



UTAH



***WSWC SUMMER MEETINGS AND 60TH ANNIVERSARY
SNOWBIRD, UTAH
JUNE 11-12, 2025***



WESTERN STATES WATER COUNCIL

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Web Page: www.westernstateswater.org

MEMORANDUM

TO: Western States Water Council Members and Others

FROM: Tony Willardson, Executive Director

DATE: June 6, 2025

RE: Briefing Materials for the Summer 2025 (207th) WSWC Meetings

This is to advise you that briefing materials for our 2025 Summer meetings being held in Snowbird, Utah (a hybrid in-person and virtual event) on June 11-12, may be downloaded on our [meetings webpage](#). In addition to our customary single PDF, the briefing book also has been separated into smaller segments for each committee. The minutes from our WSWC Spring 2025 meetings held in Lincoln, Nebraska have been posted and may be found on our [website](#).

The meeting schedule and agenda are posted on our meetings webpage. Please note that all times are Mountain Daylight Time (MDT). As a reminder, in order to participate, whether in-person or virtually, all must register. There is no registration fee. Please visit our [meetings webpage](#). When registering for virtual attendance, please mark each section you wish to attend. A confirmation email will be sent containing directions to join the meetings via Zoom webinar. The Zoom link provided will be unique to each individual registrant and should not be shared.

On Tuesday, June 10, our Utah hosts have arranged a full day field trip, which will include lunch. ***The field trip is being sponsored by the Jordan Valley Water Conservancy District.*** Members and guests will depart from the Cliff Lodge at 8:00 am and walk across the parking lot to tour the Wasatch Drain Tunnel Treatment Plant and learn about cloud seeding up Little Cottonwood Canyon. Next, we will board a bus and travel to the Provo River Delta Restoration Project. We will have lunch at Utah Lake. Our afternoon will continue with a visit to the Olmsted Historic Hydroelectric Plant and will conclude with a stop at Jordanelle Reservoir. We recommend wearing closed-toed shoes and bringing a jacket for your comfort.

On Wednesday, June 11, the Council meetings will begin with Utah's State Presentation at 8:00 am (MDT), followed by abbreviated committee meetings. Please note the committee meetings have been shortened to one hour each to accommodate an extended facilitated discussion on the Council's future strategic directions on Wednesday afternoon beginning at 1:30 pm. Attached is a schedule of meetings for your reference.

A Wednesday evening reception sponsored by SWCA Environmental Consultants, Smith Hartvigsen PLLC, and OpenET celebrating the 60th Anniversary of the WSWC will be held for all WSWC members and guests from 6:00 - 9:00 pm.

The Full Council meeting will be held on Thursday morning, June 12, from 8:00 am to noon.

We look forward to seeing most of you in person! Please contact me with any questions at twillardson@wswc.utah.gov.

**WESTERN STATES WATER COUNCIL
207th COUNCIL MEETING
Snowbird, Utah
June 11-12, 2025**

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- WQ Position #484 - regarding Hydraulic Fracturing
- WR Position #485 - supports Water Research and Development Programs at DOE National Labs

List of Current WSWC Policy Statements

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

Draft FY2025-2026 Committee Work Plan

- G. Water Resources / Executive / Water Quality / Legal
- H. WaDE/WestDAAT/WestCAT Update
- I. Landsat Next Update
- J. Instream Flow Council Training Center
- K. WSWC Testimony - House Natural Resources Sub. on Water, Wildlife and Fisheries
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Tab A – Schedule of Meetings – Agenda –
30-day Notice



SCHEDULE OF MEETINGS

WESTERN STATES WATER COUNCIL

The Cliff Lodge
Snowbird, Utah

June 10-12, 2025

<u>Date/Time</u>	<u>Meeting</u>	<u>Room</u>	<u>Adjournment</u>
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(*Mountain Daylight Time*)

Tuesday, June 10

8:00 am	A Full Day Field Trip <i>Sponsored by Jordan Valley Water Conservancy District</i>		4:30 pm
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Wednesday, June 11

8:00 am	Host State Presentation	Superior	8:45 am
8:45 am	Water Resources Committee Meeting	Superior	10:00 am
10:00 am	Water Quality Committee Meeting	Superior	11:00 am
11:00 am	Legal Committee Meeting	Superior	12:00 pm
12:00 pm	Executive Committee (over lunch)	Cirque	1:15 pm
1:30 pm	WSWC Strategic Directions Facilitated Discussion	Superior	5:30 pm
6:00 pm	Reception celebrating 60th Anniversary of the Council <i>Sponsored by SWCA Environmental Consultants, Smith Hartvigsen PLLC, and OpenET</i>	Superior Lobby/Terrace	9:00 pm

Thursday, June 12

8:00 am	WSWC Full Council (207th) Meeting	Superior	12:00 pm
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AGENDA
WATER RESOURCES COMMITTEE

The Cliff Lodge
Snowbird, Utah

June 11, 2025

Call to Order at: 8:45 a.m. (Mountain Daylight Time)
Conducting: Anna Pakenham Stevenson, Montana

Room: Superior

TABS

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Resolutions –**

Position #482 - Preservation of Radio Frequencies necessary for Weather forecasting and Water Management

Position #483 - supporting Strengthening the Resiliency of Our Nation to the Impacts of Extreme Weather Events

Position #485 - urging the Administration and Congress to Support Water Research and Development Programs at the Department of Energy National Laboratories
- H 5. **WaDE/WestDAAT/WestCAT Update** – Ryan James and Tony Willardson
- I 6. **Landsat Next Update** – Tim Newman
- J 7. **Instream Flow Council Training Center** – Christopher Estes
- G 8. **FY2025-2026 Committee Work Plan** – Anna Pakenham Stevenson
- XYZ 9. **Sunsetting Positions for Fall 2025 Meetings:**

Position #487 - urges the Administration and NASA to enhance focus on research for water resources applications and promote long term engagement with the WSWC

Position #488 - expressing support for implementation of the SECURE Water Act
10. **Other Matters**
- K WSWC Testimony - House Natural Resources Sub. on Water, Wildlife and Fisheries

Adjourn by 10:00 a.m.

AGENDA
WATER QUALITY COMMITTEE

The Cliff Lodge
Snowbird, Utah

June 11, 2025

Call to Order at: 10:00 a.m. (Mountain Daylight Time)
Conducting: Jennifer Zygmunt, Wyoming

Room: Superior

TAB

- | | | |
|----------|----|--|
| | 1. | Welcome and Introductions |
| | 2. | Approval of Minutes |
| C | 3. | Sunsetting Positions |
| | | Position #484 - regarding Hydraulic Fracturing |
| | 4. | Utah Water Quality Issues – John Mackey |
| L | 5. | EPA Updates – Council Staff and Roger Gorke |
| M | | a. WOTUS |
| | | b. CWA §401 |
| | 6. | Roundtable – Current State Challenges and Opportunities |
| G | 7. | FY2025-2026 Committee Work Plan – Jennifer Zygmunt |
| XYZ | 8. | Sunsetting Positions for Fall 2025 Meetings – Jennifer Zygmunt |
| | | Position #486 - related to EPA exercise of authority under Section 404(c) of the Clean Water Act |
| | 9. | Other Matters |
| 11:00 am | | Adjourn |

AGENDA

LEGAL COMMITTEE

The Cliff Lodge
Snowbird, Utah

June 11, 2025

Call to Order at: 11:00 am (Mountain Daylight Time)
Conducting: Chris Brown, Wyoming

Room: Superior

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Positions – None**
4. **Utah Legal Issues – Teresa Wilhelmsen and Mark Stratford**
- N 5. **Judicial Water Education – Alf Brandt, Dividing the Waters**
6. **Roundtable: State Challenges and Opportunities**
- G 7. **FY2025-2026 Committee Work Plan**
- O 8. **Staff Updates – Michelle Bushman**
 - a. Legislation and Litigation Update
 - b. WSWC-NARF Symposium
 - c. Western Water Cooperative Committee
- XYZ 9. **Sunsetting Positions for Fall 2025 Meetings -**

Position #489 - supporting legislation requiring the federal government to pay state filing fees in state general stream adjudications
10. **Other Matters**
- 12:00 pm Adjourn

**AGENDA
EXECUTIVE COMMITTEE**

The Cliff Lodge
Snowbird, Utah

June 11, 2025

Call to Order at: 12:00 a.m. (Mountain Daylight Time)
Conducting: Julie Cunningham, Chair

Room: Cirque

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- D 3. **Report on Budget and Finances** – Tony Willardson
- C 4. **Sunsetting Positions**
 - Position #482 - Preservation of Radio Frequencies necessary for Weather forecasting and Water Management
 - Position #483 - supporting Strengthening the Resiliency of Our Nation to the Impacts of Extreme Weather Events
 - Position #484 - regarding Hydraulic Fracturing
 - Position #485 - urging the Administration and Congress to Support Water Research and Development Programs at the Department of Energy National Laboratories
- E 5. **Executive Director's Report/WSWC Activities and Events** – Tony Willardson
- F 6. **Future WSWC Meetings**
7. **New Executive Director Search** – Julie Cunningham
- B 8. **Council Membership Update** – Tony Willardson
- G 9. **Draft FY2025-2026 Committee Work Plan**
- XYZ 10. **Sunsetting Positions for Fall 2025 Meetings** – #486-#489
 - Position #486 related to EPA exercise of authority under Section 404(c) of the Clean Water Act
 - Position #487 urges the Administration and NASA to enhance focus on research for water resources applications and promote long term engagement with the WSWC
 - Position #488 expressing support for implementation of the SECURE Water Act
 - Position #489 supporting legislation requiring the federal government to pay state filing fees in state general stream adjudications
10. **Other Matters**
- 1:15 p.m. **Adjourn**

WESTERN STATES WATER COUNCIL
WSWC 2025 Summer (207th) Meetings - WSWC Strategic Direction Facilitated Discussion
Wednesday, June 12, 2025, 1:30PM – 5:30PM
AGENDA

Meeting objectives:

1. Build on previous strategic direction engagement activities and identify topics to focus on in the coming year.
2. Inform the development of an annual road map and process to advance WSWC priority topics.

1:30PM Welcoming and Setting Intention

Purpose: Reengage members and build on the ongoing WSWC strategic direction discussion.

1:40 Recap of Members Input on Strategic Direction and Next Steps

Purpose: Share opportunities for change based on member input from the survey and April meeting

1:50 Panel Sharing: WSWC History

Purpose: Hear from past Chairs/Members about WSWC's accomplishments and insights on future direction.

2:30 Developing WSWC Strategic Direction for 2025-26

Purpose: Review all topics identified by members in the survey and prioritize THREE key focus areas for the next year of meetings

3:30 Short Break

3:45 Implementation Considerations

Purpose: Identify specific steps to engage with the three priority topics.

4:45 Planning Ahead for a New Leadership

Purpose: Solicit input from members to help inform the search process for a new Executive Director.

5:15 Next Steps and Reflections

Purpose: Reflect on the strategic direction process to shape future member engagement.

5:30PM Adjourn

AGENDA
207th COUNCIL MEETING

The Cliff Lodge
Snowbird, Utah

June 12, 2025

Call to Order at: 8:00 a.m. (Mountain Daylight Time)
Conducting: Julie Cunningham, Chair

Room: Superior

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
3. **Committee Reports – Action Items**
 - a. Water Resources Committee – Anna Pakenham Stevenson
 - b. Water Quality Committee – Jennifer Zygmunt
 - c. Legal Committee – Chris Brown
 - d. Executive Committee – Julie Cunningham
4. **WestFAST Report –**

BREAK Photo Session

P 5. **New Mexico Integrated Water Financing Plan** – Tanya Trujillo, Erica Gaddis, Roger Gorke, Michelle Bushman

F 6. **Future Council Meetings** – Roger Gorke, EPA Office of Water

7. **State Reports**

XYZ 8. **Sunsetting Positions for Fall 2025 Meetings** – #486-#489

Position #486 related to EPA exercise of authority under Section 404(c) of the Clean Water Act

Position #487 urges the Administration and NASA to enhance focus on research for water resources applications and promote long term engagement with the WSWC

Position #488 expressing support for implementation of the SECURE Water Act

Position #489 supporting legislation requiring the federal government to pay state filing fees in state general stream adjudications

9. **Other Matters**

Noon **Adjourn**



WESTERN STATES WATER COUNCIL

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Web Page: www.westernstateswater.org

MEMORANDUM

TO: Council Members

FROM: Tony Willardson, Executive Director

DATE: May 13, 2025

RE: **30-Day Notice of the Summer 2025 (207th) WSWC Meetings**

This memorandum is notice that the Western States Water Council (WSWC) Summer (207th) Meetings and 60th Anniversary will be held at the Cliff Lodge in Snowbird, Utah on June 10-12. The Cliff Lodge is located up Little Cottonwood Canyon at 9320 S. Cliff Lodge Drive, Snowbird, UT 84092. **Our room block deadline at the Cliff Lodge is May 14, 2025.** If you have not done so, please make your room reservations immediately, even if your current plans to attend are uncertain and may change. Virtual meeting attendance will be accommodated.

Consistent with our rules of organization, any external policy positions to be proposed for Council consideration must be included with the 30-day notice. Four positions adopted on August 5, 2022, are scheduled to sunset at this meeting unless renewed:

[Position #482](#) - regarding Radio Frequencies Bandwidth

[Position #483](#) - strengthening the Resiliency of Our Nation to the Impacts of Weather Events

[Position #484](#) - regarding Hydraulic Fracturing

[Position #485](#) - supporting Water Research and Development Programs at DOE National Labs

The sunseting positions are available for review on our [website](#). In keeping with our usual practice, we encourage you to consult with your respective Governor's office and Western Governors' Association Staff Advisory Council (SAC) member regarding the proposed and sunseting positions. Any recommended changes will be considered during the Full Council meeting on June 12.

Please note that the Executive Committee will meet virtually (TBD) to discuss these policy resolutions and any recommended revisions. Committee Chairs are also invited to participate. Zoom meeting information will be provided separately. In the event an Executive Committee member is unable to join the call, they may designate an alternate to participate and engage in the discussion by so advising via email.

For those attending the Utah meetings in person, please register no later than May 14. All meeting participants, whether attending in-person or virtually, must register in advance on our [meetings webpage](#). There is no registration fee to attend our meetings, or field trip. For virtual participants, please note that on the Zoom registration form you will need to mark each session that you plan to attend, and you will receive an email confirmation for the meetings that contains a link to join. Do not share the link

received in the email, as it will be unique to you. If you are aware of anyone else wishing to participate remotely, please advise them to go to our meetings webpage to register for themselves.

On Tuesday, June 10, our Utah hosts have arranged a full day field trip. Further details will be forthcoming.

On Wednesday, June 11, the Council meetings will begin with Utah's State Presentation at 8:00 am (MDT), followed by abbreviated committee meetings. Please note the committee meetings have been shortened to one hour each to accommodate an extended facilitated discussion on the Council's future strategic directions on Wednesday afternoon beginning at 1:30 pm. Attached is a schedule of meetings for your reference. All times listed are Mountain Daylight Time (MDT).

A Wednesday evening reception sponsored by SWCA Environmental Consultants and Smith Hartvigsen PLLC celebrating the 60th Anniversary of the WSWC will be held for all WSWC members and guests from 6:00 - 9:00 pm.

The Full Council meeting will be held on Thursday morning, June 12, from 8:00 am to noon.

Additional meeting information and agenda details as they are available will be posted online at: <https://westernstateswater.org/events/2025-wswc-summer-207th-meetings-and-60th-anniversary-snowbird-utah/>.

We look forward to seeing most of you in person! Please contact me with any questions at twillardson@wswc.utah.gov.

Tab B – Membership List

WESTERN STATES WATER COUNCIL

MEMBERSHIP LIST

June 3, 2025

OFFICERS

Chair - **Julie Cunningham**
Vice-Chair - **Earl Lewis**
Secretary-Treasurer - **Candice Hasenyager**

STAFF

Executive Director - **Tony Willardson**
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Policy Analyst - **Elysse Campbell**
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**Executive Committee Member

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

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Vacant - Alaska
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Jeanine Jones - California
Lauren Ris - Colorado
Mat Weaver - Idaho
Jerry Rigby - Idaho
(Alternate)
Earl Lewis - Kansas
(**Vice-Chair**)
Anna Pakenham Stevenson - Montana
Jesse Bradley - Nebraska
Adam Sullivan - Nevada
Tanya Trujillo - New Mexico
Reice Haase - North Dakota
Julie Cunningham - Oklahoma
(**Chair**)
Sara Gibson - Oklahoma
(Alternate)*
Doug Woodcock - Oregon
Hunter Roberts - South Dakota
Nakaila Steen- South Dakota
(Alternate)*
Brooke Paup - Texas
Candice Hasenyager - Utah
Todd Stonely - Utah
(Alternate)*
Ria Berns - Washington
Brandon Gebhart - Wyoming
Jeff Cowley - Wyoming
(Alternate)*

Management Subcommittee

Julie Cunningham
(**Chair**)
Earl Lewis
(**Vice-Chair**)
Candice Hasenyager
(**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.

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Thomas Mooney-Myers - Alaska
Ayesha Vohra - Arizona
Kelly Brown - Arizona
(Alternate)*
Jeanine Jones - California
Jason Ullmann - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho
(Alternate)*
Vacant - Kansas
Jay Weiner - Montana
Justin Lavene - Nebraska
Vacant - Nevada
Nathaniel Chakeres - New Mexico
Vacant - North Dakota
Sara Gibson - Oklahoma
(Vice-Chair)
Vacant - Oregon
Nakaila Steen - South Dakota
Hunter Roberts - South Dakota
(Alternate)*
Vacant - Texas
Teresa Wilhelmsen - Utah
Mark Stratford - Utah
(Alternate)*
Stephen North - Washington
Chris Brown - Wyoming
(Chair)

Clean Water Act Jurisdiction

Non-Tribal Federal Water Needs Subcommittee

Tom Barrett - Alaska
Jay Weiner - Montana
Adam Sullivan - Nevada
Kathy Alexander - Texas
Chris Brown - Wyoming

Micheline Fairbanks (ex-officio member)

Ex-Officio Representatives

BLM - Ronald McCormick
David Hu
Paula Cutillo
BOR - Arthur Coykendall
DOD - Lauren Dempsey
DOJ - Stephen Bartell
USFS - Michael Eberle
Chris Carlson
USFWS - Michael Higgins
USGS - Timothy McHale
NPS - Peter Fahmy
Ed Harvey

Tribal Reserved Water Rights Subcommittee

Jay Weiner - Montana
Teresa Wilhelmsen - Utah

WRDA/Corps Policies

Tom Stiles - Kansas
Kathy Alexander - Texas

WATER QUALITY COMMITTEE

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Trevor Baggione - Arizona
E. Joaquin Esquivel - California
Betty Olson - California
(Alternate)*
Trisha Oeth - Colorado
Jojo La - Colorado
(Alternate)*
Jess Byrne - Idaho
Tom Stiles - Kansas
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Lindsey Krywaruchka - Montana
Vacant - Nebraska
Jennifer Carr - Nevada
John Rhoderick - New Mexico
David Glatt - North Dakota
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Brooke Paup - Texas
John Mackey - Utah
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Jennifer Zygmunt - Wyoming
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Abandoned Mines Subcommittee

Trevor Baggione - Arizona
Jennifer Carr - Nevada

Clean Water Act Subcommittee

Tom Stiles - Kansas
Jennifer Carr - Nevada
Allison Woodall - Texas
Lauren Driscoll - Washington

Maui Subcommittee

John Mackey - Utah
Jennifer Zygmunt - Wyoming

Nutrients Subcommittee

Jojo La - Colorado
Tom Stiles - Kansas
John Mackey - Utah
Jennifer Zygmunt - Wyoming

PFAS Subcommittee

Jojo La - Colorado
Brittany Duarte - Washington
Jennifer Zygmunt - Wyoming

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Tom Stiles - Kansas

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Ria Berns - Washington
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Climate Adaptation and Drought Subcommittee

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Ex-Officio Representatives

Corps - Rolf Olsen
NRCS - Mike Strobel

Pumped Storage Subcommittee

Sara Gibson - Oklahoma
Jennifer Zygmunt - Wyoming

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
Candice Hasenyager - Utah

Ex-Officio Representatives

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

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Chris Brown - Wyoming (**Chair**)

WATER QUALITY COMMITTEE

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June 2025

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Tab C – WSWC Policy Positions



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
on the
PRESERVATION OF RADIO FREQUENCIES
NECESSARY FOR WEATHER FORECASTING AND
WATER MANAGEMENT**

**Polson, Montana Snowbird, Utah
August 5, 2022 June 12, 2025**

WHEREAS, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

WHEREAS, the WSWC's mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future; and

WHEREAS, in 2021, Congress created the Broadband Equity, Access, and Deployment (BEAD) program under the Infrastructure Investment and Jobs Act (P.L. 117-58) to expand Americans' access to high-speed internet the Administration has launched a \$45 Billion "Internet for All" Initiative to Connect Everyone in America; and

WHEREAS, National Telecommunications and Information Administration (NTIA) carries out the BEAD program, sets policy regarding allocations and regulations governing the federal spectrum use, assigns frequencies, and participates in all aspects of the Federal government's communications related emergency readiness activities; and

WHEREAS, the Federal Communications Commission has been aggressively engaged in efforts to make as many frequencies of the radio spectrum as possible available for commercial broadband and wireless technologies, licensed and unlicensed; and

WHEREAS, legislation has been introduced that would require an estimation of the value of the electromagnetic spectrum assigned or otherwise allocated to federal entities, between 3 kHz and 95 GHz; and

WHEREAS, a proposed basis for estimation is "the value that the electromagnetic spectrum would have if the spectrum were reallocated for the use with the highest potential value of licensed or unlicensed commercial wireless services that do not have access to that spectrum as of the date of the estimate...while preserving the spectrum access necessary to satisfy mission requirements and operations of Federal entities;" and

WHEREAS, much of the nation's data for emergency and administrative information on weather, river and streamflows, groundwater and forest fires are transmitted from remote platforms to satellites (GOES and POES) and then to "direct receive or downlink" stations on the 1675-1710 MHz range of the spectrum; and

WHEREAS, Earth-observation satellites use several radio frequency bands tied to the physical properties of the scientific measurements, including water vapor (23.8 GHz), rain and snow (36-37 GHz), atmospheric temperature (50.2 – 50.4 GHz), clouds and ice (86 – 92 GHz) and others; and

WHEREAS, sharing bandwidth, or noise from adjacent bands on the spectrum with inadequate controls, has the potential to interfere with the quality, accessibility, and utility of Earth-observation satellite data and data collected and transmitted from remote platforms on earth to satellites; and

WHEREAS, significant public and private funds have been invested to establish our satellite and ground networks, many of which would be costly to replace, and some of which are irreplaceable; and

WHEREAS, the serious, unintended consequences of data interference may include degradation in short-term weather forecasts; loss of data for streamgaging and water monitoring networks; ability of state and federal agencies to prepare for and respond to floods, fires, and extreme weather events; the ability of western states to administer and manage their scarce water resources and water quality programs; and risks of loss to human life, health, welfare, property, and environmental and natural resources.

NOW, THEREFORE, BE IT RESOLVED that the ~~Western States Water Council~~WSWC supports efforts to preserve frequencies needed for weather forecasting, streamgaging, and related water and emergency management information needs.

BE IT FURTHER RESOLVED that the ~~Council~~WSWC supports interagency coordination between the NTIA, FCC, NOAA, USGS and other state and federal agencies, to quantify and analyze the effects of commercial broadband use on satellite observation data and transmissions.

BE IT FURTHER RESOLVED that the ~~Council~~WSWC supports a meaningful evaluation of the existing government and potential alternative uses of the electromagnetic spectrum without discounting the costs of natural disasters and degradations in data needed for water management decisions, and with input from the States as appropriate.

*(See also Position No. 482, August 5, 2022,
and No. 434, July 18, 2019)*



**POSITION STATEMENT
of the
WESTERN STATES WATER COUNCIL
in support of
STRENGTHENING THE RESILIENCY OF OUR NATION
TO THE IMPACTS OF EXTREME WEATHER EVENTS**

**Snowbird, Utah
June 12, 2025**

WHEREAS, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

WHEREAS, the WSWC's mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future; and

WHEREAS, the West and the Nation continue to suffer the effects of increasingly extreme weather events, including tornadoes, hurricanes, extreme precipitation, flooding and drought, resulting in the loss of life and economic, social, and environmental damages; and

WHEREAS, Western States ~~have recently~~ continue to experienced extreme seasonal and year-to-year weather volatility that has brought ~~record or near-record events with~~ floods, followed by drought and wildfires, as well as devastating tornadoes, all threatening public safety and property, and often taxing the capacity of our aging water infrastructure; and

WHEREAS, ~~widespread flooding along many western rivers and streams, including the Clark Fork, Flathead, James, Tanana, Yellowstone, and others, extreme precipitation events~~ have demonstrated the continuing need for more flood control capacity and early warning systems, with timely and accurate forecasts; and

WHEREAS, there is a need for developing new monitoring technologies such as remote sensing that provide more timely data availability and better spatial coverage for assessing flooding and drought impacts; and

WHEREAS, prolonged drought increasingly afflicts the West and the Nation, and affects the performance of interstate compacts and international treaties; and

WHEREAS, extreme prolonged drought has ~~plagued led to the cooperative development and implementation of the Drought Contingency Plans (DCPs) by the Seven~~ Colorado and Rio Grande River Basin States, the United States and Mexico, ~~prompting and calls by the Department of the Interior~~ for further reductions in water use; and

WHEREAS, flood control, drainage and other water resource issues also involve relations with Canada, including negotiations over renewing the Columbia River Treaty; and

WHEREAS, present water resources planning and sound decision-making depends on our ability to understand, monitor, predict, and adapt to droughts, floods, extreme storms, and other weather events; and

WHEREAS, in the West, sound decisionmaking demands accurate and timely data on precipitation, temperature, soil moisture, snow depth, snow water content, streamflow, and similar information; and

WHEREAS, investments in observations, research, forecasting, and monitoring the development of extreme weather events provide an opportunity to significantly improve real-time water rights administration, planning and project design, and operations to maximize storage, avoid or minimize the loss of life and property, as well as mitigate economic and environmental damages; and

WHEREAS, the Weather Research and Forecasting Innovation Act of 2017 was reauthorized in 2019, together with the National Integrated Drought Information System Act, ~~and but reauthorization of both are soon due for reauthorization~~ failed to clear the Senate in the last 118th Congress; and

WHEREAS, the FY2026 Office of Management and Budget “Passback” for the National Oceanic and Atmospheric Administration (NOAA) and Oceanic and Atmospheric Research (OAR) eliminates all funding for climate, weather, and ocean research and related programs, essentially eliminating OAR as a line office; and

WHEREAS, the ~~Council~~ WSWC continues to support NOAA’s National Integrated Drought Information System, and reauthorization and implementation of the Weather Research Act, and emergency drought response authorities for the Bureau of Reclamation and other federal agencies; and

WHEREAS, a National Academy of Sciences’ report suggests a pathway and 10-year research agenda for advancing our capabilities with a vision of a decade from now using subseasonal to seasonal (S2S) forecasts as widely as we now use 5-10 day weather forecasts; and

WHEREAS, the ~~Council~~ WSWC has urged NOAA to implement the western and midwestern pilot projects for improving S2S precipitation forecasting contained in its 2020 report to Congress pursuant to the Weather Research Act; and

WHEREAS, NOAA has allocated minimal resources for improving the skill of S2S forecasts (forecasts extending from 3 weeks to 2 years); and

WHEREAS, western states’ precipitation originates as storms moving over the Pacific Ocean and Gulf of Mexico, and the absence of key ocean observations constrains the ability to improve the skill of precipitation forecasting at near-term weather and S2S timescales; and

WHEREAS, advances in weather forecasting and research, such as that of NOAA’s Hydrometeorological Testbed program on West Coast atmospheric rivers, demonstrate the potential for improving extreme event forecasting at the operational time scale; and

WHEREAS, the ~~Council~~WSWC has supported development of an improved observing system for western extreme precipitation events, to aid in monitoring, prediction, and climate trend analysis associated with extreme storms; and

WHEREAS, there is a need for maintaining and improving existing monitoring networks that help provide early warning as well as tracking impacts of extreme events; and

WHEREAS, there is a need for improving precipitation forecasting at all time scales to support implementation of Forecast-Informed Reservoir Operations (FIRO); and

WHEREAS, there is a continuing need for greater collaboration between and among federal agencies, state agencies, local governments, non-governmental organizations and public/private organizations and businesses.

NOW THEREFORE BE IT RESOLVED, that the ~~Western States Water Council~~WSWC supports as a high priority appropriate federal appropriations and actions to plan, prepare for and avoid, minimize or mitigate the impacts of extreme weather events, including implementing the S2S forecasting pilot project^s recommended in NOAA's report to Congress and implementing NOAA's proposed Precipitation Prediction Grand Challenge.

BE IT FURTHER RESOLVED that the ~~Western States Water Council~~WSWC also supports legislation advancing the goals of: (1) minimizing the loss of life and property and economic, environmental and social cost from extreme weather events; (2) improving collaboration and coordination among agencies and organizations at all levels; (3) increasing consultation with state, local and tribal governments; (4) maintaining and enhancing data gathering and monitoring, as well as communication capabilities, identifying and addressing gaps and overlap; (5) identifying and addressing federal agency responsibilities, as well as regulatory and other preparedness and response barriers, (6) recognizing and addressing regional differences; and (7) advancing research within the physical sciences, and dynamical and statistical modeling to improve our S2S forecasting capabilities.

BE IT FURTHER RESOLVED that the ~~Western States Water Council~~WSWC pledges to work with the Administration and the Congress to appropriately address current and future needs to improve ~~S2S forecasting and~~ extreme events response and resiliency and S2S forecasting.

*(See also Position No. 483, 8/5/22; No. 435, 7/18/19;
No. 392, 7/15/16; and No. 352, 6/26/13)*



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
HYDRAULIC FRACTURING**

~~Polson, Montana~~Snowbird, Utah
~~August 5, 2022~~June 12, 2025

WHEREAS, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

WHEREAS, the WSWC's mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future; and

WHEREAS, hydraulic fracturing is a process that injects sand, water, and other fluids, including various chemical compounds, underground to aid in the extraction of oil and natural gas; and

WHEREAS, hydraulic fracturing has been used for over 60 years in oil and gas production, with over one million wells having been fractured in the United States alone; and

WHEREAS, states have primary and exclusive authority over the allocation and administration of rights to the use of water used in hydraulic fracturing operations; and

WHEREAS, states have decades of experience, knowledge, and information regulating hydraulic fracturing and other oil and gas activities, and making decisions regarding the protection of their water resources; and

WHEREAS, states are best positioned to regulate hydraulic fracturing because of their understanding of regional and local conditions and their ability to tailor regulations to fit the needs of the local environment.

NOW, THEREFORE, BE IT RESOLVED, that federal efforts involving hydraulic fracturing, including efforts to study potential adverse impacts on water quantity and quality, should leverage state knowledge, experience, policies, and regulations.

BE IT FURTHER RESOLVED, that federal efforts to study the potential impacts of hydraulic fracturing on water resources should be based upon sound science and driven by states' research and policy priorities.

BE IT FURTHER RESOLVED, that the ~~Western States Water Council-WSWC~~ opposes any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.

*(See also Position No. 484, 8/5/22;
No. 436, 7/18/19; No. 393, 7/15/16; and No. 353, 6/26/13)*



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
urging the
ADMINISTRATION AND CONGRESS
TO SUPPORT WATER RESEARCH AND DEVELOPMENT PROGRAMS
at the
DEPARTMENT OF ENERGY NATIONAL LABORATORIES**

**Snowbird, Utah
June 12, 2025**

WHEREAS, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

WHEREAS, the WSWC's mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future; and

WHEREAS, the ~~Western States Water Council~~ WSWC has long recognized that water and energy resources are interdependent – using one requires the other – and this presents a particular challenge in the West, where energy demand continues to rise while water supplies are increasingly stressed; and

WHEREAS, integrating, protecting, and wisely managing our national water and energy resources for the benefit of our present and future generations, is increasingly important; and

WHEREAS, one purpose of the ~~Western States Water Council~~ WSWC is to accomplish effective cooperation among western states (and our federal partners) in the conservation, development and management of water resources; and

WHEREAS, a second purpose of the ~~Western States Water Council~~ WSWC is to maintain vital state prerogatives, while identifying ways to accommodate legitimate federal interests; and

WHEREAS many watersheds are already fully-appropriated, and new stresses are emerging from climate, population growth, land use changes and water needs for energy development and production; and

WHEREAS, there is growing concern, particularly in the Arid West, over our ability to continue to supply water of adequate quality in quantities needed to sustain current and future uses, including energy, as well as agricultural, municipal and environmental uses; and

WHEREAS, the failure to provide for such needs would have significant regional and national consequences; and

WHEREAS, the Presidential Memo on the Recission of Useless Water Pressure

Standards issued on May 9, 2025 directs the Secretary of Energy to rescind regulations relating to energy efficiency and water conservation requirements for household water use, including the potential elimination of the Energy Star program; and

WHEREAS, more than 1,000 hyperscale (>10,000 sq. ft.) data centers have been built in the U.S. to accommodate the recent expansion of artificial intelligence, with an additional 120-130 new centers expected each year, each presenting a significant demand on water resources; and

WHEREAS, there is growing interest in renewable geothermal energy, and hydrothermal resources are primarily found in arid western states; and

WHEREAS, present water and energy resources planning and sound future decision-making depends on our ability to understand, monitor, anticipate and adapt to changing conditions; and

WHEREAS, electricity generation and other energy development is a significant driver of present and future water demands and the expertise and research of the national labs can supplement and enhance the ability of state, local and tribal water managers to understand and develop adaptation strategies; and

WHEREAS, water-related research at the Department of Energy's Office of Energy Efficiency and Renewable Energy, Office of and National Laboratories has included:

- exploring the energy-water nexus;
- highlighting energy-water-carbon nexus challenges and opportunities;
- developing unique multisector and multiscale model frameworks to address critical planning and operational decisions at the energy-water-land nexus;
- evaluating synergies between energy and water infrastructure to improve reliability and resiliency;
- understanding interactions among atmospheric particles, clouds, the land surface, and human activities;
- providing decision science, support and informatics for balancing water supply and demands;
- developing domestic water use projections;
- decreasing water and energy demands through efficient use;
- promoting sustainable groundwater management and storage opportunities while reducing cost and energy demands and insuring water quality;
- advancing next-generation hydropower and pumped storage systems;
- modernizing irrigation;
- increasing the safety, security, and sustainability of water infrastructure through the development of advanced technologies that create new water supplies;
- improving desalination membranes;
- managing water in a low-to-no snow future; and
- conducting research and development in hydrogen production, delivery, and storage for multiple end uses.

WHEREAS, such research should be guided by state needs as expressed in state water

and energy planning documents and through state planning processes with a focus on water resource demands and water quality impacts; and

WHEREAS, in the West, States in compliance with State law have exclusive authority over the appropriation and adjudication of water rights for all uses, and the allocation of water for energy development, including the determination of whether or not there is any unappropriated water available for use.

NOW, THEREFORE, BE IT RESOLVED that the ~~Western States Water Council~~WSWC urges the Administration and the Congress to recognize the value of Department of Energy hosted energy-water programs and research conducted at National Laboratories undertaken in collaboration with state water resources agencies, including but not limited to work at: the Idaho National Laboratory (INL); Lawrence Berkeley and Lawrence Livermore National Laboratories in California; Los Alamos and Sandia National Laboratories in New Mexico; the National Renewable Energy Laboratory (NREL) in Colorado; and Pacific Northwest National Laboratory (PNNL) in Washington, that collaboratively links federal energy research programs and water issues of concern to the western states.

BE IT FURTHER RESOLVED that the ~~Western States Water Council~~WSWC urges the Administration and the Congress to encourage collaboration and cooperation between the National Laboratories and other federal agencies, including but not limited to the National Oceanic and Atmospheric Administration (NOAA), U.S. Bureau of Reclamation (USBR) and U.S. Geological Survey (USGS) to leverage federal expertise and resources (including supercomputing power; climate and precipitation site sensitivity analysis; systems analysis, integration, and security, etc.) in addressing the Nation's water-related challenges.

BE IT FURTHER RESOLVED that the ~~Western States Water Council~~WSWC urges the Administration and the Congress to recognize the primary role of the States in allocating water for energy.

(See also Positions No. 485, 8/5/22; No. 437, 7/18/19; No. 395, 7/15/16; No. 355, 6/26/13; and No. 324, 7/23/10)

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.)
531	WQ	4/25/2025	regarding Clean Water Act Jurisdiction
530	L	4/25/2025	regarding Migratory Birds and the Management of State Water Rights and Resources
529	WR	4/25/2025	supporting Renewable Hydropower Development
528	WR	4/25/2025	supporting Rural Water Infrastructure Needs & Projects
527	WQ	4/25/2025	regarding the Extension of NPDES Permit Terms
526	WQ	10/23/2024	regarding Abandoned Hardrock Mine Cleanup
525	L	10/23/2024	regarding States' Water Rights and Natural Flows
524	WR	10/23/2024	regarding Bureau of Reclamation Drought Response Program
523	WR	10/23/2024	regarding Drought Preparedness, Prediction and Early Warning Programs
522	WR	10/23/2024	regarding Federal Water and Climate Data Collection and Analysis Programs
521	WQ	10/23/2024	supporting State Clean Water Act Section 401 Certification Authority
520	L	7/26/2024	regarding Endangered Species and State Water Rights
519	WQ	7/26/2024	regarding Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits
518	WR	7/26/2024	regarding the Rural Water Supply Project/Infrastructure Needs
517	WQ	7/26/2024	regarding State Nutrient Reduction Strategies
516	L	3/14/2024	regarding the Dividing the Waters program
515	L	3/14/2024	on State primacy over groundwater
514	L	3/14/2024	supporting universal access to reliable, clen drinking water for federally recognized Indian tribes and Alaska native communities
513	WR	3/14/2024	supporting federal research on climate adaptation
512	WR	3/14/2024	regarding water and energy planning and policy
511	WR	3/14/2024	supporting water infrastructure funding
510	WR	3/14/2024	supporting weather station networks
509	WR	3/14/2024	supporting the use of Forecast Informed Reservoir Operations and Innovations
508	WR	3/14/2024	regarding probable maximum precipitation standards
507	L	9/14/2023	outlining actions Federal agencies should take to expedite State General Stream Adjudications
506	WQ	9/14/2023	asserting state primacy on Protecting Ground Water Quality
505	WR	9/14/2023	supporting U.S. Department of Agriculture (USDA) Conservation Programs and Water Resources
504	L	9/14/2023	supporting Indian Water Rights Settlements
503	WR/E	5/24/2023	regarding water-related federal rules, regulations, directives, orders and policies
502	WR	5/24/2023	support federal authorization and financial support through the U.S. Geological Survey (USGS) for State Water Resources Research Institutes
501	WR	5/24/2023	requests Congress fully appropriate receipts accruing to the Reclamation Fund for their intended purpose
500	WR	5/24/2023	supporting NOAA data, forecasting, and research programs
499	L	5/24/2023	opposes any federal legislation intended to preempt state water law
498	WR	5/24/2023	supporting national dam safety programs
497	WR	5/24/2023	regarding the rural water and wastewater project/infrastructure needs and U.S. Department of Agriculture programs
496	WQ	5/24/2023	regarding the clean and drinking water state revolving funds and state and tribal assistance grants
495	WR	5/24/2023	regarding the National Levee Safety Act of 2007, levees and canal structures
494	WR	5/24/2023	regarding the transfer of federal water and power projects and related facilities
493	WR	5/24/2023	regarding the Reclamation Safety of Dams Act of 1978
492	WR	5/24/2023	regarding the Bureau of Reclamation's maintenance, repair and rehabilitation needs
491	WR	5/24/2023	urging Congress to support subseasonal to seasonal weather research, forecasting, and innovation
490	WQ	5/24/2023	water quality standards and federal reserved treaty rights for tribes
489	L	10/21/2022	supporting legislation requiring the federal government to pay state filing fees in state general stream adjudications
488	WR	10/21/2022	expressing support for implementation of the SECURE Water Act
487	WR	10/21/2022	urges the Administration and NASA to enhance focus on research for water resources applications and promote long term engagement with the WSWC
486	WQ	10/21/2022	related to EPA exercise of authority under Section 404(c) of the Clean Water Act,
485	WR	8/5/2022	urging the Administration and Congress to Support Water Research and Development Programs at the Department of Energy National Laboratories
484	WQ	8/5/2022	regarding Hydraulic Fracturing
483	WR	8/5/2022	supporting Strengthening the Resiliency of Our Nation to the Impacts of Extreme Weather Events
482	WR	8/5/2022	on the Preservation of Radio Frequencies necessary for Weather forecasting and Water Management

Sunsetted Positions

2022

#472 Regarding Clean Water Act Jurisdiction (*superseded by more recent position*)

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 a permanent mission statement, A Vision of Water*)

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



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

June 6, 2025

MEMO: Executive Committee
FROM: Executive Director
RE: FY2024-2025 Budget and WestDAAT 2.0-WestCAT Status Report

With regard to the budget, this has been an unusual year. In September, the WSWC signed a WaterSMART grant award agreement for the development of a Western States Water Conservation Application Tool (WestCAT) that gave us access to \$400,000 to be at least equally matched by the WSWC. After extensive discussion, the Executive Committee agreed to commit \$200,000 from our financial reserves towards this match, but directed that the funds focus on related required updates to our Western States Data Access and Analysis Tool (WestDAAT 2.0). The remainder of the match has largely come from allowed pre-award costs previously funded by our philanthropic partners.

WestDAAT 2.0 and WestCAT development was accelerated by our IT contractor, Don't Panic Labs (DPL) and both are now operational. Our \$400,000 WaterSMART grant and the WSWC's commitment of \$200,000 from reserves for WestDAAT 2.0 updates, have all been expended. As you know, the Trump Administration in January announced a freeze on all federal grants, but shortly thereafter released the hold pending further review. At that time, in order to ensure we could pay DPL, we began drawing funds from our Treasury ASAP account (WaterSMART grant) to cover anticipated DPL charges. Both our income and expenses for the current fiscal year have been affected.

Rather than the \$200,000 budgeted from the WaterSMART grant, we have now drawn the entire \$400,000 and that has been applied towards WestCAT development and tasks related to connecting WaDE 2.0 and WestCAT. Our DPL charges for WestCAT total \$325,750 and \$86,610 to address key crossover questions, plus another \$229,400 for WestDAAT 2.0. The grand total for both is \$641,760 compared to \$600,000 committed (and we had budgeted \$350,000 this year for both). The additional expense has been more than offset by support from our philanthropic partners BHP/Duke and savings related to Ryan's salary and benefits, as he has been working half time since October.

Given the accelerated development of WestCAT and WestDAAT 2.0, less staff time was available for work with the Lincoln Land Institute under an agreement to develop a Water Data Hub for the U.S. Bureau of Reclamation and our receipts are therefore under budget by some \$32,000.

With respect to other income, all member states paid their dues (\$648,000), which funds the bulk of the WSWC's core operations. We have already begun to receive some pre-payment of FY2025-2026 dues.

The WSWC's reserve funds are held and invested in the Utah Public Treasurers' Investment Fund (PTIF) and interest for the current fiscal year is expected to be \$53,404.13. This includes interest on general funds from dues held pending expenditure for WSWC operations, interest on an equipment replacement fund (which has covered the cost this year of a new copier, server and computer), as well as interest on a fund to cover staff annual and sick leave payout obligations upon retirement or separation from service.

As of June 4, there was \$693,826.11 in our general PTIF reserve account, \$17,045.00 in our equipment replacement fund, and \$173,469.47 in our leave payout account.

We received more income than budgeted from WSWC meeting sponsors, and \$15,000 from the State of California for a S2S workshop held in San Diego last month that was not anticipated.

Together receipts totaled \$183,564 more than budgeted, and expenses were \$290,875 more than budgeted, leaving an estimated budget shortfall of \$107,311. In addition to the additional expenses for WestCAT and WestDAAT 2.0, a number of other expense items are also over budget, notably our annual auditor's review, contract services (including the \$20,000 committed for strategic planning), and meetings and arrangements (in part due to our annual meeting being held in June). The latter will result in savings next fiscal year, with one less meeting. Travel expenses are also over budget.

Please let me know if you have any questions or concerns.

FY2025 Approved Budget & July-June Income and Expenses

	FY2024-25 Approved Budget	July-May Income & Expenses	WSWC Income & Expenses	WaDE Income & Expenses	Estimate Remainder FY2024-25	Total Estimate FY2024-25
<u>INCOME</u>						
Member States Assessments	\$ 648,000.00	\$ 648,000.00	\$ 648,000.00	\$ -	\$ -	\$ 648,000.00
Miscellaneous Income	\$ -	\$ 850.00	\$ 850.00		\$ -	\$ 850.00
PTIF Interest	\$ 46,400.00	\$ 50,164.13	\$ 50,164.13	\$ -	\$ 3,240.00	\$ 53,404.13
WellsFargo Interest	\$ -	\$ 22.84	\$ 22.84	\$ -	\$ 7.00	\$ 29.84
Joint Meeting Income	\$ -	\$ 5,904.43	\$ 5,904.43	\$ -	\$ -	\$ 5,904.43
Council Meeting Sponsors	\$ 6,750.00	\$ 6,750.00	\$ 6,750.00	\$ -	\$ 3,800.00	\$ 10,550.00
Symposium/Workshop Sponsors (CA S2S San Diego)	\$ -	\$ 15,000.00	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00
NARF WSWC Symposium (net)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
USBR Water SMART (\$200k/2 years)	\$ 827.00	\$ 727.03	\$ -	\$ 727.03	\$ -	\$ 727.03
Water Foundation Grant	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
BHP Foundation - Duke Year 3 close out & Year 5 funds availability	\$ 20,374.45	\$20,374.45	\$ -	\$20,374.45	\$ -	\$20,374.45
BHP Foundation - Duke Year 4/5 (\$37,500) beginning Oct. 1, 2025	\$ 37,500.00	\$ -	\$ -	\$ -	\$ 20,443.60	\$ 20,443.60
USBR Water SMART (\$400k/2 years)	\$ 200,000.00	\$ 400,000.00	\$ -	\$ 400,000.00	\$ -	\$ 400,000.00
WSWC Water SMART match	\$ 200,000.00	\$ 200,000.00	\$ -	\$ 200,000.00	\$ -	\$ 200,000.00
Lincoln Institute CSG/USBR Subcontract (thru 9/25)	\$ 80,000.00	\$ 24,514.93	\$ -	\$ 24,514.93	\$ 23,616.67	\$ 48,131.60
Thornburg Foundation et al - New Mexico	\$ 4,300.00	\$ 4,300.00	\$ 4,300.00	\$ -	\$ -	\$ 4,300.00
Other		\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL INCOME	\$ 1,244,151.45	\$ 1,376,607.81	\$ 730,991.40	\$ 645,616.41	\$ 51,107.27	\$ 1,427,715.08
						\$1,427,715.08
<u>EXPENSE</u>						
Accounting	\$ 4,000.00	\$ 4,174.71	\$ 4,174.71	\$ -	\$ 200.00	\$ 4,374.71
Annual & Sick Leave Funding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Audit	\$ 3,000.00	\$ 6,000.00	\$ 6,000.00	\$ -	\$ -	\$ 6,000.00
Contingencies	\$ 8,000.00	\$ 5,371.80	\$ 5,371.80	\$ -	\$ -	\$ 5,371.80
Contract Services (Independent Contractors)	\$ 3,500.00	\$ 5,681.25	\$ 5,681.25	\$ -	\$ 18,000.00	\$ 23,681.25
Contracted Office Maintenance	\$ 3,400.00	\$ 3,300.00	\$ 3,300.00	\$ -	\$ 300.00	\$ 3,600.00
Equipment Replacement Fund	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Furniture-Equipment	\$ -	\$ 299.23	\$ 299.23	\$ -	\$ -	\$ 299.23
Internet & Email (Comcast & UT Div. Tech Services)	\$ 5,250.00	\$ 4,969.03	\$ 4,969.03	\$ -	\$ 455.00	\$ 5,424.03
Insurance	\$ 2,200.00	\$ 1,690.00	\$ 1,690.00	\$ -	\$ -	\$ 1,690.00
Meetings & Arrangements	\$ 30,300.00	\$ 33,493.27	\$ 33,493.27	\$ -	\$ 14,500.00	\$ 47,993.27
Office Supplies	\$ 1,200.00	\$ 1,640.84	\$ 1,640.84	\$ -	\$ 100.00	\$ 1,740.84
Payroll Benefits						
Dental Insurance	\$ 3,485.00	\$ 2,764.08	\$ 2,764.08	\$ -	\$ 238.74	\$ 3,002.82
Life Insurance	\$ 328.00	\$ 299.75	\$ 239.80	\$ 59.95	\$ 27.25	\$ 327.00
LT Disability Insurance	\$ 2,182.00	\$ 1,879.00	\$ 1,520.51	\$ 358.49	\$ 162.94	\$ 2,041.94
Medical Insurance	\$ 89,362.00	\$ 67,247.84	\$ 67,247.84	\$ -	\$ 4,538.18	\$ 71,786.02
Pension	\$ 74,165.00	\$ 65,918.59	\$ 49,601.33	\$ 16,317.26	\$ 5,661.59	\$ 71,580.18
Payroll Salaries	\$ 436,263.00	\$ 370,186.00	\$ 316,714.50	\$ 53,471.50	\$ 32,587.34	\$ 402,773.34
Payroll Taxes (unemployment ins)	\$ 32,774.00	\$ 28,264.04	\$ 24,135.28	\$ 4,128.76	\$ 2,491.92	\$ 30,755.96
Pension Management	\$ 8,500.00	\$ 5,549.66	\$ 5,549.66	\$ -	\$ -	\$ 5,549.66
Postage & Freight	\$ 600.00	\$ 201.95	\$ 201.95	\$ -	\$ 100.00	\$ 301.95
Printing & Reproduction	\$ 1,200.00	\$ 525.76	\$ 525.76	\$ -	\$ 50.00	\$ 575.76
HOA Fees (w/o Property Tax)	\$ 4,500.00	\$ 3,336.00	\$ 3,336.00	\$ -	\$ 309.00	\$ 3,645.00
Property Tax	\$ 3,500.00	\$ 3,212.33	\$ 3,212.33	\$ -	\$ -	\$ 3,212.33
Storage Rent	\$ 6,505.00	\$ 5,401.00	\$ 5,401.00	\$ -	\$ 547.00	\$ 5,948.00
Reports & Publications	\$ 6,000.00	\$ 5,999.79	\$ 5,999.79	\$ -	\$ -	\$ 5,999.79
Symposium (Nat'l Water Data Workshop)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Symposium (CDWR-S2S)	\$ -	\$ 12,569.53	\$ 12,569.53	\$ -	\$ -	\$ 12,569.53
Symposium (WSWC / NARF)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Telephone (UBS)	\$ 1,750.00	\$ 1,540.00	\$ 1,540.00	\$ -	\$ 140.00	\$ 1,680.00
Travel	\$ 36,700.00	\$ 37,792.81	\$ 37,792.81	\$ -	\$ 3,500.00	\$ 41,292.81
Utilities (Questar & Murray Power)	\$ 1,500.00	\$ 1,644.31	\$ 1,644.31	\$ -	\$ 150.00	\$ 1,794.31
Other - Software & Licensing	\$ 15,987.00	\$ 11,488.40	\$ 3,095.01	\$ 8,393.39	\$ 1,000.00	\$ 12,488.40
WaDE Accelerator & Consulting (DPL)	\$ 8,000.00	\$ 7,640.00		\$ 7,640.00	\$ -	\$ 7,640.00
WestDAAT 2.0 Update (DPL)	\$ -	\$ 229,400.00		\$ 229,400.00	\$ -	\$ 229,400.00
WestCAT Key Crossover Questions (DPL)	\$ -	\$ 86,610.00		\$ 86,610.00	\$ -	\$ 86,610.00
WestCAT Development (DPL)	\$ 350,000.00	\$ 325,750.00		\$ 325,750.00	\$ -	\$ 325,750.00
SWCA Contractor Payments	\$ 100,000.00	\$ 108,125.57	\$ 108,125.57	\$ -	\$ -	\$ 108,125.57
TOTAL EXPENSES	\$ 1,244,151.00	\$ 1,449,966.54	\$ 717,837.19	\$ 732,129.35	\$ 85,058.96	\$ 1,535,025.50
Balance	\$ -	\$ (73,358.73)	\$ 13,154.21	\$ (86,512.94)	\$ (33,951.69)	\$ (107,310.42)
						8% over

Tab E – WSWC Activities and Events

Western States Water Council Summary of Activities

April 2025 – June 2025

ADMINISTRATION/CONGRESSIONAL OUTREACH

In April the WSWC began to send programmatic requests for a \$15 million National Weather Service FY26 increase for a western pilot to improve sub-seasonal to seasonal (S2S) precipitation.

On April 1, the WSWC sent a letter to Senate Energy and Natural Resources Committee leadership in strong support of the nomination of Andrea Travnicsek to serve as Assistant Secretary of the U.S. Department of the Interior for Water and Science.

On April 11, the WSWC joined a coalition letter to House and Senate appropriators calling for full funding for the Clean Water and Drinking Water State Revolving Funds (SRFs). The signers included more than two dozen organizations including the American Water Works Association (AWWA), Association of Clean Water Agencies (ACWA), Association of State Drinking Water Administrators (ASDWA), Environmental Council of States (ECOS), and U.S. Water Alliance.

On April 30, WSWC Deputy Director and General Counsel, provided testimony before the House Natural Resources Subcommittee on Water, Wildlife and Fisheries hearing regarding *Advancing Federal Water and Hydropower Development: A Stakeholder Perspective*. She voiced WSWC’s support for “reasonable hydropower projects and programs that enhance our electric generation capacity and promote economic development, through efficient permitting processes,” while respecting state authority, interstate compacts, and rights of water users. She also called for integrated water-energy planning and urged the federal government to engage States in early and meaningful coordination to help streamline permitting processes and environmental reviews.

On June 2, WSWC sent a letter to EPA leadership regarding Waters of the United States (WOTUS) expressing the need for robust consultation and continued access to federal technical and financial assistance. WSWC expressed support for the development of geospatial datasets and mapping of jurisdictional waters and the development of a dispute resolution mechanism.

WESTERN GOVERNORS’ ASSOCIATION COORDINATION

WSWC staff coordinate with WGA staff on policy letters, positions, statements, and testimony.

WSWC staff have regular monthly calls with the WGA’s Water Policy Advisor.

The WSWC is a member of the Western Policy Network, led by WGA, and participates in quarterly calls and provides information for the Network’s Roundup Monthly Newsletter.

WSWC CALLS, MEETINGS, SURVEYS, SYMPOSIA AND WORKSHOPS

On April 22-25, the WSWC held its Spring Meetings in Lincoln, Nebraska.

WSWC staff continue to work on a summary of results from a past survey designed by the Legal Committee on various aspects of state water rights administration, law, management, and regulation.

The WSWC circulated a survey to members seeking opinions and guidance related to current WSWC operations and strategic plans for future directions in preparation for our 60th Anniversary in June.

COORDINATION with WESTFAST AGENCIES

WSWC and WestFAST leadership communicate weekly and via monthly WestFAST calls as needed.

WSWC Deputy Director/General Counsel has participated in EPA Managed Aquifer Recharge (MAR) assessment, of the state of science, gaps, and obstacles.

COORDINATION WITH OTHER ORGANIZATIONS

April 28-30, WSWC Executive Director attended AWRA 2025 Spring Conference in Anchorage, Alaska providing the keynote speech.

April 28-30, WSWC Deputy Director/General Counsel attended the National Water Resources Association, DC Policy Conference, in Washington, DC.

On May 7-9, the WSWC and the California Department of Water Resources (CDWR) cosponsored a workshop to continue a dialogue among western states, the National Oceanic and Atmospheric Administration (NOAA), and the research community on improving sub-seasonal to seasonal (S2S) precipitation forecasting to support water management decisionmaking. The workshop was held in San Diego, California.

WSWC participates in the Western Regional Partnership's (WRP) Water Security Deep-Dive calls. WRP is a collaboration initiative involving the U.S. Department of Defense, other federal agencies, the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah, as well as tribal entities to advance shared strategic planning, land management and policy goals.

WaDE DEVELOPMENT AND OUTREACH

The WSWC continues to lead efforts to make state water-related data Findable, Accessible, Interoperable and Reproducible (FAIR) through its Water Data Exchange (WaDE) and Western States Water Data Access and Analysis Tool (WestDAAT), the preeminent source of data on western state water rights.

Western States Water Data and Analysis Tool Version 2.0

WestDAAT 2.0 is an update that allows access to site-specific time-series data, to the extent it is provided by States in a machine-readable format. WestDAAT 2.0 improvements include access to all WaDE recorded data including: (1) querying historical water supply/water use data available in the WaDE database; and (2) visualizing how administrative and regulatory overlay information relates to water rights. In addition, WestDAAT's existing water right visuals have been expanded to include new filter options, and the WaDE APIs capabilities and services have been redeveloped to follow Open Geospatial Consortium (OGC) Standards. WSWC committed \$200,000 dollars towards the updates.

The WaDE team scheduled three separate demonstrations to showcase the developments for WestDAAT 2.0 (one demo on March 27th and two demos on April 1st). Demonstrations included a brief presentation on new features, a live demo, followed by an open discussion where attendees had access to WestDAAT 2.0 in a staging environment. Attendees were asked to provide feedback on useability, neatness, and suggestions on improvements to better visualize and access the data.

Western States Water Conservation Application Tool

With support from a \$400,000 WaterSMART applied science grant from the U.S. Bureau of Reclamation and philanthropic partners matching funds, the WSWC has developed and is deploying a Western States Water Conservation Application Tool (WestCAT), designed to facilitate temporary, voluntary, compensated water exchange programs using state water rights data and evapotranspiration (ET) data from OpenET as a surrogate for consumptive use, field-by-field, and reasonable beneficial use.

Internet of Water Coalition

WSWC Executive Director and WaDE Program Manager share updates and participate in Internet of Water (IoW) bimonthly check-in calls related to WaDE progress as a major IoW data hub, and IoW Coalition Steering Committee meetings.

Western Water Data Hub for the Bureau of Reclamation

WSWC staff are also working with the Lincoln Institute of Land Policy and its Center for Geospatial Solutions (CGS) to provide state-based data on reservoir storage and releases, streamflow, and water use from WestDAAT 2.0 for a Western Water Data Hub funded by the U.S. Bureau of Reclamation. WSWC staff participate with Lincoln CGS and Reclamation on WaDE and Internet of Water coordination calls to discuss development of the Hub and outreach plans.

COMMITTEES, TASK FORCES AND WORKGROUPS

WSWC staff participate as members of the following:

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

American Water Resources Association (AWRA) – WSWC Executive Director

Internet of Water (IOW) Coalition Steering Group – WSWC Executive Director

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

USGS Water Use Data and Research (WUDR) Open Forum

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

Western Policy Network – WSWC Executive Director

Western Regional Partnership – WSWC Executive Director/Deputy Director

Tab F – Future WSWC Meetings

WESTERN STATES WATER COUNCIL

FUTURE MEETINGS

2025 Council Meetings/Host States

Fall – California
DoubleTree San Pedro Port of Los Angeles
San Pedro, California
September 23-26, 2025

2025 Other Meetings:

WSWC-NARF 19th Biennial Indian Reserved Water Rights Symposium (virtual)
TBD

2026 WSWC Meetings Projections

Spring –	DC Roundtable	last held March 2024
Summer –	Oregon	last held 8/3/2018 in Newport
Fall –	New Mexico	last held 10/20/2017 in Albuquerque

2027 WSWC Meetings Projections

Spring –	Idaho	last held 10/26/2018 in Coeur d’Alene
Summer –	Washington	last held 7/18/2019 in Leavenworth
Fall –	Arizona	last held 3/22/2019 in Chandler

[illegible]

Tab G – Draft FY25-26 Committee Work Plan
Water Resources / Executive /
Water Quality / Legal

WATER RESOURCES COMMITTEE
WORK PLAN
July 1, 2025 to June 30, 2026

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. The WSWC serves as a foundational hub for the Internet of Water, and promotes related FAIR data standards (Findable, Accessible, Interoperable and Reproducible). Greater interoperability and consistent data standards to facilitate decisionmaking 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. In August 2023, the WSWC hosted a National Water Use Data Workshop in Salt Lake City, Utah.

On April 25, 2023, the WSWC publicly released its Western States Water Data Access and Analysis Tool (WestDAAT) with data for over 1.7 million water rights, including where available, in a machine-readable format, ownership, point of diversion, place of use, purpose of use, and priority date. For the first time, such information was presented in a user-friendly format across state lines. Work continues to add data to the tool, including state time series data related to state streamgages, wells and reservoirs. A significant amount of outreach with various state and federal agencies, and public and private stakeholders was involved in the development and production phases of WestDAAT's release. Such outreach continues.

In June 2025, the Council launched a new service called the Westwide Western Water Conservation Application Tool (WestCAT), which is an extension of the existing WestDAAT tool,

and is a water conservation paper application tracking service to be used to streamline implementation of voluntary compensated, in-state, and temporary water conservation measures. WestCAT integrates two foundational data sets for water conservation: WestDAAT water rights data and evapotranspiration (ET) data as a proxy for consumptive use estimates. WestCAT can be used to help facilitate voluntary, temporary, in-state, and compensated conservation programs which might include full-season fallow, alternative irrigation strategies, and crop switching.

2025-2026: WSWC is working 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.

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 continues to discuss with USGS ways of 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 seeking resources to maintain current efforts. A number of philanthropic foundations have provided support, as has the U.S. Bureau of Reclamation through its WaterSMART program

The WSWC working with an IT contractor has also completed scoping the effort and resources needed to incorporate OpenET (evapotranspiration data) into WestDAAT in order to tie measurable consumptive use with water rights and field boundaries. Such capabilities would help facilitate efforts to conserve water for various private and public purposes. The WSWC is working with the Upper Colorado River Commission and other interests to help expedite and simplify initiatives such as the UCRC's System Conservation Pilot Program.

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), 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 #522 Oct. 2024; #487 Oct. 2022; and #500 May 2023). 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.

2025-2026: The WSWC 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. This includes working with Congress on authorizations and appropriations, as well as with the Administration on budget requests and program implementation.

Subcommittee:

Timeframe: Ongoing

3. SUB-SEASONAL to SEASONAL PRECIPITATION FORECASTING

Work to date: The Council 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). Workshops have been held almost annually since 2015. 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 information about the S2S workshops may be found here: <https://westernstateswater.org/topical-resources/s2s/>.

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 recommended NOAA develop four pilot projects. Since 2022, the WSWC has worked with its members and congressional staff to encourage support for appropriations to initiate work on a western pilot project.

2025-2026: Additional S2S workshops have and will be held, 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 also work to promote federal funding to implement the 2017 Act, and the recommended S2S pilot projects in the West.

Subcommittee:

Timeframe: Ongoing

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.

A second planned WSWC/NASA workshop was postponed due to the pandemic. Future workshops would 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 agencies for R2O.

2025-2026: The Committee will consider holding another workshop to identify best practices to transfer applied research to operational programs working with 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 (Positions #500 May 2023 and #522 October 2024). The Council also supports development of an improved western observing system for extreme precipitation events and research to better understand hydroclimate processes (Position #483 Aug. 2022). The Council’s Executive Director serves as Co-Chair of the National Integrated Drought Information System (NIDIS) Executive Council with NOAA and USDA.

2025-2026: 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.

2025-2026: 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. 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.

2025-2026: The Council will continue to call on 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 #501, May 2023). 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 demand 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 has been an 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 #485, Aug. 2022**). The Council has in the past participated with the Western Electric Coordinating Council (WECC) and related State Provincial Steering Group and Environmental Data Work Group. In 2023, the Council and WestFAST coordinated together to host a pumped storage hydropower webinar series: <https://westernstateswater.org/topical-resources/pumped-storage-hydropower/>

2025-2026: 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, pumped hydropower projects, Clean Water Act Section 401 certification, [the growing number of data centers for artificial intelligence](#), and other practices.

Subcommittee:

Timeframe: Ongoing

**EXECUTIVE COMMITTEE
WORK PLAN
July 1, 2025 to June 30, 2026**

1. WGA/WSWC COORDINATION and COLLABORATION

Work to date: The Western Governors' Association (WGA) has adopted two comprehensive policy statements, one Water Resource Management in the West (2024-07) and the other Water Quality in the West (2024-09), 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 Corp's Water Supply Rule, 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 taken the lead on some issues and deferred to the Council on other issues, such as tribal water rights settlements.

2025-2026: 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: The creation in 2008 of our Western States Federal Agency Support Team (WestFAST) has had many benefits. It is a unique forum for addressing western (and national) water issues that has brought together fifteen separate 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.

2025-2026: 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) precipitation 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.

2025-2026: The Council will continue to communicate our positions with the 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. During the pandemic, meetings were held virtually. One benefit of virtual and now hybrid meetings 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.

2025-2026: The WSWC met for its Summer meetings in Snowbird, UT on June 10-12, and will meet in San Pedro, CA on September 23-26. The Spring 2026 meetings will be held in Washington, DC.

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 has been 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. A subscription fee for others has been discontinued. It is primarily distributed via email, and is posted on our website.

2025-2026: 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.

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 last WSWC/NARF Symposium was held virtually in August 2023. The Executive Committee considers hosting symposia on any topic and issues as their importance merits.

In 2022-23, the Council held a number of meetings and webinars in collaboration with relevant federal agencies, multiple stakeholders, and public and private experts. This included exploring a potential regional approach to defining "Waters of the United States" (WOTUS), and a technical white paper summarizing the discussions was drafted. Further, a National Water Use Data Workshop was held. One goal is identifying common interests and promoting partnerships.

2025-2026 The Legal Committee, under the direction of the Executive Committee, will coordinate with NARF in sponsoring the 2025 Indian Water Rights Settlement Symposium.

Time Frame – Ongoing

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.

2025-2026: The staff will work on the current backlog of annual reports (2020-2024).

Time frame: Ongoing

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.

In 2024, the Committee approved the funds to contract with a facilitator to conduct a forward-looking strategic directions exercise. A survey of states on relevant issues and valued activities was followed by two facilitated discussions during the meetings in Nebraska and Utah.

2025-2026: 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:

9. STATE WATER AGENCY STAFFING AND RETENTION CONCERNS

Background: During the Deadwood, South Dakota meeting in September 2021, various WSWC members raised concerns about hiring, training, and retaining technical and professional staff to carry out essential agency functions. Some turnover or lack of new applicants may be attributable to: (1) high specialization of western water challenges; (2) shuffling among state/federal agencies; (3) smaller salaries compared to the private sector; (4) limited advancement opportunities for mid-level staff; and (5) retirements, pandemic-related adjustments, and younger generation career-culture shifts. On October 22, 2021 and January 24, 2022, various WSWC members discussed challenges and potential solutions that the WSWC might work together to be able to accomplish.

2025-2026: The Committee will consider: (1) a brief survey of states to identify obstacles, with the intent to create a report that may be utilized to demonstrate the staffing needs of state water agencies across the West; (2) a mechanism for sharing job postings at state water agencies across the West that is cost-effective; and (3) developing a pipeline of incoming staff by introducing a younger generation of potential employees to day-to-day work of technical and professional staff, complex western water challenges, and benefits beyond salaries (e.g., through webinar series, cooperation with universities or other organizations).

Subcommittee: Henry Brooks, Jerry Rigby, Mary Anne Nelson, Connie Owen, Earl Lewis, Matt Unruh, Jesse Bradley, Sara Gibson, Jeanne Goodman, Kathy Alexander, Kim Nygren, Jeff Cowley

Time frame:

**WATER QUALITY COMMITTEE
WORK PLAN
July 1, 2024 to June 30, 2025**

1. WATER QUALITY/QUANTITY NEXUS

Background: Western Governors’ Association (WGA) Policy Resolution 2024-07, 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 offer 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.

Beginning January 2022, WestFAST held a monthly Wildfire Webinar Series. The series continued for a full year and covered topics regarding science, policy, and outreach. Technical topics explored include wildfire prediction, restoration and resilience-building, and the relationship of wildfire to water quality and water availability. Other policy topics explored the intersection of wildfire with property insurability and public health. WestFAST also covered engagement topics such as community planning, investment in watershed health, NASA’s FireSense strategy, and available risk reduction tools. See <https://westernstateswater.org/topical-resources/wildfires/>

From February to May 2023, WestFAST held a three part webinar series on Pumped Storage Hydropower. The first in this series gave an overview of types of pumped storage systems, and their benefits and challenges. The following two installments covered various permitting processes for new pumped storage hydropower projects, including the Federal Energy Regulatory Commission licensing process, compliance requirements, and Reclamation’s lease of power privilege process. A summary of the Pumped Storage Hydropower webinars, and other resources regarding the topic, are available at <https://westernstateswater.org/topical-resources/pumped-storage-hydropower/>.

From July to December 2023, WestFAST held a four part Stream Restoration webinar series. They covered introductory concepts, the science of stream restoration, as well as stream restoration and water rights in Utah, Colorado, Nebraska and California. See <https://westernstateswater.org/topical-resources/stream-restoration-and-water-rights/>

2025-2026: The Committee supports WGA Resolution 2024-07, 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 2024

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: : 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. The 2020 WOTUS Rule was vacated, and was replaced by the Revised Definition of the "Waters of the United States" Rule (2023 WOTUS Rule), finalized on January 18, 2023 (88 FR 3004). On May 25, 2023, the U.S. Supreme Court issued its decision in *Sackett v. EPA* (#21-454). Citing the Justice Scalia plurality opinion in *Rapanos*, the five-Justice majority Court concluded that the definition of WOTUS in Clean Water Act (CWA) §1362(7) "encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes." The Court held that WOTUS does not apply to all wetlands, but extends only to those wetlands with a continuous surface connection to bodies of water that are WOTUS in their own right, so that they are indistinguishable from those waters. The Court acknowledged that "temporary interruptions in surface connection may sometimes occur

because of phenomena like low tides or dry spells.” In footnote 16, the Court said: “Although a barrier separating a wetland from a water of the United States would ordinarily remove a wetland from federal jurisdiction, a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier’s removal because it violates the Act...that unlawful barrier poses no bar to its jurisdiction.” On August 29, 2023, the EPA and Corps issued an Amended 2023 Rule (88 FR 61964) to conform key aspects of the regulatory text to the *Sackett* decision. Two state lawsuits have challenged the Amended 2023 Rule: *Texas v. EPA* (TX, ID), and *West Virginia v. EPA* (AK, AL, AR, FL, GA, IA, IN, KS, LA, MI, MO, MT, ND, NE, NH, OH, OK, SC, SD, TN, UT, VA, WV, and WY). Both cases issued preliminary injunctions on the 2023 WOTUS Rule. A third case, *Kentucky v. EPA*, did not issue an injunction, but the rule is stayed while the decision is on appeal. Currently, the agencies are interpreting “waters of the United States” consistent with the pre-2015 regulatory regime and the Supreme Court’s decision in *Sackett* for these 27 states until further notice. For the remaining 23 states, the District of Columbia, and the Territories, the agencies are implementing the Amended 2023 Rule.

For both regulatory regimes, the agencies entered into joint coordination memoranda to establish a process by which the Corps and EPA would coordinate on jurisdictional determinations “to ensure accurate and consistent implementation” of the regimes. These memoranda included implementation guidelines regarding identification of wetland areas and tributary reaches, whether site specific discrete features can serve as continuous surface connection, and whether natural landforms can provide evidence of a continuous surface connection. Under the newly inaugurated Trump Administration, the EPA set these memoranda to expire on March 27, 2025 ([WSW #2626](#)).

On March 12, 2025, the Trump Administration EPA and Corps announced they would jointly review the definition of “waters of the United States” (WOTUS) and released field guidance on the proper implementation of “continuous surface connection.” The field memo provided updated guidance for implementing WOTUS under both regimes currently operating across the country. Affirming the plurality set forth in *Rapanos v. United States*, 547 U.S. 715 (2006), the agencies interpreted “continuous surface connection” as adjacent wetlands that “directly abut the [requisite jurisdictional water] (e.g., they are not separated by uplands, a berm, dike, or similar feature).” The memo noted that wetlands with only an intermittent, physically remote hydrologic connection to WOTUS do not have the “necessary connection” to trigger the CWA. Departing from the prior administration’s coordination memoranda, the agencies wrote: “Therefore, an interpretation of ‘continuous surface connection’ which allows for wetlands far removed from and not directly abutting covered waters to be jurisdictional as adjacent wetlands has the potential to violate the direct abutment requirement for ‘adjacent wetlands’ under the plurality’s standard and now *Sackett*’s endorsement of that standard. Therefore, any components of guidance or training materials that assumed a discrete feature established a continuous surface connection are rescinded.” [See WSW #2652](#).

EPA and Army Corps received over 4200 comments in response to their solicitation for feedback on implementing and defining WOTUS (Docket EPA-HQ-OW-2025-0093), including comments from the States of Alaska, California, Idaho, Nevada, New Mexico, North Dakota, Utah, Washington, and Wyoming. WSWC prepared a summary of state comments which can be accessed at <https://westernstateswater.org/policy-letters/2025/cwa-wotus-definition/>.

Work-to-Date: WSWC adopted Position #369 Regarding Clean Water Act Jurisdiction on June 18, 2014. It has seen minor revisions and been continually readopted. The most recent iteration is

Position #531, adopted at the April 2025 meeting in Lincoln Nebraska. (see former Positions No. 481– 4/06/22; No. 472 – 9/16/2021; No. 427 –10/26/2018; No. 410 – 6/29/2017; and No. 369 – 7/18/2014). WSWC also adopted Position #373 to clarify the scope of Clean Water Act Jurisdiction, but it was soon allowed to sunset and acknowledged as a letter with continued historical value.

In the Summer of 2022, WSWC hosted a series of workshops to consider the technical and policy implications of a regional approach to WOTUS implementation, and prepared a white paper to document this effort for future use. See https://westernstateswater.org/wp-content/uploads/2022/10/WSWC-WOTUS_RegionalConcepts_Technical_Whitepaper_Final.pdf

On June 2, 2025, WSWC sent a letter in response to the federalism consultation initiated by the agencies' March 12 approach to WOTUS. WSWC highlighted state authority, and the impact of the rulemaking on states. The letter stated the WSWC position that any federal effort to clarify or define WOTUS must “create an enduring and broadly supported definition; acknowledge states as co-regulators; provide a clear process for resolving jurisdictional determination differences; provide for joint federal/state/tribal mapping of jurisdictional waters; and consider a regional approach to implementation based on hydrology, geology, and climate.” The full letter can be accessed at <https://westernstateswater.org/policy-letters/2025/wswc-letter-wotus-federalism/>.

2025-2026: 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 Carr (NV), Jojo La (CO), Julie Pack (AK)

*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 is available at: <https://westernstateswater.org/publications/other-reports/2021/2021-water-reuse-report/>

2025-2026: With the report finalized, staff will work with ACWA to determine next steps, including potential publication in a national water policy or law journal.

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 2018, the WIFIA program has closed 140 loans totaling \$22B in credit assistance to help finance \$48B for water infrastructure projects. 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.

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
FY2020	\$1,638.8	\$1,126.1	\$60.0
FY2021	\$1,638.8	\$1,126.1	\$64.5
FY2022	\$3,087.2	\$2,630.3	\$69.5
FY2023	\$2,977.8	\$2,718.9	\$75.6

Source: Congressional Research Service Report R43871; IF11485; IF11724; IF12130; IF12309; IF12617

When Congress enacted the 2022 Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58) it authorized significant but short-term federal funding for SRFs. However, a substantial portion of those increases were earmarked for Congressionally-directed spending on earmarked projects.

On May 2, the Office of Management and Budget (OMB) released President Trump’s recommendations on discretionary funding levels for FY2026. The “skinny budget” called for a reduction to Clean and Drinking Water SRFs to \$305M total, a reduction of \$2.4B. The proposal

said the original intent of SRFs has been bypassed through Congressional earmarks, and that SRFs are duplicative of the WIFIA program. WIFIA funding was not specifically mentioned in the request (WSW #2659). In a hearing, EPA Administrator Lee Zeldin pointed again to the earmarks and encouraged lawmakers to have a conversation about the use of earmarks, and its effect on SRF funding. See [WSW #2662](#).

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 #496 urges the Administration and Congress to provide greater flexibility and fewer restrictions on state SRF management, to provide stable and continuing appropriations to the SRF capitalization grants at adequate funding levels, and to ensure that states' allocations are not reduced or harmed by directed congressional earmarks. Appropriations should be adequate to help states address their water infrastructure needs and meet federal mandates. WGA Policy Resolution 2021-10, Water Quality in the West, also supports the SRFs as "important tools" and requests greater flexibility and fewer restrictions on state SRF management.

Between August 2023 and April 2025, the Western States Water Council (WSWC) repeatedly joined coalitions led by the Council of Infrastructure Financing Authorities (CIFA) and other organizations to advocate for full funding of the Clean Water (CW) and Drinking Water (DW) State Revolving Funds (SRFs) at their congressionally authorized levels. These efforts included multiple letters to House and Senate Appropriations Committees and EPA leadership, urging that the SRFs be funded at \$3 billion each for FY2024 and later at \$3.25 billion each. The coalitions also expressed concern about the impact of Congressional earmarks and continuing resolutions on timely appropriations.

2025-2026: 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 2021-10 (paragraph B(2)(c)) and WSWC Position #469 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.

2025-2026: 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 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, and the Radhika Fox memo *Accelerating Nutrient Pollution Reductions in the Nation's Waters* on April 5, 2022.

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.

The Fox memo sets forth five "governing principles" to guide the EPA Office of Water as it works with states, tribes, and local partners to reduce nutrient pollution. The guiding principles are: (1) Advance equity and environmental justice; (2) Build and foster partnerships; (3) Follow the science and invest in data-driven solutions; (4) Support innovation; (5) Scale successful initiatives.

The memo also outlines EPA's primary strategies and secondary strategies to drive reductions in nutrient pollution.

- **Deepen collaborative partnerships with agriculture.** Secondary strategies to this end include collaboration with USDA, engagements with agricultural stakeholders, and improving on-the-ground collaboration between USDA, states, territories, tribes, and stakeholders.
- **Redouble our efforts to support states, tribes, and territories to achieve nutrient pollution reductions from all sources.** Secondary strategies include encouraging states to use One Water approach, championing innovative financing and use of CWA flexibility for implementing market-based approaches, and prioritizing support to disadvantaged communities.
- **Utilize EPA's Clean Water Act authorities to drive progress, innovation, and collaboration.** Secondary strategies include urging adoption of numeric nutrient criteria into Water Quality Standards, more fully using the Clean Water Act assessment and listing process, supporting development of TMDLs for nutrient pollution, and further reducing nutrient loads from point sources.

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.

On March 14, 2024 Tom Stiles provided an overview of the Association of Clean Water Administrators' (ACWA) 11 standing principles on nutrients policy as a preamble to Council discussions on a possible position. On March 15, the Committee established a Nutrients subcommittee for further discussion. The subcommittee met in Spring 2024 and prepared a position for Full Council review and input. Position #469, Water Transfers and NPDES Discharge Permits was adopted on July 26 at the meeting in Fargo, North Dakota.

2025-2026: 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.

Michelle Bushman will examine the possibility of inviting Natural Resources Conservation Service (NRCS) staff for a facilitated discussion, with an emphasis on mutual conversation, examining: (1) How state nutrient reduction strategies are considered in NRCS programs, and how NRCS helps states implement those strategies; (2) What farmers are expressing to NRCS regarding nutrients and application of fertilizers and manure; (3) Whether soil health practices have been well-adopted by farmers working with NRCS. Bushman will also examine the possibility of mutual discussion with EPA regarding the new Trump Administration's approach to nutrients and plans for future memos.

Time Frame: Ongoing

Nutrients Subcommittee: Jojo La (CO), John Mackey (UT), Tom Stiles (KS), Jennifer Zygmunt (WY)

f. Section 401 Certifications

Background:

In 2019, the Trump administration issued Executive Order 13868, leading to EPA's issuance of the 2020 CWA Section 401 Certification Rule (2020 Rule)(85 FR 42210). The 2020 rule narrowed the authority of states to determine certification timeframes, application materials requirements, and the scope of certifications. WSWC and WGA submitted comments and letters to the administration, congress, and EPA prior to Executive Order 13868 and throughout the rulemaking process, opposing changes which may diminish state authority. In January 2021, the Biden administration issued Executive Order 13990, directing agencies to review and address regulations promulgated under the Trump administration. On April 21, 2022, WSWC sent a letter to the Administration encouraging the accelerated review of the CWA 401 Certification Final Rule and requesting the involvement of states as co-regulators.

In June 2022, the Environmental Protection Agency (EPA) released a pre-publication version of a revised rule for CWA (Clean Water Act) §401 certification. In August, the Council of State Governments-West (CSG-West) and the WSWC submitted a comment letter to EPA, commending the proposed rule's cooperative elements, but criticizing its provision that a pre-filing meeting cannot occur until the federal agency has drafted the license. They argued that it placed states at the end of the federal permitting process and limited collaboration. They expressed support for early substantive consultation with states.

On September 14, 2023 the Environmental Protection Agency (EPA) announced the final *Clean Water Act Section 401 Water Quality Certification Improvement Rule* (2023 Rule) (88 FR 66558), which went into effect in November 2023 ([WSW #2575](#)). The rule provides the following: (1) allows states to specify additional application requirements, beyond EPA baselines; (2) maintains the 30-day pre-filing meeting time period; (3) limits the scope of state certifications to the water quality impacts of the "activity as a whole", rather than point source only; and (4) limits EPA's certification review to only the timeliness of action, rather than the substance of the determination.

On December 4, 2023 a coalition of states (including AK, MT, OK, and WY) and regulated entities challenged the 2023 Rule in the U.S. District Court of the Western District of Louisiana (*State of Louisiana et al. v. U.S. Environmental Protection Agency et al.*, case No. 2:23-cv-01714). The petitioners requested an order declaring that the 2023 Rule violates the CWA and the

Administrative Procedure Act (APA); vacating and setting aside the 2023 Rule; and enjoining EPA from applying or enforcing the 2023 Rule. In January 2024, 18 states including California, New Mexico, Oregon, and Washington jointly filed a motion for leave to intervene for the purpose of defending the 2023 Rule (WSW #2592). The intervenor defendant states argued that they have a “clear and direct interest in upholding the 2023 Rule to preserve their sovereign authority over water quality within their respective states under section 401 of the CWA.” On May 14, the Court granted EPA’s unopposed motion to hold the case in abeyance for 60 days while the new administration reviewed the rule.

On May 21, EPA issued a memo entitled “Clarification regarding the Application of Clean Water Act Section 401 Certification” to clarify that CWA Section 401 authority is “limited to addressing only water quality-related impacts” and they do not authorize conditions based on “generalized concerns about water quality untethered to... a specific applicable water quality requirement.” EPA also announced plans to issue a Federal Register notice to receive feedback identifying additional implementation challenges to be later addressed with additional rulemaking. [See WSW #2662](#).

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.

2025-2026: Staff will continue to facilitate the 401 MOU workgroup, track the implementation of the rules, and report on challenges or experiences that states have had regarding how the changes are working on-the-ground.

Timeframe:

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. In 2023, EPA published its proposed rule, Federal Baseline Water Quality Standards for Indian Reservations (88 FR 29496). At least 12 of

our member states provided substantive comments. See [WSW Special Report #2571](#). The Federal Baseline Water Quality Standards for Indian Reservations was withdrawn on January 10, 2025.

In December 2022, EPA issued a proposed rule, Water Quality Standards Regulatory Revisions To Protect Tribal Reserved Rights (87 FR 74361). At least 10 of our member states provided substantive comments. See [WSW Special Report #2548](#). The states generally expressed concern about the Constitutional authority of EPA, the states, and the Tribes to undertake the effort to quantify tribal treaty rights. They noted anticipated costs and the complexity of navigating state-tribal relationships when disagreements arise between sovereigns. On June 3, 2024, EPA's final rule went into effect (89 FR 35717). Under the new rule, if a Tribe formally asserts a tribal reserved right to a state and the EPA, the state must consider the value of the waters or protecting the tribal reserved right and the potential future exercise of the right. Where the state has adopted designated uses, the state must establish water quality criteria that encompasses the tribal reserved right. See [WSW #2612](#). A week later, twelve states filed *State of Idaho v. EPA* (1:24-cv-00100) challenging the rule as unconstitutional and seeking preliminary injunction. Twelve tribal nations, including Nez Perce, Quinault Indian Nation, Bay Mills Indian Community, and the Confederated Salish & Kootenai Tribes of the Flathead Reservation intervened. See [WSW #2621](#).

Work-to-Date: In December 2016, the WSWC submitted a [letter](#) commenting on the ANPR proposing federal baseline WQS for tribes. In May 2023, the WSWC approved a new policy position #490 regarding Water Quality Standards, Protecting Tribal Reserved Rights, and Federal Baseline Water Quality Standards for Indian Reservations. In August 2023, the WSWC submitted a [comment](#) on EPA's proposed rule for federal baseline WQS for tribes.

2025-2026: 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.

In September 2021, the WSWC passed Position #477 regarding Abandoned Hard Rock Mine Cleanup. On February 3, 2022, Senator Martin Heinrich (D-NM) introduced the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571). On July 28, 2022, WSWC sent letters to Congress and to the Administration regarding the Good Samaritan bill and joint efforts to address abandoned hardrock mine cleanup.

On September 13, 2023 Senators Martin Heinrich (D-NM) and Jim Risch (R-ID) reintroduced the bipartisan Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2781)([WSW #2577](#)). On January 10, 2024 the WSWC sent a letter to the Senate leadership and the Environment and Public Works Committee, supporting and making recommendations on the bill. The letter included WSWC Policy Position No. 447 and recommended financial flexibility for states, the establishment of a formal consultation process under the bill’s pilot program, and the establishment of a permanent program through which states can administer Good Samaritan permits ([WSW #2591](#)). On December 17, 2024 President Biden signed S.2781 into law (P.L. 118-155) ([WSW #2639](#)). Under the pilot program authorized by the act, EPA is allowed to provide up to 15 Good Samaritan permits and 15 investigative sampling permits. EPA is working on the process for applicants to submit permit applications.

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 2024-08). 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.

WSWC was invited by the EPA Good Sam Workgroup to present on the water aspects of abandoned mines. Michelle Bushman presented a high-level overview of what western states are working on regarding abandoned mines, the challenges they face, and how they prioritize various sites. The workgroup expressed interest in having further discussion with states about abandoned mine projects they are working on.

2025-2026: 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

i. Per-and Polyfluoroalkyl Substances (PFAS)

Background: The widespread use and persistent nature of PFAS chemicals presents a complex environmental problem that affects water quality, human health, and ecosystems in varying degrees around the nation. Water sources with high levels of contamination in some instances must be replaced by alternative water sources, which can be costly and difficult in the arid west. Additionally, cleanup efforts may require coordination between state, federal, tribal, and local authorities.

Work-to-Date: In 2022-23, the Subcommittee explored the possibility of WSWC position and actions that might be taken to address PFAS water contamination in a collaborative way. The WSWC hosted a states-only PFAS Roundtable and prepared a summary of the meeting. See <https://westernstateswater.org/events/states-only-pfas-roundtable/>. In May 2023, the Committee determined not to pursue a PFAS policy position at this time, but to continue to keep an eye on PFAS developments. On May 14, EPA announced plans to rescind and reconsider the regulations for PFHxS, PFNA, HFPO-DA (commonly known as GenX), and the Hazard Index mixture of these three plus PFBS, to ensure that the determinations and any resulting regulation follow the legal process in the Safe Drinking Water Act. EPA also intends to extend compliance deadlines for PFOA and PFOS, establish a federal exemption framework, and initiate enhanced outreach to water systems, especially in rural and small communities.

2025-2026: The Committee will continue to monitor PFAS developments and revisit this issue as needed..

Subcommittee: Jennifer Zygmunt (WY)

j. NPDES Permits

Background: On March 14, 2024 Jennifer Zygmunt reiterated South Dakota's interest in proposing a new resolution on NPDES, with particular interest on whether to support legislation that would extend NPDES permit terms from five years to ten. On March 21, 2024 the House passed H.R. 7023, the Creating Confidence in Clean Water Permitting Act which would allow the term extension but it did not pass the Senate. The proposal was introduced, the subcommittee met and drafted a position, and introduced the draft at the fall meeting in Lawrence, Kansas. Following robust discussion, it was decided to allow more time for the committee to review and edit. Expecting the change in permit terms to happen sooner-than-later, and a "bull rush of requests for longer permits," Zygmunt and Stiles raised concerns about implementation and suggested the subcommittee draft a guidance document to outline benefits, opportunities, stipulations, and potential challenges. The guidance or implementation document would outline suggestions such as what conditions suggest a 10-year or 5-year term. It would be intended to help member states navigate decision-making and conversations if future conflict arises among the regulated community. The subcommittee met to make final adjustments to the position. It was adopted as

Position #527 – Regarding the Extension of NPDES Permit Terms on April 25, 2025 at the meetings in Lincoln, Nebraska.

2025-2026: A subcommittee will review the possibility of drafting an implementation document regarding extended NPDES permit terms. They will examine the scope, need, and intent of such a document and determine what details, foreseen challenges, and implementation suggestions should be included.

Subcommittee: Tom Stiles (KS), Trevor Baggione (AZ), Joaquin Esquivel (CA), Mark Mayer (SD), Jennifer Zygmunt (WY), Jennifer Carr (NV), Leslie Connelly (WA)

k. Maui and Groundwater

Background: The U.S. Supreme Court issued a ruling in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), holding that the provisions of the Clean Water Act require a National Pollution Discharge Elimination System (NPDES) permit when there is a “functional equivalent of a direct discharge,” which may include some discharges through groundwater. The Court noted that many factors may be relevant in determining whether a pollutant discharged through groundwater is a functional equivalent of a direct discharge to navigable waters. Time and distance will be the most important factors in most cases. The Court offered the examples of: (1) a 100-year migration of pollutants through 250 miles of groundwater to a river, which would not ordinarily require a permit; (2) where a pipe ends 50 miles from navigable waters and the pollutants mix with groundwater and other materials in the aquifer, ending up in navigable waters many years later, in which case permitting requirements likely would not apply; and (3) where a pipe emits pollutants only a few feet through groundwater before discharging into a navigable water. Other relevant factors might include the nature of the aquifer material, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount discharged at the point source, how or where the pollutant enters the navigable waters, and the degree to which the pollution has maintained its specific identity.

In January 2021, EPA issued a notice of implementation guidance (86 FR 6321) which was rescinded in September 2021 (86 FR 53653). EPA issued a new draft guidance in November 2023 (88 FR 82891). Several WSWC member states submitted comments on the proposed guidance ([Special Report #2591](#)). Two federal cases have analyzed the application of the “functional equivalent” standard: *Cottonwood Environmental Law Center v. Edwards*, 86 F.4th 1255 (9th Cir. 2023) (over-irrigation of golf course leaching nutrients into groundwater) and *Stone v. High Mountain Mining Company*, #22-1340 (10th Cir. 2024) (discharge from unlined settling ponds seeping into groundwater). At the Spring, 2024 meeting in Washington, DC, Jennifer Zygmunt presented the results of a survey on workplan priorities. The majority of respondents were in favor of framing new resolutions on *Maui* groundwater discharge.

2025-2026: The Committee will work with the Water Quality Committee through the Workgroup to follow and comment on federal actions regarding Maui guidance in accordance with the WSWC’s and WGA’s positions, as well as consider the impacts of any guidance or rules on state policies, programs and regulations.

Time Frame: Ongoing

Maui Workgroup: Jennifer Zygmunt (WY), John Mackey (UT)

3. STATE GROUNDWATER REGULATION

Background: In 2023, various news organizations began publishing articles on the use of groundwater in the nation, with a particular focus on groundwater overuse in the West. While the articles highlighted genuine challenges (depletion, pollutants, subsidence, lack of monitoring), they lacked information about the nuances of western water laws, and did not include the efforts and progress states have made over the past several decades to address those challenges. Several of the articles called for federal regulation of groundwater, asserting that the states would not or could not do enough to address the groundwater management challenges.

In 2024, the White House solicited input from the public to address questions regarding groundwater use, recharge, and storage across the United States. The President’s Council of Advisors on Science and Technology (PCAST) issued specific questions regarding methods for timely collection of data, effective modeling and prediction of groundwater changes, efficient scaling of groundwater recharge, ensuring clean and safe groundwater availability, community engagement, and strategies to limit groundwater overuse. The PCAST briefing read: “In the western states especially, groundwater resources are being depleted at an alarming rate, mostly from agricultural withdrawal. The problem of groundwater depletion is exacerbated by climate change and precipitation variability and in many aquifers, groundwater withdrawal has outpaced natural and artificial recharge. There is a need to explore the consequences of artificial recharge and to identify successful recharge approaches that might be scaled across the country.... Groundwater is managed locally, with best practices that vary from state to state, but there is an opportunity to develop and scale approaches to restore clean water in every community.” [See WSW #2610](#).

In Summer of 2024, PCAST held a workshop in Arizona, which convened government agencies, key groundwater users, and community stakeholders. Acknowledging the government’s limited jurisdiction over groundwater, and the need for some kind of government policy, the Working Group talked about the possibility of developing a central repository of groundwater data for use by water managers. They noted the need for enhanced tracking and measurement of groundwater quality and quantity. They shared some of what they were seeing from public comments, including the sentiment that currently available science and technology could reduce uncertainty and increase supply. They also noted the feedback that many locations have already taken effective action. See [Special Report #2622](#).

On September 23, Governor Brad Little (R-ID) and Lt. Governor Scott Bedke (R-ID) sent a letter to the White House expressing concern about the PCAST inquiry, framing it as an effort to increase federal oversight: “...the federal government has no place in groundwater management. has long left those actions up to the states and has limited its involvement to funding of projects and technology advancements” [WSW #2630](#).

On December 14, PCAST released its report recommending the White House establish an interagency working group, expand technology research, establish a network of regional data and research hubs, provide incentives for sustainable groundwater management, develop accounting methodologies for natural capital, and campaign to develop groundwater science and management workforce. [See WSW #2643](#).

On January 31, President Trump rescinded the Executive Order establishing PCAST. See [Special Report #2646](#).

Work to Date: On July 1, 2024, the WSWC submitted a comment letter along with two policy positions on groundwater allocation and groundwater quality. On July 22, 2024, Council staff participated in the PCAST workshop. On April 22, 2025, WSWC held a Groundwater Workshop at the meeting in Lincoln, Nebraska ([WSW #2658](#)).

2025-2026: The Council will explore the potential of hosting a groundwater workshop in the coming year, with opportunities for states to share with each other challenges and developments in technologies, resources, and regulations. The Council will examine the possibility of another groundwater workshop in California.

Subcommittee: Raquel Rancier (OR), Anna Pakenham Stephenson (MT), Mathew Weaver (ID), Melissa Flatly (NV), Chris Brown (WY), Joaquin Esquivel (CA), Theresa Wilhelmson (UT), Jesse Bradley (NE). Ex-Officio members: Dan Yates (GWPC)

**LEGAL COMMITTEE
WORK PLAN
July 1, 2024 to June 30, 2025**

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. Past webinars and workshops include:

November 10, 2015	McCarran Amendment – state and federal perspectives	
July 13, 2016	Groundwater and Meeting Federal Water Needs (ND)	
October 18, 2017	Continuing State-Federal Relationships through the Implementation Phase of Decreed and Adjudicated Water Rights (NM)	
October 24, 2018	State and Federal Agencies’ Approach to Grazing Water Rights (ID)	
October 15, 2019	Grazing Water Rights (CO)	https://westernstateswater.org/publications/2021/stock-water-rights-for-grazing-livestock-on-federal-lands/
September, 2021	Wild and Scenic Rivers (SD)	https://westernstateswater.org/publications/seminars-workshops/2021/wild-scenic-rivers-workshop/

2025-2026: 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 identifying useful principles for state-federal memoranda of understanding (MOUs) to develop a useful framework and recommended approaches.

Time Frame: Ongoing

Federal Non-Tribal Water Claims Subcommittee: Jay Weiner (MT), Jennifer Verleger (ND), Buck Smith (WA), and Chris Brown (WY). WestFAST members and agency staff participating in the Subcommittee in an *ex officio* capacity include: Michael Higgins (U.S. Fish and Wildlife Service), Donald Anderson (Bureau of Reclamation), Stephen Bartell (Department of Justice), Lauren Dempsey (Air Force) and Chris Carlson (U.S. Forest Service).

2. CLEAN WATER ACT ISSUES

a. CWA Jurisdiction*

Background: In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S. Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006). This was followed by the 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. The 2020 WOTUS Rule was vacated, and was replaced by the Revised Definition of the "Waters of the United States" Rule (2023 WOTUS Rule), finalized on January 18, 2023 (88 FR 3004). On May 25, 2023, the U.S. Supreme Court issued its decision in *Sackett v. EPA* (#21-454). Citing the Justice Scalia plurality opinion in *Rapanos*, the five-Justice majority Court concluded that the definition of WOTUS in Clean Water Act (CWA) §1362(7) "encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes." The Court held that WOTUS does not apply to all wetlands, but extends only to those wetlands with a continuous surface connection to bodies of water that are WOTUS in their own right, so that they are indistinguishable from those waters. The Court acknowledged that "temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells." In footnote 16, the Court said: "Although a barrier separating a wetland from a water of the United States would ordinarily remove a wetland from federal jurisdiction, a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier's removal because it violates the Act...that unlawful barrier poses no bar to its jurisdiction." On August 29, 2023, the EPA and Corps issued an Amended 2023 Rule (88 FR 61964) to conform key aspects of the regulatory text to the *Sackett* decision. Two state lawsuits have challenged the Amended 2023 Rule: *Texas v. EPA* (TX, ID), and *West Virginia v. EPA* (AK, AL, AR, FL, GA, IA, IN, KS, LA, MI, MO, MT, ND, NE, NH, OH, OK, SC, SD, TN, UT, VA, WV, and WY). Both cases issued preliminary injunctions on the 2023 WOTUS Rule. A third case, *Kentucky v. EPA*, did not issue an injunction, but the rule is stayed while the decision is on appeal. The agencies are interpreting "waters of the United States" consistent with the pre-2015 regulatory regime and the Supreme Court's decision in

| Sackett for these 27 states until further notice. For the remaining 23 states, the District of Columbia, and the Territories, the agencies are implementing the Amended 2023 Rule.

For both regulatory regimes, the agencies entered into joint coordination memoranda to establish a process by which the Corps and EPA would coordinate on jurisdictional determinations “to ensure accurate and consistent implementation” of the regimes. These memoranda included implementation guidelines regarding identification of wetland areas and tributary reaches, whether site specific discrete features can serve as continuous surface connection, and whether natural landforms can provide evidence of a continuous surface connection. Under the newly inaugurated Trump Administration, the EPA set these memoranda to expire on March 27, 2025 ([WSW #2626](#)).

On March 12, 2025, the Trump Administration EPA and Corps announced they would jointly review the definition of “waters of the United States” (WOTUS) and released field guidance on the proper implementation of “continuous surface connection.” The field memo provided updated guidance for implementing WOTUS under both regimes currently operating across the country. Affirming the plurality set forth in *Rapanos v. United States*, 547 U.S. 715 (2006), the agencies interpreted “continuous surface connection” as adjacent wetlands that “directly abut the [requisite jurisdictional water] (e.g., they are not separated by uplands, a berm, dike, or similar feature).” The memo noted that wetlands with only an intermittent, physically remote hydrologic connection to WOTUS do not have the “necessary connection” to trigger the CWA. Departing from the prior administration’s coordination memoranda, the agencies wrote: “Therefore, an interpretation of ‘continuous surface connection’ which allows for wetlands far removed from and not directly abutting covered waters to be jurisdictional as adjacent wetlands has the potential to violate the direct abutment requirement for ‘adjacent wetlands’ under the plurality’s standard and now Sackett’s endorsement of that standard. Therefore, any components of guidance or training materials that assumed a discrete feature established a continuous surface connection are rescinded.” See [WSW #2652](#).

EPA and Army Corps received over 4200 comments in response to their solicitation for feedback on implementing and defining WOTUS (Docket EPA-HQ-OW-2025-0093), including comments from the States of Alaska, California, Idaho, Nevada, New Mexico, North Dakota, Utah, Washington, and Wyoming. WSWC prepared a summary of state comments which can be accessed at <https://westernstateswater.org/policy-letters/2025/cwa-wotus-definition/>.

Work-to-Date: 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. At the September 2021 meeting in Deadwood, South Dakota, Position #472 was again revised and adopted, with the understanding that further efforts would be made to improve the position the following Spring. WSWC sent various letters and comments to EPA and the Corps. At the April 2022 meeting in Arlington, Virginia, Position #481 was revised and adopted, replacing #472.

In the Summer of 2022, WSWC hosted a series of workshops to consider the technical and policy implications of a regional approach to WOTUS implementation, and prepared a draft white paper to document this effort for future use. See https://westernstateswater.org/wp-content/uploads/2022/10/WSWC-WOTUS_RegionalConcepts_Technical_Whitepaper_Final.pdf

On June 2, 2025, WSWC sent a letter in response to the federalism consultation initiated by the agencies' announcement of a forthcoming rulemaking on the Implementation of the Definition of Waters of the United States. WSWC highlighted state authority, and the impact of the rulemaking on states. The letter stated the WSWC position that any federal effort to clarify or define WOTUS must "create an enduring and broadly supported definition; acknowledge states as co-regulators; provide a clear process for resolving jurisdictional determination differences; provide for joint federal/state/tribal mapping of jurisdictional waters; and consider a regional approach to implementation based on hydrology, geology, and climate." The full letter can be accessed at <https://westernstateswater.org/policy-letters/2025/wswc-letter-wotus-federalism/>.

2025-2026: 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: Jennifer Zygmunt (WY), Tom Stiles (KS), and Julie Cunningham (OK).

*See Item 2(a) of the Water Quality Committee Workplan

b. Maui and Groundwater

Background: The U.S. Supreme Court issued a ruling in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), holding that the provisions of the Clean Water Act require a National Pollution Discharge Elimination System (NPDES) permit when there is a "functional equivalent of a direct discharge," which may include some discharges through groundwater. The Court noted that many factors may be relevant in determining whether a pollutant discharged through groundwater is a functional equivalent of a direct discharge to navigable waters. Time and distance will be the most important factors in most cases. The Court offered the examples of: (1) a 100-year migration of pollutants through 250 miles of groundwater to a river, which would not ordinarily require a permit; (2) where a pipe ends 50 miles from navigable waters and the pollutants mix with groundwater and other materials in the aquifer, ending up in navigable waters many years later, in which case permitting requirements likely would not apply; and (3) where a pipe emits pollutants only a few feet through groundwater before discharging into a navigable water. Other relevant factors might include the nature of the aquifer material, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount discharged at the point source, how or where the pollutant enters the navigable waters, and the degree to which the pollution has maintained its specific identity.

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Two federal cases have analyzed the application of the “functional equivalent” standard: *Cottonwood Environmental Law Center v. Edwards*, 86 F.4th 1255 (9th Cir. 2023) (over-irrigation of golf course leaching nutrients into groundwater) and *Stone v. High Mountain Mining Company*, #22-1340 (10th Cir. 2024) (discharge from unlined settling ponds seeping into groundwater).

2024-2025: The Committee will work with the Water Quality Committee through the Workgroup to follow and comment on federal actions regarding *Maui* guidance in accordance with the WSWC’s and WGA’s positions, as well as consider the impacts of any guidance or rules on state policies, programs and regulations.

Time Frame: Ongoing

Maui Workgroup: Jennifer Zygmunt (WY), John Mackey (UT), Julie Pack (AK)

*See Item 2(k) 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 #504). As a result, the WGA and WSWC have worked with the Native American Rights Fund (NARF) for over forty 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.

On August 8-9, 2023, the WSWC and NARF co-hosted the 18th Biennial Symposium on the Settlement of Reserved Water Rights, highlighting the Hualapai Tribe’s settlement authorized by the 117th Congress. The Symposium also provided a forum to discuss the Biden Administration’s settlement and negotiation policies, Congressional outlooks for pending settlement bills and permanent funding mechanisms, and water leasing of reserved water rights. Recordings and presentation materials for past Symposia are available at: <https://westernstateswater.org/topical-resources/indian-reserved-water-rights/>

2025-2026: 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; (3) discuss potential adjustments to the long-time support of the Reclamation Water Settlement Fund in light of new Congressionally-authorized funds and the mix of both project-based and fund-based settlements; and (4) prepare to hold the 2025 Symposium on the Settlement of Indian Reserved Water Rights Claims in partnership with the Native American Rights Fund.

Time Frame: Ongoing

Reserved Rights Subcommittee: Jay Weiner (MT), Teresa Wilhelmson (UT). NARF members participating in the Subcommittee in an *ex officio* capacity include: John Echohawk, Dan Lewerenz, and David Gover. Other *ex officio* members include:

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.

On May 10, 2022, the Council sent a letter in support of Senator Cramer's proposed legislation to create a committee with the Corps of Engineers and the States focused on cooperative federalism concerns surrounding the management of water resources, which passed as §8158 of WRDA 2022. The purpose of the Western Water Cooperative Committee (WWCC) is to ensure that U.S. Army Corps of Engineers (Corps) "flood control projects in Western States are operated consistent with congressional directives by identifying opportunities to avoid or minimize conflicts between the operation of the [Corps] projects and water rights and water laws in such States." The membership of the Cooperative Committee includes the Assistant Secretary of the Army for Civil Works, the Chief of Engineers, two representatives from each Western State appointed by the governor and the attorney general, and one employee from each of the impacted regional offices of the Bureau of Indian Affairs. On March 17, 2023, the WSWC co-hosted a briefing for our western states on the WWCC with the Conference of Western Attorneys General (CWAG) and WGA, and encouraged our Governors and Attorneys General to prepare appointment letters to the Committee. The briefing materials are available at: <https://westernstateswater.org/events/wswc-cwag-briefing-wwcc/>

On May 18, 2023, the WSWC and CWAG sent a group of 25 appointment letters to Assistant Secretary Mike Connor, with some Governors and Attorneys General sending letters directly to the Army Corps of Engineers. On August 29, 2023, the Corps reached out to verify contact information for each of the current appointees, and WSWC assisted with outreach and filling in the gaps. The Corps indicated that they were nearing a point where they would be able to stand up the WWCC, but were still waiting for approval on funding to facilitate efficient operation of the committee and to

determine whether FACA rules apply. In December 2023, the Army determined that FACA rules apply.

2025-2026: 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:

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 #515 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).

Additionally, the Department of Defense is considering reserved water rights claims to the use of groundwater for Naval Air Weapons Station China Lake in the groundwater basin adjudication *Indian Wells Valley Water District v. All Persons Who Claim a Right to Extract Groundwater in the Indian Wells Valley Groundwater Basin, etc., et al.* (Orange County Superior Court, California, 30-2021-01187275-CU-OR-CJC).

On January 31, 2024, the U.S. Fish and Wildlife Service submitted a letter asserting federal reserved water rights to groundwater that could be negatively impacted by a proposed permit from the Georgia Environmental Protection Division (GEPD) for a mining company that seeks to withdraw 1.4 million gallons a day to mine titanium dioxide three miles from the Okefenokee National Wildlife Refuge. The letter noted the risk to the refuge, despite GEPD's conclusion that there would be a minimal impact.

2025-2026: 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.

2025-2026: 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.

c. State Groundwater Regulation

Background: In 2023, various news organizations began publishing articles on the use of groundwater in the nation, with a particular focus on groundwater overuse in the West. While the articles highlighted genuine challenges (depletion, pollutants, subsidence, lack of monitoring), they lacked information about the nuances of western water laws, and did not include the efforts and progress states have made over the past several decades to address those challenges. Several of the articles called for federal regulation of groundwater, asserting that the states would not or could not do enough to address the groundwater management challenges.

In 2024, the White House solicited input from the public to address questions regarding groundwater use, recharge, and storage across the United States. The President’s Council of Advisors on Science and Technology (PCAST) issued specific questions regarding methods for timely collection of data, effective modeling and prediction of groundwater changes, efficient scaling of groundwater recharge, ensuring clean and safe groundwater availability, community engagement, and strategies to limit groundwater overuse. The PCAST briefing read: “In the western states especially, groundwater resources are being depleted at an alarming rate, mostly from agricultural withdrawal. The problem of groundwater depletion is exacerbated by climate change and precipitation variability and in many aquifers, groundwater withdrawal has outpaced natural and artificial recharge. There is a need to explore the consequences of artificial recharge and to identify successful recharge approaches that might be scaled across the country.... Groundwater is managed locally, with best practices that vary from state to state, but there is an opportunity to develop and scale approaches to restore clean water in every community.”

Work to Date: On July 1, 2024, the WSWC submitted a comment letter along with two policy positions on groundwater allocation and groundwater quality. On July 22, 2024, Council staff participated in the PCAST workshop.

Prior to the Spring 2025 meetings in Nebraska, the WSWC hosted a discussion-focused groundwater workshop for states to share their recent challenges and successes in groundwater regulations, aquifer science, conjunctive management, and monitoring.

2025-2026: The Council will explore the potential of hosting furthera groundwater workshops and webinars in the coming year, with opportunities for states to share with each other challenges and developments in technologies, resources, and regulations.

Subcommittee: Raquel Rancier (OR), Anna Pakenham Stephenson (MT), Mathew Weaver (ID), Melissa Flatly (NV), Chris Brown (WY), Joaquin Esquivel (CA), Sara Schecter (UT), Theresa Wilhelmson (UT), Jesse Bradley (NE). Ex-Officio members: Dan Yates (GWPC).

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. In 2021, WSWC members responded to the survey questions, and WSWC staff began compiling the responses into four separate reports.

In April 2025, the first report on State Engineers was presented to the states for review.

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.

2025-2026: Council staff will prepare a report of the 2021 responses to the survey questions. 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.

2025-2026: Council staff will compile responses to the 2021 survey questions 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.

2025-2026: Council staff will prepare a report on the 2021 survey responses. The Committee and Council will also provide a forum for a discussion of water rights enforcement.

Subcommittee:

Timeframe:

Tab H – WaDE/WestDAAT/WestCAT Update

Western States Water Council

Water Data Exchange (WaDE) Program Update

Ryan James, WaDE Data Analyst / Hydroinformatics Specialist

Tony Willardson, Executive Director

The Water Data Exchange (WaDE) Program is committed to assisting the Western States Water Council (WSWC) member states in publicly sharing water rights, allocation, supply, and use data through a streamlined and standardized service that enables regional analyses to inform water resources planning and policies¹. Since 2011, the WSWC has nurtured the WaDE Program development with financial support from federal agencies and philanthropic organizations. The WaDE Program's overarching goal is to provide a standardized water data-sharing platform for state and other public agencies, as well as private individuals, academic, consulting and non-profit organizations, which makes state data findable, accessible, interoperable, and reusable (FAIR).

This report provides a brief update of the WaDE Program's status over the period from April through June 2025 in the following areas: (1) Current WaDE Water Data Sharing; (1) WaDE/WestDAAT Improvements; and (3) the Western States Water Conservation Application Tool (WestCAT).

WestCAT and WestDAAT 2.0 are now operational (production stage) and future engagement and outreach with potential users, including public and private conservation organizations, state agencies, and others will be scheduled to encourage their use and gather feedback that can be used to further refine the tools.

Of note, WaDE is currently funded by three grants to assist in modernizing western water data and infrastructure as an Internet of Water Coalition hub. The funds come from: (1) a Broken Hill Proprietary (BHP) Foundation grant through Duke University; (2) a subcontract with the Center for Geospatial Solutions at the Lincoln Institute of Land Policy funded by the Bureau of Reclamation; and (3) a Bureau of Reclamation Applied Science WaterSmart grant and financial assistance agreement.

Current WaDE Water Data Sharing

The WaDE Program's database offers data access originating from 229 unique datasets across eighteen Western States for the following three categories of state water data in a consistent format and terminology where one state may have multiple datasets: (1) water rights data; (2) water supply data,

¹ WaDE: <https://westernstateswater.org/wade>

which includes (a) site-specific historical reservoir and streamgage data, (b) data on groundwater pumping, and (c) available aggregated water supply estimates at a watershed scale; (3) water use data, including (a) historical site-specific withdrawals related to water rights, (b) site-specific state public-supply water use, and (c) aggregated withdrawal, demand, delivered water, and consumptive use at a watershed scale; and (4) administrative and regulatory overlays data (Table 1). See **Appendix A**.

Table 1: Summary of WaDE-supported datasets that are shared through the APIs and WestDAAT

#	Data Type	Data and key metadata	# States Sharing	# Datasets Shared	WaDE Database / API	WestDAAT
1	Water Rights	Owner, priority date, point of diversion, place of use, purpose of use, permitted flow or volume, and water source name and type.	18	43	Yes	Yes
2	Water Supply	Site-specific historical reservoir and streamgages or groundwater pumping	12	46	Yes	Yes
		Aggregated water supply, such as runoff in streams, reservoirs, or groundwater	2	4	Yes	Yes
3	Water Use	Site-specific historical withdrawals related to water rights	4	5	Yes	Yes
		Site-specific state public-supply water use	5	34	Yes	Yes
		Aggregate withdrawal, demand, delivered water, consumptive use	9	68	Yes	Yes
4	Overlay	Administrative & Regulatory Overlays	17	29	Yes	Yes

WaDE/WestDAAT 2.0 Improvements

WestDAAT 2.0 improvements include access to all WaDE recorded data (1). This includes: (1) querying historical water supply/water use data available in the WaDE database; and (2) visualizing how administrative and regulatory overlay information relates to water rights. In addition, WestDAAT's existing water right visuals have been expanded to include new filter options, and the WaDE APIs capabilities and services have been redeveloped to follow Open Geospatial Consortium (OGC) Standards.

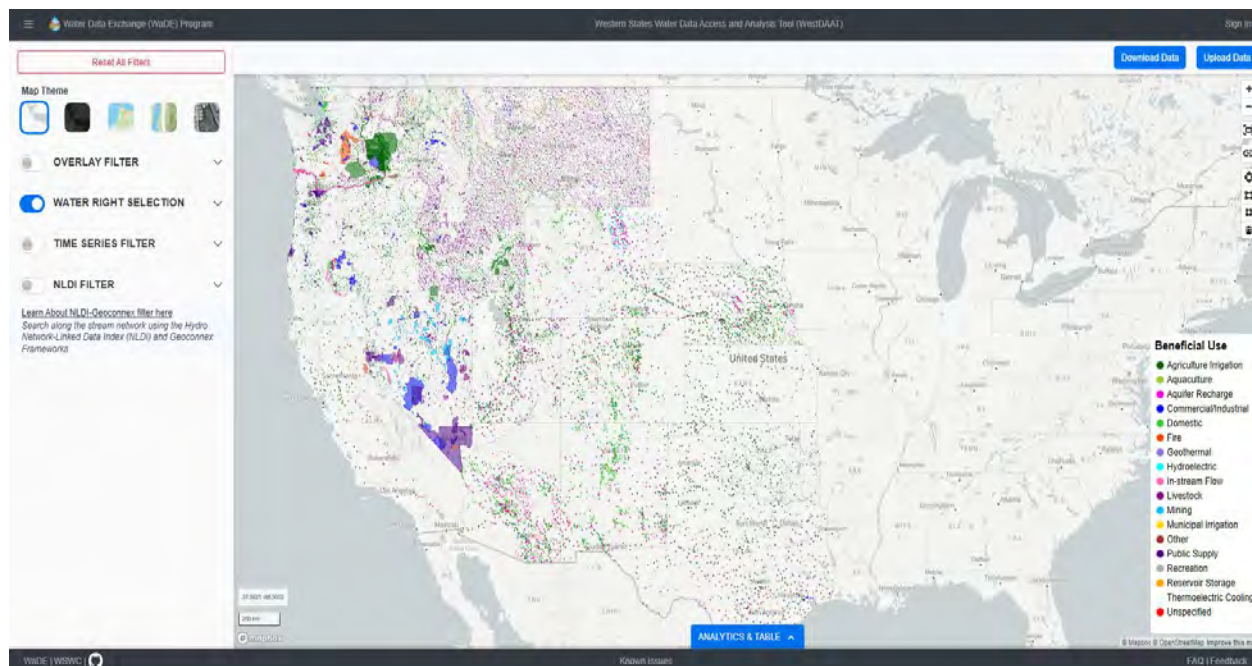


Figure 1: Screenshot of the new WestDAAT 2.0 Layout

The following is a breakdown of the new features being included.

- New Data Type Time Series Data:** WestDAAT 2.0 is now capable of showing state-based historical time series records on water supply and use, alongside the existing water right site information (and listed geospatial overlay data mentioned above). Such water supply records include site-specific historical reservoir releases, streamgage flow, and groundwater level or pumping measurements. Water use records include site-specific historical withdrawals related to an existing water right, and public-supply use related to geospatial areas. Existing site landing pages of WestDAAT have been updated to include both the site and time series information. Users of this data will be able to more easily answer questions like the following: (1) Where are related points of diversion/return and their actual volume or flow values in a hydrologic system? (2) What is the annual time series for a given set of sites with known beneficial use categories, water source types, and/or methodologies? and (3) What responses may be appropriate given real-time changes to reservoir levels, streamgage heights, or longer-term changes such as groundwater levels.
- New Data Type Administrative and Regulatory Overlays:** WestDAAT 2.0 is now capable of displaying geospatial overlays paired with water right site information. The two types of overlays deployed are administrative (boundaries of districts or offices with authority over water use) and regulatory (geographic areas that may follow basin or aquifer boundaries where specific rules or

requirements apply to water use) (of note, WestDAAT is geared to expand up available overlay types as they are available). Each overlay has a geospatial boundary, name, type of overlay, the water source type it applies to, an oversight agency, and a hyperlink that points to online documentation provided by the oversight agency. In the WaDE database, each overlay is mapped to water rights. Thus, administrative and regulatory overlays are geospatial metadata related to water rights that provide context to surface and groundwater water rights and water use across the West. Each overlay has a landing page with its metadata and a hyperlink to the oversight agency. Users of this overlay information will be able to answer questions like the following: (1) What are the administrative or regulatory agencies or districts with authority over groundwater or surface water use across the West? (2) What local or regional regulations exist in an area of interest? and (3) What water rights or water uses could be impacted by an administrative or regulatory decision?

- **New Water Right Filter Options:** WestDAAT's ability to filter and query for water right data has been expanded to include the following new data filters. A description of each filter type is described as follows: (1) **Allocation Type:** description of the type of water right (e.g., surface water right, underground water claim, state-recognized federal reserved water rights, etc); (2) **Legal Status:** the state- recognized legal status of the water right (e.g., proven, approved, perfected, adjudicated, etc.); and (3) **Site Type:** the high-level description of the site type recognized by the data provider (e.g., well, spring, reservoir, river, ditch, etc.).
- **New Site Selection Drawing Tools:** New drawing tools for both water right and time series sites have been included. New tools include expanding upon the existing drawing tools to include a draw circle, draw square, or draw an irregular polygon, and a new custom input file select from the user. Accepted file types include Shape files (shp) and GeoJSON files.
- **New Water Right Analytic Visuals:** Existing analytic visuals for water rights have been expanded. New visuals include the option to use a bar chart, and the ability to group results beneficial use (existing), water source type, owner type, allocation type, legal status type, site type.
- **New WaDE API Data Delivery:** WaDE is expanding its existing APIs data retrieval service to better follow the data retrieval guidelines set down by the Open Geospatial Consortium (OGC)² for retrieving and finding geospatial data. Specifically, WaDE will be using the OGC Features³ standard which is a modern, web-friendly standard developed for accessing and interacting with geospatial feature data over the web. It enables users to query, retrieve, and filter collections of geographic features (such as rivers, parcels, or monitoring stations) while using familiar web

² OGC: <https://ogcapi.ogc.org/>

³ OGC API Features: <https://ogcapi.ogc.org/features/overview.html>

technologies (e.g., RESTful URLs) and industry standard data formats (e.g, shp, GeoJSON). One of OGC’s strengths is its modular, interoperable design, allowing for lightweight, flexible data access across different systems and devices without requiring specialized GIS software.

Western States Water Conservation Application Tool

A new service has been launched, called the Westwide Western Water Conservation Application Tool (WestCAT), which is an extension of the existing WestDAAT tool, and is a water conservation program application tracking service to be used to streamline implementation of voluntary, compensated, in-state, and temporary water conservation measures (see Figure 3). WestCAT integrates two foundational data sets for water conservation: WestDAAT water rights data and evapotranspiration (ET) data as a proxy for consumptive use estimates relying on OpenET (a satellite-based imagery service that can computationally estimate the total amount of water transferred from both land surfaces and vegetation to the atmosphere through or ET). WestCAT will be used to help facilitate evaluation of applications to participate in compensated conservation programs through measures that might include full-season fallowing, alternative irrigation strategies, such as split season irrigation, and crop switching, etc.

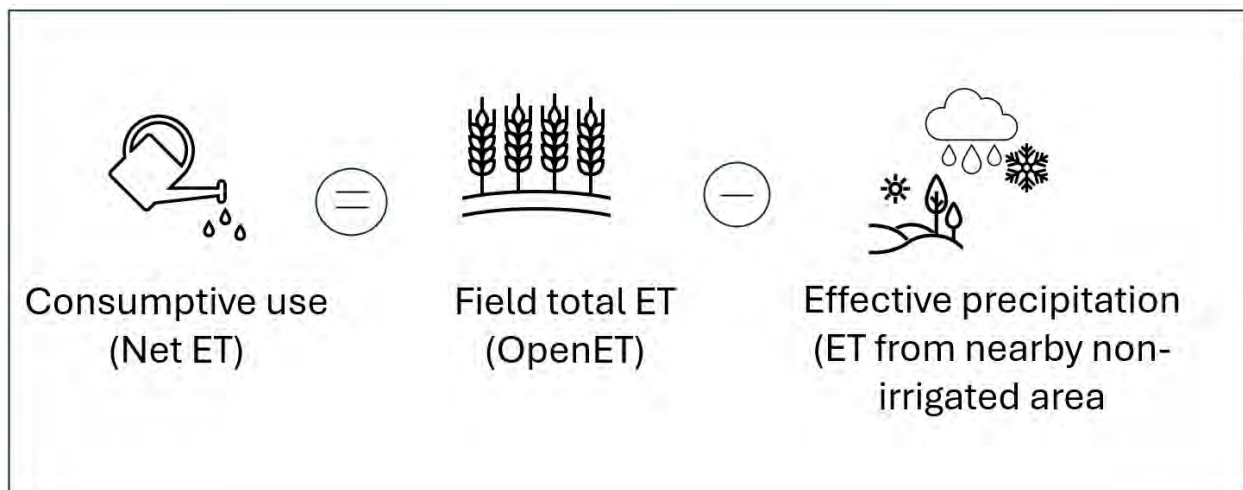


Figure 2: Consumptive Use (NET ET) Breakdown.

Consumptive Use (Net ET) is calculated based on the amount of estimated total ET from an irrigated field using OpenET, minus the Effective Precipitation falling on that area estimated using OpenET to measure ET from a non-irrigated control point (Figure 2). Western water laws and rights are based on reasonable beneficial use as the measure and the limit of a state-granted use right. This may be defined differently by each State, but for purposes of WestCAT, Net ET as a measure of consumptive use is a proxy for

reasonable beneficial use. Western water law also prohibits waste (of water), and thus promotes water conservation. However, heretofore, calculating consumptive use has been a complicated and laborious process taking into account cropping patterns, soil type, estimated or metered applied water and related runoff, etc. OpenET accurately estimates Net ET and is used to derive the actual amount of water consumptively used by the crop compared to water applied via irrigation, subtracting any water available to a crop from natural precipitation. It should be noted that a state water right may also include an amount for carriage losses from canals and laterals related to deliver of water to a headgate for diversion. Therefore, such losses may be accepted as reasonable, not just consumptive crop water use.

OpenET uses an ensemble of satellite-driven models to estimate evapotranspiration (ET). The models currently included are: ALEXI/DisALEXI, eeMETRIC, geeSEBAL, PT-JPL, SIMS, and SEEBop. These models use Landsat satellite data and other sources to calculate ET at a 30-meter by 30-meter spatial resolution.

WestCAT was designed to work with three main user types in mind: Conservation Organizations, Users, and Technical Reviews.

- Conservation Organizations are the funding source for a compensated conservation program and may involve a state agency, interstate commission, or other public or private organization with a desire and means to sponsor a program. The first step in WestCAT is to have these organizations reach out to the WSWC staff and register for the use the WestCAT service. The Conservation Organization will set application rules, sign up criteria, select an OpenET model(s) used for evaluating consumptive use, and set their offered reimbursement dollar amount or range of compensation. They will be the ones that make final decisions and announce award results for participants. A Conservation Organization will have different dashboards and tools available to evaluate and compare proposals. An individual applicant will not have access to information on proposals by other applicants.
- A User (e.g., farmers, ranchers, producers, canal companies, and holder of water rights) is an individual or group of water users that the Conservation Organization has contacted and encouraged to consider participating in the voluntary conservation program. They will use WestCAT to estimate consumptive water use on their fields/lands and consider potential offered compensation for conservation saving, evaluate the savings from selected conservation measures of interest, and submit applications for consideration of an award.
- The Technical Reviewer may be Conservation Organization staff or third-party consultants that check, and review User submitted applications for accuracy and completeness. This includes reviewing boundary measurements for proposed fields, checking OpenET model estimates, and the feasibility of selected conservation practices. Technical Reviewer may coordinate with any additional parties, such as state water rights administration agencies, or those agencies could be

granted access to review applications. A canal company or irrigation district that may hold the water right and distributes water to shareholders, might also be consulted and involved in the review and could possibly imposed restrictions on the amount of land enrolled in a program to protect operational and fiscal interests in the system.

Water Data Exchange (WaDE) Program

Western States Water Data Access and Analysis Tool (WestDAAT)

rjames+applicant@wsdc.utah.gov

Back to Water Right Landing Page

Water Conservation Estimation Tool

Estimate consumptive use through OpenET for an irrigated field

Click once to begin drawing a polygon around your land by using the shape tool. Then, use the panel on the left to review estimates and potential compensation as part of a voluntary and temporary measure. [How does this work?](#)

Or, you can upload a file from your device: [Upload File](#)

CALCULATED SHAPE AREA FOR ALL IRRIGATED FIELDS
0.00 Acres
Note: Polygons must be smaller than 50,000 acres.

FUNDING ORGANIZATION

OpenET MODEL

MAP LAYER

ESTIMATED CONSUMPTIVE USE

AVERAGE HISTORICAL TOTAL CONSUMPTIVE USE (DEPLETION)

CONSERVATION ORGANIZATION COMPENSATION RATE

DESIRED COMPENSATION (\$)

CONSERVATION ESTIMATE

[Continue to Application](#)

If you own this water right or have legal authority over the use of its water, you may apply to a water conservation program for compensated, temporary, and voluntary measure. Pending verification and approval by appropriate parties.

Estimate Consumptive Use for the Drawn Polygon(s)

DATA TABLE

mapbox

WaDE | WSWC | Known Issues | FAQ | Feedback

Figure 3: Water Conservation Estimation Tool

WestCAT and WestDAAT 2.0 are now operational (production stage) and future engagement and outreach with potential users, including public and private conservation organizations, state agencies, and others will be scheduled to encourage their use and gather feedback that can be used to further refine the tools.

Appendix A: WaDE Infrastructure

The WaDE 2.0 Data System is a centralized cloud-based system where the WaDE team maps and imports Western States' water data into a SQL Server Database hosted in Microsoft Azure web services. The WaDE database is based on a standardized and scalable data dictionary for water rights, water supply, and water use data in the Western U.S. The WaDE data dictionary has the following seven fundamental metadata elements.

- Water right metadata - priority date, owner name, and permitted diversions by flow or volume
- Sites are the spatial location of a point of diversion or place of use associated with water data
- Variables reported or measured – water source, water use, beneficial use, and units
- Water source types - generally surface or groundwater
- Beneficial use includes agricultural, municipal, industrial, etc.
- Methods used to estimate or model the data value
- Organizations or data providers

WestDAAT 2.0, as a front-end user-friendly tool, is deployed as part of the WaDE system in three independent environments (development, staging and production), which also include the Microsoft SQL Server database, APIs, and the web-browser-based front-end dashboard (i.e., WestDAAT). These separate environments allow the WaDE team to test any changes or data updates before going into the final product. First, the Quality Assurance (QA) or development environment is used to test how the system performs following new design changes using a sample of data. Second, the User Acceptance Testing (UAT) or staging environment is used to test the quality of data and user experience. Finally, the third or Production environment is the live service that is available to users (see Figures A1 & A2).

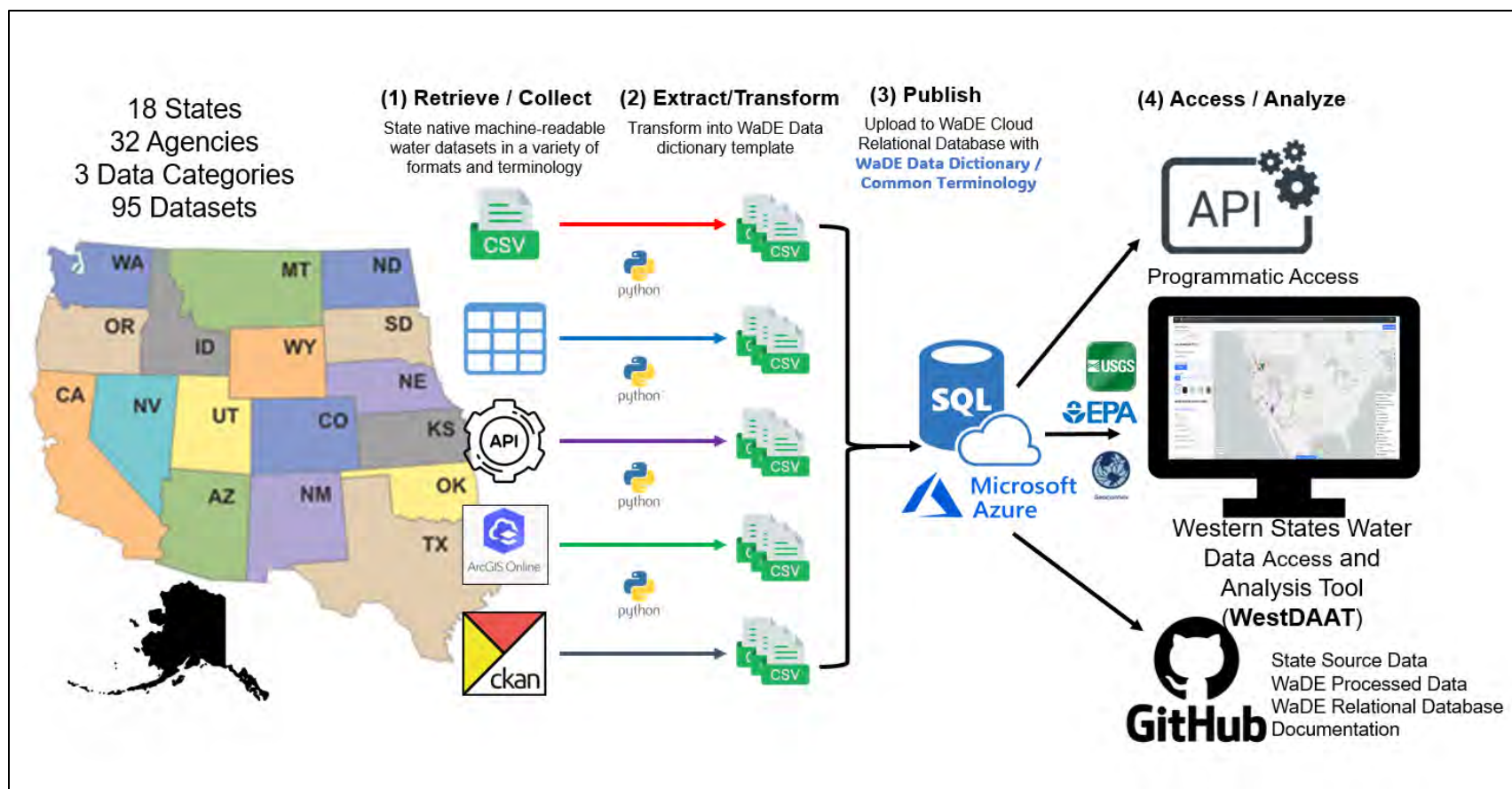


Figure A1: WaDE 2.0 architecture to streamline access to western states water rights, water use, and water supply data as FAIR through a streamlined and standardized service.

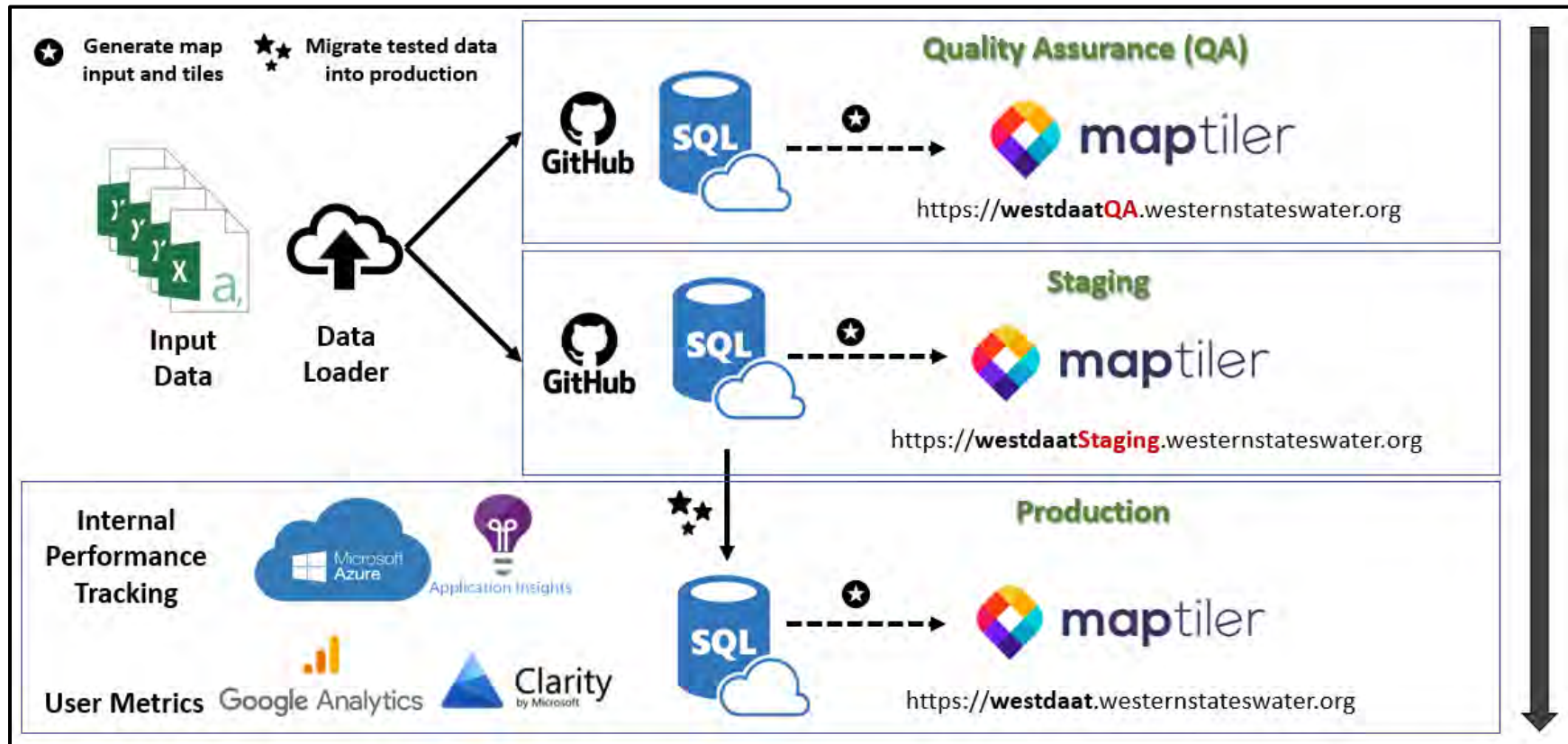


Figure A2: State-of-the-art scalable WaDE Data System based on the best IT practices deployed in three environments: Quality Assurance; Staging; and Production with open-source code tracked in GitHub at <https://github.com/WSWCWaterDataExchange>.

Tab I – Landsat Next Update



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

June 11, 2025

The Honorable Doug Burgum, Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Ms. Janet Petro, Acting Administrator
National Atmosphere and Space Administration
300 E Street, SW
Washington, D.C. 20240

Dear Secretary Burgum, and Acting Administrator Petro,

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

As we address the results of decades of drought in the West and continuing hydrologic uncertainty, adequately and expeditiously funding preparations for the launch of Landsat Next and its operations is critical. We are particularly concerned that the President's "skinny" budget calls for "...restructuring the gold-plated, two-billion-dollar Landsat Next mission while NASA studies more affordable ways to maintain the continuity of Landsat imagery, which is used by natural resource managers, States, and industry." The delay restructuring would threaten the continuing growth in the use of Landsat data for myriad water and other natural resources-related uses for many high value purposes.

The U.S. Geological Survey contracted for a report on the *Economic Valuation of Landsat and Landsat Next* in 2023, which was delivered on August 30, 2024. The report found the annual direct economic value to public and private users to be \$25 billion in 2023, and well over \$1 billion for indirect benefits. By way of comparison the estimated annual value in 2017 was \$3.45 billion. Landsat data enable monitoring water use, including unmetered irrigation diversions and withdrawals (counting groundwater wells), monitoring water quality and harmful algal blooms, reducing crop insurance fraud and lowering crop flood insurance rates, wildfire management and restoration, as well as the discovery of mineral reserves.

The multi-spectral trio of Landsat Next satellites scheduled for launch in the early 2030s, is estimated to create over \$33 billion in annual economic value from applications related to agriculture, water resources and water quality management, monitoring snowpack and water supplies, mitigating natural disasters, including drought, floods and wildfires, and many more applications. The driving force behind Landsat's dramatic gain in total value is the increase in scene-equivalent imagery accessed by users, estimated at 18.1 million in 2017 and rising to 65.6 million in 2023, through both computer downloads and cloud-based usage. We urge you to maintain funding for Landsat Next as designed, with an early 2030s launch date. The benefit-cost ratio for the Landsat Next program is apparently roughly 1:16.5 – a considerable annual economic return on the federal investment over the life of the mission. Moreover, no other private or public source can replace these benefits now or in the foreseeable future.

The Western Governors Association specifically noted their support for the Nation's Land Imaging Program and Landsat in a June 2024 Policy Resolution on Water Resources Management in the West (2024-07). The WSWC has long been an active advocate for the Landsat program and its thermal infrared (TIR) imaging capability as an increasingly essential tool for measuring, monitoring and managing water use in the western United States. Landsat is the only operational satellite having both thermal data and a spatial resolution fine enough to map and monitor water-resources use at the level of agricultural fields.

Typical applications include mapping irrigated lands, as well as crop type, measuring and monitoring evapotranspiration and consumptive water uses, mapping the extent of surface and groundwater use, allocating and administering rights to the use of water, including approval of water rights transfers and evaluating beneficial consumptive use, facilitating water marketing opportunities, administering negotiated interstate agreements and monitoring interstate compacts, estimating water-use by invasive species, monitoring water and food sustainability and security, forecasting and moderating commodity market fluctuations, as well as helping monitor and evaluate forest health and wildfire risks that directly impact our water resources.

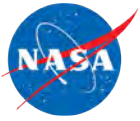
The WSWC and western water community worked hard to secure a place for the TIR imager on both Landsat 8 and Landsat 9, given these aging satellites, accelerating deployment of Landsat Next is urgently needed to guarantee TIR imagery remains available and there are no future data gaps, maintaining data integrity. Uncertainty regarding future data availability is an obstacle to expanding operational water resources conservation, planning, monitoring and management programs and limits the potential future value of the National Land Imaging Program.

We are currently working with the OpenET Coalition to measure and monitor evapo-transpiration as a representation of consumptive agricultural water use. Under a WaterSMART grant, we have developed and are deploying a Western States Water Conservation Application Tool (WestCAT) that integrates OpenET data with our regional Water Data Exchange (WaDE) and Western States Water Data Access and Analysis Tool (WestDAAT 2.0). Together these tools can be used to measure reasonable consumptive use and facilitate voluntary, compensated, water conservation programs promoting leasing and market transfers. The Colorado River Systems Conservation Pilot Program (SCPP) is one example of an effort that could benefit from these new tools. Landsat spectral measurements – both thermal and reflected – are essential for this work. Landsat Next will provide more frequent observations, as well as improved measurement accuracy and quality.

An Aesop's fable comes to mind about the farmer that "killed the goose that laid golden eggs!" Any short-term gain from restructuring Landsat Next will be at the expense of long-term economic and environmental benefits. The WSWC strongly supports Landsat Next and we urge you to give this investment a high priority. Effective and efficient conservation, development, and management of our Nation's water and related land resources depends on it.

Sincerely,

Tony Willardson
Executive Director



LANDSAT NEXT

<https://landsat.gsfc.nasa.gov/satellites/landsat-next/>



Landsat Next: A New & Revolutionary Mission

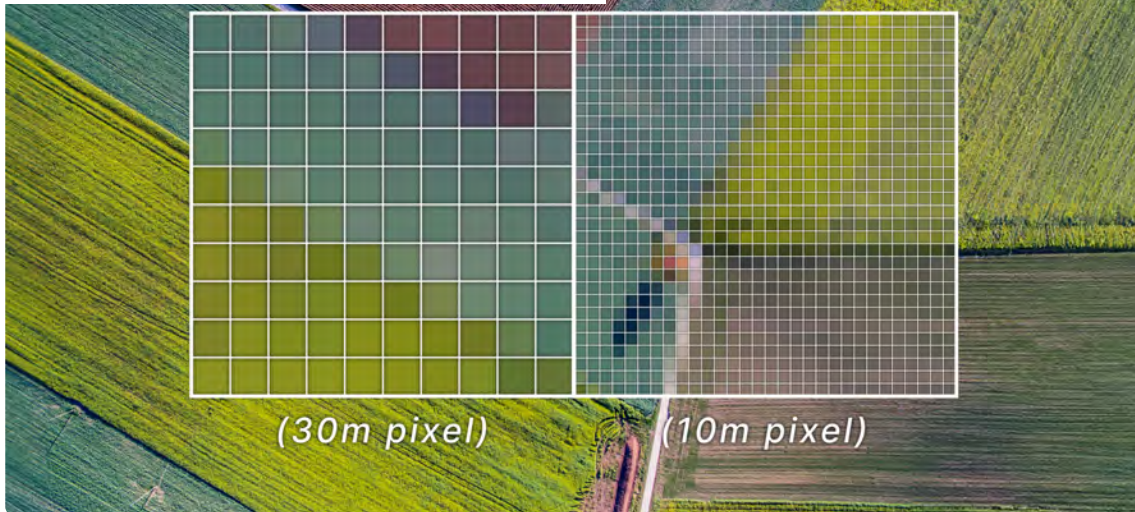
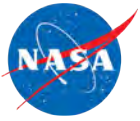
Landsat Next, expected to launch no earlier than 2031, is an innovative Landsat mission that represents a quantum leap in measurement capabilities with improved spatial and spectral resolutions. The mission will satisfy global Landsat data user needs and support evolving and emerging applications, all while maintaining Landsat data continuity and quality of the longest space-based record of Earth's land surface.

QUICK FACTS

- Temporal revisit: Under Review
- Spatial resolution: 10-20 meters (VSWIR), 60 meters (atmospheric VSWIR/TIR)
- Spectral bands: 26 (21 VSWIR, 5 TIR)
- Orbit: Sun-synchronous at 653 km (406 miles)
- Orbital inclination: ~98 degrees
- Equatorial crossing time: 10:10 am $\pm$ 5 minutes
- Global reference grid system: WRS-3
- Scene size: 164 km (102 miles) x 168 km (104 miles)
- Field of view: $\pm$ 7.2 degrees from nadir
- Expected launch date: No earlier than 2031
- Mission design life: 5 years
- Mission Category: 2
- Mission Class: B

Enhanced Spatial Resolutions

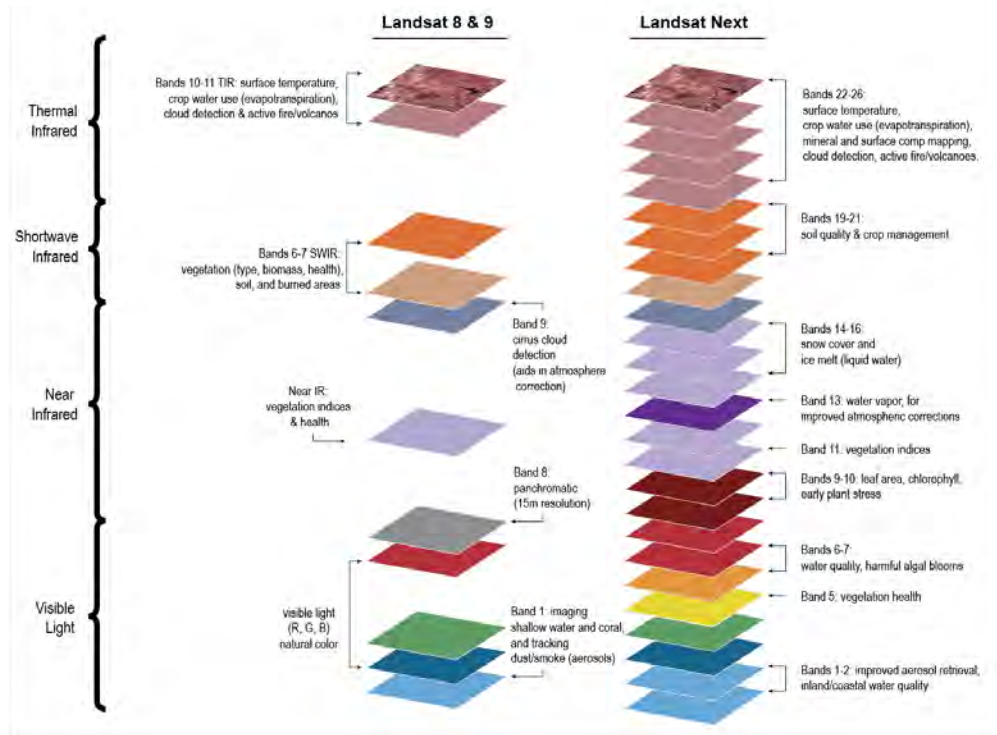
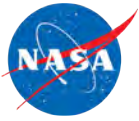
Each satellite observatory will consist of a spacecraft with a Landsat Next Instrument Suite (LandIS) that will collect 21 VSWIR and 5 thermal infrared bands. All bands will have higher spatial resolutions than prior Landsat missions, with ground sample distances of 10 to 20 meters for visible, near infrared, and shortwave infrared bands and 60 meters for atmospheric VSWIR and thermal infrared bands.



Superspectral Observations

Landsat Next will collect 26 bands—15 more than the currently operational Landsat 8 and Landsat 9 missions. The LandIS on each observatory will acquire refined versions of the 11 Landsat “heritage” bands to maintain data continuity, five new bands with similar spatial and spectral characteristics to the European Space Agency’s Copernicus Sentinel-2 mission to allow for improved data synergy and fusion, and 10 new spectral bands to support data user needs and emerging applications. Landsat Next will also have a water vapor band that will provide for atmospheric correction without ancillary data from other satellites.

LandIS will acquire all bands nearly simultaneously. This will minimize illumination change between bands, facilitating both cloud screen detection and products derived from multispectral surface reflectance and thermal emission data (e.g., evapotranspiration).



Spectral comparisons between Landsat 8/9 and Landsat Next. Spectral bands refer to the wavelengths of light that Landsat instruments measure. When an instrument measures a range of wavelengths, it provides details about different features on the ground. Landsat Next will acquire 26 bands, 15 more bands than the two previous satellite observatories. Image credit: NASA Landsat Communications and Public Engagement Team.

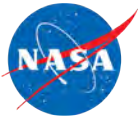
Data Quality and Integrity

The historical record of highly calibrated Landsat data has served as a gold standard of global land imaging. Landsat Next will preserve the robust radiometric and geometric accuracy requirements associated with the Landsat program to ensure long-term data consistency and facilitate critical time-series analyses. The radiometric accuracy will be comparable to the signal-to-noise ratios and noise equivalent differential temperatures of Landsat 8 and Landsat 9. The geometric accuracy of previous Landsat missions will match the finer ground sample distances of Landsat Next. Rigorous radiometric and geometric calibration and validation methods will be employed to provide band-to-band and image-to-image registration. Top of atmosphere and surface reflectance data products will be comparable with those from previous Landsat missions.

Landsat for the New Generation

Landsat Next will build upon the Landsat legacy of observing, managing, and adapting to Earth's changing surface, and will provide expanded capabilities to support evolving and emerging user applications. The enhanced spatial resolution and new 26-band superspectral capabilities of Landsat Next will enhance existing Landsat applications and unlock new applications that support:

- Water quality and aquatic health assessments (e.g., harmful algal blooms)
- Crop production and soil conservation (e.g., crop residues and non-photosynthetic vegetation)



Landsat Next will continue the Landsat program's decades-long data record of spaceborne multispectral imagery, which affords global, synoptic, and repetitive coverage of Earth's land surfaces at a scale where natural and human-induced changes can be detected, differentiated, characterized, and monitored over time.

Why Landsat Next?

Landsat Next will help us live sustainably on Earth. Landsat Next will propel us into the next half century of scientific discovery and informed decision making. Long-term Earth observations have become more valuable due to growing populations and increased pressures on resources such as food, water, housing, and energy. Tracking global environmental change and natural resources is important for sustaining human needs in the future.

Landsat Next will provide continuity, improve understanding, and support decision making. Landsat Next will continue to provide an unbiased, freely-available, and continuous record of changes on Earth. The longevity of Landsat's data record enables long-term characterization of environmental changes. Harmonization of Landsat Next data with similar observatories (e.g., Sentinel-2), improving data access through cloud storage and computing, and developing new algorithms will offer the ability for more rapid analyses and decision making.

Landsat Next will result in breakthrough science. New measurements will allow Landsat data users to identify features and patterns that were missed in previous Landsat images due to insufficient spatial or spectral resolutions. This may include features too small to detect (e.g., farm field, deforestation, urban structures) or objects with indistinguishable spectral attributes (e.g., land plants and algal pigments). These scientific discoveries are led by developments in engineering and technology that were not previously available and reflect the overall evolution and improvement in imaging capabilities.

The value of the Landsat program will be magnified with the expanded capabilities of Landsat Next. The new mission will continue to add to the indispensable and extensive data record. It will provide land and ecosystem change data and trending information that would otherwise not be available. With the revolutionary spectral and spatial enhancements, Landsat Next will bestow new capabilities to support evolving and emerging applications, and it will assist land managers and policymakers in making more informed decisions about global, regional, and local natural resources and the environment.

FEATURED STORY

Landsat's Economic Value increases to \$25.6 Billion in 2023

A New Report Details Additional Billions of Indirect Benefits

By [Communications and Publishing](#)

October 9, 2024

A new report about the Landsat satellite program – a partnership between the U.S. Geological Survey and National Aeronautics and Space Administration – calculates its 2023 value at \$25.6 billion—a marked increase from its 2017 estimate of \$3.45 billion.

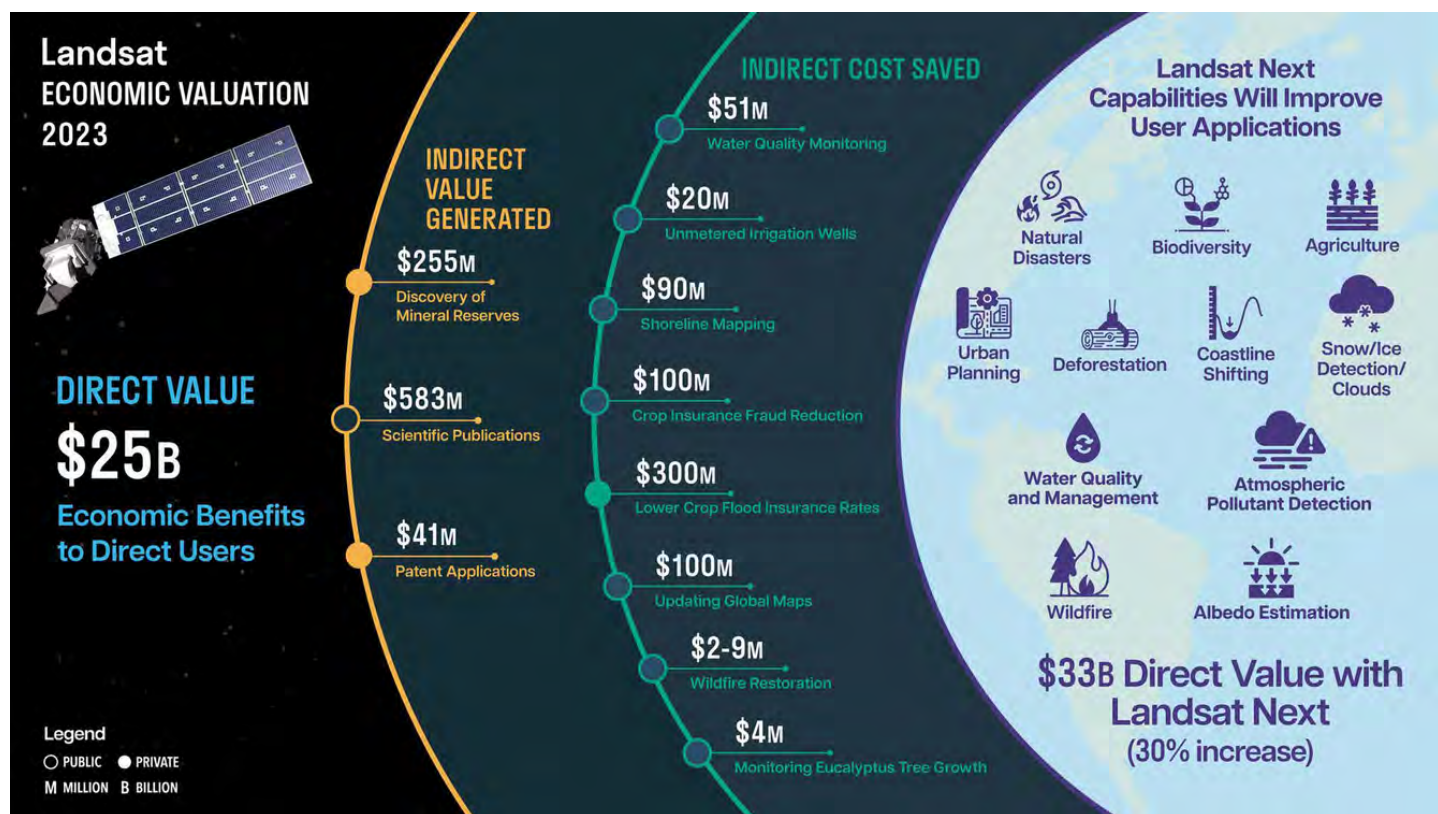
Landsat is the only U.S. satellite system designed and operated to collect essential data on Earth's geologic formations, natural habitats, farmlands, cities, lakes, glaciers, coastlines and other surface features. It provides imagery at landscape-scale resolution that can be used to support efforts to improve environmental sustainability, climate change resiliency, and economic growth – all while expanding an unparalleled record of Earth's changing landscapes.

The “Economic Valuation of Landsat and Landsat Next 2023” study also highlights additional benefits, including more than a billion dollars’ worth of indirect benefits. The report estimates that Landsat Next, the multi-spectral trio of satellites scheduled for launch in early 2030s, could bring in over \$33 billion in annual economic value.

“Our nation’s multi-decadal commitment to the Landsat series of satellites has made—and continues to make—foundational public services and research contributions to the U.S. economy that far exceed their cost,” said Tim Newman, Program Coordinator for the USGS National Land Imaging Program.

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Newman added, “The results of this latest study underscore the urgent need to continue the timely development of Landsat Next—a true national priority. Timely development of this revolutionary new Landsat mission can deliver additional billions of dollars in annual economic benefits, supporting sectors as varied as agriculture, forestry, wildfire response and recovery, and water resource monitoring.”



Sources/Usage: Public Domain. [View Media Details](#)

This infographic is from the report "Economic Valuation of Landsat and Landsat Next 2023," which shows that Landsat's direct value in 2023 was \$25.6 billion. The report and infographic also show well over \$1 billion in estimated indirect economic value.

Direct vs. Indirect Value

The driving force behind Landsat’s dramatic gain in total value is the increase in scene-equivalent imagery accessed by users, estimated at 18.1 million in 2017 and rising to 65.6 million in 2023

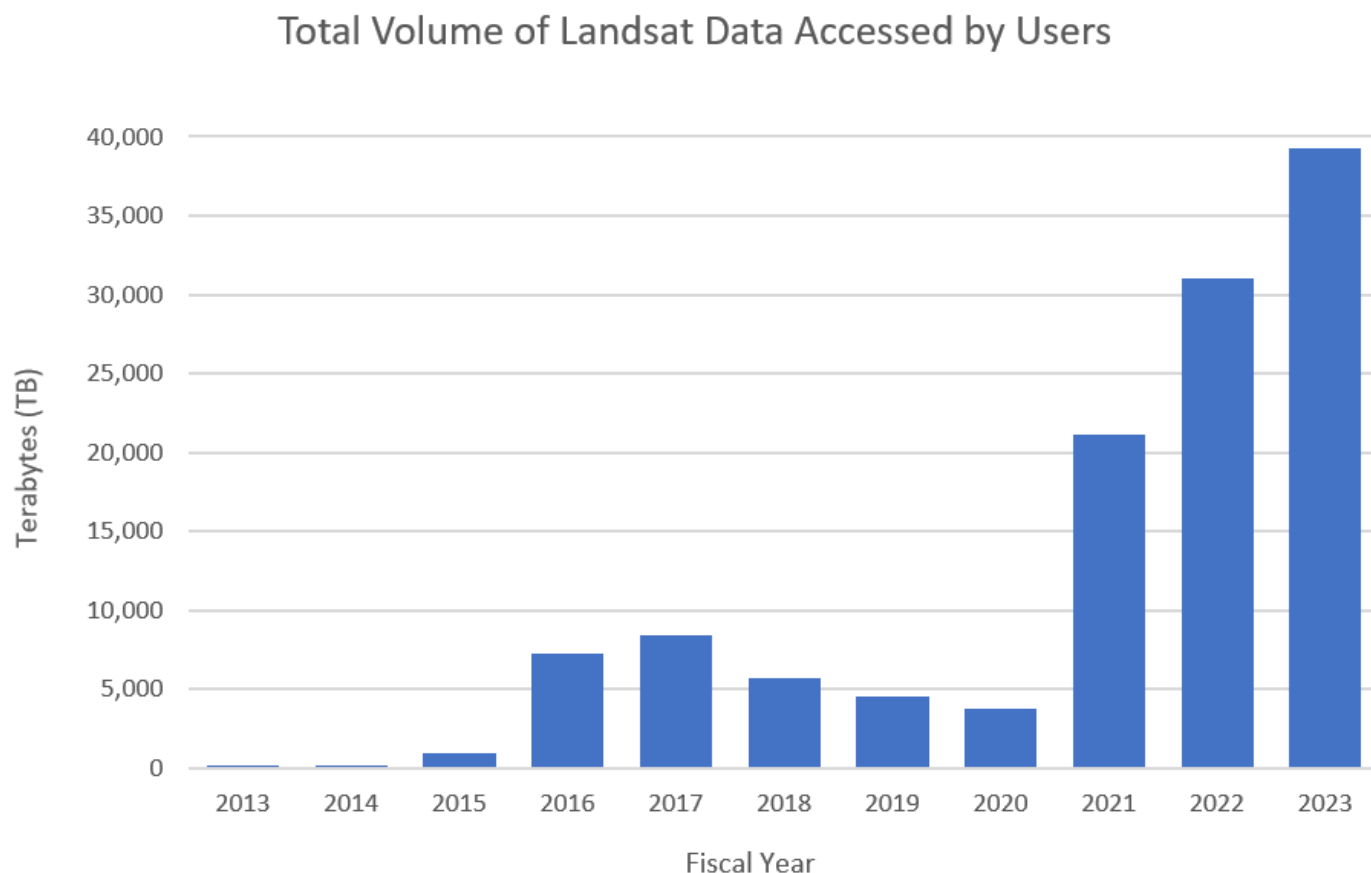
The authors calculated that 65.6 million Landsat scene-equivalents were accessed by users in 2023. This figure was derived by measuring the total volume of Landsat data accessed through both computer downloads and cloud-based usage, and then dividing it by the average size of a Landsat scene.

Using the same methods employed in the 2019 report that evaluated 2017 data, the new study estimated that the cost per scene had increased from \$183–\$203 in 2017 to \$390 in 2023. Despite this rise, the primary reason for the significant jump in Landsat’s overall economic valuation—now estimated at \$25.6 billion—is the increase in Landsat imagery accessed. This direct value was determined by analyzing historical costs per scene, user surveys, current commercial costs for satellite data, and other relevant variables.

Landsat use has continued to increase over the years, thanks to the landmark 2008 decision by the USGS to make Landsat data available at no cost to users. And beginning in late 2020, the availability of Landsat data in the cloud

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further improved access by enabling faster downloads and analysis, reducing latency and increasing availability for users worldwide.



Sources/Usage: Public Domain. [View Media Details](#)

This graph illustrates the annual volume of Landsat data accessed by users, including all data types, collections, and dissemination pathways. Notable increases in data demand occurred in FY2016 with the introduction of Collection 1 and in FY2021 with the start of Collection 2, which marked the transition to cloud-based access, offering enhanced product variety and improved accessibility.

The \$25.6 billion figure does not include the value derived from indirect users accessing Landsat data through commercial, cloud-based, data providers and Geographic Information System providers, and other commercial firms.

Real-World Benefits

To understand the full impact of how Landsat data are used to benefit the United States and the world, the report's authors compiled examples that add up to cost savings of well over a billion dollars.

They also noted that these savings are not necessarily directly related to the researchers or agencies who downloaded the data in the first place. In other words, these examples show the indirect value of Landsat data—what could be called a ripple effect.

Examples of this ripple effect of cost savings and economic efficiencies included the \$41 million in patents that cite Landsat data in their applications and the \$255 million in gold reserves estimated to

data. International uses include \$4 million saved in one area of Brazil by improved monitoring of eucalyptus plantations.

- **Flood Insurance Savings:** The U.S. Department of Agriculture saves \$300 million annually in flood insurance premiums for farmers through better mapping.
- **Water Usage Monitoring:** The Idaho Department of Water Resources saves nearly \$20 million annually by using Landsat to estimate water usage from unmetered wells.
- **Post-Wildfire Restoration:** The U.S. Forest Service and Bureau of Land Management save between \$2 million to \$9 million annually using Landsat for post-wildfire restoration activities.
- **Crop Insurance Fraud Prevention:** Landsat data is used to prevent crop insurance fraud, saving the U.S. government \$100 million annually.
- **Water Quality Monitoring:** Using Landsat to monitor water quality for chlorophyll saves \$51 million annually in lab costs.

In addition, the report details a multitude of Landsat benefits that are difficult to quantify in dollar value. These include measuring carbon emissions, analyzing how wetlands and lakes benefit people, estimating agricultural water use, tracking biodiversity and wildlife, monitoring deforestation, and gauging economic activity and urban growth.

Forecasting Landsat Next Benefits

With advanced capabilities like 10-meter resolution, 26 spectral bands, and a six-day revisit time, the upcoming Landsat Next satellite mission is projected to provide even more value than Landsat 8 and 9.

The study estimated potential benefits across sectors resulting from improved Landsat Next observations to be between \$33.3 billion and \$34.7 billion annually, representing a 30–35 percent increase in value per scene. These figures were based on the number of downloaded scenes from 2023, which came to 65.5 million. Given the 10-year trend of increased use of Landsat data, the total economic value can be expected to grow beyond the nearly \$35 billion.

With these capabilities, Landsat Next will carry the Landsat legacy into the future and continue to support a wide range of industries, from agriculture to urban planning, and provide critical data for addressing some of the world's most pressing challenges, including disaster response and climate change resiliency.

Find the full report at: <https://www.usgs.gov/media/files/economic-valuation-landsat-and-landsat-next-2023>

Contacts

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Public Affairs Specialist

Communications and Publishing

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U.S. Geological Survey
U.S. Department of the Interior



Contact USGS

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Tab J – Instream Flow Council Training Center



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

June 11, 2025

RE: Instream Flow Council/American Fisheries Society Project Steering Committee
National Center for Ecologically Sustainable Water Conservation & Management

The Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors. The WSWC's mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

Water in the West is an increasingly scarce and precious resource. Western States have and will continue to face unique hydrologic, legal and infrastructure challenges. Population growth, competing economic and ecological demands, and changing social values have left surface and ground water supplies stressed in many areas. This has increased the number and complexity of conflicts among users and uses. Effectively addressing these challenges requires a knowledgeable and capable workforce trained in sound science and water law and policy.

Western governors recognize the need to align education and workforce training with opportunities for students and workers to secure good jobs and to build a skilled workforce that can support our present and future economic and environmental needs. Access and training related to the use of data on streamflow, snowpack runoff, soil moisture, groundwater levels, evapotranspiration, and water-related forecasts are important aspects of effective water and related resources management, including quantifying needs related to protecting, developing and managing our water and related resources, including fish and wildlife resources.

Western States are primarily responsible for management of water, fish and wildlife resources, which requires balancing public and private interests, rights and responsibilities. Sustainable water resource management and development should yield long term economic growth, enhanced protection and restoration of significant aquatic ecosystems, and improved economic and environmental security and quality of life. The WSWC supports [or] creation of the National Center for Ecologically Sustainable Water Conservation & Management [is consistent with this principle] and [we] look[s] forward to future collaborative efforts to further its purposes.

Sincerely,

Executive Director
Western States Water Council



National Center for Ecologically Sustainable Water Conservation & Management Updates Page

You are here: INSTREAM FLOW COUNCIL > National Center for Ecologically Sustainable Water Conservation & Management Updates Page

IFWLC CENTER* PROJECT UPDATES PAGE (updated April 28, 2025)

*The original Center name: the 'Instream Flow and Water Level Conservation (IFWLC) Training Center' used in the original [Feasibility Assessment Report](#) has been updated to:

National Center for Ecologically Sustainable Water Conservation and Management (Center)

Page Contents:

- [Project Background](#)
- [Letters of Support](#)
- [Published Articles](#)



Center Updates

- [April 2025 Update](#)
- [March 2025 Update](#)
- [February 2025 Update](#)
- [January 2025 Update](#)
- [December 2024 Update](#)
- [November 2024 Update](#)
- [October 2023 Update](#)



Project Background

For nearly two decades, interdisciplinary instream flow related conservation (protection, restoration and enhancement) training, research and development services were provided under the direction of the federal Cooperative Instream Flow Service Group (CIFSG) in Fort Collins, Colorado. After that group ceased to exist in 2001, no equivalent centralized uniform source of instream flow and water level conservation (IFWLC) training and support services has been established.

Many who received training by the CIFSG have subsequently retired or moved to other jobs. As a result, this interdisciplinary water conservation field has been losing a central focus, potentially leading to diminished knowledge, mentorship, and leadership for quantifying the effects of water uses, management, and research on effective conservation of instream flow and water levels on fish, wildlife, and habitat. Collectively these services contributed to achievement of ecologically sustainable water conservation and management (integration of anthropogenic and ecological water uses).

These and related concerns are being addressed by the [Instream Flow Council](#) (IFC) and [American Fisheries Society](#) (AFS) through a Multistate Conservation Grant (MSCG) project to first assess the needs and support for establishing a new IFWLC training, research, and development center (Center), and contingent on positive outcomes of the assessment, develop strategies and pathways forward to establish and operate the Center.

As part of this process, the IFC and AFS established a steering committee (SC)** to execute this project. The SC is comprised of experts representing governmental, non-governmental, academic, and private sectors with extensive experience in integration of the interdisciplinary development, training, and application of IFWLC methods, and who have remained actively involved in water resource allocation issues.

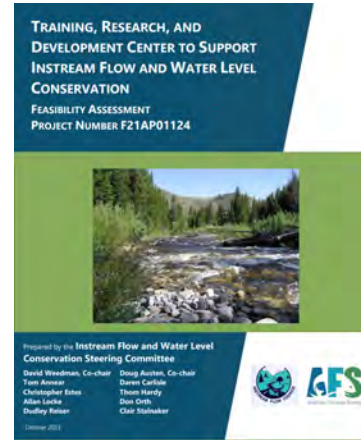
October 2023 Update

Instream Flow and Water Level Conservation Center Feasibility Report Completed

After extensive engagement, the [IFWLC Center Feasibility Assessment Report](#) was completed in October 2023 and established the need, support, strategies, expectations, and pathways forward to develop the Center. This document serves as the guiding document through the next steps of development of the Center.

Citation:

Weedman, D., D. Austen, T. Annear, D. Carlisle, C. Estes, T. Hardy, A. Locke, D. Orth, D. Reiser, and C. Stalnaker. 2023. Training, research, and development center to support instream flow and water level conservation: Feasibility assessment. Multistate Conservation Grant Project Number F21AP01124, Wildlife and Sport Fish Restoration. Instream Flow and Water Level Conservation Steering Committee. [Instream Flow Council](#) and [American Fisheries Society](#). 78 p.



[IFC Home Page](#) | [Center Project Updates-Home Page \(Top of Page\)](#) | [RFIQ Process Page](#)

Last Updated May 6, 2025

Tab K – WSWC Testimony
House Natural Resources Sub. on
Water, Wildlife and Fisheries

**Testimony of the
WESTERN STATES WATER COUNCIL**

**Submitted to the
House Committee on Natural Resources
Water, Wildlife and Fisheries Subcommittee Hearing**

Advancing Federal Water and Hydropower Development: A Stakeholder Perspective

April 30, 2025

My name is Michelle Bushman, and I am the Deputy Director and General Counsel for the Western States Water Council (WSWC), a bi-partisan government entity created by Western Governors in 1965, representing eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues, working closely with the Western Governors' Association (WGA). Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

Water is an increasingly scarce and precious resource and should continue to be a public policy priority. Western States have and will continue to face unique hydrologic, legal and infrastructure challenges. Population growth, competing economic and ecological demands, and changing social values have stressed surface and groundwater supplies in many areas. This has increased the number and complexity of conflicts among users and uses. A secure water future is becoming more costly and increasingly uncertain given our unpredictable climate, aging and often inadequate infrastructure, data limitations regarding water supplies and demands, competing or poorly defined water rights, and a constantly evolving regulatory landscape. Effectively addressing these challenges will require stronger collaboration and cooperation that transcends political and geographic boundaries between states, federal agencies, tribes, and local communities.

State Water Authority

Western states have primary authority and responsibility for the appropriation, allocation, development, conservation and protection of water resources, both groundwater and surface water, including protection of water quality, instream flows and aquatic species, while acknowledging international treaties, interstate agreements, and judicial decrees. States are primarily responsible and accountable for their own water development, management, and protection challenges, and are in the best position to identify, evaluate, and prioritize their needs and plan and implement strategies to meet those needs. Each Western State has developed comprehensive systems for the appropriation, use and distribution of water tailored to its unique physiographic, hydrologic and climatic conditions found within that state.

Congress has historically deferred to state water law as embodied in Section 8 of the Reclamation Act, Section 10 of the Federal Power Act, Section 101(g) and 101(b) of the Clean Water Act, and myriad other statutes. Federal deference to state water law is based on sound principles for the protection of private property rights and the collective public interest in

managing our water resources and the environment. Western states value their partnerships with federal agencies as they operate under this established legal framework.

Federal water planning, policy development, regulation, protection, and management must recognize, defer to, and support state water laws, plans, policies, programs, water rights administration, adjudication and regulation, compacts and settlements. Rather than attempt to dictate water policy, the federal government should engage states early in meaningful consultation and contribute funding to support implementation of state water planning and management, thus avoiding, or at least minimizing, the need for federal regulatory mandates.

Hydropower

The WSWC has long supported federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs that enhance our electric generation capacity and promote economic development, through efficient permitting processes, while appropriately protecting environmental resources and respecting States' Clean Water Act §401 certification authority, States' authority over water allocation within their borders, the obligations of interstate compacts, and the rights and preferences of existing water and power users.

Hydropower is a clean, efficient source of energy that is a vital part of meeting our present and future energy demands. It represents about 27% of total renewable electricity generation, with approximately 103.4 gigawatts of capacity and nearly 5.7% of total electricity generation. The potential exists for further public and private development of hydropower, including upgrading existing generators, developing small hydro and the power potential from low-head hydro on existing man-made conduits and canals, development of tidal power energy systems, as well as hydroelectric pumped storage projects. Aside from projects requiring review by the Federal Regulatory Commission (FERC), such development can often be undertaken with little impact on environmental and ecological resources, requiring minimal further environmental review. Permitting requirements may be appropriately minimized and streamlined to promote reasonable development while avoiding unnecessary costs.

WSWC supports the development and implementation of appropriate energy and water conservation programs at all levels to minimize demands placed on our natural resources and ecosystems.

Energy-Water Nexus

The West enjoys diverse and abundant renewable and non-renewable energy resources. Water is often a necessary component of energy development and production, which can present significant challenges in States where water resources are already scarce. Similarly, water management can be energy intensive, including the extraction or movement of water, or desalination, recycling, and reuse of water resources. An integrated approach to water and energy resource planning, development, diversification, management and protection is necessary to achieve a thriving and sustainable future for the West. This includes integrating water and energy policies to maximize effectiveness and efficiencies; supporting research and gathering data to improve our understanding of water-energy supplies and demands; ensuring that decisions related to the siting, construction, and operation of water and energy development projects include an

evaluation and appropriate consideration of the interrelated impacts of such development; and that the use of alternative cooling technologies or other energy-related options are tailored to the availability of water and the related opportunity costs of other water uses.

Reclamation Fund

Under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principal means for financing federal western water and power projects with revenues from western resources. 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. The unobligated balance of the Reclamation Fund continues to grow and is expected to exceed \$25.2B. However, these receipts are only available for expenditure pursuant to annual appropriation acts, and the fund receipts are mostly spent elsewhere contrary to Congress' original intent.

WSWC recommends that 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).

WestFAST

The Western States Federal Agency Support Team (WestFAST) was formally organized in 2008 in response to the Western Governors' Association's recommendation to facilitate correlation of federal activities and to develop and enhance collaborative partnerships among state and federal agencies working on priority water-resource issues. Today, WestFAST is a collaboration of more than sixteen federal agencies with water management responsibilities in the West.

WestFAST works closely with the Western States Water Council striving to accomplish effective cooperation among western states, and their partners, in the understanding, conservation, development and management of water resources. The WestFAST federal agencies form a dynamic, flexible team that provides the opportunity for interaction initiated by WSWC, individual states, or the federal government. WestFAST supports a continued commitment on the part of federal and state organizations to work with local, tribal, and other stakeholders to improve the effectiveness of collaboration and seek solutions to water issues across Western States. Federal layoffs, massive staff reductions, and the closure of local federal agency offices across the West, have created uncertainty about the future of federal support for water management and related disaster mitigation.

Water Data

All levels of government must prioritize the collection, analysis and open sharing of reliable data regarding water availability, quality, and usage given its importance to research for sound science and data driven decisionmaking. This includes actions related to hydropower development and Forecast Informed Reservoir Operations (FIRO). Sound decisionmaking for

water resource management requires accurate and timely data on precipitation, streamflow, evapotranspiration, soil moisture, snow depth, snow water content, droughts, and water quality. In addition to state, tribal, and local data, many federal programs provide critical data.

For example, the U.S. Geological Survey's (USGS) Groundwater and Streamflow Information Program (GWSIP) and National Streamflow Network provide data on water supply availability and water levels. Landsat thermal data is archived and distributed by the USGS. The former National Hydrography Dataset (NHD) and 3D Hydrography Program (3DHP) provide map locations of water features and streamgages. The National Water Information System (NWIS) provides surface water data.

The U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) provides water supply data through the Snow Survey and Water Supply Forecasting Program, based primarily on data from SNOTEL weather stations that measure snowpack through winter and early spring. The National Water and Climate Center (NWCC) provides soil moisture data through the Soil and Climate Analysis Network (SCAN). The USDA's National Agriculture Imagery Program (NAIP) is used in water right transactions (e.g., water right transfers, instream leases) to confirm or support assertions of beneficial use of water on subject lands.

The National Atmospheric and Space Administration (NASA) and its water-related missions provide remotely-sensed data, and WGA has specifically expressed support for the Landsat program and its use of thermal infrared imagery for monitoring water use.

The National Oceanic and Atmospheric Administration's (NOAA) National Weather Service, Climate Programs Office, Office of Atmospheric Research (OAR), National Environmental Satellite Data and Information Service (NESDIS), National Centers for Environmental Information (NCEI), and National Integrated Drought Information System (NIDIS), another program specifically supported by WGA, all conduct research and provide forecasting data, supporting water management and preparation for the extremes of drought and flooding.

The Bureau of Reclamation's (USBR) Agrimet system is an agricultural weather station network that collects site-specific data that, among other things, is often used to ground truth and calibrate remotely sensed satellite data. It also provides data for improving agricultural water planning and water use efficiency, conserving water, improving crop yields, reducing pesticide and fertilizer application, and reducing energy costs for growers.

The Environmental Protection Agency's National Environmental Information Exchange Network (NEIEN) facilitates environmental data sharing among state, federal, tribal, and local governments to improve timeliness for decisionmaking.

Many of these programs operate very efficiently on lean budgets, yielding public safety and water supply benefits much greater than the cost of their operation. WSWC recently asked our Western states how they are using some of these federal datasets. While not all of these responses will be specifically relevant to this Subcommittee, nor is this an exhaustive list, the complexity of the responses below underscores the many critical roles that federal data play in water management

across the West:

California has a long history of collecting its own data to meet its water needs, and also relies on federal data to make informed water infrastructure operations and management decisions. California's State Water Project and Reclamation's Central Valley Project, the two largest water projects in California, rely on a mix of state and federally collected and served water and weather data to support project operations, including hydropower generation. The NWS California-Nevada River Forecast Center has been co-located with CDWR's State Flood Operations Center for decades, and the two entities partner closely in flood forecasting and flood emergency operations. State and local agencies use USGS streamflow and groundwater level measurements for water project operations, water rights compliance, and groundwater management. Following the 2016 Open and Transparent Water Data Act, California's Department of Water Resources (CDWR) created an integrated water data platform, which includes water and ecological data related to California water supply and management and collected or held by USBR, USGS, NOAA, U.S. Forest Service, and the U.S. Fish and Wildlife Service. NWS watches and warnings support emergency responders in preparing to issue evacuation warnings and orders, such as the high wind and extreme fire risk warnings leading up to and through the recent 2025 LA fires, and the 2023 flood warnings during the atmospheric river events prior to the breach of levees on the Pajaro River.

Colorado's Water Conservation Board uses NRCS SNOTEL and streamgage data to conserve, develop, protect, and manage Colorado's water. Many federal data programs are even more beneficial in the long term (decadal scale) as they provide robust statistical information through variable climate conditions. Discontinuing these data programs can disrupt the long-term benefits.

Kansas uses USGS streamgage data for water rights administration, and reservoir data for reservoir operations. Landsat and OpenET data provide information for irrigated acreage analysis. They use USGS Real Time Water Quality Sensors to monitor ambient water quality and for tracking plumes and relating pollutant levels to stream flows. USACE and USBR reservoir data enables them to manage reservoir release decisions for mitigating instream water quality impacts from harmful algal blooms (HABs). USACE reservoir data provides information on drought or low flow operations and informs interstate water compact compliance. USACE Missouri River data and projections help determine the impacts to Kansas reservoir operations. USACE water quality data supplement state data for TMDL analysis and development. EPA water quality data supplements state data for water quality planning and evaluation. The NOAA-NIDIS drought monitor is used to determine gubernatorial declarations of drought emergencies. The USDA Risk Management Agency (RMA) supports the PRISM project that Kansas uses to update the Republican River Compact Administration groundwater model, and to do other historical analyses with its gridded precipitation and temperature data.

Idaho's Department of Water Resources relies extensively on the USGS stream gaging program for water resource management, to carry out the priority administration of surface water (Snake River, Bear River, Big Lost River, Big Wood River, Payette River, and Upper Salmon River), for dam operations (Priest Lake Outlet), and to ensure compliance with interstate compacts (Upper Snake and Bear River) and tribal water rights settlements (Nez Perce and Shoshone-

Bannock). Idaho also relies on the USGS Landsat program for the remote sensing of evapotranspiration data across the Snake River Plain and tributary basins. Landsat data is used to map irrigated lands and to calculate data needed both annually and in real-time to carry out conjunctive surface and groundwater administration; to calibrate and validate groundwater models; to evaluate and approve new water appropriations via permitting, licensing, transfers, and water supply bank transactions; and to recommend historical water use in adjudication processes. Idaho relies on NRCS SNOTEL data for water supply forecasting, tracking the state's water resources, and informing management decisions. These data allow IDWR and water users to plan for potential water shortages. SNOTEL forecasts allow Idaho to maintain statutorily prescribed water levels in Priest Lake, and to determine whether summer flows will meet the hydropower minimum streamflow requirements in the Swan Falls Settlement Agreement. The Idaho NRCS office manages 119 of the 900 national SNOTEL sites. The NRCS State Snow offices have 27 of 71 positions vacant, and the Idaho office has 4 of 10 positions vacant due to recent federal terminations, threatening SNOTEL network maintenance and forecasting capabilities.

Montana's Department of Natural Resources and Conservation relies on several federal water datasets to actively manage the water resources. As a headwaters state, Montana relies heavily on streamgage data, SNOTEL data, and weather data that are used daily during the winter and spring to forecast anticipated runoff and water availability for their state reservoir management, flood risk assessment, and water compact agreements including international, interstate, tribal and federal compacts.

New Mexico heavily relies on water data developed by or in consultation with federal agencies for several different purposes collaboratively integrates several sources of federal and non-federal water data under the authority of New Mexico's Water Data Act, NMSA 72-4B-1, et seq.. New Mexico and other states rely on federal water data to track reservoir levels, gauging and stream flow measurements, and forecasts for water management operations in intrastate and interstate basins. For example, in connection with the current severe drought conditions, New Mexico has utilized the NRCS monthly SNOTEL data and current and historic precipitation data, NOAA monthly soil moisture measurements, NIDIS interactive drought maps, and the U.S. Drought Monitor, and Climate Assessment for the Southwest (CLIMAS), an interdisciplinary NOAA program that is a collaboration between the University of Arizona and New Mexico State University. Federal water data is also useful in connection with implementation of the technical elements of interstate and Indian Water Rights Settlement Agreements. Federal water data also has been utilized recently in New Mexico in connection with coordinated responses across several agencies to flooding and channel capacity constraints.

In Nevada, the NRCS water supply forecasts, based primarily on SNOTEL data, are the principal indicator used by irrigators in the Walker River Basin to set pumping thresholds to prevent chronic groundwater depletions. Such local efforts to manage groundwater use for the benefit of the community helps prevent the need for state-mandated curtailments of water rights by priority date. During record-breaking precipitation in the winter and spring of 2023, Nevada relied on those monthly forecasts to notify dam owners of potential runoff volumes that could exceed dam spillway capacity. They relied on NOAA weather predictions to determine flood control reservoir releases during a near-failure event at the Echo Canyon Dam in 2023; two of the three subsurface grade check structures in the downstream outlet channel were breached by

headcutting, and the third and final structure held up. USDA's RMA PRISM Climate Data is an extremely valuable gridded geodatabase to estimate climate parameters in the many remote regions of Nevada where there is little ground-based weather data. It is commonly used for hydrologic modeling to estimate water budgets and groundwater availability. They widely rely on the U.S. Drought Monitor to gauge drought severity, which is easily communicated and often drives water conservation efforts at the local level.

North Dakota relies heavily on precipitation data provided through NOAA and NRCS. NOAA's Atlas 14 program was a gargantuan shift on the understanding of precipitation patterns and statistical probability of those patterns. The recent development of Atlas 15, a spatially continuous national precipitation frequency atlas, is expected to be an equivalent leap forward in understanding when, where, and how much precipitation is to be expected. NRCS precipitation distribution publications, such as Technical Papers 40 (1961) and 49 (1964) (then-U.S. Soil Conservation Service) help in the construction of water-related infrastructure. Data from Atlas 15 will help North Dakota to ensure that its water infrastructure projects are designed accurately and efficiently, making the most efficient use of taxpayer dollars.

Oregon uses federal data for almost all major functions for characterizing and managing surface and groundwater, including water distribution, forecasting, monitoring, modeling, allocation, regulation, management, public safety, water right transactions (permits, transfers, evidence of beneficial use, forfeiture of non-use), reservoir monitoring, basin studies, municipal water supply planning, agricultural water supply needs, and meeting the needs of ESA-listed aquatic species. Data include USGS NWIS groundwater monitoring network, streamgage network, water chemistry, and maps; USBR Hydromet and Agrimet; U.S. Fish and Wildlife Service threatened and endangered aquatic species lists; NOAA precipitation data; USDA soil surveys, NRCS snow surveys, CREP-enrolled lands, and Ag Census.

South Dakota's Department of Agriculture and Natural Resources relies heavily on USGS stream flow, Mesonet datasets, and other USGS and NOAA publications when investigating water right or water quality permit applications. These data are also used during droughts, floods, responding to pollution spill situations, and to verify hydrologic modeling for dam spillway sizing. On the water quality side, streamflow gages are critical in determining allowable pollutant discharges. Federal water chemistry data impact water quality permit decisions. Mesonet data help inform their beneficial use analysis of waterbodies. On the water resources side, streamflow data informs decisions about bypass requirements and water shut off orders. The state dam safety program is waiting for NOAA to complete its updated probable maximum precipitation (PMP) study (last completed in the 1970s) to provide updated numbers for designing and rehabilitating dams. NOAA's Atlas 15 is needed to update the National Precipitation Frequency Standards for designing infrastructure to the best available information and current storm data.

Utah's Department of Natural Resources relies heavily on USGS streamgages for accurate real-time flow measurements and historical data that inform decisions about diversions, withdrawals and compliance for the fair and transparent allocation of water rights. Streamflow data help optimize reservoir operations, groundwater management, and other water projects. This can lead to more efficient water use, reduced conflicts, and better environmental outcomes. Accurate data allows for complex Great Salt Lake management, from flow modeling to salinity

forecasting. Streamgauge data supports early warning systems and informs emergency response strategies. Having access to near real-time conditions aids in flood forecasting, drought planning, informing agricultural decisions, minimizing risks to communities and infrastructure, and supports recreational and ecological needs. Historical records enable trend analysis, helping detect changes in flow regimes over time, which helps with modeling and state planning efforts. Such insights guide policy development, water resources planning, and future infrastructure investments.

Washington's Department of Ecology relies on NOAA and USGS flood forecasts for predicting peak flood elevations, severity, and inundation areas days in advance, which helps identify potential road closures or evacuations before flood events occur. NOAA's precipitation gauges and cameras in wildfire-affected areas help monitor and predict post-wildfire debris flows and flood risks, improving responses and mitigation efforts. The staff of NRCS's regional Snow Survey and Water Supply Forecasting Program has been decimated – only 5 of 12 staff remain to cover both Washington and Oregon, and the northwest SNOTEL system will not be maintained without sufficient staff, and is expected to fail as soon as this summer. The U.S. General Services Administration has proposed cancelling the lease for the NRCS facility that houses the SNOTEL equipment, and listed the vehicles and supplies used to maintain the monitoring network as potentially being put up for sale as soon as June. Without snowpack data, Ecology will not be able to accurately forecast water supplies, and may not be able to issue timely drought declarations. This means that farmers and water managers will not be able to plan for and mitigate drought impacts. The Bureau of Reclamation's determinations regarding Yakima basin water allocation rely on NRCS data. Ecology's Office of Chehalis Basin noted that without the integrated federal system for collecting, analyzing, and reporting data, every aspect of the work they do and fund would be impaired or impossible. Their Flood Warning System relies on a combination of federal, state, and local funding to build, upgrade, and maintain the system. The system includes data from USGS gages, NOAA's GOES satellite system, NWS weather forecasts, and NOAA's River Forecast Center – all of those elements need to be working and communicating with one another for the flood warning system to operate. The system provided thousands of residents with advance notice of a major flood event in 2022, enabling them to protect lives and property. NIDIS is the sole source of collaboration between Washington and other states on drought response and resilience. The NIDIS data analysis is in a format that is accessible to the public and allows Ecology and other water managers to evaluate drought conditions, including the impacts on irrigation districts in the Yakima Basin. Ecology is concerned about proposed cuts to OAR where NIDIS is housed; the data collected and analyzed there is critical to their understanding of and forecasts for seasonal climate trends, including drought. USGS gages and historical weather data are essential in creating and operating the hydrologic and hydraulic models used for reducing flood damage and protecting aquatic species, and to assess the potential impact of future infrastructure and conveyance improvements.

Data and forecasting provide early warning that can help water and power suppliers, communities, and businesses to take action to mitigate loss of life, property damage, and economic impacts. Examples of recent billion-dollar disasters in the West include: flooding and mudslides, severe weather and wildfires (2023); extensive West and Midwest drought, heatwave, and wildfires, as well as severe Central weather and North Central and South Central hail (2022); Western drought, heatwave and wildfires, with California flooding, as well as Central and South Central severe storms and cold wave (2021); continued drought, heatwave, wildfires, as well as

severe storms and hail (2020); Missouri River and northern Great Plains flooding (2019); Colorado hail storms (multiple years), drought in the southern Great Plains (2018); California and Nevada flooding (2017); severe multi-year drought in California and much of the West (2012-16); Texas and Oklahoma flooding (2015); and flooding in Texas resulting from Hurricane Harvey (2017); drought across the southern Great Plains (2011); Missouri River and northern Great Plains flooding (2011). Such disasters are not isolated occurrences in the West and are likely to continue.

Water agencies depend on NOAA forecasting to be the early warning for extreme weather events. Unfortunately, the skill of NOAA precipitation forecasting is poor more than a week in advance. Reliable forecasts with longer lead times would allow water managers to operate infrastructure more efficiently and allocate resources to mitigate and manage impacts. WSWC urges Congress to prioritize the needed research funding to improve precipitation forecasting at subseasonal to seasonal (S2S) lead times. Public Law 115-25 directed NOAA to improve its S2S forecasts and to submit a report to Congress with recommendation for doing so. NOAA submitted its report in 2020 but has not taken action on its recommended pilot projects for water management and agriculture.

Western water agencies also rely on streamflow water supply products produced by NOAA's three western River Forecast Centers. The services the river forecast centers provide to federal, state, and local reservoir operators in the West are unique to the West; NOAA's National Water Center in Tuscaloosa does not have the capability to prepare water supply forecasts. WSWC urges Congress to require NOAA to keep the centers operational and to continue providing the water supply products used by federal, state, and local agencies, including the critical modeling needed to support Colorado River water and power operations.

WSWC urges Congress to prioritize the appropriation of sufficient funds to maintain, modernize, expand, and improve these federal data programs, ensuring that they remain accessible to a growing and diffuse number of decisionmakers and stakeholders. The erosion or loss of these programs and the disruption of data may have significantly adverse consequence for our economic and environmental future.

WSWC further urges Congress to invest in additional research and data sharing to help resolve state and regional water problems, including support for water resources research institutes and the Water Resources Research Act program, transitioning from research to operations and technology transfers, forecast informed reservoir operations, hydroclimate data collection, and seasonal to subseasonal forecasting.

Water Infrastructure

A secure and sustainable water future will be determined by our ability to maintain, replace, expand and make the most efficient use of critical water infrastructure. We must preserve and improve existing infrastructure, as well as encourage and support innovative water supply strategies and new storage options to better balance supplies with demands.

The West depends on an intricate and aging system of weirs, diversions, dams, reservoirs, pipelines, aqueducts, pumps, canals, laterals, drains, levees, wells, stormwater channels, and water

and wastewater treatment and hydroelectric power plants. These systems are financed and maintained under a complex network of state, tribal, local, private, and federal ownership, benefitting a broad segment of water users and other stakeholders.

Aging federal water infrastructure has deteriorated due to underfunded and deferred maintenance, repair, and replacement needs. In many cases, this infrastructure had exceeded its designed lifespan, raising public safety issues. Other authorized federal infrastructure projects have not been started or remain incomplete for decades due to inconsistent, incremental, or insufficient appropriations; permitting and licensing backlogs; and oversight by multiple federal agencies with inadequate interagency coordination.

Maintaining and delivering sufficient supplies of water of suitable quality is key to maintaining the West's economic prosperity, meeting our environmental needs, and sustaining our quality of life, both now and in the future. Appropriate water-related infrastructure investments ensure our continued ability to store, manage, conserve, and control water during both floods and droughts, as well as protect and treat our water resources. Existing and new infrastructure is critical to meet drinking water, wastewater treatment, irrigation, hydropower, flood control, interstate compact, tribal and international treaty, fish and wildlife habitat needs.

The WSWC supports collaboration and leadership at all levels of government and within the private sector to address the nation's infrastructure needs, including hydropower. WSWC urges Congress to work with the Administration to ensure adequate appropriations for constructing, maintaining, and replacing critical federal water projects and to assist states and local governments as they address their water infrastructure needs. The WSWC encourages Congress to work with the Administration and with States to streamline permitting processes and coordinate environmental and other regulatory reviews to eliminate duplicative procedures. WSWC urges Congress further to develop a method of budget scoring that considers the unique timing of the costs and benefits of water infrastructure investments and accounts for long-term public health and safety, economic and environmental benefits, with fair and appropriated discounting.

Rural Water Systems

Many of our rural communities are struggling to meet existing and future water supply needs and compliance with present regulatory mandates. Over 90% of the public water supply systems in the United States are small systems serving 10,000 or fewer people. These small systems face unique challenges, including financial constraints, aging infrastructure, limited technical operations and managerial administrative expertise, reduced or contaminated water supplies, and lack of access to alternative water supplies. Small system infrastructure consolidation poses significant challenges, particularly for geographically isolated communities. However, regionalization of sharable technical, financial, and managerial resources across multiple small systems may present opportunities for small systems to make meaningful improvements.

For nearly twenty years, the Bureau of Reclamation's Rural Water Program has been focused on the completion of authorized rural water projects that have long been needed in Montana, New Mexico, North Dakota, and South Dakota. The program is also authorized to work with rural communities, states, and tribes to assess potable water supply needs, and to undertake

additional appraisal investigations or feasibility studies for new rural water projects. The WSWC supports the use of this program to identify smaller scale opportunities for small public water supply systems, including the appropriation of sufficient funds directed toward that effort. WSWC also supports the work done by USDA Rural Development to bring clean, safe drinking water and sanitation to rural communities.

Indian Water Rights Settlements

WSWC has long supported the negotiated resolution of Indian water rights claims, which can achieve the final determination unquantified reserved water rights for tribes in a manner that is the least disruptive to existing water uses with younger priority dates. This leads to greater water security across the West and an increased ability to plan for the future. Some advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities. The successful resolution of certain claims may require “physical solutions,” such as development of federal water projects and improved water delivery and application techniques. The federal government has trust obligations toward tribes, and water rights settlements often involve a waiver of some portion of tribal water right claims and breach of trust claims that could otherwise result in court-ordered judgments and increased costs for federal taxpayers. These settlements have a regional impact and are not and should not be considered earmarks or community projects. WSWC urges Congress to expand opportunities to provide funding for settlements, and to ensure that authorized settlements will be funded without a corresponding offset to other essential tribal or Department of Interior programs.

An integrated, collaborative, and grassroots approach to water resources management is critical to the environmentally sound and efficient use of our water resources. States, federal agencies, tribes, and local communities should work together to identify water problems and develop optimal solutions at the lowest appropriate level. Striving for cooperation rather than litigation, we must recognize and respect national, state, regional, local and tribal differences in values related to water resources.

Thank you for the opportunity testify.

FORMALLY ADOPTED POSITIONS OF THE WESTERN STATES WATER COUNCIL

2025

- [Position #531](#) – Regarding Clean Water Act Jurisdiction (4/25/25)
- [Position #530](#) – Supporting Migratory Birds and the Management of State Water Rights and Resources (4/25/25)
- [Position #529](#) – Supporting Renewable Hydropower Development (4/25/25)
- [Position #528](#) – Supporting Rural Water Infrastructure Needs & Projects (4/25/25)
- [Position #527](#) – Regarding the Extension of NPDES Permit Terms (4/25/25)

2024

- [Position #526](#) – Regarding Abandoned Hardrock Mine Cleanup (10/23/24)
- [Position #525](#) – Regarding States' Water Rights and Natural Flows (10/23/24)
- [Position #524](#) – Regarding Bureau of Reclamation Drought Response Program (10/23/24)
- [Position #523](#) – Regarding Drought Preparedness, Prediction and Early Warning Programs (10/23/24)
- [Position #522](#) – Regarding Federal Water and Climate Data Collection and Analysis Programs (10/23/24)
- [Position #521](#) – Supporting State Clean Water Act Section 401 Certification Authority (10/23/24)
- [Position #520](#) – Regarding the Endangered Species and State Water Rights (7/26/24)
- [Position #519](#) – Supporting Water Transfers and NPDES Discharge Permits (7/26/24)
- [Position #518](#) – Supporting Rural Water Supply Project/Infrastructure Needs (7/26/24)
- [Position #517](#) – Regarding State Nutrient Reduction Strategies (7/26/24)
- [Position #516](#) – Supporting the *Dividing the Waters* program for judges (March 14, 2024)
- [Position #515](#) – State Primacy over Groundwater (3/14/24)
- [Position #514](#) – Access to Reliable, Clean Drinking Water for Federally Recognized Indian Tribes (3/14/24)
- [Position #513](#) – Supporting Federal Research on Climate Adaptation (3/14/24)
- [Position #512](#) – Regarding Integrating Water and Energy Planning and Policy (3/14/24)
- [Position #511](#) – Supporting Water Infrastructure Funding (3/14/24)
- [Position #510](#) – Supporting Weather Station Networks (3/14/24)

- [Position #509](#) – Supporting the use of Forecast Informed Reservoir Operations and Innovations (3/14/24))
- [Position #508](#) – Regarding Probable Maximum Precipitation Standards Position (3/14/24)

2023

- [Position #507](#) – Actions Federal Agencies Should Take to Expedite State General Stream Adjudications (9/14/23)
- [Position #506](#) – Asserting State Primacy on Protecting Ground Water Quality (9/14/23)
- [Position #505](#) – Supporting USDA Conservation Programs and Water Resources (9/14/23)
- [Position #504](#) – Supporting Indian Water Rights Settlements (9/14/23)
- [Position #503](#) – Regarding Water-Related Federal Rules, Regulations, Directives, Orders and Policies (5/24/23)
- [Position #502](#) – Supporting the Water Resources Research Institutes and USGS Water Resources Research Act Program (5/24/23)
- [Position #501](#) – Regarding the Reclamation Fund (5/24/23)
- [Position #500](#) – Supporting NOAA Data, Forecasting, and Research Programs (5/24/23)
- [Position #499](#) – Regarding Preemption of State Law in Federal Legislation (5/24/23)
- [Position #498](#) – Supporting National Dam Safety Programs (5/24/23)
- [Position #497](#) – Regarding Rural Water and Wastewater Project/Infrastructure Needs and USDA Programs (5/24/23)
- [Position #496](#) – Regarding the Clean and Drinking Water State Revolving Funds and State and Tribal Assistance Grants (5/24/23)
- [Position #495](#) – Regarding the National Levee Safety Act of 2007 and Levee and Canal Structures (5/24/23)
- [Position #494](#) – Regarding the Transfer of Federal Water and Power Projects and Related Facilities (5/24/23)
- [Position #493](#) – Regarding the Reclamation Safety of Dams Act of 1978 (5/24/23)
- [Position #492](#) – Regarding Bureau of Reclamation Maintenance, Repair and Rehabilitation Needs (5/24/23)
- [Position #491](#) – Supporting Subseasonal to Seasonal Weather Research, Forecasting, and Innovation (5/24/23)
- [Position #490](#) – Regarding Water Quality and Federal Reserved Treaty Rights for Tribes (5/24/23)

2022

- [Position #489](#) – supporting legislation requiring the federal government to pay state filing fees in state general stream adjudications (10/21/22)
- [Position #488](#) – expressing support for implementation of the SECURE Water Act (10/21/22)
- [Position #487](#) – urges the Administration and NASA to enhance focus on research for water resources applications and promote long term engagement with the WSWC (10/21/22)
- [Position #486](#) – related to EPA exercise of authority under Section 404(c) of the Clean Water Act (10/21/22)
- [Position #485](#) – supports Water Research and Development Programs at the Department of Energy National Laboratories (8/5/22)
- [Position #484](#) – regarding Hydraulic Fracturing (8/5/22)
- [Position #483](#) – strengthening the Resiliency of Our Nation to the Impacts of Extreme Weather Events (8/5/22)
- [Position #482](#) – regarding Radio Frequencies Bandwidth (8/5/22)
- [Position #481](#) – regarding Clean Water Act Jurisdiction (4/6/22)
- [Position #480](#) – supporting Migratory Birds and the Management of State Water Rights and Resources (4/6/22)
- [Position #479](#) – supporting Renewable Hydropower Development (4/6/22)
- [Position #478](#) – supporting Rural Water Infrastructure Needs & Projects (4/6/22)

Tab L – WOTUS Update

Agency Review of Waters of the United States (WOTUS) and Summary of State Comments

Agency Review

On March 12, 2025, the Trump Administration EPA and Corps announced they would jointly review the definition of “waters of the United States” (WOTUS) and released field guidance on the proper implementation. The field memo provided updated guidance for implementing WOTUS under both regimes currently operating across the country. Under the previous administration, the agencies entered into joint coordination memoranda to establish a process by which the Corps and EPA would coordinate on jurisdictional determinations “to ensure accurate and consistent implementation” of the regimes. These memoranda included implementation guidelines regarding identification of wetland areas and tributary reaches, whether site specific discrete features can serve as continuous surface connection, and whether natural landforms can provide evidence of a continuous surface connection. Under the newly inaugurated Trump Administration, the EPA set these memoranda to expire on March 27, 2025 ([WSW #2626](#)).

The new (March, 2025) memo affirmed the plurality set forth in *Rapanos v. United States*, 547 U.S. 715 (2006), and interpreted “continuous surface connection” as adjacent wetlands that “directly abut the [requisite jurisdictional water] (e.g., they are not separated by uplands, a berm, dike, or similar feature).” The memo noted that wetlands with only an intermittent, physically remote hydrologic connection to WOTUS do not have the “necessary connection” to trigger the CWA. Departing from the prior administration’s coordination memoranda, the agencies wrote: “Therefore, an interpretation of ‘continuous surface connection’ which allows for wetlands far removed from and not directly abutting covered waters to be jurisdictional as adjacent wetlands has the potential to violate the direct abutment requirement for ‘adjacent wetlands’ under the plurality’s standard and now Sackett’s endorsement of that standard. Therefore, any components of guidance or training materials that assumed a discrete feature established a continuous surface connection are rescinded.” See WSW #2652 and <https://www.epa.gov/system/files/documents/2025-03/2025cscguidance.pdf>

As part of EPA and Army Corps’ review, the agencies solicited feedback on key topic areas over a 30-day period (Docket ID No. EPA-HQ-OW-2025-0093). The agencies received over 4200 comments in response to their solicitation for feedback on implementing and defining WOTUS, including comments from the States of Alaska, California, Idaho, Nevada, New Mexico, North Dakota, Utah, Washington, and Wyoming. WSWC prepared a summary of state comments (below). Also see <https://westernstateswater.org/policy-letters/2025/cwa-wotus-definition/>.

State Comments

Alaska

The Alaska Department of Environmental Conservation (ADEC) highlighted its vast water resources and wetlands, prior congressional carve-outs and exemptions, and unique climatic conditions. ADEC advocated for significant curtailment of the scope of federal jurisdiction, regionalized definitions and

tools, categorical exclusion of permafrost wetlands, and the exclusion of jurisdictional ditches from the definition of WOTUS. They recommended that: (1) “relatively permanent” waters must have measurable flow or seasonal standing water, contribute flow directly to a WOTUS, and have a defined bed/bank with an ordinary high water mark (OHWM) or high tide line; (2) permafrost wetlands must be specifically excluded; (3) use of litter or debris must be eliminated from the OHWM definition; (4) the Sackett two-part test must be used for “continuous surface connection;” (5) non-tidal wetlands abutting a traditional navigable water are only a relatively permanent surface water connection if they have a permanently flooded water regime; (6) “adjacent” must equate to “abut;” and (7) upland ditches draining only uplands with less than perennial flow must be excluded.

ADEC recommended that the term “seasonal” refer to extended periods of standing or continuously flowing water occurring in the same geographic feature year after year, except in times of drought. It should not include tributaries with flowing or standing water for only a short duration in direct response to precipitation. The OHWM should be defined as “that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, or change vegetation susceptible to permanent flooding as defined by existing wetland characterization methods.”

ADEC agreed with the Agencies’ March 12 Field Memo that a “continuous surface connection” refers to a wetland which directly abuts a WOTUS without being separated by uplands, berms, or dikes. They emphasize that only non-tidal wetlands with a permanently flooded water regime meet the “relatively permanent” standard and reject the idea of connecting jurisdictional waters across uplands.

ADEC said that jurisdictional ditches should meet the same criteria as WOTUS tributaries: continuous seasonal flow, existing beyond rain events and feeding into navigable waters. Ditches built solely to manage precipitation and lacking “relatively permanent” flow should be excluded from WOTUS. Rules should clarify that ditches draining uplands are not jurisdictional along the upland-excavated portions.

California

The California State Water Resources Control Board, in conjunction with the California Regional Water Quality Control Boards, highlighted the CWA’s vital role in protecting the state’s water resources and supporting a wide range of uses. The State urged that future federal actions strengthen the CWA’s effectiveness, especially in tackling new challenges like harmful algal blooms and non-point source pollution. California called for the retention of the 2023 WOTUS Rule. Alternatively, California emphasized that any proposed changes must be regionally appropriate and accommodate the hydrology of the arid West. They advised against basing jurisdictional criteria on flow rates, timing, or similar characteristics, warning they would be “unlikely to accommodate” the variable hydrology of the arid West. California’s precipitation is highly variable and is expected to intensify in coming years. They urged the Agencies to work closely with all States if they pursue any revisions.

Idaho

The Idaho Departments of Agriculture and Environmental Quality advocated for a clear, predictable, and administratively implementable rulemaking. They stressed the importance of cooperative federalism and strongly supported the 2020 Navigable Waters Protection Rule (NWPR), basing their proposed definitions on the previous rulemaking.

Idaho recommended defining “relatively permanent” narrowly and clearly by limiting the term to waters with continuous flow at least seasonally (typically three months), excluding ephemeral features (those flowing only in direct response to precipitation), and requiring traceable, demonstrable surface connectivity. They recommended avoiding “speculative or historical determinations regarding the condition of a waterbody at the time of impoundment.”

Idaho defined “continuous surface connection” to explicitly require the wetland to abut or be indistinguishable from a jurisdictional water. They urged clarification that connections via ditches, culverts, or swales do not satisfy this requirement, and the establishment of field-ready criteria for assessing “indistinguishability.”

They suggested strengthening the exclusion for ditches used solely for agricultural return flows. They supported keeping the NWPR’s clear exclusion of ditches that are entirely in uplands, do not have relatively permanent flow, and are artificial conveyances not originating in jurisdictional waters. The State also urged reinstating exclusions from the 1986 guidance and NWPR – such as prior converted croplands, artificially irrigated lands that return to dry status, and man-made conveyances without permanent flow. Idaho addressed the need for straightforward exclusions for highway and roadside ditches.

Nevada

The Nevada Division of Environmental Protection (NDEP) supported creating a durable WOTUS rule but stressed the need for user-friendly tools — including a national mapping system, reliable hydrologic data, and transparency in resources used to make jurisdictional determinations — to help the public identify jurisdictional waters and make informed permitting decisions.

NDEP emphasized cooperative federalism and warned that unclear federal rules could force States to create equivalent programs, increasing costs for regulated entities. To strengthen co-regulator partnerships, NDEP made the following recommendations: “(1) The Corps needs to actively solicit state involvement and provide the state with a meaningful role when making [Jurisdictional Determinations] JDs; (2) JDs made by one of the agencies (i.e., USACE) should apply to other applications of the [CWA] (i.e., §402); and (3) Case-by-case JDs should remain in place for longer than 5 years.... Enabling approved JDs (AJDs) to remain in place until they are revisited, updated, or challenged would improve Rule durability and provide greater certainty to both the regulator and stakeholder communities.” They recommended a recourse mechanism for States and Tribes to challenge incorrect jurisdictional determinations

NDEP asserted that political boundaries should factor into WOTUS definitions when interstate waters are impaired, as federal oversight is crucial in resolving cross-state water quality issues. “Nevada values EPA

oversight and partnership as a co-regulator in restoration of waterbodies that cross state lines and believes issues would be resolved more readily if federal jurisdiction over these waters is maintained.”

NDEP opposed using a single, nationwide definition of “relatively permanent” waters, arguing it fails to reflect the hydrologic variability of arid regions. They advocated for a hydrology-based approach that considers environmental variability and avoids excluding ecologically important waters from federal oversight. They urged the Agencies by rule to account for regional hydrologic differences and to clearly maintain the exemption of groundwater, including shallow subsurface flow, from WOTUS definitions.

NDEP recommended evaluating characteristics such as flow regime, seasonality, hydroperiod, vegetation, and soil and emphasized the need to account for regional differences in land use, ecology, and climate. NDEP suggested using federal tools such as the U.S. Geological Survey’s (USGS) National Hydrography Dataset, EPA’s ecoregions framework, U.S. Department of Agriculture’s Land Resource Regions, USACE’s Delineation Manual, the National OHWM Field Delineation Manual for Rivers and Streams, and the regionally-developed supplements to the delineation manual. They highlighted the Streamflow Duration Assessment Models (SDAMs) as a tool that enables rapid assessment of stream flow duration, “one of the most ecologically important aspects of a stream’s hydrology.”

They argued that streams, wetlands, and lakes that dry up due to drought or seasonal variation should still qualify as WOTUS if they materially contribute to the chemical, physical, or biological integrity of downstream waters. Physical traits like a defined bed, bank, and course should be included in assessments of relative permanence in arid areas.

NDEP stated that wetlands should be considered abutting a WOTUS if they materially contribute to its chemical, physical, or biological integrity, and that evaluations should consider the natural state of aquatic systems before human alteration to support future beneficial uses. NDEP emphasized that temporary interruptions in surface connectivity are common in many regions and should not automatically sever jurisdiction. They criticized the Agencies’ March 12 Field Memo interpretation that discrete features (like berms or roads) can sever a continuous surface connection. Functional and environmental significance should take precedence over strict adjacency when determining WOTUS jurisdiction. “The permanent loss of these features could not have been considered in light of these new parameters during USACE’s historic permitting decisions, nor were they necessarily subject to compensatory mitigation requirements when USACE authorized the structures severing jurisdiction.”

NDEP supported explicitly excluding agricultural ditches from the WOTUS definition and recommended the rule clarify this exclusion. They emphasized that this should not conflict with existing exemptions for agricultural stormwater and irrigation return flows, and noted that ditches are not naturally considered “waters.” NDEP described ditches that divert from and do not return to WOTUS as “distributaries” and endorsed the NWPR’s definition of ditches, but urged that ditches be evaluated based on their use.

New Mexico

The New Mexico Environment Department, Department of Game and Fish, Interstate Stream Commission, and Energy, Minerals and Natural Resources Department advocated for the continued

protection of as many waters as possible that “feed and influence the chemical, physical, and biological character” of downstream traditional navigable waters. They recommended that agencies either implement regionally appropriate definitions or allow flexibility in implementation. They noted that 97% of New Mexico’s streams are characterized as ephemeral or intermittent but still deliver significant quantities of water, sediment, nutrients, and woody debris to jurisdictional waters. Ephemeral and intermittent streams can significantly impact downstream navigable waters – especially in the Southwest – and should be included in WOTUS where regionally appropriate. For ephemeral waters, New Mexico proposed using alternative criteria like watershed area, stream order, or sediment load to determine jurisdiction.

New Mexico stressed the importance of genuine consultation with States and Tribes throughout the rulemaking process, and recommended the Agencies explicitly “codify the importance of recognizing regional differences in [WOTUS] determinations and definitions to signal an intent to work through these approaches in collaboration with state and tribal co-regulators.” They highlighted the need for the Agencies to use any new rulemaking as an opportunity to build long-term federal investment in water quality programs. They called for direct funding to States and Tribes with financial need, ensuring that they can implement pollution control and water management programs effectively.

New Mexico advised against defining “seasonality” as a fixed three-month duration, arguing that hydrologic patterns vary regionally. Instead, they recommended defining “relatively permanent” waters to include perennial streams, intermittent streams, prominent ephemeral streams, and wetlands – excluding those that flow solely in response to precipitation, without needing to specify flow duration or sources.

New Mexico said the Agencies and JDs should rely on the best available science – including biological, geomorphological, and hydrological indicators – to identify “relatively permanent” tributaries and wetlands in the field. New Mexico also highlighted EPA’s Streamflow Duration Assessment Methods (SDAMs), arguing that they offer consistent, scientifically valid ways to classify streamflow duration (perennial, intermittent, ephemeral) based on observable indicators in a single site visit. Guidance for identifying “relatively permanent” waters should undergo peer review and include robust public participation. To ensure efficient, predictable implementation and avoid permitting delays, the federal workforce must be sufficiently staffed and trained to carry out field determinations. They also highlighted USGS NHDPlus HR, and USFWS NWI as resources which should inform decisions about surface connection and adjacency.

New Mexico said “continuous surface connection” determinations should be based on connections under natural, undisturbed conditions, even if surface flow is temporarily dry or occurs as shallow subsurface flow, as this still maintains ecological and hydrological connectivity. Definitions of “adjacent” and “abut” should consider surface and shallow subsurface connections under natural conditions. New Mexico recommended defining “adjacent” as “bordering, continuous, or neighboring,” and suggested this could be further refined by physical distance or hydrologic connection. They also said that wetlands separated by barriers like dikes, levees, or roads should still be considered adjacent and jurisdictional in western states because they are functionally linked to nearby waters. They emphasized that natural or artificial

disruptions (e.g., sediment plugs, log jams, flood gates) should not sever jurisdictional connectivity, especially in arid environments where flow may temporarily shift subsurface during drought.

New Mexico recognized the importance of shallow subsurface connections in the exchange of water, nutrients, and organic matter which are essential to the health of the stream system. Narrowing the scope of federal jurisdiction would lead to a loss of benefits provided by wetlands such as flood control and attenuation, pollution control, resistance to wildfires, wildlife habitat, and recreation. Droughts or dry spells should be treated as temporary interruptions, not disqualifiers for jurisdiction. Instead, surface and shallow subsurface connections should be evaluated under “normal” conditions, which, in arid areas, may naturally include periods of dryness. The Agencies should consider historical hydrologic data when assessing these connections, particularly in light of the ongoing megadrought in the Southwest since 2000.

New Mexico stated that ditches transport water and should therefore be considered jurisdictional if they meet specific criteria. They recommended evaluating flow regime, physical characteristics, location (e.g., upland vs. natural channel), and biological indicators (like the presence of aquatic life) to distinguish jurisdictional from non-jurisdictional ditches. They also noted that the ditch’s type or use could help inform these determinations. They specifically support the current scope of jurisdiction over acequias and other irrigation ditches that divert from and are directly connected to wet areas where aquatic species use them as habitat.

North Dakota (et al.)

Attorneys General (AGs) from eighteen States, including North Dakota, Montana, Nebraska, and Oklahoma joined in a letter in support of a definition that “recognizes state authority over intrastate waters and that presumes waters are not WOTUS unless it is affirmatively established that they are.” They stressed that state primacy in managing diverse water features – such as prairie potholes, mountain streams, and marshes – cannot be replaced with one-size-fits-all federal rules. They urged the Agencies to use the Sackett ruling as a turning point to restore the proper balance of federal and state power in CWA implementation. They outlined overarching legal principles that should inform the Agencies’ rulemaking. They said WOTUS must be defined with clear and bright-line rules, centered on navigability. They emphasized a high standard of indistinguishability that may exclude certain impoundments and wetlands.

The AGs urged the Agencies to adopt a bright-line rule that limits federal jurisdiction to water features with naturally occurring, continuous, year-round flow (not dependent on rainfall or temporary events). They recommended excluding small streams and tributaries from federal jurisdiction by default, unless and until established otherwise. They approved of the NWDR’s use of “perennial” and “ephemeral” as stream categories, but rejected the rule’s use and definition of “intermittent,” then meaning “surface water flowing continuously during certain times of the year and more than in direct response to precipitation.” They said, “Any definition of WOTUS that classifies such ‘intermittent’ streams as constituting WOTUS is too vague to be workable, not capable of being understood by a reasonable landowner, and should be rejected by the Agencies.... The Agencies should not define WOTUS to include ephemeral waters or those that flow only intermittently.... Permanent does not mean intermittent. Permanent means permanent. And a relatively permanent water feature is one that has a naturally occurring, flow of water

year-round, excepting only for ‘temporary interruptions in surface connection [that] may sometimes occur because of phenomena like low tides or dry spells.’”

The AGs defined “continuous surface connection” as water that flows from one feature to the other so that they are “indistinguishable” under normal conditions. Natural landforms like berms do not automatically break the connection if the natural landforms evidence a continuous surface connection.

The AGs urged the agencies to abandon the term “abut,” and return to Congress’s use of the term “adjacent.” They interpreted adjacent to mean “separated by no more than one geologic feature, such as a naturally occurring berm, which still leaves the features, ‘as a practical matter indistinguishable’ from one another.” The AGs argued that artificial structures like flood gates or pumps should only make a wetland “adjacent” to a WOTUS if there is a real, consistent surface water connection under normal conditions. If the connection only occurs during irregular precipitation or unusually wet periods, it should not trigger federal jurisdiction. They also urged the Agencies to exclude the “catch-all” category included in the 2023 Rule.

The AGs urged the Agencies to eliminate “jurisdictional ditches” as a separate WOTUS category and instead apply the same criteria to both artificial and natural water features when determining federal jurisdiction. If the category is kept, they asked the Agencies to confirm that ditch determinations will follow the same standards as those for natural waterways, noting that applying the standard WOTUS tests to artificially created ditches would naturally exclude ditches that purely serve an irrigational or drainage purpose.

Oregon

The Oregon Attorney General signed onto a letter with the Attorneys General of New York, Illinois, Massachusetts, and Michigan. The AGs expressed concern that limiting the scope of the CWA creates risk for uncontrolled pollution. They opposed “any attempt to further limit [CWA] protections beyond the limits under the Sackett decision.” They argued that the strong science demonstrating the functional connectivity of small streams and wetlands to larger waters indicates a need to “strengthen, not weaken, clean water protections for all Americans.” They urged the agencies “not to take any action to further limit the vital protections afforded by the [CWA].”

Utah

Utah strongly advocated for a narrower, more precise definition of WOTUS in alignment with the Supreme Court’s Sackett decision, and preserves state authority over the majority of water resources. The State advocated for a definition that limits federal jurisdiction, emphasizes state authority over water resources, and reduces permitting burdens on rural communities and essential land uses such as agriculture, mining, and housing development. “A broader definition expands federal permitting requirements to a larger number of water bodies. Conversely, a narrower definition grants the State greater flexibility in establishing its mechanisms to protect Utah’s waters consistent with the State’s goals and management objectives.” Utah recommended simplifying the process for States to assume CWA

Section 404 permitting authority. They requested that the agencies provide more categorical exclusions “essential to Utah’s farmers, ranchers, and rural communities.”

Utah proposed a Clean Water Rule that defines WOTUS as: (1) navigable-in-fact interstate waters used or usable in commerce, including territorial seas; (2) relatively permanent streams, rivers, and lakes with an indistinguishable surface connection to such waters; and (3) adjacent wetlands that are permanent and continuously connected to those waters. It explicitly excludes groundwater, intermittent or ephemeral channels, and manmade structures used mainly for agriculture, flood control, or stormwater.

Utah’s proposed rule defines “relatively permanent” waters as those waters whose “normal status quo state is year-round – or at a minimum 290 days per year – presence or existence, and for which non-existence (i.e. drying up) during its typical period of presence or existence is an extraordinary circumstance and have an indistinguishable surface connection with navigable-in-fact waters.” Utah proposed including only “those adjacent wetlands that are a relatively permanent body of water and have a continuous surface connection with and are indistinguishable” from navigable-in-fact interstate waters. “Indistinguishable means that the waters have merged, so there is no clear demarcation between the two.” They defined “adjacent” as “having a continuous aquatic surface.” Utah would explicitly exclude ditches, conveyances, and other structures, manmade or otherwise, used primarily for agricultural, or flood abatement or storm-water control purposes.

Washington

The Washington Department of Ecology said that narrowing the definition of WOTUS would limit regulatory oversight, potentially causing harm to Washington’s waters and threatening public and environmental health by allowing unregulated pollution or circumvention of CWA Section 401 certification. While supportive of the Agencies simplification goals, they said “the effort should not exclude broad categories of waters with a connection to downstream traditionally navigable waters.” The State supported a definition that includes intermittent and relatively permanent waters, adjacent wetlands (even when connected through features like pipes or ditches), and jurisdictional ditches based on hydrologic connectivity – not solely on their purpose or structure. Washington urged the Agencies to collaborate closely with States as co-regulators under the CWA and to use regionally appropriate tools and methods for determining jurisdiction. The State favors a flexible, science-based approach that accounts for diverse hydrologic conditions, avoids overly rigid numeric flow criteria, and maintains strong protections for water resources.

Washington recommended defining “relatively permanent” waters to include perennial and intermittent tributaries, lakes, and ponds that connect to traditionally navigable waters during a normal water year. “We include intermittent connections because flows naturally vary over the course of a year. We view this as consistent with a continuous surface connection.... We urge the inclusion of a provision that is ‘based on a normal water year’ to account for changes resulting from an annual drought period, a dry year, or flood conditions.” The State advised against rigid flow duration metrics, urging the use of regional tools like the USACE Antecedent Precipitation Tool and the Oregon Streamflow Duration Method to assess flow regimes. It also suggested field identification rely on physical features like banks, beds, and OHWM, as well as contribution to flow of a downstream traditionally navigable water,

determined regionally. Evaluations should be based on normal precipitation years, supported by diverse data sources such as USGS topographical maps, aerial photography, Light Detection and Ranging (LIDAR), satellite imagery, National Hydrography Dataset, National Wetland Inventory maps, fish presence maps, and streamgage data.

Washington said continuous surface connections should include both hydrologic and hydric soil connections, applying to adjacent wetlands, lakes, and ponds. The definition should include discrete features such as ditches, culverts, pipes, and tide gates that maintain a hydrologic connection to a relatively permanent water. “In other words, a wetland, pond, lake or tributary should not lose regulatory protection under the [CWA] merely because they flow through uplands, a pipe, a ditch, or another discrete feature.”

They consider “abutting” to include wetlands connected to relatively permanent waters through a discrete feature such as a pipe, culvert, or ditch, and do not believe natural berms preclude a continuous surface connection. In Washington’s view, flood and tide gates, pumps, or similar artificial features do not remove a wetland from being considered adjacent as they “manage the flow of water between wetlands and the adjacent tributary or traditionally navigable water, maintaining the continuous surface connection between the two.” Other artificial features, such as shallow buried water conveyances, like pipes, should also be treated as maintaining federal jurisdiction and protection. “Allowing these features to sever jurisdiction today, even though upstream waters still flow to a jurisdictional waterbody makes no logical or ecological sense. It also defeats the purpose for which the pipes were installed.”

Washington recommended only categorically excluding ditches excavated in upland areas in order to drain them, while determining the jurisdiction of ditches with channelized streams or those built in wetlands on a case-by-case basis. They supported using physical features and downstream connections to assess whether a ditch is jurisdictional, rather than excluding ditches based on their intended use. Relocated tributaries should retain their jurisdictional status even when flowing through ditches. Biological criteria alone, such as the presence of fish, should not determine jurisdiction for ditches. The standard should be whether a ditch’s flows contribute to jurisdictional waters. They suggest using various mapping and imagery tools to determine if a ditch was constructed in an upland area or in a natural feature.

In summary, Washington suggested using Geologic Land Office survey maps to determine whether a ditch contains a tributary or was constructed in a wetland. It also highlighted National Wetland Inventory Maps, LIDAR, historical aerial photography, USGS topographic maps, fish presence maps, stream gauge data, satellite imagery, the USACE’s Antecedent Precipitation Tool, regional streamflow duration methods, and National Hydrography Dataset as important tools.

Wyoming

The Wyoming Department of Environmental Quality (WDEQ) expressed support for amending the rule in favor of a clear, consistent, durable, and objective definition that recognizes the limits of federal authority and is easily understood by the public. Wyoming’s state water quality standards apply to all

surface waters, regardless of federal WOTUS status. WDEQ advocated for a definition that maintains balanced federal-state collaboration.

WDEQ defined “relatively permanent” for perennial waters to mean “surface water flowing continuously during a typical year.” They recommended the inclusion of intermittent waters as “relatively permanent” provided they have a continuous hydrologic connection to a traditional navigable water for at least three consecutive months (equivalent to a season) during a “typical year.” They suggested incorporating the definition of “typical year” from the 2020 NWPR as well as incorporating 30-year precipitation normals developed by the National Oceanic and Atmospheric Administration (NOAA). Wyoming recommended categorically excluding intermittent waters with continuous flow for less than three months, as well as all ephemeral streams. They suggested removing the interstate water category as the term “navigable waters” is not constrained by political boundaries.

For identifying “relatively permanent” waters in the field, WDEQ recommended using observed or modeled stream flows rather than field indicators. They advocated for the geospatial mapping of WOTUS to improve regulatory certainty and transparency. “Initial mapping efforts could focus on traditional navigable waters, territorial seas, and many of the excluded waters, followed by the more complex jurisdictional waters such as tributaries, lakes and ponds, and ultimately adjacent wetlands.... [T]hese maps could be periodically updated (e.g., every five years) to be consistent with the effective duration of jurisdictional determinations and to reflect long-term changes in the hydrology of the nation’s waters.”

WDEQ recommended that a “continuous surface connection” means the feature physically abuts or has a direct “relatively permanent” hydrologic connection to a jurisdictional water during a “typical year.” They consider “physically abut” and “physically adjacent” to be synonymous.

WDEQ recommended clarifying that a ditch must have “relatively permanent” flow in a “typical year” to be considered jurisdictional. They suggest building on the 2020 NWPR’s definition of a ditch, which describes it as a surface water conveyance constructed for specific purposes like drainage, irrigation, stockwater or municipal use, or transport. Ditches that lack “relatively permanent” flow or originate or terminate in uplands would be categorically excluded from the CWA.



WESTERN STATES WATER COUNCIL

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Web Page: www.westernstateswater.org

June 2, 2025

The Honorable Lee M. Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW, MC: 1101A
Washington, DC 20460
zeldin.lee@epa.gov

The Honorable Peggy Browne
Acting Assistant Administrator
for the Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue NW, MC: 4101M
Washington, DC 20460
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Dear Administrator Zeldin and Acting Administrator Browne,

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

We offer the following comments in response to the agencies' federalism consultation initiated by forthcoming rulemaking on the Implementation of the Definition of Waters of the United States (WOTUS). We understand the aim of this agency action is to revise the definition of WOTUS to better align with legal requirements, provide clarity, protect the Nation's navigable waters, and streamline regulatory processes. Our States will give their respective feedback regarding the appropriate scope of "relatively permanent waters," "continuous surface connection," the definition of "adjacent" and the scope of jurisdictional ditches. We urge you to recognize that it is the States who best understand their own unique landscapes, flow regimes, and seasonality that these definitions must reflect, as well as the impact that proposed language will have on implementation within their borders.

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.

I. Cooperative Federalism

The Clean Water Act (CWA) is built upon the principle of cooperative federalism, especially as noted under CWA §101(b) and (g). Efforts to redefine or clarify CWA jurisdiction have numerous federalism implications, with the potential to significantly impact States, and the potential to alter the

distribution of power and responsibilities among the States and federal government. The WSWC strongly encourages the agencies to proactively reach out to the States individually, as co-regulators in early meaningful consultation and to acknowledge States' authorities over "waters of the State."

The WSWC urges the agencies to provide opportunities for a representative number of States across different regions with diverse perspectives to actively engage in the rule development process with the agencies, to provide direct and effective feedback on the implementability of concepts or language that might be considered in a proposed rule. As co-regulators, the States would like to work together with the agencies to develop and implement a rule that seeks to strike a balance between the critical importance of protecting the quality of the Nation's waters and preserving the sovereignty of States over their land and water resources.

II. Technical and Financial Assistance

The WSWC supports continued access to federal technical and financial assistance to the States to protect and improve water quality under existing EPA programs. These non-regulatory federal measures have been meaningful for the States to address point and non-point source pollution through state regulatory and voluntary programs tailored to fit unique state needs.

The six components used in the Water Pollution Control State grant allotment formula are: (1) Surface Water Area; (2) Groundwater Use; (3) Water Quality Impairment; (4) Point Sources; (5) Nonpoint Sources; and (6) Population of Urbanized Area (40 CFR 35.162). Some of these components have the potential to be impacted in the event that certain waters are no longer considered WOTUS, but are still protected as waters of the State. Many States use a combination of state funds, fee funds, and federal water pollution control grant funds to implement their water pollution control programs. The WSWC does not support any reduction in water pollution control state or other grant funding for western States due to the WOTUS changes.

III. Mapping and Geospatial Datasets

The WSWC supports the development of geospatial datasets for mapping jurisdictional waters through a joint federal, state, and tribal effort. WSWC supports joint federal-state efforts to identify and employ the most up-to-date data and tools, and appropriate provisions and funding for field verification of map accuracy and ongoing data and map maintenance. Regardless of how WOTUS is defined, there has long been a need for a national mapping structure that provides clarity to regulators and the regulated community with respect to jurisdiction. While the currently available data lacks the quality and resolution needed for an accurate and comprehensive map of all jurisdictional waters, an initial joint effort could be made toward identifying traditionally navigable waters.

IV. Dispute Resolution Mechanism

Uncertainty and differences of opinion exist between States regarding CWA jurisdiction, as evidenced by the many lawsuits brought by States either objecting to or supporting the 2015 Clean Water Rule, the 2020 Navigable Waters Protection Rule, and the 2023 Revised Definition of WOTUS Rule. Further, substantial and recurring changes from one Administration to the next create uncertainty, inconsistencies, and indecision not only for States as co-regulators, but also for the regulated community. This challenges the EPA and Army to work more closely with the States to develop and implement a more reliable, enduring, and broadly supported definition of WOTUS and end the regulatory whiplash.

The WSWC supports a clear process for resolving differences of opinion over federal and non-federal jurisdiction, as well as jurisdictional disputes between different States and tribes with Treatment-as-States authority. For example, although 40 CFR §131.7 provides a dispute resolution mechanism between States and tribes with differing water quality standards, this does not appear to apply to jurisdictional disputes between one State and another State, or between one tribe and another tribe, or between a State/tribe and a federal agency, e.g. if a federal agency determines a water is jurisdictional as a “water of the United States” and a State claims it is instead a “water of the State.”

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, reading "Tony Willardson", enclosed within a rectangular border.

Tony Willardson
Executive Director

Tab M – CWA §401 Update



OFFICE OF WATER
WASHINGTON, D.C. 20460

May 21, 2025

MEMORANDUM

SUBJECT: Clarification regarding the Application of Clean Water Act Section 401 Certification

FROM: Peggy S. Browne, Acting Assistant Administrator

Consistent with the overall cooperative federalism framework of the Clean Water Act, Section 401 authorizes states and authorized Tribes to play a role, but a specific and limited one, in the federal licensing or permitting process. The U.S. Environmental Protection Agency, as the lead federal agency for administering the CWA, is responsible for developing regulations and guidance to ensure effective implementation of CWA programs, including Section 401. The agency promulgated regulations on CWA Section 401 certifications in September 2023 (2023 Rule). Recently, some stakeholders have raised questions about potential applications of the 2023 Rule's scope of certification.¹ The purpose of this document² is to reiterate the EPA's longstanding position that states and Tribes must utilize CWA Section 401 only for its statutory purpose – to protect water quality – and not as a weapon to shut down projects for reasons with no basis in the statute or applicable regulations. A certifying authority's evaluation is limited to considering adverse impacts to water quality, and only such impacts insofar as they prevent compliance with applicable water quality requirements.

The scope of certification refers to the purview of a certifying state's or authorized Tribe's analysis when it evaluates a request for certification related to an application for a federal license or permit, to determine whether it will issue certification, deny certification, or waive certification. The most common examples of federal licenses or permits that may be subject to CWA Section 401 certification are CWA Section 404 permits for the discharge of dredged or fill material permits issued by the Army Corps of Engineers as well as Rivers and Harbors Act Sections 9 and 10 permits issued by the Army Corps of Engineers; hydropower and interstate natural gas pipeline licenses issued by the Federal Energy Regulatory Commission; and CWA Section 402 National Pollutant Discharge Elimination System permits issued by the EPA in jurisdictions where the EPA administers the NPDES permitting program.

¹ See, e.g., America Builds: Clean Water Permitting and Project Delivery Hearing before Subcommittee on Water Resources and Environment, 119th Cong. (2025) (statement of Robert D. Singletary, Executive Director, Oklahoma Department of Environmental Quality, statement of Noah Hanners, Executive Vice President, Nucor Corporation, on behalf of the National Ass'n of Manufacturers).

² This document is not a regulation, nor does it change or substitute for any applicable regulations. Thus, it does not impose legally binding requirements on the EPA, states, Tribes, other federal agencies or the regulated community. This document neither alters legal rights or obligations nor changes or creates law. In the event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling.

Accordingly, energy, critical mineral, infrastructure and development projects that are key to economic growth and the EPA's "Powering the Great American Comeback" initiative are often subject to CWA Section 401.

The 2023 rule and all prior EPA regulations and guidance documents have consistently stated that CWA Section 401 is limited to addressing only water quality-related impacts. Similarly, the regulations do not authorize a certification condition based on generalized concerns about water quality untethered to noncompliance with a specific applicable water quality requirement or requirements. It would be inconsistent with CWA Section 401 to deny or condition a certification based on potential impacts not connected to water quality (e.g., based solely on potential impacts to air quality, traffic, noise, project preference, or economic impacts that have no direct connection to water quality). If a certifying authority imposes certification conditions or denies certification for a reason or reasons such as these, then that certification decision would not comply with CWA Section 401 or the EPA's regulations.

The agency will use a forthcoming Federal Register notice and recommendations docket to identify additional areas of implementation challenges and regulatory uncertainty related to the 2023 Rule's scope of certification to be later addressed through additional guidance or rulemaking.

Tab N – Judicial Water Education

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Dividing the Waters

The [Dividing the Waters Program of the National Judicial College](#) has served western judges overseeing complex water litigation since 1993, providing information and training resources on water law and water conflicts to state, tribal, and federal judges. Western water laws can be very complex, especially for those who are encountering those laws for the first time. It is in the interest of the executive branch water agencies of the western states to ensure that the judicial officers who adjudicate water cases in their states have an understanding of the fundamentals of western water law and the latest information on water adjudication. *Dividing the Waters* provides a critical link between the executive branch water agencies and the judicial branch that adjudicates water conflicts in the western states.

Dividing the Waters started as a confidential discussion forum for the judges adjudicating the large “general stream adjudications” of water rights. The “Conveners,” judges with experience in water adjudication, led the program and invited other judges to join. As water litigation evolved, so did *Dividing the Waters*. Today, it addresses the most critical water issues facing judges today, including climate change, water quality, endangered species, and growing cities. In the wake of extreme droughts, state courts started seeing more water cases, and some states created their own programs for water judges. They worked with *Dividing the Waters* to help their judges learn how best to adjudicate complex water conflicts, which may have thousands of parties and the public interest at the center of the dispute. *Dividing the Waters* has begun creating on-demand courses related to water to facilitate learning the fundamentals of water law quickly. The first online course, on water science, is now available to judges in state courts that have joined *Dividing the Waters*.

Dividing the Waters helps both state and federal judges share information; discuss problems; learn what works and what doesn't; benefit from technical and scientific expertise; and build a water knowledge network among judges, water masters, and referees. In order to encourage open discussion and debate among judges, *Dividing*

the Waters maintains the confidentiality of such discussions, consistent with the Canons of Judicial Ethics.

Judges and non-judges alike are welcome to subscribe to the [Dividing the Waters Network](#), which includes access to the monthly **Network Note**, a newsletter that covers recent water-related cases, introduces judges who are new to the network, and provides information about upcoming webinars and conferences. (See [Past Issues](#).)

Over the years, *Dividing the Waters* has also published various bench books and other publications, primarily by judges for judges (occasionally with outside review from water agencies or other experts), including:

- Adjudicating Groundwater: A Judge’s Guide to Understanding Groundwater Modeling
- Hydrological Modeling Bench Book
- Water and Growing Cities: A Survey of Western State Water Requirements for Urban Development
- Mitigating the Exercise of Water Rights and Water Use: A White Paper on Questions Judges May Consider
- Water Science in the Courtroom

Select a topic for related resources

Administration Appropriations Arizona BOR California Clean Water Act Colorado
Colorado River Congress Corps DOI Drought EPA Forecasting Funding Groundwater
house Indian Water Rights Infrastructure Kansas Litigation Meeting Meetings NASA
NOAA Organizations People PFAS Senate SRFs USDA USGS utah Water Data
Water Infrastructure Water Quality Water Resources Water Rights Waters of the US
water supply Western Governors WestFAST Wildfires WOTUS WRDA

Archive

Select Month



Tab O – Legislation and Litigation Update

**Priority Legislation Update 119th Congress
207th WSWC Meeting
Snowbird, Utah**

Compiled By:
Elysse Ostland Campbell, WSWC Policy Analyst

This summary describes developments regarding a select number of WSWC priority legislation, pertaining to WGA/WSWC policies or other points of interest. It focuses on developments that have taken place since the beginning of the 119th Congress. Entries are sorted in reverse chronological order. A comprehensive legislation update is available at <https://westernstateswater.org/topical-resources/legislation-updates/>. The online report will be

NOTABLE LEGISLATION

Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R. 3427	5/15/2025	Water Quality, EPA, SRFs	The bill would require the Government Accountability Office (GAO) to conduct a comprehensive review of all clean water-related technical assistance programs administered by the Environmental Protection Agency (EPA). The review must assess how these programs serve states, tribes, local governments, and non-governmental organizations, and how they support communities—particularly those that are economically distressed—through initiatives like the Water Technical Assistance (WaterTA) initiative.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Water Resources Technical Assistance Review Act	House - Transportation and Infrastructure	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		Specifically, the GAO would examine who receives assistance, how technical assistance providers are selected and deployed, what types of support are delivered, and whether there is overlap among EPA programs. It would also evaluate how well these programs help communities access broader water infrastructure resources, and how EPA coordinates with other federal agencies offering similar support.
Bill Sponsor	Support	Activity Status	
Rep. Taylor, David J. [R-OH-2]	Republican	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R. 3346	5/13/2025	Water Quality, Water Resources, Legal, EPA	The bill would abolish the Environmental Protection Agency (EPA) and transfer environmental responsibilities to the states. It mandates EPA's termination 270 days after its enactment, eliminating all its functions, duties, and legal authorities. During that period, the EPA Administrator would be responsible for winding down the agency's operations and reporting to Congress on the progress within 90 days. Upon the termination date, all laws authorizing the EPA's activities would also be repealed. To replace the EPA's role, the bill establishes a system of block grants from the U.S. Treasury to individual states and territories—referred to as "covered states"—based on population. Governors would designate state environmental quality departments to receive and manage the funds. The bill would authorize \$4.4B annually from 2026 to 2029 for the block grants.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Sovereign State Environmental Quality Assurance Act	House - Science, Space, and Technology, House - Transportation	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Rep. Higgins, Clay [R-LA-3]	Republican	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R. 3347	5/13/2025	Water Quality, Water Resources, Disaster	The bill proposes to abolish the Federal Emergency Management Agency (FEMA) and replace it with a state-administered block grant program for disaster relief. Under the bill, FEMA would be dissolved two years after enactment. Its functions, staff, and responsibilities would be transferred to the President, and any unobligated FEMA funds at that time would be returned to the Treasury for use in the new grant program. All legal references to FEMA or its Administrator would then be understood as references to the Executive Office of the President. In FEMA's place, the Secretary of the Treasury would establish a block grant program to distribute funds to states for natural disaster and emergency relief. Each state would receive an annual grant based on a formula that accounts for population size, historical disaster frequency, geographic risk factors, and economic need. States could use these funds for disaster preparedness, emergency response and recovery, and risk mitigation projects, with up to 5% reserved for administrative costs.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Sovereign States Emergency Management Act	House - Transportation and Infrastructure	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Rep. Higgins, Clay [R-LA-3]	Republican	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R. 3293	5/8/2025	Water Resources, Agriculture	The bill would allow the Secretary of Agriculture to increase payments for drought-resilient or water-saving practices under the Food Security Act of 1985. These practices include those that have the capacity to produce in water-deficient environments, conserve surface or groundwater, reduce runoff, and transition from irrigated to dryland farming systems. The bill also includes supplemental payments for resource-conserving practices, including crop rotations, advanced grazing management, and perennial production systems.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Support Water-Efficient Strategies and Technologies Act of 2025	House - Agriculture	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Rep. Leger Fernandez, Teresa [D-NM-3]	Bipartisan, CA	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S. 1523	4/30/2025	Water Resources, Water Data, Weather / S2S	The bill would enhance and restructure the operations of the National Water Center within the Office of Water Prediction at NOAA's National Weather Service. The bill expands the Center's role to lead the transition of federal water research—such as hydrological model development—into operational use by NOAA and the National Weather Service. It designates the Center as the primary federal hub for coordinating water-related research and operations across agencies, including the USDA, Army Corps of Engineers, Bureau of Reclamation, USGS, and FEMA. It also directs integration of water modeling into NOAA's Unified Forecast System using advanced computing capabilities. Furthermore, the bill mandates closer coordination between the National Water Center and NOAA's River Forecast Centers and establishes oversight of the Cooperative Institute for Research to Operations in Hydrology. Finally, it extends authorized funding for the program through fiscal year 2028.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Water Research Optimization Act of 2025	Senate - Commerce, Science, and Transportation	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
	2025-05-21 Committee on Commerce, Science, and		
Bill Sponsor	Support	Activity Status	
Sen. Britt, Katie Boyd [R-AL]	Bipartisan	WSWC Priority	

Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R. 3035/S. 1760	4/28/2025	Water Resources, Water Infrastructure	The bill would amend the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014 to clarify the budgetary classification of certain financial assistance under the program, specifically for non-federal entities. If a non-federal entity (e.g., a local government, utility, or public authority) receives WIFIA financial assistance and repays it using non-federal revenue sources, then: (1) The assistance would be considered non-federal for budget scoring purposes. (2) It would be treated as a direct loan or loan guarantee under the Federal Credit Reform Act of 1990. This treatment does not apply to federal agencies or entities. Only non-federal borrowers qualify under this provision.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Restoring WIFIA Eligibility Act	House - Energy and Commerce, House - Transportation and	https://www.congress.gov/bill/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill aims to catalyze the use of recycled water by manufacturers, data centers, and other industrial entities by creating a 30% federal investment tax credit for certain water reuse projects.
Rep. Costa, Jim [D-CA-21]; Sen. Curtis, John R. [R-UT]	Bipartisan, AZ, WA	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	
H.R. 2940	4/17/2025	Water Resources, Water Reuse	
Bill Title	Assigned Committee(s)	Congress.gov Link	
Advancing Water Reuse Act	House - Ways and Means	https://www.congress.gov/bill/119th-	This bill proposes to update and expand the Conservation Reserve Enhancement Program (CREP) under the Food Security Act of 1985 to offer greater flexibility in water conservation, agricultural use, and payment structures—particularly in drought-prone regions. Dryland farming and grazing would be explicitly allowed as appropriate conservation practices under CREP, offering more use options for enrolled land. Landowners could choose how their annual payments are allocated across the years of their agreement, allowing them to better manage financial needs (i.e., variable allocation). For permanent water rights retirement agreements, payment rates would match those for irrigated acres. For dryland use agreements, payments would be set at the difference between irrigated and dryland rates, and this would apply retroactively to past agreements. The USDA would be required (not just allowed) to enter into CREP agreements for lands used for continuous cropping or crop rotation, subject to conservation plans. CREP participation would require adherence to a formal conservation plan rather than simply applying best practices. Payments under CREP would be exempt from the standard USDA payment caps, making it easier for larger landowners or more costly projects to participate fully.
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Rep. LaHood, Darin [R-IL-16]	Bipartisan, CA	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R. 2758/S. 1389	4/9/2025	Water Resources, Conservation	This bill requires several agencies to develop programs that use artificial intelligence (AI) to support weather forecasting, environmental monitoring, and the energy grid. For example, the National Oceanic and Atmospheric Administration (NOAA) must develop an Earth system reanalysis dataset that provides a record of past weather events so as to support AI weather forecast applications. NOAA must also develop an AI program that analyzes environmental data to support wildfire forecasts. Additionally, the Department of Agriculture must use AI to analyze data with respect to deforestation, the movement of illegal wood products, and associated changes. The Department of Energy must establish an AI program to optimize energy grids with respect to energy production, stability, and efficiency.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Conservation Reserve Enhancement Program Improvement Act of 2025	House - Agriculture, Senate - Agriculture, Nutrition, and Forestry	https://www.congress.gov/bill/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill aims to amend the Infrastructure Investment and Jobs Act. Specifically, it would authorize the use of funds for additional Carey Act projects, focusing on the rehabilitation, reconstruction, or replacement of dams built under section 4 of the Carey Act. The bill would also require the Secretary to determine if dams have received adequate funding and if funds remain available before allocating additional resources
Rep. Boebert, Lauren [R-CO-4]; Sen. Marshall, Roger [R-KS]	Bipartisan, CO, KS	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	
H.R. 2770/S. 1378	4/9/2025	Water Resources, Drought, Disaster	
Bill Title	Assigned Committee(s)	Congress.gov Link	
TAME Extreme Weather and Wildfires Act	House - Science, Space, and Technology, Senate - Commerce,	https://www.congress.gov/bill/119th-	The bill would authorize the Secretary of the Interior, through the Bureau of Reclamation, to launch up to five pilot watershed projects in Reclamation States using a performance-based, data-driven approach. The goal is to achieve measurable improvements in watershed health—such as increasing water quantity, improving water quality, or restoring aquatic habitat—through targeted conservation actions. Eligible entities (states, tribes, water districts, or NGOs) would be selected as “watershed partners” to manage these projects. Each partner must use technical analysis to assess the costs and outcomes of potential activities to maximize environmental benefit per dollar spent. The government would pay only for verified, quantifiable outcomes, such as increased groundwater or reduced agricultural runoff, under pay-for-performance contracts. The bill allows up to 75% federal cost-share, with the remainder from state, local, or private sources. Annual funding for planning and execution could cover up to 50% of project costs. Partners must demonstrate community support, conduct stakeholder outreach, and regularly report progress. Data used in analytics is protected as confidential. The bill authorizes \$17 million annually from FY2026 to FY2031 to support these efforts.
Passed (S/H)	Hearing(s)		
	Senate: 2025-04-30—Committee on Commerce, Science, and		
Bill Sponsor	Support	Activity Status	
Rep. Franklin, Scott [R-FL-18]; Sen. Schatz, Brian [D-HI]	Bipartisan, MT, NM	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S. 1257	4/2/2025	Water Resources, Water Infrastructure	The bill would authorize the Secretary of the Interior, through the Bureau of Reclamation, to launch up to five pilot watershed projects in Reclamation States using a performance-based, data-driven approach. The goal is to achieve measurable improvements in watershed health—such as increasing water quantity, improving water quality, or restoring aquatic habitat—through targeted conservation actions. Eligible entities (states, tribes, water districts, or NGOs) would be selected as “watershed partners” to manage these projects. Each partner must use technical analysis to assess the costs and outcomes of potential activities to maximize environmental benefit per dollar spent. The government would pay only for verified, quantifiable outcomes, such as increased groundwater or reduced agricultural runoff, under pay-for-performance contracts. The bill allows up to 75% federal cost-share, with the remainder from state, local, or private sources. Annual funding for planning and execution could cover up to 50% of project costs. Partners must demonstrate community support, conduct stakeholder outreach, and regularly report progress. Data used in analytics is protected as confidential. The bill authorizes \$17 million annually from FY2026 to FY2031 to support these efforts.
Bill Title	Assigned Committee(s)	Congress.gov Link	
A bill to amend the Infrastructure Investment and Jobs Act to authorize	Senate - Energy and Natural Resources	https://www.congress.gov/bill/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill would authorize the Secretary of the Interior, through the Bureau of Reclamation, to launch up to five pilot watershed projects in Reclamation States using a performance-based, data-driven approach. The goal is to achieve measurable improvements in watershed health—such as increasing water quantity, improving water quality, or restoring aquatic habitat—through targeted conservation actions. Eligible entities (states, tribes, water districts, or NGOs) would be selected as “watershed partners” to manage these projects. Each partner must use technical analysis to assess the costs and outcomes of potential activities to maximize environmental benefit per dollar spent. The government would pay only for verified, quantifiable outcomes, such as increased groundwater or reduced agricultural runoff, under pay-for-performance contracts. The bill allows up to 75% federal cost-share, with the remainder from state, local, or private sources. Annual funding for planning and execution could cover up to 50% of project costs. Partners must demonstrate community support, conduct stakeholder outreach, and regularly report progress. Data used in analytics is protected as confidential. The bill authorizes \$17 million annually from FY2026 to FY2031 to support these efforts.
Sen. Risch, James E. [R-ID]	Republican, ID	WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	
S. 1242	4/1/2025	Water Infrastructure, Water Resources	
Bill Title	Assigned Committee(s)	Congress.gov Link	
Watershed Results Act	Senate - Energy and Natural Resources	https://www.congress.gov/bill/119th-	The bill would authorize the Secretary of the Interior, through the Bureau of Reclamation, to launch up to five pilot watershed projects in Reclamation States using a performance-based, data-driven approach. The goal is to achieve measurable improvements in watershed health—such as increasing water quantity, improving water quality, or restoring aquatic habitat—through targeted conservation actions. Eligible entities (states, tribes, water districts, or NGOs) would be selected as “watershed partners” to manage these projects. Each partner must use technical analysis to assess the costs and outcomes of potential activities to maximize environmental benefit per dollar spent. The government would pay only for verified, quantifiable outcomes, such as increased groundwater or reduced agricultural runoff, under pay-for-performance contracts. The bill allows up to 75% federal cost-share, with the remainder from state, local, or private sources. Annual funding for planning and execution could cover up to 50% of project costs. Partners must demonstrate community support, conduct stakeholder outreach, and regularly report progress. Data used in analytics is protected as confidential. The bill authorizes \$17 million annually from FY2026 to FY2031 to support these efforts.
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Sen. Wyden, Ron [D-OR]	Democrat	WSWC Priority	

Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.2093	03/14/2025	Water Quality, CWA §402 (NPDES)	The bill would set National Pollutant Discharge Elimination System (NPDES) permit terms to "Not exceeding 10 years for a permit issued to a State or municipality" and "Not exceeding 5 years for a permit issued to any person not described in clause (i) (i.e., entities other than states or municipalities)."
Bill Title	Assigned Committee(s)	Congress.gov Link	
To amend the Federal Water Pollution Control Act with respect to permitting	House - Transportation and Infrastructure	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Rep. Calvert, Ken [R-CA-41]	Bipartisan, CA	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.2025	03/11/2025	Water Resources, Legal, Indian Reserved Water	The bill aims to settle water rights claims for the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe: (1) Secures water rights for the three tribes; (2) Authorizes the Navajo Nation and Hopi Tribe to lease their water, creating economic opportunities; (3) Authorizes \$5 billion for essential water infrastructure development in the region; (4) Establishes a homeland for the San Juan Southern Paiute Tribe; (5) Establishes the duration of water leases and conditions for water exchanges between the Navajo Nation and the Hopi Tribe; (6) Regulates the construction and operation of the iinā bá – paa tuwaqat'si pipeline, crucial for water transportation between the tribes; (7) Addresses project management, funding structures, and limitations on revenue use.
Bill Title	Assigned Committee(s)	Congress.gov Link	
To provide for the settlement of the water rights claims of the Navajo Nation,	House - Natural Resources	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Rep. Ciscomani, Juan [R-AZ-6]	Bipartisan, AZ	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.953	03/11/2025	Legal, Indian Reserved Water Rights	The bill would approve, ratify, and confirm water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. It would establish a trust fund for the Hopi and the San Juan Southern Paiute Tribes. It mandates a feasibility study for the iinā bá – paa tuwaqat'si pipeline. The bill establishes the iinā bá – paa tuwaqat'si Pipeline Implementation Fund Account. The bill would establish the iinā bá – paa tuwaqat'si Pipeline Implementation Fund Account. Navajo Nation Cibola Water, Navajo Nation Fourth Priority Water, and Hopi Tribe Cibola Water delivered and used would be credited as water reaching Lee Ferry and charged against the Lower Basin's consumptive use apportionment. The bill also addresses the creation of a reservation for the San Juan Southern Paiute Tribe.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Northeastern Arizona Indian Water Rights Settlement Act of 2025	Senate - Indian Affairs	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Sen. Kelly, Mark [D-AZ]	Democrat, AZ	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.783	02/27/2025	Water Resources, Agriculture	The bill would amend the Consolidated Farm and Rural Development Act to provide additional assistance to rural water, wastewater, and waste disposal systems. Specifically, the bill would allow the Secretary of Interior to provide grants, zero interest loans, or one percent loans to eligible entities (rural water, wastewater, or waste disposal facility that can receive assistance under existing programs within the Consolidated Farm and Rural Development Act). It would also allow the Secretary to forgive principal or interest, modify the terms, or refinance existing loans made to eligible entities.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Assistance for Rural Water Systems Act of 2025	Senate - Agriculture, Nutrition, and Forestry	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Sen. Shaheen, Jeanne [D-NH]	Bipartisan	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.689	02/24/2025	Water Resources, Legal, Indian Reserved Water	The bill would approve the settlement of water rights claims of the Tule River Tribe in California. The bill ratifies a 2007 agreement between the Tribe and other parties. The bill establishes trust accounts for the Tribe and authorizes funding for the settlement's implementation and mandates the transfer of approximately 1826 acres of land into trust for the Tribe. Additionally, the Act outlines the waiver and release of various water rights claims by the Tribe and the United States as trustee
Bill Title	Assigned Committee(s)	Congress.gov Link	
Tule River Tribe Reserved Water Rights Settlement Act of 2025	Senate - Indian Affairs	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
	05/12/2025 Placed on Senate Legislative Calendar under General		
Bill Sponsor	Support	Activity Status	
Sen. Padilla, Alex [D-CA]	Democrat, CA	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.1482/ S.637	02/19/2025	Water Resources, Legal, Indian Reserved Water	The bill would increase the total authorization of appropriations for the Navajo-Gallup Water Supply Project to \$2.2B for fiscal years 2009 through 2029, and it would increase the authorization for the Navajo Nation Operations, Maintenance, and Replacement Trust Fund to \$37.5M for fiscal years 2009 through 2032. Additionally, the bill would allow the Navajo Nation to provide not more than 2,000 acre-feet per year of non-Project water to communities in Utah under specific conditions tied to the Navajo/Utah Settlement Agreement. The bill also includes provisions regarding land to be taken into trust and modifies certain contract terms and deadlines.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Navajo-Gallup Water Supply Project Amendments Act of 2025	House - Natural Resources, Senate - Indian Affairs	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
	Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be		
Bill Sponsor	Support	Activity Status	
Sen. Lujan, Ben Ray [D-NM]; Rep. Leger Fernandez, Teresa [D-NM-3]	Bipartisan, NM, UT	Active, WSWC Priority	

Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.640	02/19/2025	Water Resources, Legal, Indian Reserved Water	The bill would amend the Omnibus Public Land Management Act of 2009 to appropriate \$6.4M and other amounts for adjusted interest payments. It would also amend the Claims Resolution Act of 2010 to appropriate \$7.8M for the Taos Pueblo Water Development Fund for adjusted interest payments, and \$4.3M to the Aemodt Settlement Pueblos' Fund for the Pueblos' share of O&M and replacing the Pueblo Water Facilities and the Regional Water System.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Technical Corrections to the Northwestern New Mexico Rural Water	Senate - Indian Affairs	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
	Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be		
Bill Sponsor	Support	Activity Status	
Sen. Lujan, Ben Ray [D-NM]	Democrat, NM	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	
S.590/S.613	02/18/2025	Water Resources, Water Data	
Bill Title	Assigned Committee(s)	Congress.gov Link	
Improving Flood and Agricultural Forecasts Act of 2025	Senate - Commerce, Science, and Transportation	https://www.congress.gov/bills/119th-	The bill would reauthorize and expand the National Mesonet Program through FY2029. The bill prioritizes leveraging available commercial, academic, and other non-Federal Government environmental data to enhance coordination across different sectors involved in weather forecasting. The National Mesonet Program would also be responsible for establishing means to integrate a greater density and more types of environmental observations annually, including encouraging local and regional networks of environmental monitoring stations and in situ sensor networks (like soil moisture and ground-based profilers) to participate. In carrying out the Program, the Under Secretary would be required to: • Increase data density by improving the quantity and density of environmental observations used by the National Oceanic and Atmospheric Administration (NOAA) and the National Weather Service for various forecasts and warnings. This includes increasing boundary-layer data, identifying terrestrial or marine environmental data gaps, and supporting the National Weather Service in reaching its severe weather warning time target. • Monitor local meteorological conditions by acquiring soil and moisture data for drought monitoring and supporting the National Coordinated Soil Moisture Monitoring Network. It also involves expanding and enhancing environmental observational networks in the roadway environment. • Administer the Program by obtaining data in a cost-effective manner while meeting quality standards, leveraging
Passed (S/H)	Hearing(s)		
	S.613: Senate - 03/12/2025 Committee on Commerce, Science,		
Bill Sponsor	Support	Activity Status	
Sen. Schatz, Brian [D-HI]	Bipartisan, KS	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.1322/S.562	02/13/2025	Legal, Water Resources, Indian Reserved Water	The bill would approve the settlement of water rights claims for the Pueblos of Acoma and Laguna in the Rio San José Stream System, and the Pueblos of Jemez and Zia in the Rio Jemez Stream System. The bill would authorize, ratify, and confirm settlement agreements between these Pueblos, the State of New Mexico, and other parties. It establishes settlement trust funds for each Pueblo and authorizes mandatory appropriations for these funds. The bill mandates appropriations as follows: (1) Pueblo of Acoma, \$296M for the Water Rights Settlement Account, \$14M for the Water Infrastructure Operations and Maintenance Account, and \$1.7M for the Feasibility Studies Settlement Account; (2) Pueblo of Laguna, \$464M for the Water Rights Settlement Account, \$26M for the Water Infrastructure Operations and Maintenance Account, and \$3.3M for the Feasibility Studies Settlement Account; (3) Pueblo of Jemez, \$290M; (4) Pueblo of Zia, \$200M. Additionally, \$45M is allocated to the Acoma Reservoir Works Trust Fund for the benefit of both Acoma and Laguna. The bill also outlines state cost-share contributions. The Pueblo Water Rights, as defined in the agreements and the bill, would be held in trust by the United States.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Rio San José and Rio Jemez Water Settlements Act of 2025	House - Natural Resources, Senate - Indian Affairs		
Passed (S/H)	Hearing(s)		
	Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be		
Bill Sponsor	Support	Activity Status	
Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Heinrich, Martin [D-NM]	Democrat, NM	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	
H.R.1323/S.563	02/13/2025	Legal, Water Resources, Indian Reserved Water	
Bill Title	Assigned Committee(s)	Congress.gov Link	
Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2025	House - Natural Resources, Senate - Indian Affairs		The bill would approve the settlement of water rights claims for Ohkey Owingeh Pueblo. The bill would authorize, ratify, and confirm a settlement agreement between Ohkay Owingeh, the State of New Mexico, and other relevant parties, provided the agreement aligns with the provisions of the bill. It appropriates \$745M to be deposited into the Ohkay Owingeh Water Rights Settlement Trust Fund. Additionally, the bill specifies that the State of New Mexico will contribute several amounts: \$98.5M for signatory acequias ditch improvements and other projects, \$32M for water system improvements for the City of Española, and \$500,000 to mitigate impacts on non-Pueblo groundwater rights.
Passed (S/H)	Hearing(s)		
	Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be		
Bill Sponsor	Support	Activity Status	
Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Heinrich, Martin [D-NM]	Democrat, NM	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.564/ H.R.1444	02/13/2025	Legal, Water Resources, Indian Reserved Water	The bill would authorize, ratify and confirm the Zuni Indian Tribe Water Rights Settlement between the Tribe, New Mexico, and other parties. It would appropriate \$655M for the Zuni Tribe Water Rights Settlement Trust Account and \$29.5 M for the Zuni Tribe Operation, Maintenance, & Replacement Trust Account. It also includes provisions for the protection of the Zuni Salt Lake and Sanctuary by withdrawing approximately 92,364 acres of Federal land from various forms of disposal and development. Additionally, certain Federal land described as "Tribal Acquisition Area" on a specified map would be taken into trust for the benefit of the Tribe
Bill Title	Assigned Committee(s)	Congress.gov Link	
Zuni Indian Tribe Water Rights Settlement Act of 2025	Senate - Indian Affairs, House - Natural Resources	https://www.congress.gov/bills/119th-	
Passed (S/H)	Hearing(s)		
	Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be		
Bill Sponsor	Support	Activity Status	
Sen. Heinrich, Martin [D-NM]; Rep. Vasquez, Gabe [D-NM-2]	Democrat, NM	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	
S.546	02/12/2025	Water Resources, Legal, Indian Reserved Water	
Bill Title	Assigned Committee(s)	Congress.gov Link	
Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley	Senate - Indian Affairs		The bill would amend section 10807(b)(3) of that the Omnibus Public Land Management Act of 2009 to appropriate \$5.2 M for deposit into the Development Fund. This additional funding is for adjusted interest payments related to the Development Fund of the Shoshone-Paiute Tribes.
Passed (S/H)	Hearing(s)		
	Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be		
Bill Sponsor	Support	Activity Status	
Sen. Cortez Masto, Catherine [D-NV]	Bipartisan, ID, NV	Active, WSWC Priority	

Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.907	01/31/2025	Legal, Water Resources, Indian Reserved Water	The bill would settle the long-standing water rights claims of the Fort Belknap Indian Community in Montana by ratifying the Fort Belknap-Montana water rights compact and confirming Tribal water rights. The bill would authorize the exchange and transfer of specific Federal and State lands. The bill would allocate 20,000 acre-feet of water per year from Lake Elwell to the Fort Belknap Indian Community and mandate Milk River Project mitigation activities, such as the restoration of the St. Mary Canal and the enlargement of the Dodson South Canal, with a funding limit of \$3M. Subject to appropriations, the Secretary of the Interior would also be directed to rehabilitate, modernize, and expand the Fort Belknap Indian Irrigation Project, with total obligations capped at \$4.2M. To manage the funds associated with these actions, the bill would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund. Title II would authorize the appropriation of \$2.5M to the Secretary of the Interior for community water distribution and wastewater treatment facilities for the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Northern Montana Water Security Act of 2025	House - Natural Resources		
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	This legislation would mandate the establishment of a dedicated program to improve forecast lead times, accuracy, and dissemination through research, advanced modeling, and innovative data collection. The program would focus on developing better forecast systems, understanding the role of atmospheric rivers in precipitation, creating effective communication strategies, and transitioning research into operational practices. Key components include enhanced data assimilation, improved modeling for complex terrain, atmospheric river reconnaissance using aircraft, and the development of hazard communication methods. Ultimately, this bill seeks to reduce the risks associated with atmospheric rivers by providing more reliable and understandable forecast information to stakeholders and the public.
Rep. Zinke, Ryan K. [R-MT-1]	Republican, MT	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.322	01/29/2025	Weather / S2S, Water Resources	This legislation would mandate the establishment of a dedicated program to improve forecast lead times, accuracy, and dissemination through research, advanced modeling, and innovative data collection. The program would focus on developing better forecast systems, understanding the role of atmospheric rivers in precipitation, creating effective communication strategies, and transitioning research into operational practices. Key components include enhanced data assimilation, improved modeling for complex terrain, atmospheric river reconnaissance using aircraft, and the development of hazard communication methods. Ultimately, this bill seeks to reduce the risks associated with atmospheric rivers by providing more reliable and understandable forecast information to stakeholders and the public.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Improving Atmospheric River Forecasts Act	Senate - Energy and Natural Resources		
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	Would direct the Under Secretary of Commerce for Oceans and Atmosphere to establish at least two pilot projects focused on enhancing subseasonal to seasonal weather forecasting. These projects specifically target improvements relevant to water management in the western United States and agriculture nationwide. Water management projects must address key science challenges in improving forecasts and developing related products, including: 1) Improving operational model resolution (horizontal and vertical) to resolve issues associated with mountainous terrain, such as precipitation intensity and the rain-snow fraction; (2) improving the fidelity of operational modeling of the atmospheric boundary layer in mountainous regions; (3) resolving challenges in predicting winter atmospheric circulation and storm tracks, including periods of blocked versus unblocked flow over the eastern North Pacific Ocean and the western United States; (4) improving the forecast of atmospheric rivers; (5) improving the quality and temporal and spatial resolution of air-sea interaction observations, operational modeling of air-sea interactions, and operational modeling of the influence of oceans on subseasonal and seasonal forecasting. The legislation allocates \$45M annually for five years to support these forecasting enhancements.
Sen. Padilla, Alex [D-CA]	Bipartisan, AK	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.324	01/29/2025	Weather / S2S, Water Resources, Agriculture	This resolution condemns the Mexican government for not fulfilling annual water deliveries to the United States under a 1944 treaty between the United States and Mexico respecting utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Smarter Weather Forecasting for Water Management, Farming, and Ranching	Senate - Energy and Natural Resources		
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill would redefine and rename the Municipal, Rural, and Industrial (MR&I) water infrastructure to "MR&I Projects" and repeal the section concerning the "MR&I System". The bill would also restructure the Crow Settlement Fund, establishing a dedicated "MR&I Projects Account" for water infrastructure development and a "Crow CIP Implementation Account." It would extend the timeframe related to Yellowtail Dam, modify funding procedures, and introduce an indexing adjustment for the MR&I Projects Account to account for cost fluctuations.
Sen. Rosen, Jacky [D-NV]	Democrat, CA, NM	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.Res.71	01/28/2025	Water Resources, Treaties, International	The bill would provide for the settlement of the water rights claims of the Fort Belknap Indian Community in Montana. This would involve ratifying and confirming a water rights compact between the Community and the State, authorizing the Secretary of the Interior to execute it, and authorizing necessary funds for its implementation. The bill would also authorize the exchange and transfer of specific Federal and State lands for the benefit of the Community. It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund to manage funds for water resources development, administration, and infrastructure projects. The bill also includes provisions for a storage allocation of water from Lake Elwell to the Fort Belknap Indian Community, mitigation for the Milk River Project, and the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project. Title I outlines the satisfaction of claims and the waiver and release of certain water rights claims by the Fort Belknap Indian Community and the United States. Title II of the bill would authorize appropriations for planning, design, construction, operation, maintenance, and replacement of community water distribution and wastewater treatment facilities for the Blackfeet Tribe.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Condemning the Government of Mexico for failing to fulfill its water deliveries on	House - Foreign Affairs		
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill would provide for the settlement of the water rights claims of the Fort Belknap Indian Community in Montana. This would involve ratifying and confirming a water rights compact between the Community and the State, authorizing the Secretary of the Interior to execute it, and authorizing necessary funds for its implementation. The bill would also authorize the exchange and transfer of specific Federal and State lands for the benefit of the Community. It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund to manage funds for water resources development, administration, and infrastructure projects. The bill also includes provisions for a storage allocation of water from Lake Elwell to the Fort Belknap Indian Community, mitigation for the Milk River Project, and the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project. Title I outlines the satisfaction of claims and the waiver and release of certain water rights claims by the Fort Belknap Indian Community and the United States. Title II of the bill would authorize appropriations for planning, design, construction, operation, maintenance, and replacement of community water distribution and wastewater treatment facilities for the Blackfeet Tribe.
Rep. De La Cruz, Monica [R-TX-15]	Republican, TX	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.726/S.240	01/24/2025	Indian Reserved Water Rights, Legal, Water	The bill would provide for the settlement of the water rights claims of the Fort Belknap Indian Community in Montana. This would involve ratifying and confirming a water rights compact between the Community and the State, authorizing the Secretary of the Interior to execute it, and authorizing necessary funds for its implementation. The bill would also authorize the exchange and transfer of specific Federal and State lands for the benefit of the Community. It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund to manage funds for water resources development, administration, and infrastructure projects. The bill also includes provisions for a storage allocation of water from Lake Elwell to the Fort Belknap Indian Community, mitigation for the Milk River Project, and the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project. Title I outlines the satisfaction of claims and the waiver and release of certain water rights claims by the Fort Belknap Indian Community and the United States. Title II of the bill would authorize appropriations for planning, design, construction, operation, maintenance, and replacement of community water distribution and wastewater treatment facilities for the Blackfeet Tribe.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Crow Tribe Water Rights Settlement Amendments Act of 2025	House - Natural Resources		
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill would provide for the settlement of the water rights claims of the Fort Belknap Indian Community in Montana. This would involve ratifying and confirming a water rights compact between the Community and the State, authorizing the Secretary of the Interior to execute it, and authorizing necessary funds for its implementation. The bill would also authorize the exchange and transfer of specific Federal and State lands for the benefit of the Community. It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund to manage funds for water resources development, administration, and infrastructure projects. The bill also includes provisions for a storage allocation of water from Lake Elwell to the Fort Belknap Indian Community, mitigation for the Milk River Project, and the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project. Title I outlines the satisfaction of claims and the waiver and release of certain water rights claims by the Fort Belknap Indian Community and the United States. Title II of the bill would authorize appropriations for planning, design, construction, operation, maintenance, and replacement of community water distribution and wastewater treatment facilities for the Blackfeet Tribe.
Rep. Downing, Troy [R-MT-2]	Republican, MT	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
S.241	01/24/2025	Water Resources, Legal, Indian Reserved Water	The bill would provide for the settlement of the water rights claims of the Fort Belknap Indian Community in Montana. This would involve ratifying and confirming a water rights compact between the Community and the State, authorizing the Secretary of the Interior to execute it, and authorizing necessary funds for its implementation. The bill would also authorize the exchange and transfer of specific Federal and State lands for the benefit of the Community. It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund to manage funds for water resources development, administration, and infrastructure projects. The bill also includes provisions for a storage allocation of water from Lake Elwell to the Fort Belknap Indian Community, mitigation for the Milk River Project, and the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project. Title I outlines the satisfaction of claims and the waiver and release of certain water rights claims by the Fort Belknap Indian Community and the United States. Title II of the bill would authorize appropriations for planning, design, construction, operation, maintenance, and replacement of community water distribution and wastewater treatment facilities for the Blackfeet Tribe.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Northern Montana Water Security Act of 2025	Senate - Indian Affairs		
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill would provide for the settlement of the water rights claims of the Fort Belknap Indian Community in Montana. This would involve ratifying and confirming a water rights compact between the Community and the State, authorizing the Secretary of the Interior to execute it, and authorizing necessary funds for its implementation. The bill would also authorize the exchange and transfer of specific Federal and State lands for the benefit of the Community. It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund to manage funds for water resources development, administration, and infrastructure projects. The bill also includes provisions for a storage allocation of water from Lake Elwell to the Fort Belknap Indian Community, mitigation for the Milk River Project, and the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project. Title I outlines the satisfaction of claims and the waiver and release of certain water rights claims by the Fort Belknap Indian Community and the United States. Title II of the bill would authorize appropriations for planning, design, construction, operation, maintenance, and replacement of community water distribution and wastewater treatment facilities for the Blackfeet Tribe.
Sen. Daines, Steve [R-MT]	Republican, MT	Active, WSWC Priority	

Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.635	01/22/2025	Water Resources, Indian Reserved Water Rights	The bill would amend the Omnibus Public Land Management Act of 2009 to increase Tribal access to water conservation and efficiency grants. Specifically, it would allow the Secretary to reduce or waive the non-Federal share of the cost for infrastructure improvements or activities that are the subject of a grant or agreement between the Secretary and an Indian Tribe if the Secretary determines that contributing the non-Federal share would result in a financial hardship for the Indian Tribe.
Bill Title	Assigned Committee(s)	Congress.gov Link	
WaterSMART Access for Tribes Act	House - Natural Resources		
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	The bill would extend the authorization for the Colorado River System conservation pilot program, allowing for new water conservation agreements to be entered into until 2026, and ensuring that funds remain available for obligation until 2027. This represents a two-year extension beyond the original timelines specified in the Energy and Water Development and Related Agencies Appropriations Act, 2015.
Rep. Stansbury, Melanie A. [D-NM-1]	Democrat, CA, CO, KS, NV, NM	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	
S.154	01/21/2025	Colorado River Basin, Conservation, Water	
Bill Title	Assigned Committee(s)	Congress.gov Link	
Colorado River Basin System Conservation Extension Act	Senate - Energy and Natural Resources		To amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System conservation pilot program.
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	
Sen. Hickenlooper, John W. [D-CO]	Bipartisan, WY, UT, CO	Active, WSWC Priority	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill
H.R.231	01/07/2025	Water Resources, Water Infrastructure,	To amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System conservation pilot program.
Bill Title	Assigned Committee(s)	Congress.gov Link	
Colorado River Basin System Conservation Extension Act of 2025	House - Natural Resources		
Passed (S/H)	Hearing(s)		
	02/12/2025 Ordered to be Reported (Amended) by Unanimous Consent.		
Bill Sponsor	Support	Activity Status	
Rep. Hageman, Harriet M. [Rep.-R-WY-At Large]	Republican, WY	Active, WSWC Priority	

Litigation Update
207th WSWC Meeting
Snowbird, Utah
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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 2025.

Case Name <i>Arizona v. Fondomonte</i> Case Number CV2024-035721 Court Superior Court of Arizona, Maricopa County Relevant Dates 2/11/24: Arizona Complaint filed 1/28/25: Motion for More Definite Statement 4/9/25: Fondomonte's Answer 5/30/25: Scheduling Order Related Cases Notes https://www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseInfo.asp?caseNumber=CV2024-035721	Issues Excessive groundwater pumping Arizona's AG brought this nuisance action in an effort to enjoin Fondomonte (an alfalfa grower that is a subsidiary of a Saudi Arabian company) from excessively pumping groundwater in violation of A.R.S. §13-2917, and to require the defendant to establish an abatement fund. Arizona alleged adverse effects on public health and safety, land subsidence, water quality degradation, a rapidly dropping water table, with anticipated damage to infrastructure and worsening groundwater shortages in the Ranengras Basin if the pumping isn't stopped. Arizona alleged that Fondomonte has been pumping excessive groundwater since 2014, with wells capable of pumping 4,000 gpm. Wells near the Fondomonte land have been going dry in recent years.
Case Name <i>Utah Physicians for a Healthy Environment et al. v. Utah Department of Natural Resources, et al</i> Case Number #230906637 Court Utah Third District Court Relevant Dates September 2024: Hearing on Motions to Dismiss 3/27/25: Court decision partially granting the Motions to Dismiss, moving forward with the more limited question of the scope of the public trust doctrine in Utah Related Cases Notes	Issues Public Trust Doctrine The complaint asserted a claim against the State agencies for a breach of trust for failure to protect the public resources in the Great Salt Lake (GSL). In particular, the plaintiffs sought a declaratory judgment that the "public trust doctrine imposes a duty on [State] Defendants to identify and implement feasible means of maintaining the Great Salt Lake at least at the [4,198 feet] level, including the reduction of unsustainable upstream diversions." The Utah Division of Water Rights argued in their Motion to Dismiss that "inserting water rights into Utah's public trust doctrine goes against the long-standing water public policy of the state" and "the State Engineer lacks legal authority to curtail water rights to maintain lake levels." The Central Utah, Jordan Valley, and Weber Basin Water Conservancy Districts, intervenor defendants, argued that the court lacks jurisdiction because "(1) federally owned water rights and related facilities are subject to sovereign immunity; (2) by seeking to 'modify' the legal extent of every water right in the GSL Basin, Plaintiffs are effectively seeking a general adjudication of water rights, but general adjudications are special statutory civil actions which can only be brought pursuant to Title 73, Chapter 4; and (3) District projects include trans-basin diversions to import hundreds of thousands of acre-feet of water from the Colorado River Basin to the Wasatch Front, and issues related to such 'imported water' can only be determined in a general adjudication proceeding." The Water Conservancy Districts also noted that the complaint failed to join either the tens of thousands of water right holders or the United States as parties to the complaint. Water user organizations that intervened as defendants included water districts, municipalities, and a regional power company. They argued that "modifying water rights is constitutionally prohibited, the Plaintiffs' proposed remedy is an uncompensated taking of private property and creates impossible conflicts among state agencies, that article XX, section 1 of the Utah Constitution is not self-executing, and Plaintiffs have no claim under Utah's Uniform Trust Code." The Court disagreed with the arguments to the extent that it has subject matter jurisdiction to "issue a limited declaratory judgment regarding (a) the scope of the public trust doctrine, which includes the navigable waters of the [GSL]; (b) the scope of the State's duties as trustee of the public trust, which includes the duty to protect the Great Salt Lake from substantial impairment and preserve the waters of the [GSL] so that can be used for the trust purposes of navigation, commerce, fishing, and recreation; and (c) the State's alleged breach of its trustee duties. However, the court agrees with Defendants that it does not have subject matter jurisdiction to issue declaratory relief in the form of an order directing the State to 'review, and where necessary, modify [upstream] diversions to protect and preserve the public trust. Consequently, the court grants the Motions to Dismiss with respect to this aspect of Plaintiffs' declaratory judgment claim."

Case Name	Issues	CEQ Rulemaking Authority; 2024 NEPA Rule
<i>Iowa et al. v. CEQ</i>	A coalition of 21 states (including AK, ID, KS, MT, NE, ND, SD, TX, UT, and WY) alleged that the 2024 NEPA Rule violated the NEPA statute and the Administrative Procedures Act (APA), and requested that the 2024 Rule be vacated and the 2020 Rule reinstated. The Plaintiff States argued: "NEPA is a procedural statute intended to ensure that federal agencies take a hard look at the environmental impacts of their proposed actions. The statute does not require or authorize an agency to take any substantive actions or elevate the protection of environmental resources above other priorities." The Plaintiff States noted that the 2024 Rule failed to sufficiently consider its own relevant impacts under the NEPA statute. They argued that there is no statutory or Congressional authority to create exceptions for beneficial impacts or special environmental assessments. A coalition of 13 States intervened as defendants (including CA, CO, NM, and OR). They argued that the 2024 NEPA Rule "reverses many of the remaining problematic provisions of the 2020 Rule and reinstates aspects of the 1978 regulations, while also modernizing and updating the 1978 regulations, in ways that streamline review and increase public participation, without sacrificing quality analysis. The Final Rule correctly recognizes federal agencies' obligation under NEPA to identify, analyze, and consider alternatives and mitigation measures for the reasonably foreseeable direct, indirect, and cumulative effects, including 'climate change related effects' of all major federal actions." The State Intervenor Defendants noted that under a reinstated 2020 Rule, they would lose the opportunity to comment on actions that proceed under the diminished public process of a categorical exclusion, or challenge them before environmental or health injuries occur, and it would interfere with their sovereign interests in their respective state lands, waters, and other natural resources. On 2/3/25, the Court ruled on 4 summary judgment motions and held that the Council on Environmental Quality (CEQ) has no rulemaking authority and vacated the 2024 National Environmental Policy Act (NEPA) Implementing Regulations, Revisions Phase 2 (89 FR 35442) on a nationwide basis. "NEPA is not ambiguous. The plain text of the statute does not give CEQ authority to issue binding regulations. NEPA only authorizes CEQ to make recommendations to the President.... For forty years CEQ's authority has been assumed, but these assumptions by the courts and others do not constitute binding precedent." "It is very likely that if the CEQ has no authority to promulgate the 2024 Rule, it had no authority for the 2020 Rule or the 1978 Rule and the last valid guidelines from CEQ were those set out under President Nixon. However, vacating a rule does not mean the Court decides the appropriate replacement. The law states that vacating simply reinstates the previous rule. The validity of the 2020 Rule is not before this Court. Whether or not the 2020 Rule conflicts with the FRA [2023 Fiscal Responsibility Act (P.L. 118-5)] does not affect this Court's ruling and is not relevant to this decision. The Court holds CEQ has no rulemaking authority and therefore, the 2024 Rule is invalid and vacated as a matter of law."	
Case Number		
1:24-cv-00089		
Court		
U.S. District Court for North Dakota		
Relevant Dates		
2/3/24: Court ruling that CEQ has no rulemaking authority.		
Related Cases		
Notes		
Case Name	Issues	CEQ Rulemaking Authority; NEPA compliance
<i>Marin Audubon Society v. FAA</i>	In the underlying case, petitioners challenged the Federal Aviation Administration and the National Park Service on compliance with NEPA in their development of an Air Tour Management Plan (ATMP) for four national parks near San Francisco. Petitioners argued that the Agencies had improperly relied on a categorical exclusion under NEPA to approve the ATMP. The court found the Agencies' NEPA analysis had used an improper baseline for flight traffic and vacated the plan. However, both parties argued the case based on CEQ's regulations. The court said those arguments could not be addressed and declared the CEQ's NEPA regulations themselves were outside CEQ's authority. "Over many years, our court has expressed serious concerns about whether CEQ's regulations had any 'binding effect' because it was 'far from clear' that CEQ had any 'regulatory authority under [NEPA]'.... It is time for our court's long-standing misgivings to be put to the test..." The court characterized the question as a separation of powers issue, pointing out that CEQ traces its authority to an Executive Order of the President and not legislation: "No statutory language states or suggests that Congress empowered CEQ to issue rules binding on other agencies—that is, to act as a regulatory agency rather than as an advisory agency. NEPA contains nothing close to the sort of clear language Congress typically uses to confer rulemaking authority." The court disagreed that the CEQ's regulations could be justified under the "Take Care Clause" of the Constitution (Art. III, Sec. 3). The court reasoned that upholding the CEQ regulations as an exercise of Presidential oversight would imply that the President could circumvent the limitations of agencies, which derive their powers solely from congressional statutes. The court also examined specific legal provisions cited by President Carter in Executive Order 11991 (42 FR 26967), which purportedly authorized CEQ to issue regulations. Reviewing Section 309 of the Clean Air Act, the court determined that it only supports CEQ's role as advisory and not regulatory. It also considered the Environmental Quality Improvement Act of 1970, which established an Office of Environmental Quality headed by CEQ's chairman, and found that the authority granted was to assist other federal agencies, not broad rulemaking authority.	
Case Number		
#23-1067		
Court		
D.C. Circuit		
Relevant Dates		
2/12/24: Court ruling on case		
Related Cases		
Notes		
Case Name	Issues	NPDES Permits with Narrative Limits
<i>San Francisco v. EPA</i>	On March 4, 2025, the Supreme Court held in a 5-4 decision that §1311(b)(1)(C) does not authorize EPA to issue NPDES permits with "end result" provisions, such as conditioning compliance on the quality of receiving waters. Determining the necessary steps to meet WQS is EPA's responsibility (in this context). This does not preclude narrative criteria that EPA and states use to require permittees to follow certain best practices. "Because of the harsh penalties for violating the terms of a permit, the permit shield is invaluable. Because of it, a discharger that complies with all permit conditions can rest assured that it will not be penalized. But the benefit of this provision would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard. A permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences. It is therefore exceedingly hard to reconcile the Government's interpretation of §1311(b)(1)(C) with the permit shield." The Court also pointed out "the absence of any provision dealing with the problem that arises when more than one permittee discharges into a body of water with substandard water quality." BACKGROUND: San Francisco's wastewater treatment plant discharges treated effluent and combined stormwater-sewer overflows into the near-shore Pacific Ocean, which requires joint NPDES permits from EPA and the local region of the State Water Quality Control Board. In addition to numeric limitations that apply during dry weather, the permit includes a set of comprehensive management requirements for operations during wet weather. Because EPA determined the management requirements would not necessarily achieve WQS, they added provisions that demand the city not violate WQS, but without setting pollutant limits. The city challenged the generic prohibitions in the permit as not compliant with the CWA. The 9th Circuit panel found that the provisions of 33 USC §1311(b)(1)(C) and 40 CFR §122.44(d) empower EPA and states to impose generic prohibitions against violating WQS when necessary, and that EPA possesses the discretion to translate WQS into WQBELs expressed numerically or as generic prohibitions and management practices. The city petitioned for certiorari, arguing that this approach "will encourage EPA and states to continue imposing water quality prohibitions that cause permittees to labor under NPDES permits that fail to define their pollution control obligations with the clarity that the [CWA] demands." Issue: Whether the CWA allows EPA (or an authorized state) to impose generic prohibitions in NPDES permits that subject permit-holders to enforcement for violating water quality standards without identifying specific limits to which their discharges must conform.	
Case Number		
#23-753		
Court		
U.S. Supreme Court		
Relevant Dates		
7/31/23: 9th Circuit decision		
Related Cases		
Notes		
https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-753.html		

Case Name	Issues State WQS to protect Tribal Reserved Treaty Rights (89 FR 35717)
<i>Idaho v. EPA</i>	Attorneys general for the States of Alaska, Idaho, Iowa, Louisiana, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Texas, Utah, and Wyoming challenged EPA's Water Quality Standards (WQS) Regulatory Revisions To Protect Tribal Reserved Rights. The States asked the court to vacate the rule as a violation of the Constitution and the Administrative Procedures Act, and because it exceeds EPA's authority under the Clean Water Act (CWA). The States argued that Congress did not "give the EPA the power to commandeering states into protecting and adjudicating alleged tribal reserved rights for the government" and that the CWA focuses on water quality, not on protecting specific rights for tribal or non-tribal members of the public. The rule requires case-by-case inquiries into undefined reserved rights that can only be resolved by courts, often over the course of a decade or more. "[T]reaty rights promised by the federal government to the tribes are socially, politically, and legally complex issues." EPA provides no guidance or mechanism for dispute resolution for "inevitable disagreements—between the tribes themselves, between tribes and States and between the tribes and the federal government—over the extent and nature of any alleged reserved rights." Such disagreements "have been the subject of countless lawsuits." The States alleged that the delegation of this effort to evaluate claimed tribal reserved rights to State water management agencies is an "unworkable task." It would also require a reevaluation of the myriad existing permits and certifications, postponing triennial review processes, likely resulting in WQS "that are orders of magnitude more stringent than those required under existing regulations," "standards that cannot be reasonably met using cost effective technologies," and "the vast majority of waters being deemed impaired." It would impact thousands of regulated entities with existing permitted discharges associated with important economic activities. The States argued that the rule also purports to require state water quality agencies to ensure that tribes have the right to quantities of water needed to secure their claimed rights and uses, such as certain flow rates for fishing rights, "even if the states have determined water quantities inconsistent with the tribal claims." "The EPA now grants itself the ability to disapprove State water quality standards it determines are not sufficiently protective.... This puts EPA in the position of choosing whose claim to water should be protected—undermining and interfering with the States' longstanding role, as well as previously negotiated or litigated claims and decreed water rights." This puts vested water rights at risk.
Case Number	
1:24-cv-00100	
Court	
U.S. District Court for the District of North Dakota	
Relevant Dates	The twelve Tribes that filed a motion to intervene noted that EPA has previously used its oversight authority to disapprove of state WQS that violate CWA requirements because they were insufficiently protective of Tribal reserved rights. They said the States often fail to consider Tribal uses in the WQS process, and the rule "merely clarifies existing requirements and ensures uniform treatment of Tribal reserved rights essential to Tribal rights holders' subsistence, cultural, and spiritual practices." They said: "Tribal reserved rights can include the use of water for various purposes, such as fishing, gathering, ceremonial, domestic, irrigation, and municipal uses. Ensuring sufficient water quality for those uses is essential for the health and wellbeing of Tribal members.... Tribes have a clear interest in the quality of waters where they hold usufructuary or 'use' rights and the aquatic resources that depend on these waters." Some of the Tribes consume higher rights of fish and wild rice than the general population, and they are concerned about contaminants such as mercury, sulfate, and chloride. They argued that this litigation threatens to impair the Tribes' sovereign and conservation interests, and that the federal government cannot adequately protect their interests in this case. "EPA defends the case as the rule maker that must consider the interests of all citizens, which includes weighing competing interests against each other. The Tribes' interests are more particularized, given the unique treaty rights reserved for different Tribes and the specific interests in the waters of the state each Tribe occupies." They noted that while they don't believe the rule goes far enough to protect treaty rights, it is an essential step forward.
5/28/24: Complaint filed	
6/14/24: Amended Complaint and Motion for Prelim. Injunction	
6/28/24: Tribes' Motion to Intervene	
7/24/24: Tribes' Answer to Amended Complaint	
9/5/24: EPA's Answer to Amended Complaint	Related Cases
11/4/24: State Plaintiff's MSJ	
1/3/25: EPA's Cross-MSJ	
2/10/25: Court stayed the case	
5/8/25: Stay extended 90 days	
Related Cases	Notes
Case Name	Issues PFAS CERCLA rule (89 FR 39124)
<i>Chamber of Commerce et al. v. EPA</i>	The U.S. Chamber of Commerce petitioned for direct review of EPA's new rule "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances" (89 FR 39124), under the Administrative Procedures Act and Section 113 of CERCLA.
Case Number	
#24-1193	
Court	
D.C. Circuit	
Relevant Dates	Related Cases
6/10/24: Petition filed	
2/24/25: Court stayed the case	
4/30/25: Stay extended	
5/30/25: Motion to extend the stay	
Related Cases	Notes
Case Name	Issues PFAS National Primary Drinking Water Regulation (89 FR 32532)
<i>AWWA et al. v. EPA</i>	The American Water Works Association (AWWA) and Association of Metropolitan Water Agencies (AMWA) filed a petition for direct review of EPA's PFAS drinking water rule. published on April 26. "Petitioners strongly support the protection of public health and the use of a sound scientific process in the development of regulations. EPA did not rely on the best available science and the most recent occurrence data, and used novel approaches as the basis for certain portions of the rule. EPA finalized this rule without following the process mandated by Congress, without allowing the public an adequate opportunity to provide comment, and without addressing the concerns raised by those who work to deliver safe and affordable drinking water to their communities. Petitioners are seriously concerned about the impact of this rule on water affordability, particularly for households that struggle to pay for essential needs. EPA has significantly underestimated the costs of this rule and the adverse impact that it will have on individual water users."
Case Number	
#24-1188	
Court	
D.C. Circuit	
Relevant Dates	Related Cases
6/7/24: Petition filed	
10/7/24: Opening brief due	
2/7/25: Court stayed the case	
4/10/25: Stay extended to 5/12/25	
5/14/25: Stay extended to 6/4/25	
Related Cases	Notes

Case Name	Issues CWA 404 Veto
Alaska v. EPA	Alaska sought a declaration that EPA violated the CWA and APA in issuing its 2023 veto action (Final Determination) that blocked the development of the Pebble Mine by prohibiting the issuance of any CWA 404 permits to discharge into WOTUS. AK asked the court to set aside the Final Determination, allowing the permit application process to proceed forward.
Case Number	
3:24-cv-84	
3:24-cv-59 (consolidated)	
Court	
U.S. District Court of Alaska	
Relevant Dates	
4/11/24: Alaska's Complaint 6/24/24: EPA Answer 8/2/24: Administrative record filed 8/9/24: EPA Motion for Protective Order 8/20/24: AK Motion to Stay 9/17/24: Stay granted until ruling on EPA's Motion for Protective Order 10/2/24: Protective Order granted 11/12/24: Order consolidating cases to Case No. 3:24-cv-59 2/14/25: Case stayed until 5/14/25 5/16/25: Stay extended to 6/13/25	
Related Cases	
Notes	
Case Name	Issues CWA 404 Veto
<i>State of Alaska v. United States</i>	Alaska petitioned for \$700B in compensation for EPA's 2023 veto action (Final Determination) that blocked the development of the Pebble Mine. Alaska noted that, in authorizing the Statehood Act and Cook Inlet Land Exchange, Congress explicitly recognized that Alaska would develop its mineral resources. The State alleged that these agreements constitute contracts, under which the State would receive land, associated mining rights (subject to lease by the State), and regulatory authority over its lands. They claimed that EPA's Final Determination decision is a breach of contract by the federal government, as well as a breach of the covenant of good faith and fair dealing. The State further alleged multiple takings counts (permanent categorical taking, permanent non-categorical taking, and temporary taking) stating that EPA's Final Determination denies all economically beneficial or productive use of the land. They asserted that a finding of either type of permanent taking should entitle them to compensation exceeding \$700B, the 100-year value of Pebble Mine estimated by EPA in 2010. The State argued that even if the EPA were to withdraw its Final Determination or it were to be vacated, the Determination has blocked the U.S. Army Corps of Engineers (Corps) from issuing a Clean Water Act (CWA) permit for the Pebble Mine. This would constitute a temporary taking, entitling the State to just compensation in an amount that exceeds \$10,000.
Case Number	
1:24-cv-00396	
Court	
U.S. Court of Federal Claims	
Relevant Dates	
3/14/24: Petition filed 9/4/24: Case stayed to 1/6/25 (pending district court case outcome, to preserve judicial resources) 1/6/25: Stay extended to 7/7/25	
Related Cases	
Alaska v. U.S. Env't Prot. Agency, No. 3:24-cv-84 (D. Alaska)	
Notes	
Case Name	Issues CWA exemptions for agricultural irrigation, 33 U.S.C. §1342(1)(1)
<i>Pacific Coast Federation of Fishermen's Associations, Inc., et al. v. Ernest Conant, et al.</i>	The Association of California Water Agencies (ACWA) led an agricultural coalition amicus curiae brief, noting that the Grasslands Bypass Project drainage infrastructure is not unique, and "this case may have far-reaching impacts on farmlands that utilize and rely on irrigation drainage facilities essential to maintaining crop production." The CWA exemption for agricultural return flows applies to "millions of acres of farmland" and a ruling rendering that exemption essentially nonexistent "would broadly affect western agriculture, forcing thousands of farmers and operators of agricultural drainage systems across the western United States to immediately apply for and operate under onerous NPDES permits or face liability under the CWA." They emphasized the lower court's determination that the exemption "cannot be defeated merely because additional nonpoint sources of pollution may enter into agricultural drains that convey agricultural return flows to waters of the United States."
Case Number	
2:11-cv-02980	
#23-15599	
Court	
U.S. District Court for the Eastern District of California	
9th Circuit	
Relevant Dates	
2011: Complaint filed 2017: District Court Decision 2019: 9th Circuit Decision (remand) 2/21/23: ED CA ruling that exemption still applied 4/19/23: Notice of Appeal to 9th Cir. 3/4/24: Agriculture Coalition Amicus Brief 10/21/24: Oral Argument	
Related Cases	
Notes	
	BACKGROUND: The underlying case, filed in 2011, arises from water discharges from the Grasslands Bypass Project in California's Central Valley. The project was created as a result of a previous lawsuit for the purpose of preventing irrigation water from leaching selenium and salt from the agricultural soil into the groundwater. The project collects water used to irrigate agricultural land through an underground perforated tile drainage system, moving "the collected drainage water through a concrete-lined conveyance for many miles before it dispenses into a wetland." The plaintiffs alleged that the Bureau of Reclamation (USBR) and the Grasslands Water District are discharging pollutants, without a National Pollutant Discharge Elimination System (NPDES) permit, which made their way into the San Joaquin River and San Francisco Bay Delta in violation of the Clean Water Act (CWA). The defendants argued that the agricultural land is exempt from CWA permitting under 33 U.S.C. §1342(1)(1).
	In 2017, the district court held that, because the majority of the water came from agricultural lands, the exemption applied. In 2019, the 9th Circuit reversed and remanded that decision, noting that the CWA exemption language is "for discharges composed entirely of return flows from irrigated agriculture." On remand, the lower court again held that the exemption applied, because the water was either from the agricultural lands or from other nonpoint sources that are exempt. The plaintiffs appealed.

Case Name	Issues	Delegation of CWA §404 to Florida and Endangered Species Act
<i>Center for Biological Diversity (CBD) et al. v. Michael S. Regan, et al.</i>	The Court issued a partial MSJ ruling (2/15/24) that the Environmental Protection Agency (EPA) and the Fish and Wildlife Service (FWS) violated the Endangered Species Act (ESA) when they approved Florida's application to assume Clean Water Act (CWA) §404 permitting authority. The court held that the agencies had circumvented ESA requirements by approving programmatic Section 7 consultation, providing broad ESA liability protection for all future state permittees. The court vacated the USFWS' programmatic Biological Opinion (BiOp) and Incidental Take Statement (ITS), as well as EPA's approval of Florida's §404 assumption application. The intervenor defendants, the State of Florida and the Florida Department of Environmental Protection (FDEP), filed a brief (2/26/24) in support of the partial stay. They noted that they had over 1,000 pending §404 individual and general permit applications for roads and bridges, hospital construction projects, school buildings and facilities, affordable housing, military base projects, power grid reliability projects, and various projects to improve water quality in the Everglades. They emphasized the need for the stay to minimize the disruptive consequences of vacatur. They asked for clarification on several questions the court left unanswered regarding procedures for applications that "may affect" listed species and their continued authority over applications that do not. The Florida intervenor defendants alternatively presented the approach used by New Jersey and Michigan, involving memoranda of agreement (MOAs) that facilitate EPA or USFWS review where the State identifies applications that may affect ESA listed species. They noted that while the court found the Florida Section 7 consultation deficient, the formal process went "above and beyond what was done in the other two states at the assumption stage" where no programmatic BiOp was ever prepared. BACKGROUND: CBD argued that the FWS' programmatic BiOp, programmatic ITS, and technical assistance processes "create an ESA scheme that is not authorized by law" and "give [Florida] a workaround regarding the mechanisms that Congress provided for establishing take limits, extending liability coverage, and determining jeopardy to species." They also allege that the EPA relied on the facially deficient Section 7 statements and failed to consult with the National Marine Fisheries Service (NMFS). The federal agencies argued that even if their Section 7 consultations were insufficient, they had created a technical assistance process between Florida and the agencies to address all of the ESA requirements on a permit-by-permit basis by requiring Florida to consult with FWS regarding each application. They requested that the Court only vacate approval to those projects in the category of "may affect, likely to adversely affect" listed species.	
Case Number		
1:21-cv-00119		
#24-5101, #24-5156, #24-5159		
Court		
U.S. District Court for the District of Columbia		
D.C. Circuit Court		
Relevant Dates		
1/1/21: Complaint filed in DC Dist. Ct. 2/15/24: Partial MSJ decision (vacatur of 404 delegation) 2/26/24: Federal agency defendants and Florida intervenor defendants arguments on partial stay of vacatur 4/23/24: Court denied partial stay of vacatur -- 4/26/24: Florida appealed (#24-5101) 9/16/24: Florida brief 9/23/24: State amicus brief 5/5/24: Oral argument -- 6/10/24: CBD cross-appeal (#24-5156) 9/16/24: Federal agencies and Florida briefs filed 9/23/24: State amicus brief 5/5/24: Oral argument -- 6/11/24: Federal agencies appealed (#24-5159) 9/16/24: Federal agencies and Florida briefs filed 9/23/24: State amicus brief 5/5/24: Oral argument		
Related Cases		
Notes		

Case Name	Issues	CWA §401 Water Quality Certification Improvement Rule (2023 Rule) (88 FR 66558)
State of Louisiana et al. v. U.S. Environmental Protection Agency et al.	The plaintiff states (including AK, MT, OK, and WY) and regulated entities challenged the 2023 Rule, arguing that it expands the states' authority beyond the scope of the CWA by: (1) allowing states to establish additional requirements for a complete certification request; (2) directing states to evaluate all potential water quality-related effects of a proposed activity (rather than evaluating the point source discharge only) under all types of state water quality requirements; (3) retroactively applying the rule to pending requests; and (4) failing to adequately carry out APA notice-and-comment procedures. The petitioners requested an order declaring that the 2023 Rule violates the CWA and the APA; vacating and setting aside the 2023 Rule; and enjoining EPA from applying or enforcing the 2023 Rule. Since filing the complaint on December 4, the plaintiffs also petitioned for preliminary injunctive relief to stay the 2023 Rule in states bringing the lawsuit. The intervenor defendant states (including CA, NM, OR, and WA) argued that they have a "clear and direct interest in upholding the 2023 Rule to preserve their sovereign authority over water quality within their respective states under section 401 of the CWA." They argued that their interests are not adequately represented by either the plaintiff states or EPA. They noted that the plaintiff's plea to invalidate the 2023 Rule and return to the 2020 Rule may impair intervenor defendant states' ability to protect their interests. They disagreed with the plaintiffs allegations that the 2023 Rule is overly broad or burdensome, stating: "Placing the ultimate authority to ensure proposed projects comply with state water quality requirements in the hands of states is the core reason Congress included the section 401 certification requirement in the first place." They pointed out that the nature of cooperative federalism as mandated by the CWA requires independent state representation, and that EPA's interests in this case diverge from their own.	
Case Number		
2:23-cv-01714		
Court		
U.S. District Court for the Western District of Louisiana		
Relevant Dates		
12/4/23: Complaint filed		
1/12/24: 18 states filed a motion to intervene as defendants		
2/6/24: EPA Answer		
3/7/24: Motion for Preliminary Injunction denied		
5/30/24: Plaintiffs States' MSJ		
7/30/24: Intervenor Defendant States Cross MSJ		
8/8/24: Court set deadlines for MSJ responses by 9/30/24, and replies by 10/30/24		
2/11/25: Court stayed the case for 90 days		
5/14/25: stay extended 90 days		
Related Cases		
Notes		

Case Name	Issues	Delegation of CWA 404 and Tribal Lands
<i>Miccosukee Tribe v. EPA</i>	The Miccosukee Tribe alleged that EPA's approval of Florida's CWA 404 permitting program (85 FR 83553) impermissibly disregarded and diminished the Miccosukee's Tribal Sovereignty by subjecting more than 200,000 acres of Indian lands to the State's regulatory jurisdiction. Tribal members have been prevented from obtaining permits to build homes on tribal lands in the Everglades. The complaint asserted that Miccosukee lands include more than the reservation lands, noting that the tribe holds interests in lands held by the federal government, Miccosukee reserved areas, perpetually leased lands, reserved rights lands, and fee simple lands. EPA's approval of Florida's proposal transferred CWA § 404 permitting authority over the Miccosukee Leased Lands, Reserved Rights, and Fee Simple Lands to the State of Florida unless such lands were subject to the ebb and flow of the tide. The complaint alleged that the state lacks legal authority to carry out the CWA 404 program on Indian lands, and in the absence of that authority, EPA's regulations (40 CFR 233.2(b)) specify that 404 permitting authority will remain with the Army Corps of Engineers. Rather than describe the waters within the state's jurisdiction and the waters retained by the Corps, Florida's description said that "State-assumed waters...are all waters of the United States that are not retained waters," provided inconsistent definitions of Corps-retained waters, and although Florida noted that "Indian country, as defined in 18 USC 1151, is not included in Florida's 404 program," failed to include other Indian lands. The Tribe sought five counts of relief under the APA, requesting that EPA's transfer of authority over certain waters be vacated.	
Case Number		
1:22-cv-22459		
Court		
U.S. District Court for the Southern District of Florida		
Relevant Dates		
8/4/22: Tribe filed complaint against EPA		
9/7/22: Florida motion to intervene (granted)		
7/27/23: Tribe's MSJ		
9/27/23: EPA cross-MSJ		
12/20/23: Florida Reply to cross-MSJ		
12/27/23: Florida Reply to MSJ		
3/18/24: Stay (pending outcome of CBD v. EPA, which vacated EPA's approval of Florida's CWA 404 assumption of authority)		
3/18/25: Stay extended to 6/16/25		
Related Cases		
Notes	Florida intervened and countered in the MSJ reply (#43) that "the Tribe's boundless view of 'Indian lands' as much broader than 'Indian country'" is erroneous and unprecedented. "Florida's Section 404 Program remains subject to continuous permit-by-permit oversight by the federal government and allows for full involvement by the Tribe at every stage. As such, there is no legal or factual basis to claim 'sovereignty' injuries here. The Tribe's decision to selectively forego participating in the Section 404 program for two proposed permits [the Tribe expressly asked Florida to suspend the processing of the two applications, and Florida consented to that request] is entirely self-inflicted and inconsistent with the Tribe's own past involvement in state permit programs." Florida argued that Congress clearly did not intend the application process to include a canvass of the landscape on a parcel-by-parcel basis and get bogged down in contentious disputes over jurisdictional line-drawing. "As set forth in the FDEP-Corps MOA, any site-specific line-drawing determinations can be made as circumstances warrant, particularly since the precise boundaries of assumable waters are subject to change based on current conditions." Additionally, Florida expressly did not seek authority over Indian country (18 USC 1151). "If EPA correctly interpreted Indian lands synonymously with Indian country, Florida's program obviously does not cover Indian lands within the meaning of 40 CFR 233.11(h)." Florida also argued against the Tribe's assertion that state-tribe interactions injure tribal sovereignty and cannot be government-to-government relations, noting that states are also sovereign, and that the BIA has acknowledged: "While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well... [T]ribes frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement."	
Case Name	Issues	2023 WOTUS Rule (88 FR 3004) and Amended Rule (88 FR 61964)
<i>West Virginia et al. v. EPA</i>	A coalition of 24 states, led by WV and including the ten western states of AK, KS, MT, NE, ND, OK, SD, UT, and WY, requested that the rule be vacated and remanded to the agencies for violations of the Clean Water Act (CWA), the Administrative Procedures Act (APA), and the U.S. Constitution, including the Commerce Clause and the Fifth and Tenth Amendments. The States asserted that the 2023 WOTUS rule mirrors or exceeds the 2015 WOTUS Rule (enjoined by this court for likely violating the CWA grant of authority to EPA and the Corps), and that it "improperly upsets the balance of State and federal powers in an area typically dominated by the States." Each State expressed its sovereign authority to govern, manage, and protect the waters within its borders, as cited in their respective state constitutions and statutes. For a lengthier summary of the complaint, see WSW #2546 Special Report.	
Case Number		
3:23-cv-00032		
Court		
U.S. District Court in North Dakota		
Relevant Dates		
2/16/23: Lawsuit filed		
4/12/23: Preliminary injunction (24 states)		
7/18/23: Case stayed		
9/1/23: Status report from Corps & EPA re: amended WOTUS rule issued		
10/10/23: Stay lifted		
11/13/23: Amended Complaint		
12/12/23: Industry Motion to Intervene granted (Ag, Mining, Construction, etc)		
12/13/23: Answers filed		
2/26/24: States and Industry MSJs filed		
4/26/24: EPA, Corps MSJ filed		
6/25/24: various responses filed to MSJs		
7/26/24: EPA, Corps filed reply		
7/30/24: Federal defendants filed supplemental authority: Kentucky v. EPA (6th Circuit remand to allow amended complaints rather than sua sponte dismissal, #23-5343 and #23-5345)		
2/18/25: Court stayed the case		
4/22/25: next status report due 6/23/25		
Related Cases		
Texas v. EPA, #3:23-cv-17 (see below)		
Lewis v. United States, 88 F.4th 1073 (5th Cir. 2023)		
Glyn Envtl. Coal., Inc. v. Sea Island Acquisition, LLC, #2:19-cv-50, S.D. Georgia (2024) [appeal #24-10710 to 11th Cir.]		
White v. EPA, #2:24-cv-13, E.D. North Carolina (2024) [appeal #24-____ to 5th Circuit]		
EPA v. Ace Black Ranches, #1:24-cv-113, D. Idaho (2024)		

Notes	
Case Name	Issues 2023 WOTUS Rule (88 FR 3004) and Amended Rule (88 FR 61964)
<i>Texas et al. v. EPA et al.</i>	The complaint requested that the 2023 WOTUS rule be vacated for violations of the Constitution, the CWA, and the APA. Texas alleged: "The Final Rule harms Plaintiffs by: (1) expanding federal regulation beyond that authorized in the CWA; (2) eroding the states' authorities over their own waters; (3) increasing the states' burdens and diminishing the states' abilities to administer their own programs; and (4) undermining the states' sovereignty to regulate their internal affairs as guaranteed by the Constitution." Texas asserted that the CWA "only authorizes the Federal Agencies to regulate 'navigable waters,' defined as 'waters of the United States'" and the new rule is a violation of the CWA and APA for asserting jurisdiction over lands and waters that fall outside the CWA and effectively removing any requirement of navigability. For a lengthier summary of the complaint, see WSW #2546 Special Report.
Case Number	
3:23-cv-00017	
Court	
U.S. District Court for the Southern District of Texas	
Relevant Dates	
1/18/23: Lawsuit filed	On March 19, 2023, the court issued a preliminary injunction preventing the 2023 WOTUS Rule from taking effect in the States of Texas and Idaho. "[T]wo aspects of the 2023 Rule make the plaintiffs particularly likely to succeed on the merits – first, the Rule's significant-nexus test, and second, the Rule's categorical extension of federal jurisdiction over all interstate waters, regardless of navigability." The court found that Chevron deference does not apply due to the criminal penalties in the rule, and due to the significant constitutional and federalism questions raised by the agencies' interpretation of the CWA. The court held that the states had standing to challenge the rule to protect their quasi-sovereign interests in regulating their land and water. For a lengthier summary of the preliminary injunction, see WSW # 2549.
2/27/23: Idaho joined	
3/19/23: Preliminary injunction (TX & ID only)	
7/10/23: Case stayed	
9/1/23: Status report from Corps & EPA re: amended WOTUS rule issued	
2/2/24: Plaintiffs filed MSJ	
4/2/24: EPA, Corps MSJ and opposition to Plaintiff's MSJ	
6/17/24: TX and ID Reply	
7/30/24: Federal defendants filed supplemental authority: Kentucky v. EPA (6th Circuit remand to allow amended complaints rather than sua sponte dismissal, #23-5343 and #23-5345)	
2/4/25: Case stayed, status reports due every 60 days	
4/7/25: EPA/Corps Status Report, noting the new guidance and the regulatory docket soliciting input to further clarify the WOTUS definitions, which may resolve the litigation or narrow the existing dispute (next status report 6/6/25)	
Related Cases	In August 2023, the EPA announced amendments in response to the Supreme Court decision in Sackett v. EPA. In turn, Texas and Idaho amended their complaint to include the changes. On February 2, 2024, the plaintiffs filed an MSJ. They argued that the Amended 2023 Rule (88 FR 61964) is unconstitutionally vague in its definitions of "every jurisdictional category," including its definitions of Traditional Waters, Impoundments, Tributaries, Wetlands, and Other Jurisdictional State Waters. Additionally, the Relatively Permanent Standard is broader and vaguer than the standard described in Sackett and Rapanos. Plaintiffs also argued that the Amended 2023 Rule exceeds the CWA, is contrary to the States' sovereignty, violates due process afforded by the Constitution, and was adopted through unlawful procedure under ADA. They conclude: "It cannot be supported by the plain language of the Clean Water Act, it is inconsistent with Supreme Court precedent, it cannot be justified as a valid exercise of congressional authority under the Commerce Clause, it cannot be excused in the face of the Tenth Amendment, and it infringes on the due process rights afforded under the Fifth Amendment. And even if it were not substantially unlawful, it was adopted through unlawful procedure." See WSW #2596
West Virginia v. EPA, #3:23-cv-32 (see above)	
Notes	
Case Name	Issues Water rights adjudication (groundwater), SGMA 2014, federal water rights and groundwater
<i>Indian Wells Valley Water District v. All Persons Who Claim a Right to Extract Groundwater in the Indian Wells Valley Groundwater Basin, etc., et al.</i>	On June 11 and 21, 2024, the adjudication was separated into several phases. Phase 1 will address the federal government's reserved water rights claims to groundwater. Phase 2 will adjudicate the safe yield and groundwater in storage. Phase 3 will determine the water rights claims of all other parties. Phase 4 will determine a physical solution.
Case Number	
30-2021-01187275-CU-OR-CJC	
Court	
Orange County Superior Court, California	
Relevant Dates	
6/16/21: IWVWD Cross-complaint, opening the adjudication	BACKGROUND: The original complaint was filed by Mojave Pistachios, LLC. The cross-complaint by the Indian Wells Valley Water District (IWVWD) seeks "a judgment to comprehensively determine and adjudicate all groundwater rights in the Basin and to provide a physical solution for the perpetual and continuous management of the Basin." IWVWD's website noted that water use in the basin has exceeded groundwater supply for years, resulting in an "overdraft" condition. IWVWD is a member of the Indian Wells Valley Groundwater Authority, formed pursuant to the Sustainable Groundwater Management Act (SGMA). The Authority developed and adopted a groundwater sustainability plan (GSP), and several lawsuits were filed alleging that the GSP actions to regulate water use and impose fees were unlawful and excessive, leading in part to the present adjudication. IWVWD's website said: "The Basin underlies approximately 382,000 acres or approximately 600 square miles of land. Approximately 301,000 acres of land overlying the Basin are federal property managed by Naval Air Weapons Station China Lake, the Bureau of Land Management, and the Forest Service. The non-federal lands overlying the Basin consist of the City of Ridgecrest and unincorporated land in the Counties of Kern, Inyo, and San Bernardino. Water rights of the federal government are beyond the jurisdiction of the State to regulate. Under applicable law, the federal government may only participate in a water rights lawsuit if such a case is considered to be what is called a 'comprehensive adjudication' involving all stakeholders/pumpers. The District is therefore taking the necessary action of filing a comprehensive adjudication. Such steps will involve all stakeholders/pumpers; protect the general welfare of the Basin; protect the District's right to pump groundwater from the Basin; protect groundwater quality; and to manage water costs to the public. The goal of the District's action is to bring long-term and enforceable sustainability to the Basin."
9/7/21: California Department of Water Resources received notice of the adjudication	
10/13/21: form of Notice of Commencement of Groundwater Basin Adjudication approved	
12/16/21: Notices mailed to basin property owners	
3/17/23: Case Management Conference	
9/1/23: Status Conference (awaiting judicial assignment from the Judicial Council, followed by briefing on Court's authority to determine safe yield and impose a physical solution, as well as the issue of including de minimis users and McCarran jurisdiction)	
2/23/24: IIWVWD Motion for order to divide the trial into phases, establish the basin boundary, set the phase 1 trial, and partially lift the discovery stay	
8/8/24: Order granting the motion to schedule the phase 2 trial (safe yield) at the next status conference (10/2/24); interesting discussion on the intersection of SGMA, GSPs, and adjudications under the Streamlined Act (2015)	
[4/28/2025: Phase 1 Trial on federal reserved water right claim scheduled]	
Related Cases	
	During a joint case management conference, one of the jurisdictional issues raised was whether the de minimus water users, and any overlying non-users, needed to be included in the proceeding in order for the Court to have jurisdiction over the United States as part of a comprehensive adjudication, both to ensure the US participation and to protect the due process rights of these others. Also discussed was the potential for a bifurcated trial, with phase 1 focused on the characteristics of the basin, the total groundwater and available freshwater in storage, and the safe yield. Phase 2 would then address water rights claims not already agreed to by stipulation, and the presentation of a "physical solution" (California Const. Art. X sec. 2), one that achieves the practical allocation of water among competing interests consistent with the constitutional mandate to maximize reasonable and beneficial use, and recognize established water rights. The solution seeks to make water available for a greater number of beneficial uses while still protecting senior priorities and implementing targeted management actions. Some of the parties requested that phase 1 of the trial be completed by the end of summer 2023, and phase 2 occur expeditiously thereafter. The Water District filed a motion regarding the scope of the trial phases. They proposed that Phase 1 issues include determining the amount of fresh groundwater in storage and adjudicating the federal reserved water right claim of the United States. Phase 2 would include determining the safe yield, adjudicating all water rights and their relative priorities, and considering and adopting a physical solution consistent with the Phase 1 trial.

Mojave Pistachios, LLC v. IWVWD	adjudicating all water rights and their relative priorities, and considering and adopting a physical solution consistent with the Phase 1 trial findings.
Comprehensive adjudication of the Cuyama Valley Groundwater Basin, another basin in an overdraft condition. (9/2/21)	
Notes	
See: https://www.iwvwd.com/basin-adjudication/	
Case Name	Issues Nationwide Permits, ESA
<i>Center for Biological Diversity et al. v. Spellmon</i>	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 Number 4:21-cv-00047	
1:22-cv-02586	On August 18, 2022, the federal court in Montana determined that it was not the appropriate venue for the ESA claims, as the events giving rise to the claims did not occur in Montana, and the sole Montana plaintiff could not show Article III standing on the ESA claims. The case was transferred to the District of Columbia for further proceedings.
Court U.S. District Court for Montana	
U.S. District Court for the District of Columbia	The federal defendants withdrew their request for court deference to the agency following <i>Loper v. Raimundo</i> , but argued that no deference was needed to uphold the agency action. Additionally, <i>Loper</i> held that courts could consider an agency's long-standing interpretation of a statute. "The Corps' issuance of NWP 12 reflects the best reading of CWA Section 404(e)'s minimal effects threshold because for linear pipeline projects, what 'constitutes separate and distant crossings can vary across the country because of differences in the distribution of waters and wetlands in the landscape, local hydrologic conditions, local geologic conditions, and other factors.' Thus, allowing Corps districts to determine when crossings are sufficiently 'separate and distant' from one another on a case-by-case basis, rather than establishing national thresholds, is the best reading of the statute." The Corps argued that this interpretation has been in place for 33 years.
Relevant Dates	
5/3/21: Lawsuit filed	
6/7/21: Montana intervened	
8/31/21: Petroleum associations intervened	
9/7/21: Answer from the Corps	
6/9/22: Hearing on MSJs ("order will be submitted forthwith")	
8/18/22: Case transferred to District of Columbia	
11/18/22: Supplemental Briefing on schedule submitted by the parties to the DC court	
9/2023: Supplemental authorities filed	
7/15/24: Supplemental authority: <i>Loper Bright Enterprises v. Raimondo</i>	
8/27/24: Corps response to <i>Loper</i>	
Related Cases	Indian Reserved Water Rights
Northern Plains Resource Council et al. v. U.S. Army Corps of Engineers, No. 4:19-cv-00044 (D. Mont.), appeal vacated lower court decision (8/11/21) in part due to new NWP that renders some claims moot, and remanded to determine whether vacatur was appropriate, (9th Cir, #20-35412). On remand, claim four was dismissed as moot, and the other three claims were dismissed without prejudice (9/29/22)	
Notes	
Case Name	
<i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.</i>	
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: Plaintiffs opposition to bifurcation	
7/20/20: Motion denied; case management order modified to extend deadlines	
10/6/20: Case stayed pending private mediation	
2/12/25: Stay extended (5/31/25)	
Related Cases	Indian Reserved Water Rights
<i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.</i> , 13-883	
Notes	
Case Name	Issues Indian Reserved Water Rights

<i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.</i>	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.)
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	
7/17/20: Agua Caliente filed its amended complaint	
7/31/20: Answers to amended complaint	
10/6/20: Case stayed pending private mediation	
2/12/25: Stay extended (5/31/25)	
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/	
Case Name	Issues Hydraulic fracturing
<i>California v. Bureau of Land Mgmt.</i>	
Case Number	BACKGROUND: 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."
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	
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 confrence scheduled for March 1	
3/19/21: Case administratively closed for mediation	
3/11/25: Administrative closure extended to 5/9/25	
Related Cases	
Sierra Club et al. v. Zinke, No. 18-524 (consolidated)	
Notes	
	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.

Tab P – New Mexico Integrated Water Financing Plan

New Mexico Integrated Water Financing Plan

In 2023, former New Mexico-appointed member Rebecca Roose reached out to the WSWC staff to consider the idea of building on previous western state-federal collaborations between WestFAST and state agencies, by developing an Integrated Water Financing Plan in New Mexico.

Background

In 2022, Governor Michelle Lujan Grisham's Water Policy and Infrastructure Task Force, composed of senior state agency staff and water and natural resources experts, representing diverse expertise, geographies, and community interests, published a report on [Facing New Mexico's 21st Century Water Challenges](#). The report identified numerous water management challenges and opportunities. On January 30, 2024, Governor Lujan Grisham released New Mexico's [50-Year Water Action Plan](#), which took into consideration vital input from nations, tribes, pueblos, acequias, farmers, and other stakeholders. The Plan focuses on expanding water conservation in cities and on farms, developing new water supplies and enhancing water quality protections.

In the meantime, Congress authorized unprecedented levels of funding for water projects and initiatives through the 2021 Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), and the 2022 Inflation Reduction Act (IRA). Although the federal funding combined with state funding has been critical to meet state water needs in the West, many state agencies found a limited capacity to access and utilize those funds within a short timeframe. Previous state-federal collaborations facilitated by WSWC and WestFAST presented an opportunity to increase that capacity.

With the generous support of the Thornburg Foundation, the Water Foundation, and the Walton Family Foundation, the WSWC was able to contract with SWCA Environmental Consultants to help develop an Integrated Water Financing Plan, to facilitate meetings and information sharing between state agencies, federal agencies, tribes, and local entities, and to ultimately move forward with some of the recommendations in the Water Task Force report.

Project

This project built on the recommendations in New Mexico's 50-Year Water Action Plan (2024) and the Water Task Force report (2022). The Integrated Water Financing Plan aimed to accelerate progress on these recommendations by:

- Securing more one-time federal funding for water projects and initiatives.
- Connecting federal funds to existing and new tribal and state water programs.
- Developing innovative financing approaches leveraging state, federal, and local resources.

Integrated Water Financing Plan elements:

- Build on previous efforts, compile water resources activities from relevant state plans and survey results.
- Identify candidate activities for financing strategy workshops in partnership with state and federal agencies.
- Collaboratively develop a financing plan for selected activities with a focus on maximizing federal funds.
- Identify barriers to accessing funds and recommend solutions along with resources for implementation.

Survey

A survey was designed to inventory water resource projects, programs, and initiatives that could benefit from federal funding, assess new federal funds already secured in New Mexico, and understand lessons learned from previous efforts to secure federal funding.

Demonstration Projects

Based on the survey and meetings with state and federal agencies, the project executive committee narrowed the focus to three demonstration projects most suitable to the scope of this effort. The demonstration projects each represent one of the primary themes from the Water Task Force December 2022 Report and also reflect priorities identified in the Governor's 50-Year Water Action Plan.

- Water Infrastructure: The *Accelerating small community drinking water system regionalization* demonstration project will focus on accelerating regionalization of small public water systems. Regionalization for the purposes of this effort is defined as 'consolidation of water infrastructure or administrative functions across jurisdictions/existing drinking water facilities to improve quality and cost efficiencies.'
- Water Resources Management and Planning: The *Aquifer mapping and monitoring* demonstration project will focus on securing one-time funds for drilling of new monitoring wells necessary to characterize and monitor critical aquifers in New Mexico.
- Watershed Health: Based on the considerations for selection, the *Upper Rio Grande Basin Riparian Conservation, Restoration, and Watershed Health Initiative* was identified as the watershed health demonstration project. Riparian corridors provide visible representation of the ribbons of life they sustain, and the inspiration for the common name of the Upper Rio Grande Basin Riparian Conservation, Restoration, and Watershed Health Initiative 'Ribbons of Life'. The goal is to protect and restore "crucial habitat connectivity, with a focus on riparian networks and watersheds, for the well being of people, plants and wildlife" through a robust and effective coalition of partners.

Meetings

Introductory Webinar

Update and Feedback Session

A series of virtual workshops were held in June, July, and October, bringing together various state and federal agencies and a limited number of stakeholders to discuss the needs and funding opportunities across the three demonstration projects. Building on the lessons from these virtual workshops, New Mexico, WSWC, and

WestFAST hosted an in-person meeting for a larger number of stakeholders in November 2024.

[Aquifer Mapping and Monitoring Presentation](#) – Stacy Timmons, Associate Director, Hydrogeology Programs, NM Bureau of Geology at New Mexico Tech

[In-Person Workshop](#) (November 14, 2024)

Reports

[New Mexico Integrated Water Financing Plan](#) (December 2024)

Demonstration Project Summary Sheets: [Aquifer Mapping](#), [Drinking Water](#), [Ribbons of Life](#)

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NEW MEXICO INTEGRATED WATER FINANCING PLAN

A PARTNERSHIP BETWEEN THE
**WESTERN STATES
WATER COUNCIL, WESTFAST,
AND THE STATE OF
NEW MEXICO.**



WESTERN STATES
WATER COUNCIL

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NOVEMBER 2024



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APPENDICES

Appendix A: Participants



Federal funding opportunities generated through the American Rescue Plan Act (ARPA), the Bipartisan Infrastructure Law (BIL), and the Inflation Reduction Act (IRA) represent a generational opportunity to invest in water resources. Numerous federal agencies have been tasked with distributing and investing in various aspects of water resources, especially in the arid West. States, Tribes, and local governments are among the primary eligible recipients for much of this funding, although the ability to optimize the impact of these funding opportunities on state priority issues is limited by capacity constraints, policy and planning gaps, and the complexity of the funding landscape. This project aims to assist the State of New Mexico with these challenges through collaborative development of an Integrated Water Financing Plan that focuses on New Mexico's priority water resource challenges. Two primary reference documents utilized were the January 2024 Governor's 50-year Water Action Plan and the December 2022 report, Facing New Mexico's 21st Century Water Challenges: A Report of the New Mexico Water Policy and Infrastructure Task Force.

The New Mexico Integrated Water Financing Plan is a collaboration between state agencies, Western Federal Agency Support Team (WestFAST), the Western States Water Council, other federal partners, and project funding partners. Using a facilitated process three demonstration projects were selected that aligned with the three major areas of focus in both the Water Task Force Report (2022) and the Governor's 50-year Water Action Plan (2024):

- Accelerating Small Community Drinking Water System Regionalization
- Aquifer Mapping and Monitoring
- Ribbons of Life: Upper Rio Grande Riparian Conservation, Restoration and Watershed Health Initiative

These three areas were the focus for a series of virtual workshops, one in-person workshop, and many one-on-one meetings. The information and feedback shared at these workshops helped to shape the content and recommendations provided within this report, as well as build capacity and strengthen relationships among participants across different entities.

Separate two-page summaries have been developed to summarize the needs and recommendations specific to the three selected demonstration projects. More general outcomes are summarized below.

Funding from multiple sources were incorporated into the plans for each of the demonstration projects.

- A wide variety of federal funding programs were explored and prioritized for each of the demonstration projects, including programs managed by USBR, FEMA, USACE, DOE, EPA, NRCS, and Sentinel Landscapes. In-kind resources were also identified from the BLM, USGS, NASA, and NIDIS-NOAA.

- State sources were identified to pair with federal funds, including the New Mexico Match Fund, capital outlay, and Water Trust Board funds.
- Private investment opportunities that can be paired with federal and state funding were identified for infrastructure elements including watershed and nature-based solutions for water resources.

Several policy and planning gaps were identified and solutions generated to further enable access to funding. These consist of the following:

- Incentivizing regionalization of drinking water systems.
- Optimizing a blend of loan and grant funds and ensure projects are fully funded early in the planning stage.
- Pursuing watershed designations for the Upper Rio Grande basin to be more competitive for EPA and NRCS funds.

Several needs for future coordination were identified through collaborative workshop discussions, consisting of:

- Establish a New Mexico Federal Agency Support Team (NM FAST) to facilitate more regular and effective coordination across federal and state agencies for water related programs.
- Launch a statewide planning and scoping study for aquifer mapping and monitoring to be coordinated through a multiagency steering committee.
- Create a state water financing coordinating council for infrastructure financing.
- Accelerate coordination across multiple stakeholders for the Ribbons of Life project to position for upcoming funding opportunities.

The project also identified several federal policy changes that could help to reduce barriers to accessing federal funds and increase collaboration between federal agencies, states, and other partners. These consist of:

- Streamline some federal permitting requirements
- Increase flexibility in funding programs to make it easier for small and disadvantaged communities to access funds
- Develop a long-term durable federal funding mechanism for ongoing water infrastructure, water conservation, and watershed restoration needs
- Continue targeted investment in capacity building and water workforce development.

A series of applicable lessons related to the collaboration process and financing solutions are outlined at the end of the report in addition to the following overall conclusions:

- Federal funding programs are numerous, complex, and challenging to navigate. Having program experts available to provide technical assistance is critical to overcome barriers and identify the best opportunities.
- The New Mexico Integrated Water Financing Plan project provided an opportunity for state agencies that typically do not work together to better understand the funding that is available and to identify collaborative approaches to securing funding in the future.

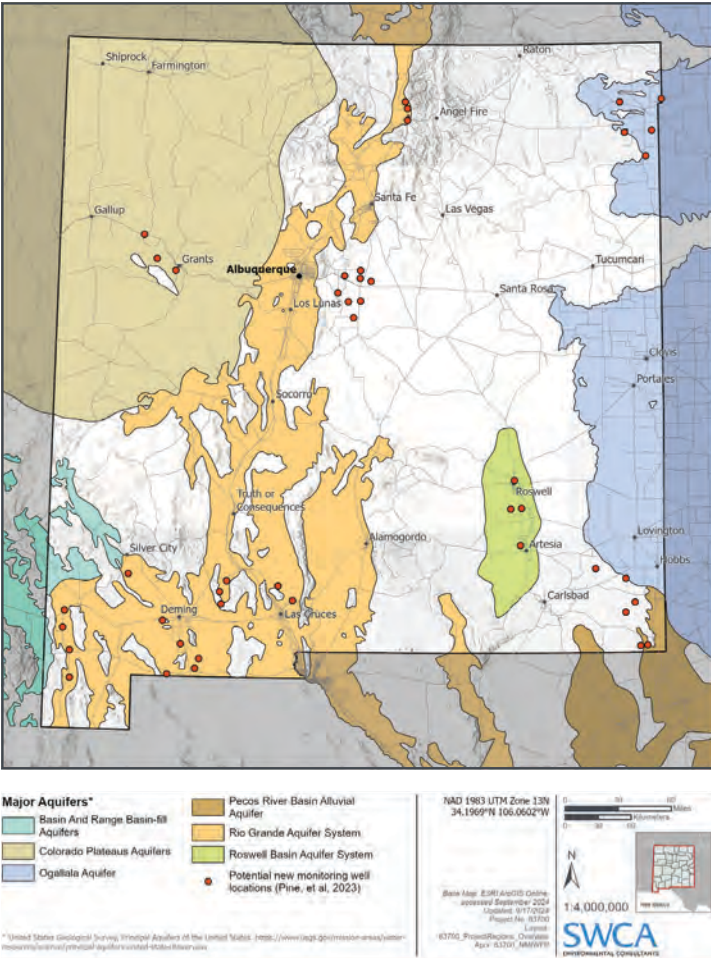
Regardless of the funding that is available, capacity must be developed to manage and implement the funding. Capacity needs to be strengthened at all levels of government in order to most effectively benefit from the available funding.

AQUIFER MAPPING AND MONITORING INTEGRATED WATER FINANCING PLAN

THE NEED...

Nearly 92% of New Mexico’s community water systems rely on groundwater as a source of drinking water. It’s also vital for agricultural production, commercial and industrial uses, such as mining, manufacturing, energy generation, and private wells for drinking water.

Currently, groundwater level monitoring coverage of the state is insufficient and the need to understand and manage New Mexico’s groundwater is essential.



AQUIFER CHARACTERIZATION IS NEEDED FOR:

- Inform water supply decision making
- Identify aquifer recharge potential
- Drought and climate hazard mitigation
- Protection of groundwater quality

PROMISING FINANCING OPPORTUNITIES

Funding Program	Applicability	Potential Funding Amount
WaterSMART (USBR)	Aquifers that serve communities experiencing water stress or scarcity	Variable
HMGP (FEMA)		\$1,000,000+
Infrastructure as a Service (Sustainability Partners)	Well infrastructure - statewide	\$100 million + (depending on state need)
Planning Assistance to States (USACE)	Planning - statewide	Planning - statewide
Upper Colorado River Basin System Conservation and Efficiency Program (USBR)	Aquifers in the Upper Colorado River Basin	Multiple millions
NIDIS Drought Toolbox	Aquifers that serve communities experiencing water stress or scarcity	In-kind
NAWI (DOE)	Candidate aquifers for desalination water supply	\$1,000,000+
Sentinel Landscapes (DOD, DOI, USDA)	Ogallala Aquifer	TBD

FUNDING NEEDS

**\$1,250,000
PER YEAR**

ONGOING FUNDS SUPPORT:
Data Acquisition Systems, Long-Term Monitoring Well Maintenance, Sample Analyses, FTEs, Database, and Software Licenses.

**\$175 MILLION
OVER 12 YEARS**

NON-RECURRING FUNDS SUPPORT:
Drilling Wells, Mapping, Surveys, and Aquifer Characterization.

IMMEDIATE FUNDING NEXT STEPS

- 1

Apply for FEMA funding to support statewide planning and targeted pilot project.
Lead: NMBGMR. Target Date: February 2025
- 2

Secure legislative funds that can provide non-federal match.
Lead entity: NMBGMR. Target Date: 2025 Legislative General Session
- 3

Develop private financing plan with Sustainability Partners that integrates state and federal funding.
Lead entity: NMBGMR. Target Date: Spring 2025
- 4

Submit request letter to USACE for Planning Assistance for States support.
Lead entity: NMBGMR. Target Date: Summer 2025

PLANNING AND POLICY ACTIONS

- Discuss best funding program for planning and scoping study with FEMA and DHSEM.
Target date: Fall 2024
- Establish Steering Committee to guide Aquifer Mapping and Monitoring program progress.
Target date: Spring 2025
- Apply for membership to the National Alliance for Water Innovation (DOE) to enable future eligibility for programs. Lead: NMBGMR.
Target date: Spring 2025
- Complete statewide aquifer characterization planning and scoping study. Lead: NMBGMR.
Target date: Fall 2025



KEY PARTNERS



STATE

- New Mexico Bureau of Geology and Mineral Resources
- New Mexico Environment Department
- New Mexico Interstate Stream Commission and Office of the State Engineer
- New Mexico Department of Emergency Management and Homeland Security
- New Mexico Tech

OTHER PARTNERS

- Sustainability partners

FEDERAL

- Federal Emergency Management Agency
- US Army Corps of Engineers
- US Geological Survey
- Bureau of Reclamation
- Environmental Protection Agency
- National Integrated Drought Information System (NOAA)
- Department of Energy
- Sentinel Landscapes

FUTURE STEPS

1. Design data management system and integrate with existing datasets. Target date: Fall 2025.
2. Continue to evaluate other federal funding programs that could support the project following completion of planning and scoping study.

ACCELERATING SMALL COMMUNITY DRINKING WATER SYSTEM REGIONALIZATION

INTEGRATED WATER FINANCING PLAN

THE NEED...

Aging drinking water infrastructure in small communities threatens public health, constrains economic development, and wastes water. 88% of public water systems in NM are small or very small.

Drinking water system regionalization presents opportunities for infrastructure improvement in New Mexico’s rural communities but requires high levels of initial investment and coordination.

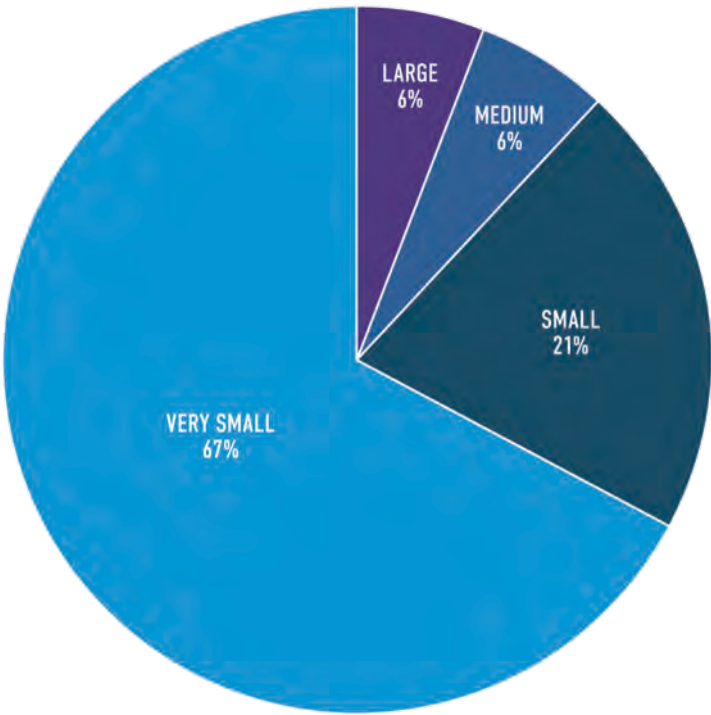
Infrastructure improvements are difficult to finance in small rural communities with traditional water financing due to the high cost per household.

BENEFITS OF DRINKING WATER SYSTEM REGIONALIZATION:

- Water supply resiliency to drought and climate change
- Opportunity to integrate natural infrastructure
- Cost efficiencies for operations and asset management
- Public health through improved drinking water quality
- Capacity building through regional collaboration

OPPORTUNITIES TO LEVERAGE TRADITIONAL WATER INFRASTRUCTURE FINANCING:

Funding Program	Applicability	Potential Funding
Drinking Water State Revolving Loan Fund (NMED/EPA)	Drinking Water Infrastructure	Multiple millions per project
New Mexico Match Fund	Projects requiring match to federal funds	Up to \$10 million per project
595 Program (USACE)	Water supply projects	\$5 million per project
WaterSMART Drought Response Program (USBR)	Water supply for disadvantaged communities	\$10 million per project
Hazard Mitigation Grant Program (FEMA)	Water supply related to drought mitigation	Wide range; could be multiple millions
Building Resilient Infrastructure and Communities (FEMA)	Water supply related to drought mitigation	Wide range; could be multiple millions
Sentinel Landscapes (DOD, DOI, USDA)	Communities within boundary of Eastern Sentinel Landscape	TBD



NM COMMUNITY PUBLIC WATER SYSTEMS

FUNDING NEEDS

\$3 BILLION+

\$400,000,000

Known drinking water infrastructure regionalization projects identified by partners, regional plans, or funding agencies.

IMMEDIATE FUNDING NEXT STEPS

- 1** Promote federal grant or award opportunities to leverage existing loan funds including 595 program (USACE), Hazard Mitigation Grant Program (FEMA), Building Resilient Infrastructure and Communities (FEMA), and WaterSMART Drought Resiliency Projects (USBR) as part of community financing packages.
Lead: Technical Assistance Partners. Target date: Ongoing
- 2** Pursue funding through the Sentinel Landscapes program for communities located within the boundary of the Eastern New Mexico Sentinel Landscape.
Lead: Technical Assistance Partners. Target date: Spring 2025.
- 3** Examine the New Mexico Match Fund annually and increase appropriations as necessary to ensure the ability to maximize federal funding opportunities.
Lead entity: NMDFA. Target date: Annual state budget deadlines.

PLANNING AND POLICY ACTIONS

- Implement technical assistance support through state-wide procurement of support services.
Lead entity: NMFA. Target date: November 2024
- Implement a Water Financing Coordinating Function or Council with support from the new NM DFA Infrastructure Planning Division.
Lead entity: Technical assistance partners and NMDFA. Target date: Spring 2025
- Implement policy recommendation to incentivize communities to regionalize.
Target date: 2025 Legislative Session
- Implement policy recommendations to optimize loan and grant funds through blended financing plans to fully fund projects that will help ensure funds are put to work more quickly.
Target date: 2025 Legislative Session



KEY PARTNERS



STATE

- New Mexico Department of Finance and Administration.
- New Mexico Finance Authority
- New Mexico Environment Department
- New Mexico Interstate Stream Commission and Office of the State Engineer

FEDERAL

- Environmental Protection Agency
- US Bureau of Reclamation
- US Army Corps of Engineers
- Federal Emergency Management Agency

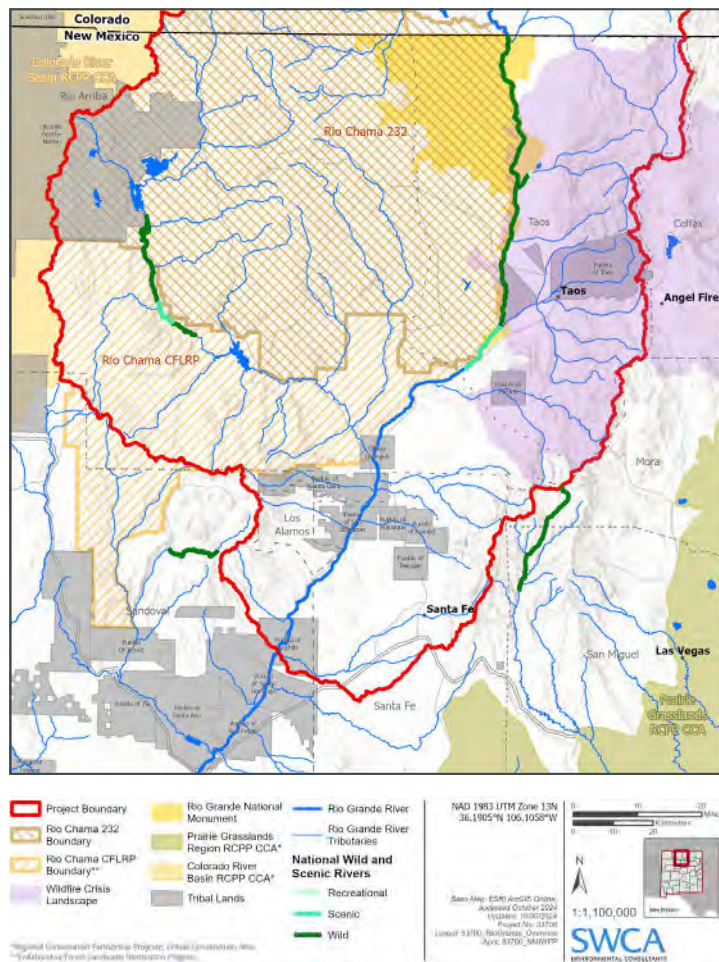
FUTURE STEPS

- 1. Build water workforce including drinking water operators, state agency staff, and technical assistance providers.**
- 2. Evaluate federal policy changes that would accelerate investment in drinking water infrastructure including:**
a) increased waivers for federal match requirements; b) development of dedicated, durable, long-term funding sources; and c) increased flexibility in federal funding programs to build long-term local capacity.

RIBBONS OF LIFE: UPPER RIO GRANDE BASIN RIPARIAN CONSERVATION, RESTORATION, AND WATERSHED HEALTH INITIATIVE INTEGRATED WATER FINANCING PLAN

THE NEED...

The Upper Rio Grande (URG) basin is the headwaters of the Rio Grande, providing drinking water to local communities and supporting critical forest, riparian, and freshwater habitats. Riparian areas in the URG basin (>2,000 stream miles) are one of the most threatened ecosystems in the Southwest due to drying, sedimentation from higher intensity wildfire and floods, and habitat loss. For the purposes of the Integrated Water Financing Plan, we are focused on acreage within NM.



ENHANCED WATERSHED HEALTH IN THE UPPER RIO GRANDE BASIN IS NEEDED FOR:

- Ecological resilience and habitat connectivity
- Preserving healthy headwaters
- Reducing the risk of catastrophic wildfire
- Protecting critical community water supplies

More information available at: nwf.org/ribbons-of-life

PROMISING FINANCING OPPORTUNITIES

Federal Program Nexus	Applicability	Potential Funding
WaterSMART Cooperative Watershed Management Program (USBR)	Supports watershed coalition building and planning for restoration implementation.	\$300,000
Collaborative Capacity Program for Forests and Communities (USFS, NFF)	Collaboration to support long-term strategy for achieving stewardship outcomes benefiting National Forest lands.	\$150,000
WaterSMART Aquatic Ecosystem Restoration Program (USBR)	Design and on-the-ground implementation for restoration of aquatic habitat.	Design up to \$2,000,000; construction up to \$20,000,000
WaterSMART Environmental Water Resources Projects (USBR)	Collaborative ecological value or watershed health projects that increase water savings.	Up to \$5 million for a watershed group.
Building Resilient Infrastructure and Communities (FEMA)	On-the-ground projects, plans, and/or partnership building.	Wide range; could be multiple millions.
Hazard Mitigation Grant Program (FEMA)	On-the-ground projects and plans.	Wide range; could be multiple millions.
Landowner Cost Share Payment Programs for Climate Mitigation and/or Forest Resilience Practices (USFS)	Collaboration to support long-term strategy for achieving stewardship outcomes benefiting National Forest lands.	\$10,000 to \$150,000

FUNDING NEEDS

\$9,132,800

Strengthen coalition of partners and fund identified on-the-ground projects including stream restoration, fish passage, and noxious weed management.

SIGNIFICANT NEED FOR ON-THE-GROUND PROJECTS NOT YET QUANTIFIED.

IMMEDIATE FUNDING NEXT STEPS*

- 1

Secure funding for coalition capacity and support through applications to WaterSMART Cooperative Watershed Management Program (USBR) and/or Collaborative Capacity Program for Forests and Communities (USFS, National Forest Foundation).

Lead: National Wildlife Federation. Target date: Jan 2025
- 2

Apply for WaterSMART funding through Aquatic Ecosystem Restoration Program and Environmental Water Resources Program.

Lead entity: Coalition partners TBD.
Target date: Jan 28, 2025 for AERP and Mar 11, 2025 for EWRP
- 3

Apply for Building Resilience Infrastructure and Communities program funding (FEMA) to support on-the-ground projects and/or partnership building.

Lead entity: Coalition partners TBD. Target date: Feb 2025
- 4

Apply for Landowner Cost Share Payment Programs for Climate Mitigation and/or Forest Resilience Practices to support on-the-ground projects.

Lead entity: Coalition partners TBD.
Target date: 2025 cycle deadline, once available.

PLANNING AND POLICY ACTIONS*

- Request National Water Quality Initiative designation from NRCS.
Lead entity: NMED.
 - Prepare and submit Regional Conservation Partnership Program application to NRCS for multiple-state or non-Critical Conservation Area project.
Lead entity: Coalition partners TBD.
 - Increase legislative appropriations to secure state match for federal grants through the NM Match Fund and the River Stewardship Program.
Lead entity: Coalition partners TBD.
Target date: Legislative session 2025
- Update Ribbons of Life Action Plan to include alignment of individual on-the-ground project needs with recurring funding opportunities.
Lead entity: National Wildlife Federation.
Target date: Annually (on-going)
 - Pursue designation of federal funding explicitly for the Rio Grande Basin.

*Note: To be vetted with Coalition partners.

KEY PARTNERS

RIBBONS OF LIFE COALITION

- National Wildlife Federation
- Multiple Pueblos
- Theodore Roosevelt Conservation Partnership
- Amigos Bravos
- New Mexico Wildlife Federation

- Trout Unlimited
- Forest Stewards Guild
- Rio Grande Return
- And many others!

STATE

- New Mexico Forestry Division
- New Mexico Department of Game and Fish
- New Mexico Office of the State Engineer and Interstate Stream Commission
- Natural Heritage New Mexico (UNM)
- New Mexico Environment Department, Watershed Protection Program

FEDERAL

- Bureau of Land Management
- USDA – Forest Service
- USDA – Natural Resources Conservation Service
- Bureau of Reclamation
- Federal Emergency Management Agency

FUTURE STEPS

- Build and sustain local capacity and critical resources that will accelerate the rate of riparian restoration work.
- Collaborate with and support the nine Pueblos and the Jicarilla Apache Nation.
- Cultivate and advance new projects that are ready for application submittal as funding opportunities arise.

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**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
CLEAN WATER ACT § 404(c)**

**Sulphur, Oklahoma
October 21, 2022**

WHEREAS, the Western States Water Council’s (WSWC) mission is “to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future;” and

WHEREAS, the Clean Water Act (CWA) does expressly “recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources....” CWA § 101(b); and

WHEREAS, there is a continuing need for greater collaboration between and among federal agencies, state agencies, local governments, and public/private organizations and businesses; and

WHEREAS, CWA § 401 grants States the right to issue certifications articulating project conditions necessary to ensure compliance with State water quality standards;

WHEREAS, CWA § 404 establishes a permitting program for the disposal of dredge or fill material administered by the U.S. Army Corps of Engineers (USACE), unless delegated to a State or Tribe; and

WHEREAS, CWA § 404(c) grants the Environmental Protection Agency (EPA) Administrator the power “to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and...deny or restrict the use of any defined area...as a disposal site, whenever he determines...that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas;” and

WHEREAS, in 1992, as directed by CWA Section 404(q), EPA and USACE executed a Memorandum of Agreement (“1992 MOA”) that bound the two agencies to specific procedures for resolving potential disagreements, including “elevation of specific individual permit cases...that involve aquatic resources of national importance;” and

WHEREAS, EPA’s actions in the § 404 permitting process have recently been inconsistent with established protocols, creating challenges for States’ engagement and public and private investment in projects requiring § 404 permits.

NOW THEREFORE BE IT RESOLVED, that the WSWC supports the promulgation of regulation and guidance: (a) improving predictability in § 404 permitting, specifically the (c) and (q) processes; (b) improving communication between federal agencies and states; and (c) requiring EPA to adhere to established § 404 permitting processes and protocols.

BE IT FURTHER RESOLVED, that the WSWC urges regulation and guidance expressly limiting exercise of EPA’s § 404(c) power to the time period between USACE’s indication of its intent to issue a permit, and USACE’s final issuance of that permit.

BE IT FURTHER RESOLVED, that the WSWC urges EPA to:

- (1) communicate with the state's environmental agency in which the § 404 permit is to be issued prior to exercise of its § 404(c) power and provide the State with a meaningful opportunity to address EPA's concerns;
- (2) see the CWA § 404(q) process through to completion, prior to any proposed § 404(c) veto;
- (3) abstain from issuing a § 404(c) veto unless and until the affected State's time period for issuing a § 401 certification has expired;
- (4) update the existing 1992 MOA to reflect a procedure that the EPA and the Corps are committed to following;
- (5) document the rationale for any § 404(c) veto, including:
 - (a) verification that impacted waters are Waters of the United States;
 - (b) findings from any Final Environmental Impact Statement pertaining to the proposed project;
 - (c) impacts to municipal water supplies, shellfish beds, fishery areas, wildlife, and recreational areas; and
 - (d) resolved issues emanating from discussions between the USACE and EPA; and
- (6) abstain from issuing a § 404(c) veto until after discussion with the state's environmental agency on the rationale behind the 404(c) veto.

BE IT FURTHER RESOLVED, that the WSWC pledges to work with the Administration to reduce the uncertainties and inconsistencies in EPA's § 404(c) power, as it has been exercised to date.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
NASA'S APPLIED SCIENCE RESEARCH PROGRAM
Sulphur, Oklahoma
October 21, 2022**

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 (much of which originates from mountain snows) and sound decision making demands accurate and timely mapping of, and data on, altimetry, topography, precipitation, temperature, snow water content, groundwater, land use and land cover, water use, water quality parameters, and similar information; and

WHEREAS, the demands for water and related climate data continue to increase along with the West's population, and this information is used by federal, state, tribal, and local government agencies, as well as private entities and individuals to: (1) forecast flood and drought occurrence; (2) project future water supplies for agricultural, municipal, and industrial uses; (3) estimate streamflows for hydropower production, recreation, and environmental purposes; (4) facilitate water management and administration of water rights, decrees, interstate compacts, and international water treaties; (5) assist in disaster response; (6) assess impacts of climate variability and change; and

WHEREAS, thermal infrared imaging data available from Landsat 8 and Landsat 9 is used to measure and monitor agricultural and other outdoor water uses and needs, and is increasingly important for present and future management of our scarce water resources, and is an example of the application of basic science pioneered by the National Aeronautics and Space Administration (NASA); and

WHEREAS, the ability to use interferometric synthetic aperture radar (InSAR) to measure land subsidence due to groundwater extraction has already been demonstrated, and there are promising research approaches for developing a method to directly measure snow depth using Lidar measurements from the Ice, Cloud, and Land Elevation Satellite-2 (ICESat-2);¹ and

WHEREAS, NASA research has enabled operational use of airborne snow observations; and

WHEREAS, additional airborne and spaceborne remote sensing research and observations have a potential to provide other information on varied temporal and spatial scales that could with sustained engagement focus on transition of research to operations and ultimately be useful for water resources planning, management and decision-making; and

WHEREAS, NASA has identified the "water and energy cycle" and "water resources" as topics to support in the agency's research and applications programs respectively; and

WHEREAS, NASA's demonstration project on California applications for use of remote sensing information has illustrated that the potential exists for repurposing data collected from certain present NASA

¹ [NASA Scientist Discovers New Means to Measure Snow Depth from Space | NASA](#)

*(Originally adopted Oct 29, 2010 and revised and readopted on October 3, 2013;
September 30, 2016; and October 18, 2019.)*

missions for water management applications, and that additional potential exists for research applications with sensors planned in future Decadal Survey missions such as the NASA-ISRO Synthetic Aperture Radar (NISAR), which is designed to observe and take measurements of the planet's crust and disturbances, including subsidence due to groundwater pumping; and

WHEREAS, the successful transfer of technology from the research domain to the applications domain or research to operations (R2O) is dependent, in part, on on-going communication between researchers and those responsible for resource management and policy decisions and a long-term commitment to maintain such communication.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urges the Administration and NASA to enhance the agency's focus areas on research for water resources applications, and to promote long-term engagement with the Council and the state and regional agencies in the western United States responsible for water management and water policy to maximize benefits to the public from NASA's existing and future investments in Earth observations, Earth system models and systems engineering.

BE IT FURTHER RESOLVED, that the Council supports efforts to advance linkages between NASA's capabilities and water managers' needs, such as NASA/JPL's Western Water Applications Office (WWAO).

BE IT FURTHER RESOLVED, that the Council urges the Administration and NASA to plan and provide for long-term continuity of observations from key sensors such as the thermal infrared sensor and InSAR used in water management.

BE IT FURTHER RESOLVED, that the Council strongly supports a continuing National Land Imaging Program, including existing thermal imaging capabilities, and expresses its strong support for the expedited approval and construction of the Landsat Next mission – while exploring the potential for medium and longer-term advances in technology, design and future capabilities to meet existing and future uses.

BE IT FURTHER RESOLVED, that the Council supports and strongly encourages interagency cooperation, including collaborative efforts between NASA, NOAA, and USGS to move research towards operational applications that inform and improve State water resources management and decisionmaking.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
THE DEPARTMENT OF THE INTERIOR's WATER SMART PROGRAMS
Sulphur, Oklahoma
October 21, 2022**

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 programs; and

WHEREAS, in the West, water is a critical, vital resource and “...States bear the primary responsibility and authority for managing the water resources of the United States,” as recognized in the SECURE Water Act¹; and

WHEREAS, Western water law and policy are based on the reality of scarcity and the need to use water wisely, and Western states have made great strides in increasing efficiency and reducing water use, but continued investments and sacrifices are needed to maintain our quality of life in the West and to protect our environment; and

WHEREAS, the Act also recognizes that “the Federal Government should support the States, as well as regional, local and tribal governments...” and authorizes a number of important programs to provide this much needed support; and

WHEREAS, the Council supports technical and financial assistance to states and local watershed groups and water districts as an appropriate federal role, consistent with authorized federal programs; and

WHEREAS, the Council has long supported watershed and basin-wide coordination that involves all governmental entities and stakeholders interested in finding solutions to present and future water management challenges; and

WHEREAS, Section 9504 of the Act authorizes the Secretary of the Interior to provide grants or enter into cooperative agreements to assist states and other non-federal entities in carrying out a range of water use efficiency improvements to address crucial water supply issues, stretch limited water supplies, and improve water management; and

WHEREAS, the Act authorizes a variety of activities to enhance the Department of the Interior’s water data efforts with significant progress made on these activities, including the development of a national groundwater monitoring program, a brackish water assessment, and the establishment of a national water availability and use assessment; and

¹ See Section 9501, SECURE Water Act, which Congress passed as Subtitle F of the Omnibus Public Lands Management Act of 2009 (Public Law 111-11).

WHEREAS, real-time water resources data are critical for timely actions in response to droughts, flooding, and other extreme weather events, and the lack of federal capital investments in water data programs has led to the discontinuance, disrepair, or obsolescence of vital equipment needed to maintain existing water data gathering activities; and

WHEREAS, the lack of timely and accurate streamflow information threatens to put human life, health, welfare, property, and environmental and natural resources at a considerably greater risk of loss; and

WHEREAS, the U.S. Geological Survey's (USGS) National Streamflow Information Program (NSIP) facilitates an improved national backbone focused on national needs and interests; and

WHEREAS, the Groundwater and Streamflow Information Program (GWSIP), as well as USGS' cooperative matching funds within the Water Availability and Use Science Program (WAUSP), together provide vital water data that States and other public and private entities and individuals rely on in making day-to-day planning and management decisions; and

WHEREAS, substantial advances in water science, together with emerging breakthroughs in technical and computational capabilities, have led the USGS to develop a Next Generation Water Observing System (NGWOS); and

WHEREAS, USGS provides "grants to State water resource agencies to assist in developing water use and availability datasets" under the Water-Use Data and Research (WUDR) program, in support of the Water Use Data for the Nation publication and the National Water Census; and

WHEREAS, USGS' NSIP, GWSIP, NGWOS, WAUSP, and WUDR programs together provide vital water data that States and other public and private entities and individuals rely on to make day-to-day planning and management decisions; and

WHEREAS, authorization and funding for some of these WaterSMART programs have expired or appropriations have largely been depleted and some have gone unfunded or underfunded or remain dependent on year-to-year appropriations, as opposed to a dedicated line item.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council expresses our continuing strong support for authorization and implementation of the SECURE Water Act and related programs; and

BE IT FURTHER RESOLVED, that Western States recognize that too often program authorization and appropriations have not kept up with the need, limiting program participation and benefits; and

BE IT FURTHER RESOLVED, that the Council encourages the Administration to request and the Congress to ensure that the Act's authorized activities receive support and appropriations that are adequate to fulfill their stated purposes as a dedicated line item, as well as focus existing resources on these important programs.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
URGING CONGRESS TO REAFFIRM ITS DEFERENCE TO STATE WATER LAW,
PROVIDE FOR THE WAIVER OF THE UNITED STATES' IMMUNITY TO
PARTICIPATION IN STATE ADMINISTRATIVE AND JUDICIAL PROCEEDINGS,
AND PROVIDE FOR PAYMENT OF FEES REQUIRED BY STATE LAW
Sulphur, Oklahoma
October 21, 2022**

WHEREAS, water is the lifeblood of each of the arid Western States, the allocation of which determines the future of each Western State's economic, environmental, social and cultural fortunes; and

WHEREAS, each Western State has developed comprehensive systems for the appropriation, use and distribution of water tailored to its unique physiographic, hydrologic and climatic conditions found within that state; and

WHEREAS, the United States does not have a water management system that is equivalent to those of the Western States for the appropriation, use or distribution of water; and

WHEREAS, Congress has consistently recognized the primacy of state water law because of the need for comprehensive water management systems tailored to the unique needs and characteristics of the individual states; and

WHEREAS, the adjudication of water rights claims is absolutely essential for the orderly allocation of water in all the Western States where state law is based on the prior appropriation doctrine; and

WHEREAS, Congress enacted the McCarran Amendment, 43 U.S.C. § 666, to allow the joinder of the United States in state general stream adjudications, and Congress intended the United States to be subject to the same procedures as all other water right claimants joined in state general stream adjudications; and

WHEREAS, many of the Western States are conducting general stream adjudications for the purpose of quantifying all water right claims in accordance with the McCarran Amendment; and

WHEREAS, the United States is often the largest claimant of water rights in these general stream adjudications, and the adjudication of federal water right claims requires a large commitment of time, effort and resources by the state courts and by state agencies; and

WHEREAS, many of the Western States' general stream adjudication procedures require claimants to pay a fee to offset the states' expenses arising from state general stream adjudications; and

WHEREAS, citing the U.S. Supreme Court's decision in *United States v. Idaho*, 508 U.S. 1 (1993), the United States claims immunity from the payment of adjudication filing fees required of all other claimants to offset the judicial and administrative expenses Western States incur in conducting general stream adjudications; and

WHEREAS, for the United States to be immune from sharing in the expenses of these proceedings constitutes an unfunded federal mandate to the states; and

WHEREAS, many Western States are facing budget shortfalls and limited resources, and the federal non-payment of state filing-fees is a significant impediment to their ability to begin or carry out general stream adjudications in a timely manner; and

WHEREAS, drawn out adjudications are having a detrimental impact on the willingness of stakeholders in watersheds to collaborate on joint management and planning for water supply and water quality; and

WHEREAS, the United States contends that it cannot be joined in state administrative or judicial proceedings with respect to water rights it has acquired under state law other than pursuant to the McCarran Amendment, 43 U.S.C. § 666; and

WHEREAS, it is inefficient and wasteful to require that a separate lawsuit be commenced for the sole purpose of regulating water rights acquired by the United States under state law; and

WHEREAS, the United States often claims it is also immune from paying fees to states that are required of all other water users for the appropriation, use or distribution of water; and

WHEREAS, equity and fairness dictate that federal agencies who voluntarily seek to appropriate water pursuant to state law, or who acquire water rights based on state law, should be required to comply with state law, including the payment of fees, to the same extent as all other persons.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports passage of legislation that at a minimum provides for the following:

1. Requires the federal government to participate in all state administrative and judicial proceedings with respect to water rights it acquires to the same extent as all other persons.
2. Requires the federal government (not Native American tribes) to pay filing fees as well as comply with all other state substantive and procedural water right adjudication laws to the same extent as all other persons.
3. Requires the federal government to pay applicable fees as well as comply with all other state substantive and procedural laws for the appropriation, use and distribution of water rights to the same extent as all other persons.
4. Provides for state administration of all water rights.

BE IT FURTHER RESOLVED, that the Western States Water Council also urges Congress to appropriate moneys for retroactive payment of unpaid fees to states that have incurred expenses as a result of processing federal claims or federal objections to private claims in state general stream adjudications.

BE IT FURTHER RESOLVED, that absent legislation the Council encourages federal agencies to work with states and enter into memoranda of agreement or other administrative mechanisms to minimize and otherwise mitigate the expense of federal claims incurred by states in general adjudications to the maximum extent allowed by law.

(Originally adopted Nov. 17, 1995, readopted Nov. 20, 1998 and revised and readopted Nov. 16, 2001, Oct. 29, 2004, Nov. 16, 2007, Oct. 29, 2010, Oct. 3, 2013, and Oct. 18, 2019)