLM lands--in violation of its statutory requirements to process permits, approve permits within permitting deadlines, and hold quarterly lease sales, with respect to Federal oil and gas leasing and permitting--shall not take effect unless a joint resolution of approval is enacted.
Bill Number H.R. 543 Bill Title Protecting Our Wealth of Energy Resources (POWER) Act Passed (S/H) Bill Sponsor Rep. Herrell, Yvette [R-NM-2]	Date Introduced 01/28/21 Assigned Committee(s) Natural Resources, Agriculture Hearing(s) Co-sponsors 41 Republicans, including Representatives from AZ, CA, CO, ID, NE, NV, OK, OR, TX, WA, WY	WSWC Keywords water quality, wells Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/543	Summary of Bill To prohibit the President from issuing moratoria on leasing and permitting energy and minerals (oil and gas, coal, hard rock, and new critical minderals) on certain Federal lands. It would also prohibit the President from withdrawing federal lands unless approved by an act of Congress.

Bill Number S. 140 Bill Title BLUE GLOBE Act Passed (S/H) Bill Sponsor Sen. Whitehouse, Sheldon [D-RI]	Date Introduced 01/28/21 Assigned Committee(s) Commerce, Science and Transportation Hearing(s) 5/12/21: CST ordered reported with an amendment Co-sponsors	WSWC Keywords water quality, data, monitoring Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/140	Summary of Bill A bill to improve data collection and monitoring of the Great Lakes, oceans, bays, estuaries, and coasts, and for other purposes
Bill Number H.R. 565 Bill Title South Florida Clean Coastal Waters Act Passed (S/H) Bill Sponsor Rep. Mast, Brian J. [R-FL-18]	Date Introduced 01/28/21 Assigned Committee(s) Natural Resources, Science, Space and Technology Hearing(s) Co-sponsors Rep. Soto, Darren [D-FL-9], Rep. Posey, Bill [R-FL-8]	WSWC Keywords water quality, harmful algal blooms Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/565	Summary of Bill Directs the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia (33 U.S.C. 4001) to develop a plan for reducing, mitigating, and controlling harmful algal blooms and hypoxia in South Florida.
Bill Number S. Res. 17 Bill Title No title Passed (S/H) Bill Sponsor Sen. Ernst, Joni [R-IA]	Date Introduced 01/27/21 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors 27 Republican co-sponsors	WSWC Keywords WOTUS Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-resolution/17	Summary of Bill Expressing the sense of the Senate that clean water is a national priority and that the April 21, 2020, Navigable Waters Protection Rule (85 Fed. Reg. 22250) should not be withdrawn or vacated.
Bill Number H.R. 491 Bill Title California New River Restoration Act Passed (S/H) Bill Sponsor Rep. Vargas, Juan [D-CA-51]	Date Introduced 01/25/21 Assigned Committee(s) Natural Resources, Transportation and Infrastructure Hearing(s) Co-sponsors	WSWC Keywords water resources Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/491	Summary of Bill Requires EPA to establish a restoration program for the New River, which starts in Mexico and drains into the Salton Sea. EPA would implement projects, plans, and initiatives supported by the California-Mexico Border Relations Council and provide grants and technical assistance.

Bill Number S. 29 Bill Title Local Water Protection Act Passed (S/H) Bill Sponsor Sen. Klobuchar, Amy [D-MN]	Date Introduced 01/22/21 Assigned Committee(s) Environment and Public Works Hearing(s) Co-sponsors	WSWC Keywords water quality Congress.gov Link https://www.congress.gov/bill/117th-congress/senate-bill/29	Summary of Bill This bill reauthorizes EPA programs through FY2025 that award grants to states for managing nonpoint source water pollution or protecting groundwater quality. Water pollution from nonpoint sources is caused by precipitation picking up pollution as it moves over or through the ground.
Bill Number H.R. 74 Bill Title Protecting Local Communities from Harmful Algal Blooms Act Passed (S/H) Bill Sponsor Rep. Buchanan, Vern [R-FL-16]	Date Introduced 01/04/21 Assigned Committee(s) Transportation and Infrastructure Hearing(s) Co-sponsors Rep. Hastings, Alcee L. [D-FL-20]	WSWC Keywords HABs Congress.gov Link https://www.congress.gov/bill/117th-congress/house-bill/74	Summary of Bill Amends Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122) to include algal blooms as a major disaster.

Litigation Update
196th WSWC Meeting
Cody, Wyoming
Complied By:
Michelle Bushman
WSWC Legal Counsel
mbushman@wswc.utah.gov

This summary describes developments regarding notable litigation that pertains to WGA/WSWC policies or cases that are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of 2021.

Case Name Center for Biological Diversity et al. v. Spellmon Case Number 4:21-cv-00047 Court U.S. District Court for Montana Relevant Dates 5/3/21: Lawsuit filed Related Cases Northern Plains Resource Council et al. v. U.S. Army Corps of Engineers, No. 4:19-cv-00044 (D. Mont.), appeal pending, (9th Cir. #20-35412) Notes	Issues Nationwide Permits, ESA The complaint for declaratory and injunctive relief stems from the Corps issuance of Nationwide Permit 12, a general permit for oil and gas pipeline projects pursuant to CWA 404(e). The lawsuit alleges ESA and APA violations for failure to assess environmental effects, and to fulfill consultation responsibilities under ESA section 7 with the National Marine Fisheries Service and the FWS. The NWP 12 allows oil and gas pipelines to cross water repeatedly without limits to the number of wetlands a project might impact, ignoring the cumulative effects of large interstate pipelines.
Case Name FWS v. Sierra Club Case Number 19-547 Court U.S. Supreme Court Relevant Dates Related Cases Notes	Issues FOIA, draft Biological Opinions On March 4, 2021, the U.S. Supreme Court held that pre-decisional, internal draft biological opinions and interagency memoranda are protected from disclosure under FOIA exemption 5. The Supreme Court reversed and remanded a 9th Circuit decision that previously held that the draft biological opinions were not privileged. The issue surrounds interagency communications following a 2011 EPA rule on industrial cooling water intake structures (76 FR 22174) that triggered ESA consultation requirements with FWS. The Sierra Club submitted FOIA requests for records related to those consultations, which spanned several years and resulted in a modified EPA rule, and a biological opinion that shifted from "jeopardy" to "no jeopardy" regarding the impact on endangered species. The FWS withheld the draft biological opinion on one of the previous versions of EPA's proposed rule, labeling it as nonfinal and protected by the deliberative process exemption. The Court said: "It is true that a draft document will typically be predecisional because, as we said earlier, calling something a draft communicates that it is not yet final. But determining whether an agency's position is final for purposes of the deliberative process privilege is a functional rather than formal inquiry. If the evidence establishes that an agency has hidden a functionally final decision in draft form, the deliberative process privilege will not apply. The [FWS], however, did not engage in such a charade here."

Case Name Audubon of Kansas v. DOI et al Case Number 2:21cv02025 Court U.S. District Court for Kansas Relevant Dates 1/15/21: Lawsuit filed 3/9/21: GMD5 Motion to Intervene 4/12/21: Motions to Dismiss by Kansas Dept. Agriculture/Division of Water Resources and by Department of the Interior/FWS 4/28/21: Answer by GMD5 5/17/21: Plaintiff response to MTDs due Related Cases Notes	Issues FWS Reserved Water Rights The Audubon of Kansas (AOK) sued the U.S. Department of the Interior (DOI), the U.S. Fish and Wildlife Service (FWS), the Kansas Department of Agriculture (KDA), and the Chief Engineer of the KDA Department of Water Resources (DWR), over water resources for the Quivira National Wildlife Refuge (QNWR). The FWS holds a 1957 priority water right to protect the wetlands at the refuge, but groundwater pumping by neighboring junior water users has impacted the water levels at the refuge. The FWS spent decades working with Kansas trying to resolve its water right impairment concerns before filing a formal complaint with KDA-DWR in 2013. The DWR's investigation found that the QNWR's water rights were impaired by groundwater pumping. The Big Bend Groundwater Management District No. 5 (GMD5) sought to reduce water use and address declining streamflows through a Local Enhanced Management Area (LEMA) plan, but it was rejected as inadequate. In 2019 DWR prepared to reduce the water use of the junior water rights. Senator Jerry Moran (R-KS) and then-Representative Roger Marshall (R-KS) brokered an agreement between the FWS, KDA, and GMD5 to postpone administration of water rights to allow more time to seek a remedy to the impairment. AOK alleged violations of the National Wildlife Refuge System Improvement Act, the Administrative Procedures Act, the Endangered Species Act, and the National Environmental Policy Act. AOK asserted that the FWS must obtain water supplies through the federal reserved water rights doctrine with a 1955 priority date that coincides with the creation of the QNWR, plus additional state-law water rights to ensure adequate water supplies for the QNWR. AOK sought orders requiring FWS to obtain court injunctions that require the long-term curtailment of junior groundwater rights, and to request "the full administration of all water rights in the Rattlesnake Creek sub-basin that have impaired and are impairing the Refuge Water Right...."
Case Name In re: Clean Water Rulemaking Consolidated cases: American Rivers et al. v EPA (#20-cv-04636); California et al. v. EPA (#20-cv-04869); Suquamish Tribe v. EPA (#20-cv-06137) Case Number 3:20-cv-04636 Court U.S. District Court for Northern California Relevant Dates California et al. v. EPA 7/21/20: Lawsuit filed 9/30/20: Answer by intervenor states 10/6/20: Answer by EPA 10/19/20: Answer by intervenor petroleum organizations 10/23/20: Case scheduling order--consolidating cases In re Clean Water Act Rulemaking 11/24/20: Schedule for completing administrative record 6/7/21: Joint Motion to stay case until 6/18/21 granted Related Cases Delaware Riverkeeper et al. v. EPA (#20-cv-03412) Notes	Issues 401 Certification Twenty states, including California, Colorado, Nevada, New Mexico, Oregon and Washington, filed a complaint for declaratory and injunctive relief, challenging the CWA §401 Certification Rule. The complaint alleged APA deficiencies and argued that the new rule "upends fifty years of cooperative federalism by arbitrarily re-writing EPA's existing water quality certification regulations to unlawfully curtail state authority under the [CWA]." Eight states intervened as defendants, including Montana, Texas, and Wyoming.

Case Name	Issues
Wild Virginia et al. v. CEQ et al.	NEPA Rule
Case Number	Requested that the court vacate the new NEPA regulation issued by the Council on Environmental Quality on July 15, 2020 for various violations of the Administrative Procedures Act and reinstate the 1978 NEPA regulations
3:20-cv-00045	
Court	
US District Court for the Western District of Virginia	
Relevant Dates	
7/29/20: Complaint filed	
9/11/20: Motion for Preliminary Injunction denied	
9/21/20: Motions to Dismiss for lack of jurisdiction denied	
10/22/20: Administrative record lodged	
11/19/20: Motion for Summary Judgment filed by environmental plaintiffs	
12/21/20: Cross Motions for Summary Judgment filed by CEQ and intervenor industry (farm, cattle, oil, transportation, commerce) defendants	
3/17/21: CEQ Motion to Remand the rule	
4/21/21: Hearing on MSJs and Motion to Remand	
Related Cases	
Notes	

Case Name Colorado v. EPA et al. Appeals: 20-01461, Consolidated (20-01238, 20-01262, 20-01263) Case Number 1:20-cv-01461 Court U.S. District Court for Colorado 10th Circuit Relevant Dates 3/22/20: Lawsuit filed 6/1/20: Motion for Preliminary Injunction 6/19/20: Preliminary Injunction granted (CO only) 6/23/20: EPA/Corps appeal to 10th Cir. re: preliminary injunction 7/15/20: Motions to intervene granted (Sacketts, Business defendants) (they also subsequently appealed the preliminary injunction order) 7/20/20: Amended complaint against all defendants 8/3/20: Answers to amended complaint filed 8/6/20: Scheduling order - pending Appeal decision 9/2/20: Administrative record filed 4/21/21: Stay granted through 6/14/21 6/9/21: Colorado request for further stay, in light of EPA/Corps announcement of filing motions for remand and engaging in a new WOTUS rulemaking Appeal 11/18/20: hearing on consolidated appeals 2/2/21: Motion to Stay (re EO 13990, 86 FR 7037) Related Cases Notes	Issues WOTUS Colorado challenged the 2020 Navigable Waters Protection Rule under APA and NEPA. Although Colorado defines its "waters of the state" more broadly than WOTUS and prohibits discharge of pollutants into state waters, Colorado does not have a state equivalent of a 404 discharge permit program. Establishing its own permitting program for fill activities to address the sudden decrease in federal jurisdiction under the 2020 Rule would require that the State of Colorado amend the Colorado Water Quality Control Act, promulgate new regulations, and appropriate millions of dollars for new permitting and mitigation programs – the outcomes of which are far from certain and would likely take years to complete. Until Colorado does this, fill activities cannot occur in waters that are not subject to federal jurisdiction. The narrowed definition of waterbodies subject to federal Clean Water Act jurisdiction creates a '404 permitting gap' where certain development and infrastructure activities will not be able to take place." This could have enormous negative consequences on Colorado's infrastructure, economy, businesses, and local governments. The court reluctantly granted a preliminary injunction, staying the effective date of the 2020 Rule in Colorado. The court noted that "Rapanos arguably forecloses every formulation" of WOTUS proposed so far.
---	--

Case Name California et al. v. Wheeler et al. Case Number 3:20-cv-3005 Court U.S. District Court for the Northern District of California Relevant Dates 5/1/20: Lawsuit filed by 17 states 6/1/20: 23 states and 15 industry trade organizations move to intervene as defendants 6/19/20: Request for preliminary injunction denied 8/10/20: EPA/Corps Answer filed 8/14/20: Sackett appeal to 9th Circuit re: motion to intervene 8/31/20: Administrative record (amended) filed 11/23/20: Plaintiff states MSJ filed 1/19/21: EPA/Corps Opp./Response and cross-MSJ filed 1/22/21: Virginia Opp./Response and cross-MSJ filed 2/17/21: Congress amicus brief in support of Plaintiff states' MSJ; court granted leave to file this and other amicus briefs, and granted the stay requested by DOJ re: Biden EO 13990. 4/16/21: EPA/Corps Motion to Stay granted [11/5/21: MSJ hearing re-scheduled] Related Cases Conservation Law Foundation et al. v. EPA (#20-cv-10820), U.S. Dist. Mass.; South Carolina Coastal Conservation League et al. v. Wheeler et al. (#20-cv-01687), U.S. Dist. S. Carolina; Murray v. Wheeler (U.S. District Court, Northern New York, #19-cv-1498); Chesapeake Bay Foundation v. Wheeler (#20-cv-1064) U.S. Dist. Maryland; Puget Soundkeeper Alliance et al. v EPA et al., U.S. District Court for the District of Arizona at Tucson; Pasqua Yaqui Tribe et al. v EPA et al., U.S. District Court for the Western District of Washington Notes	Issues WOTUS CA, NM, OR and WA, with 13 other states, challenged the 2020 Navigable Waters Protection Rule on APA grounds. "The 2020 Rule discards the 'significant nexus' standard for [WOTUS] set forth in Justice Kennedy's concurring opinion in Rapanos v. United States, 547 U.S. 715 (2006) and endorsed by a majority of the Justices on the Court.... [The Rule] improperly relies on and implements the plurality opinion in Rapanos which did not command a majority of the Court's Justices and is not consistent with the [CWA's] text, structure and purpose. Contrary to the Act's objective 'to restore and maintain the chemical, physical and biological integrity of the Nation's waters,' 33 U.S.C. § 1251(a), the [Rule] excludes many waters, including ephemeral streams and many wetlands, from the scope of [WOTUS] and thereby deprives these waters of CWA protections." The states allege: "By eliminating CWA protections for all ephemeral streams, many wetlands, and other waters...the [Rule] also contradicts...the scientific evidence and the Agencies' prior factual findings.... The [Rule] harms the States and Cities by limiting the waters subject to the Act's protections, thereby exposing the States' and Cities' waters to pollution entering from jurisdictions that are less protective of their waters; putting the States and Cities at a competitive disadvantage by incentivizing industry to relocate to upstream states with less stringent water quality protections; disrupting the States' and Cities' regulatory programs; and threatening injury to the States' and Cities' sovereign and proprietary interests." AK, ID, KS, MT, NE, ND, OK, SD, TX, UT, WY and 12 other states moved to intervene, assrtng that sovereign lands and waters within state borders are potentially subject to federal jurisdiction and that the ability to "regulate and protect intrastate waters is an important element of state sovereignty." They add that "the scope of the term 'waters of the United States' does not just set federal jurisdiction over waters within the State; it sets the scope of the States' responsibilities under the [Clean Water Act (CWA)]." In addition, the intervening States "...believe the 2020 Rule strikes a reasonable balance between the roles of the federal regulators and the States in protecting land and water resources...and view [it] as a substantial improvement over the prior rule." The court rejected the plaintiffs' motion for a preliminary injunction, noting that the 2020 Rule presents an entirely new question not addressed by Rapanos, whether the new rule has gone far enough. Given the ambiguity of "navigable waters" and Chevron deference, the court was unwilling to substitute its judgment for the policy choices of the agencies at this stage of the litigation.
--	--

Case Name Center for Biological Diversity et al. v. Interior et al. Case Number 4:20-cv-106 Court U.S. District Court for the District of Arizona Relevant Dates 3/13/20: Lawsuit filed 6/8/20: DOI/Army Answer 9/15/20: Administrative Record filed 11/13/20: Plaintiffs MSJ filed 3/26/21: Federal cross-MSJ filed 3/26/21: Motion to supplement Admin Record Related Cases Notes	Issues ESA The lawsuit challenges the assumptions of a 2014 FWS biological opinion, over groundwater pumping for use by Fort Huachuca and its contractors near the San Pedro River. Plaintiffs challenge the reliance on speculative water savings from agricultural water easements that hadn't been used for years, ignoring the effects of pumping on river base flows over an extended period of time, failure to analyze the effects of climate change, and alleges various other (ESA) violations. The lawsuit seeks to vacate the 2014 biological opinion and order the defendants to reinstate consultation on the effects of continued groundwater pumping associated with the Fort on listed species.
Case Name Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist. Case Number 5:20-cv-00174 Court U.S. District Court for the Central District of California Relevant Dates 1/24/2020: case filed 3/13/2020: Answers filed by Desert Water Agency and Coachella Valley Water District 6/22/2020: Defendants motion to bifurcate case 6/29/2020: Plaintiff's opposition to bifurcation 7/20/20: Motion denied; case management order modified to extend deadlines 10/6/20: Case stayed pending private mediation (through 4/1/21) 3/23/21: Case stayed pending private mediation (through 10/1/21) Related Cases Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al., 13-883 Notes	Issues Indian Reserved Water Rights At issue is whether the water district's assessment of fees (replenishment assessment charges, RAC) on the tribe's production of its federally reserved groundwater is preempted as a matter of federal law. The water district uses Colorado River water to recharge the aquifer. The RACs are imposed on water production in designated areas of benefit—including much of the Agua Caliente Reservation—to cover the costs of artificial recharge programs. The tribe argues that the RACs unlawfully interfere with its inherent and exclusive sovereign authority to regulate its water resource.

Case Name Montana and Wyoming v. Washington Case Number 220152 Court U.S. Supreme Court Relevant Dates 1/21/2020: case filed 6/8/2020: Washington opposition filed 6/22/2020: WY and MT Reply 9/29/2020: Conference 10/5/2020: U.S. Acting Solicitor General invited to file a brief with the U.S. views 5/25/21: U.S. filed amicus brief in opposition to petition 6/7/21: MT and WY filed supplemental brief 6/24/21: S.Ct. Conference Related Cases Lighthouse Resources v. Inslee, 3:18-cv-05005, U.S. District Court for the Western District of Washington Lighthouse Resources, Inc. v. Jay Inslee, 9th Circuit Notes Lighthouse Resources docket timeline: 4/1/2019: MSJs by defendant/intervener defendant granted 5/10/2019: appealed to the 9th Cir. (Dist. Ct. case has been stayed, with no final judgment entered) 4/18/20: 9th Cir. oral arguments	Issues CWA 401; Commerce Clause The U.S. filed an amicus brief in opposition to the petition, arguing that the Millennium Bulk Terminal bankruptcy rendered the complaint moot. MT and WY disagreed, arguing that their Commerce Clause concerns go beyond one §401 permit denial to a broader impact from WA policies that remain unchanged. BACKGROUND: Montana and Wyoming filed on Commerce Clause grounds, for Washington's denial of Clean Water Act §401 certification of the Millennium Bulk Terminal project. They allege that Washington has intentionally discriminated against the landlocked Montana and Wyoming by blocking port access for one of their most important commodities, low-sulfur coal. The complaint alleges: "Washington's denial of a Section 401 Water Quality certification was based on protecting the state's own agricultural interests, the political concerns and aspirations of its Governor, and because of extraterritorial and unfounded concerns that coal exports from Wyoming and Montana would increase greenhouse gas emissions in Asia." The complaint alleges violations of the Dormant and Foreign Commerce clauses of the U.S. Constitution which prohibit states from (1) engaging in discriminatory or protectionist actions against other states; (2) regulating conduct outside its borders or placing an undue burden on interstate commerce; and (3) regulating foreign commerce, especially when it is at odds with the foreign policy of the U.S. Government. Montana and Wyoming seek injunctions against Washington preventing it from (i) denying the CWA §401 certification on grounds unrelated to water quality; and (ii) engaging in protectionist and discriminatory actions in its permitting decisions for the Millennium Bulk Terminal and from basing its permitting decisions on extraterritorial factors. They also seek a declaration that Washington's discrimination against their coal exports violates the Dormant Commerce Clause. In its motion in opposition, Washington argued that (1) the §401 certification was denied for reasons other than greenhouse gas emissions; (2) the company seeking to build the project was unable to obtain the necessary lease and county permits, meaning the project could not be built even if the §401 certification was approved; (3) the issues raised by Montana and Wyoming are already being litigated by the private company in state and federal courts; and (4) millions of tons of Montana and Wyoming coal already pass through Washington for export at west coast ports, and this one §401 certification denial is not protectionist or discriminatory. In reply, Montana and Wyoming argued that the §401 certification was denied with prejudice, while the other permit and lease issues could still be addressed in other ways; and that the private lawsuits could not address the significant loss to the States in severance taxes and revenue, an issue addressed in other original Supreme Court jurisdiction cases.
---	--

Case Name South Carolina Coastal Conservation League (CCL) et al. v. EPA et al. Case Number 2:19-cv-03006 Court U.S. District Court for the District of South Carolina Relevant Dates 10/23/19: case filed 12/18/20: Motion to intervene by various farm, ranch, mining, and other organizations 2/18/20: Case stayed 75 days 5/29/20: Case stayed additional 90 days ... 12/23/20: Case stayed through 3/4/21 Related Cases Notes	Issues WOTUS CCL sued to vacate the agencies' recent rule (84 Fed. Reg. 56626) repealing the 2015 WOTUS Rule. The CCL plaintiffs allege: "Like the Suspension Rule earlier invalidated by this Court...the present rulemaking violates fundamental provisions of administrative law in furtherance of an ongoing campaign to diminish and impair the protections of the Clean Water Act – a bedrock federal statute that protects America's waters from pollution." The CCL plaintiffs allege that the repeal has been carried out by executive fiat, disregarding the federal rulemaking requirements and the views of the American public, as well as failing to consider the relative merits of the 2015 Rule or the pre-2015 regime. "The Final Repeal Rule also reinstates an illegal regime – the regulations that pre-dated the Clean Water Rule as limited by guidance – that runs contrary to Supreme Court precedent, unlawfully leaving certain waters of the United States unprotected due to the guidance's unduly narrow interpretation of Justice Kennedy's significant-nexus test." The CCL plaintiffs claim nine violations of the APA: (1) a predetermination to repeal the 2015 WOTUS Rule; (2) failure to consider and address the effects of the repeal; (3) failure to provide a reasoned explanation for the repeal; (4) failure to discuss alternatives; (5) failure to provide a meaningful opportunity to comment; (6) failure to publish the text of the proposed and final rules; (7) failure to demonstrate that the repeal is consistent with the CWA; (8) arbitrary reinstatement of unlawful pre-2015 regulations; and (9) failure to provide a meaningful opportunity to comment on the economic analysis.
Case Name New Mexico Cattle Growers' Association (CGA) v. EPA et al. Case Number 1:19-cv-00988 Court U.S. District Court for the District of New Mexico Relevant Dates 10/22/19: Case filed 4/27/20: Amended Complaint 7/16/20: Notice of briefing complete on Motion for Prelim. Injunction 2/10/21: Order denying PI motion without prejudice; granting DOJ motion for stay re: Biden EO 13990 (through 5/1/21) Related Cases Washington Cattlemen's Association v. EPA (U.S. District Court Western Washington, #19-cv-569) (Motion to consolidate with Puget Soundkeeper Alliance filed on 8/27/20); Oregon Cattlemen's Association v. EPA (U.S. District Court Oregon, #19-cv-564) (Motion for prelim injunction denied on 8/7/20) Notes	Issues WOTUS The lawsuit initially challenged the October 2019 readoption of the 1986 regulations, when the agencies repealed the 2015 Clean Water Rule defining "waters of the United States" (WOTUS) and "recodified" the guidance in place prior to the 2015 rule. The amended complaint expands that challenge to the 2020 Navigable Waters Protection Rule. NMCGA argues that the agencies' interpretation of the term "navigable waters" exceeds "...the agencies' statutory authority under the Clean Water Act and the Congressional Review Act, or Congress' authority under the Commerce Clause, the Due Process Clause, the Non-Delegation Doctrine, and the Tenth Amendment. Plaintiff asks this Court to declare that several provisions of the Clean Water Act, the 1986 Regulations, and related guidance, and/or the Navigable Waters Protection Rule, are statutorily and constitutionally invalid, and to enjoin their enforcement." The complaint alleges that, even under the Navigable Waters Protection Rule, many of the waters included within the four categories – e.g., territorial seas and waters used for commerce, tributaries, lakes and ponds, and adjacent wetlands – "do not stand or flow year-round, and many of these non-perennial waters are only present for days or weeks before they dry up. EPA and the Army regulate discharges to the locations of these waters even though the 'waters' only occupy those locations for a few days or weeks in any given year."

Case Name Save the Colorado, et al. v. DOI Case Number 3:19-cv-8285 Court U.S. District Court for the District of Arizona Relevant Dates 10/1/2019: Complaint 12/5/2019: DOI answer 4/2/2020: Joint Motion to Intervene by Colorado, California, Arizona Department of Water Resources, Nevada, Utah, and Wyoming 4/30/2020: Joint Motion to Intervene by Southern Nevada Water Authority, Central Arizona Water Conservation District, and Metropolitan Water District of Southern California 6/2/20: Administrative record filed 7/2/20: State joinder to answer 10/9/20: Addition to Admin record filed 4/2/21: Briefing on Motion to Supplement Administrative Record complete Related Cases Notes	Issues Colorado River Plaintiffs allege that DOI failed to take into consideration the effects of climate change and the aging infrastructure of the Glen Canyon Dam in its environmental analysis of future operations. They also assert that DOI failed to consider the alternatives of decommissioning the dam, filling Lake Mead first, and returning the river to its natural flow. The plaintiffs seek to set aside DOI's final environmental impact statement for violations of NEPA, and to require the inclusion of the impacts of climate change and a reasonable range of alternatives in the proposed action. DOI denied all the allegations, and asserted that the plaintiffs are not entitled to the relief they seek, and that the court lacks subject matter jurisdiction. The Colorado River Basin states and agencies intervened, joining in DOI's answer, and laid out the intricate complexities of the Law of the River, with its many compacts, treaties, Congressional deference to state water rights and laws, and ongoing efforts among the states and various other organizations and interested parties to manage the flow, salinity, and ecological benefits of the river.
--	---

Case Name	Issues
Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al. Case Number 5:13-cv-883 Court U.S. District Court for the Central District of California 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 11/27/17: S. Ct. denied Cert 4/19/19: Dist. Ct. granted Defendants' MSJ on Phase II 8/14/19: Dist. Ct. denied motion to reconsider 10/12/19: Tribe's motion for amended complaint 11/25/19: DWA's opposition to amended complaint 7/17/20: Agua Caliente filed its amended complaint 7/31/20: Answers to amended complaint 10/6/20: Case stayed pending private mediation 3/23/21: Stay extended for mediation through October 1, 2021 Related Cases 9th Circuit #15-55896 Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., 5:20-cv-00174 Notes For more information see: http://www.scotusblog.com/case-files/cases/coachella-valley-water-district-v-agua-caliente-band-cahuilla-indians/ and https://www.narf.org/cases/agua-caliente-v-coachella/	Indian Reserved Water Rights On April 19, 2019, the U.S. District Court for the Central District of California granted the defendants' motions for summary judgment, which argued that the tribe does not have standing to assert its claims. The court agreed, noting that although there may be injury to the groundwater in the form of overdrafts and the practice of recharge with lower-quality Colorado River water, the tribe has not demonstrated injury to its ability to use water of a sufficient quality or quantity to fulfill the purposes of the reservation. Similarly, the court held that the tribe did not demonstrate that the defendants interfered with the tribe's right to use the aquifer's pore spaces to store its reserved water rights. On August 19, 2019, the court denied DOJ's motion to reconsider. On October 12, 2019, the tribe filed a motion to amend and supplement its complaint, modifying its claims and allegations regarding ownership of pore spaces in the aquifer, providing additional information about the amounts of natural and artificial water recharge, pumping, and overdraft in the valley, the tribes efforts to resume groundwater production and intention to store its reserved water rights in the aquifer, which would be frustrated by the water districts' continuous pumping and their assertion of jurisdiction over the tribe's aquifer pore space for non-tribal aquifer recharge programs. On November 25, 2019, the DWA filed a motion opposing the amended complaint, arguing that the tribe still lacks standing because it hasn't alleged facts that show actual or imminent harm from the water districts' actions. On July 17, 2020, the tribe filed its amended complaint. BACKGROUND: 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 District 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 case was trifurcated, with phase II addressing 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. (Note: The order of Phase II and Phase III appears to have been reversed. as litigation continued.) On March 7, 2017, the 9th Circuit upheld the California District Court's summary judgment, holding 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 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." On July 5, 2017, the Defendant water agencies filed petitions for cert. On August 7, 2017, NV, AZ, AR, ID, NE, ND, SD, TX, WI, and WY filed an amicus curiae brief, arguing 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 Supreme Court denied the petition for cert on November 27, 2017.

Case Name California v. Bureau of Land Mgmt. Case Number 18-521 20-16157 Court U.S. District Court for the Northern District of California 9th Circuit Relevant Dates 1/24/18: Lawsuits filed 7/17/18: U.S. Motion to transfer case to Wyoming denied 10/9/18: BLM lodged administrative record with the court 6/3/19: CA filed Motion for Summary Judgment 8/2/19: BLM filed Cross Motion for Summary Judgment 8/23/19: WY and petroleum organizations filed Cross MSJs 1/22/20: Hearing on MSJs 3/27/20: BLM and WY's Cross MSJ's granted, CA's MSJ denied 6/12/20: CA filed appeal, 9th Cir. #20-16157 10/21/20: Opening briefs 11/20/20: Answering brief 2/11/21: Reply briefs 2/19/21: Mediation conference scheduled for March 1 3/19/21: Case administratively closed until May 18 5/20/21: Closure for mediation extended to August 16 Related Cases Sierra Club et al. v. Zinke, No. 18-524 (consolidated) Notes	Issues Hydraulic fracturing On December 28, 2017, the Bureau of Land Management (BLM) published its Federal Register notice of the final decision to rescind the stayed 2015 Hydraulic Fracturing Rule. BLM's review of the Rule found that all 32 of the states with federal oil and gas leases have regulations to address hydraulic fracturing, and that companies are disclosing the chemical content of their hydraulic fracturing fluids using FracFocus or other state regulatory databases. Rescinding the 2015 Rule was also considered consistent with the Administration's Executive Order 13771 to reduce the costs of regulatory compliance. On January 24, 2018, California and several environmental groups sought to vacate the rescission and reinstate all of the Hydraulic Fracturing Rule's provisions. CA argues that hydraulic fracturing on federal and Indian lands, particularly those not subject to state jurisdiction, will impact surface water and groundwater resources, air pollution, and seismicity from the disposal of wastewater. Additionally, states do not have BLM's stewardship standards and trust responsibilities over federal lands.). California said that although new administrations are entitled to change policy positions, the APA requires a reasoned explanation for those changes, particularly addressing any inconsistencies with prior factual findings. California argues that state and tribal regulations fall short of the 2015 Rule requirements. "For example, at least six of the nine states where the majority of fracking on federal land occurs did not require the use of tanks instead of pits for containing injection waste fluids, as the Fracking Rule does. Additionally, most of the nine states' regulations on monitoring and verifying the integrity of cement casing fell short of the Fracking Rule's requirements. The Fracking Rule contemplated concurrent state regulation of wells on federal lands and in no way prevented states from enacting stricter requirements. States or tribes could also apply for a variance from the requirements of the Fracking Rule." State requirements also differ "with regard to mechanical integrity testing, pressure monitoring during hydraulic fracturing operations, and post-fracturing disclosure requirements." The district court rejected CA's arguments. "The Court's task is not to decide whether the changes [BLM] seek[s] to make will result in better or worse environmental policy...[or] to decide whether it would find the rationales advanced by the agency compelling (or even persuasive) if it were reviewing the matter from scratch. Instead, the narrow APA question before the Court is whether the admitted policy change represented by the Repeal was so inadequately explained as to be arbitrary and capricious." The court added that it may not question BLM's choice to weigh socioeconomic concerns more heavily than the value of consistent federal regulations the 2015 rule may have provided. The court also rejected Wyoming's argument that BLM lacked authority to promulgate the rule. Aside from the fact that the 2015 rule wasn't before the court (only the repeal of the rule), the court said BLM never conceded that it lacked legal authority, only eliminated the need for further litigation over BLM's statutory authority by repealing the rule. The case is now on appeal before the 9th Circuit.
--	---

Case Name Florida v. Georgia Case Number #220142 Court U.S. Supreme Court Relevant Dates 11/3/14: Complaint filed 2/21/17: S. Ct. received the Special Master's Report 6/27/18: S. Ct. Remand to (new) Special Master 1/31/19: FL and GA filed supplemental briefs 11/7/19: Oral argument before the Special Master 12/11/19: Special Master's Second Report 4/13/20: Florida's Exceptions to the Special Report filed 6/26/20: Georgia's Reply to FL Exceptions to the Special Report filed 7/6/20: US amicus brief filed, in support of FL claims 2/22/21: Oral Arguments before S. Ct. 4/1/21: S. Ct. decision Related Cases Notes For more information, see the Special Master's website, https://www.ca10.uscourts.gov/special-master-142, or http://www.scotusblog.com/case-files/cases/florida-v-georgia-2/	Issues Equitable Apportionment On April 1, 2021, the U.S. Supreme Court issued its 9-0 decision holding that Florida had not shown clear and convincing evidence of serious ecological injury caused by Georgia's alleged overconsumption, and thus was not entitled to an equitable apportionment of interstate waters. The Court noted that the precise causes of Florida's injuries remain a subject of ongoing scientific debate: "As judges, we lack the expertise to settle that debate and do not purport to do so here. Our more limited task is to evaluate the parties' arguments in light of the record evidence and Florida's heavy burden of proof. And on this record, we agree with the Special Master that Florida has failed to carry its burden." The Court declined to rule on the causation standard applicable in equitable apportionment cases – e.g., whether Georgia's consumption of water must be the sole cause of injury or at least a substantial factor contributing to it – because "...Florida has failed to establish a sufficient causal connection under any of the parties' proposed standards." The Court noted that the fundamental problem with Florida's evidence of oyster collapse "...is that it establishes at most that increased salinity and predation contributed to the collapse, not that Georgia's overconsumption caused the increased salinity and predation.... The NOAA, in fact, primarily blamed 'prolonged drought conditions' and the Corps' reservoirs operations – not Georgia's consumption during drought conditions – for the elevated levels of salinity and predation in the Bay. Other record evidence, moreover, indicates that the unprecedented series of multiyear droughts, as well as changes in seasonal rainfall patterns, may have played a significant role." Further, the Court found an absence of evidence of actual harm to other wildlife and plant life along the river in terms of population decline, particularly when the U.S. Fish and Wildlife Service found that one of the species is stable and may be increasing in population size. The Court concluded: "In short, Florida has not met the exacting standard necessary to warrant the exercise of this Court's extraordinary authority to control the conduct of a coequal sovereign. We emphasize that Georgia has an obligation to make reasonable use of Basin waters in order to help conserve that increasingly scarce resource. But in light of the record before us, we must overrule Florida's exceptions to the Special Master's Report and dismiss the case." BACKGROUND: On June 27, 2018, the Supreme Court issued a 5-4 decision to remand the case to the Special Master for further evidence. Rather than deny Florida's request for relief due to the absence of the Corps as a necessary party, the Court noted that the Corps has agreed to cooperate in implementing any determinations and obligations this Court decrees. While the Corps must meet statutory obligations when it operates dams and impounds water, and any cooperation would be at the Corps' discretion, the Court determined that it is premature to assume that a remedy to the interstate conflict would be in vain without an order binding the Corps. The Court held that Florida made a legally sufficient showing at this stage of the case that equitably apportioning the water from the interstate Apalachicola -Chattahoochee-Flint River Basin might be an effective remedy. The Special Master's assumptions about Florida's significant ecological and economic harms entitle Florida to the opportunity to show that the benefits of equitable apportionment outweigh the harms of placing a cap on Georgia's use of Flint River waters. While the Court reserved judgment on the correct findings of fact and the ultimate disposition of the case, it held that the Special Master's standard of proof for a workable remedy was too strict. Florida was required to show the general availability of judicial relief by clear and convincing evidence, but the details and effectiveness of a decree is a separate consideration. The Court remanded the case to conduct an equitable-balancing inquiry. To determine whether Florida's harms may be redressed by a court decree, the Special Master must make findings of fact regarding the scope of Florida's harm caused by the absence of water, and the approximate amount of water that must flow into the Apalachicola River to ameliorate the harm. On December 11, 2019 the Special Master issued his recommendations to the U.S. Supreme Court. The Special Master found other causes for Florida's injuries than Georgia's consumption of water, including drought, mismanagement of aquatic resources, and changes in stream-estuary morphology due to Corps operations. The Special Master wrote: "Given my factual findings, I recommend denying Florida's request for a decree because it has not proved the elements necessary to obtain relief. Florida has pointed to harm in the oyster fishery collapse, but I do not find that Georgia caused that harm by clear and convincing evidence. Next, although Georgia's use of the Flint and Chattahoochee Rivers has increased since the 1970s, Georgia's use is not unreasonable or inequitable. Last, I have determined that the benefits of an apportionment would not substantially outweigh the harm that might result. This is especially true given that the Army Corps' reservoir operations on the Chattahoochee River would prevent most streamflow increases from reaching Florida during the times when more streamflow is needed to alleviate Florida's alleged harms."
---	--

Case Name Mississippi v. Tennessee Case Number No. 220143 Court U.S. Supreme Court Relevant Dates 6/6/2014: Motion for leave to file complaint 8/12/2016: Special Master's Memorandum of Decision on various motions 11/29/18: Special Master denied Tennessee's MSJ 12/21/18: TN and MS filed pre-hearing briefs 5/20/19-5/24/19: Evidentiary hearing (transcripts posted) 9/19/19: Post hearing briefs 2/25/20: Closing arguments 11/5/20: Special Master's Report 2/22/21: MS and TN filed exceptions 4/29/21: Amicus brief filed by CO, ID, NE, NC, ND, OR, SD, & WY [6/24/21: S.Ct. Conference scheduled] Related Cases Hood ex rel. Mississippi v. City of Memphis, Tenn., 533 F. Supp. 2d 646 (N.D. Miss. 2008) (aff'd 570 F.3d 625 (5th Cir. 2009); Mississippi v. City of Memphis, 559 U.S. 901 Notes For more information, see http://www.ca6.uscourts.gov/special-master; https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22o143.html	Issues Interstate Groundwater, Equitable Apportionment On August 12, 2016, the Special Master issued a Memorandum of Decision, noting 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. 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. However, tasked with erring on the side of over-inclusiveness to assist the Supreme Court in making its ultimate determination, he 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 November 29, 2018, the Special Master denied Tennessee's Motion for Summary Judgment. On December 21, 2018, the parties filed their pre-hearing briefs. The evidentiary hearing was held May 20-24, 2019. Post-hearing briefs were filed in the Fall of 2019, and the final oral arguments were February 25, 2020. The Special Master submitted his report in November 2020, with the recommendation that the aquifer was an interstate resource and that Mississippi must seek equitable apportionment. Both Mississippi and Tennessee filed exceptions to the report on February 22, 2021. Mississippi maintains that the aquifer is not an interstate resource but is part of the state's sovereign territory, and remedies other than equitable apportionment are available to protect its aquifer from overpumping. Tennessee agreed with the Special Master's conclusions, but disagreed with the opportunity for Mississippi to convert its existing claims to an equitable apportionment claim, noting the higher pleading standards (requiring a showing of substantial injury) that should be considered at the petition to file stage of proceedings. On April 29, 2021, several states filed an amicus brief arguing that, without an interstate compact or equitable apportionment: (1) a state has no duty to manage shared natural resources for the benefit of another state; (2) states cannot obtain damages or an injunction for intrastate use of shared natural resources; and (3) the court should not create a claim for damages or enjoin uses, because it would incentivize lawsuits over compact negotiations, it would undermine the doctrine of judicial equitable apportionment, and it would create uncertainty for states as they administer natural resource use within their borders.
---	--

Case Name IN RE: Gold King Mine Release in San Juan County, Colorado Case Number 1:18-md-2824 Court U.S. District Court for the District of New Mexico Relevant Dates 5/23/16: New Mexico v. EPA filed 8/16/16: Navajo Nation v. EPA filed 11/28/16: NM and NN cases consolidated 2/13/17: EPA Motion to Dismiss consolidated NM and NN cases 4/4/18: MDL for pre-trial proceedings 7/25/18: EPA filed MTD 2/28/19: MTD denied 10/4/19: Environmental Restoration LLC filed interlocutory appeal re applicable SOL 1/31/20: status conference, setting deadlines for witnesses, bellweather case briefs, and issues of economic damages 6/19/20: order setting deadlines for depositions 9/1/20: Court granted Utah's motion to dismiss its claims against EPA and certain contractor parties 10/30/20: Amended case management deadlines (fact discovery ends Jan2021, expert discovery ends Oct2021, trial begins Feb2022) 1/13/21: NM (\$10M) and NN (\$10M) settled claims against mining defendant Sunnyside/Kinross 2/22/21: Court granted MTD on the Navajo Nation's tort claims against the mining defendants 4/29/21: Kinross (mining) MSJ granted against NM, NN, UT, Allen P's 5/3/21: Kinross MSJ partially granted against EPA's cross-claims 5/24/21: EPA partial MSJ against Kinross personal jurisdiction defense 5/28/21: Weston partial MSJ to dismiss tort claims 6/3/21: Allen plaintiffs requested Rule 54(b) certification to appeal decision on Kinross partial MSJ Related Cases New Mexico v. EPA, 1:16-cv-465; Navajo Nation v. EPA, 1:16-cv-931 (now consolidated with 1:16-cv-465); Utah v. Environmental Restoration LLC et al., 2:17-cv-866; Allen v. US, 18-cv-744; IN RE: Gold King Mine Release in San Juan County, Colorado, on August 5, 2015, 1:18-md-2824 Notes	Issues Abandoned Hard Rock Mines Discovery and motions have continued, with several parties settling their claims in late 2020 and early 2021, and motions for summary judgment resolving some issues. BACKGROUND: 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. 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. This request was granted on April 4, 2018, and on June 19, 2018, a Special Master was appointed. (MDL-2824). On July 25, 2018, the federal defendants filed a Motion to Dismiss the state and tribal claims for lack of jurisdiction over the CERCLA, RCRA, CWA, and tort claims. On February 28, 2019, the Special Master denied the motion. The DOJ argued that the court lacked jurisdiction to hear the claims due to the sovereign immunity of the United States, asserting that the waiver provisions of the statutes did not apply to EPA's actions in this case. The Court disagreed, finding that EPA qualified as an operator, arranger, and transporter under CERCLA's waiver of sovereign immunity; that the state and tribal plaintiffs were entitled to discovery regarding EPA's discretionary actions for the tort claims; and that the RCRA and CWA claims dealt with facts in dispute, and the federal defendants could file a motion for summary judgment after jurisdictional discovery. Subsequent motions to dismiss from other parties were largely denied, and after the Answers were filed, on June 5, 2019, the Court issued a scheduling order and set the scope of discovery. On October 4, 2019, Environmental Restoration LLC filed interlocutory appeal on whether NM or CO statute of limitations applied (potentially impacting claims of 300 Allen v. US plaintiffs and the scope of discovery)
--	--

Case Name Texas v. New Mexico and Colorado Case Number #220141 Court U.S. Supreme Court Relevant Dates 1/8/13: Texas filed its complaint 2/27/14: United States Motion to Intervene 3/20/17: Special Master Report received by the Supreme Court 8/4/17: Kansas amicus brief in support of Texas re: interstate compacts and impact of upstream groundwater diversions 1/8/18: S. Ct. oral arguments 3/5/18: S. Ct. decision to allow US to intervene 5/23/18: NM filed Answers and Counterclaims 7/20/18: TX Answer 7/23/18: U.S. Answer 12/21/18: U.S. Motion for Judgment on the Pleadings 12/26/18: Texas and New Mexico motions for partial judgment 4/2/19: Hearing on motions before Special Master 3/31/20: Status conference to discuss completion of discovery, to set hearing dates, to establish a trial date, and to discuss potential for settlement 6/25/20: Mediator appointed 11/5/20: Texas, U.S., and New Mexico's respective partial MSJs filed 12/22/20: responses to partial MSJs filed 3/9/21: Partial MSJ hearing 5/21/21: Order granting and denying various MSJ issues [9/13/21: Trial scheduled to begin] Related Cases Notes For more information, see https://www.ca8.uscourts.gov/texas-v-new-mexico-and-colorado-no-141-original and https://www.scotusblog.com/case-files/cases/texas-v-new-mexico-and-colorado/	Issues Rio Grande Compact On May 21, 2021, the Special Master issued a ruling on several issues submitted for summary judgment. The Special Master noted that, while a fair amount of evidence appears to be undisputed, the different reasonable inferences that can be drawn from the evidence about Compact interpretation and course of performance abound, due to the states and Reclamation operating with incomplete information about one another's practices, requiring a trial to sort through many of those matters. The Special Master ruled that the 1938 Compact unambiguously establishes that New Mexico receives part of its apportionment above and part below the Elephant Butte Reservoir, with the downstream portion delivered exclusively by Reclamation's Rio Grande Project. He ruled that the groundwater and surface water downstream of the Reservoir are hydrologically interconnected to a sufficient degree that groundwater pumping generally reduces return flows and affects Rio Grande surface water flows, resulting in indirect capture of Rio Grande Compact water. New Mexico has a Compact-level duty to avoid material interference with Reclamation's delivery of Compact water to Texas, including groundwater pumping that captures Rio Grande surface water "to the extent that the overall impact of such capture is inconsistent with Compact water deliveries to Texas or interferes with long-term operation of the Project." The Compact protects the Rio Grande Project, its water supply, and the baseline operating condition--however, there are "material factual disputes concerning the baseline condition and the full scope of the effect of New Mexican pumping on Project operations." New Mexico admits that groundwater pumping beyond disputed limits affects surface water supplies, but disputes the extent of the interference and the extent to which interference rises to the level of a Compact violation. Several other Compact interpretation details were addressed and left for trial. The Special Master denied the United States' request for injunctive relief against New Mexico, noting that the propriety of that relief "remains to be determined based on the detailed resolution of issues identified above and based on proof of damages taking into account as of yet unresolved issues including: acquiescence, equitable defenses, and any offsetting harm a state's own actions have caused. It is anticipated any such relief, if proven necessary, will be directed against a state as a whole but hopefully will include sufficiently specific requirements to ensure immediate and practical relief to the prevailing party." BACKGROUND: The state of Texas filed a lawsuit in the United States Supreme Court against the states of New Mexico and Colorado alleging that New Mexico is violating the 1939 Rio Grande Compact, which governs the distribution of Rio Grande water among the three states. New Mexico denies this allegation. The United States filed a motion to intervene on the grounds that the case affects the Department of Interior's management of the Reclamation's Rio Grande Project, its calculation of diversion allocations, and its responsibility to deliver water to intended Project beneficiaries and to Mexico pursuant to Treaty. New Mexico filed a motion to dismiss on the grounds that the language of the compact could not provide the relief requested by Texas, and that the United States is not a party to the Compact. The case was referred to Special Master in November 2014. Two political subdivisions (water districts supplied by and the sole direct beneficiaries of the Rio Grande Project) of New Mexico and Texas also sought to intervene on the grounds that they have compelling interest in the case not properly represented by their respective states. On February 9, 2017, the Special Master submitted the First Interim Report with recommendations 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 March 5, 2018, the Supreme Court ruled that the United States may pursue its complaint as an intervenor, asserting its claim that New Mexico has violated the Rio Grande Compact, and remanded the case back to the Special Master.
--	---

Tab U – State Reports

Arizona State Report for June 2021 Western States Water Council Meeting

Legislative Update (not exhaustive):

This session, a record breaking 1823 bills were introduced in the Arizona Legislature. Sixty of these were water-related bills that the Department has tracked, of which 10 have been signed by the Governor. This summarizes some of the bills passed since the spring 2021 WSWC meeting.

HB 2388 expands the eligibility criteria for grants administered from the Water Supply Development Revolving Fund to include a broader range of entities, such as those in counties with smaller populations, and increases the maximum funding amount of a single grant.

HB 2691 will require Arizona Department of Water Quality to adopt rules for water quality standards and best management practices for non-waters of the United States, as well as publish a list of all protected surfaces waters in Arizona.

SB 1366 expands a declaration that the use of groundwater withdrawn, up to an aggregate amount of 65,000 acre-feet for approved remedial action projects, must be considered consistent with the management goal for the AMA.

The 2021-2022 Arizona budget bills have also been introduced and heard in the appropriations committees, with a vote expected soon. The budget bills include \$2.8 million for Arizona Department of Water Resources staff salaries and the establishment of the Drought Mitigation Revolving Fund for purposes that substantially improve sustainable water supplies to meet Arizona's long-term water demand.

Additional information, including ADWR-relevant enacted legislation can be found on our [Legislative Affairs web page](#).

Agency Activities Update:

ADWR continues to lead the [Arizona Reconsultation Committee](#) (ARC) and has participated in three meetings that have reconvened many of the same leaders that worked on the Steering Committee of the Colorado River Drought Contingency Plan in Arizona. The ARC is preparing the state's vision of what Colorado River management should look like once the current set of rules expire in 2026. The ARC has received updates from the modeling and analysis work group and Arizona strategy team to inform ARC discussions in preparation of broader discussions with the basin states at the end of the year.

ADWR continues to work with Central Arizona Project agricultural districts to distribute legislatively approved funds for their groundwater infrastructure programs through the Regional Conservation Partnership Program.

On January 31, 2019, as a corollary to the Drought Contingency Plan legislation, Governor Ducey signed an Executive Order creating a Water Augmentation, Innovation, and Conservation Council (Council). Membership includes legislators as well as water managers and stakeholders for which meetings are held quarterly. The Council made progress despite challenges posed by COVID-19. Much of the work of the Council is accomplished through its committees, which work to identify and discuss issues and to develop, evaluate, and prioritize recommendations for the Council to consider. The Post-2025 Active Management

Areas Committee will present a plan for moving forward with the solutions phase for their package of water management [issue briefs](#) to the Council for their consideration this month. The Desalination Committee met to review a [summary](#) detailing the legal barriers to increased use of poor-quality groundwater supplies in Arizona. The Long-Term Water Augmentation Committee reviewed a summary of studies related to options for water importation. All Council and Committee meetings are open to the public and additional information, including recordings of previous meetings, can be found on the [ADWR website](#).

ADWR adopted the remaining [4th Management Plans \(4MPs\)](#) for the Phoenix, Pinal, and Santa Cruz AMAs on March 11, September 18, and October 20, 2020 respectively. With this milestone, ADWR met its goal of completing the adoption of these remaining 4MPs by the end of 2020. Work continues on the 5th Management Plans (5MPs) for all AMAs with regular virtual meetings of the 5th Management Plans Work Group and the related sub-groups. Stakeholder engagement in these workgroups remains high, perhaps because of the accessibility of the virtual format. A [concepts webpage](#) has been developed that summarizes concepts and proposals for the sector conservation programs and contains interactive data dashboards, meeting links, and stakeholder comments. While finalizing the last details of the conservation programs in workgroup process, the Management Plans team is concurrently drafting all five AMA 5MPs, with the intent to return to the work group as needed to review draft regulatory language.

As a continuation of ADWR's data transparency and sharing initiatives, AMA staff have developed and published websites dedicated to information related to sector specific conservation programs, [Agricultural](#), [Municipal](#), and Industrial (in progress). User-friendly data dashboards for each of these sector webpages are also in the development phase.

Drought Status Update:

May is typically one of the two driest months in Arizona. While north central Arizona received most of the state's rainfall, the rest received 60% - 90% below last year's average precipitation levels. Arizona counties are also in stage 1 or 2 fire restrictions, with an above normal fire risk for the state.

[Drought conditions](#) have remained unchanged in May with 95% of the state in severe(D2) to exceptional(D4) drought. No substantial improvement is expected for June.

State Report – Utah

Prepared by Todd Stonely | Erica Gaddis | Norm Johnson
June 25, 2021

DIVISION OF WATER RESOURCES

Noteworthy Items

- American Rescue Plan Funding – In a special session in May, the Utah Legislature authorized the Division of Water Resources to potentially tap \$100 million of American Rescue Plan Funding to pay for needed dam safety projects and secondary (non-potable) water meters. Although this provides a huge boost for two of the Division’s priority funding needs, it would fund less than half projected need of \$250 million. The legislature is working with the Biden Administration to iron-out the details. It is still being determined by Legislative Leadership where and how this money will be directed.
- Water Conservation Grant Funding – In recent years, the Utah Legislature appropriated a total of \$2.75 million in ongoing general funds to help promote water conservation in the M&I sector. The funding includes \$750,000 each year to encourage installation of water saving devices (primarily smart-irrigation timers for homes and commercial properties) and \$2M per year of general funds for secondary (non-potable) water meters in Class I and II counties. The funding for residential irrigation timers is up to \$75 per residence and the funding for other items requires a minimum 50% cost match.

Water Conditions

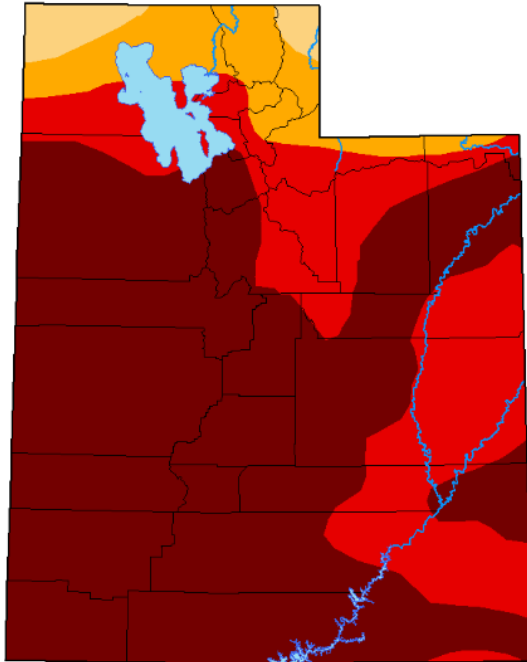
The entire State of Utah is currently experiencing moderate to exceptional drought. More than 90% of the state is shown by the U.S. Drought Monitor to be experiencing the worst categories of extreme or exceptional drought.

Spring runoff this year was abysmal, with stream flows in many areas around the state below 25% of average. As a result, runoff into reservoirs barely moved the needle. In the Weber River Basin, for instance, average increase in reservoir storage is about 80,000 acre-feet; this year the basin only increased storage 3,000 acre-feet. The only bright spot is that soil moisture has increased, but that too will change if dry conditions persist.

In March, Governor Cox issued an Emergency Drought Declaration to forewarn Utah residents of the conditions and implore their help to voluntarily reduce water demands with the hope of avoiding municipal water restrictions later in the year. Since then, conditions have only worsened and a second declaration was issued this month providing mandatory water use restrictions at all state-owned facilities and recommendations for the public including general lawn and garden watering statewide. The hope is that Utahans will water to help their landscapes “survive, not thrive,” giving priority to trees, gardens, shrubs and other high-value plants, while allowing lawns to go dormant.

US Drought Monitor

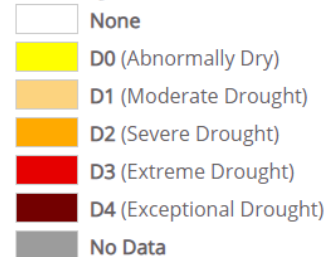
Utah



Map released: Thurs. June 17, 2021

Data valid: June 15, 2021 at 8 a.m. EDT

Intensity



Authors

United States and Puerto Rico Author(s):
Curtis Riganti, National Drought Mitigation Center

Pacific Islands and Virgin Islands Author(s):
Richard Tinker, NOAA/NWS/NCEP/CPC

DIVISION OF WATER QUALITY

Clean Water Loan and Hardship Grant programs and infrastructure needs

The Water Quality Board recently completed an updated guidance for hardship analysis to align with recent EPA and NAPA recommendations. Hardship criteria are especially relevant with the declining balances in Utah's Clean Water accounts. Combined state and federal loan funds are projected to be completely spent by 2023 despite \$2.7 billion of projected wastewater construction activity with needed public financing by 2030. Utah recently projected wastewater and storm water infrastructure needs to be \$15 billion by 2060 (see reclaim60.org).

Harmful Algal Blooms and drought

Utah DWQ is seeing early indications that harmful algal blooms will be especially problematic in 2021 due to warm water temperatures, low water levels, and stagnant conditions due to the lack of weather systems. Active blooms and monitoring results are available at habs.utah.gov. Zion National Park recently reposted advisories on the North Fork of the Virgin River. Utah (DWQ and DNR) will pilot new treatment approaches to algae in Utah Lake this year.

Legacy Mining Issues

The Utah Division of Water Quality has initiated an inventory of discharging abandoned mines in the state that contribute to water quality impairments. This work is being conducted in partnership

with local, state, and federal partners. In addition, Utah issued a UPDES permit to a legacy mining discharger at the new Mayflower resort and a similar permit will be public noticed this summer with another resort in the state.

ATTORNEY GENERAL'S OFFICE

Pending Litigation

The Ute Indian Tribe of the Uintah and Ouray Indian Reservation brought suit in March of 2018 against the United States alleging a variety of water-related claims, many of which implicated the State of Utah's interests. The Court granted Utah's motion to intervene in February of last year. Thereafter the Tribe amended its complaint and named the State as a defendant. Defendants subsequently filed motions to dismiss the amended complaint and briefing is complete. Oral argument on the motions is likely to occur this summer.

Utah, along with other states, has also intervened in *Save the Colorado v. U.S.*, 3:19-cv-08285-MTL (D. Ariz.) and *Center for Biological Diversity v. DOI*, 2:19-cv-00636-JNP D. Utah) which challenge Colorado River operations on a variety of grounds, including climate change. The plaintiffs and the United States are wrangling over the completeness of the administrative record in this matter; the case will move forward once issues related to the record have been resolved.

Congress approved the Navajo/Utah Water Rights Settlement Act in the federal omnibus spending bill passed in the lame-duck session in December. The Utah Legislature recently approved legislation and appropriated money necessary to move this agreement forward.

Tab V – *intentionally left blank*

Tab W – Newsletter Index

WESTERN STATES WATER NEWSLETTER INDEX

January 8, 2021 - June 11, 2021

Issues No. 2434 - 2456

<u>HEADING</u>	<u>SUBHEADING</u>	<u>DATE</u>	<u>ISSUE</u>
ADMINISTRATION	30-by-30	05-21	2453
	Appropriations	05-28	2454
		06-04	2455
	Army Corps of Engineers (Corps)	01-22	2436
		02-05	2438
		02-26	2441
		03-12	2443
		04-23	2449
		05-07	2451
		05-28	2454
		06-11	2456
	Biden Administration	01-08	2434
	-Transition (special report)	01-22	2436
	Biden Nominees	03-05	2442
		04-09	2447
		04-23	2449
		05-21	2453
		06-04	2455
	Bureau of Land Management (BLM) Headquarters	01-29	2437
	Bureau of Reclamation (USBR)	02-19	2440
	(special report)	03-12	2443
		04-09	2447
		04-16	2448
		04-23	2449
		05-28	2454
	Clean Water Act (CWA) (also see special report)	02-05	2438
	-Section 401 Certification Rule	05-28	2454
	Climate	02-05	2438
	Commerce	05-21	2453
	Department of the Interior (DOI) (special report)	01-22	2436
	-Nomination	03-05	2442
		03-19	2444
		05-21	2453
	-Nomination	06-04	2455
	Drought (special report)	03-12	2443
		04-23	2449

Environmental Protection Agency (EPA) (special report)	01-22	2436
(special report)	02-05	2438
	03-19	2444
	04-23	2449
	04-30	2450
-Nomination	06-04	2455
	06-11	2456
Infrastructure (special report)	04-02	2446
	04-30	2450
Invasive Species	04-16	2448
Lead and Copper Rule	04-09	2447
Levee Engineer Circular	02-26	2441
National Aeronautics and Space Administration (NASA)		
-Administrator Nomination	04-09	2447
	05-21	2453
National Climate Task Force	04-23	2449
National Oceanic and Atmospheric Administration (NOAA)	01-29	2437
(special report)	03-12	2443
	06-04	2455
Natural Resources Conservation Service (NRCS) (special report)	03-12	2443
Navigable Waters Protection Rule (NWPR) (special report)	02-05	2438
Per- and Polyfluoroalkyl Substances (PFAS)	04-30	2450
Regulatory Review	02-05	2438
Subseasonal to Seasonal (S2S) Forecasting	01-29	2437
	06-04	2455
SECURE Water Act	02-19	2440
	04-09	2447
Science and Technology	02-05	2438
State-Federal Relationship	02-19	2440
	04-16	2448
Streamgages	04-02	2446
Tribes	04-23	2449
U.S. Department of Agriculture	03-05	2442
	04-16	2448
U.S. Geological Survey (USGS)	04-02	2446
Water Resources Development Act (WRDA)	03-12	2443

CONGRESS	Water Supply Outlook (special report)	03-12	2443
	Waters of the United States (WOTUS)	04-23	2449
		05-07	2451
	WaterSMART	04-09	2447
	Water Infrastructure Financing and Innovation Act (WIFIA)	04-30	2450
	117th Congress	01-08	2434
	Appropriations	03-12	2443
		05-28	2454
		06-04	2455
	Army Corps of Engineers (Corps)	05-28	2454
	Bureau of Land Management (BLM) Headquarters	01-29	2437
	Bureau of Reclamation (USBR)	05-28	2454
	California	02-26	2441
	Clean Water Act (CWA)	02-05	2438
		02-26	2441
	Commerce	05-21	2453
	Department of the Interior	05-21	2453
	Drinking Water	04-02	2446
		06-04	2455
	Drinking Water and Wastewater Infrastructure Act	05-07	2451
	Environmental Protection Agency (EPA)	06-11	2456
	House Science Space and Technology	05-21	2453
	Infrastructure	04-02	2446
		05-21	2453
		06-04	2455
		06-04	2455
	Navigable Waters Protection Rule (NWPR)	02-26	2441
	Nominations	05-21	2453
		06-04	2455
	Non-point Source	02-05	2438
	Rural and Tribal Water Projects	06-04	2455
	Senate Confirmation	03-05	2442
		03-19	2444
	State Revolving Funds (SRFs)	03-12	2443

	U.S. Department of Agriculture	04-16 06-11	2448 2456
	Wastewater	04-02 05-21	2446 2453
	Water for Conservation and Farming Act	04-02	2446
	Water Infrastructure	03-12	2443
	Water Resources Development Act (WRDA)	04-02	2446
	Watersheds	04-23	2449
	Waters of the United States	02-26	2441
	Wildfire	04-23	2449
ENVIRONMENT	Climate	02-05	2438
	Colorado River	02-19	2440
	Columbia River Basin	02-12	2439
	Lower Snake River Dams	02-12	2439
	Regulatory Review	02-05	2438
	Science and Technology	02-05	2438
LITIGATION	California	02-26	2441
	Clean Water Act (CWA)	02-26 05-07	2441 2451
	Corps' Nationwide Permit 12	05-07	2451
	Equitable Apportionment (special report)	03-05 04-09	2442 2447
	<i>Fish and Wildlife Service v. Sierra Club</i>	03-19	2444
	<i>Florida v. Georgia</i> (special report)	03-05 04-09	2442 2447
	Freedom of Information Act (FOIA)	03-19	2444
	Gold King Mine	01-15	2435
	Groundwater (special report)	03-05	2442
	Kansas	02-12	2439
	<i>Mississippi v. Tennessee</i> (special report)	03-05	2442

	<i>Montana and Wyoming v. Washington</i> (special report)	06-11	2456
	Navigable Waters Protection Rule (NWPR) (special report)	02-05	2438
		02-26	2441
	New Mexico	01-15	2435
	<i>Texas v. New Mexico</i> (special report)	06-11	2456
	Quivira National Wildlife Refuge	02-12	2439
	Waters of the United States (WOTUS) (special report)	02-05	2438
		02-26	2441
WATER QUALITY	Clean Water Act (CWA) (also see special report)	02-05	2438
		02-19	2440
		05-07	2451
	Clean Water Act (CWA) Section 401 Rule	05-14	2452
	Corps' Nationwide Permits	01-22	2436
		05-07	2451
	Drinking Water	04-02	2446
		06-04	2455
	Environmental Protection Agency (EPA) (special report)	02-05	2438
		06-04	2455
		05-07	2451
	Gold King Mine	01-15	2435
	Infrastructure	01-15	2435
		04-02	2446
		05-21	2453
		06-04	2455
	Lead and Copper Rule	04-09	2447
	Montana	01-08	2434
	National Pollutant Discharge Elimination System (NPDES)	02-19	2440
	Navigable Waters Protection Rule (NWPR) (special report)	02-05	2438
	New Mexico	01-15	2435
		01-29	2437
	Non-point Source	02-05	2438
	Oklahoma	01-08	2434
	Per- and Polyfluoroalkyl Substances (PFAS)	04-30	2450
	Subseasonal to Seasonal (S2S) Forecasting	06-04	2455

WATER RESOURCES	Section 401 Certification	01-08 05-28	2434 2454
	South Dakota	01-22	2436
	State Revolving Funds	03-12 01-22	2443 2436
	Texas	02-19	2440
	Wastewater	04-02 05-21	2446 2453
	Water Infrastructure Finance and Innovation Act (WIFIA) Loans	01-15	2435
	Water Quality Standards	01-08	2434
	Water Reuse Action Plan	04-23	2449
	Waters of the United States	05-07	2451
	Arizona	01-08 03-05 05-07	2434 2442 2451
	Army Corps of Engineers	01-22 02-26 03-12 05-14	2436 2441 2443 2452
	Bear River Basin	01-08	2434
	Bureau of Reclamation	01-15 01-22	2435 2436
	(special report)	03-12 04-09 04-16 04-23	2443 2447 2448 2449
	California	02-12 05-14	2439 2452
	Central Valley Project	03-12	2443
	Clean Water Act (CWA) Section 401 Rule	05-14	2452
	Colorado River	02-12 02-19 04-30 05-07 06-04	2439 2440 2450 2451 2455
	Columbia River Basin	02-12	2439
	Drinking Water and Wastewater Infrastructure Act	05-07	2451

Drought (special report)	03-12	2443
	04-16	2448
	04-23	2449
	05-07	2451
Environmental Protection Agency (EPA)	04-30	2450
Forecast-Informed Reservoir Operations (FIRO)	02-12	2439
Forecasting (special report)	03-12	2443
Idaho	01-08	2434
Groundwater	01-08	2434
Idaho	01-15	2435
Infrastructure	01-15	2435
	02-05	2438
	03-12	2443
	04-30	2450
	06-04	2455
Kansas	01-15	2435
Legislation	01-29	2437
Levee Engineer Circular	02-26	2441
Lower Snake River Dams	02-12	2439
National Aeronautics and Space Administration (NASA)	01-15	2435
National Climate Task Force	04-23	2449
Nationwide Permits	01-22	2436
Nebraska	01-29	2437
Nevada	03-19	2444
	04-09	2447
New Mexico	01-22	2436
	01-29	2437
National Oceanic and Atmospheric Administration (NOAA) (special report)	01-29	2437
	03-12	2443
	04-02	2446
	06-04	2455
North Dakota	05-14	2452
Rural and Tribal Water Projects	06-04	2455
Subseasonal to Seasonal (S2S) Forecasting	01-29	2437
	06-04	2455
San Juan-Chama Project	04-16	2448

	SECURE Water Act	02-19 04-09	2440 2447
	Streamgages	04-02	2446
	Texas	01-22 05-14	2436 2452
	U.S. Geological Survey (USGS)	04-02 06-11	2446 2456
	Utah	01-08 02-12	2434 2439
	Water and Tribes Initiative	04-30	2450
	Water Banking and Conservation	04-09	2447
	Water Conservation	01-15 03-05	2435 2442
	Water Data	01-15	2435
	Water for Conservation and Farming Act	04-02	2446
	Water Infrastructure	03-12	2443
	Water Infrastructure Finance and Innovation Act (WIFIA) Loans	01-15 04-30	2435 2450
	Water Resources Development Act (WRDA)	03-12	2443
	Water Reuse Action Plan	04-23	2449
	Water Supply Outlook (special report)	03-12 06-04	2443 2455
	Water Sustainability Fund	01-29	2437
	Watersheds	04-23	2449
	WaterSMART	04-09	2447
	Weather Forecasting	04-02	2446
	Wildfire	04-16 04-23	2448 2449
	Wyoming	01-08	2434
WATER RIGHTS	Adjudications	03-19	2444
	Nevada	03-19	2444
	Water and Tribes Initiative	04-30	2450

WESTERN GOVERNORS	30-by-30	05-21	2453
	Arizona	03-05	2442
	California	05-14	2452
	Conservation (special report)	05-21	2453
	Drought	05-14	2452
	Infrastructure	04-02	2446
	Invasive Species	04-16	2448
	North Dakota	05-14	2452
	State-Federal Relationship	02-19 04-16	2440 2448
	State of the State Address (special report)	01-29	2437
	Arizona		
	Idaho		
	Kansas		
	Nevada		
	New Mexico		
	North Dakota		
	Oregon		
	South Dakota		
	Utah		
	State of the State Address (special report)	04-16	2448
	Alaska		
	California		
	Colorado		
	Montana		
	Nebraska		
	Oklahoma		
	Texas		
	Washington		
	Wyoming		
	Texas	05-14	2452
	Water Conservation	03-05	2442
	Water Resources Development Act (WRDA)	04-02	2446
WESTERN STATES WATER COUNCIL	Spring Meetings	03-26	2445
ORGANIZATION	American Society of Civil Engineers	03-12	2443

PEOPLE

Chris Beightel	03-05	2442
Trevor Baggione	04-23	2449
Kelly Brown	04-23	2449
Thomas Buschatzke	04-23	2449
Kelli Buscher	04-23	2449
Tim Davis	02-12	2439
Jeanne Goodman	04-23	2449
Eric Gronlund	04-23	2449
Cara Hendricks	03-05	2442
Earl Lewis	02-19 03-05	2440 2442
Amanda Long-Rodriquez	04-23	2449
Shaun McGrath	05-28	2454
Kevin Moss	02-19	2440
Connie Owen	02-19 03-05	2440 2442
Hunter Roberts	04-23	2449
Ward Scott	02-19	2440
Nakaila Steen	04-23	2449
Tom Stiles	03-05	2442
Kenneth Titus	03-05	2442
Ayesha Vohra	04-23	2449

Tab XYZ – Sunsetting Positions for Fall 2021
Meetings (#426 - #431)



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
STATE CWA SECTION 401 CERTIFICATION AUTHORITY**

**Coeur d'Alene, Idaho
October 26, 2018**

WHEREAS, States have responsibly exercised their delegated authority under the Clean Water Act (CWA) Section 401 and under state water quality statutes to protect water quality, and must consider proposed activities and discharges in light of the states' designated water uses and related water quality standards; and

WHEREAS, the Council supports a balanced and integrated approach to achieve water and energy policy goals that plans for the future in sustainable ways, and recognizes legitimate state water and water quality management, protection and planning authorities to balance competing water uses; and

WHEREAS, the western states strongly support the planning and development of critical infrastructure and streamlined permitting processes, but such efforts should not come at the expense of states' authority to allocate, manage, and protect their water resources; and

WHEREAS, the development of hydropower and other federally permitted and licensed projects involving activities that may impact states' water quality standards should be appropriately undertaken in compliance with substantive and procedural state water law and delegated authority under CWA Section 401; and

WHEREAS, CWA Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution."; and

WHEREAS, CWA Section 101(g) of the CWA further provides that it is the primary and exclusive authority of each state to "allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act"; and

WHEREAS, Section 27 of the Federal Power Act declares: "That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein."; and

WHEREAS, the Supreme Court has narrowly interpreted the Federal Power Act (16 U.S.C. 791a et seq.) reading Section 27 (16 U.S.C. 821) to limit state authority to set streamflow requirements on federally permitted and licensed projects, holding in *First Iowa Hydro-Electric Cooperative v. Federal Power Commission*, 328 U.S. 152 (1946) and in *California v. FERC*, 495 U.S. 490 (1990) that federal requirements preempted any state requirements, including efforts to establish minimum stream flows, noting that "...Congress remains free to alter what we have done"; and

WHEREAS, these rulings eroded state authority over state resources, and the Council has supported federal legislation to restore states' primary authority for regulating streamflows and water use and clarifying Congressional intent under the Federal Power Act; and

WHEREAS, in *P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), the Supreme Court upheld a state's delegated authority to impose minimum stream flow conditions under the CWA Section 401 certification process where necessary to protect a designated use for fish habitat, expressly rejecting any implied limitations on Section 401 certifications based on the *First Iowa* interpretation of the Federal Power Act; and

WHEREAS, an overly narrow reading of Section 401 would deprive the states of the ability to maintain the very beneficial uses that the Clean Water Act was designed to protect, and threaten the existing partnership between states and federal agencies based on cooperative federalism; and

WHEREAS, the vast majority of Section 401 certification requests are processed within 90 days, well within the one year allowed by current law, with relatively little if any backlog of certification actions; and

WHEREAS, most delays are typically due to submission of an incomplete application, applicants' non-responsiveness to requests for additional information, the completion of necessary study requirements, the size and complexity of some projects (and related impacts), substantive changes to the proposed project requiring further review, or constraints on state resources; and

WHEREAS, CWA Section 401 certification denials by states are rare and carefully considered, and are not examples of the failure of the system, as the current process is well-understood, reliable and supported by case law that provides certainty for both the states, federal agencies, and the regulated community; and

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council opposes any changes that may weaken the deference to state water laws and diminish the primary state authority and responsibility for the appropriation, allocation, development, conservation, and protection of their water resources, including minimum streamflows, and the protection of water quality and designated uses.

BE IT FURTHER RESOLVED that the Western States Water Council strongly supports early state engagement in federal permitting and licensing actions and the coordination of state and federal environmental requirements and review processes for critical infrastructure without diminishing state authority.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
CLEAN WATER ACT JURISDICTION
Coeur d'Alene, Idaho
October 26, 2018**

WHEREAS, the Clean Water Act (CWA) is built upon the principle of cooperative federalism in which Congress intended the states, the Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers to implement the CWA as partners, delegating co-regulator authority to the states;

WHEREAS, the CWA's cooperative federalism framework has resulted in significant water quality improvements since the law's enactment in 1972, and western states have made great strides in protecting water quality and coordinating water quality and water quantity decisions; and

WHEREAS, EPA has actively sought meaningful state consultation, engagement and participation in its review and development of a new proposed rule to define Waters of the United States; and

WHEREAS, States are best positioned to manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology, geology, and legal frameworks; and

WHEREAS, States have both state statutory and constitutional authority pursuant to their "waters of the state" jurisdiction to protect the quality of waters within their borders and such jurisdiction generally extends beyond the limits of federal jurisdiction under the CWA; and

WHEREAS, CWA Section 101(b) supports the states' critical role in protecting water quality by stating: "It is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution;" and

WHEREAS, CWA Section 101(g) further provides that the primary and exclusive authority of each state to "allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act;" and

WHEREAS, a one-size-fits-all national approach to federal regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West, where water can be scarce and a variety of unique waterbodies exist, including but not limited to small ephemeral washes and arroyos, snow dependent intermittent streams, effluent dependent and dominated streams, prairie potholes, playa lakes, and terminal lakes, as well as numerous man-made reservoirs, impoundments, and water and stormwater conveyance structures; and

WHEREAS, physical, biological, and chemical differences between waters, and hydrologic differences, both spatially and temporally, as well as considerable differences in legal doctrines that govern water in western states, mean that any federal effort to clarify CWA jurisdiction will inevitably impact each State differently, thus underscoring the need to thoroughly involve states in developing and implementing any rule so as to clearly respect and avoid conflict with state authority over the regulation of water quality and the allocation of waters and water rights within their respective borders; and

WHEREAS, any efforts to redefine or clarify CWA jurisdiction have, on their face, numerous federalism implications that have the potential to significantly impact states and alter the distribution of power and responsibilities among the states and the federal government; and

WHEREAS, as co-regulators, States are separate and apart from the general public, and have a unique role with the federal government in the development and implementation of any rule to clarify or redefine CWA jurisdiction; and

WHEREAS, information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the Corps to develop and implement federal CWA jurisdiction efforts in authentic partnership with the states; and

WHEREAS, uncertainty and differences of opinion have and continue to exist regarding CWA jurisdiction among States, and challenge EPA and the Corps to develop and implement any new rule in cooperation with the States, based on principles of cooperative federalism, and together to provide greater certainty and a clearer definition of the limits of federal jurisdiction; and

WHEREAS, perennial streams with a relatively permanent surface water connection to navigable waters are now presumptively considered to be under federal CWA jurisdiction.

NOW, THEREFORE BE IT RESOLVED that Congress and the Administration should ensure that any federal effort to clarify or define CWA jurisdiction and define Waters of the United States:

1. Gives as much weight and deference as possible to state needs, priorities, and concerns.
2. Includes robust and meaningful state participation and consultation in the development and implementation of any rule, acknowledging the inherent federalism implications.
3. Gives full force and effect to Congress' intent and the purposes of CWA Sections 101(b) and 101(g).
4. Recognizes that Justice Kennedy's "significant nexus" test in *Rapanos* requires a connection between waters that is more than speculative or insubstantial to establish jurisdiction. Federal CWA jurisdiction efforts should also quantify "significance" to ensure that the term's usage does not extend jurisdiction to waters with a *de minimis* connection to jurisdictional waters, applied to individual waters on a case-by-case and not watershed basis.
5. Complies with the limits Congress and the U.S. Supreme Court have placed on CWA jurisdiction, while providing clear and recognizable limits to the extent of CWA jurisdiction, consistent with the plurality opinion authored by Justice Scalia in *Rapanos*.
6. Specifically excludes waters and features outside the scope of CWA jurisdiction, including:
 - (a) Groundwater;
 - (b) Man-made conveyances and related control features for water supply, stormwater and flood water management, including but not limited to: (i) agricultural irrigation canals, laterals and ditches and drains; (ii) municipal and industrial water supply pipelines, conduits, and aqueducts; (iii) storm sewers, drains, and flood flow bypass features; (iv) roadside barrow pits, ditches, and culverts.

- (c) Man-made impoundments on ephemeral or intermittent streams (or off stream impoundments), such as farm and stock ponds, dugouts and similar features; and
 - (d) Dip ponds that are excavated on a temporary, emergency basis to combat wildfires and address dust abatement; and
 - (e) Isolated, non-navigable, intrastate waters and wetlands, including prairie potholes and playa lakes, as well as intrastate terminal lakes, individually or in combination with similarly situated waters; and
 - (f) Arroyos, coulees, washes and similar features.
- 7. Acknowledges that states have authority to protect all “waters of the state,” and that excluding waters from federal jurisdiction does not mean that they will be exempt from state regulation and protection.
 - 8. Continues to provide access to appropriate technical and financial assistance to the States to protect and improve water quality under existing EPA programs without regard to jurisdictional determinations.
 - 9. Provides a clearly delineated process for resolving differences of opinion over federal and non-federal jurisdiction, and jurisdiction between different States and Tribes (treated as States).
 - 10. Provides for mapping of jurisdictional waters as a joint federal/state/tribal effort employing the best available data and tools, with appropriate provisions and processes for map maintenance.
 - 11. Includes an appropriate delay in the effective date of any new rule or otherwise allows for a transition enabling States to take such actions as may be necessary to address any gaps in state law, regulation and protection.

The State of Washington voiced concerns and abstained from the vote.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding**

FEDERAL WATER AND CLIMATE DATA COLLECTION AND ANALYSIS PROGRAMS

Coeur d'Alene, Idaho

October 26, 2018

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states, and has long been involved in western water conservation, development, protection, and management issues, and the member states and political subdivisions have long been partners in cooperative federal water and climate data collection and analysis programs; and

WHEREAS, in the West, water is a critical, vital resource and sound decision-making demands accurate and timely data on precipitation, temperature, evapotranspiration, soil moisture, snow depth, snow water content, streamflow, groundwater, water quality and similar information; and

WHEREAS, the demands for water and related climate data continue to increase, and this information is used by federal, state, tribal, and local government agencies, as well as private entities and individuals to: (1) forecast flooding, drought and other climate-related events; (2) project future water supplies for agricultural, municipal, and industrial uses; (3) estimate streamflows for hydropower production, recreation, and environmental purposes, such as for fish and wildlife management, including endangered species needs; and (4) facilitate water management and administration of water rights, decrees, and interstate compacts; and

WHEREAS, without timely and accurate information, human life, health, welfare, property, and environmental and natural resources are at considerably greater risk of loss; and

WHEREAS, critical and vital information is gathered and disseminated through a number of important federal programs including, but not limited to: (1) the Snow Survey and Water Supply Forecasting Program, administered by the National Water and Climate Center (NWCC) in Portland, Oregon, and funded through USDA's Natural Resources Conservation Service (NRCS); (2) NWCC's Soil and Climate Analysis Network (SCAN); (3) the U.S. Geological Survey's (USGS) Groundwater and Streamflow Information Program (GWSIP) and National Streamflow Network, which are funded through the Department of Interior; (4) Landsat thermal data, archived and distributed by the USGS, and other remotely-sensed data acquired through the National Atmospheric and Space Administration (NASA) and its water-related missions; (5) the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service and Climate Programs Office; and (6) the Environmental Protection Agency's National Environmental Information Exchange Network (NEIEN); and

WHEREAS, state-of-the-art technology has been developed to provide real or near real-time data in formats that can be shared and used by different computer programs with the potential to vastly improve the water-related information available to decisionmakers in natural resources and emergency management, and thus better protect the public safety, welfare and the environment; and

WHEREAS, these federal programs provide useful products to assist in visualizing and interpreting data on water and snow, making water supply and availability information more accessible and easy to interpret; and

WHEREAS, over a number of years, the lack of capital investments in water data programs has led to the discontinuance, disrepair, or obsolescence of vital equipment needed to maintain existing water resources related data gathering activities; and

WHEREAS, there is a serious need for adequate and consistent federal funding to maintain, restore, modernize, and upgrade federal water, weather and climate observation programs, not only to avoid the loss or further erosion of critical information and data, but also to address new emerging needs, with a primary focus on coordinated data collection and dissemination.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the Administration and the Congress to give a high priority to the allocation and appropriation of sufficient funds for these critical, vital programs, which benefit so many, yet have been or are being allowed to erode to the point that it threatens the quantity and quality of basic data provided to a myriad, growing and diffuse number of decisionmakers and stakeholders, with significantly adverse consequences.



**POSITION
of the
WESTERN STATES WATER COUNCIL**

**regarding
DROUGHT PREPAREDNESS, PREDICTION AND EARLY WARNING PROGRAMS
Coeur d'Alene, Idaho
October 26, 2018**

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states, and has long been involved in western water conservation, development, protection, and management issues, and western states have a long history of promoting drought preparedness, planning and response programs, in cooperation with federal agencies; and

WHEREAS, in the West, water is often scarce even in “wet” years and drought is a recurring threat to our environment, economy and way of life – affecting not only the West, but also the Nation; and

WHEREAS, according to the National Centers for Environmental Information, from 2015-2017, economic losses due to drought have been estimated at \$11.1B while also contributing to \$34.1B in wildfire losses; and

WHEREAS, continuing exceptional, extreme and severe conditions afflict the West and elsewhere, highlighting the need for greater attention to developing more comprehensive and coordinated drought prediction, preparedness, planning and response programs at all levels; and

WHEREAS, there is a need for maintaining and improving existing monitoring networks that help provide drought early warning signals, as well as for tracking the impacts of drought; and

WHEREAS, there is a continuing need for developing new monitoring technologies, such as remote sensing, that provide more timely data on water availability and better spatial coverage for assessing drought impacts; and

WHEREAS, early drought warning systems facilitate early drought assessment and mitigation efforts to minimize drought impacts; and

WHEREAS, there is a need for continuing federal research to develop new predictive capability for precipitation at subseasonal to seasonal time scales as described in the report to Congress prepared by NOAA pursuant to Title II of PL 115-25; and

WHEREAS, there is a continuing need for a permanent federal role in coordination of research programs related to drought early warning and prediction;

WHEREAS, collection of basic monitoring data on streamflow, snow pack, groundwater levels, and weather and climate data are essential to understanding water availability and interpreting the early signs of drought.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the Administration and the Congress to support federal programs including but not limited to the National Integrated Drought Information System (NIDIS), under the National Oceanic and Atmospheric Administration (NOAA), and other programs designed to improve our forecasting and response capabilities.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
BUREAU OF RECLAMATION DROUGHT RESPONSE PROGRAM
Coeur d'Alene, Idaho
October 26, 2018**

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states and since its inception the Council has been actively involved in national drought preparedness, planning and response, as well as related policy and program development and implementation; and

WHEREAS, in the West, water is often scarce and drought is a recurring threat; and

WHEREAS, according to the National Centers for Environmental Information, from 2015-2017, economic losses due to drought have been estimated at \$11.1B; and

WHEREAS, the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2214(c)) and subsequent reauthorizations, under Title I, provide only temporary authority for some critical Reclamation actions; and

WHEREAS, Reclamation's current Drought Response Program supports a proactive approach to drought and provides financial assistance to water managers and users via its WaterSMART program to: (1) develop drought contingency plans; (2) implement drought resiliency projects to build the capacity of communities to mitigate and respond to drought – increasing the reliability of water supplies, improving water management and operational flexibility, facilitating voluntary sales, transfers or exchanges of water, and providing benefits for fish and wildlife and the environment; and (3) undertake emergency actions to minimize losses due to drought through temporary construction activities and other activities, including water purchases and the use of Reclamation facilities to convey and store water; and

WHEREAS, there is a continuing need for making permanent the temporary authority allowing Reclamation the flexibility to continue delivering water to meet authorized project purposes, meet environmental requirements, respect state water rights, work with all stakeholders, and provide leadership, innovation, and assistance.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council strongly supports legislation to permanently authorize Title I activities under the Reclamation States Emergency Drought Relief Act, and provide for adequate appropriations to meet priority needs and continue the Reclamation Drought Response Program.

BE IT FURTHER RESOLVED that the Council urge and encourage the Administration and the Congress to assess and consider the need for a comprehensive national drought preparedness and response program on par with federal efforts to address other natural disasters such as hurricanes, tornadoes and similar extreme events.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
STATES' WATER RIGHTS AND NATURAL FLOWS
Coeur d'Alene, Idaho
October 26, 2018**

WHEREAS, the Western States Water Council strongly supports preservation of the States' inherent right to develop, use, control, and distribute water; and

WHEREAS, States have exclusive authority over the allocation and administration of rights to the use of surface water located within their borders and are primarily responsible for protecting, managing and otherwise controlling the resource; and

WHEREAS, States are in the best position to protect 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, 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 being the natural flows that would pass through the states in the absence of the U.S. Army Corps of Engineers dams; and

WHEREAS, the federal government has long recognized the right to use water as determined under the laws of the various states; and

WHEREAS, the various states have the authority and duty to manage permitting of stored water to supplement natural flows; and

WHEREAS, federal agencies in the western states, such as the Bureau of Reclamation, generally recognize western water laws and natural flows through reservoir operations, with releases from storage that supplement natural flows, and water service contracts that supplement natural flow; and

WHEREAS, representatives of the U.S. Army Corps of Engineers have indicated that all waters entering its Missouri River mainstem reservoirs are stored waters to be allocated and controlled by the U.S. Army Corps of Engineers without recognition of the States' rights to natural flows being separate from the captured floodwaters stored within those reservoirs; and

WHEREAS, in its Proposed Rule on Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply (81 FR 91556) the Corps asserts that its contracting authority over surplus waters was intended by Congress to include “withdrawals that could potentially have been accommodated from the natural flow of the river had the reservoir never been constructed” (at 91565).

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council urge the Army Corps of Engineers to recognize the legal right of the States to the development, use, control, distribution and allocation of the States’ surface waters, including natural flows.

BE IT FURTHER RESOLVED, that any policy of the U.S. Army Corps of Engineers to require storage contracts to access natural flows within a reservoir boundary would be a violation of the States’ rights to develop, use, control, and distribute surface water.

BE IT FURTHER RESOLVED, that the Western States Water Council opposes any and all efforts that would diminish the primary and exclusive authority of States over the allocation of surface water.

**Nebraska abstained from voting on the position in October 2012.*