



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS/WATER RESOURCES

Drought/Water Resources Infrastructure

On November 19, New Mexico Governor Martinez proposed dedicating \$112M for water infrastructure from the state's capital investment fund, which amounts to about 60% of the amount available for appropriation next year. "Unprecedented drought, wildfires, and floods have put further stress on New Mexico's aging water infrastructure, in communities large and small across the state. We have seen communities run out of water and our watersheds terribly damaged, and the threat of water shortage looms for many other communities across New Mexico," said Governor Martinez. "While we cannot dictate the duration or magnitude of these crises, we can and must dictate our response." The money is proposed to help communities in danger of going dry after three years of drought, or struggling with poor water quality, as well as watershed and dam rehabilitation projects to help communities survive and thrive economically.

Governor Martinez committed her administration to working with local governments, state agencies, legislators and others to identify critical water projects. The New Mexico Drought Task Force is identifying communities with water quantity and quality problems, with many already evident due to recent disasters and neglected maintenance of existing infrastructure.

Matthew Holmes, with the New Mexico Rural Water Association, said the Governor's proposal "...is exactly what New Mexico needs to address both current and future water shortages and infrastructure problems. Communities across our state are running dangerously close to exhausting water supplies; dams, pipes, wells, and other infrastructure are in disrepair or dangerously obsolete. These funds are critical to protecting our state's water supply and providing the basic security our families, communities, and businesses...need.

Governor Martinez noted that infrastructure improvements create jobs in the short-term during design and construction, while laying a long-term foundation for economic growth. She said: "Water security is one of several critical pillars of economic growth." She also reiterated her support for the River Stewards initiative, a \$1.5M capital investment in watershed and river protection and restoration projects.

WESTERN STATES WATER COUNCIL

Army Corps of Engineers/EPA/Clean Water Act

On November 20, the WSWC wrote the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers to "strongly urge" them to recognize the "significant federalism implications" of their Clean Water Act (CWA) rulemaking efforts and to comply with Executive Order (E.O. 13132), which requires state consultation in the development of federal policies with federalism implications. The letter also seeks information on how EPA and the Corps "...will consult with the states regarding the development of this rule, including how they will ensure the treatment of states as co-regulators." The letter is based on WSWC position #330.5 and related follow up letters from the WSWC.

The letter says the agencies' September submission of a draft rule to the Office of Management and Budget "...without any state consultation raises significant concerns about how and when [EPA] and the [Corps] will consult with the states.... Congress intended the states and EPA to implement the CWA as a federal-state partnership, delegating authority to the states to administer the CWA as co-regulators with EPA. As such, your agencies must treat the states as co-regulators in the development of any proposed rule regarding CWA jurisdiction. Ideally, EPA and the Corps would have consulted with the states prior to beginning the rulemaking process and certainly prior to submitting a draft rule...."

"We are especially concerned that your agencies may not consider the rulemaking to have federalism implications requiring compliance with [E.O. 13132]. Such a perspective is in direct opposition to the principles of cooperative federalism embedded within the CWA. Any efforts to redefine or clarify the term 'waters of the U.S.' have, on their face, numerous federalism implications that necessitate compliance with E.O. 13132. In particular, such efforts qualify as 'policies that have federalism implications' under the order because they have 'substantial direct effects' on the states and on the 'distribution of power and responsibilities among the various levels of government.'"

"[A]side from four states...every state is primarily responsible for regulating discharges of pollutants to jurisdictional waters because they have delegated

responsibility from EPA to operate approved National Pollutant Discharge Elimination System permitting programs under Section 402 of the CWA. Any changes to the regulations and policies that govern which waters are jurisdictional will have a direct substantial impact to these programs.... Moreover, regardless of whether they have delegated authority under Sections 402 or 404, the requirements and limitations associated with jurisdictional waters will directly impact the ability of every state to enact policies regarding waters within their borders, as well as the allocation of their already limited resources. This is particularly true if the rule compels states to extend their Section 303(d) responsibilities to waters that are functionally marginal.”

“The considerable uncertainty and differences of opinion that exist regarding the extent of the CWA’s authority demand that states receive a unique audience with your agencies as co-regulators that is separate and apart from the general public, and gives as much weight and deference as possible to state needs, priorities, and concerns. Indeed, numerous provisions of E.O. 13132 call for exactly this type of consultation....”

“[W]aiting until the publication of a rule for public comment to solicit state input will not allow for meaningful consideration of state views, especially with respect to...alternative ways of meeting federal objectives. [I]t will be very difficult to develop a workable rule that resolves the considerable uncertainty regarding CWA jurisdiction and that leads to actual water quality improvements without changing the current trajectory of this rulemaking to include the states’ views and concerns before seeking public comment. [P]romulgating this rule without complying with E.O. 13132’s consultation criteria could threaten the historically positive and productive relationship that states have enjoyed with EPA and the Corps in implementing the CWA.”

The letter also reiterates WSWC concerns that require state consultation, including how to ensure: (1) deference to state water law under Sections 101(b) and 101(g) of the CWA; (2) that the rule is not misinterpreted as extending CWA jurisdiction to groundwater; and (3) compliance with Congressional and U.S. Supreme Court limits on the extent of CWA jurisdiction. Please contact the WSWC for a copy of the letter.

Of note, Western Governors’ Association Executive Director Jim Ogsbury and WSWC Executive Director Tony Willardson met with EPA Deputy Administrator Bob Perciasepe on November 21 to discuss the WSWC’s concerns. (WSW #2060)

ADMINISTRATION UPDATE/WATER RESOURCES

Drought

On November 15, the Obama Administration launched a National Drought Resilience Partnership as

part of its climate change initiative to improve access to federal drought resources, align federal drought policies, and link information such as monitoring, forecasts, outlooks, and early warnings with drought preparedness and longer-term resilience strategies in critical sectors of the economy. The U.S. Department of Agriculture (USDA) and the National Oceanic and Atmospheric Administration (NOAA) will spearhead the Partnership, which also includes the Department of the Interior, the Corps, the Federal Emergency Management Agency, EPA, and the Department of Energy.

During its first year, the Partnership will focus on creating a new, web-based portal to ease access to federal agency drought recovery resources, hosting more frequent regional drought outlook forums, supporting the coordination of a national soil moisture monitoring network, and identifying a single point of contact for the public. It will also undertake a pilot project in a western area affected by drought to create a local-scale drought resilience plan that could be applied to other areas.

“[The] Partnership will help rural residents, farmers, ranchers and business owners prepare for drought events like the one we experienced in 2012,” said USDA Secretary Tom Vilsak. Acting NOAA Administrator Kathryn Sullivan also said: “This partnership builds upon NOAA’s climate programs and products, and recent improvements to our drought forecasts to provide our many stakeholders with the critical environmental intelligence they need for drought planning and preparedness activities.” Secretary of the Interior Sally Jewell noted that the Partnership “...will help ensure that the federal family is a strong partner in providing accessible information and helpful tools to communities to prepare for and mitigate [drought] impacts.” See: http://www.noaanews.noaa.gov/stories2013/20131115_drought_resilience.html.

CONGRESSIONAL UPDATE

House Appropriations Committee

On November 13, House Appropriations Committee Chair Hal Rogers (R-KY) announced changes to the chairmanships of four appropriations subcommittees, two of which have jurisdiction over water. Specifically, Rep. Mike Simpson (R-ID) will succeed Rep. Rodney Frelinghuysen (R-NJ) as Chair of the Energy and Water Development Subcommittee, while Rep. Ken Calvert (R-CA) will follow Simpson as the Interior and Environment Subcommittee Chair. Frelinghuysen will now lead the Defense Subcommittee. The changes are due to the October passing of Rep. C.W. Bill Young (R-FL), who chaired the Defense Subcommittee, and the September resignation of Rep. Rodney Alexander (R-LA), who chaired the Legislative Branch Subcommittee, which Rep. Tom Cole (R-OK) will now lead. Please see: <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=361160>.

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