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Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS/WATER QUALITY
Clean Water Act/Federalism Consultation

On June 19, the Western Governors' Association (WGA) submitted comments to EPA and the Corps in response to renewed efforts to define waters of the United States as that term applies to the jurisdictional scope of the Clean Water Act. The agencies sought comments from state and local governments regarding the best way to protect waters, including how states regulate the "waters of the State" that are excluded from federal jurisdiction. WGA's letter notes the importance of this consultation with the states as co-regulators with the primary authority for allocating, administering, protecting, and developing water resources within their boundaries. "Western Governors were quite concerned about the lack of substantive consultation with states during the promulgation of the 2015 Clean Water Rule. Governors are encouraged by the recent efforts of both EPA and the Corps to conduct early outreach in this renewed rulemaking process. Importantly, these efforts have involved direct outreach to individual states through their Governors. WGA strongly urges the agencies to pursue continued consultation with Governors throughout the substantive development of any new rule under the CWA."

While deferring to individual states for their own substantive comments, WGA highlighted four procedural matters in the rulemaking process: (1) the proposed rule must stay within the limits established by Congress and the U.S. Supreme Court, and recognize the primary authority of states to manage and allocate water resources within their boundaries; (2) substantive consultation with states should continue from the development stage of any proposed rule through any refinements that lead to a final version; (3) state data and expertise should be included in the development and analysis of science that serves as the basis for the new rule, with greater representation on relevant committees and panels; and (4) due to the disproportionate impact of water on the economies of Western states, the analysis of the economic impact of the rule on states and local communities must be thorough and complete.

"Western Governors recognize the essential role of partnerships between the states and federal agencies and the tradition of cooperative federalism in protecting our nation's waters. WGA recognizes the EPA and the Corps for your positive efforts in beginning a dialogue with Western Governors in this renewed rulemaking process. We request that you pursue future state consultation with diligence and carefully consider the comments submitted in this letter, as well as those submitted by individual states, recognizing states' authority and unique role in the implementation of the CWA for the protection of their water resources."

WSWC also sent a letter on June 19, noting that "Implementation of any rule will require broad support among state agencies with delegated authority to administer CWA programs." The Council emphasized Congressional deference to state authority to regulate the waters within their boundaries and recognizing the states' critical role in protecting water quality, citing CWA §101(b) and (g). "The U.S. Supreme Court has clearly determined that not all waters are jurisdictional, and the rule should not try to expand jurisdiction beyond the limits set by the Court to address a perceived gap in regulation. Rather, the rule should acknowledge that states have authority pursuant to their 'waters of the state' jurisdiction to protect excluded waters, and that excluding waters from federal jurisdiction does not mean that excluded waters will be exempt from regulation and protection."

WSWC provided some suggestions for improved clarity in determining which waters are jurisdictional in a timely manner, and reiterated its 2014 list of waters that should clearly be outside the scope of CWA jurisdiction. It also recommended working with the EPA and Corps representatives on the Western Federal Agency Support Team (WestFAST) to serve as a bridge to the Western states as the agencies work to revise and implement a workable new rule. For a copy of the WGA, WSWC, and various state letters, see http://www.westernstateswater.org/letters/.

ADMINISTRATION/WATER QUALITY
EPA/Water Infrastructure Loans/WIFIA

On July 19, the Environmental Protection Agency (EPA) announced the selection of 12 projects in nine states eligible to apply for Water Infrastructure Finance and Innovation Act (WIFIA) loans. The applicants were

selected from a group of 43 projects from interested communities. (See WSW #2246)

EPA screened the letters of interest for eligibility, creditworthiness, and selection criteria. Four of the selected projects were from California, including: (1) the southeast water pollution control plant biosolids digester facilities project from the San Francisco Public Utilities Commission; (2) the groundwater replenishment system final expansion for the Orange County Water District; (3) Pure Water San Diego; and (4) the water reclamation facility small community project in Morro Bay. Also selected were the Saddle Creek combined overflow retention treatment basin in Omaha, Nebraska, and the Georgetown wet weather treatment station in King County, Washington.

The application process involves a detailed financial and engineering review that will be used to develop the terms and conditions of the loan for the project. Once the EPA Administrator approves the mutually agreeable term sheet, the WIFIA program will finalize the terms of credit assistance and execute the credit agreement. EPA Administrator Scott Pruitt said, "Rebuilding America's infrastructure is a critical pillar of the President's agenda. These large-scale projects will improve water quality for 20 million Americans, especially those communities that need it the most – such as rural and urban communities." See https://www.epa.gov/wifia.

WATER QUALITY/WATER RESOURCES

Colorado River Basin Salinity Control Forum

On July 11, the seven-state Colorado River Basin Salinity Control Forum released a draft of its 2017 Review of Water Quality Standards for Salinity in the Colorado River System. The Forum is seeking written public comment through August 25. See http://coloradoriversalinity.org/.

The water quality standards include numeric criteria and a plan for implementation, and are reviewed every three years under Clean Water Act §303©. The final review is submitted to the governors of the states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, for inclusion in their respective state water quality standards. The Forum, created in 1973 and comprised of governor-appointed members, coordinates salinity control efforts among the states and federal agencies, and evaluates opportunities for additional salinity control to increase the economic and environmental benefits of the river in the Upper and Lower Basin.

The Forum's Salinity Control Program controls over 1.33M tons of salt annually, and is working toward 1.66M tons annually by 2035. The current Plan of Implementation anticipates an additional 63,500 tons of annual salinity control over the next three years, and includes: (1) construction of salinity control measures by Reclamation, USDA, the Basin States Program and BLM to the extent that those measures remain viable and appropriately cost-effective; (2) state implementation of the Forum's NPDES effluent limitation policies; and (3) implementation of non-point source management plans developed by the states and approved by EPA.

The Forum recommends that the numeric salinity criteria at the stations on the lower main stem of the Colorado River remain the same: 723 mg/L below Hoover Dam; 747 mg/L below Parker Dam; and 879 mg/L at Imperial Dam. Reclamation's numerical modeling indicates that, with the current and planned salinity control projects, the probability of exceeding these criteria over the next three years is less than 5%. "The Salinity Control Program continues to be a successful federal and state partnership that has environmental and economic benefits for users of Colorado River water."

PEOPLE

Governor Edmund Brown appointed **Grant Davis** as the new Director of the California Department of Water Resources, replacing **Bill Croyle**, Acting Director who has served since January 1, when former Director **Mark Cowin** retired. See: https://www.gov.ca.gov/news.php?id=19882.

Governor John Hickenlooper announced **Kevin Rein** as the new State Engineer and Director of the Colorado Division of Water Resources. Kevin replaces **Dick Wolfe**, who retired at the end of June after 10 years in the position. See https://www.colorado.gov/governor/news/rein-appointed-new-state-engineer.

Rebecca Mitchell has been named the new Director of the Colorado Water Conservation Board (CWCB). Rebecca, who was selected by the CWCB's 15-member board, replaces **James Eklund** who joined Squire Patton Boggs global Environmental, Safety & Health Practice Group. See: http://cwcb.state.co.us/Pages/CWCBHome.aspx.

Utah Department of Environmental Quality (DEQ) Executive Director Alan Matheson has appointed **Erica Gaddis** as the Director of Utah's Division of Water Quality, within the DEQ. Erica replaces Walt Baker who retired in May after serving 32 years, twelve years as director. See https://documents.deq.utah.gov/communication-office/press-releases/2017-06-20-New-Water-Quality-Director.pdf.

We congratulate Grant, Kevin, Rebecca and Erica on their appointments and look forward to working with them.