



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION** **EPA/Water Reuse**

On April 18, the Environmental Protection Agency (EPA) released a 13-page discussion framework to inform the collaborative development of a Water Reuse Action Plan (WRAP). EPA is reaching out to states and various water stakeholders in the coming months to “brainstorm action items and specific activities related to water reuse” that will provide more water to users while protecting human health and the environment. Some of EPA’s key considerations to develop a useful WRAP include: (1) identifying specific actions that federal agencies, states, tribes, local governments, and the entire water sector can take now and in the future; (2) addressing improvements to state-federal coordination of water reuse activities; (3) identifying barriers, opportunities, and areas of focus that should be in the WRAP; and (4) creating an overarching emphasis on integrated water resources management where reuse is considered. With that input, EPA intends to prepare an initial draft WRAP for release in September 2019 at the 34<sup>th</sup> Annual WaterReuse Symposium in San Diego.

The framework document provides illustrative examples of water reuse applications, including agricultural, industrial, aquifer recharge, drinking water, and environmental restoration. It lists some of the implementation challenges, such as lack of cost-effective treatment technologies, lack of water quality data, infrastructure limitations, and lack of public understanding or support. The framework provides a list of past and present federal policies, legislation, agency guidance, workgroups, and opportunities for collaboration on water reuse. It also provides a list of relevant published literature. “The WRAP will not attempt to repeat these recent efforts, but will draw on their findings and recommendations to determine what knowledge gaps or actions need to occur to bolster opportunities for water reuse across all sectors of the U.S. economy.”

For example, one high level action might be to ensure state and federal funding eligibility is clear and can be easily integrated with other funding programs. Another might be to consider alternatives for the management and disposal of wastewaters, similar to

recent efforts of New Mexico and EPA to understand their respective regulations affecting the reuse of produced waters from energy development. Also, how information about water quality and water quantity may be shared in a way that is usable at different scales to facilitate integrated water resources management, and how collaborative information hubs can be encouraged.

EPA notes several recurring themes raised by the literature and stakeholders, including: (1) technological improvements; (2) regulations and policies; (3) financial initiatives; (4) performance metrics; (5) water information use and availability; and (6) public outreach. “Each type of reuse could be evaluated against these six components to provide greater understanding of the incentives for and barriers to water reuse.”

### **LITIGATION/WATER RIGHTS** **California/Indian Water Rights/Agua Caliente**

On April 19, the U.S. District Court for the Central District of California issued a decision in Phase II of *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.* The decision grants the defendants’ motions for summary judgment, which argued that the tribe does not have standing to assert its claims. The court agreed, noting that although there may be injury to the groundwater in the form of overdrafts and the practice of recharge with lower-quality Colorado River water, the tribe has not demonstrated injury to its ability to use water of a sufficient quality or quantity to fulfill the purposes of the reservation. Similarly, the court held that the tribe did not demonstrate that the defendants interfered with the tribe’s right to use the aquifer’s pore spaces to store its reserved water rights.

During Phase I of the trifurcated case, the court held that the tribe’s reserved water right extends to the groundwater underlying the reservation, and that groundwater is a water source available to fulfill that right. Phase II addressed quantification of that right to groundwater, whether the tribe has the right to receive groundwater of a certain quality, and whether defendants could be enjoined from infringing on the use of the pore spaces underlying the reservation. Phase III will address the limited question of whether the tribe owns the pore spaces of the aquifer to store its reserved water rights.

## **WATER QUALITY/WATER RESOURCES** **Infrastructure Financing**

On April 24, Bluefield Research – a Boston, Massachusetts firm providing clients with data, analysis and insights on domestic and global water markets – released a report on the federal government’s role in financing water and wastewater infrastructure. *Funding U.S. Water & Wastewater Infrastructure: Analyzing Government Sources for Project Development*, examined \$25.3B in federal loans and grants distributed in 2018 through four programs: the EPA’s State Revolving Funds (SRF); U.S. Department of Agriculture (USDA) loan and grant programs; the Water Infrastructure Finance and Innovation Act (WIFIA); and U.S. Bureau of Reclamation (BOR) programs. Bluefield works with municipal utilities, engineering, procurement and construction firms, technology and equipment suppliers, and investment firms to address and strengthen strategic planning processes. Learn more at [www.bluefieldresearch.com](http://www.bluefieldresearch.com).

The report examined federal spending, broken down by program and percentages. EPA SRFs accounted for 60% of the \$25.3B in federal spending, with the Clean Water SRF (41%) and Drinking Water SRF (19%), followed by WIFIA (21%), USDA Water and Waste Disposal Loan and Grant Programs (19%), and BOR programs (<1%). The programs support municipalities addressing the challenge of more than 70,000 aging urban and rural water and wastewater treatment systems and three million miles of underground pipe nationwide. Erin Bonney Casey, Research Director for Bluefield, said SRF loans and grants are increasingly important as the financial burdens fall on local communities. While some States like Ohio are proactive in supporting requests, SRFs in Arizona and Tennessee are underutilized. Navigating SRF applications can be challenging.

Overall public water utilities spending at all levels declined in five of the last ten years. Bluefield’s analysis of municipal utility capital improvement plans (CIP) and annual SRF requests in 2018 identified “...as much as \$68B in capital needs for water and wastewater infrastructure, annually, over the next decade. At the same time, \$82B was requested from state administered SRF programs for clean (wastewater) and drinking water projects, up from \$64B in the prior year.” With only \$15.2B in SRF awards, the gap between utilities’ investment needs and available federal spend is “clearly widening,” even with “WIFIA expanding to over \$4.8B in its second year, and the USDA dedicating over \$5B to its water and waste program in a push to invest in rural communities.” These federal programs address varying geographic needs and project sizes, and typically receive bipartisan support.

The WSWC supports these federal programs and calls for increased spending for BOR programs from the Reclamation Fund. The President’s infrastructure plan

leveraging public spending is progressing slowly. Existing federal programs are “...expected to remain as water infrastructure mainstays in the absence of a more wide sweeping infrastructure act.”

The Bluefield report observes: “Select cities and states are also becoming more creative and using innovative mechanisms to fund their water infrastructure improvements. Traditionally, rate increases have been a way to pay for improvements, which is not sustainable, particularly with water and wastewater rates increasing by as much as 30% since 2012, outpacing inflation and median household income growth.... Philadelphia has moved to implement a new water pricing model to address the 40% of customers falling behind on bill payments at any given time. Atlanta and Washington D.C. are leveraging environmental impact bonds as an alternative means of financing infrastructure improvements. At the core of this approach, also known as ‘pay for success’, are project-specific performance metrics that can be measured at baseline and monitored thereafter across the life-cycle of the bond.”

Casey said, “There is no one-stop shop for water infrastructure funding. Therefore, utilities and municipalities are being forced to find alternative ways to leverage existing funding sources and financing tools.”

## **WATER RESOURCES** **Colorado River Basin/Water Supply Outlook**

As of April 16, the Colorado Basin River Forecast Center (CBRFC) in Salt Lake City, Utah projected that April-July unregulated inflows for major reservoirs in the Upper Colorado River Basin would be 102% of average for Fontenelle and Flaming Gorge, Blue Mesa 127%, McPhee 144%, and Navajo 119%. Lake Powell inflow is forecast at 9.2 million acre-feet (maf) or 128%.

On April 22, Lake Powell’s elevation was 3569 feet with live storage of 9.02 maf or 37% full. On the same date, Lake Mead in the Lower Basin was at an elevation of 1089 feet, holding 10.8 maf or 41% full. Under the 2007 Interim Guidelines, with current inflow projections, BOR anticipates normal releases from Lake Powell somewhere above 7.5 maf and as much as 9 maf. This would be a significant improvement over January 1 projections, and would likely forestall cuts in deliveries in the Lower Basin.

Tier 1 shortage conditions and reduced water deliveries from Lake Mead are triggered at an elevation of 1075 feet. Further reductions in deliveries would occur should Lake Mead drop to Tier 2 at elevation 1050 feet, or Tier 3 at elevation 1025 feet. At that level, agreed releases from Lake Powell would be 8.23 maf. Should Lake Mead fall below 1025 feet, minimum and maximum releases from Lake Powell would be 7 to 9.5 maf. The Drought Contingency Plan legislation (see WSW#2343), was signed by the President on April 16.

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