



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

682 East Vine Street / Suite 7 / Murray, UT 84107 / (801) 685-2555 / Fax 685-2559 / www.westernstateswater.org

Chairman - Jerry Rigby; Executive Director - Tony Willardson; Editor - Michelle Bushman; Subscriptions - Julie Groat

ADMINISTRATION

Corps/Water Supply Rule

On August 24, the Corps again extended the comment period (82 FR 40085) for the notice of proposed rulemaking on the use of Corps reservoir projects for domestic, municipal, and industrial water supply that was originally published in the *Federal Register* on December 16, 2016. The new extension comes at the request of multiple parties. The new deadline for comments is November 16. Several WSWC member states previously submitted letters to the Corps. See WSW #2222, 2230, 2233, and 2244; <http://www.westernstateswater.org/letters/>.

Nebraska

Jeff Fassett, Director of the Nebraska Department of Natural Resources (NDNR) and WSWC Member, submitted a letter to the Corps in May, urging them to engage in substantive consultation with the states before moving forward with the proposed rulemaking. "Asking for comments does not meet the requirement of consultation." Sitting down to discuss the various state water laws enables all entities to better understand the needs and requirements that exist.

Nebraska's involvement with its 17 Corps reservoirs is significant. Although the Corps is exempted from submitting to state regulatory authority when it engages in flood control and navigation projects, "once the [Corps] decides to engage in providing water supply the [Corps] must first obtain whatever permits are required by the States for purposes of regulating and allocating water supply under their various water right systems."

Nebraska objects to the interpretation of surplus water that includes natural flows in order to authorize easements to access the state's water that would flow in the river even without the reservoirs. "...[I]f the [Corps] wants to subject natural flows to its authority within the footprint of its reservoirs, then it needs Congress to grant that authority." Granting an easement to authorize access to natural flow is different from entering into a contract for the use of storage water that is surplus to existing uses, and recognizing the difference is critical.

Additionally, the Corps must quantify the surplus water available before it can administer water supply uses, even if it obtains the necessary authority. "The cumulative effects of all existing water uses and the proposed new uses from the reservoirs will need to be assessed in future surplus water studies." Nebraska notes that for Corps reservoirs on the Missouri River, "Except for the 16.3 million acre-feet space allocated for flood control, there has been no allocation among the other seven congressionally authorized purposes including hydropower, water supply, water quality control, recreation, navigation, irrigation, and fish & wildlife. Thus at this time no determination can be made regarding the amount of surplus storage available to be contracted under a water supply agreement. Additionally, the flood control storage should not be re-allocated for other uses because flood control remains a continuing unmet need. Moreover flood control is Nebraska's top concern and flood control should be [the Corps'] primary purpose for operating Missouri River mainstem dams."

ADMINISTRATION/CONGRESS

Department of the Interior

On September 7, the Senate Energy and Natural Resources Committee considered the nominations of Ryan Nelson to be Solicitor of the Department of the Interior (DOI) and Joseph Balash to be Assistant Secretary of the Interior for Land and Minerals Management. Senator James Risch (R-ID) and Senator Mike Lee (R-UT) introduced Nelson, who graduated from Brigham Young University Law School and clerked for D.C. Circuit Judge Karen Henderson. He also served as Deputy Assistant Attorney General for the Environment and Natural Resources Division at the Department of Justice, overseeing the Appellate, Natural Resources, and Wildlife Sections.

Nelson said, "I gained a deep understanding and respect for natural resource and environmental law, as well as the important mission of the Department of the Interior, one of the Division's largest clients. I managed some of the most complex natural resource questions related to the Endangered Species Act, Indian law, NEPA, and dozens of complex environmental laws. I helped draft water compacts and land use management agreements." Nelson also served as Deputy General

Counsel at the White House Office of Management and Budget, managing the environment and natural resources docket in coordinating agency regulations and executive orders for final approval. “As a result, I understand agency rulemaking and executive action from many points of view.” If confirmed, Nelson said he’s committed to fulfill DOI’s mission to ensure our nation’s natural resources are put to productive use, and that our cultural heritage is protected.

Chairman Lisa Murkowski (R-AK) introduced Balash, a fellow Alaskan. “He is currently serving as Senator Sullivan’s Chief of Staff, he previously ran Alaska’s Department of Natural Resources (DNR). I’ve worked closely with him in both of those roles and I truly cannot say enough about his understanding and certainly knowledge of these issues.”

Balash described several life experiences that shaped how he views the importance of natural resources and a clean environment. “I realized that with the right approach, you can have responsible development without sacrificing clean air and water.... If confirmed, I will work relentlessly to produce the value the American people deserve from their public lands. This includes recreational access, responsible energy development, and active management of the Department’s assets. I will do so within the confines of the laws established by the Congress and with a dedication to transparent leadership and accountability.”

Federal Energy Regulatory Commission

The Senate Energy and Natural Resources Committee also considered the nominations of Richard Glick and Kevin McIntyre to be members of the Federal Energy Regulatory Commission (FERC). Chairman Murkowski noted that the Senate confirmed FERC nominees Neil Chatterjee and Robert Powelson on August 3, restoring a working quorum for FERC after six months with only one confirmed commissioner. “I’m confident that Mr. McIntyre will be a capable Chairman upon his confirmation. He has significant experience and strong qualifications for the role.... Mr. Glick, who is Senator Cantwell’s General Counsel here on the Committee, is certainly well-known to many of us.... I personally want to thank you for your service to this panel – including your role in shaping our bipartisan energy bill, and many other matters.”

Senate Judiciary Committee

On September 7, President Trump announced the nomination of 16 more candidates for federal judgeships. Ryan Bounds, Assistant U.S. Attorney for the District of Oregon, has been nominated to serve as a judge on the 9th Circuit Court of Appeals. Gregory Katsas, White House Counsel’s Office, would serve on the D.C. Circuit Court of Appeals. John Broomes, Member of Hinckle

Law Firm LLC, was nominated to serve as a district judge on the Kansas U.S. District Court. In Texas, the President has nominated five federal district judges: (1) U.S. Magistrate Judge Walter Counts for the Western District; (2) Jeff Mateer, First Assistant Attorney General of Texas, to serve in the Eastern District; (3) Matthew Kacsmayk, Deputy General Counsel to First Liberty Institute, to serve in the Northern District; (4) Karen Scholer, law partner at Carter Scholer PLLC, also to serve in the Northern District; and (5) Fernando Rodriguez, field office director for International Justice Mission, to serve in the Southern District.

The Senate Judiciary Committee has held nomination hearings for only 13 of the President’s 51 judicial nominees since April, and the full Senate has only confirmed three appellate court and two district court judges, in addition to Supreme Court Justice Neil Gorsuch. Another hearing was scheduled for four judicial nominees on September 7, but was delayed a week at the request of Democrats on the Committee.

EPA/NASA/NOAA

On September 5, the President sent 46 nominations to the Senate. Among them were David Ross to lead the Environmental Protection Agency’s (EPA) Office of Water; Matt Leopold to be EPA General Counsel; Timothy Gaullaudet to be Assistant Secretary of Commerce for Oceans and Atmosphere; and U.S. Representative Jim Bridenstine (R-OK) to be the Administrator of the National Aeronautics and Space Administration.

MEETINGS EPA/WOTUS 2.0

The U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army will hold 11 sessions to give stakeholders an opportunity to provide recommendations on a revised definition of “waters of the United States.” The agencies will hold nine two-hour long teleconferences, Tuesdays from 1:00-3:00 pm Eastern, that will be tailored for specific sectors. Small government jurisdictions will be September 19, and Stormwater, Wastewater Management, and Drinking Water Agencies will be November 14. There will also be a Small Entities in-person meeting at EPA headquarters in Washington, D.C. on October 23. For more details, including RSVP contact and webinar information, see <https://www.epa.gov/wotus-rule/outreach-meetings>.

National Water Supply Alliance

The National Water Supply Alliance (NWSA) will meet September 25-26 at Murfreesboro, Tennessee. A block of hotel rooms has been reserved until September 12. To RSVP and for more details about the meeting agenda, email admin@watersupplyalliance.us.

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.