



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS

Idaho

On May 27, Governor Brad Little (R-ID) and Lt. Governor Scott Bedke issued statements celebrating more than \$30M in water infrastructure funding approved by the Idaho Water Resource Board (IWRB). The new IWRB budget provided funding to implement key terms of the 2024 Water Settlement Agreement (WSW #2637). The budget allocated \$1M to the Surface Water Coalition Measuring and Monitoring Support Grant Program, \$4M to recharge infrastructure to boost water levels in the Eastern Snake Plain Aquifer, \$20M for the Eastern Snake Plains Aquifer (ESPA) Groundwater to Surface Water Conversion Projects Grant Program, and \$5M for the Surface Water Operational Efficiencies Program. Governor Little said "Idaho is committed to supporting farmers and maintaining our water sovereignty. I appreciate my legislative partners for approving my KEEPING PROMISES plan for ongoing water funding. This first round of funds will help our farmers to roll up their sleeves and develop projects to sustainably manage their water for years to come, and we're not done yet!" <https://gov.idaho.gov/pressrelease/>

Nebraska

On May 22, Jesse Bradley was confirmed by the Nebraska State Legislature to lead the newly restructured Department of Water, Energy and Environment. The reorganization follows the passage of Governor Jim Pillen's (R) bill, LB317, which calls for the merger of the Department of Environment and Energy (DEE) with the Department of Natural Resources (DNR), in part, to bring more "meaningful and streamlined oversight around water use." Bradley has been serving as the interim director of both agencies. The merger is effective July 1. Matt Manning was confirmed as Chief Water Officer. Concurrent with the legislative effort, Pillen initiated a Water Quality and Quantity Task Force, including Bradley and Manning, and other leaders from across the agriculture, natural resources management, public utility, local government, and academic sectors. Gov. Pillen said: "We have tremendous opportunity through this group to initiate actions that will impact Nebraska for generations to come. Now, we have the

knowledge and technology in place to be proactive in how we approach issues that impact our farmers, our industries and our communities."

LITIGATION

NEPA/ *Seven County v. Eagle County*

On May 29, the U.S. Supreme Court reversed the D.C. Circuit decision in *Seven County Infrastructure Coalition, et al. v. Eagle County, Colorado, et al.*, #23-975, 605 U.S.____(2025), limiting the scope of environmental analysis and judicial review under the National Environmental Policy Act (NEPA). In the underlying case, the U.S. Surface Transportation Board (STB) considered a proposal by a group of seven Utah counties for the construction and operation of an approximately 88-mile railroad line in northeastern Utah that would connect the oil-rich Uinta Basin with the national rail network. The Board approved the railroad line in 2021, determining that the new railroad line would have substantial transportation and economic benefits that outweighed disruptions to local wetlands, land use, and recreation due to construction and operation. The D.C. Circuit "faulted the EIS for not sufficiently considering the environmental effects of projects separate from the railroad line itself—primarily, the environmental effects that could ensue from (i) increased oil drilling upstream in the Uinta Basin and (ii) increased oil refining downstream along the Gulf Coast of Louisiana and Texas." (WSW #2627)

The Court held that NEPA is a procedural statute meant to inform, not block, agency decisions. It does not prevent agencies from prioritizing other values over environmental concerns, and it requires substantial judicial deference. Additionally, the Court clarified that environmental analysis should focus on the specific project at hand, not on speculative or unrelated future projects beyond the agency's control or jurisdiction.

The Court recognized that lower courts have developed different philosophies regarding how "aggressive" or "restrained" an approach to take. In light of this, the Court sought to clarify the principles of review. "[T]he central principle of judicial review in NEPA cases is deference. As a general matter, when an agency

interprets a statute, judicial review of the agency's interpretation is *de novo*. See *Loper Bright Enterprises v. Raimondo*, 603 U. S. 369, 391–392 (2024). But when an agency exercises discretion granted by a statute, judicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard. Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained. When a party argues that an agency action was arbitrary and capricious due to a deficiency in an EIS, the reviewing court must account for the fact that NEPA is a purely procedural statute. Under NEPA, an agency's only obligation is to prepare an adequate report.... NEPA imposes no substantive constraints on the agency's ultimate decision to build, fund, or approve a proposed project. So when reviewing an agency's EIS, 'the only role for a court' is to confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project."

The Court explained that judicial deference can take several forms, such as trusting the agency's judgment on which facts, impacts, and alternatives are scientifically significant, as well as the scope and level of detail to employ. "Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness." The Court acknowledged that geographically distant or indirect environmental effects can be included in an EIS if there's a reasonably close causal connection to the project. A separate project, however, will likely attenuate that causal relationship. Projects that are closely interrelated may pose a gray area, but even under those circumstances, court reviews "still must remain deferential."

The Court noted the need to reign in judicial review of agency NEPA decisions, arguing that these "overly intrusive" approaches deviate from the statute's text and the Court's own precedents. "Those rulings have slowed down or blocked many projects and, in turn, caused litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects. The upshot: NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects."

The Court noted the impact of increased costs for infrastructure and clean-energy projects. "Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary, both for the agency preparing the EIS and for the builder of

the project.... A course correction of sorts is appropriate to bring judicial review under NEPA back in line with the statutory text and common sense. Congress did not design NEPA for judges to hamstring new infrastructure and construction projects...."

The Court added that neither "the language nor the history of NEPA suggests that it was intended to give citizens a general opportunity to air their policy objections to proposed federal actions. The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements."

WATER QUALITY **WOTUS/State Comments**

On May 30, WSWC posted a summary of comments made by several western States to EPA and the Corps regarding the implementation of the definition of Waters of the United States (WOTUS) (Docket EPA-HQ-OW-2025-0093). Some States, including Alaska, Idaho, North Dakota, Utah, and Wyoming advocated for narrowing the scope of federal jurisdiction, emphasizing state authority and proposing clearer, more restrictive definitions of key terms. Others, such as California, Nevada, New Mexico, Oregon, and Washington supported broader protections, emphasizing functional connections and federal support. States in both groups stressed the importance of regionally variable hydrology, and recommended regional-specific rules or guidance materials. Many states advocated the use of both federal and state-led data collection tools. A full report is available at <https://westernstateswater.org/policy-letters/2025/cwa-wotus-definition>.

WOTUS/Federalism

On June 2, WSWC sent a letter to EPA leadership, regarding the federalism consultation process (under the terms of EO 13132), initiated by the agency's action on WOTUS. WSWC supported robust consultation and continued access to federal technical and financial assistance. The letter supported the development of geospatial datasets, jurisdictional mapping, and a dispute resolution mechanism. "It is the position of the WSWC that any federal effort to clarify or define WOTUS must, among other efforts: (1) create an enduring and broadly supported definition; (2) acknowledge and address the needs, priorities, and concerns of States as co-regulators; (3) provide for a clearly delineated process for resolving differences of opinion over jurisdictional determinations; (4) provide for mapping and map maintenance of jurisdictional waters as a joint federal/state/tribal effort; and (5) consider the potential for a regional approach to implementation, building upon existing classification systems based on hydrology, geology, and climate." Also see WSW #2656.

The WESTERN STATES WATER COUNCIL is a government entity of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.