



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/CONGRESS** **Regulation through Litigation**

On October 16, Environmental Protection Agency (EPA) Administrator Scott Pruitt issued a directive to end “sue and settle” practices to increase public participation and transparency in EPA consent decrees and settlement agreements. The directive notes that EPA, “in partnership with the states, serves a vital role in protecting human health and the environment.” In resolving past lawsuits, EPA’s actions have “had the effect of creating Agency priorities and rules outside the normal administrative process,” giving the appearance of collusion with outside groups. “When negotiating these agreements, EPA excluded intervenors, interested stakeholders, and affected states from those discussions. The days of this regulation through litigation...are terminated. EPA will not resolve litigation through backroom deals with any type of special interest group.”

The directive lists ten procedures EPA will follow, including online publication of lawsuit notices and direct notification to affected states or regulated entities of both complaints and any negotiations to resolve them, seeking their concurrence before entering into an agreement. See <https://www.epa.gov/newsreleases/administrator-pruitt-issues-directive-end-epa-sue-settle>.

On October 25, the House passed the Sunshine for Regulations and Regulatory Decrees and Settlements Act (H.R. 469) by a vote of 234-187, largely along party lines. The bill is intended to inhibit the ability of federal agencies to enter into consent decrees with special interest groups to compel agency action, realign regulatory priorities, and create new rules affecting American citizens without public input.

The bill establishes procedures for public notice and comment on proposed agreements; requires publication of notices and reports to Congress on complaints, consent decrees, and settlement agreements; and requires courts to allow sufficient time and procedures to comply with the Administrative Procedures Act, rulemaking statutes, and executive orders before approving consent decrees or settlement agreements.

Rep. Doug Collins (R-GA) introduced H.R. 469, and praised the passage of the bill as well as EPA’s recent directive. He said: “The back-room litigation that the EPA, Fish and Wildlife Service and other agencies favored throughout the last administration must come to an end. A government by and for the people has no business allowing unelected bureaucrats to redraft laws behind closed doors....” See <https://dougcollins.house.gov/press-releases/house-passes-collins-bill-to-stop-sueandsettle-abuse/>.

### **Hurricanes/Wildfires/Disaster Relief**

On October 26, President Trump signed into law the Additional Supplemental Appropriations for Disaster Relief Requirements Act (H.R. 2266, Pub. L. 115-72). The act provides additional FY2018 emergency supplemental funding for hurricane and wildfire relief and recovery efforts.

Congress appropriated \$18.7B to the Federal Emergency Management Agency’s Disaster Relief Fund, particularly to assist local governments in providing essential services after Hurricanes Harvey, Irma, and Maria, and associated flooding, primarily impacting Texas, Florida, and Puerto Rico.

The act also appropriates \$184.5M for Wildland Fire Management under the Department of Agriculture, to address urgent wildland fire suppression operations, with an additional \$50M for Wildland Fire Management under the Department of the Interior; and \$342M to the FLAME Wildfire Suppression Fund, to cover the costs of large or complex wildfire events. The funding is intended to address recent wildfires in Sonoma and Napa Counties, California.

Bipartisan members of the House sent a letter to the Office of Management and Budget on October 4 requesting the Administration send a proposal to Congress “that includes comprehensive forest management and wildland fire budgeting reforms as part of the next disaster relief request as soon as possible.” [https://westerncaucus.house.gov/uploadedfiles/10.04.2017\\_final\\_signed\\_omb\\_forestry\\_letter.pdf](https://westerncaucus.house.gov/uploadedfiles/10.04.2017_final_signed_omb_forestry_letter.pdf)

## **CONGRESS**

### **Nominations Confirmed**

On September 28, the Senate confirmed North Dakota U.S. District Court Judge Ralph Erickson to be a U.S. 8<sup>th</sup> Circuit Judge. Judge Erickson issued the 13-state stay on implementation of EPA's Waters of the U.S. Rule, in *North Dakota et al. v. EPA*. On October 3, the Senate voted to confirm Stephen Censky to be the Deputy Secretary of Agriculture. On October 5, the Senate voted to confirm Timothy Gallaudet to be the Assistant Secretary of Commerce for Oceans and Atmosphere. (See WSW #2263) On October 26, the Senate also voted to confirm Gregory Ibach, former Nebraska Department of Agriculture Director, to be the Under Secretary of Agriculture for Marketing and Regulatory Programs.

### **Water Resources Development Act**

On October 27, the House Transportation and Infrastructure Committee, the Water Resources and Environment Subcommittee, and members of the Florida delegation held a roundtable policy discussion in Miami, Florida, entitled "America's Water Resources Infrastructure: Concepts for the Next Water Resources Development Act (WRDA)."

The bipartisan Congressional leaders and public and private stakeholders discussed water infrastructure needs and challenges that states and communities face in addressing those needs.

Subcommittee Chairman Garret Graves (R-LA) noted Congress' recent efforts to make changes to the Corps' procedures, enhance America's competitiveness, and strengthen investments in the nation's water resources infrastructure, with increased flexibility for state, local, and non-federal investments. He spoke of greater resiliency and efficiency, and how millions of dollars in investments today can save billions of dollars down the road, particularly as we face disasters.

Committee Chairman Bill Schuster (R-PA) talked about changing the dynamic in Congress, figuring out how to address critical projects in a post-earmark environment and passing bipartisan bills. "I'm interested in hearing how the reforms from previous WRDAs are working from your perspective, and how we can build upon the successes of those laws. My goal is to continue working together with all stakeholders and listening to all viewpoints to develop the next WRDA. The American people have spoken and they want us to improve our nation's aging infrastructure. We need to take action so our infrastructure can meet the demands of our growing trade volume." He added that there may be non-legislative solutions to move projects forward, including discussions with the agencies to ensure Congressional intent is carried out.

Subcommittee ranking member Grace Napolitano (D-CA) pointed out that the stakeholders present were a diverse group, but that all of them want to see a greater investment in infrastructure. She said that Congress and the Administration have been expecting the Corps to do more with less money, and that the Corps bears some responsibility for carrying out that objective, but Congress and the Administration need to do better than the status quo on funding these projects. She asked for feedback from the stakeholders to identify what reforms and changes are needed for this WRDA bill. See <https://transportation.house.gov/news/documentsingle.aspx?DocumentID=401997>

### **EPA/Confirmation Hearings**

On October 25, the Senate Environment and Public Works Committee approved presidential nominees for EPA positions. Nominees include: David Ross for Assistant Administrator of the Office of Water; Matthew Leopold, Assistant Administrator for the Office of General Counsel; Michael Dourson, Assistant Administrator for the Office of Chemical Safety and Pollution Prevention; and Bill Wehrum, Assistant Administrator for the Office of Air and Radiation.

EPA Administrator Scott Pruitt said: "These top leaders in their fields will bring positive change to EPA's mission to protect human health and the environment. We look forward to a full Senate vote on these highly-qualified leaders." See <https://www.epa.gov/newsreleases/top-epa-presidential-nominees-approved-senate-epw-committee>

## **MEETINGS**

### **Dividing the Waters**

Groundwater Law in Transition, a conference for judges adjudicating and resolving water conflicts, will be held November 1-4, at the Baylor University School of Law in Waco, Texas. Topics will cover fundamental state groundwater laws, groundwater modeling, urban development and the land-water nexus, interstate conflicts, takings and property rights in water, and emerging conflicts over groundwater in Texas and across the West.

The conference will start with the science of groundwater, its connection to surface water, and will explore how some states apply surface water rights law concepts to groundwater, while other have adopted new governance structures to manage the resource and restore groundwater reserves. There will be a field trip to observe farming operations relying on surface and groundwater, habitat areas, and an opportunity to see first-hand how groundwater works and contributes to the communities it serves. For more information, see <http://www.judges.org/dtw/conferences/dtw-2017-general-conference/>.

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