



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

Corps/Infrastructure/P3 Pilot Projects

On December 11, the U.S. Army Corps of Engineers (Corps) hosted a webinar to discuss public-private partnerships (P3s) and its upcoming request for information on potential pilot projects it will publish in the *Federal Register* in January 2019. The presentation started within the context of the \$100B new infrastructure construction backlog, and the need for maintenance and replacement of existing projects in the neighborhood of \$140B. The Corps' annual budget is around \$6B. Given current federal limitations and ongoing national water infrastructure needs, the Corps has been developing policies on alternative financing and accelerated delivery of projects.

Once the notice is published in the *Federal Register*, prospective non-federal project sponsors will have 60 days to provide information in response to the request, and pilot projects will be selected in Spring 2019. The pilot projects can be anything federally-owned, from flood risk management to ecosystem restoration, and beach nourishment to water supply. Revenue sources could include local taxes, tolls, direct appropriations, or assessment districts. The partnership could cover some combination of project design, construction, financing, operation or maintenance. The Corps is looking for projects over \$50M that can be demonstrably expedited through P3s, that can ideally be replicated elsewhere, and partnerships that can allocate delivery and performance risks to non-federal partners, while minimizing federal liabilities associated with the project.

The use of P3s on some federally-owned assets, such as hydropower and inland or deep draft navigation, can pose particularly difficult challenges that should be considered and understood when providing recommendations to the Corps on potential pilot projects. The Corps has developed a guidance memo and identified four relevant white papers on private financing and delivery of federal projects. This information, available on the Corps' P3 website, can help potential non-federal partners identify the sorts of projects that may fit within the Corps' six known constraints: (1) projects that generate revenue; (2) the Corps' inability to make commitments regarding future

Congressional appropriations; (3) working within existing statutory authority to implement projects; (4) the Corps' long-term (50 years) contracting authority; (5) budget scoring rules that count all federal costs in the first year, rather than spread over time; and (6) identifying a benefit-cost ratio analysis that includes socioeconomic factors and prioritizes projects for both affluent and non-affluent communities in a more equitable way.

For the policy guidance documents, non-federal financing and delivery white papers, and further information, as it becomes available, see https://www.usace.army.mil/Missions/Civil-Works/Infrastructure/Infra_P3_program/.

ADMINISTRATION/WATER QUALITY

U.S. Geological Survey/Rivers and Streams

Water-Quality Trends in U.S. Rivers: Exploring Effects from Streamflow Trends and Changes in Watershed Management is a newly released study (November 2018) by U.S. Geological Survey (USGS) scientists Jennifer Murphy and Lori Sprague. It explores how water-quality trends are positively or negatively influenced by changes in streamflow and changes in managing contaminant sources. Lori is currently the coordinator of the Surface-Water Status and Trends team in the USGS National Water-Quality Assessment Project. Jennifer is a team member and hydrologist at the Lower Mississippi-Gulf Water Science Center. Determining the effects of watershed management strategies on stream quality is complicated by variability in streamflow caused by varying weather patterns.

The study investigates trends in concentrations and loads for 15 measures of nutrients, major ions, salinity, and sediment at more than 370 sites in the contiguous U.S. between 1982-2012. The study concludes that water quality trends were more strongly affected by changes in watershed management or wastewater treatment designed to reduce sources of contamination than by trends in streamflow – a key finding because billions of dollars each year are spent on managing point and nonpoint contaminant sources.

Examples of such management practices are improved wastewater treatment, increased diversion of

urban stormwater to wastewater treatment plants, changes in fertilizer application rates and timing, and conservation practices aimed at increasing denitrification or settling of sediment. For some sites and water-quality measures, streamflow trends amplified or diminished water-quality trends related to changes in watershed management. The effect of watershed management was greater for nutrients than for other constituents evaluated, indicating that efforts potentially have been more successful – or, in some cases, harmful – in controlling nutrient-related pollution than other types of pollution.

For additional information on the study, contact Jennifer Murphy (jmurphy@usgs.gov), or see <https://www.sciencedirect.com/science/article/pii/S0048969718346126?via%3Dihub>.

CONGRESS/WATER QUALITY

Clean Water Act – Waters of the United States

On December 17, Senator Rand Paul (R-KY) introduced S. 3760, with Senators Ted Cruz (R-TX) and Chuck Grassley (R-IA) as cosponsors. The bill would limit federal jurisdiction under the Clean Water Act (CWA) to waters that are “navigable in fact” or relatively permanent bodies of water, excluding ephemeral streams that only flow after a precipitation event and intermittent streams that are fed by groundwater and snowpack. The bill has been referred to the Senate Environment and Public Works (EPW) Committee.

On December 11, Senator Paul commented on the Administration’s new proposed rule: “The current, overly burdensome ‘Waters of the United States’ rule from the Obama administration places significant hardships on states, landowners, and farmers, granting broad federal control over water, and I have long called and worked for action to protect Kentuckians and all other Americans from its effects. As part of those efforts, I have previously introduced the Defense of Environment and Property Act, which I will reintroduce before the end of this Congress, to provide a permanent statutory fix for this issue. I applaud the Trump administration for its action today to revise the definition of WOTUS and provide needed clarity on the scope of federal water jurisdiction.”

The same day, Senator Cruz declared, “I am pleased to see the EPA and Army Corps’ proposal that finally provides a common-sense definition of ‘waters of the United States. Only in Washington can a puddle or dry ditch be considered navigable water. Today’s WOTUS announcement is evidence of this administration’s commitment to reining in federal overreach and protecting the property rights of landowners. This proposal will replace the Obama administration’s broad regulation which greatly expanded the scope of federal authority over land and waterways

in the United States. Ultimately, it will prevent the federal government from telling private landowners, farmers, ranchers, and others in Texas and across America what they can and cannot do with their private property.”

Senator Grassley stated: “I commend President Trump and his administration for stepping up to fix the mistakes of the out-of-touch Obama administration. The Waters of the U.S. rule was an ill-conceived overreach. The rule and its drafting process were flawed from the beginning. It would have defined 97 percent of Iowa as a waterway, meaning that if implemented, family farmers and other small business owners would have had to get permission from Washington bureaucrats to move soil on dry land.”

EPW Chairman John Barrasso (R-WY) has praised the Administration’s new proposed rule. “Americans deserve clean water and clear rules. The Trump administration’s new proposal respects the authority Congress gave EPA and the Army Corps under the Clean Water Act. Regulations must follow the law and be easy for Americans to understand. This new proposal does that. The old WOTUS rule put Washington in control of ponds, puddles, and prairie potholes. The regulation was so confusing that property owners and businesses could not determine when permits were needed. Even worse, it inserted Washington into local decision making. This overreach put unfair restrictions on how farmers, ranchers, and landowners could use their property. I am glad the new proposal addresses these issues.”

Senator Tom Carper (D-DE), the EPW Committee’s Ranking Democrat said: “The Clean Water Rule sought to make clear which waters receive federal protection after several confusing and conflicting Supreme Court decisions. That rule would protect the oceans, wetlands, and waterways from which we drink and obtain our food, provide certainty for American businesses, and keep us on a sure track to enjoy nearly \$500 million per year in economic benefits that clean water and healthy wetlands provide. The Trump Administration’s replacement plan does just the opposite. It protects fewer waters from pollution and poses serious threats to the health of the public, the environment, and our economy. The Trump Administration proposal also promises uncertainty for our farmers and ranchers, and could lead to years of unwieldy litigation for the federal government and many others who use and depend on these resources. This Administration is rolling back the clock and putting its thumb on the scale to make it easier for industry to dump harmful pollution in our waterways. Under this new rule, any water that isn’t explicitly protected is water that can be polluted.”

EPA announced the new proposed rule on December 11 and offered a pre-publication version for review; the rule has not yet been published in the FR.

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.