



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY **Clean Water Act/WOTUS**

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

The President’s February 28 Executive Order, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule,” directs the agencies to review the Clean Water Rule for consistency with the current Administration’s priorities and the law. To meet this objective, the agencies are following a two-step process to provide as much certainty as quickly as possible. As a first step, the agencies are “re-codifying the regulation that was in place prior to the issuance of the Clean Water Rule,” which is what the agencies are currently implementing under the 6th Circuit’s nationwide stay of the rule. The second step is to propose a new definition of protected waters that is consistent with the opinion of Justice Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006). The federalism consultation began with an initial meeting on April 19, with state and local government associations. “In addition to discussions our respective staffs will have with associations and individual state environmental agencies, we are reaching out to you directly to ensure we received the benefit of your particular state’s experiences and expertise. The agencies are soliciting written comments from state and local governments until June 19, 2017,” before a public notice-and-comment rulemaking.

In a press release, Lamont said, “As we go through the rulemaking process, we will continue to make the implementation of the [CWA §404] regulatory program as transparent as possible....” Pruitt said, “EPA is restoring

states’ important role in the regulation of water.... I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat.”

CONGRESS **FY2017 Budget**

On May 4, the Senate passed the Consolidated Appropriations Act (H.R. 244), 79-18, resolving the House and Senate versions of the \$1T omnibus spending bill. The President signed it on May 5. For the Department of the Interior (DOI), \$10.5M was appropriated for the Central Utah Project, \$55.6M for the California Central Valley Project, and \$36M for California Bay-Delta Restoration. For the Bureau of Reclamation (Reclamation), \$1.16B for the management, development, and restoration of water and related natural resources, with \$22,000 of that amount for the Upper Colorado River Basin Fund, and \$5.6M for the Lower Colorado River Basin Development Fund. The U.S. Geological Survey received \$1.1B through FY2018, including \$71M for satellite operations. The Bureau of Indian Affairs received \$45M for implementation of Indian land and water claim settlements, including those recently passed in the Water Infrastructure Improvements for the Nation (WIIN) Act.

For EPA, Congress appropriated \$3.53B for state revolving funds and performance partnership grants, including \$20M for Alaska matching-funds grants to address drinking water and wastewater infrastructure needs of rural and Alaska Native Villages; \$10M for the construction of high priority water and wastewater facilities along the U.S.-Mexico border; and \$4M for the water quality monitoring program authorized by the WIIN Act §5004(d) for rivers impacted by the Gold King Mine release. Also of that amount, \$1.39B is for Clean Water State Revolving Funds, and \$863M is for Drinking Water State Revolving Funds, with up to 2% of the funds available for CWA 518(c) grants to Indian tribes. A minimum of 10% of each State’s Clean Water SRF capitalization grants are to be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities. Additionally, 10% of Clean Water SRF and 20%

of Drinking Water SRF grants must be used to provide additional subsidies to eligible recipients in the form of principal forgiveness, negative interest loans or grants, either for prospective debts, or past debts that specifically address a threat to public health from lead in drinking water. \$61M of the unobligated balances from the "State and Tribal Assistance Grants" account is permanently rescinded, with the exception of amounts otherwise designated by Congress.

For the Corps, Congress appropriated \$121M for investigations, surveys, and projects, including six new study starts during FY2017, focused on flood and storm damage reduction, navigation transportation savings, and environmental restoration. Another \$1.88B was appropriated for construction of river and harbor, flood and storm damage reduction, shore protection, aquatic system restoration, and related studies for those projects, including up to six new construction starts for FY2017, and cost sharing agreements to be executed prior to the end of FY2017. For the regulation of navigable waters and wetlands, \$200M was appropriated through FY2018. Congress also appropriated \$32M for flood control and coastal emergencies due to natural disasters.

The Department of Agriculture received \$6.5M for wellhead and groundwater protection activities under the Food Security Act. For the Natural Resources Conservation Service, Congress allocated \$864M through FY2018, for various measures to conserve soil and water, including farm irrigation, land drainage, and water management necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants. This includes \$5.6M for authorized ongoing watershed projects with a primary purpose of providing water to rural communities; \$150M for watershed and flood prevention operations, with \$50M of that amount allocated to immediate projects that address regional priorities for flood prevention, agricultural water management, inefficient irrigation systems, fish and wildlife habitat, or watershed protection, with emphasis on preventing floodwater damage and stabilizing stream channels, tributaries, and banks to reduce erosion and sediment transport. An additional \$12M was appropriated for the watershed rehabilitation program.

For rural water and waste disposal programs under the Consolidated Farm and Rural Development Act, Congress appropriated \$571.2M, including \$64M for loans and grants for water and waste disposal systems; \$16.9M is for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems, including no more than \$4M for solid waste management grants; and \$20M for technical assistance grants for rural water and waste systems, which includes \$6.5M for a need-based grant for a multi-state non-profit regional technical assistance organization with experience in working with

small communities on water and waste water problems to improve planning, financing, development, operation, and management of systems.

WATER RESOURCES/ADMINISTRATION

Bureau of Reclamation/Infrastructure Financing

On May 9, Reclamation sponsored a Water Infrastructure and Alternative Financing Forum in Denver, Colorado. The meeting was designed to present a representative portfolio of projects suitable for potential public-private partnerships (P3). Private sources can provide an infusion of capital and greater management flexibility and efficiencies through designing, constructing and operating public infrastructure. Reclamation's reserved works are federally-owned projects, but operated and maintained by non-federal sponsors. As the federal budget contracts, alternative financing, such as non-federal and private investment in federal projects, is an important tool to meet growing infrastructure demands in the most timely and cost-effective manner.

Reserved works present another problem, as major rehabilitation and repair work undertaken by Reclamation (as funds are available) often require repayment by the operator within a year. Such repairs can be in the millions of dollars, often beyond the ability of the non-federal operators to repay without extended financing. Traditional private financing is problematic as the non-federal operator does not "own" the project and therefore has no asset to pledge as collateral. While Congress has authorized federal loan guarantees to address this problem, the Office of Management and Budget has raised objections and legal hurdles to such guarantees.

The Forum began with a welcome and portfolio overview by Acting Bureau of Reclamation Commissioner David Murillo and David Palumbo, Deputy Commissioner for Operations. Alan Mikkelsen, Deputy Commissioner for Public Affairs also spoke briefly. Murillo mentioned Reclamation's mission, including conserving natural resources and improving water use efficiency, as well as investing in storage and infrastructure. Five examples of potential P3 projects were highlighted: (1) the Kachess Drought Relief Pumping Station in Washington's Yakima River Basin; (2) Eastern New Mexico Rural Water System; (3) Paradox Valley Unit of the Colorado River Salinity Control Program; (4) Yuma Desalting Plant in Arizona; and (5) the Arkansas Valley Conduit in Southeastern Colorado. Murillo said, "There's just not a lot of money to build large projects.... What we are looking for also is access to [private] financial capital." He noted that in addition to large projects, there are many smaller projects that may fit a P3 model. Reclamation can help identify promising P3 opportunities, and also brings its engineering, hydrology, and environmental expertise to the table. More detail can be found at www.usbr.gov/p3 or contact P3@usbr.gov. A related RFI closes May 31. See www.fedbizopps.gov, number R17PS00874.

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.