



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER RESOURCES

Presidential Memorandum

On October 19, the President issued a Memorandum on Promoting the Reliable Supply and Delivery of Water in the West. The Memorandum is addressed to the Secretaries of the Interior, Commerce, Energy, and the Army, as well as the Chair of the Council on Environmental Quality. The President notes that the federal government has “invested enormous resources in water infrastructure throughout the western United States to reduce flood risks to communities; to provide reliable water supplies for farms, families, businesses, and fish and wildlife; and to generate dependable hydropower.” However, uncoordinated regulation of water infrastructure has created inefficiencies, unnecessary burdens, and conflicts between federal agencies, states, tribes and local water delivery agencies. The Secretaries of the Interior and Commerce are directed to: (1) streamline water infrastructure regulatory processes; (2) improve forecasts of water availability; (3) improve use of technology to increase water reliability; and (4) consider locally-developed plans in licensing hydroelectric projects.

In particular, the President orders the agencies to identify regulations and procedures delaying infrastructure projects in California and operations challenges in the Columbia River Basin, including environmental and endangered species considerations, and to develop a timeline to expeditiously complete compliance requirements. The agencies are also required to: (1) convene water experts and resource managers to develop an action plan by January 2019 under the authorities of the Weather Research and Forecasting Innovation Act of 2017; and (2) promote the expanded use of technology and reduction of regulatory burdens for desalination, water reuse, and improving the accuracy and reliability of water and power deliveries. See <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-promoting-reliable-supply-delivery-water-west/>.

Bureau of Reclamation/Sedimentation

On October 10, the U.S. Bureau of Reclamation announced a competition seeking cost effective

techniques to remove sediment from reservoirs. Sedimentation in reservoirs can limit the active life of reservoirs and reduce available water storage capacity or flood control benefits. Sedimentation also impacts dam outlets, reservoir water intakes, water quality, recreation, upstream flood stage, and downstream habitat.

This is a theoretical challenge requiring a white paper, where solvers can provide ideas on sediment collection, transport, or delivery to the downstream river. Solvers are asked to submit their idea with detailed descriptions, drawings, illustrations, specifications, supporting data or literature, and anything else needed to bring the idea to practice.

In this first stage, a total prize pool of \$75,000 is available. The minimum full amount award is \$15,000. Depending on the proposal, Reclamation may award more than that up to the total prize purse. If this first stage produces winning concepts and Reclamation determines a second stage is beneficial, it will launch a subsequent challenge where participants will be asked to present their proposal and provide a working prototype. In addition to an anticipated higher monetary award, Reclamation will invite industry, non-profit organizations, and venture capital representatives to the Stage 2 presentations and testing. Submissions for this competition are due January 4.

Reclamation is partnering with the U.S. Army Corps of Engineers, Federal Energy Regulatory Commission, Natural Resource Conservation Service and American Rivers on various aspects of this prize competition. To learn more about this prize competition and other competitions Reclamation has hosted, please visit <https://www.usbr.gov/research/challenges/index.html>.

Department of the Interior/Title Transfers

On October 16, the U.S. Department of the Interior has published a *Federal Register* notice seeking public comment on a proposed categorical exclusion under the National Environmental Policy Act (NEPA) for certain transfers of title of projects and facilities from the Bureau of Reclamation to qualifying non-federal entities. Reclamation is proposing to establish a new categorical exclusion to facilitate the transfer of title for a limited set

of simple, noncontroversial or uncomplicated projects and/or project facilities.

The federal register notice is available at <https://www.federalregister.gov/d/2018-22630>.

Title transfer is a voluntary conveyance of ownership for water projects including dams, canals, laterals and other water-related infrastructure to the beneficiaries of those facilities. It divests Reclamation of responsibility for the operation, maintenance, management, regulation of, and liability for the project, lands and facilities to be transferred.

The benefitting non-federal entity is also provided with greater autonomy and flexibility to manage the facilities to meet their needs in compliance with federal, state, and local laws and in conformance with contractual obligations. Public comments on this proposed action are due to Reclamation 30-days from the day it appears in the Federal Register, which is November 16, 2018.

A transfer of title is a federal action under the NEPA. NEPA requires that when a major federal action may have significant impacts on the quality of the human environment, a statement be prepared to describe the impacts and effects on the human environment associated with the federal action. If it is determined that a certain category of actions will not normally have a significant effect on the human environment, those actions may be excluded from further NEPA review.

WATER QUALITY **CWA §401 Certification**

On October 10, the Army Corps of Engineers (Corps) sent a letter to Senators Steve Daines (R-MT), John Barasso (R-WY), Michael Enzi (R-WY), and James Inhofe (R-OK), responding to their request that the Corps “expeditiously complete” the permit process for the Millennium Bulk Terminals - Longview (MBT) project, a proposed coal export terminal. The Senators specifically requested that the Corps “...determine that the State of Washington has waived its authority to issue a water quality certification under Section 401 of the Clean Water Act (CWA)...” While the Corps did not directly address the issue of waiver, the letter indicates that the Corps is continuing to process the permit application, advancing work on the Environmental Impact Statement (EIS) and “recommencing all remaining environmental compliance and tribal consultation and coordination actions.” The Corps then noted: “There are actions and outcomes outside of the Corps’ control and responsibility that will need to be addressed before a permit decision can be reached. With regard to water quality impacts, that subject will be addressed in the EIS.”

Applications for federally-permitted projects that result in discharge to navigable waters may not be

approved without the affected state’s CWA §401 certification. Washington’s Department of Ecology denied certification in September 2017, on the grounds that the company’s supporting documents did not provide reasonable assurance that the project would meet state water quality standards. Additionally, under the State Environmental Policy Act, the Department of Ecology determined that the project would have resulted in adverse impacts to the local environment, transportation, public health, the local community, and tribal resources.

Although the application was denied within 90-days, the company appealed the decision, and Washington’s Pollution Control Hearings Board made its ruling to uphold the denied certification in August 2018. The Senators pointed out that the Board’s decision was beyond the one-year deadline allowed by the statute, and assert that this constitutes a waiver of Washington’s certification process.

The Senators are seeking to “curb some of the recent, troubling abuses of the water quality certification process by a handful of States through surgical amendments to existing law...,” referring to the Water Quality Certification Improvement Act (S. 3303). The Senators asserted in their September 6 letter to the Corps that “a few states have tried to abuse their authority under Section 401 to block projects with a connection to fossil fuels.” They provided two examples: the MBT project in Washington, and the Constitution Pipeline in New York. See WSW #2309.

WATER RESOURCES/WATER QUALITY **New Mexico/EPA/Produced Waters**

On November 15-16, the State of New Mexico and the U.S. Environmental Protection Agency (EPA) will hold a conference in Santa Fe on “Policy, Regulations and Economics to Support Total Resource Recovery.” New Mexico is the third largest oil producer in the U.S., and is interested in appropriate and viable reuse of produced waters to relieve the growing demand on groundwater and surface water.

The conference builds on the recent Memorandum of Understanding between New Mexico and EPA to clarify existing regulatory and permitting frameworks relating to how produced water from oil and gas extraction can be re-used, recycled, and renewed for other purposes. The meeting will include speakers from New Mexico, EPA, the Department of the Interior, representatives from the oil and gas industry, technical experts on emerging water treatment approaches, reuse, and resource recovery options, and infrastructure experts. The conference is intended for oil and gas, water treatment and management, and economic development professionals. See <http://www.gwpc.org/new-mexico-produced-water-conference-November>.

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.