

# 180th COUNCIL MEETING



**Grand Hyatt Washington Hotel**  
**Washington, DC**  
**March 22, 2016**



**WESTERN STATES WATER COUNCIL**

5296 Commerce Drive, Suite 202 I Murray, Utah 84107 I (801) 685-2555 I FAX (801) 685-2559

Web Page: [www.westernstateswater.org](http://www.westernstateswater.org)

**MEMORANDUM**

**TO:** Council Members and Others

**FROM:** Tony Willardson, Executive Director

**DATE:** March 15, 2016

**RE:** Briefing Books for the 180<sup>th</sup> Council Meetings in Washington, D.C.

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Enclosed please find the briefing book for our meetings being held in Washington, D.C. on March 22, 2016. The minutes from our last meetings held in Manhattan, Kansas are posted on our website (under Past Meetings) for your review.

On Tuesday, March 22, the WSWC Committee meetings will be held sequentially, beginning at 8:00 a.m. with the Water Resources Committee meeting, after which the Legal Committee will begin at 11:30 a.m. The Executive Committee will be held over lunch from 1:00 – 2:45 p.m., followed by the Water Quality Committee meeting beginning at 3:00 p.m. The meetings will conclude with the Full Council which begins at 4:45 p.m. Please note the revised times.

The Water Resources, Legal, Water Quality Committee meetings, and Full Council meeting will be available via teleconference and webinar. **Call-in instructions and information on how to participate via webinar are attached to this memorandum.** In the event you have difficulties connecting, please call or text Tony at 801-573-7593 or Michelle at 801-615-1693.

On Wednesday, March 23rd, the WSWC is sponsoring our biennial Washington, D.C. Roundtable in cooperation with the Interstate Council on Water Policy (ICWP). It is scheduled to begin at 8:00 a.m. and will adjourn at 5:30 p.m. The Roundtable will bring together senior Administration officials and Congressional staff with State water program directors to discuss federal roles, rules and legislation affecting our nation's water future and state water resources development and planning. A reception will be held at the hotel from 6:00 – 7:00 p.m, and all Council members and guests are invited to attend. We wish to acknowledge and express our appreciation to our reception sponsor, the ***Santa Margarita Water District***.

On Thursday morning, March 24, Council members are invited to meet with WestFAST agency principals at the Rachel Carson Room, Main Interior Building located at 1849 C Street, NW, from 10:30 a.m. to 12 noon. The "C" Street entrance is the visitors entrance. All visitors must provide a photo ID or passport and go through the security check. The Rachel Carson Room is located on the basement level adjacent to the Interior Department cafeteria.

We look forward to interesting and productive meetings in Washington, D.C. If you have any questions regarding these matters, please let us know.

Attachment

## **CALL-IN AND WEBINAR INSTRUCTIONS**

### **A. Call-In Information**

The dates, times, and call-in information for each meeting are listed below. The below list also indicates which meetings will be available via webinar. Instructions on how to participate via webinar are contained in Section B, which follows.

For teleconference and webinar audio, **please use the dial-in numbers as indicated below.**

| <b>Eastern</b>  |             |                           |                                   |                |
|---|-------------|---------------------------|-----------------------------------|----------------|
| <b>Day, Date</b>  | <b>Time</b> | <b>Meeting</b>            | <b>Dial-in Number</b>             | <b>Webinar</b> |
| <b>Tues, Mar 22</b>   | 8:00 am     | Water Resources Committee | 1-800-920-7487<br>Code: 25335968# | Yes            |
|   |             |                           |                                   |                |
| <b>Tues, Mar 22</b>   | 11:30 am    | Legal Committee           | 1-800-920-7487<br>Code: 25335968# | Yes            |
|   |             |                           |                                   |                |
| <b>Tues, Mar 22</b>   | 3:00 pm     | WQ Committee              | 1-800-920-7487<br>Code: 25335968# | Yes            |
|   |             |                           |                                   |                |
| <b>Tues, Mar 22</b>   | 4:45 pm     | WSWC Full Council Mtg.    | 1-800-920-7487<br>Code: 25335968# | Yes            |
|   |             |                           |                                   |                |
| <b><i>Please send a request if you wish to participate via teleconference in the Executive Committee.</i></b> |             |                           |                                   |                |
| <b>Tues, Mar 22</b>   | 1:00 pm     | Executive Committee       | 1-800-920-7487<br>Code: 19896486# | No             |

### **B. General Webinar Instructions**

Depending on your web browser and system configuration, you may experience problems accessing the webinar.

**Please** check and prepare your computer a day or two in advance of the meeting as follows:

1. Start your web browser
2. Visit <http://westerngovernors.webex.com>
3. Select “Setup / Event manager” (left side of page)

To participate via webinar, please follow the instructions below:

1. Go to <https://westerngovernors.webex.com/>
2. Select the meeting you wish to join.
3. If requested, enter your name and email address.
4. If a password is required, enter: “wswc” for all meetings
5. Click “Join.”
6. Follow the instructions that appear on your screen.

When you attempt to log in, you may receive a message that says you need Java to run the meeting software. If you do not have an up-to-date version of Java on your computer, the WebEx software should offer you a temporary application that you can run on your computer to make the WebEx application work correctly.

We recommend you place your phone on mute and under no circumstance place the call on hold. If you encounter troubles connecting to the audio (or other things), you may ask questions or communicate via the WebEx “chat” feature.

**WESTERN STATES WATER COUNCIL**  
**180th COUNCIL MEETING**  
**Washington, D.C.**  
**March 22, 2016**

TABLE OF CONTENTS

TAB

- A. Schedule of Meetings - Agenda - 30-day Notice
- B. Membership List
- C. WSWC Policy Positions

**Sunsetting Positions**

- #349 - urges the Administration and the Congress to give a high priority to federal programs, such as NOAA's Regional Integrated Science and Assessments (RISA) program, that translate science into action
- #350 - supporting implementation of the Rural Water Supply Act of 2006
- #351 - supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs

List of Current WSWC Policy Statements and Sunsetted Positions

- D. Budget
  - Draft FY 2016-2017 Committee Work Plans
- E. Water Resources Committee
- F. Legal Committee
- G. Executive Committee
- H. Water Quality Committee
- I. Natural Resources Conservation Service (NRCS) Water-Related Programs
- J. Department of Energy (DOE) Drought and the Energy/Water Nexus
- K. Upper Missouri River Demonstration Project
- L. Federal Non-Tribal Water Rights
- M. Tribal Water Rights
- N. Legislation and Litigation Update
- O. Water Data Exchange (WaDE) / EN Grants Status Report / Strategic Plan
- P. 2015-2016 Summary of WSWC Activities and Events
- Q. Future WSWC Meetings
- R. Water Quality / Water Quantity (WQ2) Nexus – Next Steps
- S. Environmental Protection Agency (EPA) Update
- T. Western Federal Agency Support Team (WestFAST) Report
- U. - *Intentionally Blank* -
- V. - *Intentionally Blank* -
- W. Newsletter Index
- XYZ. Sunsetting Positions for Summer 2016 Meetings (#352 - #355)

Tab A – Schedule of Meetings – Agenda –  
30-day Notice

# SCHEDULE OF MEETINGS

## WESTERN STATES WATER COUNCIL

### 180th COUNCIL MEETINGS

Grand Hyatt Washington Hotel

Washington, D.C.

March 22-24, 2016

| <u>Date</u>                       | <u>Time</u> | <u>Meeting</u>  | <u>Room</u>      | <u>Adjournment</u> |
|-----------------------------------|-------------|---|------------------|--------------------|
| <b><u>Monday, March 21</u></b>    |             |   |                  |                    |
|                                   | 9:00 am     | WSWC Member Hill Visits (optional)  |                  | 5:00 pm            |
| <b><u>Tuesday, March 22</u></b>   |             |   |                  |                    |
|                                   |             | <b>WORLD WATER DAY</b>  |                  |                    |
|                                   | 9:00 am     | <i>White House Water Summit (by WH invitation only)</i>   |                  | 12:30 pm           |
|                                   | 8:00 am     | Water Resources Committee   | Constitution B   | 11:15 am           |
|                                   | 11:30 am    | Legal Committee   | Constitution B   | 12:45 pm           |
|                                   | 1:00 pm     | Executive Committee ( <i>over lunch</i> )   | Constitution C   | 2:45 pm            |
|                                   | 3:00 pm     | Water Quality Committee   | Constitution B   | 4:30 pm            |
|                                   | 4:45 pm     | Full Council Meeting  | Constitution B   | 6:00 pm            |
|                                   | 9:00 am     | <i>ICWP Water Planner's Conference (will be held concurrently)</i>  | Constitution DE  | 5:00 pm            |
| <b><u>Wednesday, March 23</u></b> |             |   |                  |                    |
|                                   | 8:00 am     | ICWP/WSWC Washington D.C. Roundtable<br>- <u>Registration Required</u> ( <i>Continental breakfast, lunch, break, and reception included</i> ) | Constitution CDE | 6:00 pm            |
|                                   | 6:00 pm     | ICWP & WSWC Reception<br>Sponsor: <i>Santa Margarita Water District</i>   | Grand Foyer      | 7:30 pm            |
| <b><u>Thursday, March 24</u></b>  |             |   |                  |                    |
|                                   | 9:30 am     | WestFAST Principals' Meeting  |                  | 10:30 am           |
|                                   | 10:30 am    | WSWC and WestFAST Principals<br>Rachel Carson Room, Main Interior Building, 1849 C Street, NW   |                  | 12:00 pm           |
|                                   | 12:00 pm    | WSWC Member Hill Visits   |                  | 5:00 pm            |
|                                   | 8:30 am     | <i>ICWP Meeting with and Leadership Team (to be held concurrently)</i>  |                  | 10:00 am           |
|                                   | 11:00 am    | <i>ICWP Hill Briefing 1</i>   |                  |                    |
|                                   | 1:00 pm     | <i>ICWP Hill Briefing 2</i>   |                  |                    |
| <b><u>Friday, March 25</u></b>    |             |   |                  |                    |
|                                   | 9:00 am     | WSWC Member Hill Visits (optional)  |                  |                    |

AGENDA  
**WATER RESOURCES COMMITTEE**  
Grand Hyatt Washington  
Washington, D.C.  
March 22, 2016

Called to Order at: 8:00 a.m. (Eastern Time)  
Conducting: Tim Davis, Chair

Room: Constitution B

TABS

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Positions**
  - #349 - urges the Administration and the Congress to give a high priority to federal programs, such as NOAA's Regional Integrated Science and Assessments (RISA) program, that translate science into action
  - #350 - supporting implementation of the Rural Water Supply Act of 2006
  - #351 - supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs
4. **U.S. Forest Service Stewardship for Water Resources on National Forests and Grasslands/Update on Groundwater Resources Framework** – Rob Harper, USFS National Director, Watershed, Fish, Wildlife, Air, and Rare Plants
- I 5. **NRCS Water-Related Programs** – Rob Sampson, NRCS National Water management Engineer
6. **USGS Water Availability and Use Programs Progress** – Sonya Jones, USGS, Coordinator Water Availability and Use Science Program
- J 7. **DOE Drought & the Energy/Water Nexus** – Diana Bauer, Director, Office of Energy Policy Analysis and Integration Office of Energy Policy and Systems Analysis
8. **NOAA Sub-seasonal Forecasting, Science & Technology** – David DeWitt, Director, NOAA Climate Prediction Center
9. **DOD Natural Resources Program Water Needs Assessment** – Becky Patton, U.S. Department of Defense, Program Managers, Climate Change Adaptation Integration
- K 10. **EPA/Montana DNRC – National Drought Resiliency Partnership Upper Missouri River Demonstration Project** -- Tina Laidlaw (EPA, Region 8)
11. **NASA LandSat Status and Other Missions** – Brad Doorn, NASA, Program Manager, Water Resources Program Science Mission Directorate Earth Science Division
12. **WGA Water & ESA-Related Activities** – Laura Chartrand, WGA
13. **CDWR/WSWC Workshop Updates** – Tony Willardson
- E 14. **Draft FY2016-2017 Committee Work Plan** – Tim Davis
15. **Other Matters/Adjourn**

## AGENDA

### LEGAL COMMITTEE MEETING

Grand Hyatt Washington

Washington, D.C.

March 22, 2016

Call to Order at: 11:30 am

Room: Constitution B

Conducting: Jennifer Verleger, Chair

### **TAB**

1. **Welcome and Introductions**
2. **Approval of Minutes**
- F 3. **Draft FY 2016-2017 Work Plan**
- N 4. **WOTUS Update** – Jennifer Verleger
  - a. Update on North Dakota and 6<sup>th</sup> Circuit cases
  - b. Corps jurisdictional determinations – *Corps v. Hawkes*, *Duarte Nursery v. Corps*
  - c. EPA Veto (preemptive and retroactive) - *Pebble Ltd. v. EPA*, *Mingo Logan Coal v. EPA*
- N 5. **Water Transfers Litigation Update** – *Catskills* decision – Michelle Bushman
6. **Water Supply Users Meeting Update** – Jennifer Verleger
7. **WSWC-WestFAST Federal Non-Tribal Water Rights Workgroup** – Pat Lambert
- M 8. **Tribal Water Rights** – Michelle Bushman
  - a. Pechanga
  - b. Blackfeet (Congress)
  - c. *Agua Caliente* (9<sup>th</sup> Cir.)
- N 9. **Legislation and Litigation Update** – Michelle Bushman
10. **Other Matters**

AGENDA  
**EXECUTIVE COMMITTEE**  
Grand Hyatt Washington Hotel  
Washington, D.C.  
March 22, 2016

Call to Order at: 1:00 p.m. (Eastern Time)  
Conducting: Pat Tyrrell, Chair

Room: Constitution C

**TAB**

1. **Welcome and Introductions**
2. **Approval of Minutes**
- D 3. **Report on Budget and Finances** – Jerry Rigby
  - a. FY2015-2016 Budget Status Report
  - O b. WaDE/EN Grants Status Report/Strategic Plan
  - c. CDWR Contracts Status Report
  - d. FY2016-2017 Proposed Budget / Dues Increase
- C 4. **Sunsetting Positions** – Tony Willardson
  - #349 - urges the Administration and the Congress to give a high priority to federal programs, such as NOAA's Regional Integrated Science and Assessments (RISA) program, that translate science into action
  - #350 - supporting implementation of the Rural Water Supply Act of 2006
  - #351 - supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs
- P 5. **Executive Director's Report** – Tony Willardson
  - a. 2015-2016 Summary of WSWC Activities and Events
- Q 6. **Future WSWC Meetings**
  - a. CDWR Workshop Series on Seasonal Precipitation Forecasting – April 28-29, 2016 – College Park, MD
  - b. CDWR Workshop Series on Expanding CIMIS
  - c. CDWR Workshop Series on Seasonal Precipitation Forecasting – June 6-10, 2016 – San Diego, CA
  - d. WSWC Summer Meetings – July 13-15, 2016 – Bismarck, ND
  - e. WSWC Fall Meetings – September 28-30, 2016 – St. George, UT
7. **WSWC Nominating Subcommittee** – Pat Tyrrell
- G 8. **FY2016-2017 Draft Committee Work Plan** – Pat Tyrrell
- XYZ 9. **Summer 2016 Meeting Sunsetting Positions**
  - #352 - supports federal efforts to prepare for and respond to extreme weather events, including an expanded and enhanced west-wide extreme precipitation monitoring system (June 26, 2013)
  - #353 - states that the WSWC "...opposes any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing." (June 24, 2013)
  - #354 - in the form of a letter to House Water Resources and Environment Subcommittee leaders in opposition to H.R. 1460, which would remove "fish and wildlife" as an authorized purpose for which the Corps can manage the Missouri River Mainstem Reservoir System (June 26, 2013)
  - #355 - urging the Administration and the Congress to support water research and development programs at the Department of Energy National Laboratories (June 26, 2013)
10. **Other Matters**

## AGENDA

### **WATER QUALITY COMMITTEE MEETING**

Grand Hyatt Washington

Washington, D.C.

March 22, 2016

Call to Order at: 3:00 pm  
Conducting: J.D. Strong, Chair

Room: Constitution B

### **TAB**

1. **Welcome and Introductions**
2. **Approval of Minutes**
- H 3. **Draft FY 2016-2017 Work Plan** – J.D. Strong
- R 4. **WQ2 Next Steps** – other workshops/webinars/exchange of information
- S 5. **EPA Update** –
  - a. Tribal Treatment as States (section 518 and 303(d));
  - b. Remand of Forest Roads Case, *Environmental Defense Center v. EPA* (80 FR 69653)
6. **Good Samaritan/Hard Rock Mine Remediation** – Trisha Oeth and Walt Baker
7. **Other Matters**

## AGENDA

### **180th COUNCIL MEETING** Grand Hyatt Washington Hotel Washington, D.C. March 22, 2016

Call to Order at: 4:45 p.m.  
Conducting: Pat Tyrrell, Chair

Room: Constitution B

#### **TAB**

1. **Welcome and Introductions**
2. **Approval of Minutes**
3. **Committee Reports – Action Items**
  - C, E a. Water Resources Committee – Tim Davis
  - F b. Legal Committee – Jennifer Verleger
  - G c. Executive Committee – Jerry Rigby
  - H d. Water Quality Committee – J.D. Strong
- T 4. **WestFAST Report and Workplan** – Roger Gorke, Environmental Protection Agency, WestFAST Chair and Pat Lambert, WestFAST Liaison
- Q 5. **Future Council Meetings**
6. **State Reports** (time permitting)
7. **Other Matters**



**W E S T E R N   S T A T E S   W A T E R   C O U N C I L**

*5296 Commerce Drive, Suite 202 I Murray, Utah 84107 I (801) 685-2555 I FAX (801) 685-2559*

*Web Page: [www.westernstateswater.org](http://www.westernstateswater.org)*

**MEMORANDUM**

**TO:** Council Members

**FROM:** Tony Willardson, Executive Director

**DATE:** February 19, 2016

**RE:** **30-Day Notice of the Washington, DC - Spring Meetings – Mar 22-24, 2016**

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This memorandum serves as notice that in 30 days the 180<sup>th</sup> meetings of the Western States Water Council will be held in Washington, D.C. at the Grand Hyatt Washington Hotel, March 22-24, 2016. The hotel is located at 1000 H Street NW, Washington, DC 20001. If you have not yet made your hotel reservations, we would urge you to do so at your earliest convenience. The **cutoff date is February 29**. Please use the online [Passkey link](#) to reserve a room at the special group rate of \$226/night (single or double occupancy). Reservations requested after this date may be accepted based upon availability and at the prevailing rate.

We have not received any new policy positions to be proposed at this meeting. Three positions are scheduled to sunset, and they are as follows:

- (1) **Position #349** – urging the Administration and the Congress to give a high priority to federal programs, such as NOAA's Regional Integrated Science and Assessments (RISA) Program, that translate science into activity;
- (2) **Position #350** – supporting implementation of the Rural Water Supply Act of 2006; and
- (3) **Position #351** – supporting federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs.

All sunseting positions are attached.

You may wish to consult your respective Governor's adviser with respect to the aforementioned policy positions. If you need information on who to contact in your Governor's office, please call the WSWC.

Please note that Council members are invited to attend and participate in our biennial Washington, D.C. Roundtable which is sponsored in cooperation with the Interstate Council on Water Policy (ICWP). It is scheduled to begin at 8:00 a.m. on Wednesday, March 23, and will adjourn at 5:30 p.m. A sponsored reception will be held at the hotel following the Roundtable and begins at 6:00 p.m. The Roundtable will bring together senior Administration officials and Congressional staff with State water program directors to discuss federal roles, rules and legislation affecting our nation's water future and state water resources development and planning.

Registration is required for all members and non-members to attend. The early registration fee, by February 29<sup>th</sup>, is \$300 for representatives of the WSWC and ICWP. We're offering a "Colleague Discount" for two members/ reps from the same agency at \$500. The fee for non-members is \$375. For those registering for the Roundtable & Evening Reception (March 23 ONLY), the fee is \$175. The fees increase beginning March 1st. The registration form and link to pay online are available on our 180<sup>th</sup> meetings [webpage link](#)

The Committee and Council meetings will be held on March 22, and will be made available via webinar and teleconference services. Information on how to access the webinar and/or teleconferences will be included in an email notification advising the briefing books are available online, about one week prior to the meetings. Members who wish to receive a hard copy of the briefing books should **notify Julie Groat no later than March 12, 2016** at [jgroat@wswc.utah.gov](mailto:jgroat@wswc.utah.gov).

On Thursday morning, March 24, Council members are invited to meet with WestFAST agency principals at the Interior Building located at 1849 C Street, NW, from 10:30 a.m. to 12 noon. A room number will be provided later. Thursday afternoon and Friday are open to schedule visits on the Hill.

A schedule of meetings and registration information are available on our [website](#). Draft committee meeting agenda will be posted in the near future. Each committee will be reviewing draft work plans for the upcoming fiscal year. Also, the minutes from the meetings held in Manhattan, Kansas will be available prior to the meetings on the Council's website for your review and reference.

As is Council policy, an Executive Committee and Committee Chairs conference call will be held to discuss sunseting policy positions, as well as other matters. **The conference call is scheduled for Friday, March 4 at 1:30 p.m. Mountain Time** (2:30 pm Central Time; 12:30 pm Pacific Time). A call-in number will be provided to Executive Committee members, designated alternates, and the Committee Chairs in a separate email.

For the purpose of the conference call and the meetings themselves, the Council has adopted an internal policy specifying the process for establishing credentials for participation by persons who are not appointed Council representatives. That policy requires written notification of any designee to act on behalf of a member, either in person or via conference call. An email is sufficient notice. As always, each state has only one vote, and the Executive Committee member or a designee is responsible for voting on any proposed Council action.

If we can be of any assistance or answer any questions regarding the foregoing, please call our office.

cc: Laura Chartrand, WGA

Attachments:  
Schedule of Meetings  
WSWC Sunseting Positions (3)

## Tab B – Membership List

# WESTERN STATES WATER COUNCIL

## MEMBERSHIP LIST

### March 8, 2016

#### OFFICERS

Chair - **Patrick Tyrrell**  
Vice-Chair - **Jerry Rigby**  
Secretary-Treasurer - **Jeanine Jones**

#### STAFF

Executive Director - **Tony Willardson**  
Legal Counsel - **Michelle Bushman**  
Federal Liaison - **Pat Lambert**  
Hydrologist/Programmer - **Sara Larsen**  
Office Manager - **Cheryl Redding**  
Administrative Assistant - **Julie Groat**

**Staff E-mail:** twillardson@wswc.utah.gov  
mbushman@wswc.utah.gov  
patlambert@wswc.utah.gov  
saralarsen@wswc.utah.gov  
credning@wswc.utah.gov  
jgroat@wswc.utah.gov

**Address:** 5296 South Commerce Drive  
Suite 202  
Murray, UT 84107  
(801) 685-2555  
(801) 682-2559 (fax)

#### ALASKA

**\*Honorable Bill Walker**  
Governor of Alaska  
P.O. Box 110001  
Juneau, AK 99811-0001  
(907) 465-3500

†**Brent Goodrum**, Director  
Division of Mining, Land & Water  
Alaska Department of Natural Resources  
550 West 7th Avenue, Suite 1070  
Anchorage, AK 99501-3579  
(907) 269-8600  
(907) 269-8904 (fax)  
brent.goodrum@alaska.gov

†**Alice Edwards**, Deputy Commissioner  
Alaska Dept. of Environmental Conservation  
410 Willoughby, Suite 303  
P.O. Box 11180  
Juneau, AK 99811-1800  
(907) 465-5066  
(907) 465-5070 (fax)  
alice.edwards@alaska.gov

†**David W. Schade** (Alt)  
Natural Resources Manager III  
Chief, Water Resources Section  
Division of Mining Land & Water  
Alaska Department of Natural Resources  
550 West 7th Avenue, Suite 1020  
Anchorage, AK 99501-3579  
(907) 269-8645  
david.w.schade@alaska.gov

#### ARIZONA

**\*Honorable Doug Ducey**  
Governor of Arizona  
Statehouse  
Phoenix, AZ 85007  
(602) 542-4331

**\*\*Thomas Buschatzke**, Director  
Arizona Department of Water Resources  
3550 North Central Avenue  
Phoenix, AZ 85012  
(602) 771-8426  
(602) 771-8681 (fax)  
tbuschatzke@azwater.gov

**Trevor Baggione**, Director  
Arizona Water Quality Division  
1110 West Washington Street  
Phoenix, AZ 85007  
(602) 771-2321  
(602) 771-4834 (fax)  
baggione.trevor@azdeq.gov

**L. William Staudenmaier**, Attorney  
Snell & Wilmer  
One Arizona Center  
400 East Van Buren Street, Suite 1900  
Phoenix, AZ 85004-2202  
(602) 382-6571  
(602) 382-6070 (fax)  
wstaudenmaier@swlaw.com

\*Ex-Officio Member

\*\*Executive Committee Member

†Council members denoted by this symbol are listed by virtue of their office, pending receipt of a letter of appointment by their Governor.

**Cynthia Chandley**, Attorney (Alt.)  
Snell & Wilmer  
One Arizona Center  
400 East Van Buren Street, Suite 1900  
Phoenix, AZ 85004-2202  
(602) 382-6154  
(602) 382-6070 (fax)  
cchandley@swlaw.com

## **CALIFORNIA**

**\*Honorable Jerry Brown**  
Governor of California  
State Capitol  
Sacramento, CA 95814  
(916) 445-2841

**\*\*Mark Cowin**, Director  
California Department of Water Resources  
1416 Ninth Street  
P.O. Box 942836  
Sacramento, CA 95814  
(916) 653-5791  
(916) 653-5028 (fax)  
mcowin@water.ca.gov

**Thomas Howard**, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100  
(916) 341-5615  
(916) 341-5620 (fax)  
thoward@waterboards.ca.gov

**Betty H. Olson**, Professor  
Civil & Environmental Engineering  
University of California, Irvine  
1361 SE II, Code: 7070  
Irvine, CA 92697-7070  
(949) 824-7171  
(949) 824-2056 (fax)  
bholson@uci.edu

**Jeanine Jones**, P.E. (Alt.)  
Interstate Resources Manager  
California Department of Water Resources  
1416 Ninth Street  
P.O. Box 942836  
Sacramento, CA 94236-0001  
(916) 653-8126  
(916) 653-5028 (fax)  
jeanine.jones@water.ca.gov

## **COLORADO**

**\*Honorable John Hickenlooper**  
Governor of Colorado  
State Capitol  
Denver, CO 80203  
(303) 866-2471

**\*\*James L. Eklund**, Director  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, CO 80203  
(303) 866-3441  
(303) 866-4474 (fax)  
james.eklund@state.co.us

**Trisha Oeth**, Administrator  
Water Quality Control Commission  
Colorado Dept. of Public Health & Environment  
OED-OLRA-A5  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530  
(303) 692-3468  
(303) 691-7702 (fax)  
trisha.oeth@state.co.us

**Dick Wolfe**, State Engineer  
Colorado Division of Water Resources  
1313 Sherman Street, Room 318  
Denver, CO 80203  
(303) 866-3581  
(303) 866-3589 (fax)  
dick.wolfe@state.co.us

**Patrick J. Pfaltzgraff**, Director (Alt.)  
Water Quality Control Division  
Colorado Dept. of Public Health & Environment  
WQCD-DO-B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530  
(303) 692-3509  
(303) 782-0390 (fax)  
patrick.j.pfaltzgraff@state.co.us

**Harold D. (Hal) Simpson** (Alt.)  
5967 South Birch Way  
Centennial, CO 80121  
(303) 771-3449 (home)  
(303) 916-1093 (mobile)  
halsimpson28@msn.com

**John R. Stulp** (Alt.)  
Special Policy Advisor to the Governor for Water  
IBCC Director  
1313 Sherman Street, Suite 721  
Denver, CO 80203  
(303) 866-3441 x. 3257  
john.stulp@state.co.us

## **IDAHO**

**\*Honorable C. L. "Butch" Otter**  
Governor of Idaho  
State Capitol  
Boise, ID 83720  
(208) 334-2100

**\*\*Jerry R. Rigby**  
Rigby, Andrus & Rigby Law, PLLC  
553 East 4th South  
Rexburg, ID 83440  
(208) 356-3633  
(208) 356-0768 (fax)  
jrigby@rex-law.com

**†John Tippets**, Director  
Idaho Department of Environmental Quality  
Statehouse Mail  
1410 North Hilton Street  
Boise, ID 83706-1255  
(208) 373-0240  
(208) 373-0417 (fax)  
john.tippets@deq.idaho.gov

**John Simpson**  
Barker, Rosholt & Simpson, LLP  
P.O. Box 2139  
Boise, ID 83701  
(208) 336-0700  
(208) 344-6034 (fax)  
jks@idahowaters.com

**Gary Spackman**, Director (Alt.)  
Idaho Department of Water Resources  
The Idaho Water Center  
322 East Front Street  
P.O. Box 83720  
Boise, ID 83720-0098  
(208) 287-4800  
(208) 287-6700 (fax)  
gary.spackman@idwr.idaho.gov

## **KANSAS**

**\*Honorable Sam Brownback**  
Governor of Kansas  
State Capitol, 2nd Floor  
Topeka, KS 66612-1590  
(785) 296-3232

**\*\*David W. Barfield**, Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS 66502  
(785) 564-6658  
(785) 564-6779 (fax)  
david.barfield@kda.ks.gov

**Tracy Streeter**, Director  
Kansas Water Office  
900 SW Jackson Street, Suite 404  
Topeka, KS 66612  
(785) 296-3185  
(785) 296-0878 (fax)  
tracy.streeter@kwo.ks.gov

**Greg Foley**, Executive Director  
Division of Conservation  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS 66502  
(785) 564-6621  
(785) 564-6779 (fax)  
greg.foley@kda.ks.gov

**Chris W. Beightel** (Alt.)  
Water Management Services Program Manager  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS 66502  
(785) 564-6659  
(785) 564-6779 (fax)  
chris.beightel@kda.ks.gov

**Burke Griggs** (Alt.)  
Assistant Attorney General  
Kansas Attorney General's Office  
120 SW 10th Avenue, 2nd Floor  
Topeka, KS 66612-1597  
(785) 296-4542  
(785) 291-3767 (fax)  
burke.griggs@ag.ks.gov

**Earl Lewis**, Assistant Director (Alt.)  
Kansas Water Office  
900 SW Jackson Street, Suite 404  
Topeka, KS 66612  
(785) 296-3185  
(785) 296-0878 (fax)  
earl.lewis@kwo.ks.gov

**Tom Stiles** (Alt.)  
Chief, Office of Watershed Planning  
Kansas Department of Health & Environment  
Signature Building  
1000 SW Jackson Street  
Topeka, KS 66612-1367  
(785) 296-6170  
(785) 291-3266 (fax)  
tstiles@kdheks.gov

## **MONTANA**

### **\*Honorable Steve Bullock**

Governor of Montana  
State Capitol  
Helena, MT 59620  
(406) 444-3111

**\*\*Tim Davis**, Administrator  
Water Resources Division  
MT Dept. of Natural Resources & Conservation  
P.O. Box 201601  
Helena, MT 59620-1601  
(406) 444-6605  
(406) 444-0533 (fax)  
timdavis@mt.gov

**George Mathieus**, Administrator  
Planning, Prevention & Assistance Division  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-1601  
(406) 444-7423  
(406) 444-6836 (fax)  
gemathieus@mt.gov

**John Tubbs**, Director  
MT Dept. of Natural Resources & Conservation  
P.O. Box 201601  
Helena, MT 59620-1601  
(406) 444-1948  
(406) 444-0533 (fax)  
jtubbs@mt.gov

**Tom Livers**, Director (Alt.)  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, MT 59620-1601  
(406) 444-2544  
(406) 444-4386 (fax)  
tlivers@mt.gov

**Mike Volesky**, Deputy Director (Alt.)  
Montana Fish, Wildlife & Parks  
1420 East Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620-0701  
(406) 444-4600  
(406) 444-4952 (fax)  
mvolesky@mt.gov

**Jay Weiner**, Assistant Attorney General (Alt.)  
Civil Services Bureau  
Montana Office of the Attorney General  
215 North Sanders Street, 3rd Floor  
Helena, MT 59620  
(406) 444-2026  
(406) 444-3549 (fax)  
jweiner2@mt.gov

## **NEBRASKA**

### **\*Honorable Pete Ricketts**

Governor of Nebraska  
State Capitol  
Lincoln, NE 68509  
(402) 471-2244

**\*\*Jeff Fassett**, Director (Alt.)  
Nebraska Department of Natural Resources  
301 Centennial Mall South  
P.O. Box 94676  
Lincoln, NE 68509-4676  
(402) 471-2366  
(402) 471-2900 (fax)  
jeff.fassett@nebraska.gov

**James R. Macy**, Director  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509-8922  
(402) 471-2186  
jim.macy@nebraska.gov

**Patrick Rice**, Administrator (Alt.)  
Water Management Division  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509-8922  
(402) 471-2186  
(402) 471-2909 (fax)  
pat.rice@nebraska.gov

## **NEVADA**

### **\*Honorable Brian Sandoval**

Governor of Nevada  
State Capitol  
Carson City, NV 89701  
(775) 687-5670

**\*\*Roland D. Westergard**  
207 Carville Circle  
Carson City, NV 89703  
(775) 882-3506

**Leo Drozdoff**, Director  
NV Dept. of Conservation & Natural Resources  
901 South Stewart Street, Suite 5001  
Carson City, NV 89701  
(775) 684-2700  
(775) 684-2715 (fax)  
ldrozdoff@dcnr.nv.gov

**Jason King**, State Engineer  
Nevada Division of Water Resources  
901 South Stewart Street, Suite 2002  
Carson City, NV 89701-9965  
(775) 684-2861  
(775) 684-2811 (fax)  
jking@water.nv.gov

†**David Emme**, Administrator (Alt.)  
Nevada Division of Environmental Protection  
901 South Stewart Street, Suite 4001  
Carson City, NV 89701-5249  
(775) 687-9301  
(775) 687-5856 (fax)  
demme@ndep.nv.gov

## **NEW MEXICO**

**\*Honorable Susana Martinez**  
Governor of New Mexico  
State Capitol  
Santa Fe, NM 87501  
(505) 476-2200

†**Tom Blaine**, State Engineer  
New Mexico Office of the State Engineer  
Concha Ortiz y Pino Building  
130 South Capitol Street, NEA Building  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
(505) 827-6175  
(505) 827-6188 (fax)  
tom.blaine@state.nm.us

†**Ryan Flynn**, Environment Secretary  
New Mexico Environment Department  
1190 Street Francis Drive, N4050  
P.O. Box 26110  
Santa Fe, NM 87502-0110  
(505) 827-2855  
ryan.flynn@state.nm.us

**Bidtah N. Becker** (Alt.)  
Executive Director  
Navajo Nation Division of Natural Resources  
P.O. Box 9000  
Window Rock, AZ 86515  
(928) 871-6592  
bidtahnbecker@navajo-nsn.gov

**Eileen Grevey Hillson** (Alt.)  
AguaVida Resources  
915 Camino Ranchitos NW  
Albuquerque, NM 87114  
(505) 238-0461 (cell)  
(505) 898-0747 (fax)  
ehillson@swcp.com

**Maria O'Brien**, Attorney (Alt.)  
Modrall Sperling  
500 Fourth Street NW, Suite 1000  
P.O. Box 2168  
Albuquerque, NM 87103-2168  
(505) 848-1800  
(505) 848-9710 (fax)  
mobrien@modrall.com

†**Greg Ridgley**, Chief Counsel (Alt.)  
New Mexico Office of the State Engineer  
130 South Capital Street  
Santa Fe, NM 87506-5108  
(505) 827-6150  
(505) 827-3887 (fax)  
greg.ridgley@state.nm.us

**John Utton**, Attorney (Alt.)  
Sheehan and Sheehan, P.A.  
40 First Plaza NW, Suite 740  
Albuquerque, NM 87102  
(505) 247-0411  
(505) 842-8890 (fax)  
jwu@sheehansheehan.com

## **NORTH DAKOTA**

**\*Honorable Jack Dalrymple**  
Governor of North Dakota  
State Capitol  
Bismarck, ND 58505  
(701) 224-2200

**\*\*Todd Sando**, State Engineer  
North Dakota State Water Commission  
900 East Boulevard Avenue  
Bismarck, ND 58505-0850  
(701) 328-4940  
(701) 328-3696 (fax)  
tsando@nd.gov

**L. David Glatt**, Chief  
Environmental Health Section  
North Dakota Department of Health  
Gold Seal Center  
918 East Divide Avenue  
Bismarck, ND 58501-1947  
(701) 328-5152  
(701) 328-5200 (fax)  
dglatt@nd.gov

**Jennifer L. Verleger**  
Assistant Attorney General  
North Dakota Office of the Attorney General  
500 North 9th Street  
Bismarck, ND 58505  
(701) 328-3537  
(701) 328-4300 (fax)  
jverleger@nd.gov

**Andrea Travnicek (Alt.)**  
Senior Policy Advisory  
Office of the Governor  
600 East Boulevard Avenue  
Bismarck, ND 58505-0001  
(701) 328-2206  
atravnicek@nd.gov

## **OKLAHOMA**

**\*Honorable Mary Fallin**  
Governor of Oklahoma  
State Capitol  
Oklahoma City, OK 73105  
(405) 521-2342

**\*\*J.D. Strong**, Executive Director  
Oklahoma Water Resources Board  
3800 North Classen Boulevard  
Oklahoma City, OK 73118  
(405) 530-8800  
(405) 530-8900 (fax)  
jdstrong@owrb.ok.gov

**†Shellie Chard-McClary**, Director  
Water Quality Division  
Oklahoma Dept. of Environmental Quality  
P.O. Box 1677  
Oklahoma City, OK 73101-1677  
(405) 702-7100  
(405) 702-7101 (fax)  
shellie.chard-mcclary@deq.ok.gov

**†Rob Singletary**, General Counsel  
Oklahoma Water Resources Board  
3800 North Classen Boulevard  
Oklahoma City, OK 73118  
(405) 530-8800  
(405) 530-8900 (fax)  
rob.singletary@owrb.ok.gov

## **OREGON**

**\*Honorable Kate Brown**  
Governor of Oregon  
State Capitol  
Salem, OR 97310  
(503) 378-3100

**\*\*Thomas M. Byler**, Director  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
(503) 986-0900  
(503) 986-0903 (fax)  
thomas.m.byler@wrdd.state.or.us

**†Jennifer Wigal**  
Water Quality Program Manager  
Oregon Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR 97204  
(503) 229-5323  
(503) 229-5408 (fax)  
wigal.jennifer@deq.state.or.us

## **SOUTH DAKOTA**

**\*Honorable Dennis Daugaard**  
Governor of South Dakota  
State Capitol  
Pierre, SD 57501  
(605) 773-3212

**\*\*Steven M. Pirner**, Secretary  
SD Dept. of Environment & Natural Resources  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501-3181  
(605) 773-5559  
(605) 773-6035 (fax)  
steve.pirner@state.sd.us

**Kent Woodmansey, PE**  
Engineering Manager, Feedlot Permit Program  
SD Dept. of Environment & Natural Resources  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501-3181  
(605) 773-3351  
(605) 773-4068 (fax)  
kent.woodmansey@state.sd.us

## **TEXAS**

**\*Honorable Gregory W. Abbott**  
Governor of Texas  
State Capitol  
Austin, TX 78711  
(512) 463-2000

**\*\*Jonathan K. "Jon" Niermann**  
Commissioner  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 100  
Austin, TX 78711-3087  
(512) 239-5505  
(512) 239-5533 (fax)  
Jon.niermann@tceq.texas.gov

**Bech K. Bruun**, Chairman  
Texas Water Development Board  
1700 North Congress Avenue  
P.O. Box 13231  
Austin, TX 78711-3231  
(512) 463-7847  
(512) 475-2053 (fax)  
bech.bruun@twdb.texas.gov

**John R. Elliott** (Alt.)  
Vice President  
Headwaters Groundwater Conservation District  
25 Lehmann Drive, Suite 102  
Kerrville, TX 78028-6059  
(830) 238-5176  
(830) 238-4611 (fax)  
elliottj@cebridge.net

**Craig Estes**, Senator (Alt.)  
Texas State Senate  
2525 Kell Boulevard, Suite 302  
Wichita Falls, TX 76308  
(940) 689-0191  
(940) 689-0194 (fax)  
craig.estes@senate.state.tx.us

**F. Scott Spears, Jr.** (Alt.)  
Partner  
Arenson & Spears  
901 MoPac Expressway South  
Austin, TX 78746-5797  
(512) 327-4422  
(512) 327-1524 (fax)  
scottspearslegal@aol.com

## UTAH

**\*Honorable Gary R. Herbert**  
Governor of Utah  
State Capitol  
Salt Lake City, UT 84114  
(801) 538-1000

**\*\*Walter L. Baker**, Director  
Division of Water Quality  
Utah Department of Environmental Quality  
195 North 1950 West  
P. O. Box 144870  
Salt Lake City, Utah 84114-4870  
(801) 536-4300  
(801) 536-4301 (fax)  
wbaker@utah.gov

**Eric Millis**, Director  
Utah Division of Water Resources  
1594 West North Temple, Suite 310  
P.O. Box 146201  
Salt Lake City, UT 84114-6201  
(801) 538-7230  
(801) 538-7279 (fax)  
ericmillis@utah.gov

**Dallin Jensen** (Alt.)  
Parsons, Behle, and Latimer  
201 South Main Street  
P.O. Box 45898  
Salt Lake City, UT 84145-0898  
(801) 532-1234  
(801) 536-6111 (fax)  
djensen@parsonsbhleh.com

**Norman K. Johnson** (Alt.)  
Assistant Attorney General  
Utah Attorney General's Office  
1594 West North Temple, Suite 300  
Salt Lake City, UT 84116  
(801) 538-7227  
(801) 538-7440 (fax)  
normanjohnson@utah.gov

## WASHINGTON

**\*Honorable Jay Inslee**  
Governor of Washington  
State Capitol  
Olympia, WA 98504  
(360) 753-6780

**\*\*Maia Bellon**, Director  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
(360) 407-7001  
(360) 407-6989 (fax)  
maib461@ecy.wa.gov

**Tom Loranger**  
Water Resources Program Manager  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
(360) 407-6672  
(360) 407-6574 (fax)  
tlor461@ecy.wa.gov

**Alan Reichman** (Alt.)  
Assistant Attorney General  
Ecology Division, Water Section  
Washington State Attorney General's Office  
P.O. Box 40117  
Olympia, WA 98504-0117  
(360) 586-6748  
(360) 586-6760 (fax)  
alanr@atg.wa.gov

**†Buck Smith** (Alt.)  
Senior Hydrogeologist  
Water Resources Program  
Washington Department of Ecology  
3190 160th Avenue, SE  
Bellevue, WA 98008  
(425) 649-7147  
(425) 649-7098 (fax)  
buck.smith@ecy.wa.gov

**Sue Lowry** (Alt.)  
Interstate Streams Administrator  
Wyoming State Engineer's Office  
Herschler Building, 4th Floor East  
122 West 25th Street  
Cheyenne, WY 82002  
(307) 777-5927  
(307) 777-5451 (fax)  
sue.lowry@wyo.gov

## **WYOMING**

**\*Honorable Matt Mead**  
Governor of Wyoming  
State Capitol  
Cheyenne, WY 82001  
(307) 777-7434

**\*\*Patrick T. Tyrrell**, State Engineer  
Wyoming State Engineer's Office  
Herschler Building, 4th Floor East  
122 West 25th Street  
Cheyenne, WY 82002  
(307) 777-6150  
(307) 777-5451 (fax)  
patrick.tyrrell@wyo.gov

**Christopher M. Brown**  
Senior Assistant Attorney General  
Water and Natural Resources Division  
Wyoming Attorney General's Office  
123 Capitol Avenue  
Cheyenne, WY 82002  
(307) 777-3406  
(307) 777-5451 (fax)  
chris.brown@wyo.gov

**Todd Parfitt**, Director  
Wyoming Department of Environmental Quality  
Herschler Building, 4th Floor West  
122 West 25th Street  
Cheyenne, WY 82002  
(307) 777-7555  
(307) 777-7682 (fax)  
todd.parfitt@wyo.gov

**Harry LaBonde**, Director (Alt.)  
Wyoming Water Development Commission  
6920 Yellowtail Road  
Cheyenne, WY 82002  
(307) 777-7626  
(307) 777-6819 (fax)  
harry.labonde@wyo.gov

**†Kevin Frederick**, Administrator (Alt.)  
Water Quality Division  
Wyoming Department of Environmental Quality  
Herschler Building, 4th Floor West  
122 West 25th Street  
Cheyenne, WY 82002  
(307) 777-7072  
(307) 777-5973 (fax)  
kevin.frederick@wyo.gov

# WESTERN STATES WATER COUNCIL COMMITTEE ASSIGNMENTS

## **EXECUTIVE COMMITTEE**

Vacant - Alaska  
Thomas Buschatzke- Arizona  
Mark Cowin - California  
Jeanine Jones - California  
(Alternate)\*  
James Eklund - Colorado  
Hal Simpson - Colorado  
(Alternate)\*  
Jerry Rigby - Idaho  
(Vice-Chair)  
David Barfield - Kansas  
Tim Davis - Montana  
Jeff Fassett - Nebraska  
Roland Westergard - Nevada  
Leo Drozdoff - Nevada  
(Alternate)\*  
Tom Blaine - New Mexico  
Todd Sando - North Dakota  
J.D. Strong - Oklahoma  
Thomas Byler - Oregon  
Steve Pirner - South Dakota  
Kent Woodmansey - South Dakota  
(Alternate)\*  
Jonathan Niermann - Texas  
Walt Baker - Utah  
Maia Bellon - Washington  
Patrick T. Tyrrell - Wyoming  
(Chair)

## **Management Subcommittee**

Patrick Tyrrell  
(Chair)  
Jerry Rigby  
(Vice-Chair)  
Jeanine Jones  
(Secretary/Treasurer)  
Tony Willardson  
(Executive Director)

## **Nominating Subcommittee**

Roland Westergard (Chair) - Nevada  
Hal Simpson - Colorado

Ex-Officio Representatives

\*For purposes of Committee rosters, the designation as an "alternate" only reflect the person's function on the Committee.

## **Endangered Species Act Subcommittee**

Roland Westergard - Nevada  
Todd Chenoweth - Texas  
Sue Lowry - Wyoming

Ex-Officio Representatives

FWS - Andrew Hautzinger  
David Cottingham

## **Shared Water Vision Subcommittee**

Sue Lowry - (Chair) - Wyoming  
Hal Simpson - Colorado  
Mike Volesky - Montana  
Pat Tyrrell - Wyoming

Ex-Officio Representatives

USBR - Dionne Thompson  
Corps - John Grothaus  
Ray Russo  
Stu Townsley  
EPA - Roger Gorke  
USGS - Pixie Hamilton

## **Water Resources Infrastructure Subcommittee**

Jeanine Jones - California (Chair)  
Hal Simpson - Colorado  
Mike Volesky - Montana

Ex-Officio Representatives

USBR - Dionne Thompson  
Corps - Elliot Ng  
EPA - Steve Albee  
NRCS - Keith Admire  
Doug Toews

## **LEGAL COMMITTEE**

David Schade - Alaska  
William Staudenmaier - Arizona  
Cynthia Chandley - Arizona  
(Alternate)\*  
Jeanine Jones - California  
James Eklund - Colorado  
Jerry Rigby - Idaho  
John Simpson - Idaho  
(Alternate)\*  
Burke Griggs - Kansas  
Jay Weiner - Montana  
(Alternate)\*  
Jim Macy - Nebraska  
Roland Westergard - Nevada  
Jason King - Nevada  
(Alternate)\*  
Maria O'Brien - New Mexico  
Greg Ridgley - New Mexico  
(Alternate)\*  
Jennifer Verleger - North Dakota  
(Chair)  
Rob Singletary - Oklahoma  
Thomas Byler - Oregon  
Kent Woodmansey - South Dakota  
John Elliott - Texas  
Norman Johnson - Utah  
Alan Reichman - Washington  
Chris Brown - Wyoming  
(Vice-Chair)

## **Non-Tribal Federal Water Needs Subcommittee**

Melissa Hornbein - Montana  
Ed Bagley - New Mexico  
Dwight French - Oregon  
Todd Chenoweth - Texas

Ex-Officio Representatives

BLM - Lee Koss  
USFS - Jean Thomas  
FWS - Andrew Hautzinger  
DOD - Marc Kodack

## **Tribal Reserved Water Rights Subcommittee**

William Staudenmaier - Arizona  
Cynthia Chandley - Arizona  
Jay Weiner - Montana  
Bidtah Becker - New Mexico  
Greg Ridgley - New Mexico  
Arianne Singer - New Mexico  
Norman Johnson - Utah

## **Water Transfers and the Public Interest**

Jerry Rigby - Idaho  
Pat Tyrrell - Wyoming

## **Natural Flows Subcommittee**

J.D. Strong - Oklahoma  
Jennifer Verleger - North Dakota  
Todd Chenoweth - Texas

## **WATER QUALITY COMMITTEE**

Alice Edwards - Alaska  
Trevor Baggione - Arizona  
Thomas Howard - California  
Betty Olson - California  
(Alternate)\*  
Trisha Oeth - Colorado  
Patrick Pfaltzgraff - Colorado  
(Alternate)\*  
John Tippetts - Idaho  
Tom Stiles - Kansas  
George Mathieus - Montana  
Tom Livers - Montana  
(Alternate)\*  
Jim Macy - Nebraska  
David Emme - Nevada  
Ryan Flynn - New Mexico  
David Glatt - North Dakota  
J.D. Strong - Oklahoma  
(Chair)  
Shellie Chard-McClary - Oklahoma  
(Alternate)\*  
Jennifer Wigal - Oregon  
Kent Woodmansey - South Dakota  
Steve Pirner - South Dakota  
(Alternate)\*  
Jon Niermann - Texas  
Todd Chenoweth - Texas  
(Alternate)\*  
Walter Baker - Utah  
Maia Bellon - Washington  
Pat Tyrrell - Wyoming  
Kevin Frederick - Wyoming  
(Vice-Chair) (Alternate)\*  
Todd Parfitt - Wyoming  
(Alternate)\*

## **Clean Water Act Subcommittee**

Michelle Hale - Alaska  
Ruth Hamilton Heese - Alaska  
Trisha Oeth - Colorado  
Barry Burnell - Idaho  
Tom Stiles - Kansas  
Jennifer Verleger - North Dakota  
J.D. Strong - Oklahoma  
Todd Chenoweth - Texas  
Walt Baker - Utah  
Lauren Driscoll - Washington

Ex-Officio Representatives

Corps - Wade Eakle  
EPA - Donna Downing

# **WATER RESOURCES COMMITTEE**

David Schade - Alaska  
Thomas Buschatzke - Arizona  
Mark Cowin - California  
Jeanine Jones - California  
(Alternate)\*  
James Eklund - Colorado  
John Stulp - Colorado  
(Alternate)\*  
Dick Wolfe - Colorado  
(Alternate)\*  
John Simpson - Idaho  
Jerry Rigby - Idaho  
(Alternate)\*  
David Barfield - Kansas  
John Tubbs - Montana  
Tim Davis - Montana  
(Chair) (Alternate)\*  
Jeff Fassett - Nebraska  
Jason King - Nevada  
Tom Blaine - New Mexico  
Todd Sando - North Dakota  
JD Strong - Oklahoma  
Thomas Byler - Oregon  
Kent Woodmansey - South Dakota  
Bech Bruun - Texas  
Eric Millis - Utah  
Tom Loranger - Washington  
Patrick Tyrrell - Wyoming  
Harry LaBonde - Wyoming  
(Alternate)\*  
Sue Lowry - Wyoming  
(Alternate)\*

## **Border Water Issues Subcommittee**

Jeanine Jones - California  
Herman Settemeyer - Texas  
Arizona  
Idaho  
Montana  
New Mexico  
North Dakota

## **Climate Adaptation and Drought Subcommittee**

Jeanine Jones - California (Chair)  
  
Ex-Officio Representatives  
  
Corps - Rolf Olsen  
NRCS - Mike Strobel

## **Water Information and Data Subcommittee**

Lane Letourneau - Kansas  
David Rodriguez - New Mexico  
Julie Cunningham - Oklahoma  
Barry Norris - Oregon  
Robert Mace - Texas  
Pat Tyrrell - Wyoming  
Sue Lowry - Wyoming

Ex-Officio Representatives

USBR - Becky Fulkerson  
Corps - Steve Ashby  
Boni Bigornia  
USGS - Pixie Hamilton and Eric Evenson  
NASA - Brad Doorn  
NOAA - DeWayne Cecil  
NRCS - Mike Strobel

## **Water Use Efficiency/Conservation Subcommittee**

Sue Lowry - Wyoming (Chair)  
John Longworth - New Mexico

Ex-Officio Representatives

NRCS - Mike Strobel

## **Water Resources and Energy Subcommittee**

William Staudenmaier - Arizona  
Jeanine Jones - California  
John Simpson - Idaho  
Todd Sando - North Dakota  
Robert Mace - Texas  
Sue Lowry - Wyoming

Ex-Officio Representatives

Corps - John Grothaus

## Committee Assignments

### EXECUTIVE COMMITTEE

Vacant - Alaska  
Thomas Buschatzke - Arizona  
Mark Cowin - California  
Jeanine Jones - California  
(Alternate)\*  
James Ekund - Colorado  
Hal Simpson - Colorado  
(Alternate)\*  
Jerry Rigby - Idaho  
**(Vice-Chair)**  
David Barfield - Kansas  
Tim Davis - Montana  
Jeff Fassett - Nebraska  
Roland Westergard - Nevada  
Leo Drozdoff - Nevada  
(Alternate)\*  
Tom Blaine - New Mexico  
Todd Sando - North Dakota  
J.D. Strong - Oklahoma  
Thomas Byler - Oregon  
Steve Pimer - South Dakota  
Kent Woodmansey - South Dakota  
Jonathan Niemann - Texas  
Walt Baker - Utah  
Maia Bellon - Washington  
Patrick T. Tyrrell - Wyoming  
**(Chair)**

### WATER QUALITY COMMITTEE

Alice Edwards - Alaska  
Trevor Baggione - Arizona  
Thomas Howard - California  
Betty Olson - California  
(Alternate)\*  
Trisha Oeth - Colorado  
Patrick Pfaltzgraff - Colorado  
(Alternate)\*  
John Tippetts - Idaho  
Tom Stiles - Kansas  
(Alternate)\*  
George Mathieus - Montana  
Tom Livers - Montana  
(Alternate)\*  
Jim Macy - Nebraska  
David Emme - Nevada  
Ryan Flynn - New Mexico  
David Glatt - North Dakota  
J.D. Strong - Oklahoma  
**(Chair)**  
Shellie Chard-McClary - Oklahoma  
(Alternate)\*  
Jennifer Wigal - Oregon  
Steve Pimer - South Dakota  
Jonathan Niemann - Texas  
Todd Chenoweth - Texas  
(Alternate)\*  
Walter Baker - Utah  
Maia Bellon - Washington  
Pat Tyrrell - Wyoming  
Kevin Frederick - Wyoming  
**(Vice-Chair)** (Alternate)\*  
Todd Parfitt - Wyoming  
(Alternate)\*

### WATER RESOURCES COMMITTEE

David Schade - Alaska  
Thomas Buschatzke - Arizona  
Mark Cowin - California  
Jeanine Jones - California  
(Alternate)\*  
James Ekund - Colorado  
John Stulp - Colorado  
(Alternate)\*  
Dick Wolfe - Colorado  
(Alternate)\*  
John Simpson - Idaho  
Jerry Rigby - Idaho  
(Alternate)\*  
David Barfield - Kansas  
John Tubbs - Montana  
Tim Davis - Montana  
**(Chair)** (Alternate)\*  
Jeff Fassett - Nebraska  
Jason King - Nevada  
Tom Blaine - New Mexico  
Todd Sando - North Dakota  
JD Strong - Oklahoma  
Thomas Byler - Oregon  
Kent Woodmansey - South Dakota  
Bech Bruun - Texas  
Eric Millis - Utah  
Tom Loranger - Washington  
Patrick Tyrrell - Wyoming  
Harry LaBonde - Wyoming  
(Alternate)\*  
Sue Lowry - Wyoming  
(Alternate)\*

### LEGAL COMMITTEE

David Schade - Alaska  
William Staudenmaier - Arizona  
Cynthia Chandley - Arizona  
(Alternate)\*  
Jeanine Jones - California  
James Ekund - Colorado  
Jerry Rigby - Idaho  
John Simpson - Idaho  
(Alternate)\*  
Burke Griggs - Kansas  
Jay Weiner - Montana  
(Alternate)\*  
Jim Macy - Nebraska  
Roland Westergard - Nevada  
Jason King - Nevada  
(Alternate)\*  
Maria O'Brien - New Mexico  
Greg Ridgley - New Mexico  
(Alternate)\*  
Jennifer Verleger - North Dakota  
**(Chair)**  
Rob Singletary - Oklahoma  
Thomas Byler - Oregon  
Kent Woodmansey - South Dakota  
John Elliott - Texas  
Norman Johnson - Utah  
Alan Reichman - Washington  
Chris Brown - Wyoming  
**(Vice-Chair)**



## WESTERN STATES FEDERAL AGENCY SUPPORT TEAM

(Updated 08/04/2015)

**D'Antonio, John (USACE)**

Deputy District Engineer  
Programs and Project Management  
U.S. Army Corps of Engineers  
Albuquerque District  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109  
(505) 342-3261  
[john.r.d'antonio@usace.army.mil](mailto:john.r.d'antonio@usace.army.mil)

**Dempsey, Lauren M. (DoD alternate)**

Western Region Water Specialist  
Air Force Western Regional Environmental  
Office: AFCEC/CZO (San Francisco)  
540 Airlift Drive, Suite C201  
Travis AFB, CA 94535  
(707) 424-8628  
[lauren.dempsey@us.af.mil](mailto:lauren.dempsey@us.af.mil)

**Doorn, Bradley (NASA)**

Program Manager, Water Resources Program  
Science Mission Directorate  
Earth Science Division  
National Aeronautics and Space Administration  
300 E Street, SW  
Washington, DC 20546  
(202) 358-2187  
[bradley.doorn@nasa.gov](mailto:bradley.doorn@nasa.gov)

**Ellsworth, Alan (NPS Alternate)**

Water Advisor  
National Parks Service  
(202) 513-7181  
[alan\\_ellsworth@nps.gov](mailto:alan_ellsworth@nps.gov)

**Fulkerson, Becky (BoR Alternate)**

Policy Analyst  
Bureau of Reclamation  
1849 C Street NW  
Washington, DC 20240-0001  
(202) 513-0638  
[rfulkerson@usbr.gov](mailto:rfulkerson@usbr.gov)

**Gorke, Roger (EPA, WestFAST Chair)**

Senior Policy Advisor, Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, MC 4101 M  
Washington, DC 20460-001  
(202) 564-0470  
[gorke.roger@epa.gov](mailto:gorke.roger@epa.gov)

**Hansen, Bill (NPS Alternate)**

Water Rights Branch Chief  
National Parks Service  
(970) 225-3532  
[bill\\_hansen@nps.gov](mailto:bill_hansen@nps.gov)

**Harvey, Ed (NPS)**

Chief, Water Resources Division  
National Parks Service  
(970) 225-3511  
[forrest\\_harvey@nps.gov](mailto:forrest_harvey@nps.gov)

**Hautzinger, Andrew (FWS)**

Chief, Division of Water Resources  
Fish and Wildlife Service  
500 Gold Ave SW Room 4002  
Albuquerque, NM 87102  
(505) 248-7946  
[andrew\\_hautzinger@fws.gov](mailto:andrew_hautzinger@fws.gov)

**Jones, Sonya (USGS)**

Water Availability and Use Science Program  
Coordinator  
U.S. Geological Survey  
1770 Corporate Drive, Ste. 500  
Norcross, GA 30093  
(678) 524-1544  
[sajones@usgs.gov](mailto:sajones@usgs.gov)

**Kodack, Marc (DoD)**

Office of the Assistant Secretary of the Army  
Energy and Sustainability  
U.S. Department of Defense  
110 Army Pentagon, RM 3D453  
Washington, DC 20310  
(571) 256-4197  
[marc.d.kodack.civ@mail.mil](mailto:marc.d.kodack.civ@mail.mil)

**Lambert, Patrick (USGS)**

WestFAST Liaison  
Western States Water Council  
5296 South Commerce Drive, Suite 202  
Murray, UT 84107  
(801) 685-2555  
[patlambert@wswc.utah.gov](mailto:patlambert@wswc.utah.gov)



## WESTERN STATES FEDERAL AGENCY SUPPORT TEAM

(Updated 08/04/2015)

**Melton, Forrest (NASA, alternate)**

Associate Program Manager for Water Resources,  
Applied Sciences Program  
National Aeronautics and Space Administration  
NASA Ames Research Center, MS 232-21  
Moffett Field, CA 94035-1000  
(650) 604-2787  
[Forrest.S.Melton@nasa.gov](mailto:Forrest.S.Melton@nasa.gov)

**McCormick, Ron (BLM)**

Water Resources Specialist for Soil, Water, and  
Air  
Bureau of Land Management  
20 M Street South East Washington D.C. 20003-  
3503  
(202) 912-7135  
[rmccormi@blm.gov](mailto:rmccormi@blm.gov)

**Pulwarty, Roger (NOAA)**

Physical Scientist and Director, NIDIS  
National Oceanic and Atmospheric Administration  
325 Broadway R/PSD  
Boulder, CO 80305  
(303) 497-4425  
[roger.pulwarty@noaa.gov](mailto:roger.pulwarty@noaa.gov)

**Strobel, Michael (NRCS)**

Director, National Water and Climate Center  
USDA-Natural Resources Conservation Service  
1201 NE Lloyd Boulevard, Suite 802  
Portland, OR 97232  
(503) 414-3055  
[michael.strobel@por.usda.gov](mailto:michael.strobel@por.usda.gov)

**Thomas, Jean (FS)**

National Water Rights Leader  
201 14th Street, SW  
Washington, DC 20024  
(202) 205-1172  
[jathomas02@fs.fed.us](mailto:jathomas02@fs.fed.us)

**Thompson, Dionne (Reclamation)**

Acting Deputy Commissioner  
External and Intergovernmental Affairs  
Bureau of Reclamation  
1849 C Street NW  
Washington, DC 20240-0001  
(202) 513-0616  
[dethompson@usbr.gov](mailto:dethompson@usbr.gov)

**Werner, Kevin (NOAA, WestFAST Vice Chair)**

Regional Climate Services Director  
NOAA Western Region  
2725 Montlake Boulevard E, Room 216E  
Seattle, WA 98112  
(206) 860-3490 (office)  
[kevin.werner@noaa.gov](mailto:kevin.werner@noaa.gov)

**Zamuda, Craig (DoE)**

Senior Policy Advisor  
Office of Climate Change Policy and Technology  
Office of Policy and International Affairs  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585  
(202) 586-9038  
[craig.zamuda@hq.doe.gov](mailto:craig.zamuda@hq.doe.gov)

## Tab C – WSWC Policy Positions

**RESOLUTION  
of the  
WESTERN STATES WATER COUNCIL  
urging the  
CONGRESS AND ADMINISTRATION  
TO PRIORITIZE FEDERAL PROGRAMS  
THAT TRANSLATE SCIENCE ON CLIMATE AND WEATHER EXTREMES  
TO WATER RESOURCES MANAGEMENT ACTIONS**

~~Denver, Colorado~~Washington, D.C.  
~~April 4, 2013~~March 22, 2016

**WHEREAS**, climate and weather extremes have serious potential consequences for water resources planning and management, water rights administration, operation of state and local water projects, and future water use; and

**WHEREAS**, there is growing concern, particularly in the Arid West, over our ability to continue to supply water of adequate quality in quantities needed to sustain current and future uses, including environmental uses, ~~as is demonstrated by the release of first (for the Colorado River Basin) of USBR's Basin Studies prepared pursuant to the Secure Water Act of 2009;~~ and

**WHEREAS**, the failure to provide for such needs would have significant regional and national consequences; and

**WHEREAS**, present water resources planning and sound future decision-making depends on our ability to understand, monitor, anticipate and adapt to droughts, floods, extreme storms, and other weather events; and

**WHEREAS**, climate and weather extremes, such as ~~the drought that gripped much of the West in the summer of 2012~~, cause ~~mb~~illions of dollars in damages and present substantial obstacles and uncertainties to present and future water resources planning and management; and

**WHEREAS**, most state, local and tribal water managers and water providers have a limited ability to undertake the necessary research to understand and develop adaptation strategies for extreme climate and weather events; and

**WHEREAS**, the federal agencies participating in climate and weather research programs have historically concentrated heavily on basic scientific research, research that needs to be translated into decision support applications for water resources management and ~~that~~ needs to be communicated to water managers through technology transfer ~~through~~ institutions such as ~~the National Oceanic and Atmospheric Administration's Regional Integrated Sciences and Assessments (RISA) program~~NOAA's RISAs; and

**WHEREAS**, important programs, such as ~~the National Oceanic and Atmospheric Administration's Regional Integrated Sciences and Assessments (RISA) program~~NOAA's RISAs support research that addresses complex science issues of concern to water managers and administrators at the regional level;

**NOW, THEREFORE, BE IT RESOLVED** that the Western States Water Council urge the Administration and the Congress to give a high priority to federal programs, such as ~~the~~NOAA's RISAs, that provide the translation function between basic scientific research on climate and weather extremes and the application of that research to real-world water management situations at the regional, ~~state~~, and local levels.

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**POSITION STATEMENT**  
**of the**  
**WESTERN STATES WATER COUNCIL**  
**in support of**  
**RURAL WATER INFRASTRUCTURE NEEDS & PROJECTS**  
**Washington, D.C.**  
March 22, 2016

**WHEREAS**, much of the West is characterized by its aridity and drought which highlights the fact that water availability is an ever present constraint defining our economic and environmental well-being and quality of life; and

**WHEREAS**, this is particularly true for many small rural communities struggling to meet future water supply needs and comply with present federal mandates; and

**WHEREAS**, the Bureau of Reclamation's rural water program, [USDA's Rural Utilities Service water and wastewater programs](#) and other continuing efforts seek to identify rural water needs and evaluate rural water supply projects and the demand for new projects; and

**WHEREAS**, there is an important role for the States in the conduct of appraisal investigations and feasibility studies, preparation of feasibility reports, and identifying funding sources; and

**WHEREAS**, with respect to funding sources, we continue to strongly support the expenditure of Reclamation Fund revenues for their intended purposes, including rural water projects, as authorized by the Congress; and

**WHEREAS**, existing federal and state rural water and wastewater programs must be coordinated to facilitate the most efficient and effective solution to meeting the water needs of non-Federal project sponsors; and

**WHEREAS**, upgrading and replacing inadequate rural water systems may require finding new water supplies, which will entail acquiring necessary state water rights; and

**WHEREAS**, continuing compliance with state water laws and interstate compacts is vital; and

**WHEREAS**, opportunities exist to leverage non-federal funding through federal loan guarantees and other financial instruments to ensure that water districts ~~which operate and maintain facilities that are part of federal projects~~ can access private sources of financing; and

**WHEREAS**, water districts and individual water users depend on federal and non-federal infrastructure for their livelihood and the risk of default is minimal.

**NOW THEREFORE BE IT RESOLVED** that the Western States Water Council supports federal and state legislative and administrative actions to authorize and implement rural water supply projects and programs that enhance water supplies and promote economic development, through streamlined permitting processes and appropriate financing instruments, while appropriately protecting environmental resources and taxpayers.

**BE IT FURTHER RESOLVED** that the Western States Water Council also supports the development and implementation of appropriate water conservation programs at all levels to minimize demands placed on our natural resources and ecosystems.

**BE IT FURTHER RESOLVED** that rural water project development should recognize and ensure consistency with state water law and regulatory authority.

**POSITION STATEMENT**  
**of the**  
**WESTERN STATES WATER COUNCIL**  
**in support of**  
**RENEWABLE HYDROPOWER DEVELOPMENT**  
~~Denver, Colorado~~ [Washington, D.C.](#)  
~~April 5, 2013~~ [March 22, 2016](#)

**WHEREAS**, the water and hydropower resources of the West have been developed through partnerships between energy and water users, and continue to be inextricably connected; [and](#)

**WHEREAS**, clean, efficient, inexpensive hydropower is a vital part of the energy resources needed to meet our present and future energy demands; and

**WHEREAS**, hydropower is the largest source of renewable electricity in the United States, producing some ~~100,000 megawatts~~ [259,367 million KWh](#) or about ~~76.3%~~<sup>1</sup> of the Nation's electricity needs; and

**WHEREAS**, the potential exists for further public and private development of ~~as much as 60,000 more megawatts of~~ this valuable resource, including upgrading existing generators, developing small hydro and the power potential from existing man-made conduits and canals, as well as hydroelectric pumped storage projects; and

**WHEREAS**, such development can often be undertaken with little impact on the environmental and important ecological resources, requiring minimal further environmental review; and

**WHEREAS**, permitting requirements may be appropriately minimized and streamlined so as to promote reasonable development while avoiding unnecessary costs; and

**WHEREAS**, the future development of potential hydropower resources should be appropriately undertaken in compliance with substantive and procedural state water law and interstate compacts, [and consistent with the States' authority under Clean Water Act Section 401](#); and

**WHEREAS**, the rights and preference privileges of existing water and power users should be respected; and

**WHEREAS**, federal legislation has [from time to time](#) been introduced to further authorize and promote the wise and sustainable development of our renewable hydropower resources, also creating jobs and reducing carbon emissions.

**NOW THEREFORE BE IT RESOLVED** that the Western States Water Council supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs that enhance our electric generation capacity and promote economic development, through streamlined permitting processes, while appropriately protecting environmental resources.

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<sup>1</sup> 2014, U.S. Energy Information Administration, [www.eia.gov](http://www.eia.gov).

**BE IT FURTHER RESOLVED** that the Western States Water Council also supports the development and implementation of appropriate energy and water conservation programs at all levels to minimize demands placed on our natural resources and ecosystems.

**BE IT FURTHER RESOLVED** that past, present and future hydropower development and operational changes should recognize and ensure consistency with state law and regulatory authority and delegated authority under federal law.

# WSWC Policy Statements

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*The WSWC policy statements are posted on its website at <http://www.westernstateswater.org/policies-2/>.*

*Policy positions will be deactivated three years after their adoption, unless extended by formal action of the Council. The following is a brief description of all current positions, listed by date of adoption and corresponding number.*

## 2015

- Regarding States' Water Rights and Natural Flows (October 9, 2015) - #388
- Regarding Bureau of Reclamation Drought Response Program (October 9, 2015) - #387
- Regarding Drought Preparedness, Prediction and Early Warning Programs (October 9, 2015) - #386
- Regarding Federal Water and Climate Data Collection and Analysis Programs (October 9, 2015) - #385
- A Vision on Water (October 9, 2015) - #384
- A Vision on Water (July 10, 2015) - #383
- Regarding Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits (July 10, 2015) - #382
- Regarding the Rural Water Supply Project/Infrastructure Needs (July 10, 2015) - #381
- on State Primacy over Groundwater (April 17, 2015) - #380
- Supporting Federal Climate Adaptation Research (April 17, 2015) - #379
- Regarding Integrating Water and Energy Policy and Planning (April 17, 2015) - #378

## 2014

- Asserting state primacy on Protecting Ground Water Quality (October 10, 2014) - #377
- Supporting Indian Water Rights Settlements (October 10, 2014) - #376
- Outlining actions Federal agencies should take to expedite State General Stream Adjudications (October 10, 2014) - #375
- Supports the *Dividing the Waters* Program (October 10, 2014) - #374
- Letter commenting on the proposed rule developed by the EPA and the USACE to clarify the scope of Clean Water Act jurisdiction (combined file) (October 10, 2014) - #373

- Letter sending comments on the USFS Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560 (October 3, 2014) - #372
- Regarding Water-Related Federal Rules, Regulations, Directives, Orders and Policies (August 11, 2014) - #371
- Regarding the Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices – (August 11, 2014) - #370
- Regarding Clean Water Act jurisdiction (July 18, 2014) - #369
- Supporting the Water Resources Research Institutes (requesting Congress to maintain the federal authorization and financial support for the state WRRI program) (July 18, 2014) - #368
- Regarding the Reclamation Fund (asks Congress to fully appropriate the receipts and collections accruing to the Reclamation Fund) (July 18, 2014) - #367
- Supporting Federal Research and Development of Updated Hydroclimate Guidance for Floods and Droughts (July 18, 2014) - #366
- Regarding Preemption of State Water Law in Federal Legislation (July 18, 2014) - #365
- Regarding the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund (Apr 3, 2014) - #364
- Regarding the National Levee Safety Act of 2007 and the Interpretation of Levees and Water Supply Canals (Apr 3, 2014) - #363
- Regarding the Transfer of Federal Water and Power Projects and Related Facilities (Apr 3, 2014) - #362
- Regarding the Reclamation Safety of Dams Act of 1978 (Apr 3, 2014) - #361
- Regarding the Bureau of Reclamation's Maintenance, Repair and Rehabilitation Needs (Apr 3, 2014) - #360

## 2013

- Regarding pesticide applications and National Pollutant Discharge Elimination System discharge permits (October 3, 2013) - #359
- Urging Congress to reaffirm its deference to state water law, provide for the waiver of the United States' immunity to participation in state administrative and judicial proceedings, and provide for payment of fees required by state law (October 3, 2013) - #358
- In the form of a letter to Senate Energy and Natural Resources Committee leaders expressing continued support for implementation of the SECURE Water Act (October 3, 2013) - #357
- Regarding NASA's applied science research program (October 3, 2013) - #356

- Urging the Administration and the Congress to support water research and development programs at the Department of Energy National Laboratories. (June 26, 2013) - #355
- In the form of a letter to House Water Resources and Environment Subcommittee leaders in opposition to H.R. 1460, which would remove “fish and wildlife” as an authorized purpose for which the Corps can manage the Missouri River Mainstem Reservoir System (June 26, 2013) - #354
- Notes that the WSWC “...opposes any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.” (June 24, 2013 - #353
- Supports federal efforts to prepare for and respond to extreme weather events, including an expanded and enhanced west-wide extreme precipitation monitoring system. (June 26, 2013) - #352
- Supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs (April 5, 2013) - #351
- Supporting implementation of the Rural Water Supply Act of 2006 (April 5, 2013) - #350
- Urging the Administration and the Congress to give a high priority to federal programs, such as the National Oceanic and Atmospheric Administration’s Regional Integrated Science and Assessments (RISA) program (April 5, 2013) - #349

## **Sunsetted Positions**

### **2015**

- #338 Energy and Water Integration Act of 2011. (*outdated*)
- #341 Letter regarding concerns with the Bureau of Reclamation's proposed changes to the Reclamation Manual. (*outdated*)

### **2013**

- #323 A Shared Vision on Water Planning and Policy. (*superceded by more recent position*)

### **2012**

- #313 Letter Regarding National Water Research and Development Initiative Act. (*There is no current legislation*)
- #315 Letter to House Transportation and Infrastructure Committee leaders raising concerns regarding a draft bill entitled the Sustainable Watershed Planning Act. (*outdated, not reintroduced*)
- #317 Supporting the Bureau of Reclamation's Field Services Program. (*outdated*)
- #318 Offering general comments to CEQ on the Principles and Guidelines. (*outdated*)
- #319 Describing principles that are important to the Western states in considering a "national vision" for water policy. (*superceded by more recent position*)

### **2011**

- #297 Strong support for legislation to establish a National Drought Council to improve national drought preparedness, mitigation, and response efforts. (*There is no current legislation*)
- #298 In cooperation with the Interstate Council on Water Policy expressing strong support for increased funding for the Cooperative Water Program and the National Streamflow Information Program. (*superceded by more recent position statements and letters*)
- #299 Supporting S. 2842, the Aging Water Infrastructure and Maintenance Act. (*enacted*)
- #300 Regarding introduction of the Cooperative Watershed Management Act of 2008 (S. 3085). (*enacted*)
- #301 Commenting on H.R. 135, the "21st Century Water Commission," specifically declaring that the WSWC be involved in the selection of members and that it include State and Native American involvement. (*Bill has not been reintroduced*)
- #302 Supporting the enactment of S. 895 to provide the Bureau of Reclamation with authority to assess rural water supply needs and for sufficient funding. (*enacted*)
- #303 Revised resolution in support of the Weather Modification Research and Technology Transfer Act. (*No federal research program or legislation has been reintroduced*)

- #306 Urging support for full funding of the USGS National Streamflow Information Program (NSIP) and sufficient funding for the Cooperative Water Program to match non-USGS contributions. *(outdated)*
- #307 Letter to Senator Bingaman, Senate Energy and Natural Resources Committee, expressing interest in S. 3231, the Omnibus Public Lands Management Act. *(outdated)*
- #311 Letter to Steve Stockton offering assistance to the Corps in their water planning initiative. *(outdated)*

## **2010**

- #287 Setting forth the Council's past perspectives on a proposed "Twenty-First Century Water Commission." *(outdated - see #301 above)*
- #289 Support of the proposed Water Conservation, Efficiency and Management Act, to specifically authorize the Bureau of Reclamation's water conservation programs. *(separately authorized)*
- #290 Concern over the Administration's decision to zero out funding for the U.S. Bureau of Reclamation's Technical Assistance to States (TATS) Program. *(outdated)*
- #291/#292 Regarding the proposed Agricultural Water Enhancement Program. *(enacted)*
- #295 Concern over budget request for federal funding for water and wastewater treatment, specifically EPA's State Revolving Fund (SRF) Capitalization Grants. *(combined with #296 and replaced with #330 – Apr 15, 2011)*
- #296 Concern with OMB directive to EPA disallowing the use of SRF revenues to repay bonds. *(combined with #295 and replaced with #330 – Apr 15, 2011)*

## **2009**

- #276 Urging the Congress and Administration to Continue to Recognize State Primacy Regarding Water Rights and Water Quality Certification in the Federal Licensing of Hydroelectric Projects. *(supplanted by WGA resolution)*
- #277 Letter commending the American Indian Environmental Office of EPA for its efforts in establishing the Tribal Water Program Council and expressing a hope that it would "offer an ongoing opportunity for state-tribal cooperation on issues of mutual interest." *(outdated)*
- #279 Support for legislation (S. 2751 and H.R. 5136) to create a National Integrated Drought Information System within the National Oceanic and Atmospheric Administration. *(authority enacted)*
- #280 Strong support for federal legislation, the National Drought Preparedness Act, to establish a national policy for drought and coordinate "proactive measures at all levels of government to plan, prepare and mitigate the serious impacts of drought." *(deferred to WGA resolution)*
- #281 Support for Reclamation's Water Conservation Field Services Program and "Bridging-the-Headgate" Partnerships. *(outdated)*

- #282 Regarding Federal Non-Tribal Fees in General Adjudications asking the Congress to pass legislation requiring the Federal government, when a party to a general water rights adjudication, to pay fees for costs imposed by the state to conduct the proceedings to the same extent as all other users. (*deferred to WGA resolution*)
- #283 Reiterating strong support for maintaining a thermal band as part of the Landsat Data Continuity Mission, and the necessary funding. (*separately updated*)

## **2008**

- #262 Support for the U.S. Geological Survey's Cooperative Water Program (CWP) and opposes any effort to force the privatization of related USGS services. (*separately updated*)
- #268 The Western States Water Council endorses policy resolutions adopted by the Western Governors' Association, and will allow these policies to guide the Council in matters relevant to implementation and potential reauthorization of the Clean Water Act. (*deferred to WGA resolution*)
- #269 Water Efficiency Standards for Plumbing Products (*subsequently enacted*)
- #270 Reauthorization of the Farm Bill. (*reauthorized*)
- #271 Support for the National Aeronautics and Space Administration's Landsat Data Continuity Mission and calling for continued funding to include a thermal infrared sensor. (*superceded by 2009 WSWC Position No. 283*)
- #273 Support for the Nonpoint Source Grant program administered by the U. S. Environmental Protection Agency under Section 319 of the Clean Water Act. (*outdated*)

Tab D – Budget

## W S W C Proposed FY17 Budget

|                                |          | Approved<br>Budget FY2016 (rev) | Actual<br>thru 12/31/15 | Estimated Inc/Exp<br>for Remaining FY | FY 2016 Estimated Total<br>Income / Expense |          | Proposed<br>Budget FY2017 | % Change from FY2015<br>Estimated Expenditures |
|--------------------------------|----------|---------------------------------|-------------------------|---------------------------------------|---|----------|---------------------------|--|
| <b>INCOME</b>                  |          |                                 |                         |                                       |   |          |                           | <b>Over / -Under</b>                           |
| Member States Assessments      | <b>1</b> | \$ 510,000.00                   | \$ 480,000.00           | \$ 30,000.00                          | \$ 510,000.00                               | <b>1</b> | \$ 510,000.00             | 0.00%  |
| Newsletter                     |          | \$ 3,500.00                     | \$ 2,100.00             | \$ 900.00                             | \$ 3,000.00                                 |          | \$ 3,700.00               | 23.33%   |
| WSWC EN Contracts              |          | \$ 105,300.00                   | \$ 40,621.06            | \$ 66,400.00                          | \$ 107,021.06                               |          | \$ 118,000.00             | 10.26%   |
| CDWR (\$164,120)               | <b>5</b> | \$ 29,000.00                    | \$ 16,112.00            | \$ 16,000.00                          | \$ 32,112.00                                |          | \$ 34,000.00              | 5.88%  |
| Other Contracts                |          | \$                              | \$                      | \$                                    | \$  |          | \$                        |  |
| Council Meeting Sponsors       |          | \$ 7,000.00                     | \$ 4,470.19             | \$ 2,500.00                           | \$ 6,970.19                                 |          | \$ 7,000.00               | 0.43%  |
| Symposium (WSWC / NARF)        |          | \$ 10,000.00                    | \$ 32,628.00            | \$ -                                  | \$ 32,628.00                                | <b>2</b> | \$ -                      | 100.00%  |
| Symposium Sponsors             |          | \$ 4,000.00                     | \$ 5,000.00             | \$ -                                  | \$ 5,000.00                                 |          | \$ 2,000.00               | -60.00%  |
| Savings Interest               |          | \$ 3,200.00                     | \$ 2,618.76             | \$ 900.00                             | \$ 3,518.76                                 |          | \$ 3,700.00               | 5.15%  |
| Other                          |          | \$ -                            | \$ -                    | \$ -                                  | \$ -  |          | \$ -                      |  |
| <b>TOTAL INCOME</b>            |          | \$ 672,000.00                   | \$ 583,550.01           | \$ 116,700.00                         | \$ 700,250.01                               |          | \$ 678,400.00             | <b>-3.12%</b>                                  |
| <b>EXPENSE</b>                 |          |                                 |                         |                                       |   |          |                           |  |
| Accounting                     |          | \$ 8,700.00                     | \$ 4,350.00             | \$ 4,350.00                           | \$ 8,700.00                                 |          | \$ 8,800.00               | 1.15%  |
| Annual & Sick Leave Funding    |          | \$ -                            | \$ -                    | \$ -                                  | \$ -  |          | \$ -                      |  |
| Audit                          | <b>3</b> | \$ 8,500.00                     | \$ -                    | \$ 8,500.00                           | \$ 8,500.00                                 | <b>3</b> | \$ -                      | 100.00%  |
| Contingencies                  |          | \$ 6,200.00                     | \$ 1,963.68             | \$ 2,000.00                           | \$ 3,963.68                                 |          | \$ 4,000.00               | 0.92%  |
| Contract Services              |          | \$ 12,000.00                    | \$ 4,995.00             | \$ 3,005.00                           | \$ 8,000.00                                 |          | \$ 16,000.00              | 200.00%  |
| Equipment Replacement Fund     |          | \$ 3,000.00                     | \$ 1,500.00             | \$ 1,500.00                           | \$ 3,000.00                                 |          | \$ -                      | -100.00%                                       |
| Furniture-Equipment            |          | \$ 700.00                       | \$ 621.23               | \$ 250.00                             | \$ 871.23                                   |          | \$ 700.00                 | -19.65%  |
| Insurance                      |          | \$ 800.00                       | \$ 756.00               | \$ -                                  | \$ 756.00                                   |          | \$ 800.00                 | 5.82%  |
| Maintenance Contracts          |          | \$ 5,500.00                     | \$ 4,384.92             | \$ 800.00                             | \$ 5,184.92                                 |          | \$ 4,500.00               | -13.21%  |
| Meeting Expenses               |          | \$ 25,900.00                    | \$ 13,662.52            | \$ 12,000.00                          | \$ 25,662.52                                |          | \$ 25,000.00              | -2.58%   |
| Office Supplies                |          | \$ 2,500.00                     | \$ 938.66               | \$ 1,775.00                           | \$ 2,713.66                                 |          | \$ 3,258.00               | 20.06%   |
| Payroll Benefits               |          | \$ 147,750.00                   | \$ 62,029.75            | \$ 85,720.25                          | \$ 147,750.00                               |          | \$ 169,567.00             | 14.77%   |
| Healthcare                     |          |                                 |                         |                                       |   |          |                           |  |
| Pension                        |          |                                 |                         |                                       |   |          |                           |  |
| Payroll Salaries               |          | \$ 310,500.00                   | \$ 151,187.37           | \$ 159,312.63                         | \$ 310,500.00                               |          | \$ 316,700.00             | 2.00%  |
| Payroll Taxes                  |          | \$ 26,200.00                    | \$ 12,576.26            | \$ 13,623.74                          | \$ 26,200.00                                |          | \$ 26,855.00              | 2.50%  |
| Pension Management             |          | \$ 5,500.00                     | \$ 410.05               | \$ 2,800.00                           | \$ 3,210.05                                 |          | \$ 3,200.00               | -0.31%   |
| Postage & Freight              |          | \$ 3,200.00                     | \$ 3,082.53             | \$ 1,000.00                           | \$ 4,082.53                                 |          | \$ 3,000.00               | -26.52%  |
| Printing & Reproduction        |          | \$ 5,200.00                     | \$ 1,182.03             | \$ 3,600.00                           | \$ 4,782.03                                 |          | \$ 5,000.00               | 4.56%  |
| Rent Expense                   |          | \$ 36,700.00                    | \$ 18,356.06            | \$ 18,356.06                          | \$ 36,712.12                                |          | \$ 37,820.00              | 3.02%  |
| Reports & Publications         |          | \$ 2,625.00                     | \$ 555.44               | \$ 2,100.00                           | \$ 2,655.44                                 |          | \$ 2,700.00               | 1.68%  |
| Symposium (CDWR) \$135,120     | <b>2</b> | \$ 13,000.00                    | \$ 9,151.02             | \$ -                                  | \$ 9,151.02                                 | <b>2</b> | \$ -                      | -100.00%                                       |
| Symposium                      | <b>2</b> | \$ -                            | \$ -                    | \$ -                                  | \$ -  |          | \$ -                      | 100.00%  |
| Symposium (WSWC / NARF)        |          | \$ 10,000.00                    | \$ 26,063.52            | \$ -                                  | \$ 26,063.52                                | <b>2</b> | \$ -                      | -100.00%                                       |
| Telephone                      |          | \$ 2,900.00                     | \$ 1,322.51             | \$ 1,905.00                           | \$ 3,227.51                                 |          | \$ 3,500.00               | 8.44%  |
| Travel                         |          | \$ 45,000.00                    | \$ 28,274.52            | \$ 23,200.00                          | \$ 51,474.52                                |          | \$ 47,000.00              | -8.69%   |
| Other                          |          | \$ -                            | \$ -                    | \$ -                                  | \$ -  |          | \$ -                      |  |
| <b>TOTALS EXPENSES (5.72%)</b> |          | \$ 682,375.00                   | \$ 347,363.07           | \$ 345,797.68                         | \$ 693,160.75                               |          | \$ 678,400.00             | <b>-2.13%</b>                                  |
| <b>NET RESERVE GAIN(LOSS)</b>  |          | \$ (10,375.00)                  |                         |                                       | \$ 7,089.26                                 |          | \$ -                      |  |
| <b>TOTAL ESTIMATED RESERVE</b> |          | \$                              | \$                      | \$                                    | \$ 589,646.38                               |          | \$ 589,646.38             |  |

1 Full dues from 17 states

2 Memo entries only – projected income equals projected expense

3 Management subcommittee approved change to biannual audit

4 Current year decision to break out

5 CDWR net income estimate

## W S W C Proposed FY17 Budget

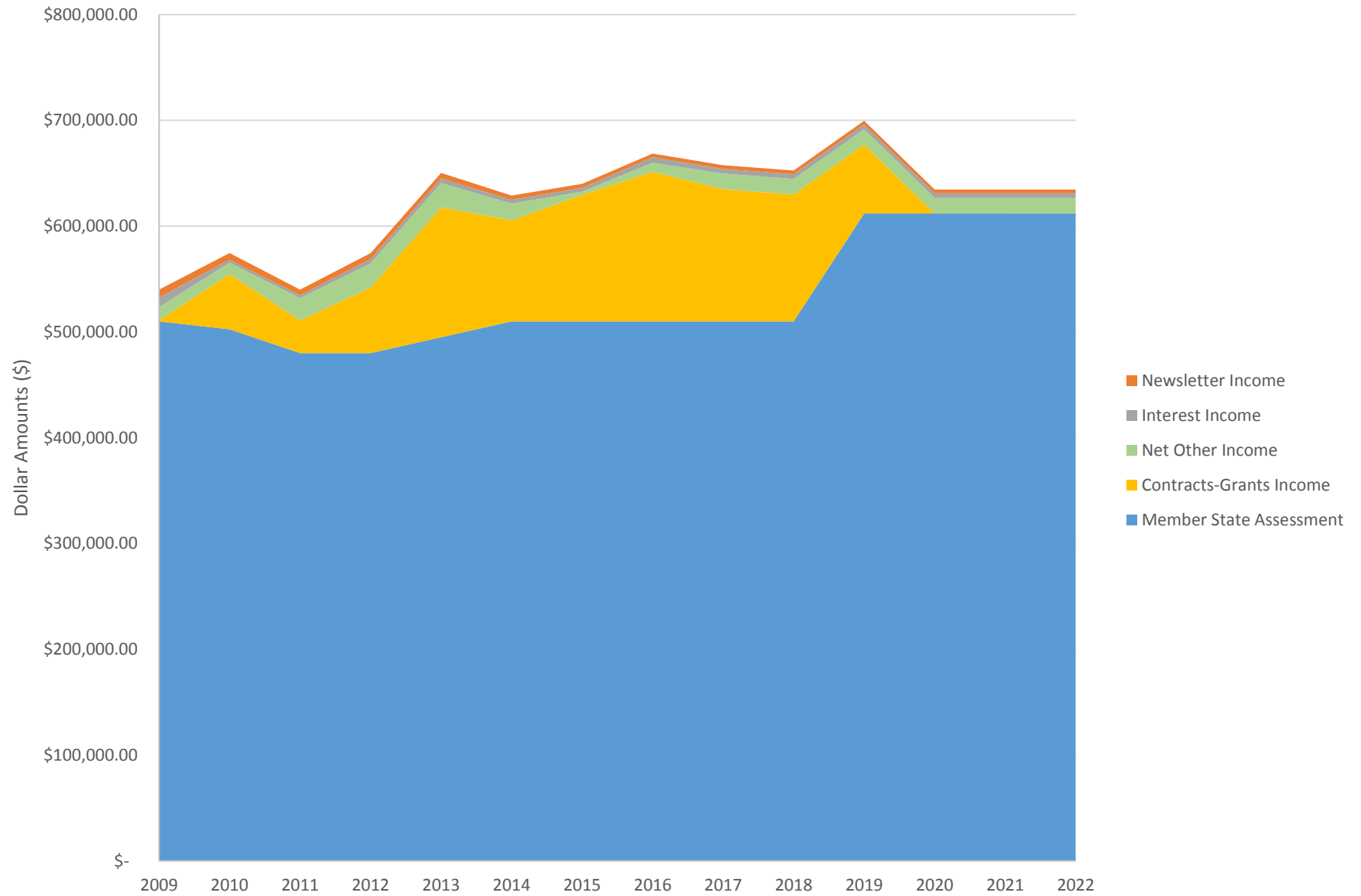
|                                       |          | FY 2016 Estimated Total<br>Income / Expense |          | FY2017 Proposed<br>Budget | Alternative A        | Alternative B        |
|---------------------------------------|----------|---|----------|---------------------------|----------------------|----------------------|
| <b><u>INCOME</u></b>                  |          |   |          |                           |                      |                      |
| Member States Assessments             | <b>1</b> | \$ 510,000.00                               | <b>1</b> | \$ 510,000.00             | \$ 480,000.00        | \$ 450,000.00        |
| Newsletter                            |          | \$ 3,000.00                                 |          | \$ 3,700.00               | \$ 3,700.00          | \$ 4,000.00          |
| WSWC EN Contracts                     |          | \$ 107,021.06                               |          | \$ 118,000.00             | \$ 125,000.00        | \$ 145,000.00        |
| CDWR (\$164,120)                      | <b>5</b> | \$ 32,112.00                                |          | \$ 34,000.00              | \$ 34,000.00         | \$ 45,000.00         |
| Other Contracts                       |          | \$ -  |          | \$ -                      | \$ -                 | \$ -                 |
| Council Meeting Sponsors              |          | \$ 6,970.19                                 |          | \$ 7,000.00               | \$ 7,000.00          | \$ 7,000.00          |
| Symposium (WSWC / NARF)               |          | \$ 32,828.00                                | <b>2</b> | \$ -                      | \$ -                 | \$ -                 |
| Symposium Sponsors                    |          | \$ 5,000.00                                 |          | \$ 2,000.00               | \$ 2,000.00          | \$ 2,000.00          |
| Savings Interest                      |          | \$ 3,518.76                                 |          | \$ 3,700.00               | \$ 3,700.00          | \$ 3,700.00          |
| Other                                 |          | \$ -  |          | \$ -                      | \$ -                 | \$ -                 |
| <b>TOTAL INCOME</b>                   |          | <b>\$ 700,450.01</b>                        |          | <b>\$ 678,400.00</b>      | <b>\$ 655,400.00</b> | <b>\$ 656,700.00</b> |
| <b><u>EXPENSE</u></b>                 |          |   |          |                           |                      |                      |
| Accounting                            |          | \$ 8,700.00                                 |          | \$ 8,800.00               | \$ 8,700.00          | \$ 8,700.00          |
| Annual & Sick Leave Funding           |          | \$ -  |          | \$ -                      | \$ -                 | \$ -                 |
| Audit                                 | <b>3</b> | \$ 8,500.00                                 | <b>3</b> | \$ -                      | \$ -                 | \$ -                 |
| Contingencies                         |          | \$ 3,963.68                                 |          | \$ 4,000.00               | \$ 3,600.00          | \$ 3,600.00          |
| Contract Services                     |          | \$ 8,000.00                                 |          | \$ 16,000.00              | \$ 14,400.00         | \$ 14,400.00         |
| Equipment Replacement Fund            |          | \$ 3,000.00                                 |          | \$ -                      | \$ -                 | \$ -                 |
| Furniture-Equipment                   |          | \$ 871.23                                   |          | \$ 700.00                 | \$ 700.00            | \$ 700.00            |
| Insurance                             |          | \$ 756.00                                   |          | \$ 800.00                 | \$ 800.00            | \$ 800.00            |
| Maintenance Contracts                 |          | \$ 5,184.92                                 |          | \$ 4,500.00               | \$ 4,500.00          | \$ 4,500.00          |
| Meeting Expenses                      |          | \$ 25,662.52                                |          | \$ 25,000.00              | \$ 22,500.00         | \$ 22,500.00         |
| Office Supplies                       |          | \$ 2,713.66                                 |          | \$ 3,258.00               | \$ 3,000.00          | \$ 3,000.00          |
| Payroll Benefits (not included below) |          | \$ 29,748.00                                |          | \$ 30,340.00              | \$ 30,340.00         | \$ 30,340.00         |
| Healthcare                            |          | \$ 77,272.00                                |          | \$ 85,123.00              | \$ 78,817.00         | \$ 78,817.00         |
| Pension                               |          | \$ 40,730.00                                |          | \$ 54,104.00              | \$ 52,428.00         | \$ 52,428.00         |
| Payroll Salaries                      |          | \$ 310,500.00                               |          | \$ 316,700.00             | \$ 316,700.00        | \$ 316,700.00        |
| Payroll Taxes                         |          | \$ 26,200.00                                |          | \$ 26,855.00              | \$ 26,855.00         | \$ 26,855.00         |
| Pension Management                    |          | \$ 3,210.05                                 |          | \$ 3,200.00               | \$ 3,200.00          | \$ 3,200.00          |
| Postage & Freight                     |          | \$ 4,082.53                                 |          | \$ 3,000.00               | \$ 3,000.00          | \$ 3,000.00          |
| Printing & Reproduction               |          | \$ 4,782.03                                 |          | \$ 5,000.00               | \$ 4,800.00          | \$ 4,800.00          |
| Rent Expense                          |          | \$ 36,712.12                                |          | \$ 37,820.00              | \$ 34,560.00         | \$ 34,560.00         |
| Reports & Publications                |          | \$ 2,655.44                                 |          | \$ 2,700.00               | \$ 2,400.00          | \$ 2,400.00          |
| Symposium (CDWR) \$135,120            | <b>2</b> | \$ 9,151.02                                 | <b>2</b> | \$ -                      | \$ -                 | \$ -                 |
| Symposium                             | <b>2</b> | \$ -  |          | \$ -                      | \$ -                 | \$ -                 |
| Symposium (WSWC / NARF)               |          | \$ 26,063.52                                | <b>2</b> | \$ -                      | \$ -                 | \$ -                 |
| Telephone                             |          | \$ 3,227.51                                 |          | \$ 3,500.00               | \$ 3,300.00          | \$ 3,300.00          |
| Travel                                |          | \$ 51,474.52                                |          | \$ 47,000.00              | \$ 40,800.00         | \$ 42,100.00         |
| Other                                 |          | \$ -  |          | \$ -                      |                      |                      |
| <b>TOTALS EXPENSES (5.72%)</b>        |          | <b>\$ 693,160.75</b>                        |          | <b>\$ 678,400.00</b>      | <b>\$ 655,400.00</b> | <b>\$ 656,700.00</b> |
| <b>NET RESERVE GAIN(LOSS)</b>         |          | <b>\$ 7,289.26</b>                          |          | <b>\$ -</b>               | <b>\$ -</b>          | <b>\$ -</b>          |
| <b>TOTAL ESTIMATED RESERVE</b>        |          | <b>\$ 589,646.38</b>                        |          | <b>\$ 589,646.38</b>      | <b>\$ 589,646.38</b> | <b>\$ 589,646.38</b> |

**1 Full dues from 17 states**

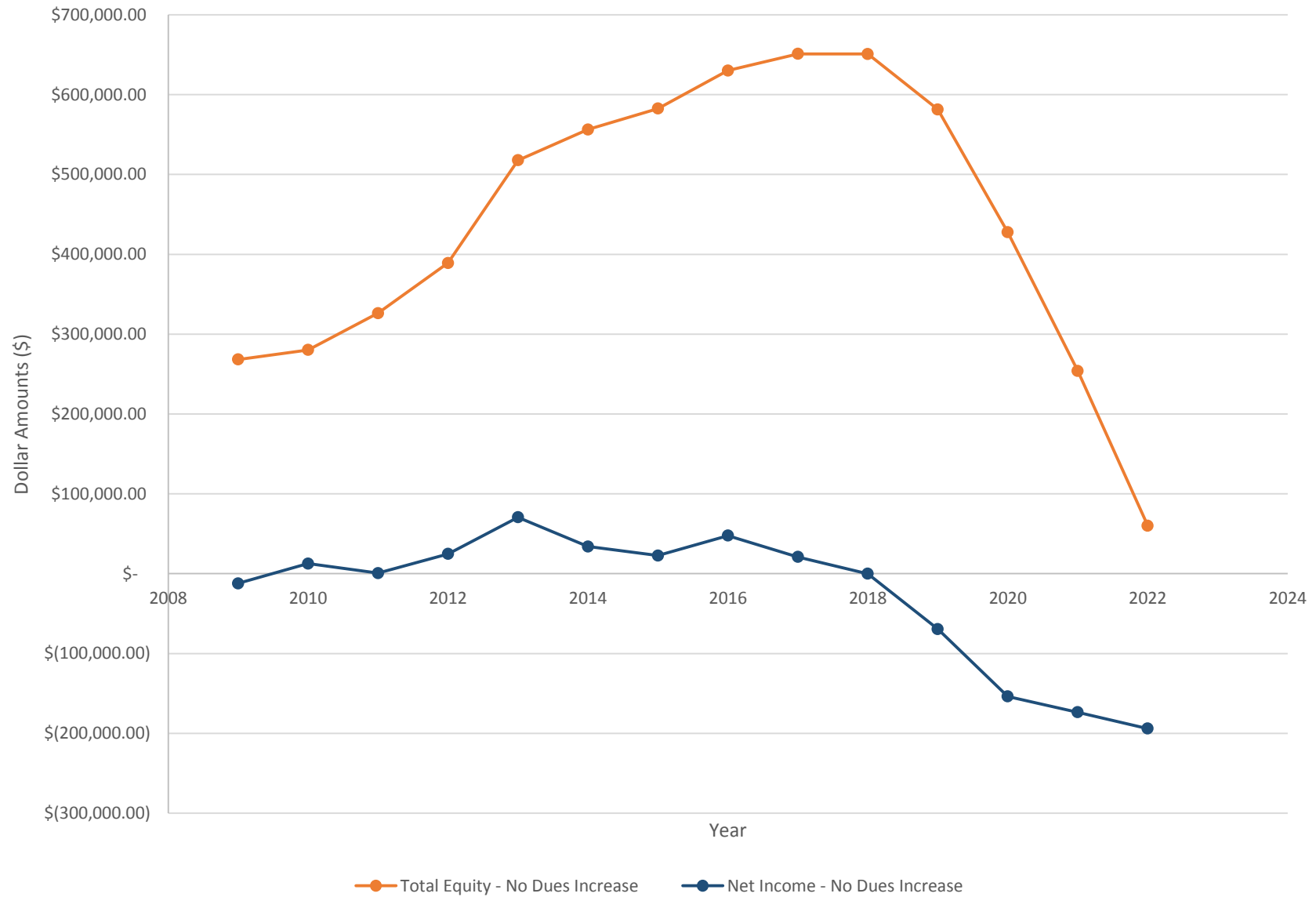
**2 Memo entries only -- projected income equals projected expense**

**3 Management subcommittee approved change to biannual audit**

## Income Sources



Net Income/Equity



## Tab E – Draft FY2016-2017 Water Resources Committee Work Plan

**WATER RESOURCES COMMITTEE  
WORK PLAN  
2016/2017**

**1. WATER DATA EXCHANGE (WaDE)**

**Work to date:** This is a collaborative effort between the Western States Water Council (WSWC) and the Western States Federal Agency Support Team (WestFAST), continuing to build on efforts undertaken previously with the support of the Western Governors' Association (WGA), and the Department of Energy Labs, and now with EPA Exchange Network support. The Committee leads this collaboration. These data are important for a number of applications. Some examples include, but are certainly not limited to: (a) state and regional water planning; (b) local watershed and urban planning and development; (c) siting of electric power generation and other energy production facilities; and (d) enabling a better understanding of the links between energy, water quantity and water quality. WaDE is consistent with and will seek to integrate other national efforts, including National Water Availability and Use Assessment (the Water Census), which is led by the U.S. Geological Survey (USGS), as well as federal open water data initiatives. WaDE will support these efforts by laying the groundwork for exchanging the core state data that may be used to support these studies.

A common 'schema' or format that can be used for sharing water availability and data has been completed. A common portal has been created, with a link on the WSWC website, and a beta version is being tested with data from California, Colorado, Idaho, Kansas, Utah and Wyoming. Sixteen states have been interviewed regarding their existing data systems. Oklahoma and Oregon will soon provide data, and work in Nebraska, Nevada, South Dakota, Texas and Washington is in progress. Moreover, a mapping tool has been created to allow states to review data. Alaska, Arizona, New Mexico, North Dakota and Washington are evaluating the resources required for them to participate.

The Committee, through a Subcommittee and various work groups, will continue to gather information on state water availability and use data and summarize existing state capabilities. Work to help states to develop, disseminate, visualize and review data on water availability will continue. The WSWC is seeking other resources to assist states.

**2016/17:** WSWC staff will continue working to help individual members states build their capacity to connect to WaDE. This will entail some site visits, as well as regular communication among members and state information technology staff to gather, input and manage data, testing the schema and refining products for presenting consumptive use and water availability information for decisionmaking.

**Subcommittee:**

**Timeframe:** Ongoing

## **2. IRRIGATION INFORMATION MANAGEMENT SYSTEMS**

**Work to date:** The Western States Water Council (WSWC) and California Department of Water Resources (CDWR) entered into an agreement to assist in implementing Governor Jerry Brown's emergency drought proclamation regarding improving agricultural water use efficiency and water conservation, through scoping expansion of the California Irrigation Management Information System (CIMIS) into interstate watersheds, beginning with the Colorado River System, but also the Klamath River, as well as the Truckee Carson and Walker Rivers (California-Nevada group).

With regard to seasonal forecasting, two workshops were held in 2015. Two additional workshops will be held in 2016. One in College Park, Maryland at NOAA headquarters on April 29, and the final in early June in San Diego, California. The Council is coordinating the meetings and will provide a report and outreach publication to CDWR to include recommendations to NOAA on improvements regarding sub-seasonal to seasonal precipitation forecasting.

A number of preliminary scoping and planning calls have been held to perform an initial assessment of potential partner networks. An initial workshop will be held in Southern California's Colorado River service area. Based on the outcome of the initial workshop, follow-up workshops will be scheduled in 2016.

WSWC staff will participate in the planning and preparations.

**2016/17:** Seasonal Precipitation Forecasting Workshops: April 29, 2016 and June 2016.  
CIMIS Workshops: Initial workshop – March 2016

**Subcommittee:**

## **3. NATIONAL WATER AVAILABILITY AND USE ASSESSMENT**

**Work to date:** In 2010, the Council staff began working as part of a USGS Ad Hoc Group on a National Water Assessment to develop a strategic plan to improve the acquisition, storage and dissemination of data on existing surface and ground water supplies and uses, both consumptive and non-consumptive, identifying trends and common themes, as well as present and future events and factors that may affect future water supplies, including changing demographics, environmental policies, energy demands, and climate, etc. WaDE will better enable the western states to share water use, water allocation, and water planning data with one another and with the federal government. It will also seek to improve the sharing of Federal data that supports state water planning efforts.

**2016/17:** The Council will continue working with member states, USGS and various federal agencies to gather and disseminate water resources data using WaDE and other resources. The Council will also partner with USGS on facilitating funding to states for water data.

**Subcommittee:**

**Timeframe:** Ongoing

#### **4. M3 INITIATIVE: MEASURING, MONITORING AND MANAGEMENT**

The Council has a long history of working to improve the measurement, monitoring and management of western water resources and related data (see Position #345, October 12, 2012, and Position #357, October 3, 2013). Data collection, management, distribution and visualization are critical for sound decisionmaking, but related programs are often underappreciated and underfunded.

**2016/17:** The Council, in an attempt to better communicate the critical need for water data will revise and renew its message to better bring attention to water data needs and develop strategies to meet those needs. Consistent reliable future funding will be one major focus for the initiative. There are a number of items under this functional area, divided as outlined below. Part of this effort will be to highlight critical measuring and monitoring “tools,” for any water management “toolbox,” and communicating their value for enhancing our ability to wisely manage water resources.

**Subcommittee:** Jeanine Jones (CA); James Eklund (CO); David Barfield (KS); Tim Davis (MT); J.D. Strong (OK); Tom Byler (OR); Dr. Robert Mace (TX); and Eric Millis (UT). Dr. Mace also represents the WSWC on the federal Advisory Committee on Water Information (ACWI).

**Time Frame:** ongoing

##### **A. USGS COOPERATIVE STREAMGAGING**

**Work to Date:** The Council has consistently supported the fully-federally funded USGS National Streamflow Information Program (NSIP) and Cooperative Water Program (CWP), federal/state streamgaging program partnerships. The Council continues to urge the Congress to appropriate sufficient money to restore a 50-50% CWP funding match. As federal program costs have increased, western states have urged USGS to focus on basic data collection, as opposed to analysis and modeling studies.

**2016/17:** The Council, through the Committee, will continue working with the Interstate Council on Water Policy and other interested organizations to represent states’ interests in maintaining a viable and useful streamgaging network, focused on gathering basic water data and information. The Council will continue to pursue opportunities to support funding for USGS cooperative streamgaging and other important programs.

**Timeframe:** Ongoing

##### **B. NRCS SNOW SURVEY AND WATER SUPPLY PROGRAMS**

**Work to Date:** The Council has consistently supported the snow survey program, and urged the Congress to appropriate sufficient money to maintain and modernize the current system. Recent cuts have led to serious declines in program capabilities, with abandoned snow courses and threatening maintenance of SNOTEL sites. Further, sustained reductions in resources threaten the continued viability of the program as it now exists, which could lead to the loss of critical long-term data essential for western water and emergency management.

**2016/17:** The Committee and Council will continue to pursue opportunities to support funding for the NRCS snow survey program and the related soil and climate analysis network (SCAN), as well as upgrading and modernizing the current snow survey and water supply forecasting system. The Council will also work with USDA, NRCS and the states to explore options for maintaining a sustainable system, including any state interest in funding specific SNOTEL sites, with a goal of helping NRCS ensure adequate funding is available for operation and maintenance.

**Timeframe:** Ongoing

### **C. LANDSAT 9 and NATIONAL LAND IMAGING PROGRAM**

**Work to Date:** More and more states are using remote sensing, particularly Landsat thermal infrared (TIR) band data, for water rights administration and to better monitor and manage water use, especially agricultural water use. In 2010, following several years of work, the President's budget request to Congress included funding for the thermal infrared sensor (TIRS) as part of the Landsat Data Continuity Mission (LDCM), largely in response to the Council's efforts. On February 11, 2013 LDCM was launched from Vandenberg Air Force Base in California, and has begun sending its first earth images. The Council has been credited with ensuring LDCM/Landsat 8 included TIRS, enabling states to continue to advance the application of the science to western water management and uses. In August 2014, the California Department of Water Resources and WSWC also sponsored a workshop on water-related uses of remote sensing capabilities at the NASA/JPL facilities in Pasadena.

**2016/17:** The Committee will continue to work towards the timely and orderly development of future Landsat missions to ensure the continued availability of TIRS data. The Committee will also work with member states, local and federal agencies to promote the increased use of remote sensing data.

**Timeframe:** Ongoing

### **D. DROUGHT, NIDIS and EXTREME WEATHER EVENTS**

**Work to Date:** Drought is a recurring natural phenomenon, the effects of which can be minimized through appropriate planning and preparedness activities. California is experiencing an extreme continuing drought and other states are suffering as well.

Nevada Governor Brian Sandoval, former WGA Chair, led state efforts to identify best management practices, holding several forums and webinars, with support as appropriate from WSWC members. WSWC and WGA staff have also collaborated on related efforts,

including a survey of western state drought planning and response, and a December 2014 workshop on drought related authorities of various federal agencies.

The Council has expressed its support for federal applied research and hydroclimate data collection programs to assist water agencies at all levels of government in adapting to weather extremes and climate variability and change (Position #379, April 17, 2015). The Council also supports development of an improved western observing system for extreme precipitation events and research to better understand hydroclimate processes (Position #366, July 18, 2014). Since 2006, the Council has held a number of workshops related to climate adaptation and extreme events, including future drought and floods.

In May 2014, the Council collaborated with the National Oceanic and Atmospheric Administration (NOAA) to prepare and present a congressional briefing on the importance of atmospheric research and monitoring programs. In June 2014, the Council held a Hydroclimate Monitoring & Data Workshop in cooperation with California Department of Water Resources (CDWR) in San Diego, followed by a series of workshops in 2015 on seasonal precipitation forecasting.

**2016/17:** The Committee will continue working to improve preparedness and response to drought, floods and other extreme events in cooperation with member states, the WGA and WestFAST. The Council will also continue to support and advise WGA and NOAA with respect to the National Integrated Drought Information System (NIDIS), and other weather/climate monitoring and adaptation efforts (including RISAs work). The Council will also continue to assist California's DWR in an ongoing series of workshops. The Council will work to evaluate proposed drought legislation and drought related authorities of federal agencies.

**Time Frame:** Ongoing

## **E.: GROUNDWATER MONITORING**

**Work to date:** The Council supports USGS ground water measurement and monitoring, as expressed in Position #345 (October 12, 2012) regarding federal water and climate data collection and analysis programs. Moreover, groundwater measurement and monitoring are important components of a number of western state water management programs. Further, the Council continues to track federal groundwater efforts related to both quantity and quality (in cooperation with the Water Quality Committee), including U.S. Forest Service directives and Environmental Protection Agency rules.

**2016/17:** The Council will consider development of appropriate groundwater data and information, as well as working collaboratively with other state and federal interests and non-governmental organizations. The Council will also promote the use of existing state information on groundwater resources.

**Subcommittee:** Dr. Robert Mace (TX)

**Timeframe:** Ongoing

## **F.: SOIL MOISTURE?**

### **5. WESTERN WATER INFRASTRUCTURE PROJECTS AND PROGRAM FUNDING**

**Work to date:** Many western states face overwhelming infrastructure financing needs, as well as declining budgets for ongoing services. The Council's origins are associated with challenges to augment and better manage the West's water supply. Augmenting the West's water supply continues to be a priority. The Council has in the past prepared reports on state water resources programs and project cost sharing and financing and analyzed state water use fees. In November 2010, the Council convened a symposium and summarized the proceeding in "Western Water Resources Infrastructure Strategies: Identifying, Prioritizing and Financing Needs." The latest in the series of symposia was held in November 2012 in Phoenix, Arizona. The Council also began compiling an updated summary of western state infrastructure financing authorities, funding sources, policies and programs.

The Council has also supported expenditures from the Reclamation Fund for authorized project purposes, including specifically authorized rural water supply projects and authorized projects as part of negotiated Indian water rights settlements.

**2016/17:** The Council will continue to call on the Congress to ensure that revenues raised from the development of western resources, specifically revenues accruing to the Reclamation Fund, are appropriated and expended as intended for the development and management of western water resources (consistent with Position #367, July 18, 2014). The Council will otherwise support efforts to secure adequate federal funding to meet growing western water demands, and work to develop a strategy to communicate important infrastructure needs. The Council will focus on developing public-private partnerships to support this effort.

**Time Frame:** Ongoing

### **6. ENERGY & WATER RESOURCES – INTEGRATED MANAGEMENT**

**Work to date:** The increase in demands for water to meet energy needs is raising interest in the interrelationship between water and power resources, including transportation fuels, and opportunities to better understand the energy-water nexus and maximize efficiencies. The Council has addressed various aspects of energy issues as they relate to water resources as part of its regular meetings, including the demand for water resources created by new energy development. Hydraulic fracturing is a current issue and long standing practice with which the states have considerable experience. (See Water Quality Committee workplan.) The use of water produced by energy development has also been discussed.

Since 2009, the Council has worked with the WGA to look at present and future water needs related to renewable and traditional energy production, and related impacts on water supplies. The Council has also urged the Administration and Congress to support Department of Energy hosted energy-water programs conducted at national laboratories (Position #355, June 26, 2013).

In 2012, the Council completed a review of the water requirements for concentrated solar power development in the Southwest and related institutional issues and permitting requirements, which has been published by the National Renewable Energy Lab (NREL).

**2016/17: The Council actively participates with the Western Electric Coordinating Council (WECC) and related State Provincial Steering Group and Environmental Data Work Group.** As resources permit, the Council will continue to compile existing information through WaDE addressing water availability and anticipated demands for energy resources development (and the implications for water use in the West). Further, the Council will consider and evaluate any federal legislation and other potential collaborative efforts in addressing energy and water needs. The Council will evaluate as appropriate specific energy and water related issues as they arise, such as hydraulic fracturing and other practices. Lastly, WECC/WSWC collaboration will continue.

**Subcommittee:** William Staudenmaier (AZ); James Eklund (CO); John Simpson (ID); Robert Mace (TX); and Eric Millis (UT).

**Timeframe:** Ongoing

## **7. BORDER WATER ISSUES?**

**Work to date:** Many WSWC member states are involved with water management issues that cross international boundaries. In 1999, the WSWC was invited to participate in a U.S.-Mexico Border Drought Workshop sponsored by the WGA, International Boundaries Water Commission (IBWC), and Mexican authorities. Also in 1999, the WSWC was asked to serve on an International Joint Commission (IJC) advisory committee reviewing water issues with Canada. Cross border issues are growing in importance, as illustrated by the current conflict over the waters of the Rio Grande between Texas and Mexico, *or the waters of the Milk River between Montana and Canada.*

Council staff will continue to participate and represent western state interests in international water forums. The Committee will identify and assess related needs and oversee WSWC activities. The Committee will coordinate its efforts with those of other organizations in order to avoid duplication.

**Subcommittee:** Jeanine Jones (CA); Tim Davis (MT); Tom Blaine (NM); and Maia Bellon (WA).

**Time Frame:** Ongoing

Tab F – Draft FY2016-2017 Legal  
Committee Work Plan

**LEGAL COMMITTEE  
WORK PLAN  
July 1, 2016 to June 30, 2017**

**1. STATE AND FEDERAL COLLABORATION REGARDING THE  
ADJUDICATION OF FEDERAL NON-TRIBAL WATER RIGHTS**

**Work-to-Date:** The Committee has created a Federal Non-Tribal Water Claims Subcommittee to evaluate ways the WSWC and WestFAST can improve the effective resolution of federal non-tribal water rights claims. The Subcommittee consists of WSWC members and WestFAST members, who serve in an *ex officio* capacity.

The Subcommittee issued a questionnaire in 2012 to WSWC member states, the Bureau of Land Management, the Bureau of Reclamation, the Department of Defense, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Forest Service. The questionnaire sought information on ways the WSWC and WestFAST could address the issues and challenges that involve federal non-tribal water right claims,<sup>1</sup> as well as examples of successful state and federal efforts to resolve these claims. Responses indicated a broad consensus that the WSWC and WestFAST could develop a clearinghouse of information to assist states and federal agencies in the effective resolution of federal non-tribal water rights claims.

On July 15-16, 2014, the WSWC and WestFAST held a workshop in Helena, Montana to discuss ways to improve the resolution of federal non-tribal water rights claims and to begin the process of developing a clearinghouse of information that states and tribes can use to resolve these claims. The WSWC and WestFAST subsequently created a joint state-federal workgroup to help develop the clearinghouse and implement the other recommendations that emerged from the workshop.

**2016-2017:** The Committee will work to carry out the recommendations and next steps that emerged from the workshop. Under the direction of the Committee, the workgroup will hold calls on a quarterly basis to discuss the development of the clearinghouse and to serve as a forum for information sharing and relationship building. The Workgroup will also advise the Committee about potential future actions the WSWC and WestFAST may take to address federal water needs and may hold webinars on specific topics of interest. [The workgroup will hold workshops on \(1\) identifying state and federal perspectives of reserved groundwater rights, with case studies as examples of how they've been handled in the past through adjudications, settlements, compacts or statutes \[planned for July 13, 8am-12pm, Bismark, ND\]; \(2\) hypothetical or actual examples of how adjudicated or decreed federal water rights will be administered by states, and how state and federal agencies would approach situations like curtailments under the current laws \[in conjunction with a future Council meeting\].](#)

**Time Frame:** Ongoing

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<sup>1</sup> For the purposes of the questionnaire, the term “federal non-tribal water right claim” encompassed federal reserved right claims, federal state-based claims, and claims relating to the aforementioned federal agencies that do not involve water right claims made by a tribe.

Federal Non-Tribal Water Claims Subcommittee: David Schade (AK), Jay Weiner (MT), Greg Ridgley (NM), Jennifer Verleger and Michelle Klose (ND), Dwight French (OR), Todd Chenoweth (TX), Norm Johnson (UT), Buck Smith (WA), and Pat Tyrrell and Chris Brown (WY). WestFAST members and agency staff participating in the Subcommittee in an *ex officio* capacity include: Jana Wilcox (Bureau of Land Management), Marc Kodack (Department of Defense), Andrew Hautzinger (U.S. Fish and Wildlife Service), Donald Anderson and Becky Fulkerson (Bureau of Reclamation), Jeff Hughes (National Park Service) and Jean Thomas (U.S. Forest Service). Other *ex officio* members of the Subcommittee include Kristen Geddes and Susan Joseph-Taylor (NV), Jonathan Allen (OK), Jesse Ratcliff (OR), and Abigail Boudewyns (WY).

## **2. CWA JURISDICTION\***

**Work-to-Date:** In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S. Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006).

In September 2013, the EPA and Corps withdrew the draft guidance. At the same time, the agencies announced that they had submitted a draft rule to clarify the extent of CWA jurisdiction to the Office of Management and Budget (OMB) for interagency review.

In 2013, the WSWC wrote EPA and the Corps a series of five letters requesting greater state consultation in the development of the rule. In addition, the WSWC created a CWA Rulemaking Workgroup to gather information on the WSWC member states' perspectives regarding the rulemaking and to identify further areas of consensus among the western states. In March 2014, the workgroup developed a letter that the WSWC sent to EPA and the Corps, setting forth a list of additional consensus comments on the rulemaking. The Western Governors' Association (WGA) sent a subsequent letter on March 25, 2014, that cited the WSWC's March 10 letter and urged the agencies to consult with the states individually and through the WGA before taking further action on the rulemaking.

On April 21, 2014, EPA and the Corps published a proposed rule in the Federal Register with an initial 90-day public comment period that was later extended to October 20, 2014, following requests from the WGA and other organizations for an extension. Following the rule's publication, EPA and the Corps engaged in a series of calls with the WSWC to discuss the states' questions and concerns about the rulemaking. WSWC Water Quality Committee Chair J.D. Strong of Oklahoma also testified on behalf of the WSWC and the WGA before the House Transportation and Infrastructure Committee regarding the rule on June 11, 2014.

The WSWC adopted Position #369 regarding CWA rulemaking efforts on July 18, 2014, during its summer meetings in Helena, Montana. The resolution replaces WSWC Position #330.5 and served as the basis of a comment letter the WSWC sent to EPA and the Corps on October 15, 2014, Position #373. That letter called for the creation of a state-federal workgroup to refine and revise the rule and set forth a number of requested changes.

On June 29, 2015, the EPA and the Corps published their final rule in the Federal Register. The final rule incorporates some of the changes requested in Position #373.

**2016-2017:** The Committee will continue to work with the Water Resources and Water Quality Committees through the Workgroup to follow and comment on the implementation of the jurisdictional rule and other federal actions regarding CWA jurisdiction in accordance with the WSWC's and WGA's positions.

**Time Frame:** Ongoing

CWA Rulemaking Workgroup: Michelle Hale (AK), Trisha Oeth (CO), Barry Burnell (ID), Tom Stiles (KS), Jon Patch (ND), Bill Schuh (ND), J.D. Strong (OK), Todd Chenoweth (TX), Walt Baker (UT), Laura Driscoll (WA), and Bill DiRienzo (WY).

\*See Item 3(a) of the Water Quality Committee Workplan

### **3. AD HOC GROUP ON RESERVED INDIAN WATER RIGHTS**

**Work-to-Date:** The Western Governors' Association (WGA) and WSWC have long supported the negotiated resolution of Indian water rights claims (WSWC Position #376). As a result, the WGA and WSWC have worked with the Native American Rights Fund (NARF) for over thirty years as part of an Ad Hoc Group on Reserved Indian Water Rights to promote negotiated settlements.

Over the years, the Ad Hoc Group has carried out a number of activities to support the negotiated settlement of Indian reserved water rights claims, including frequent trips to Washington, D.C. to support policies that facilitate settlements and a biennial symposium on settlements that the WSWC and NARF hold every odd year. The Group has also worked to highlight the need to secure a permanent funding mechanism for authorized settlements and to identify alternative funding sources to help ensure that settlements authorized by Congress and approved by the President will be implemented.

In recent years, the WSWC and NARF have established regular meetings with the Deputy Secretary of the Interior's Office, the Secretary of the Interior's Indian Water Rights Office, and other Interior officials engaged in Interior's Indian water rights efforts. The WSWC and NARF have also held regular meetings with the White House Office of Management and Budget and other White House officials to support the WSWC's settlement policies.

**2016-2017:** The Committee will oversee WSWC's Ad Hoc Group efforts in the following areas: (1) activities to gather support for an appropriate remedy to settlement funding issues, including the development of a permanent settlement funding mechanism, the identification of other possible funding sources, and funding for federal assessment, negotiation, and implementation teams; (2) continue meeting with the Administration via the quarterly conference calls and other face-to-face opportunities to discuss key issues associated with Indian water rights settlements; and (3) hold the [2017 Symposium on the Settlement of Indian Reserved Water Rights Claims in partnership with the Native American Rights Fund](#).

**Time Frame:** Ongoing

Reserved Rights Subcommittee: Bill Staudenmaier (AZ); Cindy Chandley (AZ); Jay Weiner (MT), Greg Ridgley (NM), and Norman Johnson (UT). NARF members participating in the Subcommittee in an ex officio capacity include: John Echohawk, Joel Williams, Heather Whiteman Runs Him, Steve Moore, and David Gover. Other ex officio members include Susan Cottingham, Nathan Bracken, Stanley Pollack, David Mullan, Ryan Smith, Michael Bogert, Pamela Woodies, and Arianne Singer.

#### **4. U.S. FOREST SERVICE PROPOSED GROUNDWATER DIRECTIVE**

**Work-to-Date:** On May 6, 2014, the U.S. Forest Service published a proposed directive in the Federal Register that would create a “comprehensive direction” for the agency’s management of groundwater on National Forest System (NFS) land. In particular, the directive is intended to: (1) provide for consideration of groundwater resources in Forest Service activities; (2) encourage source water protection and water conservation; (3) establish procedures for reviewing new proposals for groundwater withdrawals on NFS land; (4) require the evaluation of potential impacts from groundwater withdrawals on NFS natural resources; and (5) provide for measurement and reporting to help build the agency’s understanding of groundwater resources on NFS land. Comments on the proposed directive are due August 4, 2014.

According to the Forest Service, the directive will not infringe on state-issued water rights or change how state groundwater and surface water quality regulations affect federal lands. However, while the directive would require the agency to comply with state law when filing groundwater use claims in state adjudications and administrative proceedings, it would, among other things: (1) require application of “...the Reservation or Winters Doctrine to groundwater, as well as surface water, consistent with the purposes of the Organic Administration Act, the Wild and Scenic Rivers Act, and the Wilderness Act;” (2) require the Forest Service to evaluate all applications to states for water rights on lands adjacent to NFS lands; and (3) would presume that groundwater and surface water are connected unless proven otherwise.

WSWC position #380 notes that no federal court has recognized a federal reserved water right to groundwater, and opposes “...efforts that would establish a federal ownership interest in groundwater or diminish the primary and exclusive authority of States over groundwater.” Similarly, WGA Resolution #2015-08, paragraph B(1)(a) states: “While the Western Governors acknowledge the important role of federal laws such as the Clean Water Act, the Endangered Species Act, and the Safe Drinking Water Act, nothing in any act of Congress or Executive Branch regulatory action should be construed as affecting or intending to affect states’ primacy over the allocation and administration of their water resources.”

On July 2, 2014, the WGA wrote Secretary of Agriculture Tom Vilsack to express concern that the directive “could have significant implications for our states and our groundwater resources.” WGA’s letter also asked Vilsack to respond to a series of questions regarding the directive. The WSWC subsequently sent a letter to the USFS on October 3, 2014 (Position #372) that outlined a number of questions and concerns about the directive, including: (1) its potential to infringe on state water management, (2) questions about the legal basis for the directive; and (3) the lack of state consultation in the development of the directive.

In December 2014, USFS Chief Tom Tidwell indicated that the USFS will not move forward with the directive until after agency personnel have engaged with states and other stakeholders to better understand their concerns. After the USFS has completed this engagement, it will publish a revised directive in the Federal Register for public comment.

At the WSWC's request, the USFS met with the WSWC on February 13, 2015 to discuss the WSWC's concerns regarding the directive. The meeting identified a number of conceptual, consensus-based changes that may be able to address some of the WSWC's concerns.

On June 19, 2015, the USFS published a Notice of Withdrawal of the Proposed Directive in the Federal Register. The USFS acknowledged the States' concerns that the Proposed Directive would exceed USFS authority and infringe on States' authority to allocate water. The withdrawal will allow USFS to engage in further conversations with the States. USFS intends to use the input from States and others to develop new directives that create a consistent approach to evaluating and monitoring the effects on groundwater resulting from actions on USFS lands.

**2016-2017:** The Committee will use the results of the WSWC's February 2015 meeting with the USFS to develop consensus changes to the directive that could form the basis of potential comments for the WSWC to submit once the USFS re-publishes the directive for public comment. The Committee will also continue to monitor this issue and engage with the USFS as appropriate under the supervision of the WSWC and in close coordination with the WGA.

**Time Frame:** Ongoing

## **5. WRDA/CORPS POLICIES**

**Work to date:** The Council has in the past supported regular passage of a Water Resources Development Act (WRDA), and has addressed a number of specific policy issues, while not taking any position on specific project authorizations. The Council has raised concerns with the Corps' approach to identifying and regulating the use of "surplus waters" and Corps drought authorities related to Corps projects. The Council also worked to exclude irrigation water supply canals from any new safety levee safety program.

**2016-2017:** The Council will continue to work with the Congress and Corps on WRDA and Corps-related issues, including the treatment of irrigation canals under the proposed new levee safety program. Further, the Council will continue to work to ensure that state water rights and prerogatives are protected, specifically as it relates to natural flows, Corps storage and other issues.

**Subcommittee:** Jennifer Verleger (ND); Tracy Streeter (KS); and Tim Davis (MT)

### **A. CORPS SURPLUS WATER RULEMAKING**

**Work to date:** A draft Corps surplus water rulemaking is pending. The Flood Control Act of 1944 specifically declared the policy of Congress to recognize the interests and rights of the Missouri River Basin States in determining the development of the watersheds within their borders and likewise their interests and rights in water use and control, and to preserve and protect to the fullest extent established and potential uses of the rivers' natural flows, those flows

that would pass through the states in the absence of the Corps of Engineers dams. The federal government has long recognized the right to use water as determined under the laws of the various states. However, the Corps has indicated that all waters entering its Missouri River mainstem reservoirs are stored waters to be allocated and controlled by the federal agency and does not recognize the States' right to access natural flows, separate from the captured floodwaters stored within those reservoirs.

In October 2015, the Council adopted a resolution (#388) urging the Corps to recognize the legal rights of the States' to allocate water, wrote the Assistant Secretary of the Army for Civil Works regarding its concerns, and has met with Corps officials on different occasions, as well as discussed legislative clarifications with congressional staff. The Council has also surveyed its member states regarding their definition of stored waters and related storage rights.

**2016-2017:** The Committee will continue to work to address this issue and explore alternative solutions, including both administrative and congressional action.

## Tab G – Draft FY2016-2017 Executive Committee Work Plan

**EXECUTIVE COMMITTEE  
WORK PLAN  
2016/2017**

**1. WGA/WSWC COORDINATION and COLLABORATION**

**Work to Date:** The publication of the WGA/WSWC report(s) entitled “Water Needs and Strategies for a Sustainable Future,” raised awareness of the challenges facing the West. The WGA adopted the 2006 and 2008 reports as policy, and the Council has worked to implement their recommendations, many of which have been completed. In June 2010, the Council completed and the WGA accepted a Progress Report summarizing implementation activities. In 2011, WGA adopted two comprehensive policy statements, one focused on water quantity and the other on water quality, which the WGA revised and readopted in December 2013, and will reconsider in 2016.

Of particular note, a priority recommendation was establishment of the Western States Federal Agency Support Team (WestFAST) and the hiring of a liaison officer in the Council’s offices. Both of which were accomplished in 2008 and continued.

The Council has worked closely with WGA on various regulatory and other issues, especially the EPA’s proposed and final rules related to Clean Water Act jurisdiction and the definition of Waters of the United States, as well as the U.S. Forest Service’s proposed groundwater directive, which was subsequently withdrawn in part due to the Council’s concerns.

**2016/17:** The Council and the Committee will continue to coordinate and consult with the WGA on matters that come before the Council and assist in the development and implementation of WSWC and WGA water-related policies. WGA staff will be invited to attend and participate in our meetings, workshops and symposia.

As in the past, the Council may propose policy resolutions for WGA consideration. Further, the WSWC Chair and/or Executive Director will participate in WGA meetings as appropriate. Working with the WGA, the Council will also coordinate WestFAST activities and needs.

**Time Frame:** ongoing

Subcommittee: Management Subcommittee

**2. WESTFAST**

**Work to date:** WestFAST’s creation has had many benefits. It is a unique forum for addressing western (and national) water issues that has brought together over a dozen federal agencies to collaborate with each other and state agencies with water-related responsibilities. WestFAST addresses issues raised and discussed with the Council and WGA (which in turn support development and implementation of related federal policies and programs). WestFAST and the Council have also discussed collaborative principles to guide federal/state working relationships. WestFAST is now in its eighth year.

**2016/17:** The Executive Committee will continue to oversee the Council's work with WestFAST. Further, the Committee will work to ensure participating agencies realize the real and potential benefits of WestFAST, and work to build a sound foundation for continuing collaboration. The WSWC will meet with WestFAST principals on March 24, 2016, and will continue to seek building closer ties with WestFAST principals.

**Time Frame:** Ongoing

### **3. FEDERAL ADMINISTRATION and CONGRESSIONAL VISITS/CONTACTS**

**Work to date:** The WSWC's members, officers and staff continue to meet with key members of Congress, and the Administration on issues of interest to the Council.

On December 14-15, 2015, the WSWC Executive Director attended a White House Roundtable on Water Innovation (by invitation) and a related Office of Science and Technology Policy (OSTP) follow-up discussion session. WSWC member J.D. Strong of Oklahoma was invited to attend the second in a series of White House OSTP Water, Technology and Innovation discussions on February 1, 2016. WSWC Chairman Pat Tyrrell of Wyoming, members John Tubbs of Montana, James Eklund of Colorado, and J.D. were invited to a White House Water Summit in D.C. on March 22, 2016 – World Water Day.

In an ongoing effort to promote WSWC and WGA positions and priorities, Council officers, members and staff travel regularly to Washington, D.C. and make visits with Administration and Congressional officials. Native American Rights Fund (NARF) staff join WSWC members and staff in many of the visits. WSWC members and staff have also previously hosted or presented at briefings for congressional staff on the importance federal data gathering activities, including the Landsat thermal data, U.S. Geological Survey streamgaging programs, National Oceanic and Atmospheric Administration programs, including the National Integrated Drought Information System, River Forecast Centers, and Regional Integrated Science and Assessments, as well as Indian water rights settlements. Some of the feedback from these meetings suggested a need for greater contact and communication between the Council and federal and congressional policymakers. Of note, the Council is often invited to testify on proposed legislation. Further, the Council also distributes policy positions adopted at its meetings to all House and Senate members of western state delegations.

**2016/17:** The Council's Officers and staff again planned visits during the Council's Spring 2016 meetings in the Washington, D. C. area to make Administration and Congressional contacts and advise them on major national water issues from the perspective of western states. WSWC members and staff will also schedule visits with individual congressional offices. The WestFAST Liaison Officer and WestFAST members will participate in these visits with Executive Branch agencies. The WSWC will meet with WestFAST principals on March 24, 2016. Other trips and visits may be made as needed. The Council staff and members will also communicate our external positions as the need arises and continue to respond to requests for testimony, briefings and information from the Congress and the Administration.

**Time frame:** Spring 2016/Ongoing

**Subcommittee:** Management Subcommittee

#### **4. REGULAR COUNCIL MEETINGS**

**Work to Date:** The first meeting of the Council was held in Stateline, Nevada in 1965, and regular meetings have been held since. Currently, the Council meets three times per year, rotating among the member states, which host the meetings at a location of their choice. Guest speakers and topics for discussion are scheduled according to members' interests and needs. External policy positions for consideration are noticed 30-days before the Council meets and are distributed not only to members, but also to WGA staff and the governors' staff. Any position statement not noticed may be brought before the Council for consideration at a meeting by unanimous consent, but if approved, must be sent to WGA for review prior to distribution consistent with mutually agreed upon procedures for policy coordination between WGA and WSWC.

Nevada hosted the 50<sup>th</sup> Anniversary Summer 2015 meetings in Stateline on July 8-10. Several former members attended, as well as numerous guest dignitaries.

**2016/17:** The Spring 2016 meetings were held in Washington, D.C. on March 22-24. This included the biennial Washington, D.C. Roundtable, which was sponsored in cooperation with the Interstate Council on Water Policy. The Summer meetings will be held on July 13-15, in Bismarck, North Dakota, and the Fall meetings are scheduled for September 28-30, in St. George, Utah.

#### **5. NEWSLETTER**

**Work to date:** *Western States Water* provides members and others with accurate and timely information on various water resources topics at state, regional and national levels. It is provided as a free service to members, governors and their staff, member state water resource agencies, state water users associations, selected multi-state organizations, key Congressmen and their staffs, and top federal administration officials. Other public and private agencies and individuals may subscribe for a fee. It is primarily distributed via email, and is posted on our website, with password protection (for recent issues).

**2016/17:** Along with the Council's regular meetings, the newsletter requires our most significant commitment of staff resources, though that is usually ancillary to other efforts. The response from members and others receiving the newsletter has been consistently positive. The Council will continue to provide this service weekly via email, except for those who request a hard copy.

**Time Frame:** Ongoing

## **6. WATER MANAGEMENT SYMPOSIA**

**Work to date:** An annual WSWC Water Management Symposium has traditionally been held under the auspices of the Executive Committee. However, the Committee has usually asked one of the other committees to take the lead. In odd numbered years, Indian Water Rights Settlement Symposia have been held.

In 2012, the Council held a symposium in November in Phoenix, Arizona in collaboration with relevant federal agencies, multiple stakeholders, and public and private experts on Western State Water Resources Infrastructure Needs & Strategies. It explored state financing authorities, policies, programs and projects, as well as public-private financing and cost sharing resources, with a goal of identifying common interests and promoting partnerships.

Last year the Council sponsored an Indian Water Rights Settlement Symposium in Reno, Nevada on August 25-27, 2015.

**2016/17:** The Committee will consider hosting a 2016 Water Infrastructure Symposium focused on streamlining regulatory requirements to facilitate timely construction of projects in an environmentally responsible manner.

**Time Frame** – Fall 2016

## **7. ANNUAL REPORT**

Since its organization in 1965, the Council has prepared and published an annual report. The annual report includes a brief discussion of the Council's formation and a detailed summary of its current membership and activities. It is a report of the Council's meetings, and provides an explanation of resolutions and positions and other actions taken by the Council. Further, it includes a description of workshops, seminars and symposia sponsored by the Council, as well as other important activities and events. It also describes the Council's involvement in major current water policy issues. Lastly, biennially, it includes an audit of the Council's finances, and current rules of organization. Recently, electronic copies have been distributed.

**Time frame:** July-December

## Tab H – Draft 2016-2017 Water Quality Committee Work Plan

**WATER QUALITY COMMITTEE  
WORK PLAN  
July 1, 2016 to June 30, 2017**

**1. HYDRAULIC FRACTURING**

**Background:** In June 2015, the Environmental Protection Agency (EPA) published a study on the relationship between hydraulic fracturing and drinking water, titled “Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources.” In March 2015, the Bureau of Land Management (BLM) issued a final rule for hydraulic fracturing on public lands, which includes a variance process that would allow states to propose their own standards if they can prove that their regulations meet or exceed the requirements in BLM’s rule. In addition, EPA, the Department of Energy (DOE), and the Department of the Interior (DOI) agreed in April 2012 to develop a “Multi-Agency Unconventional Oil and Gas Research Program” to support policy decision by relevant state and federal agencies. The effort is intended to help support the White House’s March 2011 “Blueprint for a Secure Energy Future.”

**Work-to-Date:** The Western Governors’ Association (WGA) Resolution #2014-4 and WSWC Position #353 state that: (1) federal efforts involving hydraulic fracturing should leverage state knowledge, experience, policies, and regulations; (2) such efforts should be limited, based upon sound science, and driven by states; and (3) that both organizations oppose any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.

**2016-2017:** The Committee will work with the Water Resources and Legal Committees to support the WGA and WSWC positions, and will continue to monitor and update the WSWC on developments involving hydraulic fracturing, including but not limited to EPA’s study, BLM’s rule, and the EPA/DOE/DOI research program.

The Committee will also work in collaboration with the Water Resources and Legal Committees to prepare a summary of the applicable WSWC states’ experiences with hydraulic fracturing. The summary will complement previous reports by the Groundwater Protection Council and others that describe how state programmatic elements and regulations ensure that hydraulic fracturing does not impair water resources and environmental values. Examples of the types of information sought for the summary include but are not limited to: (1) the impacts of hydraulic fracturing on water quality, if any; (2) examples of how state regulations and other efforts protect water quality; (3) the economic benefits of hydraulic fracturing; (4) water supplies and amounts used for hydraulic fracturing; (5) state interaction with federal agencies involving hydraulic fracturing; and (6) the degree to which states utilize oil and gas taxes and other revenue related to hydraulic fracturing to fund water-related efforts, including but not limited to water planning, water management, and water regulation and protection. WSWC staff will prepare the summary under the direction of the Committees, and will gather the necessary information through independent research and focused telephone interviews with select staff from the applicable WSWC state agencies. WSWC staff will also coordinate with other relevant state associations and organizations to avoid duplicating prior efforts. It is envisioned that the full WSWC will review the summary.

**Time Frame:** 2016-2017, pending available staff time and resources.

## 2. WATER QUALITY/QUANTITY NEXUS

**Work-to-Date:** Paragraph (B)(3) of WGA Resolution #2015-08 states: “Western Governors believe effective solutions to water resource challenges require an integrated approach among states and with federal, tribal and local partners. Federal investments should assist states in implementing state water plans designed to provide water for municipal, rural, agricultural, industrial and habitat needs, and should provide financial and technical support for development of watershed and river basin water management plans when requested by states. Integrated water management planning should also account for flood control, water quality protection, and regional water supply systems. Water resource planning must occur within a framework that preserves states’ authority to manage water through policies which recognize state law and the financial, environmental and social values of the water resource to citizens of the western states today and in the future.” (emphasis added)

On October 6-7, 2015, the Water Quality Committee held a workshop in conjunction with the WSWC’s 2015 fall meetings in Manhattan, Kansas. The workshop provided insights on: (1) how state water quantity and quality regulations interact with each other; (2) how states can protect water quality within the existing framework of the prior appropriation doctrine; and (3) the proper relationship between federal environmental protections and the states’ primary and exclusive authority over the allocation of water resources. WSWC staff prepared a preliminary report of the meeting, which included recommendations for WSWC next steps.

**2016-2017:** The Committee will produce findings and policy options from the WQ2 workshop for the WSWC to consider as it supports WGA Resolution #2015-08. The Committee will also follow up on the next steps recommended in the WQ2 workshop, including: (1) identifying each state’s definitions of “public interest,” and determine whether a common definition may be used to communicate with federal agencies as they seek to implement policies in the Western states (this may be done by survey, workshop, or other appropriate method); (2) identify and coordinate with federal agencies and other technical or national organizations with common interests to co-host educational workshops or symposia on relevant nexus topics, both to develop better relationships and to find additional potential solutions to nexus problems; (3) create a nexus toolbox of useful and accessible information, including interagency MOUs, instream flow legislation, case studies, and reports of additional workshops, to provide a resource for the states seeking to learn from each other’s experiences.

**Time Frame:** Ongoing

## 3. CLEAN WATER ACT ISSUES

There are a number of ongoing Clean Water Act (CWA) issues that pertain to WSWC policies or are otherwise of interest that the Committee will monitor and address on an as needed basis. These issues are listed below in order of priority.

### a. CWA Jurisdiction\*

**Background:** In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S.

Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006).

In September 2013, the EPA and Corps withdrew the draft guidance. At the same time, the agencies announced that they had submitted a draft rule to clarify the extent of CWA jurisdiction to the Office of Management and Budget (OMB) for interagency review. On April 21, 2014, EPA and the Corps published a proposed rule in the Federal Register with an initial 90-day public comment period that was later extended to October 20, 2014

**Work-to-Date:** In 2013, the WSWC wrote EPA and the Corps a series of five letters requesting greater state consultation in the development of the rule. In addition, the WSWC created a CWA Rulemaking Workgroup to gather information on the WSWC member states' perspectives regarding the rulemaking and to identify further areas of consensus among the western states. In March 2014, the workgroup developed a letter that the WSWC sent to EPA and the Corps, setting forth a list of additional consensus comments on the rulemaking. The Western Governors' Association (WGA) sent a subsequent letter on March 25, 2014, that cited the WSWC's letter and urged the agencies to consult with the states individually and through the WGA before taking further action on the rulemaking.

The 90-day public comment period was extended to October 20, 2014, following requests from the WGA and other organizations for an extension. Following the rule's publication, EPA and the Corps engaged in a series of calls with the WSWC to discuss the states' questions and concerns about the rulemaking. WSWC Water Quality Committee Chair J.D. Strong of Oklahoma also testified on behalf of the WSWC and the WGA before the House Transportation and Infrastructure Committee regarding the rule on June 11, 2014.

The WSWC adopted Position #369 regarding CWA rulemaking efforts on July 18, 2014, during its summer meetings in Helena, Montana. The resolution replaces WSWC Position #330.5 and served as the basis of a comment letter the WSWC sent to EPA and the Corps on October 15, 2014. That letter called for the creation of a state-federal workgroup to refine and revise the rule and set forth a number of requested changes.

On June 29, 2015, the EPA and the Corps published their final rule in the Federal Register.

**2016-2017:** The Committee will continue to work with the Water Resources and Legal Committees through the Workgroup to follow and comment on the further development and/or implementation of the jurisdictional rule and other federal actions regarding CWA jurisdiction in accordance with the WSWC's positions.

**Time Frame:** Ongoing

CWA Rulemaking Workgroup: Michelle Hale (AK), Trisha Oeth (CO), Barry Burnell (ID), Tom Stiles (KS), Jon Patch (ND), Bill Schuh (ND), J.D. Strong (OK), Todd Chenoweth (TX), Walt Baker (UT), Laura Driscoll (WA), , and Bill DiRienzo (WY).

\*See Item 2 of the Legal Committee Workplan

**b. State Revolving Funds (SRFs) and Infrastructure Financing**

**Background:** Over the years, some budget requests from the Administration have proposed cuts to the SRF programs. Various acts of Congress have also authorized or retained a number of limitations on the use of SRF funds, including but not limited to: (1) “Buy American” provisions for iron and steel; (2) requirements that between 20% and 30% of SRF funds be used for principal forgiveness, negative interest loans, or grants subject to additional provisions; and (3) requirements that states use at least 10% of their SRF funds for green infrastructure, water or energy efficiency improvements, or other “environmentally innovative” activities.

For FY 2017, the President’s budget request seeks \$2B for the Clean Water and Drinking Water SRFs. Legislation introduced in the 114<sup>th</sup> Congress (H.R. 4653) would reauthorize the SRF, with spending of up to \$3.1 billion for FY2017, increasing to \$5.5 billion in FY2021. The SRF authorization expired in 2003, but Congress has continued to fund the program, appropriating \$863 million in last year’s spending bill.

**Work-to-Date:** WSWC Position #364 urges the Administration and Congress to provide greater flexibility and fewer restrictions on state SRF management and stable and continuing appropriations to the SRF capitalization grants at funding levels that are adequate to help states address their water infrastructure needs. WGA resolution 2014-04 also supports the SRFs as “important tools” and requests greater flexibility and fewer restrictions on state SRF management.

**2016-2017:** The Committee will support the WGA and WSWC positions. In particular, WSWC staff will continue to update the Committee on developments within Congress and the Administration that have the potential to impact the SRFs. As needed, Committee members and WSWC staff will also meet with the Administration and Congress to further the objectives of the WGA and WSWC positions.

**Time Frame:** Ongoing

**c. EPA’s Water Transfers Rule**

**Background:** On March 28, 2014, the U.S. District Court for the Southern District Court of New York (SDNY) vacated the rule in *Catskills Mountain Chapter of Trout Unlimited v. EPA (Catskills II)*, 2014 U.S. Dist. LEXIS 42545 (S.D.N.Y., March 2014). Among other things, the court reasoned that many of the types of conveyances contemplated by the rule would not be considered navigable waters under the jurisdictional standards set forth in the U.S. Supreme Court’s *Rapanos* decision. The SDNY court further opined that language in the CWA regarding state rights and state primacy over water allocation support an interpretation that allows for a federal role in water allocation. EPA has appealed this decision to the Second Circuit Court of Appeals, along with 11 western states<sup>1</sup> and a number of western water providers that have intervened in the action to

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<sup>1</sup> The 11 intervening states include: Alaska, the Arizona Department of Water Resources, Colorado, Idaho, Nebraska, Nevada, North Dakota, New Mexico, Texas, Utah, and Wyoming.

uphold the rule. California has also filed an amicus brief in support of the rule.

On August 21, 2015 a Ninth Circuit panel affirmed (on other grounds) a district court decision in *Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation*, that the Bureau of Reclamation was not required to obtain a Clean Water Act (CWA) §402 permit for waters transferred through a drain as part of the Klamath Irrigation Project. The lower court held that the Bureau of Reclamation was exempt from the permit requirement under the Environmental Protection Agency's (EPA) Water Transfers Rule, 40 CFR §122.3(i). The 9<sup>th</sup> Circuit panel relied instead on a subsequent "meaningfully distinct" test from a 2013 U.S. Supreme Court decision in *Los Angeles County Flood Control District v. Natural Resources Defense Council*, 133 S. Ct. 710. In that case, the Supreme Court held that "no pollutants are 'added' to a body of water when water is merely transferred between different portions of that water body." The panel found this a "simpler path" than deciding whether the Water Transfers Rule is properly within EPA's authority, as is the issue currently before the 2<sup>nd</sup> Circuit in *Catskills Mountains Chapter of Trout Unlimited v. EPA*, No. 14-01991.

**Work-to-Date:** Paragraph B(2)(c) of WGA Resolution #2014-04 and WSWC Position #342 generally support EPA's Water Transfers Rule (940 C.F.R. § 122.3(i)), which clarifies that water transfers from one "navigable" water to another are exempt from National Pollutant Discharge Elimination System (NPDES) permitting under Section 402 of the CWA. The rule states that transfers do not require NPDES permits if they do not add pollutants and if there is no intervening municipal, industrial, or commercial use between the diversion and the discharge of the transferred water.

**2016-2017:** The Committee and WSWC staff will: (1) continue to support the WGA and WSWC positions; (2) monitor any and all activities impacting EPA's rule, including but not limited to the Second Circuit litigation and possible efforts by EPA to reconsider the rule; (3) inform the WSWC of ongoing developments; and (4) take any other actions needed to support the WGA/WSWC positions regarding the rule.

**Time Frame:** Ongoing

**d. Nutrients**

**Background:** EPA's Office of Water is working to carry out a National Nutrient Strategy to accelerate state adoption of numeric water quality standards while building the scientific and technical infrastructure needed to develop new criteria to address nitrogen and phosphorus pollution.

On March 16, 2011, then EPA Acting Assistant Administrator for Water Nancy Stoner issued a memo to EPA's Regional Administrators to synthesize key principles regarding the agency's technical assistance and collaboration with states. The memo urged the regions to place new emphasis on working with states to achieve near-term reductions in nutrient loadings. Most notably, the memo provided a "Recommended Elements of a State Nutrients Framework" to serve as a tool to "...guide ongoing collaboration between EPA regions and states in their joint effort to make progress on reducing nitrogen and phosphorus pollution." It also asked each region to use the framework as a basis for

discussions with interested and willing states, the goal of which would be to tailor the framework to particular state circumstances.

**Work-to-Date:** The Committee and WSWC staff have followed and updated the WSWC on EPA efforts involving nutrients. Various Committee meetings have also featured presentations from EPA and state officials on federal and state nutrient management efforts.

Paragraph B(3)(b) of WGA Resolution #2014-04 states that “...nutrients produced by non-point sources fall outside of NPDES jurisdiction and should not be treated like other pollutants that have clear and consistent thresholds over a broad range of aquatic systems and conditions.” The WGA’s resolution further states that states should have “sufficient flexibility” to utilize their own incentives and authorities to establish standards and control strategies to address nutrient pollution, rather than “being forced to abide by one-size-fits-all federal numeric criteria.” According to the WGA’s resolution, successful tools currently in use by states include best management practices, nutrient trading, and controlling other water quality parameters, among other “innovative” approaches.

**2016-2017:** The Committee and WSWC staff will monitor EPA’s nutrient efforts and inform the WSWC of ongoing developments. It will also ensure that the WSWC’s efforts do not duplicate those of the Association of Clean Water Administrators.

**Time Frame:** Ongoing

e. **Treatment as States Rulemaking Efforts**

**Background:** EPA is engaged in two separate, but related rulemaking efforts regarding the tribes’ ability to obtain “treatment as states” (TAS) status under Section 518 of the CWA, which is needed for tribes to operate certain CWA regulatory programs.

The first effort involves the development of a possible interpretive rule that could do away with current requirements that tribes must demonstrate that they have inherent authority to operate CWA regulatory programs. EPA has indicated that such a reinterpretation would consider Section 518 to be an express delegation of authority from Congress. EPA conducted pre-proposal outreach with the states, including the WSWC in August 2014, and intends to publish an interpretive rule for public comment in mid-to-late 2015.

The second effort involves the development of a formal rule that will set forth the regulatory process by which tribes can obtain TAS status to operate the impaired water listing and total daily maximum daily load (TMDL) programs. EPA has indicated that Section 518 requires the development of the rule. The agency has also conducted pre-proposal outreach with the states, including the WSWC in October 2014, and intends to publish a draft rule for public comment in mid-to-late 2015.

**2016-2017:** The Committee will continue to monitor these rulemakings and engage with EPA as appropriate.

**Time Frame:** Ongoing

**f. Pesticide Permits and National Pollutant Discharge Elimination System (NPDES) Permits**

**Background:** The Sixth Circuit Court of Appeals' 2009 ruling in *National Cotton Council v. Environmental Protection Agency* vacated an EPA rule that exempted pesticide applications made in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The decision has national implications because it consolidated rule challenges filed in eleven circuits, and because the U.S. Supreme Court declined to review the decision.

Most recently, legislation (H.R. 897) has been introduced in the 114<sup>th</sup> Congress that would overturn the Sixth Circuit's decision and prevent EPA and states from requiring NPDES permits for pesticide applications.

**Work-to-Date:** WSWC Position #359 urges Congress to amend the CWA and FIFRA to clarify that FIFRA-compliant pesticide applications do not require NPDES permits. Paragraph B(2)(d) of WGA Resolution #2014-04 also states that the Western Governors support FIFRA's primary role in regulating pesticide applications to water, and will seek state-based solutions that compliment rather than duplicate FIFRA.

WSWC members and staff have supported these positions through multiple visits with Congressional officials. WSWC staff also completed a summary of state information and examples of how dual CWA-FIFRA regulation will impact western states.

**2016-2017:** The Committee will continue to: (1) monitor and inform the WSWC about developments involving this issue; and (2) work with key Congressional members and their staff consistent with the WGA and WSWC positions to support legislation that would clarify that FIFRA-compliant pesticide applications do not require NPDES permits.

**Time Frame:** Ongoing

**g. Abandoned Hardrock Mine Remediation**

**Background:** A number of Good Samaritan bills have been introduced in Congress over the years, including legislation introduced by Senator Mark Udall (D-CO). These bills have been unsuccessful due to concerns about the potential impacts of amending the CWA and perceptions that sufficient protections already exist under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). However, considerable uncertainty exists as to whether CERCLA and other existing authorities provide Good Samaritans with sufficient protection from third party lawsuits for sites in which there is a continuing discharge of pollutants as defined by the CWA.

In December 2012, the Environmental Protection Agency (EPA) issued a memorandum to clarify administrative protections for Good Samaritans. EPA's regulations require operators of sites that continue to discharge pollution after cleanup to obtain NPDES

permits under the CWA. The memorandum clarifies that Good Samaritans who complete cleanup efforts pursuant to EPA policies will not be considered “operators” responsible for obtaining NPDES permits if they lack: (1) access and authority to enter the site; (2) an ongoing contractual agreement or relationship with the site owner to control discharges; (3) power or responsibility to make timely discovery of changes to the discharges; (4) power or responsibility to direct persons who control the mechanisms, if any, causing the discharges; and (5) power or responsibility to prevent and abate the environmental damage caused by the discharges. Nevertheless, the memorandum states that it “...does not address or resolve all potential liability associated with discharges from abandoned mines.”

**Work-to-Date:** The WGA and WSWC have long supported legislation to amend the Clean Water Act (CWA) to protect authorized third parties, or “Good Samaritans,” who voluntarily clean up abandoned hardrock mines, from inheriting perpetual liability for the site under the CWA (WGA Policy Resolution #13-05).

Over the past several years, the Committee has worked to support Good Samaritan legislation and other efforts to clean up abandoned hardrock mines, including multiple visits with Congress and the Administration, Congressional testimony in support of such legislation, and involvement in a WGA-organized Task Force focused on crafting an exemption for Good Samaritan activities by state governments.

**2016-2017:** The Committee will coordinate with the WGA and encourage efforts to clean up abandoned hardrock mines, including but not limited to enactment of Good Samaritan legislation and efforts to support utilization of EPA’s 2012 memorandum. As part of this effort, the Committee will work with key Congressional members/staff, Administration officials, and other stakeholders to develop and support efforts to clean up abandoned hardrock mines in accordance with the WGA’s policies, including the possible development of a workgroup and/or workshop to bring together interested stakeholders to identify ways to facilitate abandoned hardrock mine remediation.

In addition to the above actions, the Committee will: (1) work with the Administration and Congress to provide liability protections to Good Samaritans under existing authorities; and (2) evaluate the prospects for Good Samaritan legislation.

**Time Frame:** Ongoing

## Tab I – NRCS Water-Related Programs

## Programs

[Farm Bill](#)  
[Landscape Initiatives](#)  
[Financial Assistance](#)  
[Technical Assistance](#)  
[Easements](#)  
[Landscape Planning](#)  
[Alphabetical Listing & Archive](#)

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## Landscape Initiatives



NRCS uses Landscape Conservation Initiatives to accelerate the benefits of voluntary conservation programs, such as cleaner water and air, healthier soil and enhanced wildlife habitat. NRCS conservation programs help agricultural producers improve the environment while maintaining a vibrant agricultural sector.

These initiatives enhance the locally driven process to better address nationally and regionally important conservation goals that transcend localities. They build on locally led efforts and partnerships, and they're based on science. Through the initiatives, NRCS and its partners coordinate the delivery of assistance where it can have the most impact. Where applicable, NRCS works with regulators to help producers get predictability for their use of voluntary conservation systems or practices, giving them peace of mind they can sustain agricultural production in the future.

These landscape-level efforts have seen success across the country. From the removal of streams from federal impaired streams list to the determination not to list the greater sage-grouse and New England cottontail, NRCS' work with producers benefits wildlife, natural resources and agricultural operations across the country.

Since establishing the initiatives under the 2008 Farm Bill, NRCS has used successes and lessons learned to enhance the delivery of the initiatives. With tools like the Regional Conservation Partnership Program, the 2014 Farm Bill further emphasizes the focus on building effective partnerships and obtaining meaningful results for key natural resource concerns.

The Landscape Conservation Initiatives include:

### Water-Based Initiatives

[Bay Delta Initiative](#)

[Driftless Area Landscape Conservation Initiative](#)

[Gulf of Mexico Initiative](#)

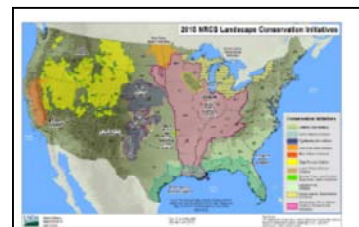
[Illinois River/Eucha-Spavinaw Watersheds Initiative](#)

[Mississippi River Basin Healthy Watersheds Initiative](#)


[National Water Quality Initiative](#)

[Ogallala Aquifer Initiative](#)

[Red River Basin Initiative](#)

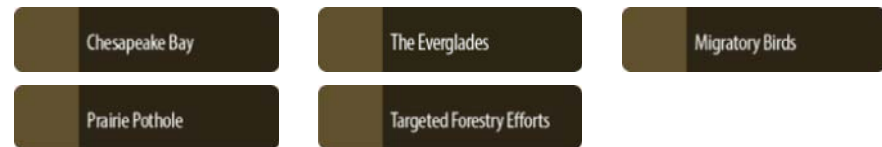


### Landscape Conservation Initiatives - In the News:

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### For more information:

Martin Lowenfisch, Landscape Conservation Initiatives, (202) 690-2196

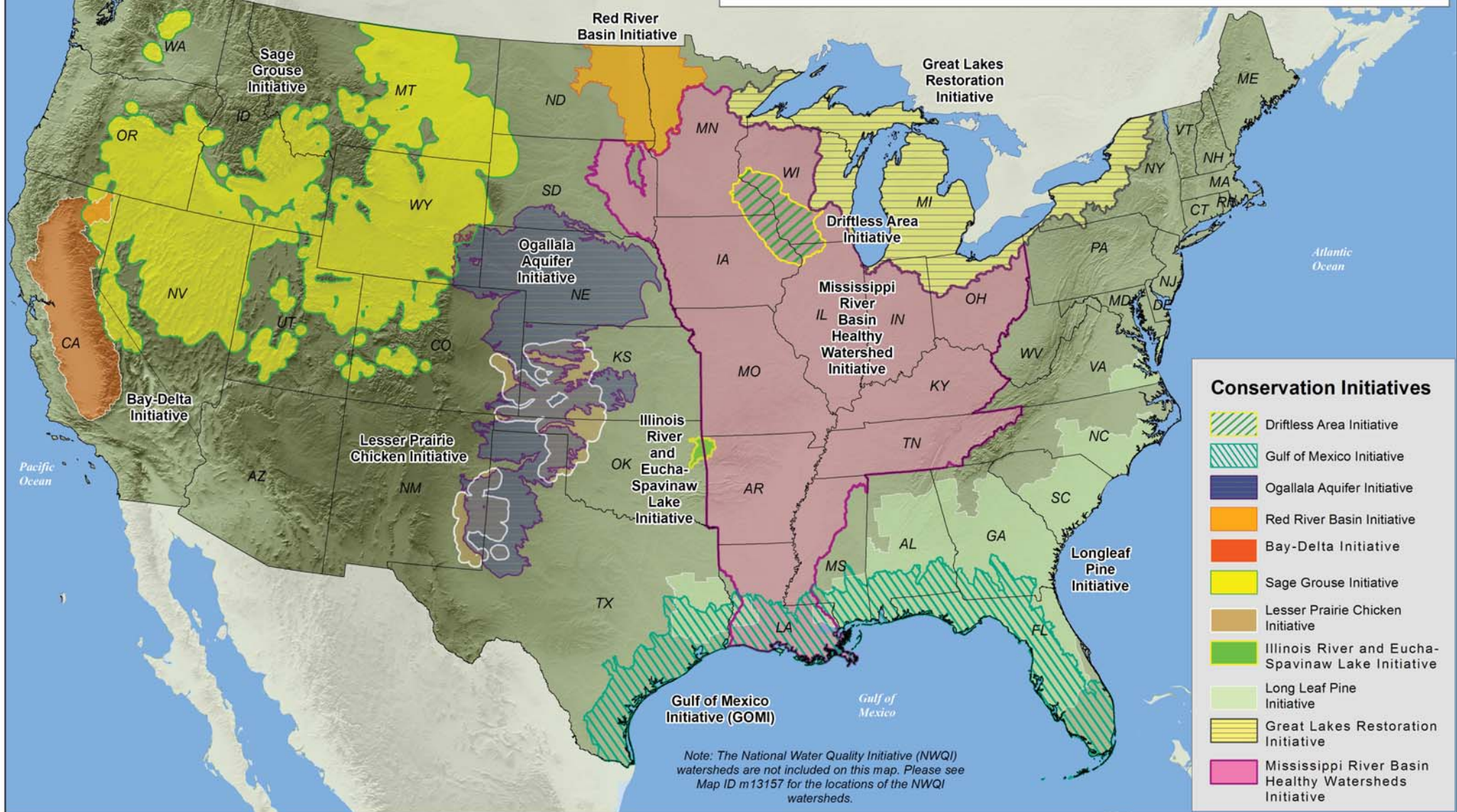
**Wildlife- and Ecosystem-Based Initiatives****Regional Pollinator Efforts****Other Landscape-Level Efforts**

[NRCS Home](#) | [Regional Conservation Partnership Program](#) | [Environmental Quality Incentives Program](#)

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# 2015 NRCS Landscape Conservation Initiatives





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## Programs

### Farm Bill

[2008 Farm Bill Archive](#)
[Regional Conservation Partnership Program](#)

### Landscape Initiatives

[Financial Assistance](#)
[Technical Assistance](#)
[Easements](#)
[Landscape Planning](#)
[Alphabetical Listing & Archive](#)

## Partner Testimonials

[Hear from NRCS partners on forming successful partnerships.](#)

## Critical Conservation Areas

[View the eight Critical Conservation Areas.](#)

## Regional Conservation Partnership Program



The Regional Conservation Partnership Program (RCPP) promotes coordination between NRCS and its partners to deliver conservation assistance to producers and landowners. NRCS provides assistance to producers through partnership agreements and through program contracts or easement agreements.

RCPP combines the authorities of four former conservation programs – the Agricultural Water Enhancement Program, the Chesapeake Bay Watershed Program, the Cooperative Conservation Partnership Initiative and the Great Lakes Basin Program. Assistance is delivered in accordance with the rules of EQIP, CSP, ACEP and HFRP; and in certain areas the Watershed Operations and Flood Prevention Program.

### 2016 Projects

NRCS funded 84 high-impact projects this year for fiscal 2016 funding. The projects cover all 50 states and target all eight Critical Conservation Areas. In total, NRCS received 265 pre-proposals from partners, and of those, selected the best to submit full proposals.

[See a list of projects by state.](#)


### Additional Resources

[See the Feb.12, 2016 press release.](#)
[See a list of projects by funding pool.](#) (PDF, 101KB)

[Download the RCPP fact sheet](#) (PDF, 4MB)

[Read testimonials from NRCS partners](#) on forming successful partnerships.

[See questions and answers on RCPP.](#)
[See a list of 2015 projects.](#)

### Benefits

RCPP encourages partners to join in efforts with producers to increase the restoration and sustainable use of soil, water, wildlife and related natural resources on regional or watershed scales.

Through RCPP, NRCS and its partners help producers install and maintain conservation activities in selected project areas. Partners leverage RCPP funding in project areas and report on the benefits achieved.

### Eligibility




**Eligible Partners** - Agricultural or silvicultural producer associations, farmer cooperatives or other groups of producers, state or local governments, American Indian tribes, municipal water treatment entities, water

and irrigation districts, conservation-driven nongovernmental organizations and institutions of higher education.

**Eligible Participants** - Under RCPP, eligible producers and landowners of agricultural land and non-industrial private forestland may enter into conservation program contracts or easement agreements under the framework of a partnership agreement.

### Funding

Funding for RCPP is allocated to projects in three different categories:


|   |  |  |
|---|--|--|
|    |                        |               |
| <b>Critical Conservation Areas</b>  | <b>National</b>  | <b>State</b>   |
| For projects in eight geographic areas chosen by the Secretary of Agriculture. These receive 35 percent of funding. <a href="#">Learn more.</a> | For nationwide and multistate projects. These receive 40 percent of funding. <a href="#">Learn more.</a> | For projects in a single state. These receive 25 percent of funding. <a href="#">Learn more.</a> |

**NRCS Programs Used in RCPP** - Conservation program contracts and easement agreements are implemented through the Agricultural Conservation Easement Program (ACEP), Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP) or the Healthy Forests Reserve Program (HFRP). NRCS may also utilize the authorities under the Watershed and Flood Prevention Program, other than the Watershed Rehabilitation Program, in the designated [critical conservation areas](#).

### How to Apply

Eligible partners interested in applying should consult the [announcement for program funding](#), which outlines requirements for proposal applications. NRCS will review partnership proposals according to the priorities identified in the announcement and make project selections. Upon selection of a partnership proposal, NRCS and the partner will enter into a partnership agreement through which they will coordinate to provide assistance to producers in the project area. Partnership agreements may be for a period of up to five years. NRCS may extend an agreement one time for an additional 12 months if needed to meet the objectives of the program.

**RCPP Infographic**



**Download**

Producers may apply for RCPP assistance in two ways:

1. At the producer's request, a partner may submit the application for participation in a selected project area
2. Directly at their local USDA Service Center in a selected project area

#### Partnership Agreements

The partnership agreement defines the scope of the project, including:

1. Eligible activities to be implemented
2. Potential agricultural or nonindustrial private forest operation affected
3. Local, state, multi-state or other geographic area covered
4. Planning, outreach, implementation, and assessment to be conducted. Partners are responsible for contributing to the cost of the project, conducting outreach and education to eligible producers for potential participation in the project and for conducting an assessment of the project's effects. In addition, partners may act on behalf of the eligible landowner or producer in applying for assistance and for leveraging financial or technical assistance provided by NRCS with additional funds to help achieve the project objectives.

Before closing the agreement the partner must provide an assessment of the project costs and conservation effects.

#### More Information

Full-sized infographic (JPG, 2MB)  
Text alternate format (TXT, 1KB)



Watershed Authorities

Watershed Planning and Water Quality Monitoring

To learn how to get started with NRCS, visit [www.nrcs.usda.gov/GetStarted](http://www.nrcs.usda.gov/GetStarted)

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### Farm Bill

[2008 Farm Bill Archive](#)

[Regional Conservation Partnership Program](#)

### Landscape Initiatives

[Financial Assistance](#)

[Technical Assistance](#)

[Easements](#)

[Landscape Planning](#)

[Alphabetical Listing & Archive](#)

## Conservation Compliance



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## 2014 Farm Bill - Financial Assistance Programs - NRCS



NRCS offers financial and technical assistance to help agricultural producers make and maintain conservation improvements on their land.



**Environmental Quality Incentives Program**

EQIP provides financial and technical assistance to agricultural producers in order to address natural resource concerns and deliver environmental benefits such as improved water and air quality, conserved ground and surface water, reduced soil erosion and sedimentation or improved or created wildlife habitat. [More on EQIP.](#)



**Conservation Stewardship Program**

The Conservation Stewardship Program helps agricultural producers maintain and improve their existing conservation systems and adopt additional conservation activities to address priority resource concerns. Participants earn CSP payments for conservation performance—the higher the performance, the higher the payment. [More on CSP.](#)



**Agricultural Management Assistance Program**

AMA helps agricultural producers use conservation to manage risk and solve natural resource issues through natural resources conservation. NRCS administers the AMA conservation provisions while the Agricultural Marketing Service and the Risk Management Agency implement other provisions under AMA. [More on AMA.](#)

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## Programs

### Farm Bill

[2008 Farm Bill Archive](#)

[Regional Conservation Partnership Program](#)

[Landscape Initiatives](#)

[Financial Assistance](#)

[Technical Assistance](#)

[Easements](#)

[Landscape Planning](#)

[Alphabetical Listing & Archive](#)

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## 2014 Farm Bill | Easement Programs | NRCS



NRCS offers easement programs to eligible landowners to conserve working agricultural lands, wetlands, grasslands and forestlands.





### Agricultural Conservation Easement Program

The Agricultural Conservation Easement Program (ACEP) provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. Under the Agricultural Land Easements component, NRCS helps Indian tribes, state and local governments and non-governmental organizations protect working agricultural lands and limit non-agricultural uses of the land. Under the Wetlands Reserve Easements component, NRCS helps to restore, protect and enhance enrolled wetlands. [More on ACEP.](#)



### Healthy Forests Reserve Program

The Healthy Forests Reserve Program (HFRP) helps landowners restore, enhance and protect forestland resources on private lands through easements and financial assistance. Through HFRP, landowners promote the recovery of endangered or threatened species, improve plant and animal biodiversity and enhance carbon sequestration. [More on HFRP.](#)

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United States  
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# Strengthening Conservation with Regional Partnerships

## Watershed Planning and National Environmental Policy Act Requirements (NEPA) When Using Watershed Program Authority in the Regional Conservation Partnership Program

USDA's Natural Resources Conservation Service offers voluntary Farm Bill conservation programs that benefit agricultural producers and the environment.

### Watershed Authority

For designated Critical Conservation Areas (CCAs), NRCS implements the Regional Conservation Partnership Program (RCPP) through several conservation authorities, including Public Law 83- 566 Watershed Protection and Flood Prevention Act (hereafter referred to as "watershed program authority"). RCPP projects in CCAs may use all PL 83-566 authorized purposes except watershed rehabilitation.

### Watershed Planning Overview

Watershed plans document social, cultural, environmental, and economic conditions in the watershed; describe all alternative solutions considered; describe and assess the environmental, economic, and social impacts of all alternatives; describe the extent to which each alternative achieves the stated purpose; and set forth arrangements and responsibilities for financing, installation, and operation and maintenance of project measures.

### Who is Responsible for Completing Planning?

Partners, engineering consulting firms, and/or NRCS may complete the watershed plan and NEPA documents. RCPP applications for program funding must identify who will be responsible for completing the plans and must set aside adequate financial resources and time to complete the required documents.

## Watershed Planning and NEPA Requirements

Applicants requesting use of Watershed Authorities must follow all statutory and programmatic rules as outlined in 7 CFR Part 622 and the NRCS National Watershed Program Manual (Title 390, Parts 500-506), including the development of a watershed plan and National Environmental Policy Act (NEPA) Environmental Assessment (EA) or Environmental Impact Statement (EIS). The combined watershed plan-EA/EIS document must include (see NWPM Section 501.31):

- Purpose and need for action;
- Watershed agreement between NRCS and sponsoring local organization(s);
- List of alternatives including a no-action alternative, the agency preferred alternative, other reasonable alternatives, the most cost-effective alternative, a summary and comparison of alternative plans, and any relevant issues and concerns identified through scoping, including direct, indirect, and cumulative actions and impacts;
- Evaluation of all reasonable alternatives. The Plan-EA/EIS is developed following NEPA procedures. The Plan EA/EIS lays out the assessment of the environmental benefits and consequences for each alternative; how benefits may be enhanced; and how consequences will be mitigated;

- A thorough economic evaluation according to the Principles and Requirements for Federal Investments in Water Resources (March 2013) to address benefits and costs of each alternative in order to document the selected alternative;
- A complete and thorough description of the preferred alternative including the rationale for alternative preference, measures to be installed, mitigation, permits and compliance, costs and cost-sharing, installation and financing, operation, maintenance and replacement, economic tables, structural tables; and
- Performance outcome measures that are quantifiable and can be evaluated at completion of the project that will be used to assess the success of each performance measure.

If a proposed project already has an NRCS-approved PL 83-566 plan, the RCPP applicant should review the plan and date completed. By NEPA and NRCS policy, plans older than 5 years will need to be updated to evaluate current environmental conditions and reaffirm economic feasibility.

### Time Required for Planning

New Watershed Plans and EA/EIS can take significant time to complete. The length of time to complete all planning and NEPA requirements should be considered when requesting watershed program authority. All RCPP proposed work must be completed and operational within five years of the RCPP agreement approval.

## Additional Requirements

As per NRCS policy, all watershed plan-EA/EIS documents must be reviewed by NRCS's National Water Management Center to ensure compliance with applicable Federal laws and NRCS policy. Congressional approval is not required for RCPP-funded projects.

All projects must follow NRCS standards and engineering criteria.

## More Information

For more information on the Watershed Protection and Flood Prevention Act, the Watershed Protection and Flood Prevention Act authorities may be found in Public Law 83-566 (16 U.S.C. Parts 1001-1008, and 1010) and Codified Rule 7 CFR part 622.

Specific information on how PL 83-566 authorities are implemented can be found in the National Watershed Program Manual and National Watershed Program Handbook at the NRCS Website:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/landscape/wfpo/>

## NRCS Point of Contact

Jan Marie Surface  
Watershed Planning Specialist  
USDA Natural Resources Conservation Service

National Water Management Center  
[jan.surface@ar.usda.gov](mailto:jan.surface@ar.usda.gov)

[nrcs.usda.gov](http://nrcs.usda.gov)

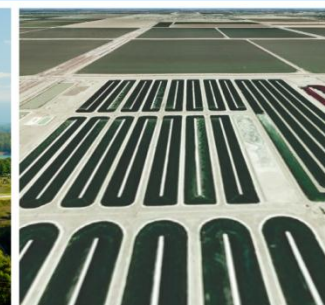
Natural Resources Conservation Service

## Tab J – Department of Energy (DOE) Drought and the Energy/Water Nexus



# The Water-Energy Nexus: Challenges and Opportunities

## Overview and Summary



Present day water and energy systems are interdependent. Water is used in all phases of energy production and electricity generation. Energy is required to extract, convey, and deliver water of appropriate quality for diverse human uses, and then again to treat wastewaters prior to their return to the environment. Historically, interactions between energy and water have been considered on a regional or technology-by-technology basis. At the national and international levels, energy and water systems have been developed, managed, and regulated independently.

Recent developments have focused national attention on the connections between water and energy infrastructure. When severe drought affected more than a third of the United States in 2012, limited water availability constrained the operation of some power plants and other energy production activities. Hurricane Sandy demonstrated the compounding ramifications of vital water infrastructure losing power. The recent boom in domestic unconventional oil and gas development brought on by hydraulic fracturing and horizontal drilling has added complexity to the national dialogue about the relationship between energy and water resources.

Several current trends are further increasing the urgency to address the water-energy nexus in an integrated and proactive way. First, climate change has already begun to affect precipitation and temperature patterns across the United States. Second, U.S. population growth and regional migration trends indicate that the population in arid areas such as the Southwest is likely to continue to increase, further impacting the management of both energy and water systems. Third, introduction of new

technologies in the energy and water domains could shift water and energy demands. Moreover, policy developments addressing water impacts of energy production are introducing additional complexities for decision making.

These trends present challenges as well as opportunities for the U.S. Department of Energy (DOE). An integrated, strategic approach can guide technology research, development, demonstration, and deployment (RDD&D) to address regional water-energy issues and also have national and global impacts. Enhancing and integrating data and models will better inform researchers, decision makers, and the public.

### Key Messages:

- Energy and water systems are interdependent.
- We cannot assume the future is like the past in terms of climate, technology, and the evolving decision landscape.
- Water scarcity, variability, and uncertainty are becoming more prominent, potentially leading to vulnerabilities of the U.S. energy system.
- It is time for a more integrated approach to address the challenges and opportunities of the water-energy nexus.
- DOE has strong expertise in technology, modeling, analysis, and data that can contribute to understanding the issues and solutions across the entire nexus.
- Collaboration with DOE's many current and potential partners is crucial.

## Role of the U.S. Department of Energy

The water-energy nexus is integral to two DOE policy priorities: climate change and energy security. DOE's program offices have addressed the water-energy nexus for many years; however, this work has historically been organized on a program-by-program basis, where water has been considered among a number of other factors.

In the fall of 2012, DOE initiated a department-wide Water-Energy Tech Team (WETT) to increase cohesion among DOE programs and strengthen outreach to other agencies and key external stakeholders in the water and energy sectors. WETT developed *The Water-Energy Nexus: Challenges and Opportunities* to provide an analytical basis from which to address these objectives and to provide direction for next steps.

The report frames the integrated challenge and opportunity space around the water-energy nexus for DOE and its partners. It further explains and strengthens the logical structure underpinning DOE's long-standing technology and modeling research and development (R&D) efforts, and lays the foundation for future efforts. The report identifies six strategic pillars that will serve as the foundation for coordinating R&D.

The report is intended as an invitation for collaboration to DOE's many current and potential partners in the water-energy arena. Many other federal agencies also have important activities at the water-energy nexus, as do regional, state, tribal, and local authorities.

### Six Strategic Pillars to Address the Water-Energy Nexus

1. Optimize the freshwater efficiency of energy production, electricity generation, and end use systems
2. Optimize the energy efficiency of water management, treatment, distribution, and end use systems
3. Enhance the reliability and resilience of energy and water systems
4. Increase safe and productive use of nontraditional water sources
5. Promote responsible energy operations with respect to water quality, ecosystem, and seismic impacts
6. Exploit productive synergies among water and energy systems

Other important organizations include private companies, national non-governmental organizations (NGOs), international governments, universities, and municipal facilities.

Activities discussed in the report are subject to future evaluation to determine the priority, appropriate agency (private, state, local, or federal), and appropriate share of any cost or responsibilities. Many federal agencies have missions related to topics and activities discussed in this report and, if adopted in future budgets, such activities could reside at federal agencies other than DOE.



Figure 1. Algae biofuel production (source: PNNL)

## The Water-Energy Nexus

U.S. flows of energy and water are intrinsically interconnected, in large part due to the characteristics and properties of water that make it so useful for producing energy and the energy requirements to treat and distribute water for human use. This interconnectivity is illustrated by Figure 6, a hybrid Sankey diagram that shows the magnitude of energy and water flows on a national scale. The diagram illustrates that thermoelectric power generation both withdraws large quantities of water for cooling and dissipates tremendous quantities of primary energy due to inefficiencies in converting thermal energy to electricity (“withdrawn” water is diverted from a surface water or groundwater source). The intensity of water use and energy dissipated varies with generation and cooling technology.

As the largest single consumer of water, agriculture competes directly with the energy sector for water resources (“consumed” water is withdrawn and not returned to its source because it has evaporated, been transpired by plants, incorporated into products etc.). However, agriculture also contributes indirectly to the energy sector via production of biofuels. Both connections could be strained by increasing concerns over water availability and quality. In addition, water

treatment and distribution for both public drinking water supply and municipal wastewater require energy.

Significant aspects of water and energy flows do not appear in the diagram. Flows will change over time, and anticipated changes in flows are important to consider when prioritizing investment in technology and other solutions (see Figure 2). Future increased deployment of some energy technologies, such as carbon capture and sequestration, could lead to increases in the energy system’s water intensity, whereas deployment of other technologies, such as wind and solar photovoltaics, could lower it.

In addition, there is significant regional variability in the water and energy systems, their interactions, and resulting vulnerabilities. For example, producing oil and natural gas through horizontal drilling and hydraulic fracturing has the potential to impact local water quantity and quality, which can be mitigated through fluid lifecycle management (see Figure 3). Large volumes of water produced from oil and gas operations present both localized management challenges and potential opportunities for beneficial reuse.

The energy requirements for water systems also have regional variability, based on the quality of water sources and pumping needs.

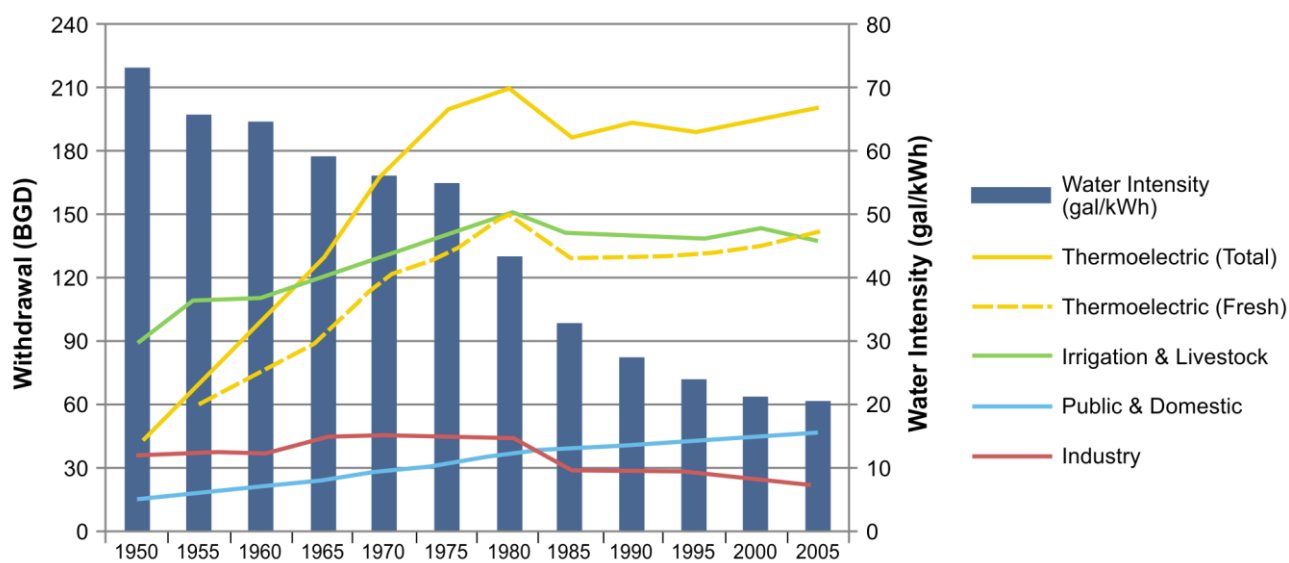


Figure 2. Water use for thermoelectric generation and other sectors.

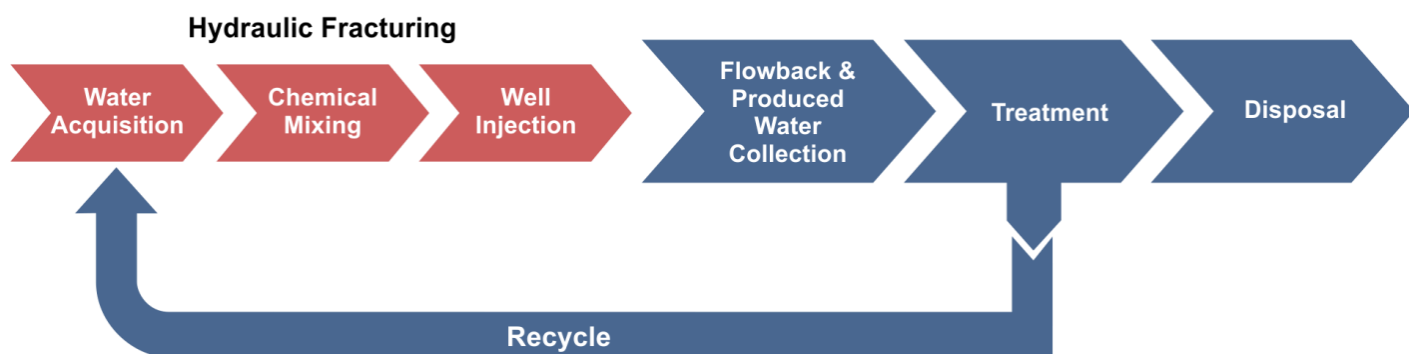


Figure 3. Fuels production water life cycle.

## Trends

Water availability will affect the future of the water-energy nexus. While there is significant uncertainty regarding the magnitude of effects, water availability and predictability will be altered by changing temperatures, shifting precipitation patterns, increasing variability, and more extreme weather.

Changes in precipitation and temperature patterns—including earlier snowmelt—will likely lead to more regional variation in water availability for hydropower, bioenergy feedstock production, and other energy needs. Rising temperatures have the potential to both increase the demand for electricity for cooling and decrease the efficiency and capacity of thermoelectric generation. These changes and variations pose challenges for energy infrastructure resilience.

Water and energy needs will also be shaped by population growth and migration patterns, as well as changes in fuels used and energy technologies deployed. According to Energy Information Administration (EIA) data, planned retirements and additions of electricity generation units and cooling systems will decrease water withdrawals, will likely increase water consumption, and will increase the diversity of water sources used (see Figure 4).

Many of the forces affecting the water-energy nexus are out of the federal government’s control. However, the future of the nexus hinges on a number of factors that are within the DOE’s scope of influence, including technology options, location of energy activities, and energy mix.

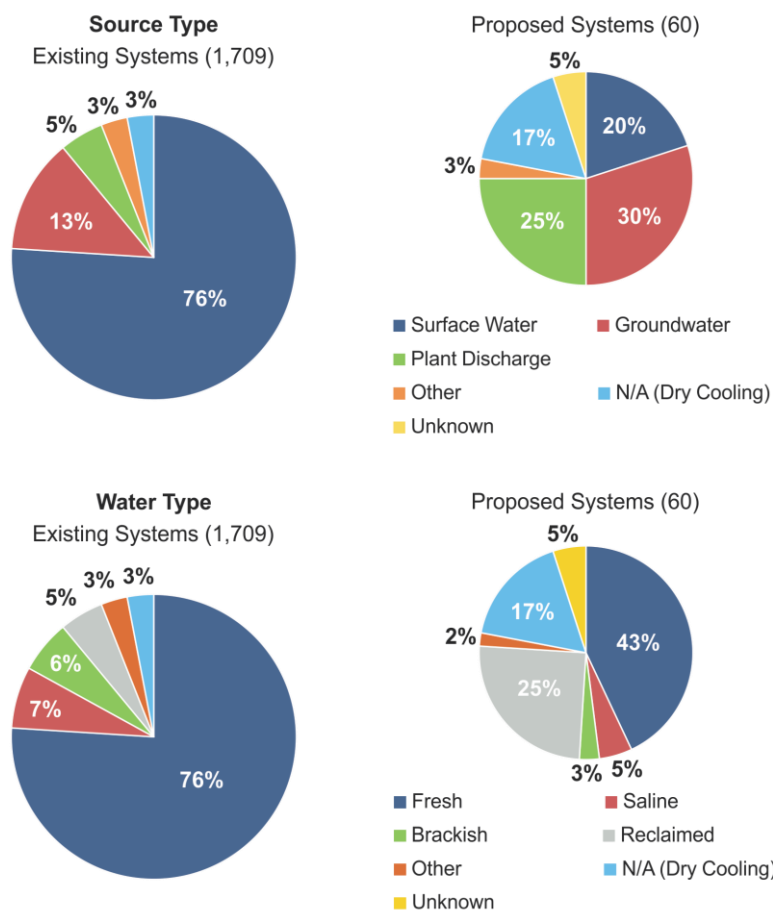


Figure 4. Existing and proposed cooling systems by source type and water type.

Proposed systems are scheduled to come online between 2013 and 2022.

## Decision-making Landscape

The decision-making landscape for the water-energy nexus is shaped by political, regulatory, economic, environmental, and social factors, as well as available technologies. The landscape is fragmented, complex, and evolving; incentive structures are overlapping and not necessarily consistent.

Water is inherently a multi-jurisdictional management issue. States and localities vary in philosophies regarding water rights; the divide is particularly pronounced between western and eastern states (see Figure 5).

There is also variation across states in relevant energy policies, including renewable portfolio standards, regulation of oil and gas development activities, and regulation of thermoelectric water intake and discharge. Regulations for both oil and gas development and

thermoelectric water use are currently undergoing substantial change.

Energy for water is also the subject of policy activity at multiple scales, from appliances to municipal water treatment. A more integrated approach to the interconnected energy and water challenges could stimulate the development and deployment of solutions that address objectives in both domains.

The water-energy nexus policy challenges are not unique to the United States; many other nations are addressing the nexus based on their own circumstances. For example, China is coal-rich but water-poor and is adopting direct and indirect measures to reduce water intensity in coal-fired power generation.

Qatar is hydrocarbon-rich but water-poor, and increasingly relies on desalinated water for drinking. Qatar is moving to power this desalination with renewable power and waste heat.

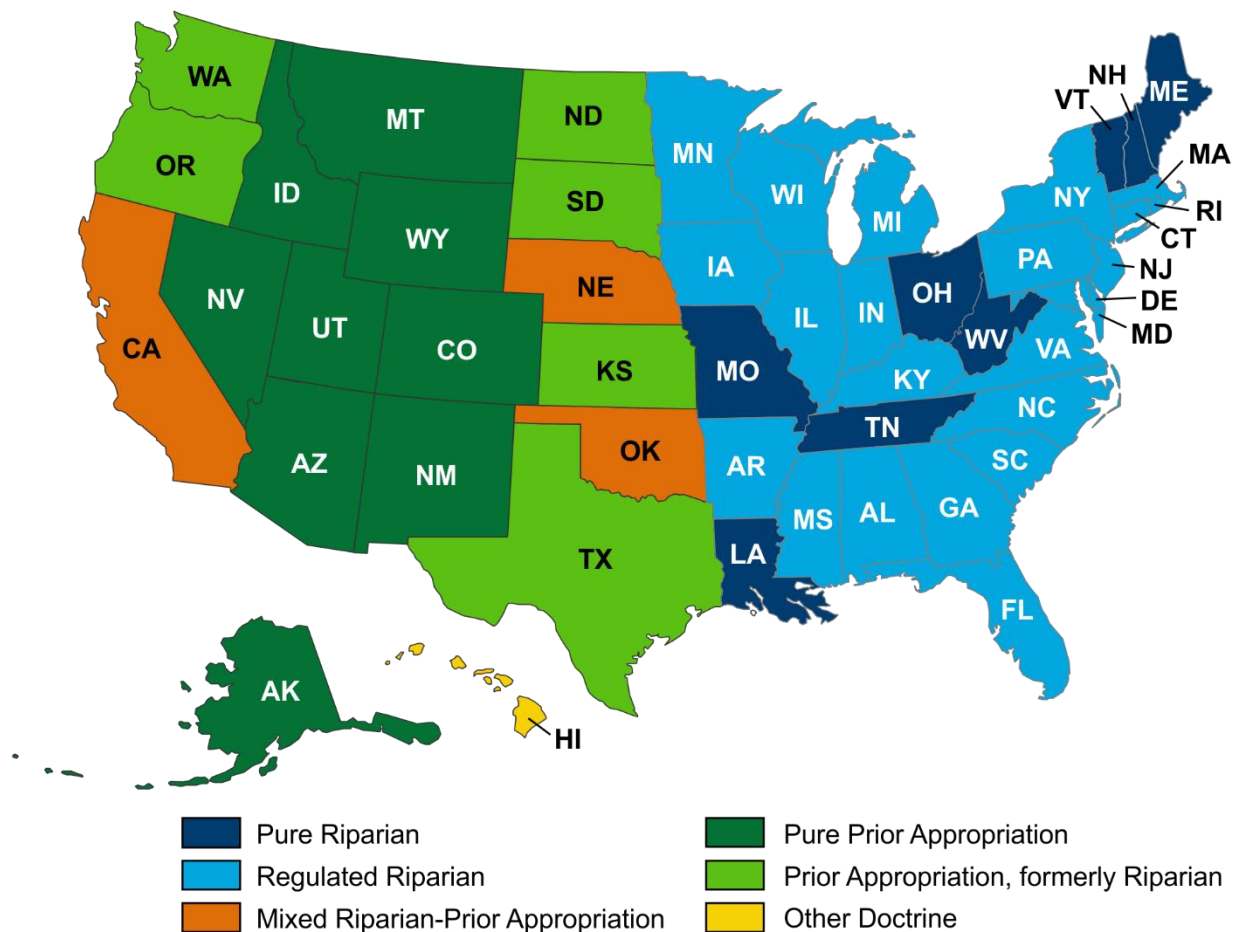


Figure 5. Water governance policies in the United States, by state.

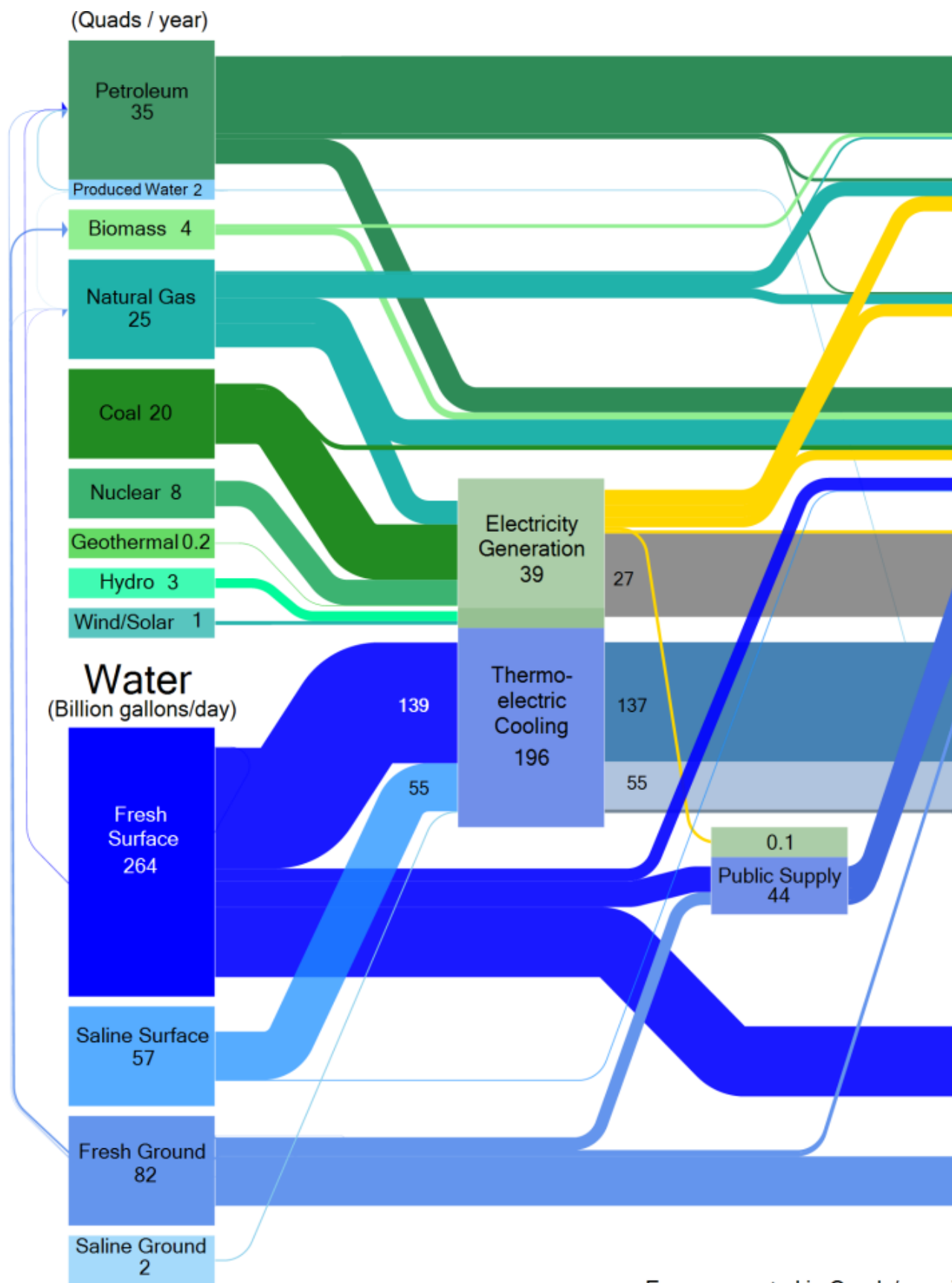


Figure 6. Energy and water flows in the



## Technology RDD&D

There are a number of technologies that support water-efficient energy systems or energy-efficient water systems. These technologies are at various stages of research, development, demonstration, and deployment.

A range of technologies can optimize freshwater use for energy through waste heat recovery, dry cooling, alternate fluids, and process water efficiency (Figure 7). Cooling for thermoelectric generation is an important target for water efficiency because it withdraws large quantities of water and dissipates tremendous quantities of primary energy.

One approach to reduce thermoelectric and other cooling requirements, along with associated water use, is to reduce the generation of waste heat through more efficient power cycles (e.g., the recompression closed loop Brayton cycle). Another option is to increase the productive use of waste heat, such as through thermoelectric materials, enhancements in heat exchanger technologies, or low temperature co-produced geothermal power.

The water efficiency of cooling systems can also be improved through advancements in technologies such as air flow designs, water recovery systems, hybrid or dry cooling, or treatment of water from blowdown.

## Technology RDD&D Opportunities

Opportunities exist throughout the stages of technology research, development, demonstration, and deployment:

- Recovery of dissipated energy
- Advances in cooling systems
- Alternatives to freshwater in unconventional oil and gas
- Desalination and nontraditional waters
- Net-zero wastewater treatment
- Efficient equipment and appliances

Improvements in sensors, data collection, analysis, and reporting will yield benefits to multiple decision-makers.

Addressing energy and water systems as an integrated whole can stimulate additional innovations.

In addition, there are opportunities to optimize water use in other parts of the overall energy system. Alternative fluids can replace freshwater in hydraulic fracturing, geothermal operations, and power cycles. Process freshwater efficiency in carbon capture, bioenergy feedstock production, and industrial processes can be improved.

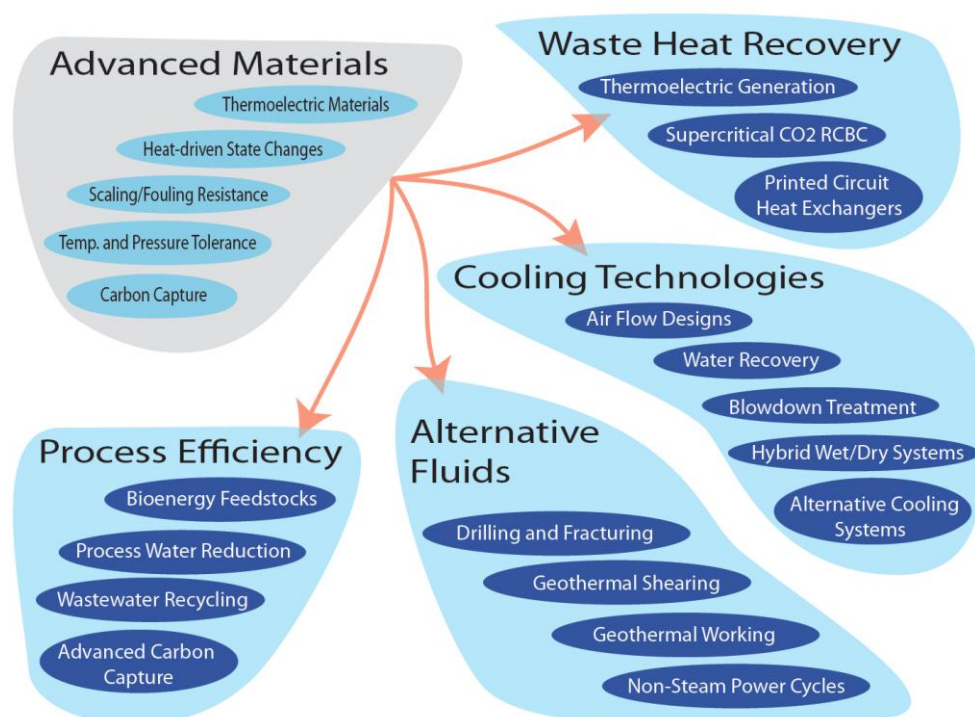
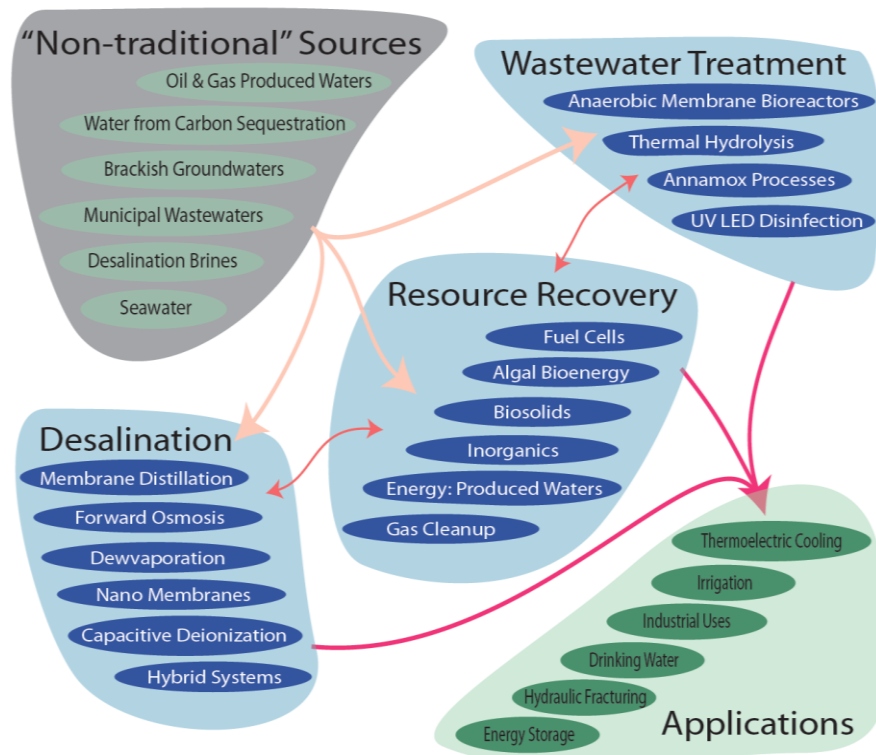


Figure 7. Representative problem/opportunity spaces in water for energy.



**Figure 8. Representative problem/opportunity spaces in energy for and from water.**

Many of the technologies that improve water efficiency are enhanced by advances in materials, including thermoelectric properties, heat-driven state changes, scaling and fouling resistance, and enhanced temperature and pressure tolerance.

Water treatment technologies can enhance energy efficiency of water systems and enable the productive and safe use of non-traditional water resources for energy and non-energy applications (see Figure 8). Such improvements in water treatment and management have particular use for treating oil- and gas-produced waters, as well as saline aquifers, brackish groundwater, brines, seawater, and municipal wastewater. For saline sources, promising water treatment technologies include membrane distillation, forward osmosis, dewvaporation, nanomembranes, and capacitive deionization. For municipal wastewater, treatment technologies include anammox systems, anaerobic pretreatments, and anaerobic membrane bioreactors. In addition, the biosolids contained in wastewater can be a source of methane energy.

Opportunities to pursue synergies between water and energy systems include use of waste heat for desalination and combined heat and power. Water systems can also be used for energy storage or electricity

demand management. The design of these integrated systems often requires analysis to characterize the specific economically and environmentally optimized configurations.

Technology deployment is another important consideration. A number of public policy tools can inform and stimulate the adoption of technologies and practices in the range of markets that have a role in the water-energy nexus. Energy and water utilities, for example, are characterized by long investment cycles, are subject to a panoply of regulations, and operate under stringent performance expectations. This combination often constrains operator willingness to undertake the risks of investing in new technologies. In some cases, loan guarantees and/or public/private demonstration projects may make such investments more attractive.

Consumer markets are driven more by price and intangibles, and product lifecycles tend to be shorter; appliance standards may inform product selection in these instances. Business applications such as combined heat and power fall somewhere in between; they might be well served by opportunities to share best practices and lessons learned.

## Data, Modeling, and Analysis

Integrated analysis and modeling of the water-energy nexus requires the simulation of many human and natural systems and their complex interactions and dynamics. The connection of water and energy to land is particularly important (see Figure 9), as are the connections to global and regional climate, technology options and strategies, and broader aspects of socioeconomic development. The latter includes population, migration, regional economics, and competing demands for energy, water, and land resources, to name a few. These simulations necessarily span many temporal and spatial scales; improving the telescopic capabilities of these interacting systems is a considerable but addressable scientific challenge.

While DOE and the rest of the federal family have a substantial body of modeling expertise, there is a need to target the development of more integrated modeling, data, and information platforms around use-inspired questions and user driven needs (see Figure 10). Ultimately, such work must lead to projections and scenarios at decision-relevant scales. Enhanced

## Data, Modeling, and Analysis Context and Needs

- The water-energy nexus is affected by many moving parts including supplies, demands, land use and land cover, population/migration, technologies, policies, regional economics, weather extremes, and climate.
- Improved integration of models spanning these domains can better reflect the dynamics of interactions and interdependencies among complex systems.
- Available data and information needs span a wide range of spatial and temporal scales, necessitating improved capacity for “telescopic resolution.”
- Layered data-knowledge built around DOE data and other observation, model-generated, and reported data sets can lead to emergent insights and broadly accessible toolkits supporting energy and coupled water-energy system resilience.
- Stakeholder decision-making needs extend beyond these more integrative modeling frameworks and data-knowledge systems and must target:
  - Qualitative and quantitative scenarios
  - Probabilistic approaches
  - Insights into system shocks and extremes
  - Improved characterization of uncertainties

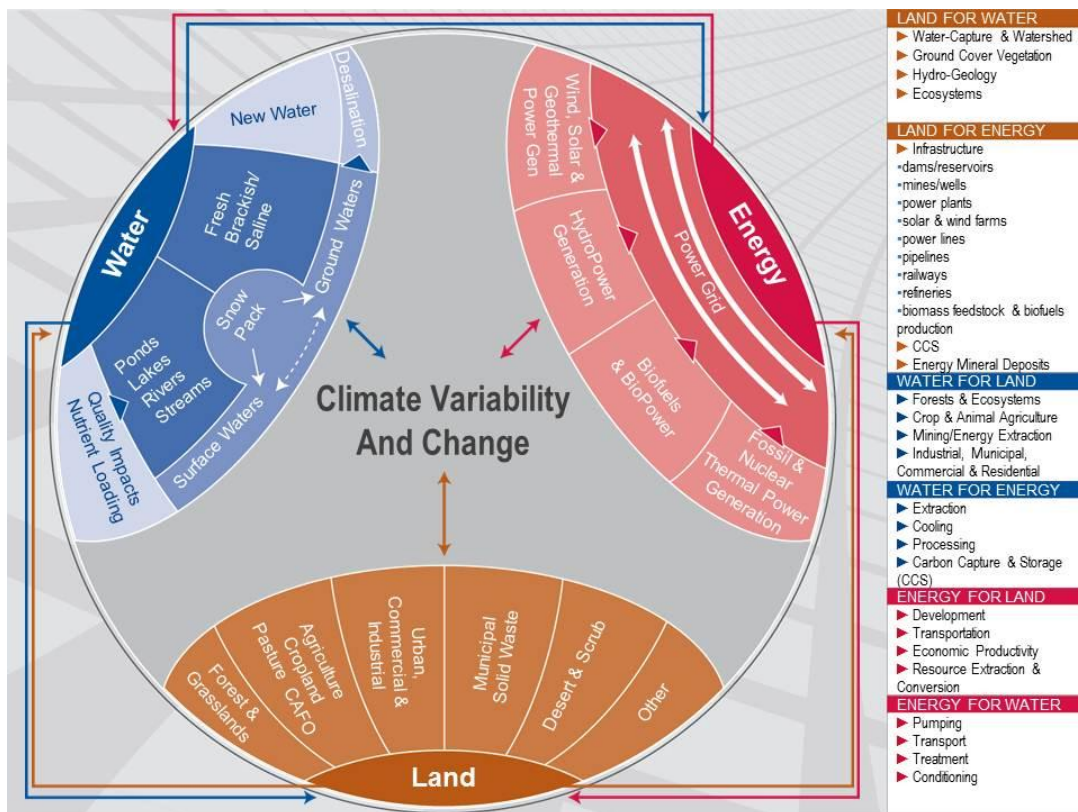
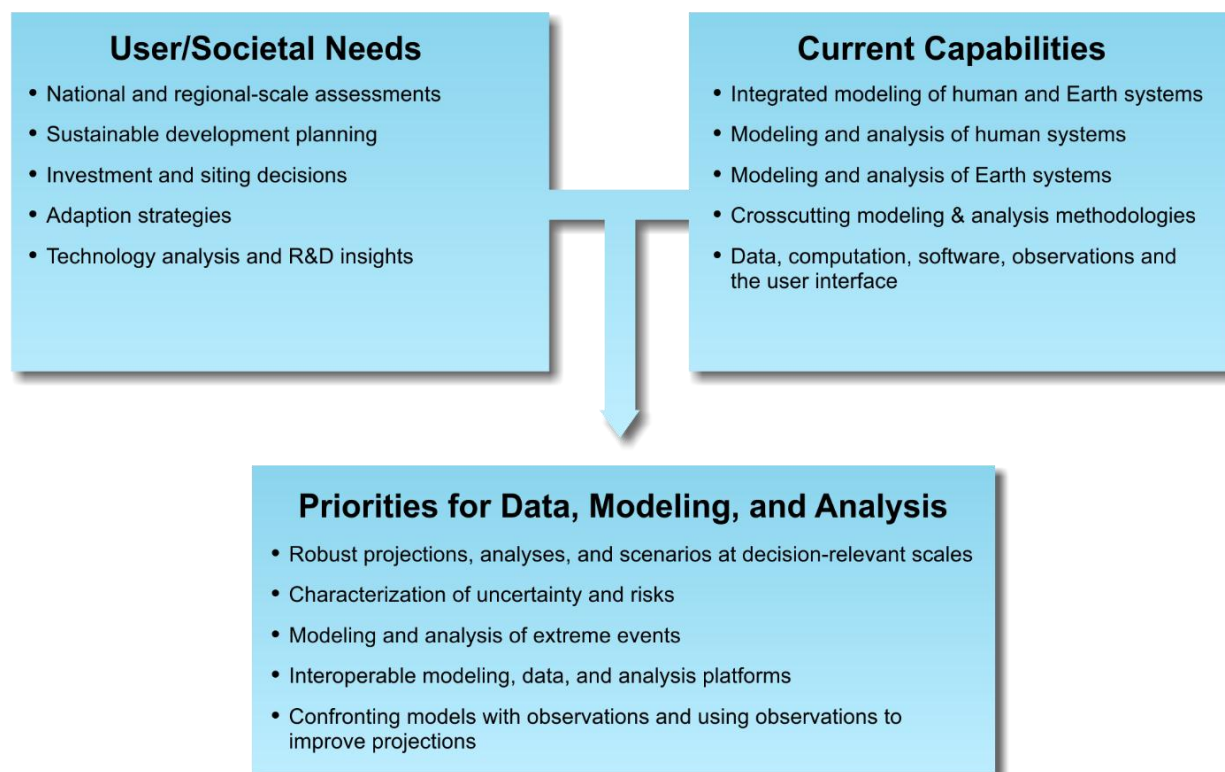


Figure 9. Illustration of the significance of three-way dynamics of E-W-L systems as represented through integrated assessment research.



**Figure 10. Needs, capabilities, and priorities for data, modeling, and analysis.**

characterization and communication of uncertainties is also important.

In addition, improving forecasting capacities of extreme events and possible tipping points is needed to inform investment and siting decisions as well as other potential adaptation options. For DOE, these insights can inform technology RDD&D priorities and market evaluation studies. Advances will require integration of multiple models originally designed for disparate purposes, including the integration of technology-specific models with larger-scale efforts.

Finally, models require extensive validation with observations and empirical data. The iterative process of calibration can provide valuable direction to future cycles of model development, data collection, and, in the end, provision of information in forms that are both accessible and meaningful to a broad range of users.

### **Next Steps**

The water-energy nexus presents an array of technical and operational challenges at local, regional, and national scales. There is a key national need for data-

driven and empirical solutions to address these challenges. The next step is to substantially increase the impact of ongoing activities by strategically integrating and building on existing technology, modeling, and data work. Understanding the challenges and developing the solutions will necessitate early engagement with a diverse set of stakeholders.

Investment in technology advances throughout the technology continuum from research to development, demonstration, and deployment can address key challenges. Potential applications of interest for technology solutions cover several broad areas, including water efficiency in energy systems, energy efficiency in water systems, and productive use of nontraditional waters.

The next step is to develop a technology research portfolio analysis addressing risks, performance targets, impacts, RDD&D pathways, and learning curves.

Strong analysis will highlight potential synergies for technologies that span multiple programs.

Models and analysis are important to inform understanding and decision-making across complex coupled energy and water systems. DOE can place additional focus on technology models and their integration into broader multi-scale models addressing energy, water, and land under climate variability and change. This set of models can form an integrated analytical platform that supports understanding of the current and potential future interactions among the energy and water systems. The models can be used to develop scenarios incorporating factors such as energy technology deployment and climate variability.

The models and scenarios can then inform technology portfolio analysis, as well as relevant operations, planning, and other decisions made by stakeholders at scales ranging from facility to nation and seconds to decades. Characterizing uncertainty and examining extreme events are also priorities.

There is also an opportunity for DOE and its partners to assemble and improve water-energy data. For some aspects of the water-energy nexus, there is a considerable amount of data and information that exists but is inaccessible. Decision-making will be improved by integrating these data into an accessible system designed around the needs of both researchers and users.

Some aspects of the water-energy nexus, such as water quality characteristics of produced waters, suffer from a lack of consistent and coherent data collection at appropriate levels of granularity. To address these gaps, DOE can work with federal agencies and other partners on sensing, surveying, compilation, analysis, modeling, presentation, and interactive updating of data sets to improve data quality and usability. This enhanced data system can be used to calibrate the integrated models described above and the models can also be used to inform data collection.

With the importance of water in energy production and the increasing uncertainty of water supply, there is a growing need for a more coherent approach to inform relevant policies. The current water-energy decision-making landscape is complex and fragmented. The nation's water and energy policies have been developed independently from one another, and in many cases there are strong regional differences in policy frameworks and objectives.

DOE can build on its modeling and analysis to help illuminate the key relevant issues brought by the strong interconnections between water and energy systems. In many cases, these interconnections relate directly to energy system reliability and resilience under changes in water resources. Reliability and resilience, in turn, align with broad Administration energy policy initiatives such as the Quadrennial Energy Review and Climate Action Plan. Important work is wide-ranging, including topics such as the development of metrics describing energy system resilience under water constraints, analysis of the connections between energy and water efficiency at multiple scales, and an examination of the impact of infrastructure investment programs.

Finally, DOE can strengthen its interactions and collaborations with diverse stakeholders. Important partners span all sectors, including federal agencies, state and local governments, foreign governments, private industry, academic institutions, non-governmental organizations, and citizens. Integration and collaboration will enable more effective research, development, demonstration, and deployment of key technologies; harmonization of policies where warranted; shared robust datasets; informed decision-making; and public dialogue

**For more information:**

[www.energy.gov](http://www.energy.gov)

**To provide feedback:**

[wett@hq.doe.gov](mailto:wett@hq.doe.gov)

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## Energy-Water Nexus (\$K)

| FY 2015 Enacted | FY 2015 Current | FY 2016 Enacted | FY 2017 Request |
|-----------------|-----------------|-----------------|-----------------|
| 15,575          | 15,085          | 34,250          | 96,100          |

### Overview

The FY 2017 Budget Request for the Energy-Water Nexus (EWN) crosscut is an integrated set of cross-program collaborations that: 1) builds and deploys a DOE mission critical data, modeling, and analysis platform to improve understanding and inform decision-making for a broad range of users; 2) strategically targets crosscutting technology research, development, demonstration and deployment opportunities within the system of water and energy flows; and 3) is informed and supported by focused policy analysis and outreach and stakeholder engagement. Taken as an integrated whole, these investments position DOE to contribute strongly to the Nation's transition to more resilient coupled energy-water systems. The EWN Request outlined here draws on ideas presented in DOE's report, *The Water-Energy Nexus: Challenges and Opportunities* (June 2014). This publication represents the culmination of an intense two-year effort that engaged DOE's sister agencies, national laboratories, state and local governments, utilities, industry, the broader science community, and others. In FY 2015, Secretary of Energy Moniz launched a series of Energy-Water Nexus roundtables to gain insights and feedback on our current plans, to build collaborations and alliances, and to leverage DOE's capabilities and those of related regional entities. In addition to a capstone event touching on general aspects of the energy-water nexus and chaired by the Secretary, DOE conducted topic-specific roundtables on fuels, the electricity sector, water infrastructure, and systems integration. This extensive stakeholder outreach has helped to inform and fine-tune this FY 2017 crosscutting initiative. The 2015 DOE Quadrennial Technology Review (QTR), released on September 10, 2015, highlights several areas where technology advances could positively impact the challenges faced in the energy-water nexus, including desalination. Additionally, in FY 2015, DOE established a crosscutting, domestic energy and water research investment as part of a bilateral collaboration with China. In this latter initiative, U.S. scientists receive funding to conduct research on a set of coordinated topics and common Nexus challenges. Ultimately, activities in FY 2017 continue to build on these foundational investments while introducing a number of strategically important new initiatives with the goal of accelerating the science, analytic capabilities, technology innovations, policy insight, and outreach for the most pressing challenges at the Nexus.

Present day water and energy systems are interdependent. From providing cooling to power plants to irrigating crops for biofuels, multiple phases of energy production and electricity generation use water. Conversely, extracting, conveying, and delivering water of appropriate quality for diverse human uses requires energy, and treating wastewaters prior to their return to the environment requires even more. Historically, interactions between energy and water have been considered on a regional or technology-by-technology basis. Despite their interdependency, energy and water systems have been developed, managed, and regulated independently.

Several current trends are increasing the urgency to address the energy-water nexus in an integrated way. First, precipitation and temperature patterns across the United States are undergoing rapid change with increasing frequency and intensity of extreme events. Already stressed by competing demands and interdependencies, record droughts (e.g., California), heat waves, floods, tropical storms, and winter storms have had significant effect on infrastructure, regional economies, and productivity in various parts of the U.S. Few communities have escaped these trends. Many of these challenges, either individually or oftentimes complicated by simultaneous occurrence, pose extreme challenges at the Nexus. Second, recent scientific evidence points to the accelerated drawdown of some critically important U.S. groundwater supplies, typically serving as the "backup plan" for insufficient or intermittent surface water supplies for energy and other uses. Third, U.S. population growth and regional migration trends indicate that the population in arid areas such as the Southwest is likely to continue to increase, further impacting the management of both energy and water systems. More generally throughout the country, migration patterns continue to feed the growth of densely populated settlements and the associated drivers for concentrated, connected infrastructure. These shifts bring their own set of unique challenges owing to the rapid growth in service demands, constraints posed by existing designs and land-use allocations, and the increased criticality of service reliability. Finally, introduction of new technologies in the energy and water domains could shift water and energy demands, potentially in disruptive ways if interdependencies are not explicitly addressed. Policy developments addressing water impacts of energy production are introducing an additional layer of complexity for decision making.

The overarching goal of this initiative is to assist the nation in moving towards resilient and sustainable coupled energy-water systems. Success will be measured through DOE's ability to:

- Optimize the freshwater efficiency of energy production, electricity generation, and end use systems.
- Optimize the energy efficiency of water management, treatment, distribution, and end use systems.
- Enhance the reliability and resilience of energy and water systems.
- Increase safe and productive use of nontraditional water sources.
- Promote responsible energy operations with respect to water quality, ecosystem, and seismic impacts.
- Exploit productive synergies among water and energy systems.

While several federal agencies have missions that touch on the water side of the energy-water nexus, DOE's focus on the energy side is essential if the Nation is to realize meaningful solutions. The complexity at the energy-water nexus also demands a coordinated and integrated DOE approach, one that leverages the full range of Departmental assets, from basic science to applied research, policy, and, ultimately, outreach. This Crosscut, now in its first year (FY 2016) of funding as a coordinated set of investments, has been years in planning and preparation. At the most fundamental level, it intends to improve understanding of vulnerabilities and opportunities as they evolve over time, offer new solutions through knowledge and technology creation, and accelerate change through policy and stakeholder engagement.

This FY 2017 crosscut is responsive to a variety of Congressional and stakeholder directives and requests. Section 979 of the Energy Policy Act of 2005 directed the DOE to carry out a program addressing energy-related issues associated with the provision of water and water-related issues associated with the provision of energy. Since that time, the Government Accountability Office (GAO) has issued a series of reports calling for improved DOE information and coordination at the energy-water nexus, including improving federal data for power plant water use (2009), improving information on water produced during oil and gas production (2012), and increasing federal coordination to better manage energy and water tradeoffs (2012).

### Highlights and Major Changes in the FY 2017 Budget Request

In FY 2016, DOE manages its EWN activities as a coordinated set of programmatic efforts included within the enacted budgets for six major programs: the offices of Energy Efficiency and Renewable Energy (EERE), Energy Policy and Systems Analysis (EPSA), Fossil Energy (FE), International Affairs (IA), Indian Energy (IE), and Science (SC). FY 2017 activities are organized around the four major pillars, noted below, and continue and expand, strategically, into areas as noted.

1. **Data, Modeling, and Analysis (DMA)** helps to understand current energy system vulnerabilities while exploring complex systems dynamics for subsequent applications in planning the resilient, efficient, and competitive energy-water systems of the future. DOE's efforts will advance foundational models, produce and analyze modeled output, and integrate data sets at spatial and temporal scales that matter to decision-makers at Federal, regional, state, and municipal levels. Improving capabilities will provide insights into technology RDD&D opportunities. The work outlined here builds on a DOE Office of Science workshop addressing modeling and long term predictions of the integrated water cycle. DMA work focuses on the following four sub-pillars:
  - a. *Layered Energy Resilience Data-Knowledge System* will fill key data gaps, identify scope, prepare a preliminary design, and begin development of an integrated data analytic system at the energy-water nexus. Efforts will initially emphasize work around the vast data inventories and capabilities distributed throughout DOE. FY 2016 funds are predominantly for scoping, planning, conceptual design, and expanding interagency engagement. FY 2017 supports the first phase of system build-out.
  - b. *Integrated Multi-System, Multi-Scale Modeling Framework and Impact, Adaptation, and Vulnerability Model Development* will improve interoperability and process representations across a range of major modeling platforms that require integration to enable coupled simulations at the energy-water nexus. FY 2017 continues support for this foundational modeling capability with the goal of advancing both an advanced multi-model predictive system and an innovative suite of use-inspired multi-model tools.
  - c. *Impacts, Adaptation, and Vulnerability Strategic Research and Analysis* will deliver a broad range of energy-water analyses, tools, and research insights to address priority needs of decision-makers and the research community.

- Overall, the FY 2017 Request features an investment portfolio that is balanced, integrated, and strategically aligned, while simultaneously preserving the unique mission imperatives of the individual programs. The integration occurs across the four pillars outlined above. For example, performance and cost specifications from technology RDD&D can feed both DMA and policy analysis. Policy analysis informs understanding of technology deployment barriers and opportunities. In addition to being broadly useful to the R&D community, DMA produces analytical tools, forecasts, and datasets and can help to identify technology opportunity.

**Energy-Water Nexus**  
**Funding by Appropriation and Program (\$K)**

|   | <b>FY 2015<br/>Enacted</b> | <b>FY 2015<br/>Current</b> | <b>FY 2016<br/>Enacted</b> | <b>FY 2017<br/>Request</b> | <b>FY 2017 vs<br/>FY 2016</b> |
|---|----------------------------|----------------------------|----------------------------|----------------------------|-------------------------------|
| <b>Departmental Administration</b>  |                            |                            |                            |                            |                               |
| Energy Policy and Systems Analysis: Program Direction                     | 2,550                      | 2,550                      | 2,550                      | 2,600                      | +50                           |
| International Affairs: Program Direction                                  | ---                        | ---                        | 300                        | 400                        | +100                          |
| <b>Total, Departmental Administration</b>                                 | <b>2,550</b>               | <b>2,550</b>               | <b>2,850</b>               | <b>3,000</b>               | <b>+150</b>                   |
| <b>Energy Efficiency &amp; Renewable Energy</b>                           |                            |                            |                            |                            |                               |
| Advanced Manufacturing: Advanced Manufacturing R&D Facilities             | ---                        | ---                        | ---                        | 25,000                     | +25,000                       |
| Advanced Manufacturing: Advanced Manufacturing R&D Projects               | ---                        | ---                        | 2,300                      | ---                        | -2,300                        |
| Advanced Manufacturing: Industrial Technical Assistance                   | ---                        | ---                        | 2,000                      | ---                        | -2,000                        |
| Bioenergy Technologies: Conversion Technologies                           | ---                        | ---                        | ---                        | 4,000                      | +4,000                        |
| Geothermal Technologies: Low Temperature and Coproduced Resources         | 1,045                      | 1,045                      | 2,000                      | 2,000                      | ---                           |
| Geothermal Technologies: Systems Analyses                                 | 180                        | ---                        | ---                        | ---                        | ---                           |
| Solar Energy: Concentrating Solar Power                                   | ---                        | ---                        | ---                        | 15,000                     | +15,000                       |
| Water Power: Hydropower Technologies                                      | ---                        | ---                        | 600                        | 6,000                      | +5,400                        |
| <b>Total, Energy Efficiency &amp; Renewable Energy</b>                    | <b>1,225</b>               | <b>1,045</b>               | <b>6,900</b>               | <b>52,000</b>              | <b>+45,100</b>                |
| <b>Fossil Energy Research &amp; Development</b>                           |                            |                            |                            |                            |                               |
| Crosscutting Research and Analysis: Water Management R&D                  | 7,000                      | 6,783                      | 6,000                      | 15,800                     | +9,800                        |
| Fuel Supply Impact Mitigation: Environmentally Prudent Development        | 3,000                      | 0                          | 0                          | ---                        | ---                           |
| <b>Total, Fossil Energy Research &amp; Development</b>                    | <b>10,000</b>              | <b>6,783</b>               | <b>6,000</b>               | <b>15,800</b>              | <b>+3,800</b>                 |
| <b>Office of Indian Energy Policy and Programs</b>                        |                            |                            |                            |                            |                               |
| Tribal Energy Program: Tribal Energy Grant Program                        | ---                        | ---                        | 500                        | 1,000                      | +500                          |
| Tribal Energy Program: Technical Assistance                               | ---                        | ---                        | 200                        | ---                        | -200                          |
| <b>Total, Office of Indian Energy Policy and Programs</b>                 | <b>---</b>                 | <b>---</b>                 | <b>700</b>                 | <b>1,000</b>               | <b>+300</b>                   |
| <b>Science</b>  |                            |                            |                            |                            |                               |
| Biological and Environmental Research: Climate and Environmental Sciences | <b>1,800</b>               | <b>1,800</b>               | <b>11,800</b>              | <b>24,300</b>              | <b>+12,500</b>                |
| <b>Total, Energy-Water Nexus</b>  | <b>15,575</b>              | <b>12,178</b>              | <b>28,250</b>              | <b>96,100</b>              | <b>+67,850</b>                |

**Energy-Water Nexus  
FY 2017 Funding by Pillar (\$K)**

|   | <b>Data,<br/>Modeling, and<br/>Analysis</b> | <b>Technology Research<br/>Development,<br/>Demonstration, and<br/>Deployment</b> | <b>Policy<br/>Analysis</b> | <b>Outreach and<br/>Stakeholder<br/>Engagement</b> | <b>Total</b>  |
|---|---|---|----------------------------|--|---------------|
| <b>Departmental Administration</b>  |   |   |                            |  |               |
| Energy Policy and Systems Analysis: Program Direction                     | 1,500                                       | ---   | 1,000                      | 100  | <b>2,600</b>  |
| International Affairs: Program Direction                                  | 300   | ---   | ---                        | 100  | <b>400</b>    |
| <b>Departmental Administration Total</b>                                  | <b>1,800</b>                                | ---   | <b>1,000</b>               | <b>200</b>   | <b>3,000</b>  |
| <b>Energy Efficiency &amp; Renewable Energy</b>                           |   |   |                            |  |               |
| Advanced Manufacturing: Advanced Manufacturing R&D Facilities             | ---   | 25,000  | ---                        | ---  | <b>25,000</b> |
| Bioenergy Technologies: Conversion Technologies                           | ---   | 4,000   | ---                        | ---  | <b>4,000</b>  |
| Geothermal Technologies: Low Temperature and Coproduced Resources         | ---   | 2,000   | ---                        | ---  | <b>2,000</b>  |
| Solar Energy: Concentrating Solar Power                                   | ---   | 15,000  | ---                        | ---  | <b>15,000</b> |
| Water Power: Hydropower Technologies                                      | 1,000                                       | 5,000   | ---                        | ---  | <b>6,000</b>  |
| <b>Total, Energy Efficiency &amp; Renewable Energy</b>                    | <b>1,000</b>                                | <b>51,000</b>   | ---                        | ---  | <b>52,000</b> |
| <b>Fossil Energy Research &amp; Development</b>                           |   |   |                            |  |               |
| Crosscutting Research and Analysis: Water Management R&D                  | 1,000                                       | 14,800  | ---                        | ---  | <b>15,800</b> |
| <b>Total, Fossil Energy Research &amp; Development</b>                    | <b>1,000</b>                                | <b>14,800</b>   | ---                        | ---  | <b>15,800</b> |
| <b>Office of Indian Energy Policy and Programs</b>                        |   |   |                            |  |               |
| Tribal Energy Program: Tribal Energy Grant Program                        | ---   | 1,000   | ---                        | ---  | <b>1,000</b>  |
| <b>Science</b>  |   |   |                            |  |               |
| Biological and Environmental Research: Climate and Environmental Sciences | <b>24,300</b>                               | ---   | ---                        | ---  | <b>24,300</b> |
| <b>Total, Energy-Water Nexus</b>  | <b>28,100</b>                               | <b>66,800</b>   | <b>1,000</b>               | <b>200</b>   | <b>96,100</b> |

## Program Roles

### Departmental Collaboration

The interaction of the four elements proposed under the crosscut—DMA, RDD&D, Policy Analysis, and Outreach and Stakeholder Engagement—cuts across six DOE offices: EERE, EPSA, FE, IA, IE, and SC. The bulk of the DMA investment comes from SC, with cross-office shared funding and/or collaboration spanning all of the major focus areas, including the Layered Energy Resilience Data-Knowledge System and the Regional-Scale Data, Modeling, and Analysis Test Beds. Technology RDD&D is primarily supported by FE and EERE and benefits from cross-office collaboration. Policy analysis is contributed by EPSA. Crosscutting outreach and stakeholder engagement is contributed by EPSA and IA.

### Data, Modeling, and Analysis (DMA)

#### DMA – Layered Energy Resilience Data-Knowledge System

##### ***SC: BER (\$3.0M)***

SC efforts will focus on methodologies for exploring inter-layer correlations and interdependencies through time; observation-model data fusion; scalable analytics; distributed data methods; advanced algorithms for pattern recognition and identification of emergent behaviors; distributed data retrieval and data preparation and conditioning for a broad range of IAM, IAV, and Earth System Modeling domains.

##### ***FE: Crosscutting Research and Analysis (\$1.0M)***

FE data, modeling, and analysis (DMA) will gather and analyze data in identified gaps to characterize energy-water relationships on a state level in coordination with other offices within DOE.

##### ***EPSA (\$500K)***

EPSA will focus on data scoping elements and capabilities aligned with potential use for the data system in multiple domains addressing a broad range of analysis, planning, and evaluation needs. In addition, EPSA will fill data gaps and align current and historical data sets in areas such as thermoelectric cooling, produced water, and water sector energy use.

#### DMA – Integrated Multi-System, Multi-Scale Modeling Framework and Impact, Adaptation, Vulnerability (IAV) Modeling

##### ***SC: BER (\$7.8M)***

BER will focus on modeling efforts to improve understanding of complex systems dynamics and to enable next generation simulations at the energy-water nexus. BER will develop and test a model integration framework to enhance model interoperability, linking models such as Integrated Assessment Models (IAMs) and energy and other infrastructure models, including the Connected Infrastructure Dynamics Model (CIDM). Efforts will focus on the development and implementation of model couplers, coupling strategies, and scale matching challenges. There will be a major emphasis on improving spatial and temporal scales of the various component models, with a goal of adaptive resolution capabilities to increase computational efficiencies. Fine scale representations are critically important for exploring regional and local stressors, responses, and coupled behaviors at the energy-water nexus. Impacts, adaptations, and vulnerabilities modeling at the nexus requires accompanying expansions of process representations and data sets. Efforts will be designed to accommodate both changing baseline conditions and characteristics of extreme events (e.g., droughts, floods, heat waves). Improvements will enhance insights into coupled system thresholds and tipping points. Thermoelectric system dependencies on cooling water will serve as one initial focus for the IAV work and deeper model development. Broader enhancements will seek to strengthen land representations within IAMs, for example in the Global Change Assessment Model (GCAM). Land cover and land use have critical bearings on energy and water supply and use. The objective will be to take into account a wider range of variables (soils, latitude, topography, etc.).

##### ***EERE: Water Power (\$1.0M)***

Understanding how reservoirs and water releases through hydropower facilities and other major dams affect water quality in downstream rivers is extremely complicated, but very necessary for modeling the linkages between the nation's energy and water systems, simulating water dependencies and the implications of extreme meteorological events, and identifying potential tipping points or vulnerabilities. There are thousands of hydropower plants and other major dams within the U.S.,

and these facilities can have significant effects on water quality, which in turn can affect aquatic ecosystems and the operations of other energy facilities (like coal and nuclear thermal generating plants). Some effects of hydropower operations can be negative, such as inadequate dissolved oxygen or alterations to the natural pattern of water temperature fluctuations in streams. Other effects of hydropower operations are beneficial, such as the management of reservoir storage to maximize the supply of cool water during hot, dry extremes. Improvements in operational water-quality models can help minimize impacts and could potentially allow hydropower facilities to improve water quality management. All of these issues become more complicated as precipitation, runoff, and temperature patterns change, further affecting generation capacity and power system flexibility. In FY 2017, the Water Program will build on its work in FY 2016 to improve accurate representation of hydropower systems in integrated energy assessment models, with the aim of identifying any significant future water and energy systems-level risks. This work will be closely coordinated with SC and other offices to improve integrated assessment and vulnerability models.

#### **DMA-IAV Strategic Research and Analysis**

##### ***SC: BER (\$3.5M)***

SC will pursue scientific analyses and supporting analytic methodologies to improve understanding of the complex forces that influence and shape evolution of the energy-water system. Forces include land use and land cover change, population/migration, regional economics, evolution of settlements (the built environment and connected infrastructures), energy and related technology developments and deployments, and changes in weather patterns and extremes. Complementary efforts will focus on development of scenario methodologies. Emphasis will be directed toward multi-scale challenges (e.g., global, national, and regional nesting of scenarios) and techniques for developing consistent, integrated scenarios that take into account the combined forces/factors identified above. SC will also advance regional climate, multi-model inter-comparison methods and downscaling capabilities in coordination with other research agencies, focusing on precipitation and other parameters of particular interest at the nexus. Modest funding will also support research analytic efforts for DOE's role in Interagency Working Groups of the U.S. Global Change Research Program that are presently engaged or seeking to engage in research at the energy-water nexus and on impacts of water cycle extremes.

##### ***IA (\$300K)***

In collaboration with other nations, IA will pursue a platform incorporating modeling and analysis that enables nations to better understand the effects of water stress on energy systems at multiple scales and the energy footprint of water systems.

#### **DMA-Regional-Scale Data, Modeling, and Analysis Test Beds**

##### ***SC: BER (\$10.0M)***

In FY 2017, SC will design and deploy three regional-scale data, modeling, and analysis test beds. These test beds will accelerate the synthesis of integrated toolsets, identify and capitalize on diverse topical and place-based DMA capabilities, and explore predictive limits and gaps in DMA capabilities for a set of regions and predictive challenges at the energy-water nexus. DOE laboratory-led research teams will be tailored to the unique DMA challenges of each test bed and corresponding set of topics and systems configurations. Each team will include participation from one to several national laboratories and engage and support strategic collaborations with universities. In general, the approach will build on DOE capabilities and leverage, as appropriate, additional assets/capabilities at the federal, state, and local levels. Informed by science community workshops and recent reports that highlight opportunities for test bed designs, selection of topics and regions will focus on water stressed regions and/or areas undergoing rapid change that can benefit from and "stress test" multi-model frameworks built around regional-scale integrated assessment models; multi-sector impact, adaptation, and vulnerability (IAV) models; and connected infrastructure dynamics models. Moreover, the test beds will seek to illuminate various current and possible future mixes of energy supply and demand and the implications of "water for energy" (e.g., thermoelectric cooling) and energy for water (e.g., pumping and treatment); issues surrounding predominantly mountain-fed versus intermittent rain-fed water supplies and co-dependencies and vulnerabilities with groundwater; implications of changing weather patterns and extremes; changing technology insertion opportunities; and implications and challenges for dense settlements (e.g. urban) versus distributed settlements and associated connected infrastructures. The selection of three test beds provides the necessary and sufficient basis to explore different types of integrated systems configurations and sub-regional processes, heterogeneity in regional-scale DMA resources/capabilities, and the analysis of trans-regional intersects, for example involving the electricity grid, oil and natural gas supplies and distribution, watersheds, population

migration, etc. One of the test beds will be designed and developed to be more detailed and robust, paving the way for growth into an Integrated Field Laboratory (IFL) that incorporates observatories and data networks as determined necessary through the initial DMA-focused efforts. This latter test bed, and ultimately the IFL, will serve as a flagship, providing the deepest scientific insights while serving as the central node for the others. As such, it will lead methodology development, for example in integrated test bed design, uncertainty quantification, scenario development, and testing and evaluation.

#### ***EPSA (\$1.0M)***

EPSA will develop a suite of policy and systems analysis questions underlying, use-inspired dimensions of the testbeds, thereby complementing the basic research focus and questions posed by SC. Topics that will be pursued include 1) the exploration of the interaction among climate regimes, water variability, grid operations, and water utility operations under different carbon emissions pathways and strategies, and the relation to reliability and resilience; 2) resilience and risk reduction options for energy infrastructure under extreme events; 3) impact of water constraints on energy facility siting decisions; 4) the interaction of evolving energy and water markets; and 5) systemic energy implications of emerging strategies to deliver water in water-stressed regions. EPSA will augment the science-driven risk and uncertainty visualization methods developed by SC for its mission-focused applications. In addition, EPSA will develop, test, and apply uncertainty and risk communication methods with testbed communities to support integrated decision-making at the Nexus.

### **Technology Research, Development, Demonstration, and Deployment (Technology RDD&D)**

#### **Technology RDD&D -- Low-Carbon, low-energy, low-cost desalination energy innovation hub**

The Department proposes to establish a low-carbon, low-energy, low-cost Desalination Energy Innovation Hub focused on RD&D on new technologies to dramatically lower the cost, energy use, and carbon footprint of water desalination. The Hub will be supported and managed by EERE's Advanced Manufacturing Office (AMO). Next generation desalination is high impact, energy-related RD&D which, if addressed, would provide the technical foundation for significant benefit for society grappling with sustained drought, groundwater depletion, and saltwater intrusion. The Desal Hub will pursue "pipe-parity" with existing water sources and/or treatment and disposal options and will address multiple water uses, including for drinking water and agriculture and multiple water sources such as produced water from oil and gas. Consistent with the criteria for a hub published by DOE's Science Advisory Board, the work within the Hub will span across disciplines and from basic and applied research to development and demonstration. The Hub will provide shared resources for development of foundational scientific understanding, enabling technologies, and testbeds of sufficient scale to demonstrate the technical potential of new desalination technology approaches. Establishment of the Hub will provide a public-private partnership framework for the subsequent scaling of individual desalination technologies. The Hub will also provide a connection point for researchers working on related technologies in water infrastructure, including others supported by complementary investments in DOE. A workshop was held in the fall of 2015 to begin to refine the technical scope for a future Hub through dialog with stakeholders from industry, academic researchers and national laboratories.

#### ***EERE: Advanced Manufacturing (\$25.0M)***

Through its management of the Hub, the Advanced Manufacturing program will support technical areas such as high-thermal flux and high corrosion resistance heat exchangers from low-cost materials (for example, based on polymers rather than metal alloys); high-volume production of membranes with low cost/area, long lifetimes (>15 years), low propensity for fouling (biological or non-biological), controlled thermal properties (both high and low thermal conductivity), superior transport properties (high flux, high selectivity, low cross-over) and robust chemical and mechanical stability; fabrication of complex flow-field structures for mass transfer with low boundary layer resistance; and materials and structures that cost-effectively enable higher distillation temperatures and therefore more efficient heat utilization while preventing chemical scaling in thermal technologies (currently caused primarily by dissolved calcium and magnesium salts).

### **Technology RDD&D – Energy-Optimized Treatment, Management, and Beneficial Use of Non-Traditional Waters**

#### ***EERE: Geothermal Technologies (\$2.0M)***

In FY 2017, the Geothermal Technologies program plans to complete prototypes of technologies and processes for low temperature geothermal water desalination in preparation for field demonstration.

**EERE: Solar Energy (\$15.0M)**

In FY 2017, the Solar Energy program will support applied R&D for the use of low temperature concentrating solar power for desalination.

**FE: Crosscutting Research and Analysis (\$9.15M)**

In FY 2017, FE Crosscutting Research and Analysis will field test promising technologies and processes for treating water produced by injection of carbon dioxide in deep saline aquifers through a Brine Extraction Storage Test (BEST). This R&D will focus on innovative multi-stage filtration technologies including membrane-based, evaporative, chemical, electrochemical, and biological systems.

**Technology RDD&D – Sustainable Low Energy Water Utilities****EERE: Bioenergy Technologies (\$4.0M)**

In FY 2017, the Bioenergy Technologies program will continue R&D for technologies that allow for the conversion of wet waste feedstocks. These technologies include: hydrothermal liquefaction to produce biofuels from biosolids in support of DOE's 2017 and 2022 goals, using biogas as a feedstock to make bioproduct precursors with carbon conversion efficiency above 50%, and exploring new alternative processes to anaerobic digestion that produce longer chain hydrocarbons that are competitive with existing biopower applications.

**EERE: Water Power (\$5.0M)**

In FY 2017, the Water Power program will focus on a new initiative to develop and demonstrate innovative technology by investing in demonstrations and performance/reliability testing in partnership with water utilities. This effort will focus on small (i.e. kilowatt to megawatt scale), modular hydropower systems appropriate for recovering excess energy from the nation's thousands of municipal water supply and water treatment systems. National labs will be involved to validate and publish testing results, with the ultimate goal of increasing the confidence of water utility managers in the reliability and economic viability of these new technologies.

**IE (\$1.0M)**

The Office of Indian Energy Policy and Programs (IE) will work with tribal stakeholders and their utility service providers to identify priorities and provide technical assistance. The Office will convene collaborative processes aimed at integration of innovative technologies and approaches that improve energy efficiency of drinking water and waste water systems on tribal lands. The Office will also competitively fund a small number of demonstration projects.

**Technology RDD&D –Water-Efficient Cooling for Electricity Generation****FE: Crosscutting Research and Analysis (\$5.65M)**

In FY 2017, FE will pursue research on increased efficiency in heat exchangers for plant cooling and support development of second-generation and transformational cooling systems.

**Policy Analysis****EPSA (\$1.0M)**

EPSA's policy analysis will draw upon and inform work in DMA and Technology RDD&D. The foundation of the policy analysis is a set of systems analyses addressing water and energy flows, energy infrastructure and technology deployment, energy and water systems operations, market analysis and finance, and regulations at multiple scales. EPSA will continue to develop relevant and appropriate policy scenarios that bridge between energy and water domains at the federal and state level that incorporate potential energy technology deployment trajectories and societal developments. Additional efforts will analyze energy system resilience under water constraints and also examine key federal, state, and local policies that affect energy system resilience under variable water conditions. EPSA will continue to identify and implement opportunities to leverage existing energy and water infrastructure investment programs, such as State and Tribal Assistance Grants, State Energy Programs, and the Water Infrastructure Finance Center. Efforts will also be directed toward region-specific analyses of the regulatory, economic, and market aspects of thermoelectric cooling and sustainable water utilities. Similar efforts will

be devoted to the topics of desalination and treatment of produced water from oil, gas, geothermal, carbon underground storage, and other sources.

## **Outreach and Stakeholder Engagement**

### ***EPSA (\$100K)***

Engaging with stakeholders of all types and at all levels is critical in understanding the relevant science, technology, business, and policy landscapes. Stakeholder engagement will inform and be informed by DMA, technology RDD&D, and policy analysis. EPSA's objectives in this area include 1) informing and effectively utilizing data, models, and analysis; 2) informing technology specifications and improving the direct impacts of potential RDD&D investments; 3) informing and communicating policy analysis and design; 4) developing collaborative relationships at the state, local, tribal, and private sector levels in order to achieve constructive results. The proposed work includes targeted workshops hosted collaboratively with universities, State Energy Offices, and regional stakeholders.

### ***IA (\$100K)***

IA will pursue strategic international collaborations balanced between targeted bilateral projects that connect to DOE's overall R&D agenda and multilateral initiatives. The collaborations will build on extensive relationships with international stakeholders in recognition that the energy-water nexus is a global issue with ubiquitous data, modeling and analysis; technology RDD&D; and policy analysis interests. Collaboration with other nations gives the U.S. the opportunity to share resources to address shared issues.

## **Key Accomplishments and Objectives**

### **FY 2015 Key Accomplishments**

- Convened a series of six Secretarial roundtables soliciting broad input on different aspects of the energy-water nexus, including fuels, water infrastructure, electricity, and systems integration. These roundtables have informed Departmental prioritization of current and future work.
- Created a new modeling capability to balance water supplies within the GCAM integrated assessment modeling framework. This capability allows analysis of how constraints on supplies will interact with evolving energy and agricultural demands.
- Made a major advance within the Integrated Global Systems Model to incorporate water quality, with important implications for projecting water temperature and its implications for power plant cooling.
- NREL has developed a series of maps highlighting geothermal resource quality and the availability of multiple types of water (fresh surface water, fresh groundwater, municipal wastewater, brackish groundwater) that could be used in geothermal operations at a high spatial resolution (USGS HUC-8 regions).
- In FY 2015, the Bioenergy Technologies program initiated a resource assessment to identify the availability and geographic distribution of wet waste streams, including biosolids, animal wastes, residential and commercial food wastes, organic industrial wastes and wastewaters, as well as biogas produced from any of these sources.

### **FY 2016 Planned Activities**

- Convened workshop to begin scoping the Desalination Hub.
- Developments to tune temporal and spatial resolution of models including GCAM to better characterize water supply, water allocation and storage, linkage of land use to river basin characteristics, and water technology options.
- Conduct a series of interagency workshops to advance ideas and plans for a multi-scale, multi-sector modeling framework for the energy-water nexus and strongly coupled impacts, adaptations, and vulnerabilities.
- Develop the initial scope and conceptual design for the layered energy resilience data knowledge framework through an inter-laboratory development meeting and a subsequent workshop to assess the broader research and analytic needs of various user communities.
- Create a coordinated plan for the conceptual framework, criteria, and path forward for Regional-Scale Data, Modeling, and Analysis Test Beds, building around and synthesizing from foundational DMA FY 2016 funded focus areas and investments that lays the foundations for a competitive FOA.
- Develop the scientific foundations for a focused set of sub-regional scenarios of the United States, linking various data layers, including regional economics, demographics, land use and land cover, energy, and water.

- Complete initial studies on the implications of climate impacts on the resilience of the US power system due to changes in air and water temperatures and water availability using a reduced form power plant modeling capability.
- Develop technologies and processes for treating water produced by injection of carbon dioxide in deep saline aquifers.
- Incorporate results from ANL and NREL's integrated assessment and life cycle analysis of geothermal water use into the Geothermal Vision Study
- Field prototype of advanced energy-efficient hybrid membrane system for industrial water reuse.
- Build off of the Bioenergy Technologies program's workshop series from FY 2015 to produce a waste-to-energy (WTE) roadmap, including quantitative targets for at least two pathways, which will in turn inform R&D directions in FY 2017.

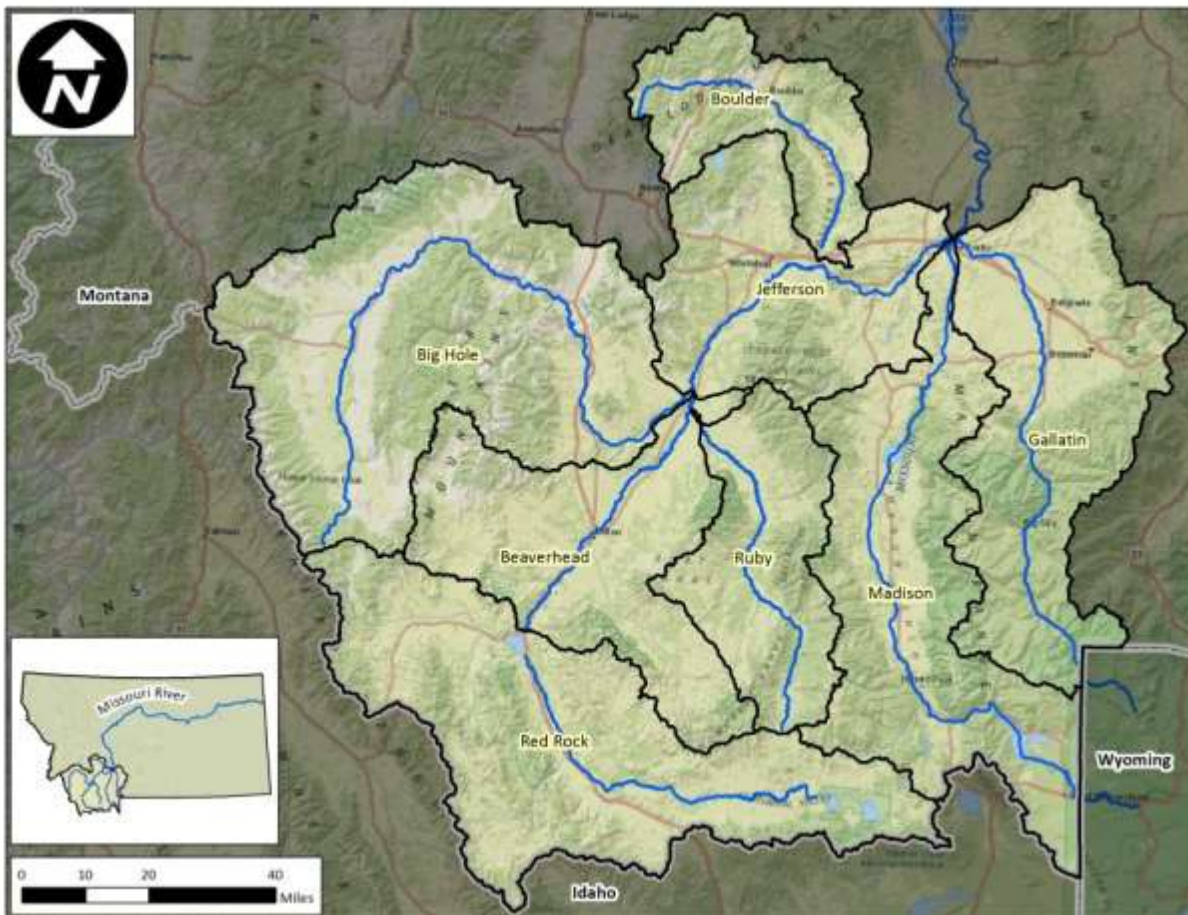
#### **FY 2017 Key Objectives**

- Launch Desalination Hub.
- Initiate build-out of the first stage of the layered energy resilience data-knowledge system focused initially on diverse DOE data layers and a small but critically important set of other agency data layers.
- Conduct initial evaluation of a leadership-class multi-system, multi-scale modeling framework for IAV modeling at the Nexus, working closely with a broad coalition of interagency partners led through a DOE initiated subgroup of the Interagency Group on Integrative Modeling.
- Reduce power plant consumption of water and provide options for use of nontraditional waters/fluids.
- Complete design, select topics and regions, engage various federal, state, and local research partners, and compete competitive awards to begin deployment of three to four regional-scale DMA test beds, including one leading test bed that can eventually evolve into an Integrated Field Laboratory.
- Complete testing of desalination prototypes at INL, LBNL, and NREL and prepare for field demonstrations.

## Tab K – Upper Missouri River Demonstration Project

**A WORKPLAN FOR DROUGHT RESILIENCE  
in the  
MISSOURI HEADWATERS BASIN**

**A National Demonstration Project**



**Montana Drought Demonstration Partners  
November 30, 2015**

## EXECUTIVE SUMMARY

The urgency for drought resilience planning has never been greater. With rapid changes in land use and increasing impacts from climate change, communities need to determine ways to meet their drought planning goals. Montana is forging new ground to join agencies, resource managers and communities to plan for drought impacts and build drought resilience. The State of Montana and the National Drought Resilience Partnership (NDRP)--a collaborative of federal and state agencies, non-governmental organizations (NGOs), and watershed stakeholders--are working together to leverage and deliver technical, human and financial resources to help address drought in the arid West.

The Missouri Headwaters Basin in southwest Montana was selected as one of two national Drought Resilience pilots by the NDRP to demonstrate collaborative efforts to build resilience.. The Basin plays an important role in landscape connectivity in the northern Rockies, experiences frequent drought, and faces rapidly changing population and land use. Although local groups in the area recognize the need to prepare for drought, they lack the human and financial capacity to fully utilize planning tools and implement solutions. Federal and State resources can assist greatly with drought monitoring, forecasts, and early warning systems, but the information isn't always readily accessible to local planners and decision makers.

The goal of the Missouri Headwaters Drought Resilience Demonstration Project is a two-way proposition -- to deliver government drought mitigation tools and resources to watershed stakeholders who need them, and to build information from local groups in direct contact with the landscape. This project will produce a model for information sharing, efficient water use and storage, and community collaboration. It will also prepare people to mitigate for drought while preserving cultural and ecological values in the face of a drier future. In September 2015, Montana's NDRP members and local watershed representatives met in Dillon, Montana, in the heart of the Missouri Headwaters Basin, to identify shared goals for developing drought preparedness plans and mitigation strategies. From this meeting and two previous meetings, the group drafted a workplan that identifies objectives and implementation tasks required to assure drought resiliency basinwide. The workplan is organized in three overarching goals that are equally important to the success of the Missouri Headwaters Drought Resilience Demonstration Project:

- 1. Provide Tools for Drought Monitoring, Assessing and Forecasting**
- 2. Develop Local and Regional Capacity to Plan for Drought**
- 3. Implement Local Projects to Build Regional Drought Resilience**

Within each of these broad goals, the workplan highlights objectives and implementation tasks all of which will be refined as the project grows. The Montana NDRP is dedicated to empowering communities to prepare for and mitigate the impacts of drought on livelihoods and the economy. This workplan grew from participation of partners living and working in the Missouri Headwaters Basin, and defines a wide assortment of tasks that can be undertaken to reach the overarching goal of coordinated landscape-wide drought resilience.

| KEY GOALS, OBJECTIVES, AND IMPLEMENTATION TASKS   |  |
|---|--|
| GOAL 1: PROVIDE TOOLS FOR DROUGHT MONITORING, ASSESSING, AND FORECASTING  |  |
| A. Develop a Drought Monitoring Network   |  |
|   | <ul style="list-style-type: none"> <li>• Coordinate a monitoring network to support local and regional needs</li> <li>• Expand soil moisture monitoring</li> <li>• Expand streamflow monitoring to address data gaps</li> <li>• Expand precipitation monitoring (CoCORaHS)</li> </ul>  |
| B. Develop a Portal to Share Monitoring, Assessment and Forecasting Information Across the Network  |  |
|   | <ul style="list-style-type: none"> <li>• Explore and compile existing data to create a central information portal on Basin specific data accessible to all water users</li> </ul>  |
| GOAL 2: DEVELOP LOCAL AND REGIONAL CAPACITY TO PLAN FOR DROUGHT   |  |
| A. Build and Engage Local Capacity for Drought Planning   |  |
|   | <ul style="list-style-type: none"> <li>• Assure adequate staffing and operational needs</li> <li>• Provide consistent drought mitigation trainings and technical assistance</li> </ul>   |
| B. Increase Local Community Awareness of Drought and Supply Planning, Forecasting, and Mitigation   |  |
|   | <ul style="list-style-type: none"> <li>• Inventory and assemble local community member lists and conduct awareness workshops</li> <li>• Develop creative communication and outreach tools to engage local leaders in the planning process</li> <li>• Develop a marketing or branding strategy for drought and the demonstration project</li> </ul>   |
| C. Provide the Tools and Technical Assistance to Help Local Groups Strategize and Develop Drought Plans   |  |
|   | <ul style="list-style-type: none"> <li>• Monitor and identify risks, vulnerabilities and supply/demand triggers</li> <li>• Set systems in place to manage voluntary agreements</li> </ul>  |
| D. Connect Local Drought Plans at the Regional Scale  |  |
|   | <ul style="list-style-type: none"> <li>• Review local plans and merge into a regional drought preparedness plan for the entire Basin</li> <li>• Explore agency drought plans</li> </ul>  |
| E. Develop a Regional Network to create a Streamlined Structure to Share Learning, Coordinate and Pursue funding opportunities and Deliver Resources across the Basin |  |
|   | <ul style="list-style-type: none"> <li>• Build a network/framework that unifies, coordinates and simplifies the delivery and sharing of resources.</li> </ul>  |
| GOAL 3: IMPLEMENT LOCAL PROJECTS TO BUILD REGIONAL DROUGHT RESILIENCE   |  |
| A. Increase Water Conservation Measures   |  |
|   | <ul style="list-style-type: none"> <li>• Work with municipalities in the Basin to develop water conservation campaigns and measures</li> <li>• Work with the farmers/ranchers in the Basin to implement water conservation and irrigation efficiency and delivery measures.</li> </ul>   |
| B. Ensure Riparian, Floodplain and Water Management Measures Are in Place   |  |
|   | <ul style="list-style-type: none"> <li>• Inform the public of the value of riparian areas and floodplains for improved water holding capacities</li> <li>• Assess and improve natural storage capacity</li> <li>• Install off-stream stock water tanks to reduce impacts to riparian areas and facilitate upland grazing management</li> <li>• Consolidate and maintain points of diversion to improve efficiencies</li> <li>• Implement hybrid sprinkler/flood systems that transition as flows change</li> </ul> |
| C. Ensure Upland Management Measures are in Place   |  |
|   | <ul style="list-style-type: none"> <li>• Demonstrate integrated management on public lands, and collaborate to implement projects to protect water quantity and quality in the headwaters</li> <li>• Develop a suite of soil and upland health demonstration projects in the Missouri Headwaters</li> <li>• Explore the impacts of conifer expansion on water yield</li> <li>• Study, understand, and implement practices that improve soil health and moisture holding capacities.</li> </ul>                     |

## TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>EXECUTIVE SUMMARY</b>   | <b>1</b>  |
| <b>I. VISION</b>   | <b>4</b>  |
| <b>II. DEFINITIONS</b>   |           |
| <b>III. BACKGROUND</b>   | <b>5</b>  |
| <b>IV. WORKPLAN GOALS and OBJECTIVE</b>  | <b>7</b>  |
| <b>Goal 1. Provide the Tools for Drought Monitoring, Assessing and Forecasting</b> | <b>7</b>  |
| Drought Monitoring Network   |           |
| Monitoring Portal  |           |
| <b>Goal 2. Develop Local and Regional Capacity to Plan for Drought</b>             | <b>8</b>  |
| Local Capacity for Drought Planning  |           |
| Community Awareness and Engagement   |           |
| Tools and Technical Assistance for Local Drought Planning                          |           |
| Regional Drought Plan  |           |
| Regional Sharing Network   |           |
| <b>Goal 3. Implement Local Projects to Build Regional Drought Resilience</b>       | <b>11</b> |
| Water Conservation   |           |
| Riparian, Floodplain and Water Management  |           |
| Upland Management  |           |
| <b>APPENDICES</b>  | <b>14</b> |
| A. Montana NRDP Stakeholders   |           |
| B. Characteristics and Geography of Watersheds in the Missouri Basin Headwaters    |           |

## I. VISION

The need to strengthen drought resilience has never been greater. With rapid changes in land use and increasing impacts from climate change, communities need to identify projects that build long-term drought resilience. The Montana National Drought Resilience Partnership (Montana NDRP) is dedicated to empowering communities to prepare for and mitigate the impacts of drought on ecosystems, livelihoods and the economy.

The overarching goal of the Montana NDRP is to leverage multiple resources to engage communities in drought preparedness planning, and put forward implementation projects that build resiliency in the Missouri Headwaters Basin. Successful drought preparation hinges on local leadership to ensure communities are aware of and invested in the approach, but also coordinated regionally across the broader landscape for greater impact. Local planning gets down to specific issues in sub-watersheds, produces on-the-ground results, and connects watersheds and resources to create greater resiliency throughout the basin.

Traditionally, Federal partners operate from a top-down regulatory framework while local watershed groups tend to work from a bottom-up, community-focused approach. State agencies and organizations often serve as the “go-between” for the two. Montana’s NDRP is the framework for catalyzing across agencies and sub-basins to build local capacity, connect and support water users, and integrate resources. State and Federal partners will coordinate efforts to help meet the technical, financial and capacity needs of the local organizations, while also coordinating the project across the basin. The ultimate challenge lies in finding ways to efficiently deliver resources to communities in a manner that supports rather than directs them, invests in local capacity, and creates locally led, long-term resiliency and sustainability. In building this network, this project will provide a template for drought resiliency applications nationally.

## II. DEFINITIONS

**Drought:** Drought is a deficiency in precipitation over an extended period, usually a season or more, resulting in a water shortage causing adverse impacts on vegetation, animals, and/or people. Human factors, such as water demand and water management, can exacerbate the impact that drought has within a watershed or across a region. Because of the interplay between a natural drought event and various human factors (e.g., growth), drought means different things to different people and can be defined as meteorological, hydrological, or agricultural drought.

- **Meteorological Drought:** Meteorological drought is based on the degree of dryness (in comparison to some “normal” or average) and the duration of the dry period. Drought onset generally occurs with a meteorological drought.
- **Hydrological Drought:** Hydrological drought usually occurs after periods of extended precipitation shortfalls that impact water supply (i.e., streamflow, reservoir and lake levels, ground water), potentially resulting in significant societal impacts.
- **Agricultural Drought:** Agricultural drought links characteristics of meteorological or hydrological drought to agricultural impacts, focusing on precipitation shortages, soil water deficits, reduced ground water or reservoir levels needed for irrigation, etc.

**Resilience:** Resilience is an ability by people or systems to adapt to stress and adversity. Drought resilience responds to the stress of drought in both communities and in ecosystems. In ecology, resilience is the capacity of an ecosystem to respond to a disturbance by resisting damage and recovering quickly. Community resilience is the ability to anticipate risk, limit impact, and utilize resources to bounce back from change or stress. The phrase, “building drought resiliency”, is used to describe the goals of national drought-related efforts and the Montana demonstration project. Ensuring a common understanding of what drought and resilience mean is critical to identifying measures of success for this project.

### **III. BACKGROUND**

#### **Project History**

As part of President Obama’s Climate Action Plan, in November 2013 the Administration launched a multi-agency National Drought Resilience Partnership (NDRP) to provide federal support to communities and resource managers to improve drought preparedness and information transfer. Federal NDRP partners include USDA, DOC/NOAA, DOI/BLM, FWS, BOR, BIA, EPA, DOE, FEMA, and others. NDRP also leverages the work of Federal and State investments such as the National Integrated Drought Information System (NIDIS) and the National Drought Mitigation Center (NDMC).

Under the leadership of Governor Steve Bullock of Montana, the State and NDRP announced a drought demonstration project for Montana’s Missouri Headwaters Basin in July 2014. The Montana NDRP demonstration project is a collaborative effort of the Federal and State agencies, NGOs, and local watershed stakeholders. The project pursues a “proof of concept” around long-term drought resilience by demonstrating how improved drought mitigation can be achieved with better coordination of Federal agency resources to support efforts in the Missouri Headwaters Basin (Basin). This project also builds on drought mitigation recommendations in Montana’s recently updated State Water Plan.

The Basin, which includes the area upstream of the confluence of the Madison, Gallatin and Jefferson Rivers and their tributaries at Three Forks in southwest Montana, was selected by the Montana NDRP because of its diverse conditions and existing partnerships with community watershed organizations. Adjacent to Yellowstone National Park, the Basin sustains valuable natural resources in a river system that is critical to many downstream water interests. The area is also prone to frequent drought, and is marked by rapid population growth, shifting demographics, and land and water uses.

Montana NDRP partners believe that successful drought preparedness is rooted first in communities and guided by invested leaders in the approach. Accordingly, the plan will recognize water management issues of the watershed and produce on-the-ground results. The Montana Department of Natural Resources and Conservation (DNRC) proposes to accomplish this goal by leveraging State and Federal resources to build local capacity. The Basin has several actively engaged soil and water conservation districts (CDs), watershed and water user groups, and non-governmental organizations (NGOs) (see Appendix A). These groups represent a broad range of stakeholders; have local knowledge, leadership and respect; and actively engage water users in their watershed communities. They also address many natural resource topics, including water quality and quantity, weeds, environmental education and land use planning.

Right now, the level of drought planning varies greatly across the Basin from actively engaged to the very early stages of awareness. Many seek guidance, technical assistance and tools on how to best plan in the absence of financial or human resources to dedicate solely to proactive drought planning and soil health. Montana's natural resource agencies provide technical assistance, but have limited staffing resources and a very large and geographically diverse landscape to cover.

### **Process**

The Federal and State partners met in November 2014 and outlined a framework for implementing the demonstration project. In March 2015, NOAA, NIDIS and NDMC hosted a Building Drought Resiliency workshop in Bozeman for all of the Basin watershed groups/CDs and their Big Sky Watershed Corps AmeriCorps (BSWC) members (50 participants). The workshop outlined the national tools and resources available to assist in drought response. At the workshop, many groups realized the need for in-depth follow-up and one-on-one assistance to better utilize the resources and implement the tools. Thus, the planning team focused on direct support to local organizations to develop their local plans. In September 2015, the Federal, State and local partners met in Dillon (80+ participants) to share the status of activities, needs and goals of the local watershed organizations. The group used this information to identify strategies to meet the Missouri Headwaters Drought Resilience Demonstration Project objectives. This document is the outcome of the September workshop and serves as a tool for guiding drought resiliency planning in the Basin moving forward.

### **Landscape and Watershed Group Descriptions**

The Basin includes the three forks of the Missouri River—the Jefferson, Madison, and Gallatin Rivers—and tributaries to these. The headwater streams originate in mountain ranges that rise up to 11,000 feet and receive substantial rain and snow. Valley bottoms are drier and range in elevation from 4,000 to 6,000 feet. Streamflows in the headwaters are snowmelt dominated, typically peaking in late May or early-to mid-June, coincident with peak mountain snowmelt and spring rains. Average annual precipitation ranges from about 10 inches in the drier valleys and prairies, to about 80 inches at the highest elevations, with an average of about 19 inches across the Basin. Water uses include hydropower, industrial, mining, municipal, domestic, recreation and tourism, but almost 98 percent of water diverted in Montana is for agricultural use, estimated at almost 12 million acre-feet annually. The area is also a nationally renowned fly fishing destination. Land ownership in the basin is a combination of private (3,750,826 acres), State (654,013 acres) and Federal (4,563,529 acres). Most of the valley bottoms are privately owned, while the USFS and BLM administer most of the higher elevations.

There are many community-based conservation organizations working within the 8 sub-watersheds. While all vary slightly in their structure, each works to solve natural resource issues collaboratively from within the community. Appendix A summarizes these local stakeholder groups, and Appendix B summarizes the geography, land-use, economics, environmental considerations, and needs for each watershed in the Basin.

### **Structure of the Partnership**

A goal of this workplan is to develop and organize a collaborative network of stakeholders that builds drought resilience across the Missouri Headwaters landscape. Critical to the success of the plan is working with local groups to fully understand their capacity, expertise and needs, and then effectively link all efforts in a coordinated drought management workplan. One of the outcomes of the project is to define partnerships, agreements, shared resources, optimal methods of communication, and implementation of drought management tools across the landscape.

#### IV. WORKPLAN GOALS and OBJECTIVES

Water management in the Basin is complicated by the fact that it is administratively closed to new surface water appropriations, and Montana administers groundwater and surface water conjunctively, thereby limiting new developments. This means that water managers and stakeholders must have contingency plans in place that adapt to ever changing water supply and demand regimes, especially during times of drought. It also means that the efforts need to be well coordinated and meet multiple local and regional objectives while adhering to the prior appropriation doctrine.

When Montana NDRP partners and local watershed groups met in Dillon, Montana in September 2015, they considered many goals for drought preparedness and mitigation in the Missouri Headwaters Basin. Agreed-upon workplan goals follow, which directly address the ability of these partners to respond to drought in the Basin to maintain healthy and productive lifestyles and landscapes. The three overarching goals are equally important to the success of this project.

- 1. Provide Tools for Drought Monitoring, Assessing and Forecasting**
- 2. Develop Local and Regional Capacity to Plan for Drought**
- 3. Implement Local Projects to Build Regional Drought Resiliency**

Within each of these broad goals the group identified objectives and implementation tasks. All recognize that this workplan must itself be resilient, and remain open to refinement as the tasks are implemented and the project grows.

##### **GOAL 1: PROVIDE TOOLS FOR MONITORING, ASSESSING AND FORECASTING**

Forecasting and monitoring is essential for any level of drought planning. During the workshop, watershed groups and Federal partners identified areas for improvement in and delivery of drought forecasting, soil moisture and dam sedimentation monitoring, installation of streamflow gages especially in tributaries, collection of precipitation data, identification of flow triggers, snowpack monitoring, irrigation scheduling and overall assessment of watershed hydrology and potential drought impacts.

##### **Objective A: Develop a Drought Monitoring Network**

The challenge lies in how to address data gaps and compile information. Insufficient soil moisture and stream flow data hamper local and regional efforts to inform drought assessments and forecasting. To predict and assess drought conditions, we need to address data gaps and ensure information is integrated and accessible to landowners. Both long-term and short-term forecasting tools are needed, and at a level of accuracy that is meaningful for informed decisions. Agencies need to deliver data that are organized, easily understood, and relevant to a particular watershed or basin. The Drought Monitoring Network will maximize the value of current resources and match data collection and dissemination to the need.

##### **Implementation Task: Coordinate a monitoring network to support local and regional needs.**

Survey watersheds to determine need to:

- Develop a monitoring network that is resilient and sustainable
- Raise awareness of the information that is available

- Develop a monitoring network guide for watershed groups
- Create an information clearinghouse portal
- Summarize hydrologic information across the watersheds

**Implementation Task: Expand soil moisture monitoring.**

Soil moisture monitoring provides indicators to assess local site conditions and improve irrigation system management. Installation of soil moisture probes locally and across the Basin will help predict future drought vulnerability and could be used to validate drought indices derived from satellite imagery. Developing a cost-effective soil moisture monitoring network that provides valuable information to local landowners while ensuring data collected are compatible with existing networks (e.g., Mesonet) will serve as a prototype for other areas across Montana and nationally.

**Implementation Task: Expand streamflow monitoring to address data gaps.**

Additional stream gaging information on tributaries can help track instream flow conditions, recognize when drought-planning action is needed based on temperature or flow conditions, and measure improvements resulting from drought resiliency efforts. This informs solutions and engages landowners in documenting progress. Stream monitoring can be expanded by using various rated options: Real time sensors, data loggers, seasonal gages, staff gages on smaller tributaries, etc. Specific locations will be identified through a regional monitoring network, and form discussions/interest of local coordinators, water users and landowners.

**Implementation Task: Expand precipitation monitoring (CoCORaHS).**

Like soil moisture monitoring, monitoring precipitation is important for individual landowners and for assessing drought conditions. The Community Collaborative Rain, Hail and Snow Network (CoCORaHS) is the largest coordinated provider of daily precipitation observations in the States. Expanding the CoCORaHS network in the Upper Missouri watersheds and integrated it into information collected from existing weather or AgriMet stations will refine the scale of precipitation data within the Basin.

**Objective B: Develop a Portal to Share Monitoring, Assessment and Forecasting Information across the Network**

Communicating monitoring information to landowners, watershed coordinators and local decision makers provides better understanding of current and historic conditions and informs decision making for drought planning at multiple scales. Satellite imagery to supplement on-the-ground data can be incorporated as another tool to improve our understanding of drought conditions.

**Implementation Task: Explore and compile existing data to create a central information portal on Basin-specific data accessible to all water users.**

The portal will disseminate data compiled from the Governor's Drought Advisory Task Force, NOAA, NIDIS, and NDMC to users throughout the Basin.

**GOAL 2: DEVELOP LOCAL AND REGIONAL CAPACITY TO PLAN FOR DROUGHT**

Water is a shared resource that is already over-allocated in the Missouri Headwaters Basin. If drought occurs with greater regularity in the area, there will be more conflict among users, as well as increasing

impact on the environment and ecosystem services. One of the greatest and most fundamental challenges of drought response is engaging the community of water users to collectively agree on the best ways to use and distribute water during times of scarcity. This organizational task falls to the community watershed groups who first need capacity to carry out their work.

**Objective A: Build and Engage Local Capacity for Drought Planning**

This includes basic support to local watershed groups and conservation districts such as staffing (coordinator and/or BSWC member), project development and coordination, trainings, and support for travel and office supplies. Sources of funding will need to be explored, from local to Federal government capabilities.

**Implementation Task: Assure adequate staffing and operational needs.**

Community-based groups often operate with less than 1 FTE to carry initiatives forward, visit field sites, engage stakeholders, connect watershed activities, seek funding and implement projects. These chronically underfunded groups provide information and context for regional drought planning and the job cannot be done without their community relationships and outreach. Big Sky Watershed Corps AmeriCorps (BSWC) members provide valuable short-term assistance and can help a small organization build new programs or relationships. However, long-term capacity is often lacking in the day-to-day workings of local groups, and permanent staffing and basic operational support (computer, printer, laptop, etc.) are vital.

**Implementation Task: Provide consistent drought mitigation trainings and technical assistance.**

All watershed group representatives said that trainings and direct technical assistance would significantly improve their ability to follow through with drought planning. Technical assistance could be provided through webinars, newsletters, or directly through state or federal field staff assistance.

**Objective B: Increase Local Awareness of Drought and Supply Planning, Forecasting and Mitigation.**

Creative and consistent methods for communicating about drought will better engage people who live in the Missouri Headwaters landscape. Ultimately, regional messaging will help reduce workload burden on local groups, while offering digestible information that connects watershed groups to the larger effort and helps market and build drought resiliency. However, some communities are not generally receptive to this information because the region is typically arid and most feel that drought is just a way of life. Finding ways to talk about drought based on issues that resonate with the community (i.e., securing water supply) will build engagement. Future drought challenges associated with changing climate and growing populations may be of a magnitude not yet experienced by these communities.

**Implementation Task: Inventory and assemble local community member lists and conduct awareness workshops.**

Key to planning for drought and building drought resilience is getting the participation of the water users. This requires focused outreach and education within the watershed, and identification of local leaders who will carry the effort forward as new information is provided.

**Implementation Task: Develop creative communication and outreach tools to engage local leaders in the planning process.**

This may involve assembling and coordinating a Local Drought Task Force

**Implementation Task: Develop a marketing or branding strategy for drought and the demonstration project.**

This could include: 1) installation of road signs with information on drought conditions similar to fire warning signs, 2) a regional drought hotline where citizens or watershed groups can call for drought information (similar to a ski/avalanche report), 3) streamlined, consistent, easy-to-read drought reports that could be distributed within the watershed, and 4) development of a regional drought resiliency website with go-to tools and local contact information for drought assistance. Careful thought needs to go to messaging around meteorological, hydrological and agricultural drought triggers as appropriate for the local watersheds.

**Objective C: Provide the Tools and Technical Assistance to Help Local Groups Strategize and Develop Drought Plans**

Each watershed group is at a different stage of community engagement and participation in drought planning. Some watersheds have drought plans, some are working on them, and others have not even been able to start conversations with stakeholders. Developing these plans can be an intimidating and time-consuming process for small, capacity challenged organizations. Moving forward will require building capacity and community engagement (Objectives A and B), but also a systematic, regional approach to providing information on drought planning. Once local plans are in place, they can be integrated into a Missouri Headwaters Basin Plan.

**Implementation Task: Monitor and identify risks, vulnerabilities and supply/demand triggers.**

These include setting minimum flow targets that reflect communities' desire for overall healthy river systems and instream flows.

**Implementation Task: Set systems in place to manage voluntary agreements.**

**Objective D: Connect Local Drought Plans at the Regional Scale**

Existing drought plans establish triggers and water conservation measures based primarily on local water resources and do not consider downstream impacts. There is a need to marry these local plans into an overarching drought preparedness plan at the broader Missouri Headwaters scale. This regional-scale drought plan could also be integrated with the Lieutenant Governor's drought plan and build from key elements or lessons learned from the State Water Plan. An inherent challenge in this effort is ensuring that a regionalized plan is not perceived as top down, and is developed instead from the local level up to the broader scale. This approach hinges on communication among groups and offers an opportunity for testing innovative drought planning concepts.

**Implementation Task: Review local plans and merge into a regional drought preparedness plan for the entire Missouri Headwater Basin**

**Implementation Task: Explore agency drought plans.**

Connect local drought planning efforts with State and Federal agencies' drought plans, like those prepared by BLM and others.

**Objective E: Develop a Regional Network to create a Streamlined Structure to Share Learning, Coordinate and Pursue Funding Opportunities, and Deliver Resources across the Basin**

There are many local, State and regional partners and efforts already working in the Basin – each with their own unique tools, expertise, and funding mechanisms. Due to limited resources, groups often compete for the same funding sources for very similar projects. Small grants are often expensive to manage, especially for local watershed groups. A regional framework/funding mechanism could provide a clearinghouse for managing State and Federal funds that could then be sub-awarded to the smaller groups. Moving State and Federal funding to locals would increase the success of the community watershed organizations. This objective invests in building collaboration and communication among watershed communities and supports information-sharing among Federal, State, and local partners. Compiling and organizing these complementary tools, funds and activities into a collaborative regional network will increase understanding, improve efficiency and ensure successful implementation. A regional framework could clarify roles and responsibilities, build communication and outreach strategies, and streamline funding mechanisms.

**Implementation Task: Build a network/framework that unifies, coordinates and simplifies the delivery and sharing of resources.**

The framework should include:

- an agreement among stakeholders
- a support or backbone communications structure to coordinate the program, manage communications, organize shared learning and track progress.
- development of templates for long-term sustainability of the framework at watershed scale
- a communications outline to guide outreach strategies of the Montana NDRP stakeholders, and to share and distribute information at different levels (local, State, Federal)
- a model for subscriber-based funding and innovative ways to share funds.

|  |
|--|
| <b>GOAL 3: IMPLEMENT LOCAL PROJECTS TO BUILD REGIONAL DROUGHT RESILIENCE</b> |
|--|

Building drought resilience requires an integrated approach to balance changes in supply and demand. Activities and projects that build resilience must be initiated locally, but produce cumulative results. A suite of smaller, on-the-ground projects that work within the natural system to store water more effectively in wetlands, floodplains and riparian areas; improve soil health strategies; and increase conservation measures and the wise management of forests and uplands will all contribute to improved drought resilience.

**Objective A: Increase Water Conservation Measures**

Although Southwest Montana has experienced drought and water shortages many times, most communities rarely implement watering restrictions or think about how they might reduce household or on-farm water consumption. Simple water conservation measures, like high efficiency appliances and low flow toilets, especially in municipalities, can have a dramatic impact on water consumption. Improved irrigation management for both domestic lawns and farm/ranch operations can reduce the amount of water diverted and consumed by these sectors. This involves a greater understanding of return flow impact on agricultural operations and on streamflow. Education and outreach, efficient water metering, irrigation audits, and incentives can help communities better conserve their water.

**Implementation Task: Work with the municipalities in the Basin to develop water conservation campaigns and measures.**

**Implementation Task: Work with the farmers/ranchers in the Basin to implement water conservation and irrigation efficiency and delivery measures.**

Activities are underway in the Basin, and may provide avenues for project implementation and water conservation going forward. For example, the USDA, through the Farm Bill Environmental Quality Incentives Program (EQIP), and the efforts of the Natural Resources Conservation Service (NRCS), work with landowners to design and implement agricultural projects that improve irrigation and conveyance efficiencies, soil health practices, alternative cropping, and range and pasture management, etc.

**Objective B: Ensure Riparian, Floodplain and Water Management Measures Are in Place**

At the heart of drought response are effective agreements and projects that modify how water is managed in streams, in storage (in reservoirs, soils and riparian areas), in the ground, and in on-the-ground water conservation and management projects. Well thought-out agreements for storage and delivery often define drought mitigation plans and hinge on a number of factors including water rights enforcement, conservation practices, setting minimum flow targets, future supply and demand planning, and storage/delivery agreements.

**Implementation Task: Inform the public of the value of riparian areas and floodplains for improved water holding capacities.**

Most of the river bottoms and riparian areas are privately owned and are not subject to local zoning or land use regulations, unless they are subdivided. Local conservation districts have permitting authority over projects that lie within the mean high water mark of perennial streams and the banks immediately adjacent. Local floodplain administrators review building permit applications, but their role is to protect humans and structures from flood, not encourage it. Efforts should help landowners and communities understand the inherent value of allowing floodplains to maintain their natural function of mitigating during high water and storing for times of scarcity.

**Implementation Task: Assess and improve natural storage capacity.**

Assess floodplain limitations and review opportunities for increasing natural storage capacity. Include channel migration and floodplain mapping, as well as a survey of road crossings and culverts in floodplains that affect floodplain storage.

**Implementation Task: Install off-stream stock water tanks to reduce impacts to riparian areas and to facilitate upland grazing management.**

**Implementation Task: Consolidate and maintain points of diversion to improve efficiencies.**

Where prescribed, install high-tech water distribution networks with real-time gages on all head gates and major return flow points (See Goal 1).

**Implementation Task: Implement hybrid sprinkler/flood systems that transition as flows change.**

Consistent calculations and improved understanding of timing and amount of return flows are needed for making the best management decision for these systems.

**Objective C: Ensure Effective Upland Management Measures are in Place**

Managing uplands to enhance water quality and quantity builds drought resilience in the Basin. A large area of the headwaters contains federally managed public lands (USFS, BLM and USFWS) and good management of these lands is vital to water quantity and quality in the region. The USFS is the largest Federal land management agency in the Basin (38 % -3,367,706 acres). Prolonged drought increases the incidence and intensity of disease and catastrophic fires in the uplands. The area is also experiencing conifer encroachment on the lower slopes and along riparian areas, that some believe is impacting water availability. Management of these lands includes forest and riparian management, grazing and livestock management, and soil and weed control to protect and improve water supply and storage. The river valleys are primarily privately owned, but also important for floodplain and riparian management and are best managed through locally led land use planning efforts combined with education and outreach. Montana Conservation Districts have statutory authority through the Montana Natural Streambed and Conservation Act (310 law) that provides local oversight and governance for projects in the beds and banks of perennial streams. The NRCS and local CDs will be helpful partners in facilitating technical assistance, engaging private landowners, and working to implement collaborative conservation projects in both upland and river valley settings.

**Implementation Task: Demonstrate integrated management on public lands, and collaborate to implement projects that protect water quantity and quality in the headwaters.**

Ideas to explore include: geomorphological studies, channel migration and floodplain mapping, road and culvert assessments, soil/riparian improvements, off-stream water sites, increased habitat connectivity, increase natural storage and wetland capacity, beaver mimicry projects, upland mesic/wet meadow restoration, floodplain health requirements, soil health improvements, and improved landowner relationships.

**Implementation Task: Develop a suite of soil and upland health demonstration projects in the Missouri Headwaters.**

Installation of soil and upland health demonstration projects in different watersheds throughout the Basin can help educate landowners about the economic and ecological benefits of soil building techniques in times of seasonal and long-term drought. These projects will provide education and outreach tools and offer a proof-of concept.

**Implementation Task: Explore the impacts of conifer expansion and water yield.**

The NRCS, through the Sage Grouse Initiative and a network of partners, is producing spatial data that characterizes conifer coverage across Sage Grouse states. These data, coupled with efforts to identify areas where conifers have encroached into landscapes where they historically were not present, will help NRCS help landowners implement projects to reduce conifer expansion on appropriate sites.

**Implementation Task: Study, understand, and implement practices that improve soil health and moisture holding capacities.** Develop a suite of soil and upland health demonstration projects in the Missouri Headwaters that emphasizes the economic and ecological benefits of soil building techniques in times of seasonal and long-term drought. Coordinate with NRCS and Soil and Water Conservation Districts of Montana to host soil health workshops and technical outreach to area landowners interested in implementing soil health practices.

## APPENDIX A. Montana NDRP Stakeholders

| Last       | First     | Affiliation   | Title  |
|------------|-----------|---|--|
| Aber       | Jesse     | MT DNRC   | MT Gov. Drought & Water Supply Advisory Committee Coordinator          |
| Anevski    | John      | BIA Water Program   | Branch Chief for Biological Resources and Conservation                 |
| Barndt     | Scott     | USFS, Custer & Gallatin NF  | Ecosystems Staff Officer   |
| Bathke     | Deborah   | National Drought Mitigation Center                                | Assistant Professor of Practice, Dept. of Earth & Atmospheric Sciences |
| Benavides  | Ada       | Army Corps of Engineers   | Western Regional Manager   |
| Benock     | Gerald    | Bureau of Reclamation   | Manager of Planning and Project Develop Division                       |
| Bilbo      | Keri      | USDA NRCS   | Assistant State Conservationist for Field Operations                   |
| Bogan      | Kathy     | NIDIS   | Web and communication specialist                                       |
| Bostrom    | Mark      | DNRC CARRD  | Division Administrator   |
| Boyk       | Katherine | Greater Gallatin Watershed Council/<br>Gallatin Valley Land Trust | BSWC member  |
| Brammer    | Jim       | USFS Beaverhead Deer Lodge Forest                                 | Forest Aquatics Program Manager  |
| Brown      | Peter     | Gallatin Valley Land Trust  | Stewardship Manager  |
| Brown      | Zach      | One Montana   | Water Program Manager  |
| Buckley    | Alice     | Future West   | Program Manager/ Outreach Specialist                                   |
| Burbach    | Thor      | USFS  | Regional Hydrologist   |
| Byorth     | Pat       | MT Trout Unlimited Water Project                                  | Staff Attorney/ Water Rights Specialist                                |
| Card       | Joan      | EPA   | Senior Policy Advisor  |
| Carporelli | Chris     | Beaverhead Conservation District                                  | BSWC member  |
| Cayer      | Emma      | MT Fish Wildlife and Parks  | Arctic Grayling biologist  |
| Chase      | Kathy     | USGS  | Hydrologist  |
| Coverdale  | Lisa      | USDA NRCS   | State Conservationist  |
| Colosimo   | Robyn     | DoD   | Asst. for Water Resources Policy                                       |
| Combs      | David     | Army Corps of Engineers   | NWD Chief  |
| Converse   | Yvette    | Great Northern Landscape Conservation Cooperative/ USFWS          | Coordinator  |
| Cottam     | Steve     | East Bench Irrigation District                                    | Chair, Certified Seed Potato farmer                                    |
| Cross      | Molly     | Wildlife Conservation Society                                     | Climate Change Specialist  |
| Cross      | Wyatt     | Montana State University Water Center                             | Ecology Professor/Director   |
| Darling    | Jim       | MT FWP  | Habitat Bureau Chief   |
| Davis      | Liz       | Madison River Foundation  | Executive Director   |
| Davis      | Tim       | DNRC Water Resources  | Division Administrator   |
| Deheza     | Veva      | Associate, Physical Science Division                              | NOAA   |
| Dodge      | Ted       | Jefferson River Watershed Council                                 | Coordinator  |
| Dolan      | Larry     | MT DNRC   | UpMo Hydrologist   |
| Downing    | Jen       | Big Hole Watershed Committee                                      | Executive Director   |

| Last           | First     | Affiliation                                       | Title                                  |
|----------------|-----------|---|--|
| Downey         | Michael   | MT DNRC   | Water Planner                          |
| Durham         | Dan       | USDA NRCS   | District Conservationist               |
| Econopouly     | Thomas    | USFWS   | Hydrologist                            |
| Eiring         | Katie     | MT DEQ  | Missouri Watershed Planner             |
| Esplin         | Brent     | Bureau Of Reclamation                             | Area Manager                           |
| Evans          | Elena     | MT Association of Conservation Districts          | Executive Director                     |
| Farris-Olsen   | Erin      | Montana Watershed Coordination Council            | Executive Director                     |
| Gardner        | Kristin   | Gallatin River Task Force                         | ED                                     |
| Gelston        | Tim       | US Army Corps Of Engineers                        | Recovery Planning Coordinator          |
| Glosso         | Melany    | USFS Beaverhead Deer Lodge Forest                 | District Ranger                        |
| Gullett        | Kale      | USDA NRCS   | State Resource Conservationist         |
| Hagenbarth     | Jim       | Big Hole Watershed Committee                      | Rancher/irrigator                      |
| Hardy          | Meredith  | Jack Creek Preserve Foundation                    | BSWC member                            |
| Harris         | Sierra    | TNC/Missouri Headwaters                           | Freshwater Specialist                  |
| Hayes          | Mike      | U of Nebraska, National Drought Mitigation Center | Director                               |
| Heaston        | Brian     | City of Bozeman                                   | Water Engineer                         |
| Heikes-Knapton | Sunni     | Madison Conservation District                     | WS Coordinator                         |
| Heinrich       | Drew      | Jack Creek Preserve Foundation                    | Programs Coordinator                   |
| Higgins        | Susan     | Center for Large Landscape Conservation           | Coordinator                            |
| Horton         | Travis    | MT FWP  | Endangered Species Coordinator         |
| Inman          | Kris      | WCS Community Partners Program                    | Coordinator                            |
| Jaeger         | Matt      | MT FWP  | Biologist                              |
| Jensen         | Amy       | USDA USFS   | Region 1 Hydrologist                   |
| Johnston       | Eric      | USDA USFS   | Region 1                               |
| Kelley         | Windy     | USDA Climate Center                               | Regional Extension Program Coordinator |
| Kilpatrick     | John      | USGS  | MT/ Wyoming Science Center Director    |
| Kluck          | Doug      | Dept Of Commerce                                  |  |
| Korb           | Nathan    | The Nature Conservancy                            | SW Lands Coordinator                   |
| Kountz         | Jodi      | Jefferson River Watershed Council                 | Drought Coordinator                    |
| Kountz         | John      | Jefferson River Watershed Council                 | Water user                             |
| Kreiner        | Holly     | Broadwater Conservation District                  | BSWC member                            |
| Kunard         | Ethan     | Madison Conservation District                     | Water Programs Manager/BSWC 2014       |
| Laidlaw        | Tina      | EPA   | Environmental Specialist               |
| Leoniak        | Lain      | City of Bozeman                                   | Water Conservation Specialist          |
| Lucas          | Natalie   | One Montana                                       | Intern                                 |
| Lynn           | Stephanie | Blue Water Task Force                             | BSWC member                            |
| Mangold        | Jane      | Montana State University                          | Invasive Species Specialist            |
| Maplethorpe    | Kara      | Centennial Valley Association                     | Former BSWC member/coordinator         |

| Last      | First     | Affiliation  | Title                                     |
|-----------|-----------|--|---|
| Marrs     | Alicia    | NIDIS  | Regional Drought Information Coordinator  |
| McEvoy    | Jamie     | Montana State University                               | Professor of Earth Sciences               |
| McGinnis  | Stephanie | MT Watercourse/ MT Water Center                        | Assistant Director                        |
| McGrath   | Shaun     | EPA  | Region 8 Director                         |
| McNutt    | Chad      | NOAA/NIDIS   | Program Affiliate                         |
| Meissner  | Justin    | USDA NRCS  | District Conservationist                  |
| Micek     | Stephanie | Bureau of Reclamation                                  | Reservoir Operations                      |
| Miotke    | Dennis    | East Bench Irrigation District                         | Manager                                   |
| Moore     | Sara      | WCS Community Partners Program                         | BSWC member                               |
| Myers     | Josh      | Cascade CD / Sun River Watershed Group                 | BSWC member                               |
| Nulph     | Tana      | Big Hole Watershed Committee                           | Conservation Programs Coordinator         |
| Oliff     | Tom       | Great Northern Landscape Conservation Cooperative/ NPS | Coordinator                               |
| Philbin   | Mike      | BLM/ Montana Dakota field offices                      | Branch Chief for Bio Resources & Conserv. |
| Pipp      | Michael   | MT DEQ   | Water Quality Standards                   |
| Prill     | Kim       | Bureau of Reclamation                                  | Outdoor Recreation Planner                |
| Ramsey    | Rebecca   | Ruby Valley CD/ Ruby Watershed Council                 | Watershed Coordinator                     |
| Reuling   | Melly     | Center for Large Landscape Conservation                | Coordinator                               |
| Rice      | Tom       | Beaverhead Co/ Joint Board of Control                  | County Commissioner, Chair                |
| Roberts   | Mike      | MT DNRC  | Hydrologist                               |
| Sandve    | Nikki     | Montana Watercourse                                    | Director                                  |
| Sawatzke  | Tom       | Bureau of Reclamation                                  | Deputy Area Manager                       |
| Savage    | Kelly     | Bureau of Land Management                              | Rangeland Mgmt Specialist                 |
| Schoonen  | Jennifer  | Blackfoot Challenge                                    | Water Steward                             |
| Schwend   | Ann       | MT DNRC  | Water Planner                             |
| Spoon     | Ron       | MT FWP   | Fisheries Biologist                       |
| Stout     | David     | Ruby Valley CD/ Ruby Watershed Council                 | BSWC member                               |
| Strasheim | Kerri     | MT DNRC  | Regional Office WR specialist             |
| Svoboda   | Mark      | U of Nebraska/ NDMC                                    | Climatologist, Monitoring Program leader  |
| Sweet     | Mike      | Montana Climate Office                                 | Research and Information Specialist       |
| Tackett   | Katie     | Beaverhead CD/ Watershed Committee                     | Coordinator                               |
| Tackett   | Kyle      | USDA NRCS  | District Conservationist                  |
| Tubbs     | John      | DNRC   | Agency Director                           |
| Velasco   | Ryan      | CEQ  | Whitehouse Council on Env. Quality        |
| Washko    | Sarah     | Big Hole Watershed Committee                           | BSWC member                               |
| Webster   | Meredith  | USDA USFS  | Region 1                                  |
| West      | Bill      | Red Rocks Lakes Wildlife Refuge/USFWS                  | Project Leader                            |
| Zimbric   | Joe       | One Montana  | BSWC member                               |
| Zimmer    | Bob       | Greater Yellowstone Coalition                          | Water resources                           |

## Appendix B: Characteristics and Geography of Watersheds in the Missouri Headwaters Basin

| WATERSHED                      | LOCALLY BASED GROUPS   | GEOGRAPHY  | NEEDS   | ACTIVITIES & CHALLENGES  | ECONOMY   |
|--------------------------------|--|--|---|--|---|
| Beaverhead and Red Rock Rivers | Beaverhead CD, Beaverhead WS Committee, Centennial Valley Association                            | Watershed Drainage: 3,620<br>Acre Feet of water produced (annually): 592,000         | Funding for a BSWC member; Community engagement on drought; Develop drought plan; Better understanding of drought forecasting; Increased soil moisture and streamflow monitoring; Triggers for water conservation and to maintain instream flows; Management of wells for water quality; Plan for future supply and demand. Assess opportunities for natural storage. | Land use change and management; persistent drought over the past decade; insufficient overwinter releases for fisheries out of Clark Canyon dam; assessing relationship between soil health and drought resilience; protection of arctic grayling and sage grouse. | Mostly focused on agriculture and recreation interests. ~55% of the land area is federally or state owned. Beaverhead County is the #1 cattle producing and #3 sheep producing county in Montana. Primary crops: alfalfa, hay, potatoes, spring wheat. Angling and tourism are also vital to the local economy. |
| Ruby River                     | Ruby Valley Conservation District, Ruby Watershed Council, Gravelly Landscape Collaborative      | Watershed Drainage: 965 sq. mi.<br>Acre Feet of water produced (annually): 216,000   | Funds to support capacity (e.g., attend meetings; trainings); Community engagement on drought; Better understanding of drought forecasting; Increased soil moisture, streamflow, snowpack and precipitation monitoring; Identification of instream flow triggers; Assessment of drought impacts.  | Dewatering of tributaries, irrigation conveyance; competing needs between agriculture and fishing sectors. Previous droughts caused wildfire, reduced stream flows, and reduced water quality and soil health  | Livestock production primarily on public land in the upper watershed for summer pasture; recreational fishing, with several fishing lodges and two fly rod manufacturers in Twin Bridges. Approximately 1200 residents.   |
| Big Hole River                 | Big Hole Watershed Committee, Big Hole River Foundation, Beaverhead, Mile High & Ruby Valley CDs | Watershed Drainage: 2,500 sq. mi.<br>Acre Feet of water produced (annually): 817,000 | Funds to support capacity (e.g., attend meetings; trainings); Funding for a BSWC member; Better understanding of drought forecasting; Increased soil moisture monitoring; Identification of drought conservation measures (e.g., irrigation scheduling); Assessment of drought impacts.   | In 1997 the BHC developed the Big Hole Drought Management Plan to mitigate the effects of low water quality for fisheries (particularly the Arctic grayling) through a voluntary effort among agricultural operations, municipalities,                             | Cattle production; 70% public ownership and 30% private; fishing (blue ribbon trout stream). Fewer than 2,000 year-round residents  |

|                              |  |   |   |   |   |
|------------------------------|--|---|---|---|---|
| Jefferson and Boulder Rivers | Jefferson River Watershed Council, Lower Jefferson Watershed Council, Jefferson & Ruby CDs   | Watershed Drainage: 2,445 sq. mi.<br>Acre Feet of water produced (annually): 120,000  | <b>Upper:</b> Funds to support capacity (e.g., trainings; visit projects); Better understanding of drought planning tools and drought forecasting; Explore need for soil moisture monitoring; Improve ability to monitor, assess and document drought conditions; Increased snowpack and precipitation monitoring; Forest management for water supply.<br><b>Lower:</b> Training support; Community engagement on drought; work to preserve community priorities; educate community on the benefits of soil health; Develop drought plan; Increased soil moisture and precipitation monitoring; Improve ability to monitor, assess and document drought conditions.                       | Maintaining flow to support the ecosystem, and the fishery in particular; changes in land and water uses; aquatic invasive species; coordinating information among the tributaries  | Agriculture and fishing. More than 57% of the land is private; the rest administered by USFS, BLM, and DNRC Trust lands   |
| Madison River                | Madison CD, Madison River Foundation, Madison Valley Ranchlands Group, Wildlife Conservation Society Community Partners Program  | Watershed Drainage: 2,510 sq. mi<br>Acre Feet of water produced (annually): 1,310,000 | Funds to support capacity (e.g., attend meetings; trainings); Better understanding of drought planning tools and drought forecasting; Community engagement on drought; Develop drought plan; Increased soil moisture and precipitation monitoring; Identification of water conservation and instream flow triggers; Assessment of drought impacts; Management of wells for water quality. Plan for future supply/demand issues. Assess opportunities for natural storage.   | Development; changing land and water use; chronic dewatering; nutrient overload; irrigation conveyance and infrastructure; ice jams; high percentage of absentee landowners   | Agriculture; tourism, abundant wildlife and trout fishing.  |
| Gallatin River               | <b>Upper:</b> Gallatin River Task Force & Jack Creek Preserve<br><b>Lower:</b> Greater Gallatin WS Council, Gallatin Valley Land Trust, Association of Gallatin Irrigators, Gallatin CD, & City of Bozeman | 1,800 sq. mi.   | <b>Upper:</b> Develop drought plan; Better understanding of drought forecasting; Increased soil moisture and precipitation monitoring; Identification of instream flow triggers; Assessment of drought impacts; Fire preparedness.<br><b>Lower:</b> Funds to support capacity (e.g., attend meetings; trainings); Better understanding of drought forecasting; Increased soil moisture and precipitation monitoring; Identification of water conservation and instream flow triggers; Improve ability to monitor, assess and document drought conditions and assess impacts; forest management for water supply and improved fire preparedness. Assess opportunities for natural storage. | <b>Upper Gallatin:</b> Big Sky Resort Development, many absentee landowners<br><b>Lower Gallatin:</b> City of Bozeman is working on drought plan for its municipal water supply; the West Gallatin agricultural users have established a sub-watershed plan to ensure the West Gallatin is not dewatered. | Tourism, fly fishing destination (portions of the upper river have been designated as a blue ribbon trout streams); agriculture; unprecedented growth in Bozeman and the region |

## Tab L – WSWC / WestFAST Federal Non-Tribal Water Rights

## Summary of the McCarran Amendment Webinar

Hosted by WSWC and WestFAST

November 10, 2015

### Chatham House Rule

Since our intent was to create an environment of mutual respect and understanding, the state and federal participants agreed that the Chatham House Rule should apply to the webinar event. The Chatham House Rule states that:

When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

The rule allows speakers to express views as individuals that may not be strictly representative of their organizations' official stance, offering anonymity from public quotation, and encouraging openness and the sharing of information.

### Summary of Presentations

*Note that this summary is not represented to be or to contain the official positions of either the U.S. Department of Justice or the State of Utah.*

### Federal Perspective and Role

The webinar started with the role of the United States in water rights adjudications, with a brief history of the pre-McCarran Amendment Era, passage of the McCarran Amendment in 1952, and post-McCarran Amendment activities from the perspective of the Department of Justice and other federal agencies.

The doctrine of sovereign immunity means that the United States is immune from lawsuits and cannot be brought into court without its consent and waiver of sovereign immunity. Prior to 1952, the United States participated in basin-wide water adjudications only if it voluntarily sought adjudication of its rights, or consented on case-by-case-basis to such suits. An example of one of the larger pre-McCarran Amendment cases is the Orr Ditch litigation in 1913. The United States sought to quiet title to water rights in Truckee River in Nevada for the Bureau of Reclamation Newlands Project, Pyramid Lake Indian Tribe, and to secure the use of Lake Tahoe for water storage. A final decree was entered in 1944, and actively administered today through a federal water master and Nevada State Engineer, recently amended with court's continuing jurisdiction.

By 1926, the United States was participating in many suits, and had filed or consented to be joined to approximately 30 water rights adjudications in the Western United States, primarily for water rights for large irrigation projects. There were many adjudications, however, to which the United States was not joined.

Without the participation of the United States, adjudications of water rights often resulted in inconclusive adjudications and decrees. Without finality, claimants were unable to obtain secure water rights relative to federal claims, many of which were large and some of which were

reserved water rights. The adjudications were subject to being reopened once the federal government asserted its water rights. The states had an interest in regulating and administering water within their states, and were opposed to the federal government's position. A Senate Judiciary Committee, as it was considering the McCarran Amendment, described the situation as one that "cannot help but result in a chaotic condition" since uses of water are often interrelated and actions on one water right often affect all other water rights.

The impetus for change was the small Quinn River Adjudication in northern Nevada in 1919. In the Quinn River Basin, the Bureau of Indian Affairs purchased land and water rights after the final decree for the basin was entered. In 1939, other water users in the basin sought to re-open the decree to join the claims of the United States. The United States objected to state court jurisdiction and moved the case to federal court. The federal court agreed with the United States' arguments that sovereign immunity precluded the lawsuit from proceeding against the United States. This frustrated water users in the Quinn River Basin, and brought the issue to the attention of Senator McCarran of Nevada, providing the impetus for federal legislation to make changes.

The McCarran Amendment was a rider to the Department of Justice appropriations bill, and was signed into law by President Truman on July 9, 1952. The McCarran Amendment is briefly worded and straightforward. It waives sovereign immunity of the United States to be joined as a party, including in state courts, to lawsuits adjudicating water rights and for the administration of adjudicated rights under certain circumstances. Subsection (a) states:

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit.<sup>1</sup>

This is the only general waiver of immunity for the United States in the area of water rights. Adjudications of federal water rights include both federal reserved water rights as well as rights acquired under state law. The administration of adjudicated or decreed water rights has not received much attention in subsequent case law. Generally the State Engineers have the right to enforce the decreed water rights to protect them from waste, encroachment, etc.

Following the passage of the McCarran Amendment, the United States participated in many more adjudications across the West, and the modern era of water rights adjudications began. The United States recognizes that, once it is properly joined to a water rights adjudication pursuant to the McCarran Amendment, it must participate, including filing its claims, or it risks losing its water rights, and losing the right to object to others' water rights that may affect federal lands. The United States is the largest land owner in the West, and public lands are often upstream

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<sup>1</sup> 43 U.S. Code §666(a) (subsections b and c omitted).

sources of critical water supply. The United States is the dominant developer of water resources for irrigation and other uses. The joinder of the United States allowed comprehensive adjudications.

Courts have held that waivers of sovereign immunity are strictly construed. Suits are generally considered to be judicial actions rather than administrative actions; however, some states like Oregon, Nevada and others have hybrid systems, where claimants present their water rights claims before the State Engineer or other administrative body, and following the administrative proceeding, the action moves on to state court, which may hear further objections and/or evidence before issuing a final decree. The United States does participate in adjudications that follow this format.

The U.S. Supreme Court has clarified the scope of the waiver of sovereignty and the procedural requirements that apply to adjudications under the McCarran Amendment. The Supreme Court has ruled that the McCarran Amendment is only a waiver for comprehensive stream adjudications where all competing claims are adjudicated.<sup>2</sup> Water rights claims between two different parties did not allow the United States to be joined as a party.<sup>3</sup> The McCarran Amendment includes a waiver for federal reserved water rights.<sup>4</sup> The McCarran Amendment does not change substantive water law; federal water rights retain their status as federal water rights, regardless of what court adjudicates them.<sup>5</sup> The McCarran Amendment is not a substantive statute, requiring the United States to perfect its water rights like other landowners.<sup>6</sup> The United States does not have to pay filing fees when participating in general stream adjudications.<sup>7</sup> States with a hybrid administrative-judicial proceedings are still considered judicial proceedings allowing a waiver of immunity under the McCarran Amendment.<sup>8</sup>

The Department of Justice represents the United States and the federal agencies in matters concerning the stewardship of the nation's natural resources and public lands, including federal interests in water resources. Within the Department of Justice, the Environment and Natural Resources Division (ENRD) has two sections, the Natural Resources Section (NRS) and the Indian Resources Section (IRS), headquartered in Washington, D.C. with smaller offices around the country. These sections are at the forefront of litigating federal water rights, representing the United States in comprehensive adjudications. The IRS represents the Bureau of Indian Affairs, and the NRS represents all other natural resource agencies. Each Western state has different water rights laws, and the Department of Justice attorneys are responsible for learning each states' water laws and procedures.

Federal agencies impacted by water rights claims include the Forest Service, Park Service, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Reclamation, Fish and Wildlife Service, and components of the Armed Services. These agencies manage land and have an interest in water rights, and often several agencies are involved in the same adjudication,

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<sup>2</sup> Dugan v. Rank, 372 U.S. 609 (1963); Colo. River Water Conservation Dist. v. United States, 424 U.S. 800 (1976).

<sup>3</sup> Colo. River Water Conservation Dist. v. United States, 424 U.S. 800 (1976).

<sup>4</sup> United States v. Dist. Court In & For Eagle Cty., Colo., 401 U.S. 520 (1971).

<sup>5</sup> Arizona v. San Carlos Apache Tribe of Ariz., 463 U.S. 545 (1983).

<sup>6</sup> Cappaert v. United States, 426 U.S. 128 (1976).

<sup>7</sup> United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res., 508 U.S. 1 (1993).

<sup>8</sup> United States v. Oregon, 44 F.3d 758 (9th Cir. 1994).

increasing the complexity of the adjudication. For example, the Las Vegas Valley Water Rights Adjudication included Nellis Air Force Base, Bureau of Indian Affairs, Bureau of Land Management, and Fish and Wildlife Service water claims. The Department of Justice was responsible for coordinating consistent positions among the agencies. After several years of litigation, the DOJ was able to settle all of the federal reserved water rights claims and water claims under state law with all other parties in the state of Nevada, considered a significant achievement by all the parties.

The federal agencies help identify and prepare federal water rights claims for the Department of Justice, as well as objections to other water claims that appear to lack adequate foundation or interfere with federal water claims. With the expertise of their hydrologists, land managers, agency counsel, and others, they determine their water uses and needs on the federal land they manage. The uses may be critical to the protection of the federal land, or may be critical to the protection of the ecological integrity of multiple-use land. They locate records of current and past water use; do their best to anticipate future water needs; and determine the quantity of water needed to fulfill the purposes for which the federal land was withdrawn or reserved. They locate relevant documents relating to the withdrawal or reservation of land, and any contemporaneous documents that shed additional light on the purpose of the withdrawal or reservation. They perform hydrologic studies, including water gaging, measurements of water sources, field verification, etc. The agencies review the water claims made by other claimants to other water sources on or upstream from federal land to see whether they appear to have complied with legal requirements, recommending objections to claims where appropriate. All claims and objections are reviewed extensively by the Department of Justice before filing.

Water rights claims by agencies might include irrigation for the Bureau of Reclamation; stock watering claims for grazing on federal lands; administering campgrounds, forests, grasslands; reserved water rights; various uses of water on military installations; and wildlife and recreation uses where allowed by state law. Reserved water rights may be express, where Congress has expressly reserved water in the legislation reserving the land (wilderness areas, for example) or reserved water rights may be implied. The United States has the obligation to determine the minimum amount of water necessary to satisfy the purposes of the withdrawal or reservation. Examples of federal reserved water rights include water needed for fire protection, water for administering the site, instream flows, various uses on Indian reservations, water sufficient to provide habitat for migratory birds and wildlife refuges.

Due to its interest in the development of interstate waters in the operation of federal water projects, the United States also participates in actions between states for the apportionment of interstate streams in “original jurisdiction” claims before the U.S. Supreme Court.

The United States has ongoing water needs, regardless of whether it has adjudicated water rights. Where the United States has been properly joined, adjudications may take decades to complete, some more than 100 years. Not all basins have been nor are currently being adjudicated, and may not be any time soon. The United States (along with its agencies) has the responsibility to protect water rights as property for the benefit of current and future generations, regardless of whether those water rights have been adjudicated. One option to protect those federal water rights, where there is interference by other water users but no state adjudication, is to seek a judicial remedy.

Agencies also sometimes seek permits for new water uses under state law, including paying filing fees under some circumstances.

Benjamin Franklin said: “When the well is dry, we know the worth of water.” The federal government recognizes the problem of increasing demand on decreasing water resources. Many of those working in Washington, D.C. have spent decades working in the West, and are aware of the needs and concerns, and the importance of working together. Improving cooperation among the competing water users will be beneficial not only to today’s water users, but to future generations. Settlements, for example, may allow the parties to resolve all their differences without resorting to litigation, or in an effort to resolve litigation. The Justice Department and federal agencies remain open to dialogue to improve relations – and hopefully this webinar is a step in that direction.

### State Perspective and Role

The webinar offered a state perspective as well, from the State of Utah. The McCarran Amendment has been beneficial to both the states and the federal government, allowing a single process to adjudicate all water rights at the same time. One drawback from the state perspective is that the federal government does not have to pay costs, but not all states charge costs to participate in general adjudications. Utah does not charge anyone adjudication fees, so it is not as much of an issue. Although adjudications take a considerable amount of time and effort to resolve all water rights in a basin or along a river, some states, including Utah, are making a concerted effort to improve their efficiency. Recently, Utah has worked on legislative changes to streamline the preliminary administrative process and to appoint a Special Master to improve the adjudication process.

Utah statute defines the purposes of general stream adjudications, including (1) to obtain final comprehensive decrees on all water rights within the respective drainage; (2) to bring all claims on to the permanent record; (3) to prevent a multiplicity of suits and to bring clarity to the water rights picture; and (4) to remove or reduce rights that have been wholly or partially forfeited through non-use.<sup>9</sup>

Utah has twelve river basins in active adjudication, with each basin divided into small divisions and subdivisions. Although there are federal water rights in all twelve basins, the United States has not been joined in all of the adjudications. Three river basins in Utah have been fully adjudicated.

Adjudications in Utah occur in a two-stage process. The first stage is administrative, where water user claims are solicited and received, hydrographic surveys are carried out, and a proposed determination is prepared. The second stage is adjudicative. The proposed determination is filed with the court, adequate notice is given to water users through summons and publications, participants are given the opportunity to object, and ultimately there is a decree entered by the court.

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<sup>9</sup> Utah Code, Title 73, Chapter 4.

An important initial step in Utah's general adjudication procedure is soliciting statements of claim, which includes communication between the Utah Division of Water Rights and federal agencies (BOR, FWS, BLM, USFS, BIA, NPS, etc.) When the United States is a party to adjudications, it is a single entity with separate and distinct agencies. Each agency has different views on describing and protecting their water rights, and one size does not fit all for federal agencies.

The McCarran Amendment gives consent for the adjudication of all federal water rights in state proceedings: "We deal with an all-inclusive statute concerning 'the adjudication of rights to the use of water of a river system' which in §666(a)(1) has no exceptions and which, as we read it, includes appropriative rights, riparian rights, and reserved rights."<sup>10</sup> One question often raised in adjudications is why the federal government has so many claims. The agencies have an incentive to make all possible water rights claims, because they will lose the opportunity to do so once the adjudication is complete. In one Utah adjudication, the United States filed 715 claims that were decreed by Utah's district court. The United States appealed because reserved rights for the national forests in the area were not included in the decree (nor had they been claimed during the adjudication process.) The Utah Supreme Court held:

It is our opinion that the United States, having become a party seeking adjudication of its rights in this proceeding, wherein the court had jurisdiction of the subject matter and the parties, is bound by the judgment to the same extent as any other party...Therefore, any water rights which have been or could have been claimed within this adjudication are now concluded by it.<sup>11</sup>

One purpose of federal water rights (among many others) is watering stock on public land. Historically, the BLM and USFS filed claims on each source within a grazing allotment, such as springs or segments along a stream from point to point. This results in hundreds of individual claims, including over 300 claims in the Logan River Drainage in Cache County, Utah. There are several challenges with filing claims on individual sources, including (1) correctly naming and describing each point of diversion; (2) identifying supplemental groups and quantifying the amount of water that can be depleted from each water right/source (which can be complicated by livestock that move around); (3) changing grazing allotment boundaries after the point of diversion is published or the rights are decreed; and (4) the public perception of large federal water holdings/claims when the actual amount of water claimed overall is not that large. One alternative offered in Utah is to allow sub-basin claims, which the USFS has embraced but the BLM does not utilize. The single sub-basin claim allows a water user to collectively identify all small, shallow surface sources<sup>12</sup> within a sub-basin as points of diversion, recognizing that stock will drink from any available source on the grazing allotment. The amount of the diversion is based on the overall amount of depletion by the livestock within the sub-basin, rather than by each individual source. The USFS is usually situated on headwaters land where water is more plentiful, whereas BLM lands are generally located further downstream, and they may be more interested in protecting each individual water source.

Negotiated settlements of water rights have been a primary focus in Utah as the preferred method of resolving water rights claims, whether federal reserved rights or state based rights. To date,

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<sup>10</sup> U.S. v. District Court In and For Eagle County, Colo., 401 U.S. 520, 525 (1971).

<sup>11</sup> In re Green River Adjudication v. U.S., 404 P.2d 251 (Utah 1965).

<sup>12</sup> It excludes any ponds over 900 square feet or with depths greater than 5 feet.

Utah has completed several<sup>13</sup> water rights settlements with federal agencies in national parks and monuments across the state, and currently working on a settlement for Bryce Canyon National Park. While most of the settlements are not yet incorporated into decrees,<sup>14</sup> the settlements are strongly preferred over litigation.

Completing the first settlement in Zion National Park was a challenge, with everyone ready to litigate. A large water conservancy district in Washington County had plans to build a storage reservoir above the Park on a piece of private land they had acquired. That caused the National Park Service a great deal of concern, and the United States and other parties spent a great deal of time and effort gearing up for litigation. As the conservancy district, United States, and State of Utah started talking, several details fell into place over the course of the next five years. It is probably one of the most complex water rights settlements completed in Utah, requiring the exchange of private and federal lands, among other details. The Zion National Park settlement was submitted to the Court as its own separate proposed determination, since the Park spans the two major tributaries to the Virgin River. After a dozen or so protests, which were resolved and withdrawn after personal contact and explanation of the complex settlement agreement, the settlement was incorporated into the Court's Decree.

Once the heavy lifting was done at Zion National Park and a template was in place, negotiations for the other parks and monuments went remarkably smoothly. The parks and monuments each have unique purposes for water. The parks and monuments located at headwaters tend to be easier to settle relative to other areas, where the drainages are not as well-defined. The basic model for all of the settlements has been to first look at the hydrology and the needs of the park, then taking a look at subordinating the in-stream (not administrative) rights to any existing rights at the time the settlement is signed. That step really helps to persuade the local water users to approve the settlement. Without their support, the state-federal negotiations are much more difficult. Another key element has been to ensure reserved water right priority for administrative uses, for campgrounds, ranger residences, and other sites and facilities. Some of the parks already had state-based water rights that actually pre-date the reservation of the park. Zion National Park was able to rely on the earlier priority state-based rights for some of its administrative water uses.

Most of the parks are located in desert areas, and some have outcrops with water seeping out of canyon walls, creating hanging gardens and riparian habitats. The water is fed by groundwater instead of surface water sources. A third key component of the settlements has been to create well protection zones, where the state agrees that it will not allow any new wells to be drilled within a certain distance of the park boundary, or limiting the size of the wells to serve only domestic rather than production level needs.

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<sup>13</sup> Including Zion National Park, Cedar Breaks National Monument, Timpanogos Cave National Monument, Natural Bridge National Monument, Hovenweep National Monument and Arches National Park.

<sup>14</sup> The United States has not been joined in the Uinta Basin adjudication or the Southeast adjudication, which presents challenges for bringing completed settlements for parks and monuments in those areas to become part of a Decree. Utah is looking at getting two of the agreements presented to the Court and to the public for objections, hopefully to get them entered as Decrees.

Participation on all levels has been key for each of the settlements. Many of the settlements were reached primarily by the parties themselves, who dealt with the water hands on, rather than the attorneys. This also means that the parties and local community are invested in each settlement and willing to follow through after it is completed, limiting the substantive objections when the settlement is presented to the Court to become a decree, and allowing the state and federal entities to stand shoulder to shoulder to respond to any objections. The settlement process protects the consumptive water users as well as the federal agencies, and so far has worked very well.

### Questions and Responses

Q: Several court cases were mentioned during the presentation. Providing cites to the group following the webinar would be helpful to those who might want to review those cases.

R: A selection of Supreme Court and circuit court cases discussing the McCarran Amendment:

- Wagoner Cty. Rural Water Dist. No. 2 v. Grand River Dam Auth., 577 F.3d 1255 (10th Cir. 2009)
- State Eng'r of Nev. v. South Fork Band of the Te-Moak Tribe of W. Shoshone of Nev., 339 F.3d 804 (9th Cir. 2003)
- United States v. Puerto Rico, 287 F.3d 212 (1st Cir. 2002).
- United States v. Oregon, 44 F.3d 758 (9th Cir. 1994)
- United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res., 508 U.S. 1 (1993)
- S. Delta Water Agency v. United States, 767 5.2d 531 (9th Cir. 1985)
- Arizona v. San Carlos Apache Tribe of Ariz., 463 U.S. 545 (1983)
- Jicarilla Apache Tribe v. United States, 601 F.2d 1116 (10th Cir. 1979)
- Colo. River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)
- Cappaert v. United States, 426 U.S. 128 (1976)
- United States v. Dist. Court In & For Eagle Cty., Colo., 401 U.S. 520 (1971)
- Dugan v. Rank, 372 U.S. 609 (1963)
- Miller v. Jennings, 243 F.2d 157 (5th Cir. 1957)

Q: Any recent examples where DOJ has initiated an adjudication for non-tribal federal reserved water rights? If so, what was the motivation?

R: Unaware of any recent examples where DOJ has initiated adjudications for any federal reserved water rights.

Q: After sixty years of McCarran Amendment, any significant issues of interpretation, other than administrative issues, that remain unresolved?

R: There are folks in the West unhappy with the Court's interpretation of the McCarran Amendment on particular issues, such as the ruling that federal agencies are exempt from paying filing fees in adjudications, which are expensive endeavors. There may be situations where the federal government is unhappy with the Court's interpretation of the McCarran Amendment. Whether those interpretations will be challenged in the future or accepted as resolved is uncertain.

Q: Regarding a statement that the federal government may seek to protect rights, even if they're not yet asserted or determined, how would you go about doing that?

R: As an example, in the *Cappaert v. United States* case, the Devil's Hole National Monument held water with an endangered species of pupfish; surrounding irrigation was resulting in a declining water level, negatively affecting the fish. The agency went to the federal district court and sought an injunction to force the irrigation uses to cease. There had been no water rights adjudication, no decree or quantification of the federal government's water right. But the United States was successful in going to court and obtaining protection for that water right.

Q: Adjudications are complex and continue on for thirty years or more, at great expense to the states and other parties. Is there a sense of whether complex adjudications will continue into the future, or whether settlements or other creative alternatives/reforms will increasingly take the place of lengthy adjudications?

R: Efforts to improve efficiency of the process in Utah has focused on shifting the burden on water users to make their claims, and only investigating the claims that are made rather than spending time to locate and investigate every potential claim that could be made. Aside from streamlining the administrative process, not much can be done to expedite the judicial process and still comply with due process requirements, other than appoint a Special Master to focus on just the adjudication.

R: There are only three attorneys in the Utah Attorney General's office to handle all of the water adjudications throughout the state, which also plays a role in the time it takes to complete adjudications, negotiations, settlements, and Colorado River issues.

R: Limited resources on both state and federal sides. The United States is also spread thin in the number of attorneys available for litigation and settlements. Regarding settlements, both state and federal parties have experienced positive results, and that is the preferred way to resolve water rights claims to the extent possible. The initial view is often that there is no way we can resolve these competing claims. But once the parties get down to it, sometimes getting the attorneys out of the way, there's some creative thinking that makes it possible to reach settlements. There may be situations where people are adamantly opposed to a federal reserved water right, and would prefer that federal agencies obtain their water rights through state law. There may be room for compromise there; if the federal government is able to satisfy its needs with a protected water right, it may not always be necessary to have that water right termed as a federal reserved water right, versus a water right obtained under state law and state protections.

Q: What are the flash points coming down the pike as we move into the post-adjudication universe? How far does the McCarran Amendment subject the United States to state enforcement jurisdiction, including requiring the federal government to pay its proportionate share of costs for water commissions and ditch riders?

R: Not sure about the paying for water commissioners part of it, but I think the United States does recognize that the states do have a right to enforce the protections for decreed water rights. Where the United States participates in an adjudication and its rights are decreed in that adjudication, and a situation arises where there isn't enough water, or water rights are being interfered with, and enforcement actions become necessary, the United States will look to the appropriate state water official, in many cases the State Engineer, to enforce that decree. In some cases that may mean that the decree will have to be enforced against the United States, and that authority is recognized as appropriate.

### Other Questions

Q: Is the use of general stream adjudications on the ascent or decent as a water right determination and management tool?

Q: “Comprehensiveness” seems to have been an engineering-based concept that has been very difficult for courts to achieve. The result in many states has been perpetual litigation.

Q: Why would Utah not join the United States in an adjudication if they know federal rights exist in that basin?

Q: Does the state of Utah administer the reserved rights recognizes in the settlements? i.e., could Utah curtail a federal right which is interfering with a senior state right?

Q: Does the McCarran Amendment have bearing on whether the United States may be required to pay water commissioner/ditch rider costs proportionate with other water users on a source in which it holds federal reserved water rights? Would the answer to that question change if the water rights were state law rather than federal law based?

Q: The decision in *US v. Oregon*, 44 Fed. 3<sup>rd</sup> 758 says that the United States does not have to pay “filing fees”; however, the United States argues that this means it does not have to pay any of the costs of an adjudication, such as the transcript costs for a hearing which addresses the claims of the United States. Who is to pay these costs and how does the United States expand the Oregon decision to make this argument?

Q: The McCarran Amendment states that the United States “*shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: Provided, That no judgment for costs shall be entered against the United States in any such suit.*” Recent proposed state legislation sought to prevent state division engineers from co-operating with the United States in administering terms and conditions in federal land use authorizations. For example, state division engineers could have been barred from confirming an applicant’s ability to cross public lands when determining if a water right applicant could demonstrate the ability to put claimed water to beneficial use. This could potentially prevent the United States from participating in the state process to the same extent as a private individual under like circumstance. If states move to prevent the United States from participating in state processes to the same extent as private individuals under like circumstances, could the United States be forced to seek adjudication of its water rights in federal court?

### Discussion Regarding Future Meetings

Jean: This was a good presentation with good suggestions. I’m considering having a similar presentation to Forest Service folks where we can talk about these kinds of things, so that others within the Forest Service who deal with water rights can learn more about these topics.

Tony: Having recently sent a response to the Forest Service on the groundwater manual, it would be interesting to hear about the different ways that groundwater has been handled, and how some of those administrative uses have been quantified. I think it might be a good idea to have another webinar that discusses differences in groundwater law. The Supreme Court somewhat skirted the issue in *Cappaert* by defining that water as surface water rather than groundwater, as far as having a reserved rights claim.

Susan: I think that's a good idea. The various approaches in states, whether adjudication or settlement, are pretty diverse. It might be helpful to put a webinar together on the different approaches to either negotiation groundwater rights or adjudicating them, or other alternatives. Looking at the questions that were submitted, we really didn't drill down into the whole notion of fees and paying for administrative costs and enforcement of decrees, and what would happen in a post-decree world, might be something to carefully delineate in a webinar. It is an issue for a lot of the western states, and it has been for years. It might be something to talk about – are there alternatives to going to court to enforce decrees and forcing the federal government to pay fees. In Montana, the federal agencies have paid for notice of the court decree, which really helped. That might be another topic for the workgroup to tackle.

Pat: Really agree with Tony's comment. Adjudications or settlements, this issue of groundwater and reserved water rights always comes up. One of the presenters touched on it – if there's a situation where the state is opposed to reserved water rights and groundwater is an issue, a settlement agreement is a way to get around that, as was done in Zion and Arches National Parks. I would be interested in knowing how adjudications and settlements have handled groundwater when dealing with federal non-tribal water rights reservations on federally-managed land. I think there is still confusion and disagreement there that we may be able to make some headway on with a focused look at that. Specifically, federal claims to groundwater as a reserved right, which the federal agency may consider appropriately within the reserve water rights law, but that may not necessarily be the viewpoint of the state. Finding out how this has been handled in adjudications particularly, where the United States has been joined under the McCarran Amendment, would be interesting.

Tony: I think it would helpful in that context as well to learn how the federal government as a landowner might be entitled to a state-based groundwater right in some instances. In a Montana case, the state recognized a tribal right to groundwater, but was specific that it was not a federal reserved water right.

Susan. Exactly. Basically we said that the law is all over the place on reserved rights, so we looked at it from a practical standpoint and decided that the tribe had the right to use it as long as they don't impact non-tribal water wells, which was the template used in other compacts. I think it's a good topic.

Pat: It's something the states might be interested in, knowing how others are handling the situation with groundwater, whether as a reserved right or not.

Tony: Similarly with grazing, there's a diversity of approaches at the state level, where some recognize the right to water in the name of the landowner, where others require the right to be held by the stock owner. Others allow both the United States and the stock owner to hold the water right.

Jay: I'm really interested in that, because I'm about to get neck deep into a bunch of BLM PWR-107 claims here in Montana.

Jean: I think that's an important topic for the Forest Service, too.

Tony: This was nice in that we had a view from one state, but obviously there are a diversity of interests. At some point maybe we want to talk about a workshop. A webinar can't really handle 18 different states laws with respect to water rights and grazing.

Norm: I think the webinar presentation today was a very good first step, providing a good background. I would suggest taking a look at some of the questions, maybe grouping them together in categories of inquiry for another webinar, or maybe a day or day-and-a-half long workshop. Figuring out how to expand into selected areas of interest, like the groundwater and grazing, adjudications and negotiated settlements in general, things that would cut across the interests of the various states, I think that's the direction to go.

Susan: I know there were some specific questions about the feds initiating adjudication and things like that that were left unanswered.

Marc: One thing I always take away from adjudications, even if you've spent thirty years and millions of dollars, is what happens when you have a piece of paper but there's not enough water in the environment.

Susan: That's one thing a lot of us are concerned about with drought. Some of us are able to reach water sharing agreements, but it's a very important question. The folks that negotiated the Colorado River Compact in about 1929, they used a certain period of record hydrologically, and that no longer functions very well. So those are good questions to ask.

Norm: They really are good questions, and it's important to take a hard look at them. With the prior appropriations doctrine, we do have a way to deal with it and have for a very long time, but it may not always be the best way. Those folks without high enough priority as water resources decrease, there are ways to accommodate their uses.

Tony: I think the Colorado River Basin is a prime example, where they've had to look at how are we going to share shortages. It's led to some innovative programs and approaches, including dealing with potential inclusion of Mexico in sharing those shortages internationally in return for providing some storage for Mexico.

Norm: They were challenging, but we found a lot of ways to get things done.

Chris: Wyoming is interested in digging deeper into the administration piece and how other states are handling that, what are the issues to identify, etc.

Norm: Utah agrees.

Jay: Montana also.

Susan: We still wonder how Montana is going to weave together all the water compacts and settlements with all the state-based adjudicative rights, what the final decrees are going to look like and how they're going to be administered, so that is certainly another big topic.

Chris: It was encouraging that the United States recognizes the authority of the states to administer the rights. A situation I foresee is one of our water commissioners or superintendents going out to curtail a federal reserved water right, and then the federal agency goes to the district court to enjoin the enforcement action. I'm curious what that looks like.

Jay: I'm right with you, Chris.

Norm: Yeah, we have an interest in that, too.

Susan: There are so many huge topics, some are going to be difficult to get our arms around. We need to decide which topics are better suited for a webinar and which topics lend themselves to a seminar where people can attend in person. Something for members of the workgroup to think about.

Michelle: I would like to prepare a summary of the webinar for the workgroup, and then we have a quarterly call coming up January 11<sup>th</sup> at 2:00 Mountain time, and that might be a good time to review the summary and discuss this further. We can add topics, or drill down deeper and identify the topics that are at the top of our priority list, and the best format to present those topics.

Jay: The groundwater topic might work better as a webinar if what you're looking for is a survey of the different states. For Montana compacts with Indian tribes, we generally do treat groundwater as a component of the federal reserved water right. With the administration component of the McCarran Amendment, Montana isn't blue sky-ing, but we're getting closer to it, and I wonder if that might benefit more from an in person meeting where we can present some hypotheticals like Chris just provided, and basically ask folks around the table how various federal agencies and states would handle that kind of a situation under the current laws. That might do better with a more interactive format.

Chris: I like that.

Norm: Yeah, that's worth some thought, Jay.

David: A lot of folks have settlements and administration concerns, and in Alaska we don't have anything yet, so we're a little behind the progress others have made.

Susan: We'd be happy to fly up to Alaska and have a workshop there, David.

David: We can probably make that happen.

Nathan: Having sat in Michelle's position before, I can attest how helpful it is to have members of the Council help out with these types of projects, people like Jay, Susan, and Chris, that can come and really help take some of the laboring oar. Having the state folks pitch in to make this happen will be key, because there's no way she's going to be able to do any of that on her own.

Susan: I think having the summary will be great, and then you said January 11<sup>th</sup> is the next call. We can come up with a workplan at that point.

Tony: We can have some suggestions ready for that call.

Susan: And there's no reason these workshops can't be done in conjunction with regular Council meetings like you've done before, to help people with travel concerns. The next WSWC meeting in D.C. might be a good time to involve the WestFAST folks.



WSWC-WestFAST Non-Tribal Water Rights Workgroup

## Summary of Quarterly Call

January 11, 2016

### Attendees

Andrew Hautzinger, FWS  
Becky Fulkerson, Reclamation  
Buck Smith, Washington  
Chris Brown, Wyoming  
David Schade, Alaska, with Mike Walton  
Donald Anderson, Reclamation  
Jay Weiner, Montana  
Jeff Hughes, NPS  
Michelle Bushman, WSWC staff  
Norm Johnson, Utah (with Mike, Ben and Sarah, webinar presenters)  
Pat Lambert, WestFAST liaison  
Todd Chenoweth, Texas  
Tony Willardson, WSWC staff

### Executive Summary

We determined that our top two priorities for upcoming workshops are (1) identifying state and federal perspectives of reserved groundwater rights, with case studies as examples of how they've been handled in the past through adjudications, settlements, compacts or statutes; (2) hypothetical or actual examples of how adjudicated or decreed federal water rights will be administered by states, and how state and federal agencies would approach situations like curtailments under the current laws.

We would like to hold a workshop in person, in conjunction with our summer Council meetings in Bismark, North Dakota, on the morning of Wednesday, July 13<sup>th</sup>, from 8:00-12:00. [Note: the field trip leaves the Radisson hotel at 1:00pm.] We have some potential case studies, and would like a variety that showcases not only the different perspectives and approaches of the states in dealing with federal reserved water rights, but also the different enabling statutes of the agencies and the authorities (statutes, regulations, case law, Executive Orders) that they rely on as they use or seek to quantify federal reserved water rights. Given our short time to meet, the plan is to provide written materials in advance of the meeting to allow participants to be familiar with the different state/federal laws and selected case studies. We anticipate that for a given case study we would hear both the state and federal perspectives. The bulk of the time would be reserved for conversations or small group breakout sessions to discuss ways to resolve problems that arise due to the different state-federal perspectives, particularly given that not all states have the same perspective as each other, nor do all the federal agencies approach reserved groundwater rights in the same way.

For the written materials, it would be helpful to have: (1) a list of all cases dealing with reserved groundwater rights (tribal or non-tribal), along with a paragraph summary (the perception is that this would be a relatively small but very helpful list); (2) a list of enabling statutes and other authorities that federal agencies rely on for their reserved groundwater rights (with the understanding that this is for developing state-federal communication and is not to be seen as either exhaustive or official); (3) a list of states' authorities for ownership or regulation of groundwater (constitution, statute, case law interpretation, etc.). We will probably survey the states and agencies to gather this information.

Potential case studies include: (1) Utah-NPS agreements such as Arches; (2) Montana-Wyoming-Idaho agreements/compacts/statutes/adjudications to protect Yellowstone geothermal features from groundwater pumping outside the park [Note: part of this was covered at the Helena, MT meeting in 2014]; (3) Colorado-NPS groundwater settlement on the Great Sand Dunes National Park and Reserve; (4) Indian reserved groundwater rights (Agua Caliente, Hualapai, Lummi, Gila IV case in Arizona) and potential impact on other federal reserved groundwater rights. Looking beyond just reserved groundwater rights, Reclamation deals with return flows to their projects and groundwater rights relating to that, as well as Texas-New Mexico claims to the Rio Grande and associated groundwater rights; BLM wilderness areas and stock watering claims deal with groundwater rights; the Forest Service is also dealing with state-issued and reserved groundwater rights; and the FWS has very different enabling statutes, but tends to follow NPS lead on dealing with reserved groundwater rights for their purposes.

### Details of the Call

First a quick update on the Clearinghouse. We did receive substantive comments from Jeff Hughes on the NPS documents, and have added those to the Google Doc spreadsheet. We've also added some Abstracts and Key Words to make the documents more searchable. At this point we have 54 documents. We're still filling in the necessary information before we can add the documents and info into a searchable map of the states. Progress is slow but moving forward – up to this point it just hasn't been as high a priority as other things.

Included with the summary of the McCarran Amendment webinar from last November were four key topics of interest as we go forward:

- (1) state and federal perspectives on reserved groundwater rights and how they are handled in adjudications, settlements, compacts, etc.**
- (2) how states and federal agencies approach grazing water rights;
- (3) how do states and federal agencies approach the problem of paper water rights with no wet water to fulfill those rights in times of drought (agreements that work around strict prior appropriation application, etc.); and
- (4) hypothetical (or actual) situations for the administration of adjudicated/decreed water rights and how states and federal agencies would approach those situations under the current laws (e.g. curtailment of reserved water rights and seeking a court injunction to stop enforcement).**

We discussed what topic is our highest priority, what format (seminar, workshop, webinar, case studies, etc.), and what dates would be best to cover these topics.

Pat Lambert: We've had discussions here recently that WGA staff are looking closely and talking with these agencies about groundwater rights. I see that as a rising issue with states and federal agencies, so I think there may be some benefit at looking more closely at that topic. We need to touch on all of those topics, but it seems like there's some momentum building on that groundwater piece. I'm interested to hear others' opinions on that.

Tony Willardson: We are definitely still discussing groundwater in a number of arenas.

Chris Brown: I would agree. I think groundwater is going to continue to pop it's head up, so to speak. I'm curious with regards to the Forest Service's directive, with regard to their pulling back on the directive, where are we at in the process?

Tony: We were just discussing that today. I understand there was some discussion in the [Wyoming] Governor's office, and Pat requested what our discussions have been with the Forest Service. When the Forest Service withdrew the directive, I think they did intend to look at it more as a suspension than as a permanent withdrawal. We've had extensive conversations with them, and they do intend to re-propose it at some point in the future, but I don't know of any timeline. The Forest Service does have WSWC's line by line edits from the states, and we don't know to what extent they will be able to use those edits or what disagreements we may continue to have over what authority the Forest Service has to issue a directive.

Chris: Thanks for that. I was a part of the call with Pat Tyrrell, and we didn't really have a good answer as far as where we are at. I do recall providing feedback on the proposed directive, and I think there were several other states that did some significant work, but I hadn't heard anything back. Is it correct that we haven't gotten any response on that feedback?

Tony: Yes, to the extent that I think it has been taken positively and they've tried to make a number of changes. We have not seen any version of what they might come up with in the future. They have sent us a number of other documents to review, to flag any potential difficulties we might see. One of those was a framework document for how to deal with water in the forest, and the other was a BPM technical guide on implementing what will be their directive, I think. That's on my list to follow up with the Forest Service so we can get a better answer as to where they are with the directive.

Pat: I've communicated with Jean Thomas at the Forest Service and have some updated information. When they withdrew the directive, they took a look again at the comments received from the individual states and the WSWC,

WGA, and other stakeholders. That process took place prior to the recent holidays. There has been a bit of lull, and I don't know that they have a specific timeline on when work would begin on the new directive, incorporating the information and comments they received. They've had some recent shuffling around of staff, including Chris Carlson, one of the principal authors of the directive, who is working on detail, so that has delayed some of this work. Their intention is to take those comments received seriously. We've (WSWC and WestFAST) been working closely with them, even going line by line on the edits from the states so that the Forest Service is aware of the foundation for those comments and suggested changes. I think they'll be getting back to the directive as they get their staffing squared away.

Chris: Thanks Pat. I think from Wyoming's perspective, particularly with such a big Forest Service presence, I'd be very interested in the groundwater topic. If nothing else, at least part of what I remember hearing from Jean was the Forest Service's difficulty in dealing with the diverse nature of the laws in the Western states, so the more we can help them through these discussions to reveal those differences and potentially how to deal with them, I think that will be beneficial to both the states and the Forest Service, particularly in coming up with a final draft of that directive should that ever come to pass.

Pat: I'm pretty confident they would agree with that statement 100%

Buck Smith: I think Washington would be most interested in the first topic on groundwater as well. Virtually all the headwaters of our streams start in National Parks or Forest Service lands, so this would be important to us.

Michelle Bushman: It sounds like we have something specific between the Council members and the Forest Service, but we would want this to be open to all the other federal agencies. What would be the best format that would benefit everyone?

Buck: I like the idea of a workshop, especially if it could be rolled into the summer meeting, like the day before the meeting begins.

Michelle: That's in Bismark, North Dakota, on July 12-15.

Chris: I agree with Buck. There are things you can accomplish in that sort of setting that you can't otherwise. But I'm reminded of a comment that Pat Tyrrell made at our Kansas meeting that they're turning into week-long meetings. I don't want to make it so that people can't attend, but I know that this is a pretty important topic. I know our Governor's office raised it with the Forest Service here in Wyoming. So I agree with Buck, as long as we have a well-coordinated and ready-to-go agenda for that sort of a meeting. We need to put J.D. in charge of it!

Dave Schade: I would agree. We've got travel restrictions in place, so the more we can put things into concise timelines, it makes for longer meetings, but less travel for us up here. And I would be very interested in coming to that.

Michelle: What is it that we want to accomplish with this? Do we want to know what each state's laws are? Do we want to know what each federal agency is struggling with as far as getting things accomplished, or what their perspective is on groundwater and what the basis for that perspective is, such as a case or a statute? What is it that we want to look at as we share these perspectives and how to resolve the differences that we have?

Chris: It seems to me that there are three general ways this issue has been dealt with in the past: compact, decree, or the absence of anything, leaving everyone in limbo. So I think it would be helpful first to talk about those things that have already been done. My understanding is that in Montana, the federal reserve groundwater rights have been quantified, although not always specifically described as such. In Wyoming, about a quarter of the state has federal reserved groundwater rights that are recognized to some degree. I think a big benefit to us is to put those ideas forward, and identify what the issues are, not only with the Forest Service, but with the other federal agencies, and see if we can get some consistency as to how those issues might be dealt with, so we can at least start some inertia or movement to a common resolution to those things should they be needed, so it isn't so unknown, so when I've got the BLM coming in and asking for something like that, it's not something completely different in posture from what the Forest Service might be asking.

Pat: I agree with Chris. I recall from the last conference call we had, there's some good cases in Montana, Idaho and a few others that we can review that would go a long way toward accomplishing what Chris is talking about.

Chris: And I don't recall in Utah's presentation, Norm, whether you had a groundwater element in any of the deals you made with the NPS.

Norman Johnson: We have recognition in our NPS agreements for areas of protection for the use of groundwater even outside of Park boundaries, so the way we've addressed that is a little complicated. But the answer is yes, we have included groundwater in the settlements that we've reached.

Mike: Primarily for uses at campgrounds, visitors centers, more the administrative uses. But in places like Zions and Arches where there are groundwater features like hanging gardens and riparian habitats, we've put groundwater protection zones in place to protect those resources.

Michelle: I received feedback on our Kansas WQ2 Nexus workshop that the case studies were helpful. Do we want to try that format again, where we have case studies followed by smaller group discussions, or is there a format that you think might work better for this particular topic?

Chris: I found the Nexus workshop in Kansas very useful, and I thought the case studies were helpful. I don't know that I can tell you that the same format would work or not. I think if we could find a few different examples with regard to how it's been dealt with and chew on those a little bit, I think it would certainly be helpful.

Norm: I wonder if we can piggy back this meeting so that it's a half day, depending on the field trip, to put it on Wednesday morning.

Michelle: So that people don't have to come an extra day early?

Norm: Right, so people can come in on Tuesday afternoon and not have the meetings take up the full week.

Michelle: That sounds doable. So with a half day we would only have 3-4 hours to complete all of this, and we'd have to make sure that it's very brief so the case studies don't drag on forever, since it sounds like the most valuable thing would be the communication back and forth on how we would resolve those differences.

Norm: I think we can assume that people will come in the night before so that you can start right at 8:00, and you could do box lunches on the field trip so that you could go until 12:30 or 1:00 depending on when the field trip starts.

Dave: If you do that, I would suggest having some of those things pre-written so that people could read those case studies in advance, otherwise I don't think there's going to be enough time to really have the discussion you want.

Norm: I agree.

Michelle: Do we want to take a single case study and give both the state and federal perspectives on that case study to cover more depth? Or do we want to have separate state case studies and federal case studies to cover more breadth? *For example, with the Utah-National Park Service Arches Agreement, do we want Utah's and NPS' perspective of what happened with groundwater? Going into it, was Utah enthusiastic about acknowledging reserved groundwater rights, or was that something they needed to compromise on? Did the NPS just assume that it had the reserved groundwater rights, and was it surprised to realize that Utah didn't agree? And how did that process work out from both perspectives?* Or do we want to a case study from a state perspective and then another case study from a federal perspective, with those case studies being as broad as possible to give "the states" and "the federal" perspective, to generate ideas on finding common ground to resolve our different perspectives. My thought on that is that the states don't all have the same perspective on groundwater, and neither do the federal agencies.

Buck (?): I like the idea of the state and feds talking about the same case.

Norm: So do I, I think that would be the best way.

Chris: I agree.

Michelle: Okay, We just talked about Utah and Montana as having different ways of looking at reserved groundwater rights. What other states have accomplished things that you're aware of that might have a different perspective? I'd like different states and different agencies to make up the case studies so that we're not doing all NPS-related case

studies, for example. What other states or situations can we identify now so that we can start reaching out and asking those folks to present.

Norm: I think someone needs to talk about the *Cappaert* pupfish case, and the California case recognizing reserved water rights for the Indian reservations.

Michelle: Are you talking about the Agua Caliente?

Norm: Yep.

Michelle: So that's tribal water rights, and we tend to focus on the non-tribal water rights, but that does have an impact on how reserved water rights are viewed.

Norm: I don't think there are a lot of cases on reserved groundwater rights, so even though it deals with tribal water rights, the fact that it reaches to groundwater is worth taking a look at. It would be worth having someone pull together all the cases that do talk about reserved groundwater rights in advance of the meeting.

Buck(?): This is another National Park Service issue, but I'd be interested to know how the geothermal features in Yellowstone are being protected from too many groundwater withdrawals outside of the park boundaries.

Jeff: We did cover that the Helena, Montana meeting. It's part of the Mazda (?) Compact we have with Montana that covers five Park Service units.

Chris: I think there were three pieces, including Wyoming and Idaho. With regard to Wyoming's perspective, during our general adjudication, part of it was addressing the park's geothermal features, which was vague at best. We also have a state statute that generally protects those features. So while we don't have a specific agreement with the Park, we do have statutory recognition that places an additional burden on state withdrawals that may impact those features.

Jeff: That's right, and there is a separate agreement with Idaho to protect those features as well.

Michelle: It sounds like we have several examples from the NPS in Utah, and the Montana-Wyoming-Idaho geothermal agreements. Are there any examples of perspectives on groundwater from other agencies?

Chris: I'd be hard-pressed to find anyone from the state who helped negotiate that settlement during Phase II of the general adjudication in the mid-1980s, which addressed all of the federal reserved rights (NPS, BLM, Reclamation) within Division 3, which is generally the northwest quarter of our state. I certainly was not there, but I can tell you that with regard to groundwater it was pretty sparse, but covered water for administrative needs, mostly campgrounds, ranger houses, and things of that nature. Since the consensus seemed to be that there was no way to quantify the groundwater right for the NPS, we mostly just said that you can't mess with it, whatever the amount is.

Jeff: Is that the Bighorn Adjudication that you're talking about?

Chris: Yeah.

Jeff: Yeah, that only got a small chunk of the park, in Little Creek (?) drainage area, and I think there was some very vague language. But it's not an area that's going to develop any time soon.

Chris: Yeah, and I think that was part of the thinking when they did that. That was the only part of the park that drained down into the Clarks Fork(?), which was the only reason it was part of the general adjudication.

Jeff: Right.

Chris: But he's right. There was just so little chance that there's ever going to be development up around the park boundaries, they just didn't mess with it.

Michelle: So there's no way of knowing at this point whether that was effective.

Chris: I think it's effective. We haven't had any problems with it.

Jeff: That is true. Anyway, it's a Forest Service wilderness area and National Park, with very little opportunity for development up there.

Tony: Norm, you mentioned the Cappaert case, so I guess we should look at Nevada. I'm trying to recall any other Indian water rights cases, and the only other one I can think of is the Lummi case in Washington. Buck, I don't know if there are any others – monuments or parks or BLM or other groundwater issues that Washington has dealt with.

Buck: That's the only one I can think of.

Norm: I can't remember any others, Tony.

Tony: I'm trying to recall if there was anything in Arizona. It seems like there was something with the Organ Pipe Springs.

Chris: I think there was an Arizona state case, but I don't remember the name of it.

Michelle: There was one of the Gila cases that talked about groundwater rights, and it wasn't just for the tribes, it was any reservation, but it didn't actually apply the holding to other federal agencies. It just held that if surface water isn't available, then the groundwater must be reserved, but left it open to a case-by-case determination down the road.

Tony: We can do a survey and see what we can find, and then circulate it for additions and corrections.

Andrew: The recent Hualapai case signed by the Secretary of the Interior has some language associate with groundwater.

Michelle: Is there anything that Reclamation has had to do to deal with groundwater rights so far?

Don Anderson: I do like the focus on that first topic along with everyone else. We have an interest in that, but Reclamation doesn't typically have a dog in that fight the way the Park Service and other do, at least in terms of reserved groundwater rights. Sometimes we get into issued related with return flows to our projects, and the groundwater rights associated with those sometimes become a topic of discussion and concern. I did want to throw out another example related to National Parks. A decade or so here in Colorado there was a lot of controversy about the Great Sand Dunes National Park, and reserving groundwater rights associated with that. I don't know if that would be a topic of relevance.

Jeff: Yeah, we have water rights, but they're not called federal reserved groundwater rights, but that's just the name that the state came up with that we all agreed to. But that's another one where the groundwater is a very important component of the water rights of that Park, and it took a lot of time over many years, and we could spend a lot of time on the evolution of that. The Park Service has several different units in several different states with various types of groundwater rights, and surface water and spring flow rights that are dependent on at least some portion of groundwater. So we could talk a long time and monopolize the whole workshop. We could try summarizing something like that, which might be something more useful for the group at that meeting in July.

Don: I don't think that Reclamation would have a useful example for this particular workshop.

Tony: Are we restricting it to reserved rights?

Michelle: Or just any groundwater rights?

Tony: Because obviously Reclamation is involved in the fight between Texas and New Mexico on the Rio Grande and groundwater.

Pat: BLM is certainly a player in water rights, if not reserved, then rights that come from the state.

Tony: The Forest Service.

Andrew: And of course the BLM wilderness area water rights, especially in the state of Arizona, are prominent.

Jay Weiner: BLM's stock and wildlife claims comprise greater than 5% of the total number of claims in Montana's adjudication.

Pat: And that may be the same in other states, too, like the Snake River Plain. I know there are many groundwater rights in the Great Basin in western Utah and eastern Nevada.

Chris: What percentage of the total water is it, though, Jay?

Jay: That's what I'm trying to get my arms around. I only recently discovered that I have 11,000 claims I have to deal with. I'm guessing cumulatively it's not a huge amount, but for some of our smaller eastern Montana basins, I'm guessing it's a good chunk. Particularly where there's some question about how they've claimed them up. That's a whole different conversation.

Tony: From Michelle's notes here, we will have to make some suggestions and winnow down the topics.

Michelle: It sounds like the heavy hitter on this particular topic is the National Park Service, but we might have some other examples we can use if we don't focus just on reserved groundwater rights.

Chris: I certainly wouldn't want to limit it to the Park Service. Speaking generally, I think the NPS may have more robust enabling legislation and therefore is in a different position with respect to federal reserved groundwater rights. I certainly want to take a look at Forest Service, BLM, to the extent that we can, given the time that we have for this particular meeting. A goal for me would be for the states and federal agencies to be able to identify those issues, so that as we move forward we can start pecking away on those and perhaps bring everyone to a center, so we can more consistently deal with these rights. I would like to see shorter examples and a broader range of deals as opposed to and in depth study of Yellowstone, for example.

Jay: You make a really good point when you talk about the differences in enabling legislation. There's been litigation in some of our states already over the difference between what the NPS may be able to claim for a groundwater right as opposed to the Forest Service, which has been an extensively litigated issue, and as opposed to BLM under PR107. It may be worthwhile to do targeted examples that bring out agency by agency and state by state, what they look at and what we look at, for enabling legislation or other legal bases for reserved groundwater rights.

Norm: Yeah, we think you should do that.

Jay: I'm happy to help.

Michelle: So that sounds like something that would be helpful to have in writing, to have each of the states and federal agencies write out a paragraph maybe on this is where we get our authorization to manage groundwater, to the extent that that is not legal strategy and therefore protected information.

Tony: I think there will be differences of opinion on where that authorization comes from, but that's why we're having this conversation.

Jay: That would actually be very valuable.

Michelle: It wouldn't have to be lengthy, but for each agency to say, this is what we rely on when we go out and get groundwater rights.

Chris: With the Forest Service's groundwater directive they had four pages of potential authority. I think that lends itself to folks shotgunning it just to cover their backside. Which I don't take offense to at all, but I think that's what's going to happen.

Michelle: But it provides maybe a starting point for those conversations.

Chris: Sure.

Tony: As long as we recognize that this isn't the official position of the agencies, or we'll never get anything, because they'll have to get it through DOJ.

Chris: I can point to one sentence in our state constitution and say there you go. I have a couple of Supreme Court cases that say Wyoming owns all the water inside the state, for whatever that's worth.

Michelle: It would probably be helpful to the federal agencies working in Wyoming to know that that's your starting point.

Tony: Chris and Jay, when you talked about the approach, one of the things we've done with the Indian water rights symposia is to look at the technical issues. Obviously there are major technical issues with groundwater, like defining what is the resource, what is the effect of pumping, what is the connectivity, and different impacts.

Michelle: I will write this up and send it around, having in mind that we'll put this workshop in conjunction with our North Dakota Council meeting in July, hopefully the Wednesday morning before the field trip, from around 8-12. We will reach out to each of the states and federal agencies and gather what information we can so we can develop that meeting. I'd like to have our next workgroup call in April. That would keep us on a quarterly schedule, and that will give us a time to pin down some more of these details. We can do some general work in the meantime via email, and use the next call to finalize some of those details.

Tony: We can also discuss it at the abbreviated Legal Committee meeting in Washington, D.C.

#### Roundtable

Our last Roundtable update was September, so please share anything that has happened since then.

Andrew (FWS): Nothing to report. I really like the conversation about the different enabling legislation, because ours is very different for our uses of water. Also in general we tend to tag behind our friends in the NPS. I'll work with Jeff Hughes and we'll have some items to contribute, I'm sure.

Don (Reclamation): I don't think we have anything of value to share with the group right now. I'll be happy to work with you on putting something together for our enabling legislation and groundwater concerns.

Buck (Washington): Nothing from the state, but I do have a question. Is WSWC going to have any kind of presentation or workshop on the Upper Klamath Basin agreement and what went wrong and what went right?

Tony: What went right and what's the next step.

Buck: Exactly. It was pretty monumental to get all those parties together to come to an agreement. Unfortunately, the last I heard, it wasn't funded by Congress. I'd certainly like to know more about it.

Tony: And my understanding is that some of the tribes, I think the Umitilla and Klamath, may have changed their position since it has not been approved.

Jay: There was an agreement that was due to expire at the end of 2015, so one of the agreements in the KRBA has in fact expired. One of the things they're looking at now is whether they can put the pieces back together again.

Chris (Wyoming): I don't think there's anything to report. I just want to reiterate what I've said on the last couple of calls that we're really interested in the administration piece. I know we've deferred that, and it might be a bigger bear to wrestle, but I want to keep that on everyone's radar. I also want to relate to our federal agencies on the call that I've reached out to our water superintendents in each of the four commissions to make them aware that we're having these kind of discussions. If you have any questions popping up in the federal agencies, let me know and I can let our superintendents know and they can work with you. I'm pretty sure in Division 3 where the reserved water rights are adjudicated that our folks up there are easy to work with, but I wanted to make sure that that was out there, in case folks weren't aware. We are aware of those rights and have the ability to administer them in conjunction with our state based rights. I want to make sure we can work on any issues before they get to a point where we can't work together on them.

Michelle: We should plan at our next call to maybe look ahead and decide what topic we want to cover next after the groundwater workshop, determine our second priority.

## Summary of WSWC-WestFAST Non-Tribal Water Rights Quarterly Call

January 11, 2016

Page 9 of 9

Jay (Montana): Not anything specifically going on in Montana to report. I do want to echo Chris's interest in remaining focused on the administration of these rights. Montana is mostly done with the federal reserved water rights, with the exception of the BLM. Administration is an ongoing concern up here.

Michelle: It sounds like that might be our second priority.

Jeff (NPS): Nothing to report since last time.

Norm (Utah): We continue to work on reserved right settlements, both non-tribal and tribal, and hope to work together with our federal counterparts to make progress.

Dave (Alaska): Not a lot new in Alaska. There's been a proposal up here by some of the federal agencies to do a workshop on water rights, which I told them I'm happy to be involved in. Alaska's biggest issue is the lack of data, and dealing with federal water rights when they haven't been adjudicated and there's no data to start that process. We're way behind the curve, so we hope to learn from the other experiences and find shortcuts so we can make this work more efficiently.

Todd (Texas): Nothing to report. The administration of federal water rights is the most important topic for us, so I'm happy that is a secondary priority after we take up groundwater rights.

Tony: For Todd or Jay, are there international water issues that you're dealing with?

Todd: On a technical country to country, state to state level, no, we are not dealing with those issues. Yes, there is some potential that we could have some Mexican withdrawals affecting Texas groundwater. But we haven't poked that elephant yet.

Jay: Nor have we up here in Montana.

Buck: Our most northwestern Whatcom County is a big agricultural area, and there's a big area contaminated with nitrates. Part of it is what's been done on this side of the border, mostly dairy operations. But on the Canadian side, the Canadian dairies and chicken farms have contributed quite a bit to the nitrate issue, because the groundwater flows from the north to the south into Whatcom County.

### Next Call

**April 18<sup>th</sup> at 2:00 pm Mountain**

## Tab M – Tribal Water Rights

[Congressional Bills 114th Congress]  
[From the U.S. Government Publishing Office]  
[S. 1983 Introduced in Senate (IS)]

114th CONGRESS  
1st Session

S. 1983

To authorize the Pechanga Band of Luiseno Mission Indians Water Rights  
Settlement, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

August 5, 2015

Mrs. Boxer (for herself and Mrs. Feinstein) introduced the following  
bill; which was read twice and referred to the Committee on Indian  
Affairs

---

A BILL

To authorize the Pechanga Band of Luiseno Mission Indians Water Rights  
Settlement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.--This Act may be cited as the ``Pechanga Band of  
Luiseno Mission Indians Water Rights Settlement Act''.

(b) Table of Contents.--The table of contents of this Act is as  
follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Purposes.  
Sec. 3. Definitions.  
Sec. 4. Approval of the Pechanga Settlement Agreement.  
Sec. 5. Tribal Water Right.  
Sec. 6. Satisfaction of claims.  
Sec. 7. Waiver of claims.  
Sec. 8. Water facilities.  
Sec. 9. Pechanga Settlement Fund.  
Sec. 10. Miscellaneous provisions.  
Sec. 11. Authorization of appropriations.

Sec. 12. Repeal on failure of enforceability date.

Sec. 13. Antideficiency.

## SEC. 2. PURPOSES.

The purposes of this Act are--

(1) to achieve a fair, equitable, and final settlement of claims to water rights and certain claims for injuries to water rights in the Santa Margarita River Watershed for--

(A) the Band; and

(B) the United States, acting in its capacity as trustee for the Band and Allottees;

(2) to achieve a fair, equitable, and final settlement of certain claims by the Band and Allottees against the United States;

(3) to authorize, ratify, and confirm the Pechanga Settlement Agreement to be entered into by the Band, RCWD, and the United States;

(4) to authorize and direct the Secretary--

(A) to execute the Pechanga Settlement Agreement;

and

(B) to take any other action necessary to carry out the Pechanga Settlement Agreement in accordance with this Act; and

(5) to authorize the appropriation of amounts necessary for the implementation of the Pechanga Settlement Agreement and this Act.

## SEC. 3. DEFINITIONS.

In this Act:

(1) Adjudication court.--The term ``Adjudication Court'' means the United States District Court for the Southern District of California, which exercises continuing jurisdiction over the Adjudication Proceeding.

(2) Adjudication proceeding.--The term ``Adjudication Proceeding'' means litigation initiated by the United States regarding relative water rights in the Santa Margarita River Watershed in United States v. Fallbrook Public Utility District et al., Civ. No. 3:51-cv-01247 (S.D.C.A.), including any litigation initiated to interpret or enforce the relative water rights in the Santa Margarita River Watershed pursuant to the continuing jurisdiction of the Adjudication Court over the Fallbrook Decree.

(3) Allottee.--The term ``Allottee'' means an individual who holds a beneficial real property interest in an Indian allotment that is--

(A) located within the Reservation; and

(B) held in trust by the United States.

(4) Band.--The term ``Band'' means Pechanga Band of Luiseno Mission Indians, a federally recognized sovereign Indian tribe that functions as a custom and tradition Indian tribe, acting on behalf of itself and its members, but not acting on behalf

of members in their capacities as Allottees.

(5) Claims.--The term ``claims'' means rights, claims, demands, actions, compensation, or causes of action, whether known or unknown.

(6) EMWD.--The term ``EMWD'' means Eastern Municipal Water District, a municipal water district organized and existing in accordance with the Municipal Water District Law of 1911, Division 20 of the Water Code of the State of California, as amended.

(7) EMWD connection fee.--The term ``EMWD Connection Fee'' has the meaning set forth in the Extension of Service Area Agreement.

(8) Enforceability date.--The term ``enforceability date'' means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 7(e).

(9) ESAA capacity agreement.--The term ``ESAA Capacity Agreement'' means the ``Agreement to Provide Capacity for Delivery of ESAA Water'', among the Band, RCWD and the United States.

(10) ESAA water.--The term ``ESAA Water'' means imported potable water that the Band receives from EMWD and MWD pursuant to the Extension of Service Area Agreement and delivered by RCWD pursuant to the ESAA Water Delivery Agreement.

(11) ESAA water delivery agreement.--The term ``ESAA Water Delivery Agreement'' means the agreement among EMWD, RCWD, and the Band, establishing the terms and conditions of water service to the Band.

(12) Extension of service area agreement.--The term ``Extension of Service Area Agreement'' means the ``Agreement for Extension of Existing Service Area'', among the Band, EMWD, and MWD, for the provision of water service by EMWD to a designated portion of the Reservation using water supplied by MWD.

(13) Fallbrook decree.--

(A) In general.--The term ``Fallbrook Decree'' means the ``Modified Final Judgment And Decree'', entered in the Adjudication Proceeding on April 6, 1966.

(B) Inclusions.--The term ``Fallbrook Decree'' includes all court orders, interlocutory judgments, and decisions supplemental to the ``Modified Final Judgment And Decree'', including Interlocutory Judgment No. 30, Interlocutory Judgment No. 35, and Interlocutory Judgment No. 41.

(14) Fund.--The term ``Fund'' means the Pechanga Settlement Fund established by section 9.

(15) Indian tribe.--The term ``Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(16) Injury to water rights.--The term ``injury to water rights'' means an interference with, diminution of, or deprivation of water rights under Federal or State law.

(17) Interim capacity.--The term ``Interim Capacity'' has

the meaning set forth in the ESAA Capacity Agreement.

(18) Interim capacity notice.--The term ``Interim Capacity Notice'' has the meaning set forth in the ESAA Capacity Agreement.

(19) Interlocutory judgment no. 41.--The term ``Interlocutory Judgment No. 41'' means Interlocutory Judgment No. 41 issued in the Adjudication Proceeding on November 8, 1962, including all court orders, judgments and decisions supplemental to that interlocutory judgment.

(20) MWD.--The term ``MWD'' means the Metropolitan Water District of Southern California, a metropolitan water district organized and incorporated under the Metropolitan Water District Act of the State of California (Stats. 1969, Chapter 209, as amended).

(21) MWD connection fee.--The term ``MWD Connection Fee'' has the meaning set forth in the Extension of Service Area Agreement.

(22) Pechanga esaa delivery capacity account.--The term ``Pechanga ESAA Delivery Capacity account'' means the account established by section 9(c)(2).

(23) Pechanga recycled water infrastructure account.--The term ``Pechanga Recycled Water Infrastructure account'' means the account established by section 9(c)(1).

(24) Pechanga settlement agreement.--The term ``Pechanga Settlement Agreement'' means the Pechanga Settlement Agreement, dated June 17, 2014, together with the exhibits to that agreement, entered into by the Band, the United States on behalf of the Band, its members and Allottees, MWD, EMWD, and RCWD, including--

- (A) the Extension of Service Area Agreement;
- (B) the ESAA Capacity Agreement; and
- (C) the ESAA Water Delivery Agreement.

(25) Pechanga water code.--The term ``Pechanga Water Code'' means a water code to be adopted by the Band in accordance with section 5(f).

(26) Pechanga water fund account.--The term ``Pechanga Water Fund account'' means the account established by section 9(c)(3).

(27) Pechanga water quality account.--The term ``Pechanga Water Quality account'' means the account established by section 9(c)(4).

(28) Permanent capacity.--The term ``Permanent Capacity'' has the meaning set forth in the ESAA Capacity Agreement.

(29) Permanent capacity notice.--The term ``Permanent Capacity Notice'' has the meaning set forth in the ESAA Capacity Agreement.

(30) RCWD.--

(A) In general.--The term ``RCWD'' means the Rancho California Water District organized pursuant to section 34000 et seq. of the California Water Code.

(B) Inclusions.--The term ``RCWD'' includes all real property owners for whom RCWD acts as an agent pursuant to an agency agreement.

(31) Recycled water infrastructure agreement.--The term ``Recycled Water Infrastructure Agreement'' means the ``Agreement for Recycled Water Infrastructure'' among the Band, RCWD, and the United States.

(32) Recycled water transfer agreement.--The term ``Recycled Water Transfer Agreement'' means the ``Recycled Water Transfer Agreement'' between the Band and RCWD.

(33) Reservation.--

(A) In general.--The term ``Reservation'' means the land depicted on the map attached to the Pechanga Settlement Agreement as Exhibit I.

(B) Applicability of term.--The term ``Reservation'' shall be used solely for the purposes of the Pechanga Settlement Agreement, this Act, and any judgment or decree issued by the Adjudication Court approving the Pechanga Settlement Agreement.

(34) Santa margarita river watershed.--The term ``Santa Margarita River Watershed'' means the watershed that is the subject of the Adjudication Proceeding and the Fallbrook Decree.

(35) Secretary.--The term ``Secretary'' means the Secretary of the Interior.

(36) State.--The term ``State'' means the State of California.

(37) Storage pond.--The term ``Storage Pond'' has the meaning set forth in the Recycled Water Infrastructure Agreement.

(38) Tribal water right.--The term ``Tribal Water Right'' means the water rights ratified, confirmed, and declared to be valid for the benefit of the Band and Allottees, as set forth and described in section 5.

#### SEC. 4. APPROVAL OF THE PECHANGA SETTLEMENT AGREEMENT.

(a) Ratification of Pechanga Settlement Agreement.--

(1) In general.--Except as modified by this Act, and to the extent that the Pechanga Settlement Agreement does not conflict with this Act, the Pechanga Settlement Agreement is authorized, ratified, and confirmed.

(2) Amendments.--Any amendment to the Pechanga Settlement Agreement is authorized, ratified, and confirmed, to the extent that the amendment is executed to make the Pechanga Settlement Agreement consistent with this Act.

(b) Execution of Pechanga Settlement Agreement.--

(1) In general.--To the extent that the Pechanga Settlement Agreement does not conflict with this Act, the Secretary is directed to and promptly shall execute--

(A) the Pechanga Settlement Agreement (including any exhibit to the Pechanga Settlement Agreement requiring the signature of the Secretary); and

(B) any amendment to the Pechanga Settlement Agreement necessary to make the Pechanga Settlement Agreement consistent with this Act.

(2) Modifications.--Nothing in this Act precludes the Secretary from approving modifications to exhibits to the Pechanga Settlement Agreement not inconsistent with this Act, to the extent those modifications do not otherwise require congressional approval pursuant to section 2116 of the Revised Statutes (25 U.S.C. 177) or other applicable Federal law.

(c) Environmental Compliance.--

(1) In general.--In implementing the Pechanga Settlement Agreement, the Secretary shall promptly comply with all applicable requirements of--

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(C) all other applicable Federal environmental laws; and

(D) all regulations promulgated under the laws described in subparagraphs (A) through (C).

(2) Execution of the pechanga settlement agreement.--

(A) In general.--Execution of the Pechanga Settlement Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Compliance.--The Secretary is directed to carry out all Federal compliance necessary to implement the Pechanga Settlement Agreement.

(3) Lead agency.--The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance.

SEC. 5. TRIBAL WATER RIGHT.

(a) Intent of Congress.--It is the intent of Congress to provide to each Allottee benefits that are equal to or exceed the benefits Allottees possess as of the date of enactment of this Act, taking into consideration--

(1) the potential risks, cost, and time delay associated with litigation that would be resolved by the Pechanga Settlement Agreement and this Act;

(2) the availability of funding under this Act;

(3) the availability of water from the Tribal Water Right and other water sources as set forth in the Pechanga Settlement Agreement; and

(4) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), and this Act to protect the interests of Allottees.

(b) Confirmation of Tribal Water Right.--

(1) In general.--A Tribal Water Right of up to 4,994 acre-feet of water per year that, under natural conditions, is physically available on the Reservation is confirmed in accordance with the Findings of Fact and Conclusions of Law set forth in Interlocutory Judgment No. 41, as affirmed by the

Fallbrook Decree.

(2) Use.--Subject to the terms of the Pechanga Settlement Agreement, this Act, the Fallbrook Decree and applicable Federal law, the Band may use the Tribal Water Right for any purpose on the Reservation.

(c) Holding in Trust.--The Tribal Water Right, as set forth in subsection (b), shall--

(1) be held in trust by the United States on behalf of the Band and the Allottees in accordance with this section;

(2) include the priority dates described in Interlocutory Judgment No. 41, as affirmed by the Fallbrook Decree; and

(3) not be subject to forfeiture or abandonment.

(d) Allottees.--

(1) Applicability of act of february 8, 1887.--The provisions of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), relating to the use of water for irrigation purposes shall apply to the Tribal Water Right.

(2) Entitlement to water.--Any entitlement to water of allotted land located within the exterior boundaries of the Reservation under Federal law shall be satisfied from the Tribal Water Right.

(3) Allocations.--Allotted land located within the exterior boundaries of the Reservation shall be entitled to a just and equitable allocation of water for irrigation and domestic purposes from the Tribal Water Right.

(4) Exhaustion of remedies.--Before asserting any claim against the United States under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), or any other applicable law, an Allottee shall exhaust remedies available under the Pechanga Water Code or other applicable tribal law.

(5) Claims.--Following exhaustion of remedies available under the Pechanga Water Code or other applicable tribal law, an Allottee may seek relief under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), or other applicable law.

(6) Authority.--The Secretary shall have the authority to protect the rights of Allottees as specified in this section.

(e) Authority of Band.--

(1) In general.--Except as provided in paragraph (2), the Band shall have authority to use, allocate, distribute, and lease the Tribal Water Right on the Reservation in accordance with--

(A) the Pechanga Settlement Agreement; and

(B) applicable Federal law.

(2) Leases by allottees.--

(A) In general.--An Allottee may lease any interest in land held by the Allottee, together with any water right determined to be appurtenant to that interest in land.

(B) Water right appurtenant.--Any water right determined to be appurtenant to an interest in land leased by an Allottee shall be used on the Reservation.

(f) Pechanga Water Code.--

(1) In general.--Not later than 18 months after the

enforceability date, the Band shall enact a Pechanga Water Code, that provides for--

(A) the management, regulation, and governance of all uses of the Tribal Water Right in accordance with the Pechanga Settlement Agreement; and

(B) establishment by the Band of conditions, permit requirements, and other limitations relating to the storage, recovery, and use of the Tribal Water Right in accordance with the Pechanga Settlement Agreement.

(2) Inclusions.--The Pechanga Water Code shall provide--

(A) that allocations of water to Allottees shall be satisfied with water from the Tribal Water Right;

(B) that charges for delivery of water for irrigation purposes for Allottees shall be assessed in accordance with section 7 of the Act of February 8, 1887 (25 U.S.C. 381);

(C) a process by which an Allottee (or any successor in interest to an Allottee) may request that the Band provide water for irrigation or domestic purposes in accordance with this Act;

(D) a due process system for the consideration and determination by the Band of any request by an Allottee (or any successor in interest to an Allottee) for an allocation of such water for irrigation or domestic purposes on allotted land, including a process for--

(i) appeal and adjudication of any denied or disputed distribution of water; and

(ii) resolution of any contested administrative decision; and

(E) a requirement that any Allottee (or any successor in interest to an Allottee) with a claim relating to the enforcement of rights of the Allottee (or any successor in interest to an Allottee) under the Pechanga Water Code or relating to the amount of water allocated to land of the Allottee must first exhaust remedies available to the Allottee under tribal law and the Pechanga Water Code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (d) (4).

(3) Action by secretary.--

(A) In general.--The Secretary shall administer the Tribal Water Right until the Pechanga Water Code is enacted and approved under this section.

(B) Approval.--Any provision of the Pechanga Water Code and any amendment to the Pechanga Water Code that affects the rights of Allottees--

(i) shall be subject to the approval of the Secretary; and

(ii) shall not be valid until approved by the Secretary.

(C) Approval period.--The Secretary shall approve or disapprove the Pechanga Water Code within a reasonable period of time after the date on which the

Band submits the Pechanga Water Code to the Secretary for approval.

(g) Effect.--Except as otherwise specifically provided in this section, nothing in this Act--

(1) authorizes any action by an Allottee (or any successor in interest to an Allottee) against any individual or entity, or against the Band, under Federal, State, tribal, or local law; or

(2) alters or affects the status of any action pursuant to section 1491(a) of title 28, United States Code.

#### SEC. 6. SATISFACTION OF CLAIMS.

(a) In General.--The benefits provided to the Band under the Pechanga Settlement Agreement and this Act shall be in complete replacement of, complete substitution for, and full satisfaction of all claims of the Band against the United States that are waived and released pursuant to section 7.

(b) Allottee Claims.--The benefits realized by the Allottees under this Act shall be in complete replacement of, complete substitution for, and full satisfaction of--

(1) all claims that are waived and released pursuant to section 7; and

(2) any claims of the Allottees against the United States that the Allottees have or could have asserted that are similar in nature to any claim described in section 7.

(c) No Recognition of Water Rights.--Except as provided in section 5(d), nothing in this Act recognizes or establishes any right of a member of the Band or an Allottee to water within the Reservation.

(d) Claims Relating to Development of Water for Reservation.--

(1) In general.--The amounts authorized to be appropriated pursuant to section 11 shall be used to satisfy any claim of the Allottees against the United States with respect to the development or protection of water resources for the Reservation.

(2) Satisfaction of claims.--Upon the complete appropriation of amounts authorized pursuant to section 11, any claim of the Allottees against the United States with respect to the development or protection of water resources for the Reservation shall be deemed to have been satisfied.

#### SEC. 7. WAIVER OF CLAIMS.

(a) In General.--

(1) Waiver of claims by the band and the united states acting in its capacity as trustee for the band.--

(A) In general.--Subject to the retention of rights set forth in subsection (c), in return for recognition of the Tribal Water Right and other benefits as set forth in the Pechanga Settlement Agreement and this Act, the Band, on behalf of itself and the members of the Band (but not on behalf of a tribal member in the capacity of Allottee), and the United States, acting as

trustee for the Band, are authorized and directed to execute a waiver and release of all claims for water rights within the Santa Margarita River Watershed that the Band, or the United States acting as trustee for the Band, asserted or could have asserted in any proceeding, including the Adjudication Proceeding, except to the extent that such rights are recognized in the Pechanga Settlement Agreement and this Act.

(B) Claims against rcwd.--Subject to the retention of rights set forth in subsection (c) and notwithstanding any provisions to the contrary in the Pechanga Settlement Agreement, the Band and the United States, on behalf of the Band and Allottees, fully release, acquit, and discharge RCWD from--

(i) claims for injuries to water rights in the Santa Margarita River Watershed for land located within the Reservation arising or occurring at any time up to and including June 30, 2009;

(ii) claims for injuries to water rights in the Santa Margarita River Watershed for land located within the Reservation arising or occurring at any time after June 30, 2009, resulting from the diversion or use of water in a manner not in violation of the Pechanga Settlement Agreement or this Act;

(iii) claims for subsidence damage to land located within the Reservation arising or occurring at any time up to and including June 30, 2009;

(iv) claims for subsidence damage arising or occurring after June 30, 2009, to land located within the Reservation resulting from the diversion of underground water in a manner consistent with the Pechanga Settlement Agreement or this Act; and

(v) claims arising out of, or relating in any manner to, the negotiation or execution of the Pechanga Settlement Agreement or the negotiation or execution of this Act.

(2) Claims by the united states acting in its capacity as trustee for allottees.--Subject to the retention of claims set forth in subsection (c), in return for recognition of the water rights of the Band and other benefits as set forth in the Pechanga Settlement Agreement and this Act, the United States, acting as trustee for Allottees, is authorized and directed to execute a waiver and release of all claims for water rights within the Santa Margarita River Watershed that the United States, acting as trustee for the Allottees, asserted or could have asserted in any proceeding, including the Adjudication Proceeding.

(3) Claims by the band against the united states.--Subject to the retention of rights set forth in subsection (c), the

Band, on behalf of itself and the members of the Band (but not on behalf of a tribal member in the capacity of Allottee), is authorized to execute a waiver and release of--

(A) all claims against the United States (including the agencies and employees of the United States) relating to claims for water rights in, or water of, the Santa Margarita River Watershed that the United States, acting in its capacity as trustee for the Band, asserted, or could have asserted, in any proceeding, including the Adjudication Proceeding, except to the extent that those rights are recognized in the Pechanga Settlement Agreement and this Act;

(B) all claims against the United States (including the agencies and employees of the United States) relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion, or taking of water or water rights, or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) in the Santa Margarita River Watershed that first accrued at any time up to and including the enforceability date;

(C) all claims against the United States (including the agencies and employees of the United States) relating to the pending litigation of claims relating to the water rights of the Band in the Adjudication Proceeding; and

(D) all claims against the United States (including the agencies and employees of the United States) relating to the negotiation or execution of the Pechanga Settlement Agreement or the negotiation or execution of this Act.

(b) Effectiveness of Waivers and Releases.--The waivers under subsection (a) shall take effect on the enforceability date.

(c) Reservation of Rights and Retention of Claims.--Notwithstanding the waivers and releases authorized in this Act, the Band, on behalf of itself and the members of the Band, and the United States, acting in its capacity as trustee for the Band and Allottees, retain--

(1) all claims for enforcement of the Pechanga Settlement Agreement and this Act;

(2) all claims against any person or entity other than the United States and RCWD, including claims for monetary damages;

(3) all claims for water rights that are outside the jurisdiction of the Adjudication Court;

(4) all rights to use and protect water rights acquired on or after the enforceability date; and

(5) all remedies, privileges, immunities, powers, and claims, including claims for water rights, not specifically waived and released pursuant to this Act and the Pechanga Settlement Agreement.

(d) Effect of Pechanga Settlement Agreement and Act.--Nothing in the Pechanga Settlement Agreement or this Act--

(1) affects the ability of the United States, acting as sovereign, to take actions authorized by law, including any laws relating to health, safety, or the environment, including--

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(D) any regulations implementing the Acts described in subparagraphs (A) through (C);

(2) affects the ability of the United States to take actions acting as trustee for any other Indian tribe or an Allottee of any other Indian tribe;

(3) confers jurisdiction on any State court--

(A) to interpret Federal law regarding health, safety, or the environment;

(B) to determine the duties of the United States or other parties pursuant to Federal law regarding health, safety, or the environment; or

(C) to conduct judicial review of Federal agency action;

(4) waives any claim of a member of the Band in an individual capacity that does not derive from a right of the Band;

(5) limits any funding that RCWD would otherwise be authorized to receive under any Federal law, including, the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.) as that Act applies to permanent facilities for water recycling, demineralization, and desalination, and distribution of nonpotable water supplies in Southern Riverside County, California;

(6) characterizes any amounts received by RCWD under the Pechanga Settlement Agreement or this Act as Federal for purposes of section 1649 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-32); or

(7) affects the requirement of any party to the Pechanga Settlement Agreement or any of the exhibits to the Pechanga Settlement Agreement to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the California Environmental Quality Act (Cal. Pub. Res. Code 21000 et seq.) prior to performing the respective obligations of that party under the Pechanga Settlement Agreement or any of the exhibits to the Pechanga Settlement Agreement.

(e) Enforceability Date.--The enforceability date shall be the date on which the Secretary publishes in the Federal Register a statement of findings that--

(1) the Adjudication Court has approved and entered a judgment and decree approving the Pechanga Settlement Agreement

in substantially the same form as Appendix 2 to the Pechanga Settlement Agreement;

(2) all amounts authorized by this Act have been deposited in the Fund;

(3) the waivers and releases authorized in subsection (a) have been executed by the Band and the Secretary;

(4) the Extension of Service Area Agreement--

(A) has been approved and executed by all the parties to the Extension of Service Area Agreement; and

(B) is effective and enforceable in accordance with the terms of the Extension of Service Area Agreement; and

(5) the ESAA Water Delivery Agreement--

(A) has been approved and executed by all the parties to the ESAA Water Delivery Agreement; and

(B) is effective and enforceable in accordance with the terms of the ESAA Water Delivery Agreement.

(f) Tolling of Claims.--

(1) In general.--Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the earlier of--

(A) April 30, 2030, or such alternate date after April 30, 2030, as is agreed to by the Band and the Secretary; or

(B) the enforceability date.

(2) Effects of subsection.--Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(3) Limitation.--Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

(g) Termination.--

(1) In general.--If all of the amounts authorized to be appropriated to the Secretary pursuant to this Act have not been made available to the Secretary by April 30, 2030--

(A) the waivers authorized by this section shall expire and have no force or effect; and

(B) all statutes of limitations applicable to any claim otherwise waived under this section shall be tolled until April 30, 2030.

(2) Voiding of waivers.--If a waiver authorized by this section is void under paragraph (1)--

(A) the approval of the United States of the Pechanga Settlement Agreement under section 4 shall be void and have no further force or effect;

(B) any unexpended Federal amounts appropriated or made available to carry out this Act, together with any interest earned on those amounts, and any water rights or contracts to use water and title to other property acquired or constructed with Federal amounts appropriated or made available to carry out this Act

shall be returned to the Federal Government, unless otherwise agreed to by the Band and the United States and approved by Congress; and

(C) except for Federal amounts used to acquire or develop property that is returned to the Federal Government under subparagraph (B), the United States shall be entitled to set off any Federal amounts appropriated or made available to carry out this Act that were expended or withdrawn, together with any interest accrued, against any claims against the United States relating to water rights asserted by the Band or Allottees in any future settlement of the water rights of the Band or Allottees.

#### SEC. 8. WATER FACILITIES.

(a) In General.--The Secretary shall, subject to the availability of appropriations, using amounts from the designated accounts of the Fund, provide the amounts necessary to fulfill the obligations of the Band under the Recycled Water Infrastructure Agreement and the ESAA Capacity Agreement, in an amount not to exceed the amounts deposited in the designated accounts for such purposes plus any interest accrued on such amounts from the date of deposit in the Fund to the date of disbursement from the Fund, in accordance with this Act and the terms and conditions of those agreements.

(b) Nonreimbursability of Costs.--All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(c) Recycled Water Infrastructure.--

(1) In general.--The Secretary shall, using amounts from the Pechanga Recycled Water Infrastructure account, provide amounts for the Storage Pond in accordance with this section.

(2) Storage pond.--

(A) In general.--The Secretary shall, subject to the availability of appropriations, provide the amounts necessary to fulfill the obligations of the Band under the Recycled Water Infrastructure Agreement for the design and construction of the Storage Pond, in an amount not to exceed \$2,656,374.

(B) Procedure.--The procedure for the Secretary to provide amounts pursuant to this section shall be as set forth in the Recycled Water Infrastructure Agreement.

(C) Lead agency.--The Bureau of Reclamation shall be the lead agency for purposes of the implementation of this section.

(D) Liability.--The United States shall have no responsibility or liability for the Storage Pond.

(d) ESAA Delivery Capacity.--

(1) In general.--The Secretary shall, using amounts from the Pechanga ESAA Delivery Capacity account, provide amounts for Interim Capacity and Permanent Capacity in accordance with this section.

(2) Interim capacity.--

(A) In general.--The Secretary shall, subject to the availability of appropriations, using amounts from the ESAA Delivery Capacity account, provide amounts necessary to fulfill the obligations of the Band under the ESAA Capacity Agreement for the provision by RCWD of Interim Capacity to the Band in an amount not to exceed \$1,000,000.

(B) Procedure.--The procedure for the Secretary to provide amounts pursuant to this section shall be as set forth in the ESAA Capacity Agreement.

(C) Lead agency.--The Bureau of Reclamation shall be the lead agency for purposes of the implementation of this section.

(D) Liability.--The United States shall have no responsibility or liability for the Interim Capacity to be provided by RCWD.

(E) Transfer to band.--If RCWD does not provide the Interim Capacity Notice required pursuant to the ESAA Capacity Agreement by the date that is 60 days after the date required under the ESAA Capacity Agreement, the amounts in the Pechanga ESAA Delivery Capacity account for purposes of the provision of Interim Capacity and Permanent Capacity, including any interest that has accrued on those amounts, shall be available for use by the Band to provide alternative interim capacity in a manner that is similar to the Interim Capacity and Permanent Capacity that the Band would have received had RCWD provided such Interim Capacity and Permanent Capacity.

(3) Permanent capacity.--

(A) In general.--On receipt of the Permanent Capacity Notice pursuant to section 5(b) of the ESAA Capacity Agreement, the Secretary, acting through the Bureau of Reclamation, shall enter into negotiations with RCWD and the Band to establish an agreement that will allow for the disbursement of amounts from the Pechanga ESAA Delivery Capacity account in accordance with subparagraph (B).

(B) Schedule of disbursement.--Subject to the availability of amounts under section 9(e), on execution of the ESAA Capacity Agreement, the Secretary shall, subject to the availability of appropriations and using amounts from the ESAA Delivery Capacity account, provide amounts necessary to fulfill the obligations of the Band under the ESAA Capacity Agreement for the provision by RCWD of Permanent Capacity to the Band in an amount not to exceed the amount available in the ESAA Delivery Capacity account as of the date on which the ESAA Capacity Agreement is executed.

(C) Procedure.--The procedure for the Secretary to provide funds pursuant to this section shall be as set forth in the ESAA Capacity Agreement.

(D) Lead agency.--The Bureau of Reclamation shall be the lead agency for purposes of the implementation of this section.

(E) Liability.--The United States shall have no responsibility or liability for the Permanent Capacity to be provided by RCWD.

(F) Transfer to band.--If RCWD does not provide the Permanent Capacity Notice required pursuant to the ESAA Capacity Agreement by the date that is 5 years after the enforceability date, the amounts in the Pechanga ESAA Delivery Capacity account for purposes of the provision of Permanent Capacity, including any interest that has accrued on those amounts, shall be available for use by the Band to provide alternative permanent capacity in a manner that is similar to the Permanent Capacity that the Band would have received had RCWD provided such Permanent Capacity.

#### SEC. 9. PECHANGA SETTLEMENT FUND.

(a) Establishment.--There is established in the Treasury of the United States a fund to be known as the ``Pechanga Settlement Fund'', to be managed, invested, and distributed by the Secretary and to be available until expended, and, together with any interest earned on those amounts, to be used solely for the purpose of carrying out this Act.

(b) Transfers to Fund.--The Fund shall consist of such amounts as are deposited in the Fund under section 11(a) of this Act, together with any interest earned on those amounts, which shall be available in accordance with subsection (e).

(c) Accounts of Pechanga Settlement Fund.--The Secretary shall establish in the Fund the following accounts:

(1) Pechanga Recycled Water Infrastructure account, consisting of amounts authorized pursuant to section 11(a)(1).

(2) Pechanga ESAA Delivery Capacity account, consisting of amounts authorized pursuant to section 11(a)(2).

(3) Pechanga Water Fund account, consisting of amounts authorized pursuant to section 11(a)(3).

(4) Pechanga Water Quality account, consisting of amounts authorized pursuant to section 11(a)(4).

(d) Management of Fund.--The Secretary shall manage, invest, and distribute all amounts in the Fund in a manner that is consistent with the investment authority of the Secretary under--

(1) the first section of the Act of June 24, 1938 (25 U.S.C. 162a);

(2) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(3) this section.

(e) Availability of Amounts.--Amounts appropriated to, and deposited in, the Fund, including any investment earnings accrued from the date of deposit in the Fund through the date of disbursement from the Fund, shall be made available to the Band by the Secretary beginning on the enforceability date.

(f) Withdrawals by Band Pursuant to the American Indian Trust Fund Management Reform Act.--

(1) In general.--The Band may withdraw all or part of the amounts in the Fund on approval by the Secretary of a tribal management plan submitted by the Band in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) Requirements.--

(A) In general.--In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan under paragraph (1) shall require that the Band shall spend all amounts withdrawn from the Fund in accordance with this Act.

(B) Enforcement.--The Secretary may carry out such judicial or administrative actions as the Secretary determines to be necessary to enforce the tribal management plan to ensure that amounts withdrawn by the Band from the Fund under this subsection are used in accordance with this Act.

(g) Withdrawals by Band Pursuant to an Expenditure Plan.--

(1) In general.--The Band may submit an expenditure plan for approval by the Secretary requesting that all or part of the amounts in the Fund be disbursed in accordance with the plan.

(2) Requirements.--The expenditure plan under paragraph (1) shall include a description of the manner and purpose for which the amounts proposed to be disbursed from the Fund will be used, in accordance with subsection (h).

(3) Approval.--If the Secretary determines that an expenditure plan submitted under this subsection is consistent with the purposes of this Act, the Secretary shall approve the plan.

(4) Enforcement.--The Secretary may carry out such judicial or administrative actions as the Secretary determines necessary to enforce an expenditure plan to ensure that amounts disbursed under this subsection are used in accordance with this Act.

(h) Uses.--Amounts from the Fund shall be used by the Band for the following purposes:

(1) Pechanga recycled water infrastructure account.--The Pechanga Recycled Water Infrastructure account shall be used for expenditures by the Band in accordance with section 8(c).

(2) Pechanga esaa delivery capacity account.--The Pechanga ESAA Delivery Capacity account shall be used for expenditures by the Band in accordance with section 8(d).

(3) Pechanga water fund account.--The Pechanga Water Fund account shall be used for--

(A) payment of the EMWD Connection Fee;

(B) payment of the MWD Connection Fee; and

(C) any expenses, charges, or fees incurred by the Band in connection with the delivery or use of water pursuant to the Pechanga Settlement Agreement.

(4) Pechanga water quality account.--The Pechanga Water

Quality account shall be used by the Band to fund groundwater desalination activities within the Wolf Valley Basin.

(i) Liability.--The Secretary and the Secretary of the Treasury shall not be liable for the expenditure of, or the investment of any amounts withdrawn from, the Fund by the Band under subsection (f) or (g).

(j) No Per Capita Distributions.--No portion of the Fund shall be distributed on a per capita basis to any member of the Band.

#### SEC. 10. MISCELLANEOUS PROVISIONS.

(a) Waiver of Sovereign Immunity by the United States.--Except as provided in subsections (a) through (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666), nothing in this Act waives the sovereign immunity of the United States.

(b) Other Tribes Not Adversely Affected.--Nothing in this Act quantifies or diminishes any land or water right, or any claim or entitlement to land or water, of an Indian tribe, band, or community other than the Band.

(c) Limitation on Claims for Reimbursement.--With respect to Indian land within the Reservation--

(1) the United States shall not submit against any Indian-owned land located within the Reservation any claim for reimbursement of the cost to the United States of carrying out this Act and the Pechanga Settlement Agreement; and

(2) no assessment of any Indian-owned land located within the Reservation shall be made regarding that cost.

(d) Effect on Current Law.--Nothing in this section affects any provision of law (including regulations) in effect on the day before the date of enactment of this Act with respect to preenforcement review of any Federal environmental enforcement action.

#### SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization of Appropriations.--

(1) Pechanga recycled water infrastructure account.--There is authorized to be appropriated \$2,656,374, for deposit in the Pechanga Recycled Water Infrastructure account, to carry out the activities described in section 8(c).

(2) Pechanga esaa delivery capacity account.--There is authorized to be appropriated \$17,900,000, for deposit in the Pechanga ESAA Delivery Capacity account, which amount shall be adjusted for changes in construction costs since June 30, 2009, as is indicated by ENR Construction Cost Index, 20-City Average, as applicable to the types of construction required for the Band to provide the infrastructure necessary for the Band to provide the Interim Capacity and Permanent Capacity in the event that RCWD elects not to provide the Interim Capacity or Permanent Capacity as set forth in the ESAA Capacity Agreement and contemplated in sections 8(d)(2)(E) and 8(d)(3)(F) of this Act, with such adjustment ending on the date on which funds authorized to be appropriated under this section have been deposited in the Fund.

(3) Pechanga water fund account.--There is authorized to be appropriated \$5,483,653, for deposit in the Pechanga Water Fund account, which amount shall be adjusted for changes in appropriate cost indices since June 30, 2009, with such adjustment ending on the date of deposit in the Fund, for the purposes set forth in section 9(h)(3).

(4) Pechanga water quality account.--There is authorized to be appropriated \$2,460,000, for deposit in the Pechanga Water Quality account, which amount shall be adjusted for changes in appropriate cost indices since June 30, 2009, with such adjustment ending on the date of deposit in the Fund, for the purposes set forth in section 9(h)(4).

#### SEC. 12. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

If the Secretary does not publish a statement of findings under section 7(e) by April 30, 2021, or such alternative later date as is agreed to by the Band and the Secretary, as applicable--

(1) this Act is repealed effective on the later of May 1, 2021, or the day after the alternative date agreed to by the Band and the Secretary;

(2) any action taken by the Secretary and any contract or agreement pursuant to the authority provided under any provision of this Act shall be void;

(3) any amounts appropriated under section 11, together with any interest on those amounts, shall immediately revert to the general fund of the Treasury; and

(4) any amounts made available under section 11 that remain unexpended shall immediately revert to the general fund of the Treasury.

#### SEC. 13. ANTIDEFICIENCY.

(a) In General.--Notwithstanding any authorization of appropriations to carry out this Act, the expenditure or advance of any funds, and the performance of any obligation by the Department in any capacity, pursuant to this Act shall be contingent on the appropriation of funds for that expenditure, advance, or performance.

(b) Liability.--The Department of the Interior shall not be liable for the failure to carry out any obligation or activity authorized by this Act if adequate appropriations are not provided to carry out this Act.

<all>



[Congressional Bills 114th Congress]  
[From the U.S. Government Publishing Office]  
[S. 1125 Introduced in Senate (IS)]

114th CONGRESS  
1st Session

S. 1125

To authorize and implement the water rights compact among the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

April 28, 2015

Mr. Tester (for himself and Mr. Daines) introduced the following bill;  
which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To authorize and implement the water rights compact among the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Blackfeet Water Rights Settlement Act of 2015''.

SEC. 2. PURPOSES.

The purposes of this Act are--

(1) to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for--

(A) the Blackfeet Tribe of the Blackfeet Indian Reservation; and

(B) the United States, for the benefit of the Tribe and allottees;

(2) to authorize, ratify, and confirm the water rights compact entered into by the Tribe and the State, to the extent that the Compact is consistent with this Act;

(3) to authorize and direct the Secretary of the Interior--

(A) to execute the Compact; and

- (B) to take any other action necessary to carry out the Compact in accordance with this Act; and
- (4) to authorize funds necessary for the implementation of the Compact and this Act.

### SEC. 3. DEFINITIONS.

In this Act:

- (1) Allottee.--The term ``allottee'' means any individual who holds a beneficial real property interest in an allotment of Indian land that is--
  - (A) located within the Reservation; and
  - (B) held in trust by the United States.
- (2) Birch creek agreement.--The term ``Birch Creek Agreement'' means--
  - (A) the agreement between the Tribe and the State regarding Birch Creek water use dated January 31, 2008, as amended on February 13, 2009; and
  - (B) any amendment or exhibit (including exhibit amendments) to that agreement that is executed in accordance with this Act.
- (3) Birch creek mitigation project.--The term ``Birch Creek Mitigation Project'' means the project to provide water from Four Horns Reservoir to State water users on Birch Creek in fulfillment of the obligations of the Tribe under the Birch Creek Agreement.
- (4) Blackfeet irrigation project.--The term ``Blackfeet Irrigation Project'' means the irrigation project authorized by the matter under the heading ``Montana'' of title II of the Act of March 1, 1907 (34 Stat. 1035, chapter 2285) and administered by the Bureau of Indian Affairs.
- (5) Compact.--The term ``Compact'' means--
  - (A) the Blackfeet-Montana water rights compact dated April 15, 2009, as contained in section 85-20-1501 of the Montana Code Annotated (2013); and
  - (B) any amendment or exhibit (including exhibit amendments) to the Compact that is executed in accordance with this Act.
- (6) Enforceability date.--The term ``enforceability date'' means the date described in section 18(e).
- (7) Lake Elwell.--The term ``Lake Elwell'' means the water impounded on the Marias River in the State by Tiber Dam, a feature of the Lower Marias Unit of the Pick-Sloan Missouri River Basin Program authorized by section 9 of the Act of December 22, 1944 (commonly known as the ``Flood Control Act of 1944'') (58 Stat. 891, chapter 665).
- (8) Milk river basin.--The term ``Milk River Basin'' means the North Fork, Middle Fork, South Fork, and the main stem of the Milk River and tributaries from the headwaters to the confluence with the Missouri River.
- (9) Milk river project.--
  - (A) In general.--The term ``Milk River Project'' means the Bureau of Reclamation project conditionally approved by the Secretary on March 14, 1903, pursuant to the Act of June 17, 1902 (32 Stat. 388, chapter

1093), commencing at Lake Sherburne Reservoir and providing water to a point approximately 6 miles east of Nashua, Montana.

(B) Inclusions.--The term ``Milk River Project'' includes--

- (i) the St. Mary Unit;
- (ii) the Fresno Dam; and
- (iii) the Dodson pumping unit.

(10) Milk river project water rights.--The term ``Milk River Project water rights'' means the water rights held by the Bureau of Reclamation on behalf of the Milk River Project, as finally adjudicated by the Montana Water Court.

(11) Milk river water right.--The term ``Milk River water right'' means the portion of the Tribal Water Rights described in article III.F of the Compact and this Act.

(12) Missouri river basin.--The term ``Missouri River Basin'' means the hydrologic basin of the Missouri River (including tributaries).

(13) MR&I system.--The term ``MR&I System'' means--

(A) the intake, treatment, pumping, storage, pipelines, appurtenant items, and any other feature of the system as generally described in the document entitled ``Blackfeet Regional Water System'', prepared by DOWL HKM, and dated June 2010, and modified by DOWL HKM, as set out in the addendum to the report dated March 2013; and

(B) the existing tribal water systems improved under subparagraph (A).

(14) OM&R.--The term ``OM&R'' means--

(A) any recurring or ongoing activity associated with the day-to-day operation of a project;

(B) any activity relating to scheduled or unscheduled maintenance of a project; and

(C) any activity relating to replacing a feature of a project.

(15) Reservation.--The term ``Reservation'' means the Blackfeet Indian Reservation of Montana as--

(A) established by the Treaty of October 17, 1855

(11 Stat. 657); and

(B) modified by--

(i) the Executive Order of July 5, 1873 (relating to the Blackfeet Reserve);

(ii) the Act of April 15, 1874 (18 Stat. 28, chapter 96);

(iii) the Executive Order of August 19, 1874 (relating to the Blackfeet Reserve);

(iv) the Executive Order of April 13, 1875 (relating to the Blackfeet Reserve);

(v) the Executive Order of July 13, 1880 (relating to the Blackfeet Reserve);

(vi) the Agreement with the Blackfeet, ratified by the Act of May 1, 1888 (25 Stat. 113, chapter 213); and

(vii) the Agreement with the Blackfeet, ratified by the Act of June 10, 1896 (29 Stat.

353, chapter 398).

(16) St. mary river water right.--The term ``St. Mary River water right'' means that portion of the Tribal Water Rights described in article III.G.1.a.i. of the Compact and this Act.

(17) St. mary unit.--

(A) In general.--The term ``St. Mary Unit'' means the St. Mary Storage Unit of the Milk River Project authorized by Congress on March 25, 1905.

(B) Inclusions.--The term ``St. Mary Unit'' includes--

- (i) Sherburne Dam and Reservoir;
- (ii) Swift Current Creek Dikey
- (iii) Lower St. Mary Lake;
- (iv) St. Mary Canal Diversion Dam; and
- (v) St. Mary Canal and appurtenances.

(18) Secretary.--The term ``Secretary'' means the Secretary of the Interior.

(19) State.--The term ``State'' means the State of Montana.

(20) Swiftcurrent creek bank stabilization project.--The term ``Swiftcurrent Creek Bank Stabilization Project'' means the project to mitigate the physical and environmental problems associated with the St. Mary Unit from Sherburne Dam to the Swiftcurrent Creek confluence with the St. Mary River.

(21) Tribal water rights.--The term ``Tribal water rights'' means the water rights of the Tribe described in article III of the Compact and this Act, including the Lake Elwell allocation provided to the Tribe under section 9.

(22) Tribe.--The term ``Tribe'' means the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

#### SEC. 4. RATIFICATION OF COMPACT.

(a) Ratification.--

(1) In general.--Except as modified by this Act, and to the extent that the Compact does not conflict with this Act, the Compact is authorized, ratified, and confirmed.

(2) Amendments.--If an amendment is executed in accordance with this Act to make the Compact consistent with this Act, the amendment is authorized, ratified, and confirmed.

(b) Execution.--

(1) In general.--To the extent that the Compact does not conflict with this Act, the Secretary shall execute the Compact, including all exhibits to, or parts of, the Compact requiring the signature of the Secretary.

(2) Modifications.--Nothing in this Act precludes the Secretary from approving any modification to an appendix or exhibit to the Compact that is consistent with this Act, to the extent that the modification does not otherwise require congressional approval under section 2116 of the Revised Statutes (25 U.S.C. 177) or any other applicable provision of Federal law.

(c) Environmental Compliance.--

(1) In general.--In implementing the Compact and this Act, the Secretary shall comply with all applicable provisions of--

(A) the Endangered Species Act of 1973 (16 U.S.C.

1531 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(C) all other applicable environmental laws and regulations.

(2) Effect of execution.--

(A) In general.--An activity carried out by the Secretary to execute the Compact pursuant to this section shall not constitute a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) Compliance.--The Secretary shall carry out all Federal compliance activities necessary to implement the Compact and this Act.

#### SEC. 5. MILK RIVER WATER RIGHT.

(a) In General.--With respect to the Milk River water right, the Tribe--

(1) may continue the historical uses and the uses in existence on the date of enactment of this Act; and

(2) except as provided in article III.F.1.d of the Compact, shall not develop new uses until the date on which--

(A) the Tribe has entered into the agreement described in subsection (c); or

(B) the Secretary has established the criteria described in subsection (e).

(b) State Water Rights.--With respect to any State water right in the Milk River Basin owned or acquired by the Tribe, the Tribe--

(1) may continue any use in existence on the date of enactment of this Act; and

(2) shall not change any use until the date on which--

(A) the Tribe has entered into the agreement described in subsection (c); or

(B) the Secretary has established the criteria described in subsection (e).

(c) Tribal Agreement.--

(1) In general.--In consultation with the Commissioner of Reclamation and the Director of the Bureau of Indian Affairs, the Tribe and the Fort Belknap Indian Community shall enter into an agreement to provide for the exercise of the respective water rights on the respective reservations of the Tribe and the Fort Belknap Indian Community in the Milk River.

(2) Considerations.--The agreement entered into under paragraph (1) shall take into consideration--

(A) the equal priority dates of the Indian tribes;

(B) the water supplies of the Milk River; and

(C) historical, current, and future uses identified by each Indian tribe.

(d) Secretarial Determination.--

(1) In general.--Not later than 120 days after the date on which the agreement described in subsection (c) is submitted to the Secretary, the Secretary shall review and approve or disapprove the agreement.

(2) Approval.--The Secretary shall approve the agreement if

the Secretary finds that the agreement--

(A) equitably accommodates the interests in the Milk River of each Indian tribe;

(B) adequately considers the factors described in subsection (c)(2); and

(C) is otherwise in accordance with applicable law.

(3) Deadline extension.--The deadline to review the agreement described in paragraph (1) may be extended by the Secretary after consultation with the Tribe and the Fort Belknap Indian Community.

(e) Secretarial Criteria.--

(1) In general.--If the Tribe and the Fort Belknap Indian Community do not enter into an agreement under subsection (c) by the earlier of the date that is 5 years after the date of enactment of this Act and the date that is 3 years after the date of enactment of a congressionally approved settlement of the water rights claims of the Fort Belknap Indian Community that the Secretary determines meets the considerations set forth in subparagraphs (A) through (C) of subsection (d)(2), the Secretary shall--

(A) establish criteria that reflect the considerations described in subparagraphs (A) through (C) of subsection (c)(2); and

(B) after consultation with the Tribe and the Fort Belknap Indian Community, provide for the exercise of the respective water rights on the respective reservations of the Tribe and the Fort Belknap Indian Community in the Milk River.

(2) Consideration as final agency action.--The establishment by the Secretary of criteria under paragraph (1) shall be considered to be a final agency action for purposes of review under chapter 7 of title 5, United States Code.

(f) Authorization of Appropriations.--

(1) In general.--There is authorized to be appropriated to the Secretary to carry out this section \$500,000.

(2) Use of funds.--The Secretary shall distribute the funds made available under paragraph (1) to the Tribe and the Fort Belknap Indian Community for use to reach an agreement under this section, including for technical analyses and legal and other related efforts.

#### SEC. 6. WATER DELIVERY THROUGH MILK RIVER PROJECT.

(a) In General.--The Secretary, acting through the Commissioner of Reclamation, shall carry out the activities authorized under this section with respect to the St. Mary River water right.

(b) Treatment.--Notwithstanding article IV.D.4 of the Compact, any responsibility of the United States with respect to the St. Mary River water right shall be limited to and fulfilled pursuant to subsection (c) and subsections (a) and (b)(3) of section 15.

(c) Water Delivery Contract.--

(1) In general.--Not later than 180 days after the enforceability date, the Secretary shall enter into a water delivery contract with the Tribe for the delivery of 5,000 acre-feet per year of the St. Mary River water right through

Milk River Project facilities to the Tribe or another entity specified by the Tribe.

(2) Terms and conditions.--The contract under paragraph (1) shall establish the terms and conditions for the water deliveries described in paragraph (1) in accordance with the Compact and this Act.

(3) Requirements.--The water delivery contract under paragraph (1) shall include provisions requiring that--

(A) the contract shall be without limit as to term;

(B) the Tribe, and not the United States, shall collect, and shall be entitled to, all consideration due to the Tribe under any lease, contract, or agreement entered into by the Tribe pursuant to subsection (f);

(C) the United States shall have no obligation to monitor, administer, or account for--

(i) any funds received by the Tribe as consideration under any lease, contract, or agreement entered into by the Tribe pursuant to subsection (f); or

(ii) the expenditure of such funds;

(D) if water deliveries under the contract are interrupted for an extended period of time because of damage to, or a reduction in the capacity of, St. Mary Unit facilities, the rights of the Tribe shall be treated the same as the rights of other contractors receiving water deliveries through the Milk River Project with respect to the water delivered under this section;

(E) deliveries of water under this subsection shall be--

(i) limited to not greater than 5,000 acre-feet of water in any 1 year;

(ii) consistent with operations of the Milk River Project; and

(iii) without additional cost to the Milk River Project water users; and

(F) the Tribe shall not be required to pay OM&R for the 5,000 acre-feet delivered under subparagraph

(E)(i), except the Tribe shall pay annually the proportionate share of OM&R allocable to any quantity of water delivered to a third party for industrial purposes under a subcontract entered into by the Tribe pursuant to subsection (f).

(d) Shortage Sharing or Reduction.--

(1) In general.--The 5,000 acre-feet per year of water delivered under subsection (c)(3)(E)(i) shall not be subject to shortage sharing or reduction, except as provided in paragraph (3)(D) of that subsection.

(2) No injury to milk river project water users.--Notwithstanding article IV.D.4 of the Compact, any reduction in the Milk River Project water supply caused by the delivery of water under subsection (c) shall not constitute injury to Milk River Project water users.

(e) Subsequent Contracts.--

(1) In general.--As part of the studies authorized under section 7(b), the Secretary, acting through the Commissioner of Reclamation, and in cooperation with the Tribe, shall identify alternatives to provide to the Tribe water from the St. Mary River water right in quantities greater than the 5,000 acre-feet per year of water described in subsection (c) (3) (E) (i).

(2) Contract for water delivery.--If the Secretary determines under paragraph (1) that greater than 5,000 acre-feet per year of the St. Mary River water right can be delivered to the Tribe, the Secretary shall offer to enter into 1 or more contracts with the Tribe for the delivery of that water, subject to the requirements of subsection (c) (3) and this subsection.

(3) Treatment.--Any delivery of water under this subsection shall be--

(A) in accordance with article IV.D.4 of the Compact; and

(B) subject to reduction in the same manner as for Milk River Project contract holders.

(f) Subcontracts.--

(1) In general.--The Tribe may enter into any subcontract for the delivery of water under this section to a third party, in accordance with section 14(e).

(2) Compliance with other law.--All subcontracts described in paragraph (1) shall comply with this Act, the Compact, the tribal water code, and other applicable law.

(3) No liability.--The Secretary shall not be liable to any party, including the Tribe, for any term of, or any loss or other detriment resulting from, a lease, contract, or other agreement entered into pursuant to this subsection.

(g) Effect of Provisions.--Nothing in this section--

(1) precludes the Tribe from taking the 5,000 acre-feet per year of water described in subsection (c) (3) (E) (i), or any additional water provided under subsection (e), from the direct flow of the St. Mary River; or

(2) modifies the provisions of article III.G.1.a.ii, article III.G.1.b-c, or article III.G.1.e of the Compact.

(h) Other Rights.--Notwithstanding article III.G.1.d of the Compact, after satisfaction of all water rights under State law, including the Milk River Project water rights, the Tribe shall have the right to the remaining portion of the share of the United States in the St. Mary River under the International Boundary Waters Treaty of 1909 (36 Stat. 2448) for any tribally authorized use or need.

#### SEC. 7. BUREAU OF RECLAMATION ACTIVITIES TO IMPROVE WATER MANAGEMENT.

(a) Use of Milk River Project Facilities for the Benefit of the Tribe.--Use of Milk River Project facilities to transport water for the Tribe pursuant to subsections (c) and (e) of section 6, together with any use by the Tribe of such water in accordance with the tribal water code--

(1) shall be considered an authorized purpose of the Milk River Project; and

(2) shall not change the priority date of any Tribal water rights.

(b) St. Mary River Studies.--The Secretary, in cooperation with the Tribe and the State, shall conduct--

(1) an appraisal study--

(A) to develop a plan for the management and development of water supplies in the St. Mary River Basin and Milk River Basin, including the St. Mary River and Milk River water supplies for the Tribe and the Milk River water supplies for the Fort Belknap Indian Community; and

(B) to identify alternatives to develop additional water of the St. Mary River for the Tribe; and

(2) a feasibility study--

(A) using the information from the appraisal study conducted under paragraph (1), to evaluate the feasibility of--

(i) alternatives for the rehabilitation of the St. Mary Diversion Dam and Canal; and

(ii) increased storage in Fresno Reservoir of the Milk River Project; and

(B) to create a cost allocation study that is based on the authorized purposes described in subsection (a).

(3) Submission to congress.--Not later than 3 years after the date on which funds are made available to carry out this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report describing the results of the study under this subsection.

(4) Costs nonreimbursable.--The cost of the studies under this subsection shall not be--

(A) considered to be a project cost; or

(B) reimbursable in accordance with the Federal reclamation laws.

(5) Applicability of isdeaa.--At the request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall enter into 1 or more agreements with the Tribe to carry out the study described in paragraph (1).

(c) Swiftcurrent Creek Bank Stabilization.--

(1) In general.--The Secretary, acting through the Commissioner of Reclamation, shall carry out appropriate activities concerning the Swiftcurrent Creek Bank Stabilization Project, including review of the final design of the project and value engineering analyses.

(2) Modification of final design.--Prior to beginning construction activities for the Swiftcurrent Creek Bank Stabilization Project, on the basis of the review conducted under paragraph (1), the Secretary shall negotiate with the Tribe appropriate changes, if any, to the final design--

(A) to ensure compliance with applicable industry standards; and

(B) to improve the cost-effectiveness of the Swiftcurrent Creek Bank Stabilization Project.

(3) Applicability of isdeaa.--At the request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary

shall enter into 1 or more agreements with the Tribe to carry out the Swiftcurrent Bank Stabilization Project.

(d) Administration.--The Commissioner of Reclamation and the Tribe shall negotiate the cost of any oversight activity carried out by the Bureau of Reclamation under any agreement entered into under this section, subject to the condition that the total cost for the oversight shall not exceed 4 percent of the total costs incurred under this section.

(e) Milk River Project Rights-of-Way and Easements.--As soon as practicable after the date of enactment of this Act, the Secretary and the Tribe shall enter into an agreement to resolve all issues associated with the location and extent of the rights-of-way, easements, and other property interests of the United States in and to the Milk River Project that are located on tribal land.

(f) Funding.--The total amount of obligations incurred by the Secretary shall not exceed--

- (1) \$3,800,000 to carry out subsection (b);
- (2) \$20,700,000 to carry out subsection (c); and
- (3) \$1,700,000 to carry out subsection (e).

#### SEC. 8. ST. MARY CANAL HYDROELECTRIC POWER GENERATION.

(a) In General.--

(1) Exclusive right of the tribe.--Subject to paragraph (2) and notwithstanding any other provision of law, if the St. Mary Unit is rehabilitated, the Tribe shall have the exclusive right to develop and market hydroelectric power of the St. Mary Unit.

(2) Limitations.--The exclusive right described in paragraph (1)--

(A) shall expire 15 years after the date of enactment of an Act appropriating funds for the rehabilitation described in that paragraph; and

(B) may be extended by the Secretary at the request of the Tribe.

(3) OM&R costs.--Beginning on the date that is 10 years after the date on which the Tribe begins marketing hydroelectric power generated from the St. Mary Unit to third parties, the Tribe shall make annual payments for operation, maintenance, and replacement costs attributable to the direct use of any facilities by the Tribe for hydroelectric power generation in amounts determined in accordance with the guidelines and methods of the Bureau of Reclamation for assessing operation, maintenance, and replacement charges.

(b) Bureau of Reclamation Jurisdiction.--The Commissioner of Reclamation shall have exclusive jurisdiction to authorize development of hydropower on the St. Mary Unit.

(c) Bureau of Reclamation Cooperation.--The Commissioner of Reclamation shall cooperate with the Tribe in the development of any hydroelectric power generation project under this section.

(d) Agreement.--Before construction of a hydroelectric power generation project under this section, the Tribe shall enter into an agreement with the Commissioner of Reclamation that includes provisions requiring that--

(1) the design, construction, and operation of the project shall be consistent with the Bureau of Reclamation guidelines

and methods for hydroelectric power development at Bureau facilities, as appropriate; and

(2) the hydroelectric power generation project shall be consistent with the operations of the Milk River Project, including agreements--

(A) regarding operating criteria and emergency procedures; and

(B) under which any modification proposed by the Tribe to a facility owned by the Bureau of Reclamation shall be subject to review and approval by the Secretary, acting through the Commissioner of Reclamation.

(e) Use of Hydroelectric Power by Tribe.--Any hydroelectric power generated in accordance with this section shall be used or marketed by the Tribe.

(f) Revenues.--The Tribe shall collect and retain any revenues from the sale of hydroelectric power generated by a project under this section.

(g) Liability of the United States.--The United States shall have no obligation to monitor, administer, or account for--

(1) any revenues received by the Tribe under this section;  
or

(2) the expenditure of such revenues.

(h) Preference.--For any period for which the exclusive right of the Tribe described in subsection (a)(1) is not in effect, including any period before the enforceability date, the Tribe shall have a preference to develop hydropower on the St. Mary Unit facilities in the same manner as States and municipalities under section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) or any other applicable law or regulation.

#### SEC. 9. STORAGE ALLOCATION FROM LAKE ELWELL.

(a) Storage Allocation to Tribe.--The Secretary shall allocate to the Tribe 50,000 acre-feet per year of water stored in Lake Elwell for use by the Tribe for any beneficial purpose on or off the Reservation, under a water right held by the United States and managed by the Bureau of Reclamation, as measured at the outlet works of Tiber Dam or through direct pumping from Lake Elwell.

(b) Treatment.--

(1) In general.--The allocation to the Tribe under subsection (a) shall be considered to be part of the Tribal water rights.

(2) Priority date.--The priority date of the allocation to the Tribe under subsection (a) shall be the priority date of the Lake Elwell water right held by the Bureau of Reclamation.

(3) Administration.--The Tribe shall administer the water allocated under subsection (a) in accordance with the Compact and this Act.

(c) Allocation Agreement.--

(1) In general.--As a condition of receiving an allocation under this section, the Tribe shall enter into an agreement with the Secretary to establish the terms and conditions of the allocation, in accordance with the Compact and this Act.

(2) Inclusions.--The agreement under paragraph (1) shall

include provisions that--

(A) the agreement shall be without limit as to term;

(B) the Tribe, and not the United States, shall be entitled to all consideration due to the Tribe under any lease, contract, or agreement entered into by the Tribe pursuant to subsection (d);

(C) the United States shall have no obligation to monitor, administer, or account for--

(i) any funds received by the Tribe as consideration under any lease, contract, or agreement entered into by the Tribe pursuant to subsection (d); or

(ii) the expenditure of such funds;

(D) if the capacity or function of Lake Elwell facilities are significantly reduced, or are anticipated to be significantly reduced, for an extended period of time, the Tribe shall have the same storage rights as other storage contractors with respect to the allocation under this section;

(E) the costs associated with the construction of the storage facilities at Tiber Dam allocable to the Tribe shall be nonreimbursable;

(F) no water service capital charge shall be due or payable for any water allocated to the Tribe pursuant to this section or the allocation agreement, regardless of whether that water is delivered for use by the Tribe or under a lease, contract, or by agreement entered into by the Tribe pursuant to subsection (d);

(G) the Tribe shall not be required to make payments to the United States for any water allocated to the Tribe under this Act or the allocation agreement, except for each acre-foot of stored water leased or transferred for industrial purposes as described in subparagraph (H); and

(H) for each acre-foot of stored water leased or transferred by the Tribe for industrial purposes--

(i) the Tribe shall pay annually to the United States an amount necessary to cover the proportional share of the annual operation, maintenance, and replacement costs allocable to the quantity of water leased or transferred by the Tribe for industrial purposes; and

(ii) the annual payments of the Tribe shall be reviewed and adjusted, as appropriate, to reflect the actual operation, maintenance, and replacement costs for Tiber Dam.

(d) Agreements by Tribe.--The Tribe may use, lease, contract, exchange, or enter into other agreements for use of the water allocated to the Tribe under subsection (a) if--

(1) the use of water that is the subject of such an agreement occurs within the Missouri River Basin; and

(2) the agreement does not permanently alienate any portion of the water allocated to the Tribe under subsection (a).

(e) Effective Date.--The allocation under subsection (a) takes

effect on the enforceability date.

(f) No Carry-Over Storage.--The allocation under subsection (a) shall not be increased by any year-to-year carryover storage.

(g) Development and Delivery Costs.--The United States shall not be required to pay the cost of developing or delivering to the Reservation any water allocated under this section.

#### SEC. 10. IRRIGATION ACTIVITIES.

(a) In General.--The Secretary, acting through the Commissioner of Reclamation and consistent with subsection (c), shall carry out the following actions relating to the Blackfeet Irrigation Project:

(1) Deferred maintenance.

(2) Dam safety improvements for Four Horns Dam.

(3) Rehabilitation and enhancement of the Four Horns Feeder Canal, Dam, and Reservoir in accordance with the Birch Creek Agreement.

(b) Lead Agency.--The Bureau of Reclamation shall serve as the lead agency with respect to any activities carried out under this section.

(c) Scope of Deferred Maintenance Activities and Four Horns Dam Safety Improvements.--The scope of the deferred maintenance activities and Four Horns Dam safety improvements shall be as generally described in the document entitled ``Engineering Evaluation and Condition Assessment, Blackfeet Irrigation Project'', prepared by DOWL HKM, and dated August 2007, and the Four Horns Rehabilitated Dam sections of ``Four Horns Dam Enlarged Appraisal Evaluation Design Report'', prepared by HKM, and dated April 2007, subject to the condition that, before commencing construction activities, the Secretary shall--

(1) review the design of the proposed rehabilitation or improvement;

(2) perform value engineering analyses; and

(3) perform appropriate Federal environmental compliance activities.

(d) Scope of Rehabilitation and Enhancement of Four Horns Feeder Canal, Dam, and Reservoir.--

(1) In general.--The scope of the rehabilitation and improvements shall be as generally described in the document entitled ``Four Horns Feeder Canal Rehabilitation with Export'', prepared by DOWL HKM, and dated April 2013, subject to the condition that, before commencing construction activities, the Secretary shall--

(A) review the design of the proposed rehabilitation or improvement;

(B) perform value engineering analyses; and

(C) perform appropriate Federal environmental compliance activities.

(2) Inclusions.--The activities carried out by the Secretary under this subsection shall include--

(A) the rehabilitation or improvement of the Four Horns feeder canal system to a capacity of not fewer than 360 cubic feet per second;

(B) the rehabilitation or improvement of the outlet works of Four Horns Dam and Reservoir to deliver 15,000 acre-feet of water per year, in accordance with subparagraph (C); and

(C) construction of facilities to deliver 15,000 acre-feet of water per year from Four Horns Dam and Reservoir, to a point on or near Birch Creek to be designated by the Tribe and the State for delivery of water to the water delivery system of the Pondera County Canal and Reservoir Company on Birch Creek, in accordance with the Birch Creek Agreement.

(3) Negotiation with tribe.--On the basis of the review described in paragraph (1)(A), the Secretary shall negotiate with the Tribe appropriate changes to the final design of any activity under this subsection to ensure that the final design meets applicable industry standards.

(e) Funding.--The total amount of obligations incurred by the Secretary in carrying out this section shall not exceed \$54,900,000, of which--

(1) \$40,900,000 shall be allocated to carry out the activities under subsection (c); and

(2) \$14,000,000 shall be allocated to carry out the activities under subsection (d)(2).

(f) Nonreimbursability of Costs.--All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(g) Non-Federal Contribution.--No part of the project under subsection (d)(2) shall be commenced until the State has made available \$20,000,000 to carry out the activities under that subsection.

(h) Administration.--The Commissioner of Reclamation and the Tribe shall negotiate the cost of any oversight activity carried out by the Bureau of Reclamation under any agreement entered into under subsection (m), subject to the condition that the total cost for the oversight shall not exceed 4 percent of the total project costs for each project.

(i) Project Efficiencies.--If the total cost of planning, design, and construction activities of the projects described in this section results in cost savings and is less than the amounts authorized to be obligated, the Secretary, at the request of the Tribe, may--

(1) use those cost savings to carry out the projects described in sections 7(c), 11, or 12; or

(2) transfer those cost savings to the Blackfeet OM&R Trust Account.

(j) Ownership by the Tribe.--

(1) Blackfeet irrigation project.--Notwithstanding any other provision of law, on receipt of a request by the Tribe, the Secretary, at the discretion of the Secretary, may transfer to the Tribe, at no cost, title in and to each facility, asset, and other property of the Blackfeet Irrigation Project.

(2) Birch creek delivery facilities.--Notwithstanding any other provision of law, the Secretary shall transfer to the Tribe, at no cost, title in and to the facilities constructed under subsection (d)(2)(C) together with any associated personalty.

(k) Ownership, Operation, and Maintenance.--On transfer of title under subsection (j)(2) to the Tribe of the facilities constructed under subsection (d)(2)(C), the Tribe shall--

(1) be responsible for OM&R in accordance with the Birch Creek Agreement; and

(2) enter into an agreement with the Bureau of Indian Affairs for the operation of the facilities described in that

subsection.

(l) Liability of United States.--The United States shall have no obligations or responsibilities with respect the facilities described in subsection (d) (2) (C) .

(m) Applicability of ISDEAA.--At the request of the Tribe and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall enter into 1 or more agreements with the Tribe to carry out this section.

(n) Effect.--Nothing in this section alters applicable law (including regulations) under which the Bureau of Indian Affairs collects assessments and carries out Blackfeet Irrigation Project OM&R, or impacts the availability of amounts made available under subsections (a) and (b) (2) of section 15.

#### SEC. 11. DESIGN AND CONSTRUCTION OF MR&I SYSTEM.

(a) In General.--The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct the water diversion and delivery features of the MR&I System in accordance with 1 or more agreements between the Secretary and the Tribe.

(b) Lead Agency.--The Bureau of Reclamation shall serve as the lead agency with respect to any activity to design and construct the water diversion and delivery features of the MR&I System.

(c) Scope.--

(1) In general.--The scope of the design and construction under this section shall be as generally described in the document entitled ``Blackfeet Regional Water System'', prepared by DOWL HKM, dated June 2010, and modified by DOWL HKM in the addendum to the report dated March 2013, subject to the condition that, before commencing final design and construction activities, the Secretary shall--

(A) review the design of the proposed rehabilitation and construction;

(B) perform value engineering analyses; and

(C) perform appropriate Federal compliance activities.

(2) Negotiation with tribe.--On the basis of the review described in paragraph (1) (A), the Secretary shall negotiate with the Tribe appropriate changes, if any, to the final design--

(A) to ensure that the final design meets applicable industry standards; and

(B) to improve the cost-effectiveness of the delivery of MR&I System water.

(d) Nonreimbursability of Costs.--All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(e) Funding.--The total amount of obligations incurred by the Secretary in carrying out this section shall not exceed \$ 76,200,000.

(f) Non-Federal Contribution.--

(1) Consultation.--Before completion of the final design of the MR&I System required by subsection (c), the Secretary shall consult with the Tribe, the State, and other affected non-Federal parties to discuss the possibility of receiving non-Federal contributions for the cost of the MR&I System.

(2) Negotiations.--If, based on the extent to which non-

Federal parties are expected to use the MR&I System, a non-Federal contribution to the MR&I System is determined by the parties described in paragraph (1) to be appropriate, the Secretary shall initiate negotiations for an agreement regarding the means by which such contributions shall be provided.

(g) Ownership by the Tribe.--Title to the MR&I System and all facilities rehabilitated or constructed under this section shall be held by the Tribe.

(h) Administration.--The Commissioner of Reclamation and the Tribe shall negotiate the cost of any oversight activity carried out by the Bureau of Reclamation under any agreement entered into under this section, subject to the condition that the total cost for the oversight shall not exceed 4 percent of the total costs incurred under this section.

(i) OM&R Costs.--The Federal Government shall have no obligation to pay for the operation, maintenance, or replacement costs for the facilities rehabilitated or constructed under this section.

(j) Project Efficiencies.--If the total cost of planning, design, and construction activities of the projects described in this section results in cost savings and is less than the amounts authorized to be obligated, the Secretary, at the request of the Tribe, may--

(1) use those cost savings to carry out projects described in sections 7(c), 10, and 12; or

(2) transfer those cost savings to the Blackfeet OM&R Trust Account.

(k) Applicability of ISDEAA.--At the request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall enter into 1 or more agreements with the Tribe to carry out this section.

(l) Effect.--Nothing in this section impacts the availability of the amounts made available under subsections (a) and (b) (2) of section 15.

## SEC. 12. BLACKFEET WATER, STORAGE, AND DEVELOPMENT PROJECTS.

(a) In General.--

(1) Scope.--The scope of the construction under this section shall be as generally described in the document entitled ``Blackfeet Water Storage, Development, and Project Report'', prepared by DOWL HKM, and dated March 2013.

(2) Modification.--The Tribe may modify the scope of construction for the projects described in the document referred to in paragraph (1) if--

(A) the modified project is similar to the proposed project and consistent with the purposes of this Act; and

(B) the modification is approved by the Secretary.

(b) Nonreimbursability of Costs.--All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(c) Funding.--The total amount of obligations incurred by the Secretary in carrying out this section shall not exceed \$178,300,000.

(d) OM&R Costs.--The Federal Government shall have no obligation to pay for the operation, maintenance, or replacement costs for the facilities rehabilitated or constructed under this section.

(e) Ownership by the Tribe.--Title to any facility constructed under this section shall be held by the Tribe.

(f) Effect.--Nothing in this section impacts the availability of the amounts made available under subsections (a) and (b) (2) of section 15.

#### SEC. 13. EASEMENTS AND RIGHTS-OF-WAY.

(a) In General.--

(1) Tribal easements and rights-of-way.--On request of the Secretary, the Tribe shall grant, at no cost to the United States, such easements and rights-of-way over tribal land as are necessary for the construction of the projects authorized by sections 10 and 11.

(2) Jurisdiction.--The Tribe shall not be divested of criminal and civil jurisdiction over any land for which an easement or right-of-way is granted under this subsection.

(b) Landowner Easements and Rights-of-Way.--In partial consideration for the construction activities authorized by this section and as a condition of receiving service from the MR&I System, a landowner shall grant, at no cost to the United States or the Tribe, such easements and rights-of-way over the land of the landowner as may be necessary for the construction of the MR&I System.

(c) Land Acquired by the United States or the Tribe.--Land acquired within the Reservation by the United States or the Tribe in connection with the construction of the projects authorized by this Act shall be held in trust by the United States for the benefit of the Tribe.

#### SEC. 14. TRIBAL WATER RIGHTS.

(a) Confirmation of Tribal Water Rights.--

(1) In general.--The Tribal water rights are ratified, confirmed, and declared to be valid.

(2) Use.--Use of the Tribal water rights shall be subject to the terms and conditions of the Compact and this Act.

(3) Conflict.--In the event of conflict between the Compact and this Act, the provisions of this Act shall control.

(b) Intent of Congress.--It is the intent of Congress to provide to each allottee benefits that are equivalent to, or exceed, the benefits the allottees possess on the day before the date of enactment of this Act, taking into consideration--

(1) the potential risks, cost, and time delay associated with litigation that would be resolved by the Compact and this Act;

(2) the availability of funding under this Act and from other sources;

(3) the availability of water from the Tribal water rights; and

(4) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), and this Act to protect the interests of allottees.

(c) Trust Status of Tribal Water Rights.--The Tribal water rights--

(1) shall be held in trust by the United States for the use and benefit of the Tribe and allottees in accordance with this Act; and

(2) shall not be subject to forfeiture or abandonment.

(d) Allottees.--

(1) Applicability of act of february 8, 1887.--The provisions of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), relating to the use of water for irrigation purposes shall apply to the Tribal water rights.

(2) Entitlement to water.--Any entitlement to water of an allottee under Federal law shall be satisfied from the Tribal water rights.

(3) Allocations.--Allottees shall be entitled to a just and equitable allocation of water for irrigation purposes.

(4) Claims.--

(A) Exhaustion of remedies.--Before asserting any claim against the United States under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), or any other applicable law, an allottee shall exhaust remedies available under the tribal water code or other applicable tribal law.

(B) Action for relief.--After the exhaustion of all remedies available under the tribal water code or other applicable tribal law, an allottee may seek relief under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), or other applicable law.

(5) Authority.--The Secretary shall have the authority to protect the rights of allottees in accordance with this section.

(e) Authority of Tribe.--

(1) In general.--The Tribe shall have the authority to allocate, distribute, and lease the Tribal water rights for any use on the Reservation in accordance with the Compact, this Act, and applicable Federal law.

(2) Off-reservation use.--The Tribe may allocate, distribute, and lease the Tribal water rights for off-Reservation use in accordance with the Compact and on the approval of the Secretary.

(f) Tribal Water Code.--

(1) In general.--Notwithstanding article IV.C.1. of the Compact, not later than 4 years after the date on which the Tribe ratifies the Compact in accordance with section 4, the Tribe shall enact a tribal water code that provides for--

(A) the management, regulation, and governance of all uses of the Tribal water rights in accordance with the Compact and this Act; and

(B) establishment by the Tribe of conditions, permit requirements, and other requirements for the allocation, distribution, or use of the Tribal water rights in accordance with the Compact and this Act.

(2) Inclusions.--Subject to the approval of the Secretary, the tribal water code shall provide--

(A) that use of water by allottees shall be satisfied with water from the Tribal water rights;

(B) a process by which an allottee may request that the Tribe provide water for irrigation use in accordance with this Act, including the provision of water under any allottee lease under section 4 of the

Act of June 25, 1910 (25 U.S.C. 403);

(C) a due process system for the consideration and determination by the Tribe of any request by an allottee (or a successor in interest to an allottee) for an allocation of water for irrigation purposes on allotted land, including a process for--

(i) appeal and adjudication of any denied or disputed distribution of water; and

(ii) resolution of any contested administrative decision; and

(D) a requirement that any allottee asserting a claim relating to the enforcement of rights of the allottee under the tribal water code, or to the quantity of water allocated to land of the allottee, shall exhaust all remedies available to the allottee under tribal law before initiating an action against the United States or petitioning the Secretary pursuant to subsection (d) (4) (B).

(3) Action by secretary.--

(A) In general.--During the period beginning on the date of enactment of this Act and ending on the date on which a tribal water code described in paragraphs (1) and (2) is enacted, the Secretary shall administer, with respect to the rights of allottees, the Tribal water rights in accordance with this Act.

(B) Approval.--The tribal water code described in paragraphs (1) and (2) shall not be valid unless--

(i) the provisions of the tribal water code required by paragraph (2) are approved by the Secretary; and

(ii) each amendment to the tribal water code that affects a right of an allottee is approved by the Secretary.

(C) Approval period.--

(i) In general.--The Secretary shall approve or disapprove the tribal water code or an amendment to the tribal water code not later than 180 days after the date on which the tribal water code or amendment is submitted to the Secretary.

(ii) Extension.--The deadline described in clause (i) may be extended by the Secretary after consultation with the Tribe.

(g) Administration.--

(1) No alienation.--The Tribe shall not permanently alienate any portion of the Tribal water rights.

(2) Purchases or grants of land from Indians.--The authorization provided by this Act for the allocation, distribution, leasing, or other arrangement entered into pursuant to this Act shall be considered to satisfy any requirement for authorization of the action by treaty or convention imposed by section 2116 of the Revised Statutes (25 U.S.C. 177).

(3) Prohibition on forfeiture.--The non-use of all or any portion of the Tribal water rights by a lessee or contractor

shall not result in the forfeiture, abandonment, relinquishment, or other loss of all or any portion of the Tribal water rights.

(h) Effect.--Except as otherwise expressly provided in this section, nothing in this Act--

(1) authorizes any action by an allottee against any individual or entity, or against the Tribe, under Federal, State, tribal, or local law; or

(2) alters or affects the status of any action brought pursuant to section 1491(a) of title 28, United States Code.

#### SEC. 15. BLACKFEET SETTLEMENT FUND.

(a) Establishment.--There is established in the Treasury of the United States a fund to be known as the ``Blackfeet Settlement Fund'' (referred to in this section as the ``Fund'') to be managed, invested, and distributed by the Secretary, consisting of the amounts deposited in the Fund under subsection (c), together with any interest earned on those amounts, to be available until expended and to be used solely for the purpose of carrying out this Act.

(b) Accounts.--The Secretary shall establish in the Fund the following accounts:

(1) The Administration and Energy Account.

(2) The OM&R Account.

(3) The St. Mary Account.

(4) The Blackfeet Water, Storage, and Development Projects Account.

(5) The MR&I System Account.

(6) The Blackfeet Irrigation Project Deferred Maintenance, Four Horns Dam Safety, and Rehabilitation and Enhancement of the Four Horns Feeder Canal, Dam, and Reservoir Improvements Account.

(7) The St. Mary/Milk Water Management and Activities Fund.

(c) Transfers.--The Secretary shall transfer to the Fund--

(1) to the Administration and Energy Account, the amount made available pursuant to section 16(a)(1);

(2) in the OM&R Account, the amount made available pursuant to section 16(a)(2);

(3) in the St. Mary Account, the amount made available pursuant to section 16(a)(3);

(4) in the Blackfeet Water, Storage, and Development Projects Account, the amount made available pursuant to section 16(a)(5);

(5) for the MR&I System Account, the amount made available pursuant to section 16(a)(4);

(6) for the Blackfeet Irrigation Project Deferred Maintenance, Four Horns Dam Safety, and Rehabilitation and Enhancement of the Four Horns Feeder Canal, Dam, and Reservoir Improvements Account, the amount made available pursuant to section 16(a)(6); and

(7) for the St. Mary/Milk Water Management and Activities Fund, the amount made available pursuant to section 16(a)(7).

(d) Management of Settlement Fund.--The Secretary shall manage, invest, and distribute all amounts in the Fund in a manner that is consistent with the investment authority of the Secretary under--

(1) the first section of the Act of June 24, 1938 (25 U.S.C. 162a);

(2) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(3) this section.

(e) Availability of Amounts.--

(1) In general.--Amounts appropriated to, and deposited in, the Fund, including any investment earnings, shall be made available to the Tribe by the Secretary beginning on the enforceability date.

(2) Funding for tribal implementation activities.--Notwithstanding paragraph (1), as soon as practicable after the date on which the Tribe ratifies the Compact, and subject to the availability of appropriations, the Secretary shall make available to the Tribe to carry out this Act \$4,800,000 from the Administration and Energy Account.

(f) Withdrawals by Tribe.--

(1) In general.--The Tribe may withdraw all or part of the funds in the Fund, not including the \$3,800,000 made available for the St. Mary River studies under section 7(b), on approval by the Secretary of a tribal management plan submitted by the Tribe in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) Requirements.--

(A) In general.--In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan under paragraph (1) shall require that the Tribe shall spend all amounts withdrawn from the Fund in accordance with this Act.

(B) Enforcement.--The Secretary may carry out such judicial or administrative actions as the Secretary determines to be necessary to enforce the tribal management plan to ensure that amounts withdrawn by the Tribe from the Trust Fund under this subsection are used in accordance with this Act.

(g) Withdrawals by Tribe Pursuant to Expenditure Plan.--

(1) In general.--The Tribe may request that all or part of the funds in the Fund be disbursed from the Fund pursuant to an approved expenditure plan consistent with this Act.

(2) Requirements.--The expenditure plan under paragraph (1) shall include a description of the manner and purpose for which the amounts proposed to be withdrawn from the Fund will be used by the Tribe, in accordance with subsection (h).

(3) Approval.--On receipt of an expenditure plan under this subsection, the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with the purposes of this Act.

(4) Enforcement.--The Secretary may carry out such judicial or administrative actions as the Secretary determines to be necessary to enforce an expenditure plan to ensure that amounts disbursed under this subsection are used in accordance with this Act.

(h) Uses.--Amounts from the Fund shall be used by the Tribe for the following purposes:

(1) The Administration and Energy Account shall be used in accordance with subsection (e) (2) and for administration of the Tribal water rights and energy development projects under this Act and the Compact.

(2) The OM&R Account shall be used to assist the Tribe in paying OM&R costs.

(3) The St. Mary Account shall be distributed as follows:

(A) Subject to subparagraph (B), all interest earned on the account shall be distributed to the Tribe annually.

(B) If the Tribe withdraws all or a portion of the principal under subsection (f) or (g)--

(i) subparagraph (A) shall not apply; and

(ii) the Secretary shall distribute the interest earned on the account for that year as the Secretary determines appropriate.

(4) The Blackfeet Water, Storage, and Development Projects Account shall be used to carry out section 12.

(5) The MR&I System Account shall be used to carry out section 11.

(6) The Blackfeet Irrigation Project Deferred Maintenance, Four Horns Dam Safety, and Rehabilitation and Enhancement of the Four Horns Feeder Canal, Dam, and Reservoir Improvements Account shall be used to carry out section 10.

(7) The St. Mary/Milk Water Management and Activities Account shall be used to carry out sections 5 and 7.

(i) No Federal Liability.--The Secretary and the Secretary of the Treasury shall not be liable for the expenditure or investment of any amounts withdrawn from the Fund by the Tribe under subsection (f) or (g).

(j) No Per Capita Distributions.--No portion of the Fund shall be distributed on a per capita basis to any member of the Tribe.

(k) Transfer of Funds.--On request by the Tribe, the Secretary may transfer amounts from an account described in paragraph (1), (2), (4), (5), or (7) of subsection (b) to any other account the Secretary determines to be appropriate.

#### SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization of Appropriations.--Subject to subsection (b), there is authorized to be appropriated to the Secretary--

(1) for deposit in the Administration and Energy Account, \$28,900,000;

(2) for deposit in the OM&R Account, \$27,760,000;

(3) for deposit in the St. Mary Account, \$27,800,000;

(4) for deposit in the MR&I System Account, \$76,200,000;

(5) for deposit in the Blackfeet Water, Storage, and Development Projects Account, \$178,300,000;

(6) for deposit in the Blackfeet Irrigation Project Deferred Maintenance, Four Horns Dam Safety, and Rehabilitation and Enhancement of the Four Horns Feeder Canal, Dam, and Reservoir Improvements Account, \$54,900,000, of which--

(A) \$40,900,000 shall be made available for activities and projects under section 10(c); and

(B) \$14,000,000 shall be made available for

activities and projects under section 10(d)(2); and  
(7) for deposit in the St. Mary/Milk Water Management and  
Activities Account, \$26,700,000, of which--

(A) \$20,700,000 shall be allocated for the  
Swiftcurrent Creek Bank Stabilization Project; and

(B) \$500,000 shall be allocated to carry out  
section 5.

(b) Cost Indexing.--All amounts authorized to be appropriated pursuant to paragraphs (2), (4), (5), (6), and (7) of subsection (a) shall be adjusted as necessary to reflect the changes since April 2010, in the construction costs indices applicable to the construction, maintenance, rehabilitation, or improvement of the projects and activities described in this Act as of the date of completion of the activity, construction, maintenance, rehabilitation, or improvement of the relevant project or activity.

#### SEC. 17. WATER RIGHTS IN LEWIS AND CLARK NATIONAL FOREST AND GLACIER NATIONAL PARK.

The instream flow water rights of the Tribe on land within the Lewis and Clark National Forest and Glacier National Park are confirmed and shall be as set forth in the document entitled ``Stipulation to Address Claims by and for the Benefit of the Blackfeet Indian Tribe to Water Rights in the Lewis & Clark National Forest and Glacier National Park'' and [dated \_\_\_\_\_], and as finally decreed by the Montana Water Court, subject to section 18(e).

#### SEC. 18. WAIVERS AND RELEASES OF CLAIMS.

(a) In General.--

(1) Waivers and releases of claims by tribe and united states acting in its capacity as trustee for tribe.--Subject to the retention of rights set forth in subsection (c), as consideration for recognition of the Tribal water rights and other benefits as set forth in the Compact and this Act, the Tribe, on behalf of itself and the members of the Tribe (but not tribal members in their capacities as allottees), and the United States, acting as trustee for the Tribe and the members of the Tribe (but not tribal members in their capacities as allottees), shall execute a waiver and release of all claims for water rights within the State that the Tribe, or the United States acting as trustee for the Tribe, asserted or could have asserted in any proceeding, including a State stream adjudication, on or before the enforceability date, except to the extent that such rights are recognized in the Compact and this Act.

(2) Waiver and release of claims by the united states acting in its capacity as trustee for allottees.--Subject to the retention of claims set forth in subsection (c), as consideration for recognition of the Tribal water rights and other benefits as set forth in the Compact and this Act, the United States, acting as trustee for allottees, may execute a waiver and release of all claims for water rights within the Reservation that the United States, acting as trustee for the allottees, asserted or could have asserted in any proceeding,

including a State stream adjudication, prior to and including the enforceability date, except to the extent that such rights are recognized in the Compact and this Act.

(3) Waiver and release of claims by the tribe against united states.--Subject to the retention of rights set forth in subsection (c), the Tribe, on behalf of itself and the members of the Tribe (but not tribal members in their capacities as allottees), shall execute a waiver and release of--

(A) all claims against the United States (including the agencies and employees of the United States) relating to claims for water rights within the State that the United States, acting as trustee for the Tribe, asserted or could have asserted in any proceeding, including a stream adjudication in the State, except to the extent that such rights are recognized as Tribal water rights under this Act;

(B) all claims against the United States (including the agencies and employees of the United States) relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion, or taking of water, or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) within the State that first accrued at any time prior to and including the enforceability date;

(C) all claims against the United States (including the agencies and employees of the United States) relating to the failure to establish or provide a municipal rural or industrial water delivery system on the Reservation;

(D) all claims against the United States (including the agencies and employees of the United States) relating to deferral of maintenance for the Blackfeet Irrigation Project or the failure to provide dam safety improvements for Four Horns Reservoir;

(E) all claims against the United States (including the agencies and employees of the United States) relating to the litigation of claims relating to the water rights of the Tribe in the State;

(F) all claims against the United States (including the agencies and employees of the United States) relating to the negotiation, execution, or the adoption of the Compact (including exhibits) and this Act;

(G) all claims against the United States (including the agencies and employees of the United States) reserved in subsections (b) through (d) of section 6 of the settlement for the case styled Blackfeet Tribe v. United States, No. 02-127L (Fed. Cl. 2012);

(H) all claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the

enforceability date arising from the taking or acquisition of the land of the Tribe or resources for the construction of the features of the St. Mary Unit of the Milk River Project;

(I) all claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the enforceability date relating to the construction, operation, and maintenance of the St. Mary Unit of the Milk River Project including Sherburne Dam, St. Mary Diversion Dam, St. Mary Canal and associated infrastructure and the management of flows in Swiftcurrent Creek, including the diversion of Swiftcurrent Creek into Lower St. Mary Lake;

(J) all claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the enforceability date relating to the construction, operation, and management of Lower Two Medicine Dam and Reservoir and Four Horns Dam and Reservoir; and

(K) all claims against the United States (including the agencies and employees of the United States) that first accrued at any time on or before the enforceability date relating to the allocation of waters of the Milk River and St. Mary River (including tributaries) between the United States and Canada pursuant to the International Boundary Waters Treaty of 1909 (36 Stat. 2448).

(b) Effectiveness of Waivers and Releases.--The waivers under subsection (a) shall take effect on the enforceability date.

(c) Reservation of Rights and Retention of Claims.--Notwithstanding the waivers and releases authorized under this Act, the Tribe, on behalf of itself and the members of the Tribe, and the United States, acting as trustee for the Tribe and allottees, retain--

(1) all claims for enforcement of the Compact, any final decree, or this Act;

(2) all rights to use and protect water rights acquired after the date of enactment of this Act;

(3) all claims relating to activities affecting the quality of water, including any claims the Tribe may have under--

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including damages to natural resources;

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly referred to as the ``Clean Water Act''); and

(D) any regulations implementing the Acts described in subparagraphs (A), (B), and (C);

(4) all claims relating to damages, losses, or injuries to land or natural resources that are not due to loss of water or water rights (including hunting, fishing, gathering, or cultural rights);

(5) all claims to title to land, including title to land as

a result of the movement of water bodies;

(6) all claims relating to failure to make productive use of any land created by the movement of water bodies to which the Tribe has claimed title; and

(7) all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Act or the Compact.

(d) Effect of Compact and Act.--Nothing in the Compact or this Act--

(1) affects the ability of the United States, acting as a sovereign, to take actions authorized by law, including any laws relating to health, safety, or the environment, including--

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly referred to as the ``Clean Water Act''); and

(D) any regulations implementing the Acts described in subparagraphs (A), (B), and (C);

(2) affects the ability of the United States to act as trustee for any other Indian tribe or allottee of any other Indian tribe;

(3) confers jurisdiction on any State court--

(A) to interpret Federal law regarding health, safety, or the environment;

(B) to determine the duties of the United States or other parties pursuant to Federal law regarding health, safety, or the environment; or

(C) to conduct judicial review of Federal agency action;

(4) waives any claim of a member of the Tribe in an individual capacity that does not derive from a right of the Tribe;

(5) revives any claim waived by the Tribe in the case styled Blackfeet Tribe v. United States, No. 02-127L (Fed. Cl. 2012); or

(6) revives any claim released by an allottee or a tribal member in the settlement for the case styled Cobell v. Salazar, No. 1:96CV01285-JR (D.D.C. 2012).

(e) Enforceability Date.--The enforceability date shall be the date on which the Secretary publishes in the Federal Register a statement of findings that--

(1) (A) the Montana Water Court has issued a final judgment and decree approving the Compact; or

(B) if the Montana Water Court is found to lack jurisdiction, the United States district court has approved the Compact as a consent decree and the approval is final;

(2) all amounts authorized to be appropriated under section 16(a) have been appropriated;

(3) the State has appropriated and paid into an interest-bearing escrow account any payments due as of the date of

enactment of this Act to the Tribe under the Compact, the Birch Creek Agreement, and this Act;

(4) the State has appropriated and deposited into the Birch Creek Mitigation Fund \$14,000,000 to mitigate the impacts of the development of the tribal water right described in article III.C.1. of the Compact on the Birch Creek water supplies of the Pondera County Canal and Reservoir Company;

(5) (A) the Tribe has ratified the Compact by submitting this Act and the Compact to a vote by the tribal membership for approval or disapproval; and

(B) the Tribal membership has voted to approve this Act and the Compact by a majority of votes cast on the day of the vote, as certified by the Secretary and the Tribe;

(6) the Secretary has fulfilled the requirements of section 9(a); and

(7) the waivers and releases described in subsection (a) have been executed by the Tribe and the Secretary.

(f) Tolling of Claims.--

(1) In general.--Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the date on which the amounts made available to carry out this Act are transferred to the Secretary.

(2) Effect of subsection.--Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(g) Expiration.--If all appropriations authorized under this Act have not been made available to the Secretary by January 21, 2020, the waivers authorized in this section shall expire and be of no further force or effect.

(h) Voiding of Waivers.--If the waivers pursuant to this section are void under subsection (g)--

(1) the approval of the United States of the Compact under section 4 shall no longer be effective;

(2) any unexpended Federal funds appropriated or made available to carry out the activities authorized in this Act, together with any interest earned on those funds, and any water rights or contracts to use water and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized under this Act shall be returned to the Federal Government, unless otherwise agreed to by the Tribe and the United States and approved by Congress; and

(3) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (2), the United States shall be entitled to offset any Federal funds appropriated or made available to carry out the activities authorized under this Act that were expended or withdrawn, together with any interest accrued, against any claims against the United States relating to water rights in the State asserted by the Tribe or any users of the Tribal water rights or in any future settlement of the water rights of the Tribe or allottees.

SEC. 19. SATISFACTION OF CLAIMS.

(a) Tribal Claims.--The benefits realized by the Tribe under this Act shall be in complete replacement of, complete substitution for, and full satisfaction of all claims of the Tribe against the United States that are waived and released pursuant to section 18(a)(1).

(b) Allottee Claims.--The benefits realized by the allottees under this Act shall be in complete replacement of, in complete substitution for, and in full satisfaction of--

(1) all claims that are waived and released pursuant to section 18(a)(2); and

(2) any claims of the allottees against the United States that the allottees have or could have asserted that are similar in nature to any claim described in section 18(a)(2).

SEC. 20. MISCELLANEOUS PROVISIONS.

(a) Waiver of Sovereign Immunity.--Except as provided in subsections (a) through (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666), nothing in this Act waives the sovereign immunity of the United States.

(b) Other Tribes Not Adversely Affected.--Nothing in this Act quantifies or diminishes any land or water right, or any claim or entitlement to land or water, of an Indian tribe, band, or community other than the Tribe.

(c) Limitation on Claims for Reimbursement.--With respect to Indian-owned land located within the Reservation--

(1) the United States shall not submit against such land any claim for reimbursement of the cost to the United States of carrying out this Act or the Compact; and

(2) no assessment of such land shall be made regarding that cost.

(d) Limitation on Liability of the United States.--The United States has no obligation--

(1) to monitor, administer, or account for, in any manner, any funds provided to the Tribe by any party to the Compact; or

(2) to review or approve any expenditure of those funds.

(e) Effect on Current Law.--Nothing in this section affects any provision of law (including regulations) in effect on the day before the date of enactment of this Act with respect to pre-enforcement review of any Federal environmental enforcement action.

(f) Effect on Reclamation Law.--The activities carried out by the Commissioner of Reclamation under this Act shall not establish a precedent or impact the authority provided under any other provision of Federal reclamation law, including--

(1) the Reclamation Rural Water Supply Act of 2006 (43 U.S.C. 2401 et seq.); and

(2) the Omnibus Public Land Management Act of 2009 (Public Law 111-11; 123 Stat. 991).

(g) Irrigation Efficiency in Upper Birch Creek Drainage.--Any activity carried out by the Tribe in the Upper Birch Creek Drainage (as defined in article II.50 of the Compact) using funds made available to carry out this Act shall achieve an irrigation efficiency of not less than 50 percent.

(h) Birch Creek Agreement Approval.--The Birch Creek Agreement entered into between the Tribe and the State on January 31, 2008 (as amended on February 13, 2009) (including any amendments executed in accordance with this Act to make the Agreement consistent with this Act), is approved to the extent that the Birch Creek Agreement requires approval under section 2116 of the Revised Statutes (25 U.S.C. 177).

(i) Limitation on Effect.--Nothing in this Act or the Compact establishes or alters the quantity of allocation or apportionment of water between or among States.

#### SEC. 21. REPEAL ON FAILURE TO MEET ENFORCEABILITY DATE.

If the Secretary fails to publish a statement of findings under section 18(e) by not later than January 21, 2025, or such alternative later date as is agreed to by the Tribe and the Secretary, after reasonable notice to the State, as applicable--

(1) this Act is repealed effective on the later of--

(A) January 22, 2025; and

(B) the day after such alternative later date as is agreed to by the Tribe and the Secretary;

(2) any action taken by the Secretary and any contract or agreement entered into pursuant to this Act shall be void;

(3) any amounts made available under section 16 that remain unexpended, shall immediately revert to the general fund of the Treasury;

(4) any amounts made available under section 16, together with any interest on those amounts, shall immediately revert to the general fund of the Treasury; and

(5) the United States shall be entitled to offset against any claims asserted by the Tribe against the United States relating to water rights--

(A) any funds expended or withdrawn from the amounts made available pursuant to this Act; and

(B) any funds made available to carry out the activities authorized under this Act from other authorized sources.

#### SEC. 22. ANTIDEFICIENCY.

The United States shall not be liable for any failure to carry out any obligation or activity authorized by this Act (including any obligation or activity under the Compact) if--

(1) adequate appropriations are not provided expressly by Congress to carry out the purposes of this Act; or

(2) there are not enough monies available to carry out the purposes of this Act in the Reclamation Water Settlements Fund established under section 10501(a) of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 407(a)).

#### SEC. 23. OFFSETS.

If insufficient funds are appropriated to carry out this Act for a fiscal year, the Secretary may use to carry out this Act such amounts as are necessary from other amounts available to the Secretary for that fiscal year that are not otherwise obligated.



**State-Tribal Water Rights Settlements Update**

Michelle Bushman

Western States Water Council

January 2016

*Sources of information for this update include information from members of the Western States Water Council, status updates and other documents in court cases, testimony and reports before Congress and State Legislatures, the Department of the Interior's list of Federal Indian Water Rights Negotiating Teams, summaries from State water rights websites and the Native American Rights Fund (NARF), with supplemental information from some local news articles.*

**Arizona**

*Note: The Hualapai settlement update is omitted here due to coverage elsewhere in the conference.*

Navajo Nation/Hopi Tribe/San Juan Southern Paiute Tribe

The Tribes and Nation are part of the Little Colorado River adjudication, started in 1978, *In re: The General Adjudication of all Right to use of water in the Little Colorado River System and Source* (Superior Ct. No. 6417). Settlement negotiations started as early as 1995. In 2008, the preliminary Hydrographic Survey Report (HSR) for the Hopi Reservation was released by the Arizona Department of Water Resources (ADWR). In 2010, the Court delayed the litigation schedule for substantive progress toward a settlement agreement. The draft settlement was approved in 2010, and after some further modifications, the settlement was introduced for Congressional approval in 2012 but did not pass. In the meantime, the parties agreed that ADWR should continue working on the final Hopi HSR, and in 2011 various legal matters were briefed. Objections to the Hopi HSR were filed in 2013, and the Court requested a final HSR by December 2015.

San Carlos Apache Tribe

The United States obtained water entitlements for the Tribe with the Globe Equity Act of 1935. The full extent and nature of the Tribe's rights were uncertain, however, and the Tribe's claims became part of the *General Adjudication of the Gila River System and Source*. The Tribe entered into a Central Arizona Project (CAP) contract for water from the Black River in 1980. The CAP allocation of water and Tribe's ability to lease the water off-reservation was modified under the 1992 Water Rights Settlement Act and subsequent 1999 Settlement Agreement.

The 2004 Arizona Water Rights Settlement Act (Pub.L. 108-451) included a placeholder to preserve the Tribe's water rights claims while settlement negotiations continue on remaining claims, and appropriated funds for technical and legal efforts toward settlement negotiations, as well as funds to complete the San Carlos Irrigation Project started in the 1930s.

In 2006, the Tribe argued to the Arizona Supreme Court that its reserved water rights should not be limited by the 1935 Globe Equity Act, but the Court disagreed (Gila VI, 127 P.3d 882).

Since at least 2005, the Tribe has been involved in the San Pedro River Watershed consolidated cases (W1-11-1174), objecting to half of the United States' thirty Public Water Reserve No. 107 claims to springs located either on or near the southwest boundary of the reservation. Part of the problem is that the location of the reservation boundary is disputed between the Tribe and the United States. By 2014, the location of the springs and their direction of flow had been determined, and the Tribe and the United States were working on a settlement agreement. As of November 2015, no settlement had been reached. The Special Master ordered the parties to provide a status update on the settlement by February 2016, and ordered the Tribe to file a motion on any remaining legal issues by March 2016.

In 2013, the Tribe and the Bureau of Reclamation signed a Memorandum of Understanding (MOU) that gives the Tribe access to the Black River and authorizes negotiations for a contract to deliver decreed and non-decreed water from the Black River to the reservation and adjoining areas.

#### Tohono O'odham Nation

Parts of the Nation's water rights settlements were resolved in the 1982 Southern Arizona Water Rights Settlement Act and Title III of the 2004 Arizona Water Settlements Act. The Nation still has unresolved claims in the Sif Oidak District. The Nation approved a settlement proposal in 2009, and in 2011, the Department of the Interior appointed a Federal Indian Water Rights Negotiating Team to assist in settling the Nation's water right claims.

#### Tonto Apache Tribe

In 1980, the Tonto Apache Tribe signed a water delivery contract with CAP, but the location of the reservation made it physically impossible to divert the Tribe's allocation until the nearby town of Payson entered an agreement with the Salt River Project (SRP) to bring the water closer. The Tribe's allocation of CAP water is credited against its federally reserved water rights once they are quantified. In 2014, the Tonto Apache Tribe's request for a Federal Water Rights Negotiation Team, supported by the nearby Town of Payson, was granted, and negotiations continued through 2014 and 2015.

#### Yavapai-Apache Nation of the Camp Verde Indian Reservation

The Nation has worked toward the negotiation and settlement of its federal water rights for over 40 years. The Nation is part of the statewide adjudication (*In Re the General Adjudication of all rights to use water in the Gila River System and Sources.*) In 2004, the Nation was allocated 1,500 acre-feet of CAP as part of the Arizona Water Settlements Act (Pub. L. 108-451). The ongoing request for a Federal Water Negotiating Team began in the 1980s and was finally granted in 2010. Negotiations stalled in 2011 over key provisions of the agreement, and in 2013 the Nation was working with the Department of the Interior to secure funding through the technical assistance funds to ensure that the negotiations would continue.

In 2015, the Verde Ditch Company (VDC) and SRP sought to establish a procedure through an MOU for some VDC shareholders to confirm which water uses from the Verde Ditch are historic and to categorize types of water users. While the procedure is internal, qualitative and not intended to replace the statewide adjudication of claims and their priority dates, quantities, purpose or season of use, the MOU excluded the Yavapai-Apache Nation claims and uses, despite the Nation's status as an irrigator and shareholder in the VDC. The Nation sought modifications to the MOU that would protect the rights of individual shareholders and provide a fair and transparent process, and important improvements were made. The VDC operates under a 1909 *Hance v. Arnold* case that governs the operations of the Verde Ditch, requiring Court approval of any subsequent modifications. When the VDC and SRP sought Court approval of the MOU in August 2015, the United States objected, arguing that the water rights were already before the statewide adjudication, and that *Hance v. Arnold* Court did not have jurisdiction. The Court disagreed, and directed the SRP and VDC to proceed in drafting their new MOU.

As of December 2015, the Nation continues to pursue the negotiation of its federal water rights and the adjudication of the Verde River.

## **California**

### *Cahuilla Band of Mission Indians/Pechanga Band of Luiseno Mission Indians/Ramona Band*

In 1951, *United States v. Fallbrook* initiated the litigation of water rights in the Santa Margarita River Watershed, including the rights of the Pechanga, Ramona and Cahuilla tribes. The tribal federally reserve water rights were acknowledged but were left unquantified. In efforts to avoid further litigation, the Pechanga worked collaboratively with their neighbors to develop mutual private agreements to share and manage the limited water resources. These efforts resulted in the Groundwater Management Agreement in 2006 and the Recycled Water Agreement in 2007; however, neither of the agreements addressed the scope of the Pechanga Band's overall water rights to the Santa Margarita River Watershed

In 2006, the Pechanga Band sought settlement of the water rights claims and requested a Federal Water Rights Negotiation Team, which was granted in 2008. In the meantime, the Ramona and Cahuilla Bands sought to intervene in the *Fallbrook* case to quantify their respective water rights in the Santa Margarita River Watershed.

Negotiations began in 2008, and a draft settlement was completed in 2009. The Pechanga Band of Luiseno Mission Indians Water Rights Settlement Act was introduced in Congress in 2009, 2010, 2013 and again in 2015 (S. 1983).

### *Tule River Indian Tribe*

The Tribe began efforts to secure its water rights in 1971. In 2007, the Tribe successfully settled its water rights in an agreement with water users on the South Fork Tule River, quantifying their reserved rights while allowing non-tribal neighbors to continue their historic uses. Since then, the Tribe has sought Congressional ratification of the settlement agreement and funding for

infrastructure and reservoirs on the Tule Reservation to enable the Tribe to access the water. Bills introduced in 2007, 2008 and 2009 did not pass. In 2013, the Water Settlement Technical Report was completed, an important step toward implementation and ratification of the settlement agreement. As of December 2015, the Tribe continued to negotiate with the United States to reach agreement on an infrastructure plan and associated costs.

#### Agua Caliente Band of Cahuilla Indians

After more than 20 years of efforts to resolve concerns over the quality and quantity of water in the aquifer underlying the Coachella Valley, the Agua Caliente Band of Cahuilla Indians filed a lawsuit in May 2013, *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.* (U.S. District Court, Central District of California, EDCV 13-883). The case asks the Court to declare and quantify the existence of the tribe's water rights as the senior rights in the Coachella Valley under federal law. In March 2015, the Court ruled on summary judgment that the Agua Caliente Band of Cahuilla Indians has a reserved right to water, and groundwater is a water source available to fulfill that right. The Court denied the Tribe's claim for aboriginal title to groundwater.

The water districts filed a petition with the 9th Circuit for interlocutory review of the portion of the District Court's order addressing the inclusion of groundwater in the Tribe's reserved right to water. The parties are briefing the issue during the Fall and Winter of 2015-16, and oral argument will likely take place in mid-2016. The parties are determining how Phase 2 of the case, which deals with issues such as water quality and what standards will be used to quantify the tribe's rights, will proceed while the 9th Circuit review is pending.

### **Idaho**

#### Coeur d'Alene

In 2008, Idaho initiated the Coeur d'Alene-Spokane River Basin Adjudication (Case No. 49576). The United States filed 353 federal reserved water right claims on behalf of the Coeur d'Alene Tribe, many of which are aimed at maintaining the current level of Lake Coeur d'Alene. In 2014, the Idaho Legislature passed a resolution (HCR062) in support of negotiation efforts (rather than prolonged litigation) to settle the Tribe's claims. In August 2015, the Coeur d'Alene Tribe, State of Idaho, United States and other stakeholders lodged an MOA with the Coeur d'Alene-Spokane River Basin Adjudication (CSRBA) outlining the framework for pursuing settlement discussions regarding the Tribal claims.

### **Kansas**

#### Kickapoo Tribe

In 1994, the Kickapoo Tribe entered into an agreement with the Nehama Brown Watershed Joint District No. 7 (Watershed District), the *Watershed Plan and Environmental Impact Statement for the Upper Delaware and Tributaries Watershed*. Under the agreement, the parties planned to jointly develop a reservoir project and construction of multiple dams that would address the

Tribe's water rights and needs, as well as improve soil conservation and flood prevention. The reservoir has not been built, and water resources in the watershed continued to be developed by the non-Indian community. In 2006, the Tribe filed suit in the U.S. District Court of Kansas, *Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas v. Nehama Brown Watershed Joint District No. 7* (Case No. 06-cv-2248). The Tribe's claims focused in part on contract interpretation, and whether the contract unambiguously required the Watershed District to exercise its power of eminent domain to condemn non-Indian-owned land for the reservoir project that the Tribe was unable to acquire on its own.

In 2007, the parties took a break from litigation to explore settlement possibilities, where the Tribe's senior reserved water rights were acknowledged. The parties discussed "the amount of water needed to satisfy the Tribe's rights, the source of that water, and the means to effectively collect, store and deliver that water." In 2010, the State of Kansas and the Tribe were able to draft a Condemnation Agreement for the water storage project, but the Watershed District rejected the agreement in 2011. The Federal Court found in favor of Watershed District regarding the interpretation of the contract. The Tribe has purchased approximately 80% of the land rights needed for the project, and is evaluating an alternative means to secure the remaining land.

The case has been repeatedly stayed since December 2011, extended for six-month intervals while the parties negotiate a settlement, which included discussions of the Tribe's federally reserved water rights. As of November 2015, the parties reported continued progress toward reaching an agreement among attorneys. The parties also provided the Court with copies of documents that address Congressional and Executive branch requirements regarding Indian water settlements.

## **Montana**

### *Blackfeet*

The Blackfeet Tribe, the United States and the State of Montana entered into a water rights compact after 20 years of negotiations. The compact was approved by the Montana Legislature in 2009. The compact will provide water and economic development for the Blackfeet Tribe while protecting the rights of water users locally and downstream on the Milk River. Legislation to ratify the compact was introduced in Congress in 2010, 2011, and 2013. The 2015 iteration was introduced in the Senate in April as S.1125, and is scheduled for markup in the Senate Committee on Indian Affairs in January 2016.

### *Confederated Salish and Kootenai Tribes*

The Confederated Salish and Kootenai Tribes, the United States and the State of Montana entered into a water rights compact after nearly 15 years of negotiations. In 2013, the Montana Legislature killed in committee a bill to approve the Compact, but after renegotiations of key provisions, relating to irrigation use and instream flows on the Reservation, the Montana Legislature approved a revised compact during its 2015 session. The next step will be to seek Congressional approval.

### Gros Ventre and Assiniboine Tribes

The Gros Ventre and Assiniboine tribes share the Fort Belknap Indian Reservation. A compact between Montana and the Gros Ventre and Assiniboine tribes of the Fort Belknap Indian Reservation was ratified by the Montana Legislature in 2001. The compact protects water rights for domestic use, livestock and irrigation use, as well as emergency use for public health and safety. Negotiations continue on a federal bill, which must be approved by Congress. A bill was introduced in Congress in 2011 and again in 2013, but no action was taken.

## **Nevada**

### Walker River Paiute Tribe/Bridgeport Paiute Indian Colony/Yerington Paiute Tribe

The Federal Court litigation over rights to and administration of the Walker River system began in 1924, when the United States sued the Walker River Irrigation District (WRID) and others to quiet title to a federal reserved water right claim for the Walker River Paiute Reservation, after upstream users prevented water from reaching the Reservation. *United States v. Walker River Irrigation District*, (U.S. District Court for Nevada). Following trial, the Court entered a judicial Decree in 1936, modified in 1940, which quantified the Tribe's water rights. In 1992, the parties requested the Court to address additional claims to water from the Walker River System under its continuing jurisdiction to administer the Decree. The Walker River Paiute Tribe's claims include the right to water from a reservoir built on the reservation in the late 1930s, federal reserved water rights for lands restored or added to the tribe after 1936, and reserved rights to groundwater, none of which was addressed by the previous Decree. The United States made additional claims on behalf of the Bridgeport Paiute Indian Colony and the Yerington Paiute Tribe (among other military, BLM and National Forest federal claims). A Federal Water Rights Negotiation Team was assigned to the three Tribes in 1999.

In 2003, the parties engaged in Court-ordered mediation while litigation was stayed. By 2006, the parties had not agreed on any of the basic issues, and the Walker River Paiute Tribe withdrew from the mediation process. The stay was lifted and litigation continued forward. In June 2010, the Tribe began discussions with the States of Nevada and California regarding possible settlement options to resolve the Tribe's pending claims that may not have been explored during the past mediation efforts. A number of circumstances had changed since 2006 that led the Tribe to believe a settlement might be possible.

In May 2015, the Court (Case No. 3:73-cv-127, In Equity No. C-125-B) granted a motion to dismiss the claims of the Walker River Paiute Tribe and the United States (including the Bridgeport Paiute Indian Colony and the Yerington Paiute Tribe), holding that the adjudication and 1940 Decree precluded an expansion of water rights in the Walker River or its branches or tributaries with the same senior priority dates. The Walker River Paiute Tribe and the United States appealed the decision to the 9th Circuit (15-16479), and briefings are due in March 2016.

## **New Mexico**

### *Pueblo of Jemez/Pueblo of Zia/ Pueblo of Santa Ana*

Adjudication of the Jemez River System began in 1983 with *United States v. Abousleman, et al.* (No. 83cv1041). The Special Master issued a report and recommended rulings in 1990 and again in 1995. The Court entered a partial final decree in 2000 on the non-Pueblo, non-federal water rights in the Jemez River System. The parties briefed their positions with regard to the Indian water rights claims in 2004. The parties then entered settlement negotiations, reaching Settlement Principles in 2008 to establish a framework for final resolution of the Pueblos' water rights claims. Negotiations were unsuccessful, and in 2012 the parties resumed litigation. The parties briefed various threshold legal issues in 2013 and 2014. Nothing substantive has been filed in the Court proceeding in 2015.

### *Pueblo of Acoma/ Pueblo of Laguna/Navajo Nation*

The Rio San Jose adjudication proceeding began in 1983, *New Mexico v. Kerr-McGee Corporation* (New Mexico 13th Judicial District, CB-83-190-CV, and CB-83-220-CV (Consolidated)). Most recently, six-month stays from litigation were sought and granted for purposes of settlement negotiations in early 2014 and 2015. In May 2015, the United States, the Pueblos of Acoma and Laguna, and the State of New Mexico engaged a retired judge as a mediator and, after extensive mediation sessions and meetings in between sessions, the parties made substantial progress toward a comprehensive settlement agreement. In October 2015, the United States, the Pueblos of Acoma and Laguna, and the State of New Mexico filed a joint motion to extend litigation deadlines by six months, believing that it is feasible to reach terms of agreement within four to six months. The Court has not yet ruled on the opposed motion.

### *Zuni Tribe/Ramah Navajo Nation*

The Zuni River adjudication, *United States [now New Mexico] v. A&R Productions, et al.* (US Dist. Ct. No 01-cv-0072) was filed in 2001. Most of the non-tribal claims in the adjudication have been resolved. In 2007, the tribal claims became part of sub-proceedings. In 2013, the parties requested a stay of the case to explore settlement negotiations. In 2014, the United States, Zuni, Navajo and the State of New Mexico completed a *Negotiation Process and Confidentiality Agreement for Settlement Discussions Concerning the Zuni River Cases in New Mexico*. They also worked on a hydrologic model, depositions, and technical reports relevant to the sub-proceeding. The Zuni Tribe worked on drafting a settlement proposal it planned to present to the other parties by the end of 2015.

## **Oklahoma**

### *Choctaw/Chickasaw*

In 2011, following a decade of negotiation relating to Oklahoma's water plan, the Chickasaw and Choctaw Nations filed a lawsuit in the U.S. District Court for the Western District of Oklahoma (*Chickasaw Nation et al. v. Fallin et al.*, Case 5:11-cv-927) against the State of Oklahoma and

Oklahoma City over management of southeastern Oklahoma surface water, including the removal of water from Sardis Lake to be pumped through a pipeline to Oklahoma City.

The Tribes in Oklahoma do not have reservations, since the lands were allotted to individual tribal members, owned in fee simple by the Tribal members. In some cases, land allotments have been transferred to non-Indian owners. However, there are multiple treaties between the Tribes and the U.S. Government that may impact the extent of the Tribes' rights to water.

In 2012, the parties mediated for a year, creating a panel of interested stakeholders and laying the foundation for settlement negotiations. Negotiations commenced in 2013 and continue to progress, with periodic updates to the Court while litigation is stayed.

## **Oregon**

### *Confederated Tribes of the Umatilla Indian Reservation*

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have worked with the State of Oregon, local irrigators and the Bureau of Reclamation over many years to improve water management in the Umatilla Basin. The community collaboration produced the successful 1988 Umatilla Basin Project Act (Pub. L. 100-557), and allowed Tribal input into Oregon's Integrated Water Resources Strategy, completed in 2012. A Federal Water Rights Negotiating Team was assigned to the CTUIR in September 2012, beginning the formal negotiations of the federal reserved water rights, building on the relationships already developed between communities. In 2013, a technical team for the Tribe began developing a water resources modeling tool, using water data from Oregon and U.S. Geological Survey. The Oregon Water Resources Department began analyzing the model in 2014. The CTUIR sought additional FY2016 Budget funding support from Congress in March 2015 for the technical and legal aspects of the water rights negotiations so that the current progress is not delayed.

### *Klamath Tribes*

The 40-year Klamath Basin Adjudication has proceeded through the Oregon process to quantify the relative rights of the Klamath River Basin. In an effort to settle portions of that litigation the Klamath water settlement agreements attempt to resolve complex water and management issues between members of the United States, Klamath Tribes, Yurok Tribe, Karuk Tribe, States of Oregon and California, Upper and Lower Basin water users, NGOs and Power stakeholders. The Klamath Basin Restoration Agreement (KBRA) and Klamath Hydroelectric Settlement Agreement (KHSA) were reached in 2010, and the Upper Klamath Basin Comprehensive Agreement (UKBCA) was signed in April 2014. Implementation meetings began immediately and have continued through 2015 while seeking Congressional approval of the suite of Agreements (S.133). As contemplated in the UKBCA, the Klamath Tribes participated in the rules advisory committee formed by the Oregon Water Resources Department, to assist in developing rules for the management of groundwater for the benefit of senior water rights holders. The KBRA, a regionally-brokered fishery restoration and water management deal, terminated on December 31, 2015, due to a lack of federal authorizing legislation. The KHSA and the UKBCA remain in effect but are interdependent with the recently terminated KBRA.

The parties will confer to determine the fate of the two remaining agreements and decide whether the goals of the KBRA can be achieved in some fashion.

## **Utah**

### *Navajo Nation*

The Navajo Nation and the State of Utah executed a Memorandum of Agreement in 2003 to resolve the Nation's reserved water rights claims in Utah. Within a few years, they formulated basic points to resolve the Nation's claims. They also began requesting federal participation in the negotiation process. A Federal Water Rights Negotiation Team was assigned in 2013. In March 2015, Utah Governor Gary Herbert signed a legislative resolution to support the negotiated settlement of the federal reserved water rights claims. The Federal Water Rights Negotiation Team is now reviewing the proposed settlement. The settlement is waiting to be presented to Congress for approval and authorization.

## **Washington**

### *Lummi Nation/Nooksack Indian Tribe*

In 1995, a Federal Water Rights Negotiation Team was appointed to help resolve disputes over groundwater. Litigation was filed in 2001 after negotiations stalled. A negotiated settlement was approved by the District Court in 2007. An appeal to the 9<sup>th</sup> Circuit was resolved in 2009, and a settlement over groundwater use for the Lummi Peninsula part of the reservation is currently being implemented. Conflict remains over water for the remainder of the reservation.

The Nation and Tribe have been involved in addressing conflicts over water allocation in the Nooksack River watershed and participating in the Water Resource Inventory Area 1 (WRIA 1) Watershed Management Project. The parties hoped that collaboration in the WRIA 1 project, with its data collection and technical analyses, would resolve water resource concerns without litigation. The Lummi Nation and Nooksack Indian Tribe withdrew from settlement negotiations in 2010, sending a letter to the U.S. Department of the Interior in 2011 to request litigation to quantify the tribal instream flow rights. The United States appointed a litigation team and hired technical experts.

In 2013, the parties held a Water Supply Symposium in an effort to revive WRIA 1 efforts, and settlement negotiations have resumed. In June 2015, the Lummi Nation proposed a "conceptual settlement" to community stakeholders, seeking feedback.

## Tab N – Legislation and Litigation Update

**LEGISLATION AND LITIGATION UPDATE**  
**179<sup>TH</sup> WSWC MEETINGS**  
**WASHINGTON, D.C. – MARCH 22, 2015**

Compiled By:  
**Michelle Bushman**  
**WSWC Legal Counsel**  
[mbushman@wswc.utah.gov](mailto:mbushman@wswc.utah.gov)

*This summary describes developments regarding notable legislation and litigation that pertain to WGA/WSWC policies or are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of the 114<sup>th</sup> Congress. This update is current as of March 10, 2016, and the legislative portion is organized in reverse chronological order according to bill number. For some bills, this document uses modified versions of summaries prepared by the Congressional Research Service.*

**NOTABLE LEGISLATION**

| <b>Bill Number(s)</b> | <b>Summary</b>   | <b>Dates/Status</b>  | <b>Sponsor(s)</b>   |
|-----------------------|--|--|---|
| H.R. 4653             | <p><b>Issue – SRFs</b></p> <p><b>Title - Assistance, Quality, and Affordability Act</b><br/>           To amend the Safe Drinking Water Act to increase assistance for States, water systems, and disadvantaged communities; to encourage good financial and environmental management of water systems; to strengthen the Environmental Protection Agency’s ability to enforce the requirements of the Act</p> <p>The bill would amend the Safe Drinking Water Act to increase assistance for States, water systems, and disadvantaged communities, and would reauthorize EPA’s Drinking Water State Revolving Fund with funding for states at \$3.1B for FY2017, increasing to \$5.5B in FY2021, to offer low-interest loans to replace crumbling infrastructure. The bill would encourage good financial and environmental management of water systems, and strengthen the EPA’s ability to enforce the requirements of the Act. The SRF authorization expired in 2003, but Congress has continued to fund the program, appropriating \$863M in last year’s spending bill. The FY2017 Budget requests \$1.02B (\$2B for both Clean Water and Drinking Water SRFs.)</p> | 2/29/15: H.R. 4653 introduced in the House and referred to the Committee on Energy and Commerce  | Rep. Paul Tonko (D-NY) introduced H.R. 4653 with 15 Democratic co-sponsors                      |
| S. 1983               | <p><b>Issue - Tribal Water Rights</b></p> <p><b>Title - Pechanga Band of Luiseno Mission Indians Water Rights Settlement Act</b><br/>           Would authorize the Pechanga Settlement Agreement, entered into by the Pechanga Band of Luiseno Mission Indians, the Rancho California Water District (RCWD), and the United States, and confirm a Tribal Water Right held in trust by the U.S. on behalf of the Band and its allottees. The bill would authorize allottees to lease their lands together with any water right. Requires the Band to enact a Pechanga Water Code that governs the storage, recovery, and use of the Tribal Water Right, subject to</p>   | <p>8/5/15: S. 1983 introduced in the Senate and referred to the Committee on Indian Affairs</p> <p>2/3/16: Committee on Indian Affairs approved without amendment.</p> | Senator Barbara Boxer (D-CA) introduced S. 1983 with co-sponsor Senator Dianne Feinstein (D-CA) |

|                   |   |  |   |
|-------------------|---|--|---|
|                   | <p>the Department of the Interior's approval. Waives water rights claims within the Santa Margarita River Watershed and other specified claims against RCWD. Establishes the Pechanga Settlement Fund in the Treasury.</p> <p>The bill requests less than \$30M in congressional funding. If the bill passes the Senate, it will be (one of) the first to navigate House Natural Resources Chairman Rob Bishop's (R-UT) new system for tribal water rights settlements, enabling them to avoid the earmark designation, which has been an obstacle to the consideration of settlement legislation since the 2010 earmark ban.</p> |  |   |
| S. 1724/H.R. 3692 | <p><b>Issue: Water Quality</b></p> <p><b>Title: Lake Tahoe Restoration Act</b><br/>The bills would authorize funding for the management of forest resources, aquatic invasive species, and wildfire prevention for environmental restoration of Lake Tahoe.</p>   | <p>7/9/15: S.1724 introduced in the Senate and referred to Committee on Environment and Public Works</p> <p>10/6/15: H.R. 3692 introduced in the House and referred to various committees</p> <p>1/20/16: Senate Committee on Environmental and Public Works approved S. 1724 with an amendment.</p> | <p>Senator Dean Heller (R-NV) introduced S. 1724 with co-sponsor Senators Harry Reid (D-NV), Barbara Boxer (D-CA), and Dianne Feinstein (D-CA)</p> <p>Representative John Garamendi (D-CA) introduced H.R. 3692 with 6 California Democrat co-sponsors.</p> |
| H.R. 3382         | <p><b>Issue: Water Quality</b></p> <p><b>Title: Lake Tahoe Restoration Act</b><br/>The bill would authorize funding for the management of forest resources, aquatic invasive species, and wildfire prevention.</p>  | <p>7/29/15: H.R. 3382 introduced in the House and referred to several committees.</p> <p>10/7/15: Natural Resources Committee consideration and mark-up session</p> <p>10/8/15: Natural Resources Committee ordered the bill reported and passed with an amendment by a vote of</p>                  | <p>Rep. Tom McClintock (R-CA) introduced H.R. 3382 with co-sponsor Rep. Mark Amodei (R-NV)</p>  |

|  |   |   |  |
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|  |   | 21-16.<br><br>2/1/16: H. Rept 114-404 reported by the Natural Resources Committee.                      |  |
| S. 2533                                  | <p><b>Issue – California Drought</b></p> <p><b>Title – California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act:</b> Would provide short-term water supplies to drought-stricken California without taking water from fish protected by the Endangered Species Act (ESA), and would provide long-term investments in drought resiliency throughout the Western United States.</p> <p>Senator Feinstein stated: “Over the past several months we’ve gone through an extensive consultation process with state and federal agencies to ensure the bill’s short-term provisions allow both the state and federal water systems to work efficiently to store water during high flows while operating within environmental laws and biological opinions. We worked through every proposal or suggestion we received from these experts and all of them are incorporated into this version of the bill.... In addition to integrating proposals from state and federal agencies, the bill also reflects input from environmental groups, water districts, wildlife advocates and both Democrat[s] and Republican[s].”</p>  | 2/10/16: S. 2533 introduced in the Senate and referred to the Committee on Energy and Natural Resources | Senator Dianne Feinstein (D-CA) introduced S. 2533   |
| <u><a href="#">Draft Legislation</a></u> | <p><b>Issue - Good Samaritan/Abandoned Mine Cleanup</b></p> <p><b>Title: Good Samaritan Cleanup of Orphan Mines Act:</b> Would allow state and local governments and other groups to apply for Environmental Protection Act (EPA) permits to cleanup abandoned mine sites, with liability protection for inadvertent damage caused as long as they abide by the terms of the permit agreement, or failure to follow the permit results in only minor environmental impact. The bill would promote remediation of “historic mine residue,” defined to include “any acidic or otherwise polluted flow in surface water or groundwater that originates from, or is pooled and contained in, an inactive or abandoned mine site.”</p> <p>Senator Gardner said, “The aftermath of the Gold King Mine spill shed light on the need for remediation of orphan mines in Colorado and across the West. While there are willing and able Good Samaritans who wish to address safety and environmental concerns and improve water quality..., the EPA has done little to incentivize them and the fear of liability for meeting all federal standards during cleanup is too great.” Bennet added, “Part of that solution is to craft a Good Samaritan policy with the help of the state, local communities and their partners. This discussion draft is the result of ongoing conversations (about the need to clean up thousands of abandoned mines throughout the West) and will allow us to gather additional feedback to ensure we introduce a bill that offers proper protections...and helps pave a path to cleaning up these mines.” (See <a href="http://www.gardner.gov/newsroom">www.gardner.gov/newsroom</a>)</p> | 1/20/16: Draft legislation released   | Colorado Senators Cory Gardner (R) and Michael Bennet (D), and Representative Scott Tipton (R) |

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|           | Rep. Tipton stated, “It’s no secret that more needs to be done to clean up the contamination in abandoned mines that is leaking into our streams and rivers. This problem exceeds the EPA’s capabilities and know-how – the Gold King mine blowout is proof enough of that. However, by incentivizing cleanup at the local level through Good Samaritan groups that possess the technical knowledge and expertise desperately needed to get the job done, we can make significant strides toward protecting our environment from continued contamination.” (See: <a href="http://tipton.house.gov">http://tipton.house.gov</a> )   |  |   |
| H.R. 4323 | <p><b>Issue - Abandoned Mines</b></p> <p><b>Title - Abandoned Mine Reclamation Safety Act:</b> The bill would direct the Secretary of the Interior to regulate the reopening of abandoned mines for the sole purpose of cleanup or remediation, to ensure safety and environmental responsibility. It would also direct the creation of a program to identify and monitor surface and underground abandoned mine sites that pose the highest risk of inadvertent release of water into the environment.</p> <p>The bill incorporates the Bureau of Reclamation’s recommendations from the October 22 Technical Evaluation of the Gold King Mine Incident. (WSW #2163)</p>  | 1/6/12: H.R. 4323 introduced in the House and referred to the Committee on Natural Resources               | Rep. Raul Grijalva (D-AZ) introduced H.R. 4323  |
| H.R. 4220 | <p><b>Issue - Water Infrastructure/Tax Incentive</b></p> <p><b>Title - Water and Agriculture Tax Reform Act:</b> To facilitate water leasing and water transfers to promote conservation and efficiency. The bill would amend the Internal Revenue Code Section 501(c) to provide tax exemptions for mutual ditch or irrigation companies for any income received or accrued from the sale, lease, or exchanges of fee or other interests in real and personal property, including interests in water; from the sale or exchange of stock in any like organization or contract rights for the delivery or use of water; or from the subsequent investment of related proceeds.</p> <p>See related S.384 below.</p> | 12/10/15: H.R. 4220 introduced in the House, referred to the Committee on Ways and Means                   | Rep. Ken Buck introduced H.R. 4220 with co-sponsors Rep. Paul Gosar (R-AZ), Rob Bishop (R-UT), Cynthia Lummis (R-WY), Mia Love (R-UT), Scott Tipton (R-CO), and Mike Coffman (R-CO) |
| H.R. 4175 | <p><b>Issue - Groundwater Conservation/Tax Incentive</b></p> <p><b>Title - Groundwater Conservation Incentive Act:</b> To allow tax deductions for expenses related to conservation measures to reduce groundwater consumption, including the construction of reservoirs, impoundments, tail-water recovery systems, and surface water retention structures.</p>   | 12/3/15: H.R. 4175 introduced in the House, referred to the Committee on Ways and Means                    | Eric Crawford (R-AR) introduced H.R. 4175   |
| H.R. 4149 | <p><b>Issue - CWA §404 Lawsuits/EPA Veto</b></p> <p><b>Title - Discouraging Frivolous Lawsuits Act:</b> Aimed at limiting settlements that require compensatory mitigation and granting litigation costs, including attorneys’ fees, to prevailing parties. The bill would bar the federal government from requiring excess mitigation for dredging or disposal of</p>   | 12/1/15: H.R. 4149 introduced in the House, referred to the Committee on Transportation and Infrastructure | Representative Tom Rice (R-SC) introduced H.R. 4149   |

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|                  | material, and would repeal the power of the EPA to veto dredge-and-fill permits granted by the U.S. Army Corps of Engineers under CWA §404.  |  |  |
| S. 2358          | <p><b>Issue – CWA Wastewater/Stormwater Infrastructure Compliance</b></p> <p><b>Title: Clean Water Compliance and Affordability Act:</b> The bill would direct the EPA to develop a program in collaboration with state and local entities to work with municipalities seeking to comply with wastewater and stormwater obligations under the Clean Water Act. The program, to be developed within five years, would help communities facing costly upgrades to their aging water and wastewater infrastructure to find long-term funding solutions, and would provide flexible compliance mechanisms.</p>   | 12/3/15: S. 2358 introduced in the Senate, referred to the Committee on Environment and Public Works   | Senator Rob Portman (R-OH) introduced S. 2358 with co-sponsor Sherrod Brown (D-OH)   |
| S.1153/H.R. 2130 | <p><b>Issue – BLM Property/Red River Banks</b></p> <p><b>Title - Red River Private Property Protection:</b> The bill disclaims any right of the Bureau of Land Management to certain lands along a 116-mile stretch of the Red River between Texas and Oklahoma south of the South Bank boundary line, and sets requirements for a new third-party land survey, paid for by BLM, to be submitted to the Texas General Land Office in consultation with the Oklahoma Commissioners of the Land Office for approval. It also allows affected landowners to appeal the determinations of the survey to the Department of the Interior. Absent appeal, BLM must issue patents to the surface rights of parcels, upon application by landowners, payment of \$1.25 per acre, and a showing that the landowner has held the parcel in good faith and in peaceful adverse possession for more than 20 years. Specified adjacent landowners would have the opportunity to purchase the surface rights after the application period expires. The federal government would retain the rights to minerals and an easement to access the minerals.</p> | <p>4/3/15: S. 1153 introduced in the Senate, referred to the Committee on Energy and Natural Resources</p> <p>4/30/15: H.R. 2130 introduced in the House, referred to the Committee on Natural Resources</p> <p>9/10/15: Natural Resources Committee reported favorably with an amendment. H. Rept. 114-327</p> <p>12/9/15: The House passed H.R. 2130 with amendments by a vote of 253-177, largely along party lines</p> <p>12/10/15: Senate received H.R. 2130, referred to the Committee on Energy and Natural Resources</p> | <p>Senator John Cornyn (R-TX) introduced S. 1153 with co-sponsor Sen. Ted Cruz (R-TX)</p> <p>Rep. Mac Thornberry introduced H.R. 2130, with 7 Texas Republican Representatives</p> |
| H.R. 3946        | <p><b>Issue - Reserved Water Rights for National Monuments</b></p> <p><b>Title - Protecting Local Communities from Executive Overreach Act:</b> To protect private property rights and water rights from infringement as a result of the creation of a national monument. The bill would require the Department of the Interior to consult with local government with boundaries within</p>  | 11/5/15: H.R. 3946 introduced in the House, referred to the Committee on Natural Resources   | Rep. Paul Gosar (R-AZ) introduced H.R. 3946, co-sponsored by 26 Republicans, including   |

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|                                   | <p>or adjacent to the land to be affected by the designation to obtain concurrence for the designation before the President may declare the new or expanded national monument. Water rights associated with a national monument may not be reserved expressly or by implication by such a declaration, but may be acquired under the laws of the state in which the water rights are based.</p>   |   | <p>Representatives from Arizona, California, Colorado, Nevada, North Carolina, Florida, Idaho, Iowa, Kansas, Montana, New Mexico, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, and Wyoming.</p> |
| H.R. 3880                         | <p><b>Issue - EPA Climate Change Regulations</b></p> <p>Title - Stopping EPA Overreach Act: The bill would prevent the EPA from exceeding its statutory authority by prohibiting the regulation of climate change or global warming through the Clean Air Act, the Federal Water Pollution Control Act, the National Environmental Policy Act, the Endangered Species Act, or the Solid Waste Disposal Act, noting that the Acts neither authorize nor require such regulation.</p>   | <p>11/3/15: H.R. 3880 introduced in the House, referred to the Committee on Natural Resources</p> | <p>Rep. Gary Palmer (R-AL) introduced H.R. 3880 with 120 Republican co-sponsors</p>  |
| Upcoming Legislation: Spring 2016 | <p><b>Issue – WRDA Project Authorizations</b></p> <p><b>Title – Water Resources Development Act</b></p> <p>11/13/15: The House Transportation and Infrastructure Committee took steps toward its promised regular water resources authorizations, holding a roundtable discussion with Louisiana stakeholders regarding a new WRDA to authorize new lock, dam, levee, and ecosystem restoration projects. Committee Chairman Bill Schuster (R-PA) and Water Resources and Environment Subcommittee Chairman Bob Gibbs (R-OH) attended the discussion along with other members of the Committee</p> <p>12/9/15: The Senate Committee on Environment and Public Works sent a letter to senators requesting their water resource priorities as the Committee begins its work on the next WRDA to authorize Corps programs and projects. The Committee requested feedback from Senators with specific priorities and comments on the Corps’ recommended projects, by February 12, with an opportunity to supplement comments in response to an updated Corps report to Congress on Future Water Resources Projects, expected in February.</p> <p>2/2/16: The House Transportation and Infrastructure Subcommittee on Water Resources and Environment held an informal roundtable discussion led by Chairman Bob Gibbs (R-OH) to discuss policy and examine stakeholder priorities for the next WRDA to authorize the Corps to carry out navigation, flood control, shoreline protection, hydropower, dam safety, water supply, recreation, and environmental restoration and protection activities throughout the Nation. The Subcommittee invited local communities and businesses affected by WRDA projects to express their concerns and discuss</p> |   |  |

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|             | <p>projects important to them. Concerns included the Corps' tendency to view State and local agencies as stakeholders that are part of the general public rather than as partners who can work together to accomplish what needs to be done; the lack of funding that hampers Corps permitting and staffing; ESA listings that encumber the permitting process; and the need for local input while the Corps is initially studying a project prior to entering into cost-sharing agreements. Senator Gibbs expects to introduce the next WRDA bill this spring.</p>   |  |  |
| S.J.Res. 22 | <p><b>Issue – WOTUS</b></p> <p><b>Title – None:</b> Congressional joint resolution to express disapproval of the EPA and Corps' Waters of the United States (WOTUS) rule.</p> <p>House Speaker Paul Ryan said: "Disguised as a water cleanup measure, WOTUS is really an EPA power grab that threatens the livelihood of Americans who work the land to make a living. It would be an economic disaster. Thirty-two states are suing the federal government over the rule's legality. Congress' resolution aims to void WOTUS, restoring states as primary regulators of water." House Majority Whip Steve Scalise added: "The WOTUS rule would regulate virtually every body of water, including streams, ditches, and puddles — even on private land."</p> <p>President Obama said: "The rule, which is a product of extensive public involvement and years of work, is critical to our efforts to protect the Nation's waters and keep them clean; is responsive to calls for rulemaking from the Congress, industry, and community stakeholders; and is consistent with decisions of the United States Supreme Court. We must protect the waters that are vital for the health of our communities and the success of our businesses, agriculture, and energy development. As I have noted before, too many of our waters have been left vulnerable. Pollution from upstream sources ends up in the rivers, lakes, reservoirs, and coastal waters near which most Americans live and on which they depend for their drinking water, recreation, and economic development. Clarifying the scope of the Clean Water Act helps to protect these resources and safeguard public health."</p> | <p>9/17/15: S.J.Res. 22 introduced in the Senate, referred to the Committee on Environment and Public Works</p> <p>10/30/15: Committee on Environment and Public Works discharged S.J.Res. 22 by petition</p> <p>11/4/15: S.J.Res. 22 passed the Senate by a vote of 53-44</p> <p>1/13/16: S.J.Res. 22 passed the House by a vote of 253-166</p> <p>1/20/16: President vetoed S.J.Res. 22</p> <p>1/21/16: Senate closure vote of 52-40 failed to override the President's veto</p> | <p>Senator Joni Ernst (R-IA) introduced S.J.Res. 22, with 49 Republican co-sponsors</p>                              |
| H.R. 3764   | <p><b>Issue – Tribal Recognition Process</b></p> <p><b>Title - Tribal Recognition Act:</b> Provides federal recognition of Indian tribes exclusively through an Act of Congress, reorganizing the process and limiting the Department of the Interior's ability to recognize tribes.</p> <p>Bishop said that the Administration's "federal paternalism" and poor management of resources has</p>  | <p>10/20/15: H.R. 3764 introduced in the House, referred to the Natural Resources Committee</p> <p>10/28/15: House Natural Resources Subcommittee</p>  | <p>Rep. Rob Bishop (R-UT) introduced H.R. 3764, with co-sponsors Rep. Paul Gosar (R-AZ) and Bob Goodlatte (R-VA)</p> |

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|           | <p>held back economic development in Indian Country, undermining its policy of tribal self-determination.</p> <p>The Subcommittee noted that the Commerce Clause (Art. I, Sec. 8, Cl. 3) of the Constitution grants Congress power to “regulate commerce with the Indian tribes,” and together with the power to make treaties, the Constitution gives Congress “plenary” power over Indian affairs, including the power to recognize tribes. Referencing the Bureau of Indian Affairs’ July 1, 2015, revisions to “Part 83” regulations, the Subcommittee notes that the new standards and criteria for tribal recognition have been inappropriately relaxed and are not authorized by Congress, with long-term consequences for both new and existing tribes, as well as states and non-Indian citizens. Among the consequences are the potential for lands removed from state and local government jurisdiction, tribal eligibility for federal services and benefits, and tribal removal from Constitutional protections for U.S. citizens. The bill would reflect previous criteria in place prior to the 2015 revisions.</p> <p>Kevin Washburn, Assistant Secretary, Indian Affairs at the Department of the Interior, noted that H.R. 3764 codifies an old, broken recognition process that took tribes decades to complete, rather than incorporating DOI’s process improvements for transparency, fairness, objectivity, expedited decisions and a uniform evaluation start date of 1900. He pointed out that the “Administration strongly opposes legislation that purports to terminate or call into question the status of any of the existing federally recognized tribes.”</p> | <p>on Indian, Insular and Alaska Native Affairs held Part I of hearings</p> <p>12/8/15: House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs held Part II of hearings</p> |  |
| H.R. 3844 | <p><b>Issue - Good Sam/Abandoned Mine Cleanup</b></p> <p><b>Title - Energy and Minerals Reclamation Foundation Establishment Act:</b> Would create an Energy and Mineral Reclamation Foundation to fund abandoned mine and petroleum well reclamation projects with some federal funding and the ability to solicit donations. The Department of Interior would select the Foundation’s Board of Directors, with input from the Interstate Mining Compact Commission and the Interstate Oil and Gas Compact Commission.</p> <p>The Natural Resources Committee members “developed a package of reforms” to address the challenges of abandoned mines, including H.R. 3843, H.R. 3844, and the Mining Schools Enhancement Act (H.R. 3734). The Committee’s investigation of the Gold King mine spill found that EPA has no mining engineers and only 68 geologists compared to BLM’s 36 mining engineers and 170 geologists. The Subcommittee noted, “While progress has been made in addressing some of the problem sites,” through partnerships with western states, industries and agencies like the Bureau of Land Management (BLM) and the Forest Service, “...there are legal barriers to creating a more aggressive and substantial program that relies on the expertise and resources of the mining industry and other parties acting as ‘Good Samaritans’ in helping to clean up hard rock [abandoned mine lands] sites.”</p>  | <p>10/28/15: H.R. 3844 introduced in the House, referred to the Natural Resources Committee</p> <p>11/4/15: Subcommittee on Energy and Natural Resources held hearings</p>                             | Rep. Jody Hice (R-GA) introduced H.R. 3844 |
| H.R. 3843 | <b>Issue - Good Sam/Abandoned Mine Cleanup</b>   | 10/28/15: H.R. 3843  | Rep. Doug Lamborn                          |

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|         | <p><b>Title - Locatable Minerals Claim Location and Maintenance Fee Act:</b> Would (1) create a Department of the Interior abandoned mine program; (2) create an Environmental Protection Agency program to encourage Good Samaritan cleanups with Clean Water Act and Superfund liability protections; and (3) provide similar liability protection for states and tribes cleaning up abandoned mines under the Surface Mining Control and Reclamation Act.</p> <p>Part of the Natural Resources Committee members “package of reforms” to address the challenges of abandoned mines, including H.R. 3843, H.R. 3844 (above), and the Mining Schools Enhancement Act (H.R. 3734).</p>  | <p>introduced in the House, referred to the Natural Resources Committee</p> <p>11/4/15: Subcommittee on Energy and Natural Resources held hearings</p>            | <p>(R-CO) introduced H.R. 3843</p>   |
| S. 1894 | <p><b>Issue – Drought/Infrastructure</b></p> <p><b>Title – California Emergency Drought Relief Act:</b> Provides short-term water supplies to drought-stricken California. Title I directs the Secretaries of Interior and Commerce to provide the maximum quantity of water possible to the Central Valley Project and other communities by approving projects and operations on an expedited basis to meet Governor declared drought emergencies. The bill favors strategies that increase water deliveries while avoiding jeopardy to endangered fish. Title II would provide funding and guidance for various fish recovery and protection projects. Title III lays out eligibility and feasibility requirements for California cities, water districts and desalination facilities applying for long-term water supply projects funding.</p> <p>Title IV includes the Reclamation Infrastructure Finance and Innovation Act, which would authorize new financing, funding and investment opportunities for infrastructure in the contiguous western United States. Section 421, would amend the 2009 Public Land Management Act to share costs needed to expand and construct non-federal water storage and conveyance facilities, with emphasis on recycled water, efficient use, flood control, hydroelectric power generation, environmental benefits, and integrated regional water management. Section 431 would amend the Reclamation Wastewater and Ground-water Study and Facilities Act to authorize grant funding for new non-federal water recycling and reuse projects. Section 441 would establish a “Federal Support for State and Local Drought Solutions Fund” in the Treasury, to spend on cost-share projects and Reclamation infrastructure loan guarantees, with funds deposited between 2026 and 2050.</p> <p><b>**On November 24, Governors Matt Mead (R-WY) and Steve Bullock (D-MT) sent a <a href="#">letter</a> on behalf of the Western Governors’ Association to Senators Lisa Murkowski (R-AK) and Maria Cantwell (D-WA) of the Senate Committee on Energy and Natural Resources. The letter conveyed WGA’s position (<a href="#">2015-08</a>) on water resources management; commended the Committee’s efforts to craft comprehensive, Western drought legislation; and offered policy solutions with WGA as a resource. Solutions included incentives for innovative water management policies (with federal, tribal and local partners) that preserve state primacy; collection of drought and water data and enhancing networks to better utilize existing information; and investing in water infrastructure with loan guarantees, revolving</b></p> | <p>7/29/15: S. 1894 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p> <p>10/8/15: Committee held hearings on S. 1894</p> | <p>Senator Dianne Feinstein (D-CA) introduced S. 1894 with co-sponsor Senator Barbara Boxer (D-CA)</p> |

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|           | <p>funds, infrastructure banks, and water trust funds. The governors proposed the “creation of a budget neutral federal loan program that will make it possible...to secure financing on reasonable terms to complete important water resources management projects. Such investment should be accompanied by dedicated sources of funding with appropriate financing, cost sharing, pricing and cost recovery policies.” The governors also encouraged Congress “to authorize federal agencies to provide resources and technical support to assist states in implementing state plans designed to provide water for municipal, rural, agricultural, industrial, and habitat needs.” <i>See WSW #2150.</i></p>  |  |   |
| S. 1837   | <p><b>Issue – Drought</b></p> <p><b>Title – Drought Recovery and Resilience Act:</b> Provides drought assistance and improve water supply reliability in California, other western states and the nation. The bill’s findings recognize state primacy in water law and the primary responsibilities of states and local interests in developing water supplies, but that the federal government should participate and cooperate in these projects. The findings acknowledge that drought affects the entire western United States, and that federal solutions should respect state, local and tribal laws and not pit states against one another. Title I would apply Reclamation Fund appropriations toward water reclamation and reuse projects, infrastructure, WaterSMART assistance, cleanup of polluted groundwater, other drought relief efforts shutting down marijuana operations stealing water. Sections 103 and 104 would apply unappropriated FY2015 funds toward state and tribal assistance grants and infrastructure loans through the Environmental Protection Agency. Title II includes the Reclamation Infrastructure Finance and Innovation Act (RIFIA) leveraging private investment in water resource infrastructure and establishing new financing opportunities. Section 231 would authorize cost-share agreements for eligible projects, and section 241 would provide for title transfers of certain federal facilities to local authorities. The Innovative Stormwater Infrastructure Act in Section 251 provides grants to increase water supply through stormwater capture. The Restoring America’s Watersheds Act, Title III, creates a U.S. Forest Service “Water Source Protection Program,” with states and tribes, for National Forests west of the 100th Meridian. Section 311 covers improvements to reservoir operations. Section 320 expands investments in infrastructure that reduce evaporative losses. Section 323 provides a pilot program for competitive land leases for solar and wind energy projects. Section 391 directs the USGS to establish and maintain an open water data system to facilitate the exchange of water information, to identify information gaps, and to leverage and support existing shared databases. Title IV, the Water Innovation and Prize Competition Act, rewards low-energy desalination breakthroughs and other technology advances. Section 411 directs the Natural Resources Conservation Service and Bureau of Reclamation to provide guidance and technical assistance, including hydrological forecasting, to water and power delivery authorities to improve water use efficiency and conservation practices.</p> <p><i>See WSW #2150</i><br/> <i>**WGA position (<a href="#">2015-08</a>) on water resources management</i></p> | 7/22/15: S. 1837 introduced in the Senate and referred to the Committee on Finance | Senator Barbara Boxer (D-CA) introduced S. 1837 |
| H.R. 2898 | <b>Issue – California/Drought</b>  | 6/25/15: H.R. 2898   | Rep. David Valado (R-                           |

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|  | <p><b>Title – Western Water and American Food Security Act:</b> Titles I - VI of the bill would provide emergency drought relief in California through several means. Title V acknowledges California water rights laws governing water rights priorities and honors senior water rights in the operation of the Central Valley Project. The bill would require that federal actions under the WWAFA not result in the involuntary reduction of water supply for designated water users. It also provides for Central Valley Project allocation percentages for Sacramento Valley contractors, subject to how wet or dry the previous year was, as well as the priorities of other water rights. The bill directs the Department of Interior to develop and implement an annual water rescheduling program for agricultural water service contractors in the Central Valley Project.</p> <p>Title VI would make several amendments to the Central Valley Project Improvement Act (P.L. 102-575). Section 605 would prohibit the Secretaries of Commerce and the Interior from distinguishing between natural and hatchery-spawned fish in the Sacramento-San Joaquin Delta rivers when making Endangered Species Act determinations about fish species there. Title VII is the Water Supply Permitting Coordination Act, which would establish the Bureau of Reclamation as the lead agency for coordinating all project reviews, analyses, opinions, statements, permits, licenses, or other approvals and decisions required under federal law to construct new surface water storage projects. It also names Reclamation as the point of contact for state agencies, Indian tribes and others regarding proposed projects, and lays out the responsibilities of coordinating agencies for permits and decision-making.</p> <p>Title VIII is the Bureau of Reclamation Project Streamlining Act, which directs the acceleration of new project feasibility studies within three years of initiation, the expedited completion of reports for existing feasibility studies, and the acceleration of projects. The bill provides for a coordinated environmental review process, including responsibilities of state/local project sponsors as joint lead agencies, the identification and participation of federal, state, tribal and local agencies with jurisdiction over a project, and project study review, reporting and transparency requirements. It provides for accelerated resolution of issues that delay completion of the environmental review process. Section 806 would require an annual “Report to Congress on Future Water Project Development” that identifies project reports, proposed project studies, modifications to projects or studies, and expedited completion of reports and determinations. Title IX is the Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act, allowing for early repayment on contracts for federally-developed water supplies at the request of the contractor. A percentage of the receipts generated from early repayments would go into a Reclamation Surface Water Storage Account to be used to fund the construction of new surface water storage projects.</p> <p>Title X would amend the Reclamation Safety of Dams Act to authorize additional feasible project benefits, such as increasing conservation storage capacity through new or supplemental construction, in conjunction with existing activities, to promote more efficient management of water and water-related facilities. Title XI is the Water Rights Protection Act. The bill would prohibit the Secretaries of the Interior and Agriculture from conditioning land use permits or agreements upon water rights</p> | <p>introduced in the House and referred to the Committees on Natural Resources and Agriculture</p> <p>7/8/15: Committee Consideration and Mark-Up Session</p> <p>7/14/15: Supplemental H.Rpt 114-197, Part II filed by Committee on Natural Resources</p> <p>7/16/15: House passed H.R. 2898 by a 245-176 vote, which included five Democrats.</p> <p>7/21/15: H.R. 2898 received in the Senate and referred to the Committee on Energy and Natural Resources</p> <p>10/8/15: Senate Committee on Energy and Natural Resources held hearings on H.R. 2898</p> | <p>CA) introduced H.R. 2898 with 25 Republican and 1 Democratic co-sponsor</p> |
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|         | <p>transfers, limitations or encumbrances, or upon the water user's application for or acquisition of a water right in the name of the United States. The bill would prohibit the assertion of jurisdiction over groundwater resources unless it is consistent with state laws and policies governing the protection and use of groundwater resources. It would also prohibit the agencies from infringing on the rights and obligations of a state in evaluating, allocating, and adjudicating the waters of the state originating on or under, or flowing from, land owned or managed by the federal government.</p> <p>Section 1104 recognizes the longstanding authority of the states relating to evaluating, protecting, allocating, and adjudicating groundwater. It would require the two agencies to coordinate with the states for any federal rulemaking, policy, directive, management plan, or other similar federal action to ensure they are consistent with and impose no greater restrictions than state groundwater laws and programs. Section 1105 makes clear that the Water Rights Protection Act neither limits nor expands federal reserved water rights or Indian water rights.</p> <p><i>See WSW #2151.</i></p>  |  |  |
| S. 1694 | <p><b>Issue – Infrastructure</b></p> <p><b>Title – Yakima River Basin Water Enhancement Project Phase III Act:</b> Amends P.L. 103-434 to authorize water management improvements. Various section of Title XII would be amended by the bill. The amendments generally: (1) provide for self-sustaining harvestable populations of native fish throughout their historic distribution range; (2) add municipal, industrial and domestic uses as additional purposes of the project; (3) strike specific numeric annual water conservation goals and allow the project manager to instead calculate the amounts of water conserved and, with the advisory committee, determine whether and how the conserved water will be delivered or stored; (4) authorize additional appropriations for modifications and improvements within the project; (5) add details and limitations about federal, state and local cost-sharing for project work; (6) improve reliability and resiliency in years of drought; and (7) authorize studies to consider measures that further project purposes on tributaries to the Yakima River (in addition to Taneum Creek). The bill also adds three new sections at the end of Title XII. Section 1213 authorizes grants and cooperative agreements to accomplish the purposes of Phase III. Section 1214 (together with an amendment to section 1202 definitions) incorporates the management plan described in the 2012 “Final Programmatic Environmental Impact Statement and Integrated Water Resource Management Plan, Yakima River Basin, Water Enhancement Project, Benton, Kittitas, Klickitat, and Yakima Counties” (77 Fed. Reg. 12076). The bill sets forth the Secretary of Interior’s responsibilities in implementing the management plan, breaking them down into initial, intermediate and final development phases. Section 1215 mandates that the Secretary of Interior retains operational control to store, deliver, conserve and reuse project water supplies “to obtain maximum operational use and flexibility to meet all appropriated and adjudicated water rights.”</p> | <p>6/25/15: S. 1694 introduced in the Senate.</p> <p>7/7/15: Committee on Energy and Natural Resources held hearings. S. Hrg 114-142.</p> <p>12/16/15: Energy and Natural Resources Committee reported S. 1694 with an amendment and added to Senate calendar. S. Rept. 114-187.</p> | <p>Senator Maria Cantwell (D-WA) introduced S. 1694, with co-sponsor Senator Patty Murray (D-WA)</p> |

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|           | <p>Senator Maria Cantwell (D-WA) and her staff have worked with the Yakama Nation, farmers and irrigation districts, conservation groups, state and local governments, and community members to improve the bill. Changes to the bill include: (1) how the Integrated Plan is defined and carried out; (2) ensuring broad public participation and oversight; (3) additional provisions supporting water conservation targets and water transfers; (4) additional provisions regarding studies to evaluate feasibility, benefits and environmental impacts of projects in the basin; and (5) clarifications to drought resilience activities to support irrigation districts and communities throughout the basin. Senator Cantwell called the bill “a national model for watershed management, providing drought relief and resilience in one of Washington’s most productive agricultural regions,” encouraging the federal government to support the communities and governments that have “worked together to develop this innovative and locally-driven solution.”</p> <p><i>See WSW #2151.</i></p>   |   |   |
| S. 1552   | <p><b>Issue – Rural Water Projects</b></p> <p><b>Title – Clean Water for Rural Communities Act:</b> To authorize the Dry-Redwater Regional Water Authority System and the Musselshell-Judith Rural Water System, defining the service areas of the projects in North Dakota and Montana. Directs Interior to enter into a cooperative agreements to provide federal assistance for the planning, design, and construction of the Water Systems. Sets forth the federal share of such costs and the authorized uses of federal funds, which exclude operation, maintenance, or replacement of the Water Systems. Directs the Western Area Power Administration to make available to the Dry-Redwater System a quantity of power (up to one and a half megawatt capacity) required to meet the System's pumping and incidental operation requirements between May 1 and October 31 of each year: (1) from the water intake facilities; and (2) through all pumping stations, water treatment facilities, reservoirs, storage tanks, and pipelines up to the point of delivery of water to all storage reservoirs and tanks and each entity that distributes water at retail to individual users. Makes the System eligible to receive such power only if it: (1) operates on a nonprofit basis, and (2) is constructed pursuant to the cooperative agreement with the Dry-Redwater Regional Water Authority. Provides for the purchase of additional power. Makes the Authority responsible for: (1) charges for such additional power, (2) the costs of non-federal transmission and distribution system delivery and service arrangements, and (3) funding any upgrades to the transmission system owned by the Western Area Power Administration Basin Electric Power District and the Heartland Consumers Power District required to deliver power to the System. Authorizes appropriations and adjustments in authorized amounts in accordance with ordinary fluctuations in development costs.</p> | <p>6/11/15: S.1552 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p> <p>6/18/15: Subcommittee on Water and Power held hearings</p> | <p>Senator Steve Daines (R-MT) introduced S.1552 with co-sponsor Senator Jon Tester</p> |
| H.R. 2705 | <p><b>Issue – Clean Water Act/EPA “Waters of the United States” Rule</b></p> <p><b>Title – Federal Regulatory Certainty for Water Act:</b> To clarify the definition of navigable waters as navigable-in-fact or permanent or continuously flowing bodies of water (streams, oceans, rivers, lakes) connected to navigable-in-fact waters. The bill excludes waters without a continuous surface water connection, man-made/natural channels containing intermittent or ephemeral flow, and wetlands, playa</p>  | <p>6/9/15: H.R. 2705 introduced in the House and referred to the Committee on Transportation and</p>  | <p>Rep. Mac Thornberry (R-TX) introduced H.R. 2705</p>                                  |

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|           | lakes, prairie potholes, wet meadows, we prairies, and vernal pools that lack a continuous surface water connection. The bill prohibits the aggregation of wetlands and waters for determinations of navigable waters.   | Infrastructure  |  |
| S. 1533   | <p><b>Issue – Reclamation/Infrastructure</b></p> <p><b>Title – Water Supply Permitting Coordination Act:</b> Establishes the Bureau of Reclamation as the lead agency for purposes of coordinating all reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions (reviews) required under federal law to construct new surface water storage projects on lands administered by the Department of the Interior or the Department of Agriculture, exclusive of any easement, right-of-way, lease, or any private holding (qualifying projects). Directs the Bureau: (1) upon receipt of an application for a qualifying project, to identify any federal agency that may have jurisdiction over a required review; and (2) to notify such agency that it has been designated as a cooperating agency unless the agency notifies the Bureau that the agency has no jurisdiction or authority over the project, has no expertise or information relevant to the project or any associated review, or does not intend to submit comments other than in cooperation with the Bureau. Requires each cooperating agency to submit to the Bureau: (1) a timeframe for completing the agency's authorizing responsibilities, (2) all environmental review material produced in the course of carrying out activities required under federal law consistent with the project schedule, and (3) all relevant project data. Allows a state in which a qualifying project is being considered to choose to: (1) participate as a cooperating agency; and (2) make subject to the processes of this Act all state agencies that have jurisdiction over the project, are required to conduct or issue a review, or are required to make a determination on issuing a permit, license, or approval for the project. Lists as the principal responsibilities of the Bureau under this Act to: (1) serve as the point of contact for applicants, state agencies, Indian tribes, and others regarding proposed projects; (2) coordinate preparation of unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands for qualifying projects; and (3) coordinate all federal agency reviews necessary for the development and construction of qualifying projects. Authorizes the Department of the Interior to accept and expend funds contributed by a non-federal public entity to expedite the evaluation of a permit of that entity related to a qualifying project or activity for a public purpose under its jurisdiction. Directs Interior to ensure that all final permit decisions are made available to the public, including on the Internet.</p> | <p>6/9/15: S. 982 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p> <p>6/18/15: Subcommittee on Water and Power held hearings on S. 1533</p> | Senator John Barrasso (R-WY) introduced S.1533, with co-sponsor Sen. Michael Enzi (R-WY)                     |
| H.R. 2689 | <p><b>Issue – WRRDA</b></p> <p><b>Title – None:</b> To clarify the scope of eligible water resources projects under the Water Resources Development Act of 1986 and the Water Resources Reform and Development Act of 2014, and for other purposes.</p>  | 6/9/15: H.R. 2689 introduced in the House and referred to the Committee on Transportation and Infrastructure  | Representative Mimi Walters introduced H.R. 2689 with 29 Democratic co-sponsors and 9 Republican co-sponsors |
| S. 1500   | <b>Issue – FIFRA Pesticide Permits</b>   |   | Senator Mike Crapo   |

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|           | <p><b>Title – Sensible Environmental Protection Act:</b> The bill would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a(f)), ending the requirement that a CWA permit is needed for spraying FIFRA-approved pesticides as a discharge from a point source into a navigable body of water. The bill would reverse a court decision in <i>National Cotton Council v. EPA</i> (6<sup>th</sup> Cir. 2009), which requires EPA to issue CWA permits for spraying pesticides over navigable waters.</p> <p><i>See WSWC Position #359 supporting legislation amending CWA and FIFRA so FIFRA-compliant pesticide applications are exempt from NPDES permitting. See related House bill, H. R. 897 introduced 2/11/15.</i></p> | <p>6/3/15: S. 1500 introduced in the Senate</p> <p>8/5/15: EPW Committee reported S. 1500 favorably without amendment. S. Rept. 114-60</p> <p>10/29/15: S. 1500 placed on Senate calendar</p> | <p>(R-ID) introduced S.1500, with 12 Republican and 5 Democratic co-sponsors, including Senators John Barasso (R-WY), Michael Enzi (R-WY), James Inhofe (R-OK), Heidi Heitkamp (D-ND), Deb Fischer (R-NE), James Rische (R-ID), Jerry Moran (R-KS), and Pat Roberts (R-KS)</p> |
| H.R. 2599 | <p><b>Issue – Clean Water Act/EPA “Waters of the United States” Rule</b></p> <p><b>Title – Don't Ignore the Will of the American People Act:</b> To prohibit the obligation of certain funds until the Administrator of the Environmental Protection Agency withdraws the rule relating to the definition of “waters of the United States”.</p>   | <p>6/1/15: H.R. 2599 introduced in the House and referred to Committees on Energy and Commerce, Agriculture, Transportation and Infrastructure, and Science, Space and Technology</p>         | <p>Rep. David Rouzer (R-NC) introduced H.R. 2599</p>   |
| H.R. 2489 | <p><b>Issue – Reclamation/Infrastructure</b></p> <p><b>Title – Dam Rehabilitation and Repair Act:</b> To amend the National Dam Safety Program Act to establish a program to provide grant assistance to States for the rehabilitation and repair of deficient dams, and for other purposes</p>   | <p>5/21/2015: H.R. 2489 introduced in the House and referred to Committee on Transportation and Infrastructure</p>  | <p>Rep. Sean Maloney (D-NY) introduced H.R. 2489 with co-sponsor Rep. Christopher Gibson (R-NY)</p>  |
| S.1416    | <p><b>Issue – Federal Reserved Water Rights</b></p> <p><b>Title – None:</b> amends Title 54, US Code, to limit the authority of the President to reserve implied or express water rights in designating a national monument, and to require that water rights associated with the designation of a national monument be acquired under state laws.</p>  | <p>5/21/15: S.1416 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p>   | <p>Senator Jeff Flake (R-AZ) introduced S. 1416 with three Republican co-sponsors</p>  |
| S. 1365   | <p><b>Issue – Reclamation/Infrastructure/Rural and Tribal Water Projects</b></p>  |   |  |

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|  | <p><b>Title – Authorized Rural Water Projects Completion Act:</b> The bill would provide \$80 million per year for each of fiscal years 2015 through 2035 to complete the construction of rural water projects that have already received Congressional authorization. Other projects may be eligible for funding if: (1) a feasibility study is submitted to the Secretary of the Interior by February 27, 2015; and (2) Congress authorizes the project’s construction after S. 1365’s enactment.</p> <p>Title I of S. 1365 would provide funding for eligible rural water projects by establishing a Reclamation Rural Water Construction and Settlement Implementation Fund (the “RWP” Fund) within the U.S. Treasury, and within the RWP Fund a separate Rural Water Project Account and Reclamation Infrastructure and Settlement Account, that would be financed from revenues that would otherwise be deposited in the Reclamation Fund. These monies would not be subject to further appropriation, would be in addition to other amounts appropriated for the authorized projects, and should not result in corresponding offsets to other critical Reclamation and Department of the Interior programs. The Secretary of the Interior would also invest the portion of these receipts not needed to meet current expenses, and the resulting interest and proceeds from the sale or redemption of any obligations would become part of the RWP Fund. The RWP Fund would terminate in September 2035, at which point its unexpended and unobligated balance would transfer back to the Reclamation Fund.</p> <p>Before expenditures from the RWP Fund could be made, Section 202(b)(1) of S. 1365 would require the Secretary of the Interior to develop programmatic goals to ensure that the authorized projects are constructed as expeditiously as possible, and in a manner that reflects the goals of the Rural Water Supply Act of 2006. The bill would also require the Secretary to develop funding prioritization criteria that would consider: (1) the “urgent and compelling need” for potable water supplies in affected communities; (2) the status of the current stages of completion of a given project; (3) the financial needs of affected rural and tribal communities; (4) the potential economic benefits of the expenditures on job creation and general economic development in affected communities; (5) the ability of an authorized project to address regional and watershed level water supply needs; (6) a project’s ability to minimize water and energy consumption and encourage the development of renewable energy resources, such as wind, solar, and hydropower; (7) the needs of Indian tribes and tribal members, as well as other community needs or interests; and (8) such other factors as the Secretary deems appropriate.</p> <p><i>*WSWC Position #343 supports previous legislative efforts to establish a dedicated funding source for the completion of federal rural water projects authorized by Congress for construction by the Bureau of Reclamation</i></p> <p><i>**WSWC Position #376 supports steps to ensure that any water settlements will be funded without a corresponding offset, including cuts to some other tribal or essential Interior Department program</i></p> <p><i>***Tony Willardson, WSWC Executive Director, testified 6/18/15 before Senate Committee on Energy</i></p> | <p>5/18/15: S.1365 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p> <p>6/18/15: Subcommittee on Water and Power held hearings on S.1365</p> | <p>Senator John Testor (D-MT) introduced S. 1365 with 5 Democratic and 1 Republican co-sponsors</p> |
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|                   | <i>and Natural Resources Subcommittee on Water and Power (contained as attachments WSWC Policies #343 and #376)</i>  |  |   |
| S. 1305/H.R. 2273 | <p><b>Issue – Reclamation/Infrastructure</b></p> <p><b>Title –None:</b> Amends the Colorado River Storage Project Act to authorize the Department of the Interior, in cooperation with the state of Wyoming, to amend the Definite Plan Report for the Seedskaadee Project to provide for the study, design, planning, and construction activities that will enable the use of all active storage capacity of Fontenelle Dam and Reservoir, including the placement of sufficient riprap on the upstream face of the Dam to allow such storage capacity to be used for authorized Project purposes. Authorizes Interior to enter into: (1) any contract, grant, cooperative agreement, or other agreement that is necessary to carry out this Act; and (2) contracts with Wyoming for division of any additional active capacity made available under this Act.</p> <p>Directs Interior to enter into a cooperative agreement with Wyoming for planning, design, related preconstruction activities, and construction of any modification of the Fontenelle Dam, which shall specify the responsibilities of Interior and Wyoming regarding: (1) completing the planning and final design of the modification of the Dam, (2) any environmental and cultural resource compliance activities required for the modification of the Dam, and (3) the construction of the modification of the Dam.</p> | <p>5/12/15: S.1305 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p> <p>5/12/15: H.R. 2273 introduced in the House and referred to the Committee on Natural Resources</p> <p>6/18/15: Subcommittee on Water and Power held hearings on S.1305</p> <p>6/25/15: Subcommittee on Water, Power and Oceans held hearings on H.R. 2273</p> <p>9/9/15: Senate Committee on Energy and Natural Resources reported S. 1305 with amendments, placed on Senate calendar. S. Rept. 114-135</p> <p>2/3/16: House Committee on Natural Resources reported H. R. 2273 with an amendment by unanimous consent</p> | <p>Senator John Barrasso (R-WY) introduced S. 1305 with co-sponsor Senator Michael Enzi (R-WY)</p> <p>Rep. Cynthia Lummis (R-WY) introduced H.R. 2273</p> |
| S.1291            | <p><b>Issue – Reclamation/Infrastructure</b></p> <p><b>Title – None:</b> The bill authorizes any landowner within the Northport Irrigation District in Nebraska to repay, at any time, the construction costs of project facilities allocated to the landowner's land within the District. Provides that upon discharge in full of the obligation for repayment of all such costs, the parcels of land shall not be subject to the ownership and full-cost pricing limitations under federal</p>   | <p>5/12/15: S.1291 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p>  | <p>Senator Deb Fischer (R-NE) introduce S.1291</p>  |

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|           | reclamation law. Directs the Department of the Interior, upon request, to provide to the landowner who has repaid such costs in full a certificate acknowledging that the landholding is free of such limitations.  | 6/18/15: Subcommittee on Water and Power held hearings on S.1291  |  |
| H.R. 2227 | <p><b>Issue – Extreme Weather Events</b></p> <p><b>Title – Strengthening the Resiliency of Our Nation on the Ground Act:</b> To minimize the economic and social costs resulting from losses of life, property, well-being, business activity, and economic growth associated with extreme weather events by ensuring that the United States is more resilient to the impacts of extreme weather events in the short- and long-term, and for other purposes.</p>  | 5/1/2015: H.R. 2227 introduced in the House and referred to Committee on Transportation and Infrastructure  | Rep. Scott Peters (D-CA) introduced H.R. 2227 with 19 Democratic and 1 Republican co-sponsor |
| S. 1140   | <p><b>Issue – Clean Water Act/ EPA “Waters of the United States” Rule</b></p> <p><b>Title – Federal Water Quality Protection Act:</b> directs the agencies to follow a number of principles in clarifying that the Clean Water Act is intended to protect waters of the U.S. from pollution. Those that should be included are traditional navigable waters and interstate waters; streams identified on maps at the scale used by EPA to identify potential sources of drinking water; streams with enough flow to carry pollutants to a navigable water, based on a quantifiable and statistically valid measure of flow for that geographic area; wetlands situated next to a water of the U.S. that protect water quality by preventing the movement of pollutants to navigable water; and areas unlawfully filled without a required permit.</p> <p>Waters that should not be included are waters located below the surface of the land, including soil water and groundwater; waters not located within a body of water (such as a river, stream, lake, wetland), including channels that have no bed, bank or ordinary high water mark or surface hydrologic connection to traditional navigable water; isolated ponds, stormwater and floodwater management systems; wastewater management systems; municipal and industrial water supply management systems; agricultural water management systems; streams that do not have enough flow to carry pollutants to navigable waters; prior converted cropland; and areas lawfully filled pursuant to a permit or areas exempt from permitting. Waters of the U.S. would not be defined on the basis of use by an organism, including a migratory bird; the supply of water to a groundwater aquifer and the storage of water in an isolated waterbody; the water cycle, including the supply of water through evaporation, transpiration, condensation, precipitation, overland flow, and movement of water in an aquifer. The bill specifically directs that the agencies consult with the states under Federalism Executive Order 13132, undertake economic analyses under the Regulatory Flexibility Act, comply with the Small Business Regulatory Enforcement Fairness Act and the Unfunded Mandates Reform Act, and comply with Executive Orders 12866 and 13563 on improving regulation.</p> <p><i>*The bill addresses many of the concerns regarding consultation with the states raised by the Western States Water Council.</i></p> | <p>4/30/15: S.1140 introduced in the Senate and referred to the Environmental and Public Works Committee</p> <p>5/19/15: Subcommittee on Fisheries, Water and Wildlife held hearings on S.1140</p> <p>6/10/15: Committee on Environmental and Public Works reported with an amendment in the nature of a substitute</p> <p>7/16/15: Committee on Environmental and Public Works reported with an amendment in the nature of a substitute, and placed on Legislative Calendar</p> <p>11/3/15: Motion to proceed to consideration presented then withdrawn following failure of cloture on the motion to limit debate</p> | Senator John Barrasso introduced S. 1140 with 43 Republican and 4 Democratic co-sponsors     |
| S. 1178   | <b>Issue – Clean Water Act/EPA “Waters of the United States” Rule</b>   | 4/30/15: S.1178   | Senator Jeff Flake (R-   |

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|           | <p><b>Title – Defending Rivers from Overreaching Policies Act of 2015:</b> finds that the WOTUS rule was premature due to the current lack of scientific “consensus regarding the best methods or metrics to quantify or predict hydrologic or chemical connectivity.” Without this consensus, there is insufficient information to determine which hydrologic connections are scientifically significant. The bill proposes the temporary creation of a 9-member Supplemental Scientific Review Panel and a 15-member Ephemeral and Intermittent Stream Advisory Commission. Both the Panel and the Commission would consist of unpaid, bipartisan-appointed experts in the biogeosciences. The Commission members would have additional expertise with the CWA permitting process, as well as balanced representation of the interests of developers, agriculture, timber, energy, mineral, environment, recreation, State and local elected officials and agencies, and the general public.</p> <p>The Panel would have a year to make majority recommendations on scientifically sound metrics, accounting for regionally-variable flows, to quantify degrees of connectivity between traditionally navigable waters and other bodies of water. The Commission would then be appointed and would have an additional six months to develop criteria to define a significant nexus to traditional navigable waters, using the metrics developed by the Panel, ensuring that the criteria account for regional variability of water bodies and wetlands. The EPA and Corps would be prohibited from making or implementing any WOTUS rule until receipt of the Commission’s final report.</p>  | <p>introduced in the Senate and referred to the Environmental and Public Works Committee</p> <p>6/10/15: The Committee on the Judiciary held hearings on S.1178</p> | <p>AZ) introduced S.1178 with co-sponsor Senators John McCain (R-AZ), Deb Fischer (R-NB), John Cornyn (R-TX), Johnny Isakson (R-GA), Orrin Hatch (R-UT), and James Risch (R-ID)</p> |
| H.R. 2097 | <p><b>Issue – Reclamation/Infrastructure</b></p> <p><b>Title – Bureau of Reclamation Surface Water Storage Streamlining Act:</b> Sets forth provisions governing feasibility studies for surface water storage projects initiated by the Department of the Interior under the Reclamation Act of 1902 (project studies). Requires a project study initiated after enactment of this Act to: (1) result in the completion of a final feasibility report within three years; (2) have a maximum federal cost of \$3 million; and (3) ensure that personnel from the local project area, region, and headquarters levels of the Bureau of Reclamation concurrently conduct the required review. Sets forth factors for extending such timeline for complex projects. Set requirements for Interior to complete reviews for project studies, set meetings, provide information and expedite project study completion, as well as other responsibilities. Sets requirements for project NEPA compliance. Sets forth responsibilities of lead agency. Provides for a reduction of funds for such an agency that fails to render such a decision by a specified deadline. Directs Interior to: (1) survey the use by the Bureau of categorical exclusions in projects since 2005 and propose a new categorical exclusion for a category of activities if merited, and (2) establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process. Requires Interior to develop and submit annually a Report to Congress on Future Surface Water Storage Development that identifies: (1) the costs and benefits of, the non-federal interests associated with, and the support for project reports, proposed project studies, and proposed modifications to authorized surface water storage projects and project studies that are related to the missions and authorities of the Bureau, that</p> | <p>4/29/15: H.R. 2097 introduced in the House and referred to the Committee on Natural Resources</p>  | <p>Rep. Dan Newhouse (R-WA) introduced H.R. 2097 with four Republican co-sponsors</p>   |

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|         | require specific congressional authorization, that have not been congressionally authorized, that have not been included in any previous annual report, and that, if authorized, could be carried out by the Bureau; and (2) any project study that was expedited under this Act.   |  |   |
| S. 1125 | <p><b>Issue – Indian Water Rights Settlement</b></p> <p><b>Title – Blackfeet Water Rights Settlement Act:</b> To authorize and implement the water rights compact among the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States.</p> <p>Requires the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana and the Fort Belknap Indian Community to enter into an agreement for the exercise of the respective water rights on the respective reservations of the Tribe and the Community in the Milk River. Requires the Department of the Interior to contract with the Tribe for the delivery of 5,000 acre-feet per year of the St. Mary River water right through Milk River Project facilities to the Tribe or an entity specified by it. Requires specified appraisal and feasibility studies regarding the management and development of water supplies in the St. Mary River Basin and Milk River Basin. Requires the Bureau of Reclamation to implement the Swift Current Creek Bank Stabilization Project and offer to enter into an agreement with the Tribe to resolve all issues regarding federal Milk River Project property interests located on tribal lands. Gives the Tribe, subject to specified limitations and only if the St. Mary Storage Unit of the Milk River Project is rehabilitated, the exclusive right to develop and market hydroelectric power from the Unit. Directs Interior to allocate to the Tribe 50,000 acre-feet per year of water stored in Lake Elwell for use by the Tribe for any beneficial purpose on or off the Reservation. Authorizes the Tribe to enter into leases or other agreements for the use of that water, provided its use occurs within the Missouri River Basin and the agreement does not permanently alienate the allocation. Requires the Bureau of Reclamation, with respect to the Blackfeet Irrigation Project, to carry out: (1) deferred maintenance; (2) Four Horns Dam safety improvements; and (3) rehabilitation and enhancement of the Four Horns Feeder Canal, Dam, and Reservoir in accordance with the Birch Creek Agreement. Requires the Bureau of Reclamation to construct the water diversion and delivery features of the MR&amp;I System. Requires the Tribe, upon request by Interior, to grant, at no cost to the United States, such easements and rights-of-way over tribal land necessary for the construction of the irrigation activities related to the Blackfeet Irrigation Project and for the design and construction of the MR&amp;I System. Prescribes requirements and funding for the Blackfeet Water, Storage, and Development Project. Requires the tribal water rights to be held in trust by the United States for the Tribe and its allottees. Requires the Tribe to enact a tribal water code, subject to Interior approval, in accordance with the Compact and this Act. Establishes the Blackfeet Settlement Trust Fund. Confirms the instream flow water rights of the Tribe in the Lewis and Clark National Forest and Glacier National Park. Requires the Tribe to waive and release water rights claims against Montana and the United States in return for recognition of the tribal water rights and other benefits set forth in the Compact and</p> | <p>4/28/15: S. 1125 introduced in the Senate and referred to the Committee on Indian Affairs</p> <p>2/3/16: Committee on Indian Affairs approved S. 1125, ordering it to be reported with an amendment</p> | <p>Senator John Testor (D-MT) introduced S.1125 with co-sponsor Steve Daines (R-MT)</p> |

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|                    | <p>this Act. Declares this Act repealed if Interior fails to take certain actions by January 22, 2025.</p> <p>Committee Chairman John Barrasso (R-WY) noted: “As with most water settlements, costs can be significant. I anticipate that the budgetary impacts will remain a work in progress.” North Dakota Governor Jack Dalrymple and Attorney General Wayne Stenehjem have expressed concerns about the impact of S.1125 on future water compacts between Montana and North Dakota, wanting the Blackfeet water rights allocation included in calculations of Montana’s overall usage, and Senator John Hoeven (R-ND) voted against the bill.</p> <p>If the bill passes the Senate, it will be (one of) the first to navigate House Natural Resources Chairman Rob Bishop’s (R-UT) new system for tribal water rights settlements, enabling it to avoid the earmark designation, which has been an obstacle to the consideration of settlement legislation since the 2010 earmark ban.</p>  |   |   |
| S. 1045/ H.R. 1935 | <p><b>Issue – 10<sup>th</sup> Amendment/State Primacy</b></p> <p><b>Title – Restoring the 10th Amendment Act:</b> for the public comment period of proposed agency rules, authorizes a designated state official to submit to the head of the federal agency a legal brief challenging the constitutionality of the rule under the Tenth Amendment to the Constitution.</p> <p>The bill directs the agency head: (1) to notify the designated official of each state within 15 days after such a brief was submitted; (2) to post prominently on the front page of the agency's website a link to the brief; and (3) within 15 days after posting such link, to certify in writing that such rulemaking does not violate the Tenth Amendment and post the certification prominently on the agency's website next to the briefs pertaining to the rule, unless the agency determines not to finalize such proposed rule.</p> <p>After an agency head posts such a certification, the bill authorizes the designated state official to commence a civil action against the agency on the grounds that the rule violates the Tenth Amendment. The bill allows the state official to bring the action in the U.S. district court for the district in which the official's place of business is located, or any other venue or jurisdiction provided by law.</p> <p>The bill directs the appropriate U.S. court of appeals to grant expedited review of a decision by the district court in such an action.</p> | <p>4/22/15: H.R. 1935 introduced in the House and referred to the House Committee on the Judiciary</p> <p>4/22/15: S.1045 introduced in the Senate and referred to the Committee on the Judiciary</p> | <p>Senator Roger Wicker introduced S.1045 with 8 Republican co-sponsors</p> <p>Representative John Culberson (R-TX) introduced H.R. 1935, with 6 Republican co-sponsors</p> |
| H.R. 1830/S.982    | <b>Issue – Department of Interior/Department of Agriculture/State Primacy over Water Rights</b>  |   |   |

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|           | <p><b>Title – Water Rights Protection Act:</b> Prohibits the Department of the Interior and the Department of Agriculture from conditioning or withholding the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement (permit) on the limitation or encumbrance of any water right or the transfer of any water right to the United States or any other designee, or any other impairment of any water right under state law by federal or state action; requiring any water user (including a federally recognized Indian tribe) to apply for or acquire a water right in the name of the United States under state law as a condition of such a permit; asserting jurisdiction over groundwater withdrawals or impacts on groundwater resources, unless consistent with state groundwater resource laws, regulations, and policies; or infringing on the rights and obligations of a state in evaluating, allocating, and adjudicating state waters originating on or under, or flowing from, land owned or managed by the federal government.</p>                               | <p>4/16/15: H.R. 1830 introduced in the House and referred to the Committees on Natural Resources and Agriculture</p> <p>4/16/15: S. 982 introduced in the Senate and referred to the Committee on Energy and Natural Resources</p> <p>6/18/15: Subcommittee on Water and Power held hearings on S.982</p> | <p>Representative Scott Tipton introduced H.R. 1830 with 26 Republican co-sponsors</p> <p>Senator John Barrasso introduced S.982 with 11 Republican co-sponsors</p>                             |
| S. 980    | <p><b>Issue – Clean Water Act (CWA)/Navigable Waters/Waters of the United States (WOTUS)</b></p> <p><b>Title – Defense of Environment and Property Act of 2015:</b> would amend the CWA to define “navigable-in-fact” waters, excluding isolated water bodies and wetlands without a continuous surface water connection, and natural or man-made channels with intermittent or ephemeral water flow as drainage from periodic rainfall. The bill would prohibit the promulgation of WOTUS rules or guidance without express Congressional authorization. For determinations of CWA jurisdiction, the bill would mandate payment of double damages for regulatory takings (diminishing fair market value/economic viability), and expedited judicial review of determinations affecting State and individual water use or development. The bill would prohibit the aggregation of waters to determine Federal jurisdiction, and groundwater are expressly considered State water.</p>   | <p>4/16/15: S.980 introduced in the Senate and referred to the Environmental and Public Works Committee</p>  | <p>Senator Rand Paul introduced S.980 with co-sponsor Senators Ted Cruz (R-TX), Mitch McConnell (R-KY), Marco Rubio (R-FL), Orrin Hatch (R-UT), Mike Lee (R-UT), and Chuck Grassley (R-IA).</p> |
| H.R. 1732 | <p><b>Issue – Clean Water Act/EPA “Waters of the United States” Rule</b></p> <p><b>Title – Regulatory Integrity Protection Act:</b> To preserve existing rights and responsibilities with respect to waters of the United States, and for other purposes.</p> <p>The bill requires the Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) to withdraw their proposed WOTUS rule (79 Fed. Reg. 22188, April 21, 2014), by a 261-155 vote, including 25 Democrats. The bill requires the agencies to withdraw the regulatory proposal and any related rule (e.g. RIN 2040-AF30) within 30 days, and to go through a collaborative and transparent consultation process with state and local stakeholders, beginning within the next 3 months. The bill also requires the agencies to further consider public comments, economic analyses, the EPA Science Advisory Board report on “Connectivity of Streams and Wetlands to Downstream Waters,” and “recognize, preserve, and protect the primary rights and responsibilities of the States to protect water quality...and to plan and control the development and use of land and water resources in the States.”</p> | <p>4/13/15: H.R. 1732 introduced in the House and referred to the Committee on Transportation and Infrastructure</p> <p>4/27/15: Committee on Transportation and Infrastructure reported an amended version of H.R. 1732. H. Rept. 114-93</p> <p>5/12/15: House passes</p>                                 | <p>Senator Bill Schuster (R-PA) introduced H.R. 1732 with 68 Republican and 2 Democratic co-sponsors</p>  |

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|           |   | H.R. 1732 261-155, a largely Republican vote that included 25 Democrats<br><br>5/13/15: Senate received H.R. 1732                      |  |
| H.R. 1710 | <p><b>Issue – Water Resources Reform and Development Act (WRRDA) of 2014/Drought</b></p> <p><b>Title – Drought Resilience Investment Act of 2015:</b> Would amend the 2014 WRRDA, which passed last year, to provide additional financing options for water infrastructure projects carried out in states in which the Governor has issued a drought emergency declaration. The bill exempts water resource infrastructure projects that receive federal credit assistance under the Water Infrastructure Finance and Innovation Act, allowing financing from the proceeds of tax exempt obligations, qualified tax credit bonds or a Build America Bond, which would otherwise be prohibited by the WRRDA.</p>   | 3/26/15: H.R. 1710 introduced in the House and referred to the Committees on Transportation and Infrastructure and Energy and Commerce | Rep. Jerry McNerney (D-CA) introduced H.R. 1709 with co-sponsor Representatives Michael Honda (D-CA), Doris Matsui (D-CA) and Jared Huffman (D-CA) |
| H.R. 1709 | <p><b>Issue – Safe Drinking Water Act (SDWA)/Drought</b></p> <p><b>Title – None:</b> Would amend the SDWA to provide for the assessment and management of the risks of drought to drinking water. The bill would authorize the development of a strategic plan to evaluate the risks of drought to public water systems, to establish a comprehensive list of effects of drought on drinking water and human health, and to summarize factors that cause drought and exacerbate its effects. The strategic plan would also establish guidance on the quantification and detection of such effects, recommend treatment options, and authorize cooperative agreements with and technical assistance to states and public water systems to manage the risks. The bill would require information coordination and consultation with states, local water systems, federal agencies and others with relevant knowledge of the effects of drought on drinking water.</p>  | 3/26/15: H.R. 1709 introduced in the House and referred to the House Committee on Energy and Commerce                                  | Rep. Jerry McNerney (D-CA) introduced H.R. 1709 with 6 co-sponsor Democrats from California and New York   |
| H.R. 1705 | <p><b>Issue – Clean Water Act (CWA)/Water Infrastructure</b></p> <p><b>Title – Clean Water Affordability Act:</b> would amend the CWA to assist municipalities and regional sewer authorities that would experience a significant hardship raising the revenue necessary to finance projects and activities related to the implementation of a CWA program. The bill would authorize an assessment of local or regional economic conditions to determine the financial capability of communities to invest in water quality improvements and affordability or hardship to individual utility customers. The bill also amends the CWA to modify the effluent limitations during peak wet weather events, allowing states to adopt water quality standards to accommodate receiving waters and establish management practices for the discharge of pollutants from collection systems servicing publicly owned treatment works. The peak wet weather flow practices and techniques are intended to prevent damage to treatment facilities, maximize delivery of flow to treatment facilities, and provide cost-effective controls during peak wet weather events.</p> | 3/26/15: H.R. 1705 introduced in the House and referred to the Committee on Transportation and Infrastructure                          | Rep. Robert Latta (R-OH) introduced H.R. 1705 with co-sponsors Rep. Timoth Walz (D-MN) and Brad Ashford (D-NE)                                     |

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| H.R. 1668 | <p><b>Issue – Endangered Species Act (ESA)/Drought</b></p> <p><b>Title – Save Our Water Act:</b> During times of severe, extreme and exceptional drought (as designated by the U.S. Drought Monitor and determination of the Secretary of the Army, the Secretary of Interior, or Governor), the bill would suspend the application of the ESA to releases from water storage facilities by federal and state agencies. The bill does not prohibit the application of state law, and water releases are still permitted upon certification by the Secretary or Governor that the water release will not harm the economy or require water uses to take conservation measures.</p> <p>The bill’s sponsor, Rep. Tom McClintock (R-CA), provided the following additional information in a <a href="#">press release</a>:</p> <p style="padding-left: 40px;">This bill incorporates language that will stop the appalling practice of sacrificing tens of thousands of acre-feet of water for the comfort of fish when the human population is in immense peril</p>   | 3/26/15: H.R. 1668 introduced in the House and referred to the Committee on Natural Resources                 | Rep. Tom McClintock (R-CA) introduced H.R. 1668, with co-sponsor Dana Rohrabacher (R-CA)  |
| H.R. 1623 | <p><b>Issue – CWA/ National Pollutant Discharge Elimination System (NPDES) Permits</b></p> <p><b>Title – None:</b> Would amend the CWA to authorize states to increase the length of the NPDES permit cycle under Section 402 from five to twenty years.</p> <p>This summary is based on a description provided by the bill’s sponsor. A <a href="#">press release</a> from the bill’s sponsor, Rep. Sam Graves (R-MO), explained the reason for the legislation, stating: “Municipalities are often forced to take out a twenty-year loan for each NPDES permit, meaning that at any time, they are paying off loans for four different five-year permits.” The press release also included the following quote from Rep. Graves:</p> <p style="padding-left: 40px;">Many of these municipalities are already struggling financially, and having to pay off multiple loans at once is an added burden that simply does not make sense. The common-sense solution is to increase the length of the NPDES permit cycle to match the time a municipality is in debt to one permit cycle. Our bill will do just that.</p> | 3/25/15: H.R. 1623 introduced in the House and referred to the Committee on Transportation and Infrastructure | Rep. Sam Graves (R-MO) introduced H.R. 1623 with the other Republican members of Missouri’s Congressional delegation, Rep. Steve Russell (R-OK) and Dana Rohrabacher (R-CA) |
| S. 828    | <p><b>Issue – Hydraulic Fracturing</b></p> <p><b>Title – The Fracturing Regulations are Effective in State Hands (FRESH) Act:</b> Would declare that states have the sole authority to regulate hydraulic fracturing on all land within their boundaries, including federal land. Under the bill, oil and gas companies would still be required to comply with applicable state laws.</p> <p>The bill is a response to a <a href="#">new rule</a> the Department of the Interior finalized on March 20, setting forth new regulations to govern hydraulic fracturing on federal and tribal lands. Among other things, the rule includes a process by which states and tribes can request a variance if they have equal or more</p>   | 3/19/15: S. 828 introduced in the Senate and referred to the Committee on Energy and Natural Resources        | Senate Environment and Public Works Committee Chair Jim Inhofe (R-OK) introduced S. 828 with 28 Republican co-sponsors  |

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|                  | <p>protective regulations in place.</p> <p>This summary is based on a description provided by the bill’s sponsor. A <a href="#">press release</a> from the bill’s sponsor, Senate Environment and Public Works Committee Chair Jim Inhofe (R-OK), said:</p> <p>The past 60 years have proven that states are in the best position to understand their unique geologies and to determine what their energy needs are and what regulations are necessary to support and protect their communities. Even [Secretary of the Interior] Sally Jewell has said fracking has been done safely for many, many years. This is why I have introduced legislation...to ensure states, and not the federal government, will continue to have the sole authority in regulating hydraulic fracturing.</p> <p><i>*WSWC <a href="#">Policy #353</a> urging federal hydraulic fracturing efforts to leverage state expertise and opposing efforts to diminish state primacy over the allocation of water resources used in hydraulic fracturing.</i></p> <p><i>**WGA <a href="#">Resolution 2013-09</a>, paragraph B(3) stating that states “have effectively regulated the practice of hydraulic fracturing and redundant federal regulation is not required.”</i></p> |  |  |
| H.R. 1515        | <p><b>Issue – Hydraulic Fracturing/SDWA</b></p> <p><b>Title: Safe Hydration is an American Right in Energy Developed (SHARED) Act of 2015:</b> Would amend the SDWA to require testing of underground sources of drinking water in connection with hydraulic fracturing and public disclosure of the results of the testing.</p> <p>The SHARED Act is one of four so-called “Frack Pack” bills aimed at closing oil and gas “loopholes” involving hydraulic fracturing. The other bills include the FRAC Act (S. 785/H.R. 1482) regarding the SDWA, the FRESHER Act (H.R. 1460) regarding the CWA, and the BREATHE Act (H.R. 1548) regarding the Clean Air Act.</p> <p><i>*WSWC <a href="#">Policy #353</a> urging federal hydraulic fracturing efforts to leverage state expertise and opposing efforts to diminish state primacy over the allocation of water resources used in hydraulic fracturing.</i></p> <p><i>**WGA <a href="#">Resolution 2013-09</a>, paragraph B(3) notes that states “have effectively regulated the practice of hydraulic fracturing and redundant federal regulation is not required.”</i></p>  | 3/19/15: H.R. 1515 introduced in the House and referred to the Committee on Energy and Commerce. | Rep. Jan Schakowsky (D-IL) introduced H.R. 1515 with 26 Democratic co-sponsors |
| S. 785/H.R. 1482 | <p><b>Issue – Hydraulic Fracturing/SDWA</b></p> <p><b>Title – Fracturing Responsibility and Awareness of Chemicals (FRAC) Act of 2015:</b> Would require the disclosure of the chemicals used in hydraulic fracturing and would remove the oil and gas</p>  | 3/18/15: S. 785 introduced in the Senate and referred to the Committee on Environment and Public | Senator Robert Casey (D-PA) introduced S. 785 with 11 Democratic co-           |

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|                      | <p>industry's exemption from requirements in the SDWA's Underground Injection Control program, otherwise known as the "Halliburton Exemption."</p> <p>The FRAC act is one of four so-called "Frack Pack" bills aimed at closing what their sponsors consider to be "loopholes" involving hydraulic fracturing. The other bills include the SHARED Act (H.R. 1515) regarding the SDWA, the FRESHER Act (H.R. 1460) regarding the CWA, and the BREATHE Act (H.R. 1548) regarding the Clean Air Act.</p> <p><i>*WSWC <a href="#">Policy #353</a> urging federal hydraulic fracturing efforts to leverage state expertise and opposing efforts to diminish state primacy over the allocation of water resources used in hydraulic fracturing.</i></p> <p><i>**WGA <a href="#">Resolution 2013-09</a>, paragraph B(3) stating that states "have effectively regulated the practice of hydraulic fracturing and redundant federal regulation is not required."</i></p>  | <p>Works</p> <p>3/19/15: H.R. 1482 introduced in the House and referred to the Committee on Energy and Commerce</p>   | <p>sponsors</p> <p>Rep. Diana DeGette (D-CO) and Rep. Chris Gibson (R-NY) introduced H.R. 1482 with 61 Democratic and 1 Republican co-sponsors</p>                            |
| H.R. 1460/<br>S.1554 | <p><b>Issue – CWA/Hydraulic Fracturing</b></p> <p><b>Title – Focused Reduction of Effluence and Stormwater Runoff Through Hydrofracking Environmental Regulation (FRESHER) Act of 2015:</b> Would amend Section 402 of the CWA to revoke an exemption for and gas companies regarding stormwater runoff permits. Would also require the Department of the Interior to conduct a study to understand the effects of oil and gas operations on surface waters.</p> <p>The FRESHER is one of four so-called "Frack Pack" bills aimed at closing what their sponsors consider to be "loopholes" involving hydraulic fracturing. The other bills include the FRAC Act (S. 785/H.R. 1482) and SHARED Act (H.R. 1515) regarding the SDWA and the BREATHE Act (H.R. 1548) regarding the Clean Air Act.</p> <p><i>*WSWC <a href="#">Policy #353</a> urging federal hydraulic fracturing efforts to leverage state expertise and opposing efforts to diminish state primacy over the allocation of water resources used in hydraulic fracturing.</i></p> <p><i>**WGA <a href="#">Resolution 2013-09</a>, paragraph B(3) stating that states "have effectively regulated the practice of hydraulic fracturing and redundant federal regulation is not required."</i></p> | <p>3/19/15: H.R. 1460 introduced in the House and referred to the Committee on Transportation and Infrastructure</p> <p>6/11/15: S. 1554 introduced in the Senate and referred to the Committee on Environment and Public Works</p> | <p>Rep. Matt Cartwright (D-PA) introduced H.R. 1460 with 82 Democratic co-sponsors</p> <p>Senator Benjamin Cardin (D-MD) introduced S. 1554 with 5 Democratic co-sponsors</p> |
| H.R. 1370            | <p><b>Issue – U.S. Army Corps of Engineers/Missouri River</b></p> <p><b>Title – None:</b> Directs Corps to revise the Missouri Mainstem Reservoir System Master Water Control Manual and any related regulations to delete fish and wildlife as an authorized purpose of the Corps and elevate flood control as the highest priority of authorized purposes of the Corps at all times. (CRS Summary)</p>  | <p>3/16/15: H.R. 1370 introduced and referred to the Committee on Transportation and Infrastructure</p>   | <p>Rep. Sam Graves (R-MO) introduced H.R. 1370, with co-sponsor Rep. Vicky Hartzler (R-MO)</p>  |

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| H.R. 1296        | <p><b>Issue – California/San Luis Rey Indian Water Rights Settlement</b></p> <p><b>Title – None:</b> Would amend the San Luis Rey Indian Water Rights Settlement Act (P.L. 100-675) regarding the unquantified reserved water rights claims of the La Jolla, Ricon, San Pasqual, Pauma, and Pala Band of Mission Indians in California to clarify certain settlement terms. The legislation would also authorize the federal government to execute the settlement agreement, recognize the Bands’ reserved water rights claims, and confirms benefits to allottees in the agreement. The bill does not authorize any federal funding. The bill would release the federal government from some liability and remove it as a required party in future proceedings, while leaving the reserved water rights unquantified at the present time.</p> <p>Letty Belin, Counselor to the Deputy Secretary, DOI, testified on Administration efforts to negotiate and implement Indian water rights settlements, improve settlement terms and reduced federal costs. She noted approval of the San Luis Rey Mission Bands’ settlement would not require any new federal spending, as the 1988 Act established a fund sufficient for the infrastructure needed to provide a reliable water source for the tribes. She also expressed appreciation for the “...Committee’s support of the longstanding policy of the United States that disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation.”</p> <p><i>*WSWC <a href="#">Policy #376</a> supporting the negotiated resolution of Indian water rights settlements.</i></p> <p><i>** WGA <a href="#">Resolution #2015-08</a>, paragraph B(3)(e) supporting the negotiated resolution of Indian water rights settlements.</i></p> | <p>3/4/15: H.R. 1296 introduced in the House and referred to the Committee on Natural Resources</p> <p>10/28/15: Natural Resources Subcommittee on Water, Power and Oceans held hearings on H.R. 1296</p> <p>2/3/16: Natural Resources Committee mark-up session, ordering H.R. 1296 to be reported by unanimous consent</p> <p>2/24/16: Scheduled vote on H.R. 1296 did not occur</p> | <p>Rep. Duncan Hunter (R-CA) introduced H.R. 1296 with eight co-sponsors, including a bipartisan group of Representatives from California and Rep. Tom Cole (R-OK)</p>  |
| S. 741/H.R. 1278 | <p><b>Issue – EPA/Water Infrastructure</b></p> <p><b>Title – Water Infrastructure Resiliency and Sustainability Act of 2015:</b> Would require EPA to establish and implement a program, to be known as the Water Infrastructure Resiliency and Sustainability Program. Under the program, EPA would award grants in each of fiscal years 2016 through 2020 to owners or operators of water systems to increase the resiliency or adaptability of infrastructure to ongoing or forecasted changes (based on the best available research and data) to the hydrologic conditions of a region of the United States. Grants would require a non-federal cost share up to 50%. The legislation would authorize \$50M for each of fiscal years 2016 through 2020 under H.R. 1278 and \$50M for each of fiscal years 2015 through 2019 under S. 741. (CRS Summary)</p> <p><i>**WGA <a href="#">Resolution #2015-08</a>, paragraph B(2) regarding water infrastructure needs.</i></p>  | <p>3/4/15: H.R. 1278 introduced in the House and referred to the Committees on Transportation and Infrastructure, Energy and Commerce, and Natural Resources</p> <p>3/16/15: S. 741 introduced in the Senate and referred to the Committee on Environment and Public Works</p>   | <p>Senator Benjamin Cardin (D-MD) introduced S. 741 with cosponsors Senate Majority Leader Harry Reid (D-NV), Senators Barbara Boxer (D-CA) and Sheldon Whitehouse (D-RI)</p> <p>Rep. Lois Capps (D-CA) introduced H.R. 1278 with 17 Democratic co-sponsors</p> |
| S. 653           | <p><b>Issue – Water Resources Research Amendments Act of 2015</b></p>  | <p>3/4/15: S. 653 introduced in the Senate and referred</p>  | <p>Senator Benjamin Cardin (D-MD)</p>   |

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|                   | <p><b>Title</b> – Would amend the Water Resources Research Act of 1984 to: (1) declare that additional research is required to increase the effectiveness and efficiency of new and existing treatment works through alternative approaches, including non-structural alternatives, decentralized approaches, energy use efficiency, water use efficiency, and actions to extract energy from wastewater; (2) require each water resources research and technology institute to arrange for research that fosters the exploration of new ideas that expand understanding of water resources (currently, of water-related phenomena); (3) direct the Department of the Interior to report to specified congressional committees annually on each institute's compliance with matching fund requirements and provisions permitting the use of funds only to reimburse direct cost expenditures incurred for the conduct of the water resources research program; and (4) authorize a total of \$9.5M per year through 2020 for such institutes. (CRS Summary)</p> <p>Related bills include Water Resources Research Amendments Act (H.R. 4497) and Water in the 21<sup>st</sup> Century Act (S. 176/H.R. 291)</p> <p><i>*WSWC <a href="#">Policy #368</a> supporting the Water Resources Research Institutes.</i></p> | <p>to the Committee on Environment and Public Works</p> <p>6/9/15: S. 653 passed the Senate without amendment by unanimous consent</p> <p>6/10/15: S.653 received in the House and referred to the Committee on Natural Resources</p> | <p>introduced S. 653 with co-sponsor Senator John Boozman (R-AR)</p>   |
| H.R. 1203         | <p><b>Issue – CWA/Section 404</b></p> <p><b>Title – None:</b> Would amend the CWA to clarify that the EPA does not have the authority to retroactively disapprove of a Section 404 permit after it has been issued by the U.S. Army Corps of Engineers. The bill would apply to discharge permits issued (1) after the bill's enactment, and (2) on or before enactment if EPA failed to submit to the Corps a written objection to the permit prior to the Corps issuance of the permit.</p> <p>See summaries for H.R. 896 and S. 234 for similar legislation.</p>   | <p>3/2/15: H.R. 1203 introduced in the House and referred to the Committee on Transportation and Infrastructure</p>   | <p>Rep. David McKinley (R-WV) with co-sponsors Rep. Collin (D-MN) Peterson, the Ranking Member of the House Agriculture Committee, and Representatives Evan Jenkins (R-WV), Alexander Mooney (R-WV), Paul Gosar (R-AZ), and Andy Barr (R-KY)</p> |
| S. 611/ H.R. 2853 | <p><b>Issue – SDWA/Water Infrastructure</b></p> <p><b>Title – Grassroots Rural and Small Community Water Systems Assistance Act:</b> Would reauthorize the SDWA's technical assistance and training provision for \$15M per year through 2020. The bill's sponsor, Senators Roger Wicker (R-MS) and Heidi Heitkamp (D-ND), introduced similar legislation (H.R. 654) in the 113<sup>th</sup> Congress.</p> <p>EPA may use the funds to provide grants or cooperative agreements to nonprofit organizations that provide onsite technical assistance; circuit-rider technical assistance programs; multistate, regional technical assistance programs; onsite and regional training; assistance with implementing source water protection plans; and assistance with implementation monitoring plans, rules, regulations, and water</p>  | <p>2/27/15: S. 611 introduced in the Senate and referred to the Committee on Environment and Public Works</p> <p>6/9/15: S. 611 passed the Senate without amendment by unanimous consent</p>  | <p>Senators Roger Wicker (R-MS) and Heidi Heitkamp (D-ND) introduced S. 611 with 19 bi-partisan co-sponsors</p> <p>Rep. Gregg Harper (R-MS) introduced H.R. 2853 with co-sponsors Rep. Paul Tonko (D-</p>  |

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|                  | <p>security enhancements. Those grants and cooperative agreements may not be used for citizen suits brought under that Act. In order to ensure that technical assistance funding is used in a manner that is most beneficial to the small and rural communities, the EPA must give preference to nonprofit organizations that are the most qualified and experienced and that the small community water systems find to be the most beneficial and effective.</p> <p><i>**WGA <a href="#">Resolution #2014-03</a>, paragraph B(2) regarding water infrastructure needs.</i></p>   | <p>6/23/15: H.R. 2853 introduced in the House, referred to the Committee on Energy and Commerce</p> <p>10/22/15: House Energy and Commerce Subcommittee on Environment and the Economy held hearings on S. 611</p> <p>11/19/15: House Energy and Commerce Committee reported S. 611. H. Rept. 114-346</p> <p>11/30/15: House passed S. 611</p> <p>12/11/15: President signed S. 611 into law, Pub. L. 114-98</p> | <p>NY), Chris Stewart (R-UT), and David McKinley (R-WV)</p>   |
| S. 593/H.R. 1107 | <p><b>Issue – Bureau of Reclamation/Maintenance and Rehabilitation</b></p> <p><b>Title – Bureau of Reclamation Transparency Act:</b> would require the Secretary of the Interior to: (1) report to Congress on Reclamation efforts to manage all Reclamation facilities and to standardize and streamline data reporting and processes for purposes of managing such facilities, and (2) update such report biennially. The bill would also require the report to include a detailed assessment of major repair and rehabilitation needs at all Reclamation projects and an itemized list of major repair and rehabilitation needs of individual facilities at each project.</p> <p>Mandates an annual assessment of major repair and rehabilitation needs for reserved works with an estimate of appropriations needed to complete each item and an assignment of a categorical rating to inform the annual budget process. The bills would also direct Interior to coordinate with the non-federal entities responsible for transferred works to develop reporting requirements and a categorical rating system.</p> <p><i>*WSWC <a href="#">Policy #360</a> urging Congress and the Administration to work together to develop a standardized process to provide information regarding its maintenance and rehabilitation (M&amp;R) needs, and urging Reclamation to ensure that information regarding its M&amp;R needs is accessible and</i></p> | <p>2/26/15: S. 593 introduced in the Senate and referred to the Energy and Natural Resources Committee</p> <p>2/26/15: H.R. 1107 introduced in the House and referred to the Committee on Natural Resources</p> <p>6/18/15: Subcommittee on Water and Power held hearings on S. 593</p> <p>6/25/15: Subcommittee on Water, Power, and Oceans held hearings on H.R.</p>   | <p>Senator John Barrasso (R-WY) introduced S. 593 with co-sponsor Senator Brian Schatz (D-HI)</p> <p>Rep. Paul Gosar (R-AZ) introduced H.R. 1107 with 25 bipartisan co-sponsors</p> |

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|           | <i>easy to understand.</i>  | <p>1107</p> <p>9/9/15: Senate Energy and Natural Resources Committee reported S. 593 with amendments, placed on Senate calendar. S. Rept. 114-28</p> <p>12/3/15: House Committee on Natural Resources reported H.R. 1107 with amendments by unanimous consent, placed on House calendar. H. Rept. 114-366</p> |  |
| H.R. 1093 | <p><b>Issue – EPA/CWA/Wastewater and Stormwater</b></p> <p><b>Title – Clean Water Compliance and Ratepayer Affordability Act of 2015:</b> Would authorize EPA, in coordination with appropriate state, local, and regional authorities, to carry out a pilot program under which EPA work cooperatively with and facilitate the efforts of municipalities to develop and implement integrated plans to meet their wastewater and stormwater obligations under the CWA in a more cost-effective and flexible manner.</p>   | <p>2/26/15: H.R. 1093 introduced in the House and referred to Committee on Transportation and Infrastructure</p>  | <p>Rep. Steve Chabot (R-OH) introduced H.R. 1093 with 20 bipartisan co-sponsors</p>                    |
| H.R. 1060 | <p><b>Issue – Reclamation/Infrastructure</b></p> <p><b>Title – Sacramento Valley Water Storage and Restoration Act:</b> Directs the Department of the Interior, acting through the Bureau of Reclamation, to: (1) finalize and publish in the Federal Register the feasibility study authorized in the Water Supply, Reliability, and Environmental Improvement Act, for enlargement of the Los Vaqueros Reservoir in Contra Costa County, California; (2) work with the Department of Commerce, the Army Corps of Engineers, and the Environmental Protection Agency, by June 30, 2015, to coordinate the efforts of the relevant agencies and work with the state of California, the Sites Project Authority, and other stakeholders to complete and issue the final joint environmental impact statement and report on the Sites Project (the Sites Reservoir in Glenn and Colusa Counties, California, and related facilities, including associated water conveyance and hydropower generation and transmission facilities); and (3) enter into agreements with the Authority to carry out such work as the Bureau and the Authority mutually agree is appropriate to ensure that all studies and environmental reviews are completed on an expeditious basis and that the shortest applicable process under the National Environmental Policy Act is utilized, including in the completion of the final feasibility study and final joint environmental impact statement and report on the Sites Project. Amends the Calfed Bay-Delta Authorization Act. Authorizes and directs: (1) the</p> | <p>2/25/2015: H.R. 1060 introduced in the House and referred to the Committee on Natural Resources</p>  | <p>Rep. Doug LaMalfa (R-CA) introduced H.R. 1060 with three Republican co-sponsors from California</p> |

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|                  | <p>Bureau to advance the Sites Project as a non-federal project if the Bureau determines and Interior concurs that the Project can be expedited by the Authority as a non-federal project and that there is a demonstrable federal interest for the Project to be constructed and operated as a non-federal project, and (2) Interior to execute and implement a long-term agreement with the Authority for the coordination of operations of the Central Valley Project and the Sites Project. Directs the Bureau to: (1) be the lead federal agency for the purposes of all federal reviews, analyses, opinions, statements, permits, licenses, or other approvals or decisions required under federal law to allow either the Bureau or the Authority to construct the Sites Project; and (2) take such steps as necessary to ensure that all such reviews, approvals, or decisions required to allow either the Bureau or the Authority to construct the Sites Project are completed on an expeditious basis and utilize the shortest applicable process.</p> |  |   |
| S. 544/H.R. 1030 | <p><b>Issue – Environmental Protection Agency (EPA) Science</b></p> <p><b>Title – Secret Science Reform Act of 2015:</b> Would prevent EPA from creating regulations based on science that is not the “best available,” “specifically identified,” and publically available online in a manner “...sufficient for independent analysis and substantial reproduction of research results.”</p> <p>Republicans say the bill addresses concerns that EPA has based some of its regulations on “secret” data and information that it has not made public. However, Democrats say the bill prevents EPA from using relevant scientific data, including confidential medical information that is legally protected from public disclosure. President Obama has threatened to veto the bill.</p>   | <p>2/24/15: S. 544 introduced in the Senate and referred to the Senate Committee on Environment and Public Works</p> <p>2/24/15: H.R. 1030 introduced in the House and referred to the Science Committee</p> <p>3/2/15: House Science Committee reports H.R. 1030. H. Rept. 114-34</p> <p>3/18/15: House passes H.R. 1030 241-175, largely along party lines with Republican support</p> <p>3/19/15: Senate received H.R. 1030, referred to Committee on Environment and Public Works</p> <p>6/22/15: Senate Committee on Environment and Public Works reports S. 544 with an amendment and places</p> | <p>Senator John Barrasso (R-WY) introduced S. 544 with 7 co-sponsors</p> <p>House Science Committee Chair Lamar Smith (R-TX) introduced H.R. 1030 with 28 co-sponsors</p> |

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|                  |  | it on the Legislative Calendar. S. Rept. 114-69  |  |
| S. 543/H.R. 1029 | <p><b>Issue – EPA Science Advisory Board (SAB)</b></p> <p><b>Title – EPA Science Advisory Board Reform Act of 2015:</b> Would require EPA to disclose the identity of persons nominated to the SAB, including the entities that made the nomination, and accept comments on nominees. The bill would also require nominees to disclose financial relationships and interests that are relevant to the SAB’s advisory activities. In addition, the bill would require that at least 10% of the SAB be from state, local, or tribal government. The bill passed 236-181 on March 17, along party lines with Republican support.</p> <p>Republicans say H.R. 1029 is needed to address shortcomings in the SAB process, which they say includes limited public participation, EPA interference with expert advice, and potential conflicts of interest. Democrats largely oppose the bill, arguing that it would allow delays in EPA’s regulatory process and make it easier for industry representatives to serve on the SAB even if they have a financial conflict of interest.</p> <p><i><u>**Testimony of WGA Executive Director Jim Ogsbury before the House Appropriations Subcommittee on Interior, Environment, and Related Agencies on April 10, 2014, page 3, urging Congress to ensure that state experts comprise at least 10% of the SAB and its panels.</u></i></p> | <p>2/24/15: S. 543 introduced in the Senate and referred to the Senate Committee on Environment and Public Works</p> <p>2/24/15: H.R. 1029 introduced in House and referred to the House Science Committee</p> <p>3/2/15: House Science Committee reports H.R. 1029</p> <p>3/17/15: House passes H.R. 1029 236-181, largely along party lines with Republican support</p> <p>3/18/15: Senate received H.R. 1029, referred to Committee on Environment and Public Works</p> <p>5/20/15: Senate hearings held by the Subcommittee on Superfund, Waste Management, and Regulatory Oversight</p> | <p>Senator John Boozman (R-AR) introduced S. 543 along with co-sponsors Senators Joe Manchin (D-WV) and James Inhofe (R-OK), the Chair of the Senate Environment and Public Works Committee</p> <p>Rep. Frank Lucas (R-OK) introduced H.R. 1029 with 24 co-sponsors, including Rep. Collin Peterson (D-MN), the Ranking Members of the House Agriculture Committee</p> |
| H.R. 963         | <p><b>Issue – CWA/Abandoned Hardrock Mines/Good Samaritan Remediation</b></p> <p><b>Title – Hardrock Mining Reform and Reclamation Act of 2015:</b> Would authorize a number of activities and reforms to facilitate the clean-up of abandoned hardrock mines. Title IV of the bill would enact the Good Samaritan Cleanup of Abandoned Hardrock Mines Act of 2015, which would encourage third parties with no legal responsibility for the mine (Good Samaritans) to engage in remediation efforts by amending the CWA to create a new permitting program. Good Samaritans who</p>   | <p>2/13/15: H.R. 963 introduced in the House and referred to the Committees on Natural Resources and Transportation and Infrastructure</p>   | <p>House Natural Resources Committee Ranking Member Raul Grijalva (D-AZ) introduced H.R. 963 along with 30 Democratic co-</p>  |

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|                  | <p>comply with the terms of the permits issued under the program would be shielded from CWA liability so long as they comply with the terms of the permit.</p> <p><i>**WGA <a href="#">Resolution 2013-05</a>, paragraph B(2) calling on Congress to amend the CWA to protect Good Samaritans from becoming perpetually liable for discharges that continue at an abandoned mine after clean-up.</i></p>  |   | sponsors  |
| S. 501/H.R. 1406 | <p><b>Issue – Indian Water Rights Settlement/Infrastructure</b></p> <p><b>Title – New Mexico Navajo Water Settlement Technical Corrections Act:</b> Amends the Omnibus Public Land Management Act of 2009 to expand the current authorization for the construction or rehabilitation and operation and maintenance of conjunctive use wells in the San Juan River Basin, Little Colorado River Basin, and Rio Grande Basin in New Mexico to include the planning and design of those wells.</p> <p>Revises the percentages of funds authorized for the Navajo-Gallup Water Supply Project, conjunctive use wells, and San Juan River Irrigation Projects that may be made available for specified purposes.</p> | <p>2/12/15: S.501 introduced in Senate, referred to Committee on Indian Affairs</p> <p>3/17/15: H.R. 1406 introduced in House, referred to Committee on Natural Resources</p> <p>5/11/15: Committee on Indian Affairs reported amended version of S.501 to Senate</p> <p>5/21/15: House passed S.501 without amendment by unanimous consent</p> <p>6/25/15: Subcommittee on Water, Power and Oceans held hearings on H.R. 1406</p> <p>9/21/15: Senate presented S. 501 to the President</p> <p>9/30/15: President signed into law, Pub. L. 114-57</p> | <p>Senator Tom Udall (D-NM) introduced S.501 with co-sponsor Senator Martin Heinrich (D-NM)</p> <p>Rep. Ben Ray Lujan (D-NM) introduced H.R. 1406</p> |
| S. 438           | <p><b>Issue – Reclamation Fund/Indian Irrigation Projects</b></p> <p><b>Title – Irrigation and Rehabilitation for Indian Tribal Governments and Their Economies Act (“Irrigate” Act):</b> Would direct \$35M per year through 2036 from the Reclamation Fund into an</p>  | <p>2/10/15: Introduced in Senate and referred to Senate Indian Affairs Committee</p>  | <p>Senate Indian Affairs Committee Chair John Barrasso (R-WY) introduced S. 438 with</p>  |

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|          | <p>Indian Irrigation Fund to build and maintain Indian irrigation projects. The legislation is similar to an amendment Senator Barrasso introduced last Congress to S. 715. In addition to funding Indian irrigation projects, S. 715 would have used funding from the Reclamation Fund to support authorized rural water projects and projects that are part of authorized Indian water rights settlements.</p> <p><i>*<a href="#">WSWC Policy 367</a> supporting the use of the Reclamation Fund to support western water infrastructure projects.</i></p>   | <p>3/4/15: Senate Indian Affairs Committee holds hearing on S. 438</p> <p>3/18/15: Senate Indian Affairs Committee reports S. 438</p>   | <p>co-sponsors Senators Jon Tester (D-MT), Orrin Hatch (R-UT), Michael Enzi (R-WY), Steve Daines (R-MT), and Michael Bennet (D-CO)</p> |
| H.R. 897 | <p><b>Issue – CWA/Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)/NPDES Permits/Pesticide Applications</b></p> <p><b>Title – Reducing Regulatory Burdens Act of 2015:</b> Would amend the CWA and FIFRA to clarify that FIFRA-compliant pesticide applications do not require NPDES permits. The bill would overturn the Sixth Circuit Court of Appeals’ <i>National Cotton Council v. EPA</i>, 533 F.3d 927 (6<sup>th</sup> Cir. 2006), decision, which required NPDES permits for pesticide applications even if they comply with FIFRA. The bill is also similar to H.R. 935, which Gibbs introduced in 2013. That bill passed the House 267-161 but stalled in the Senate.</p> <p><i>*WSWC <a href="#">Policy #359</a> supporting legislation to amend FIFRA and the CWA to clarify that FIFRA-compliant pesticide applications do not require NPDES permits.</i></p> <p><i>**WGA <a href="#">Resolution #14-04</a>, paragraph B(2)(d), supporting primary role of FIFRA in regulating pesticide applications.</i></p> | <p>2/11/15: H.R. 897 introduced in the House and referred to the Committees on Agriculture and Transportation and Infrastructure</p> <p>3/19/15: House Agriculture Committee reports H.R. 897 by voice vote</p> | <p>Rep. Bob Gibbs (R-OH) introduced H.R. 897</p>   |
| H.R. 896 | <p><b>Issue: CWA/Section 404 Permits</b></p> <p><b>Title: Regulatory Certainty Act of 2015:</b> Would amend the CWA to prevent EPA from retroactively vetoing Section 404 permits issued by the Corps. Specifically, the bill would require that EPA exercise its veto authority during a period of time that: (1) begins on the date the Corps notifies EPA that it has completed all procedures for processing a 404 permit relating to the specification of a defined area as a disposal site and is ready to determine whether the permit should be issued; and (2) ends on the date the Corps issues a 404 permit. The bill would require that the period last at least 60 days and that the Corps can only issue a permit after it has provided notice to EPA. The bill would only apply to permit applications submitted after its enactment.</p> <p>H.R. 896 is similar to S. 234 summarized below.</p>  | <p>2/11/15: Introduced in the House and referred to the Committee on Transportation and Infrastructure</p>  | <p>Rep. Bob Gibbs (R-OH)</p>   |
| S. 384   | <p><b>Issue – Internal Revenue Service/Water Leasing</b></p> <p><b>Title – Water and Agriculture Tax Reform Act of 2015:</b> Would amend the Internal Revenue Code to permit tax-exempt mutual ditch or irrigation companies to earn income from dispositions of certain</p>   | <p>2/5/15: Introduced in the Senate and referred to the Committee on Finance</p>  | <p>Senator Mike Crapo (R-ID) introduced S. 384 with co-sponsors Senators Michael</p>   |

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|                   | <p>real property and stock interests without affecting their tax-exempt status. The bill would also require that such income be used to pay the costs of operations, maintenance, and capital improvements of such a company.</p> <p>See H.R. 4220 above.</p>   |   | <p>Bennet (D-CO), Cory Gardner (R-CO), Michael Enzi (R-WY), and James Risch (R-ID)</p>  |
| H.R. 813          | <p><b>Issue – Corps Reservoir Operations</b></p> <p><b>Title: Fixing Operations of Reservoirs to Encompass Climatic and Atmospheric Science Trends (FORECAST) Act:</b> Would require the Corps to review reservoir operations within one year after receiving a request from a nonfederal sponsor of a reservoir. In conducting the review, the Corps would consider the water control manual and rule curves and use improved weather forecasts and run-off forecasting methods.</p> <p>In carrying out a review, the bill would require the Corps to determine if a change in reservoir operations would improve core functions at a reservoir, including whether a change would: (1) reduce risks to human life, public safety, and property; (2) reduce the need for future disaster relief; (3) improve local water storage capability and reliability in coordination with the nonfederal sponsor and other water users; (4) restore, protect, or mitigate the impacts of a water resources development project on the environment; or (5) improve fish species habitat or population within the boundaries and downstream of a water resources project.</p> <p>If the Corps determines that using improved weather and run-off forecasting methods improves one or more core functions at a reservoir, the bill would require it to incorporate such changes into its operations and to update the water control manual.</p> | <p>2/9/2015: H.R. 813 introduced in the House and referred to the Committee on Transportation and Infrastructure</p>  | <p>Rep. Jared Huffman (D-CA) introduced H.R. 813 with 11 Democratic co-sponsors</p>   |
| S. 338/ H.R. 1814 | <p><b>Issue – Land and Conservation Fund</b></p> <p><b>Title – None:</b> Would permanently reauthorize the Land and Water Conservation Fund, which provides funds and matching grants to federal, state, and local governments for the acquisition of land and water, and easements on land and water. Requires not less than 1.5% of the annual authorized funding amount or \$10 million, whichever is greater, to be used for projects that secure recreational public access to existing federal public land for hunting, fishing, and other recreational purposes.</p>   | <p>2/2/15: S. 338 introduced in the Senate and placed on the Senate Legislative Calendar</p> <p>4/15/15: H.R. 1814 introduced in the House and referred to the Committee on Natural Resources</p> | <p>Senator Richard Burr (R-NC) introduced S. 338 with a group of 18 bipartisan co-sponsors, including western Senators Michael Bennet (D-CO), Jon Tester (D-MT), Martin Heinrich (D-NM), Patty Murray (S-WA), and Steve Daines (R-MT)</p> |

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|                 |   |  | Rep. Raul Grijalva (D-AZ) introduced H.R. 1814 with 156 Democratic and 19 Republican co-sponsors   |
| S. 176/H.R. 291 | <p><b>Issue – Bureau of Reclamation/U.S. Geological Survey (USGS)/EPA/Water Infrastructure/Water Reuse/Water Resources Research Institutes</b></p> <p><b>Title – Water in the 21<sup>st</sup> Century Act:</b> would create a financing program within the Department of the Interior to offer long-term, low-cost financing for eligible water infrastructure projects in the West that are directly and indirectly associated with Bureau of Reclamation projects. Eligible projects and activities include reuse, new infrastructure, energy efficiency, and desalination, as well as construction, reconstruction, rehabilitation, and replacement activities, among others. The program would receive about \$100M per year. Second, the bill would authorize \$700M for Reclamation to work with state and local entities on storage, conveyance, and water reuse projects. Reclamation’s share of such projects would be the lesser of 50% of the project’s total cost or \$15M. Third, the bill would direct the USGS to establish an open water data system to improve water data availability, enhance data use, and ensure timely distribution of water data and information. The bill would authorize “such sums as are necessary” for this program. Fourth, the bill would require EPA to lead an inter-agency effort that would include Reclamation, the Department of Agriculture, and others to develop National Drought Resilience Guidelines for states, local governments, and water agencies. The guidelines would create a framework of non-regulatory recommendations to help strengthen drought preparedness efforts. Fifth, the bill would authorize “such sums as are necessary” to create a new EPA grant program that would help water systems carry out various efforts, including projects to conserve water and improve water quality. The grants would provide up to 50% of project costs. Other notable provisions would: (1) authorize Interior to transfer ownership of Reclamation projects to non-federal entities; (2) re-authorize the Water Resources Research Act to authorize \$9M per year through 2020 for water supply research and other purposes at the water resources research institutes; (3) re-authorize the Water Desalination Act of 1996, and provide \$6M per year through 2020 for Interior to study desalination and water reuse; and (4) authorize the Corps to review reservoir operations, at the request of non-federal sponsors, to determine if operational changes are needed.</p> <p><i>*WSWC <a href="#">Policy #368</a> supporting the Water Resources Research Institutes.</i></p> <p><i>*WSWC <a href="#">Policy #362</a> regarding the transfer of federal water and power projects and related facilities.</i></p> <p><i>**WGA <a href="#">Resolution #2015-08</a>, paragraph B(2) regarding water infrastructure needs.</i></p> | <p>1/31/15: S. 176 introduced in the Senate and referred to the Committee on Environment and Public Works</p> <p>1/31/15: H.R. 291 introduced in the House and referred to the Committees on Natural Resources, Transportation and Infrastructure, and Science</p> | <p>Senator Barbara Boxer (D-CA) introduced S. 176 with Senate Minority Leader Harry Reid (D-NV) and Senator Dianne Feinstein (D-CA)</p> <p>Rep. Grace Napolitano (D-CA) introduced S. 176 with 31 Democratic co-sponsors</p> |

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| H.R. 594 | <p><b>Issue – CWA Jurisdiction/Waters of the U.S. Rulemaking</b></p> <p><b>Title – Waters of the U.S. Regulatory Overreach Protection Act of 2015:</b> Would require EPA and the U.S. Army Corps of Engineers to withdraw their proposed rule regarding CWA jurisdiction. In addition to withdrawing the rule, the bill would prohibit EPA and the Corps from using the rule, the now-withdrawn draft guidance the agencies developed in 2011, and any “...successor document, or any substantially similar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope or enforcement of the [CWA].” The bill further specifies that using such documents “...shall be grounds for vacating the final rule, decision, or enforcement action.”</p> <p>Going forward, the rule would require EPA and the Corps to consult with state and local officials to develop recommendations for a regulatory proposal that would identify those waters that are covered and not covered under the CWA, consistent with U.S. Supreme Court rulings. In developing these recommendations, the bill would require the agencies to consult with state and local officials that represent a “broad cross-section” of regional, economic, and geographic perspectives, and consider state and local input regarding the “...differences in State and local geography, hydrology, climate, legal frameworks, economies, priorities, and needs.” It would also require the agencies to explore with state and local officials whether federal CWA objectives can be attained by means other than through a new regulatory proposal.</p> <p>Within a year after the bill’s enactment, EPA and the Corps would be required to publish a draft report in the Federal Register for public comment that describes the recommendations developed with states and local officials. The agencies would only be able to include a recommendation in the draft report if there is a consensus. If consensus is not possible, the draft report must identify those areas where consensus was reached, those areas where consensus was not made, and the reasons for continuing disagreements. A final report addressing the comments the agencies receive would be due to Congress two years after the bill’s enactment.</p> <p><i>*WSWC <a href="#">Comments on the rule (Policy #373)</a>, <a href="#">Policy #369</a> regarding CWA jurisdiction, <a href="#">Policy #370</a> requesting withdrawal of the interpretive rule regarding agricultural exemptions, and related letters dated 3/10/14 12/23/13, 11/20/13, 11/5/13, 4/10/13, and 7/29/11 (attached to WSWC Policy #373).</i></p> <p><i>**WGA <a href="#">Resolution #2014-04</a>, paragraph B(1)(a) regarding CWA jurisdiction and related letters dated 8/27/14, 5/30/14, and 3/25/14 and Congressional testimony before the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies on 5/23/14 and before the House Appropriations Subcommittee on Interior, Environment, and Related Agencies on 4/10/14.</i></p> <p><i>***Joint WSWC-WGA Congressional testimony dated 6/11/14 before the House Transportation and Infrastructure Subcommittee on Water Resources and Environment (contained as an attachment to WSWC Policy #373).</i></p> | 1/28/15: H.R. 594 introduced in the House and referred to the Committee on Transportation and Infrastructure’s Subcommittee on Water Resources and the Environment | Rep. Paul Gosar (R-AZ) introduced H.R. 594 along with 186 co-sponsors, including House Appropriations Committee Chair Hal Rogers (R-KY) and House Agriculture Committee Ranking Member Collin Peterson (D-MN) |
| H.R. 499 | <b>Issue – State Volume Caps/IRS</b>   | 1/22/15: H.R. 499  | Representatives John  |

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|                | <p><b>Title – Sustainable Water Infrastructure Act of 2015:</b> Would amend the Internal Revenue Code to exempt from state volume caps tax-exempt facility bonds for sewage and water supply facilities.</p> <p><i>**WGA <a href="#">Resolution #2015-08</a>, paragraph B(2)(b) urging Congress to remove state volume caps.</i></p>   | introduced in the House and referred to the Committee on Ways and Means   | Duncan (R-TN) and Bill Pascrell (D-NJ) introduced H.R. 499 with 11 bipartisan co-sponsors  |
| S.234          | <p><b>Issue: CWA/Section 404 Permits</b></p> <p><b>Title: Regulatory Fairness Act of 2015:</b> Would present the EPA from retroactively vetoing Section 404 permits approved by the Corps by amending the CWA to define the period of time in which EPA is authorized to restrict or deny a permit for the discharge of dredged or fill materials into navigable waters under Section 404. Specifically, the bill would require that such period: (1) begins on the date that the Corps publishes a notice for the discharge of dredged or fill material into navigable waters at specified disposal sites, and (2) ends on the date the Corps issues the permit. Any previous action by the EPA that occurred outside of this period to deny or restrict a permit or to prohibit the specification of any defined area as a disposal site would be nullified. The bill would further require that EPA make all the information and data that it reviewed in making a determination publicly available. (CRS Summary)</p> <p>S. 234's sponsor, Senator David Vitter (R-LA), introduced an identical bill (S. 54) in the 114<sup>th</sup> Congress prior to introducing S. 234.</p> <p>S.234 is similar to H.R. 896, described above.</p>   | 1/22/15: S. 234 introduced in the Senate and referred to the Environment and Public Works Committee   | Senator David Vitter (R-LA) introduced S. 234 with 9 co-sponsors, including  |
| S.208/H.R. 399 | <p><b>Issue – Borders/ESA/National Environmental Policy Act (NEPA)</b></p> <p><b>Title – Secure our Borders First Act:</b> Seeks to improve border security by requiring the Department of Homeland Security to achieve “operation controls” along the nation’s borders with Canada and Mexico. As part of this goal, the bill would waive over a dozen environmental laws on federal lands within 100 miles of either border, including the ESA, NEPA, the Wilderness Act, the Wild and Scenic Rivers Act, the Federal Land Policy Management Act, the National Wildlife Refuge System Administration Act, and the National Park Service Organic Act.</p> <p>The bills would also prohibit the Secretaries of Agriculture and the Interior from restricting certain U.S. Customs and Border Protection Service activities on federal land located within 100 miles of the U.S. borders with Mexico and Canada. The Service would have “immediate access” to these lands to build and maintain roads and barriers, use vehicles for patrols, install communications and surveillance equipment, and deploy temporary tactical infrastructure. The bill would have no “force or effect” on state or private lands, and would not supersede, replace, negate, or diminish tribal treaties.</p> | <p>1/16/15: H.R. 399 introduced in the House and referred to the Committees on Homeland Security, Armed Services, Natural Resources, and Agriculture</p> <p>1/21/15: S. 208 introduced in the Senate and referred to the Committee on Homeland Security</p> <p>1/21/15: House Committee on Homeland</p> | <p>Senator Ron Johnson (R-WI) introduced S. 208 with 3 Republican co-sponsors</p> <p>Rep. Michael McCaul (R-TX) introduced H.R. 399 with 29 Republican co-sponsors</p> |

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|        | <p>The legislation is part of a larger Republican effort to respond to the President’s executive actions protecting undocumented immigrants. The bills’ supporters have indicated that the waivers and other provisions are needed due to concerns that federal environmental laws are hindering efforts to control the borders, a view that conservation and environmental groups dispute.</p>   | <p>Security holds mark-up session on H.R. 399</p> <p>1/27/15: House Committee on Homeland Security reports an amended version of H.R. 399</p> <p>1/27/15: House Committees on Agriculture, Natural Resources, and Armed Services discharge H.R. 399</p> |  |
| S. 133 | <p><b>Issue – Klamath Basin/Oregon/California/Indian Water Rights/Hydropower</b></p> <p><b>Title – The Klamath Basin Water Recovery and Economic Restoration Act of 2014:</b> Intended to end decades of conflict in the Klamath Basin, located on the border between California and Oregon, by authorizing federal efforts to help implement three related agreements: (1) the Klamath Hydroelectric Settlement Agreement (KHSA) to study the potential removal of four hydroelectric dams owned by PacifiCorp; (2) the Klamath Basin Restoration Agreement (KBRA) to resolve water rights disputes between tribal and non-tribal entities, among other measures; and (3) the Upper Klamath Basin Comprehensive Agreement (UKBCA), which sets forth water management and environmental restoration measures to resolve water disputes between irrigators and tribes in the Upper Klamath Basin. Estimated federal costs are expected to total around \$500M.</p> <p>Of note, S. 133 is similar to S. 2379, which bill cleared the Senate Energy and Natural Resources Committee. However, no companion legislation was introduced in the House, due in part to concerns about the agreements’ dam removal provisions.</p> <p>On December 31, the 2010 KBRA expired without the necessary Congressional authorization proposed as part of S.133. The two inter-related agreements, KHSA and UKBCA, are still in effect and awaiting Congressional authorization. U.S. Interior Secretary Sally Jewell expressed her disappointment that S.133 did not pass before the KBRA terminated. “In crafting these agreements, a diverse and committed group of coalition parties set aside ideology and years of conflict for the hope of long term progress and sustainability for tribes, the fishery and irrigated agriculture in the region.... [W]e still believe the future of the basin lies with negotiated agreements and we will work hard with the parties to find ways to achieve their collective goals while they take necessary steps to protect the long-term interests of the people of the Klamath Basin and the important natural resources on which</p> | <p>1/8/15: Introduced in the Senate and referred to the Committee on Energy and Natural Resources</p>   | <p>Senator Ron Wyden (D-OR) introduced S. 133 with co-sponsors Senators Jeff Merkley (D-OR), Dianne Feinstein (D-CA), and Barbara Boxer (D-CA)</p> |

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|         | <p>they depend for their cultural, economic and spiritual livelihood.” The KBRA deadline was extended once in 2014, but some parties to the agreement expressed reluctance to do so again.</p> <p>On February 2, the States of California and Oregon, the U.S. Department of the Interior, and PacifiCorp announced an agreement to work together to develop amendments to the KHSA and pursue an administrative path for removal of hydroelectric dam facilities, preserving the benefits of the agreements without the need for Congressional legislation.</p> <p><i>*WSWC <a href="#">Policy #376</a> supporting the negotiated resolution of Indian water rights settlements</i></p> <p><i>** WGA <a href="#">Resolution #2015-08</a>, paragraph B(3)(e) supporting the negotiated resolution of Indian water rights settlements</i></p>   |   |  |
| H.R. 22 | <p><b>Issue – WRRDA, WIFIA and Public Bonds</b></p> <p><b>Title: Fixing America’s Surface Transportation (FAST) Act:</b> Authorizes budgetary resources for surface transportation programs for FY2016-2020; reauthorizes taxes that support the Highway Trust Fund through September 30, 2022, and expenditures from that Fund through October 1, 2020; reauthorizes the Export-Import Bank through September 30, 2019; and improves the Federal permit review process for major infrastructure projects. Notably, Section 1445 of the new law strikes a paragraph from the 2014 Water Resources Reform and Development Act (WRRDA) (33 U.S.C. §3907(a)(5)) that banned municipalities from using tax-exempt public bonds in combination with Water Infrastructure Finance and Innovation Act (WIFIA) loans. WIFIA was created to supplement State Revolving Funds (SRFs), but the loans are limited to funding up to 49% of certain water and sewer system projects for drinking water, wastewater and water reuse. By striking the ban on tax-exempt bonds, qualifying municipalities and utilities now have greater access to private investment to fund the remaining 51%</p> | <p>1/6/15: H.R. 22 introduced in the House, passed by a vote of 412-0.</p> <p>1/7/15: Senate received H.R. 22, referred to Committee on Finance</p> <p>2/12/15: Finance Committee reported without amendment, placed on Senate calendar. S. Rept. 114-3.</p> <p>7/30/15: Senate passed with amendments by a vote of 65-34.</p> <p>12/3/15: Conference Reports passed by both House and Senate</p> <p>12/4/15: President signed H.R. 22 into law, Pub. L. 114-94</p> | Rep. Rodney Davis introduced H.R. 22, with 114 Republican and 4 Democratic co-sponsors |

## NOTABLE LITIGATION

| Case Names   | Issue – Reserved Water Rights include Groundwater as a Potential Source  |
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| <i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.</i>   | <p>The Agua Caliente Band of Cahuilla Indians filed a lawsuit in May 2013, asking the Court to declare and quantify the existence of the tribe’s water rights as the senior rights in the Coachella Valley under federal law. In March 2015, the Court ruled on summary judgment that the Agua Caliente Band of Cahuilla Indians has a reserved right to water, and groundwater is a water source available to fulfill that right. The Court denied the Tribe’s claim for aboriginal title to groundwater.</p> <p>The water districts filed a petition with the 9th Circuit for interlocutory review of the portion of the District Court’s order addressing the inclusion of groundwater in the Tribe’s reserved right to water. The parties are briefing the issue during the Fall and Winter of 2015-16, and oral argument will likely take place in mid-2016.</p> <p>The parties are determining how Phase 2 of the case, which deals with issues such as water quality and what standards will be used to quantify the tribe’s rights, will proceed while the 9th Circuit review is pending.</p>  |
| Courts   |  |
| <p>U.S. District Court, Central District of California, EDCV 13-883</p> <p>9th Circuit (for interlocutory review)</p>                  |  |
| Relevant Dates   |  |
| Case Names   | Issue – Whether CWA Jurisdictional Determinations are Final Agency Actions Subject to Judicial Review  |
| <p><i>U.S. Army Corps of Engineers v. Hawkes Co. Inc</i></p> <p><i>Kent Recycling Services LLC v. U.S. Army Corps of Engineers</i></p> | <p>On December 11, 2015 the U.S. Supreme Court granted certiorari to hear <i>U.S. Army Corps of Engineers v. Hawkes Co. Inc.</i>, appealed from the 8<sup>th</sup> Circuit, to consider whether a jurisdictional determination that a wetland qualifies for Clean Water Act protection constitutes a final agency decision subject to judicial review. In <i>Hawkes</i>, the Corps determined that a Minnesota property was subject to Clean Water Act permitting rules. The owner challenged the determination and costly permitting process, seeking to mine peat moss from wetlands to use in landscaping. The 8<sup>th</sup> Circuit held that the jurisdictional determination was a final agency action that could be challenged under the Administrative Procedures Act. This created a split from the 5<sup>th</sup> Circuit, which ruled the opposite way in 2014 in <i>Kent Recycling Services LLC v. U.S. Army Corps of Engineers</i>. In <i>Hawkes</i>, the Corps has asked the Supreme Court to overturn the Eighth Circuit’s decision. The Corps is not required to issue jurisdictional determinations, and the Administration has argued that doing so merely provides a landowner with information without creating any obligations, and should not be considered a final agency decision that can be reviewed by courts under the Administrative Procedure Act.</p> <p>On January 22, 2016, the Corps filed its opening brief with the Supreme Court claiming that CWA jurisdictional determinations are just one way it responds to inquiries from regulated parties concerning the CWA’s legal framework to particular factual circumstances. Specifically, the Corps claims that “[a] landowner that wishes to discharge pollutants may seek a permit from the Corps if it wishes to ensure that its conduct complies with the CWA, or it may discharge without a permit if it is sufficiently confident that the relevant site does not contain waters of the United States.”</p> <p>The Eighth Circuit held that the Corps’ position ignored the “prohibitive cost” of taking either of two alternative actions to obtain judicial review of the Corps’ assertion of CWA jurisdiction over a property. Previously, the Ninth Circuit Court of Appeals and Fifth Circuit Court of Appeals had held that similar jurisdictional determinations were not “final agency action,” and therefore, not subject to immediate judicial review. <i>See, e.g., Fairbanks N. Star Borough v. U.S. Army Corps of Eng’rs</i>, 543 F.3d 586 (9th Cir. 2008); <i>Greater Gulfport Props., LLC v. U.S. Army Corps of Eng’rs</i>, 194 F.Appx 250 (5th Cir. Aug. 23, 2006) (unpublished). The Eighth Circuit relied on the</p> |
| Courts   |  |
| <p>8<sup>th</sup> Circuit, 5<sup>th</sup> Circuit</p> <p>Supreme Court</p>   |  |
| Relevant Dates   |  |

Supreme Court's decision in *Sackett v. EPA*, 132 S.Ct. 1367 (2012) to conclude that the Corps' jurisdictional decision was both the consummation of the Corps' decision-making process and would also alter and adversely affect Hawkes' rights to use its property. The Corps' jurisdictional decision, therefore, constituted final agency action, subject to judicial review.

The case was sparked after Hawkes Co., Inc. applied for a permit from the Corps in December 2010, to mine peat on 530 acres of land in northwestern Minnesota. Two years later, the Corps issued an affirmative jurisdictional determination to Hawkes. The Eighth Circuit found that Hawkes has two other ways to contest the Corps' jurisdictional determination in court — complete the permit process and appeal if a permit is denied, or commence peat mining without a permit and challenge the agency's authority if it issues a compliance order or commences a civil enforcement action. "As a practical matter, the permitting option is prohibitively expensive and futile," the Eighth Circuit said, claiming the Supreme Court reported in its 2006 *Rapanos v. U.S.* decision that the average applicant for an individual Corps permit spends 788 days and \$271,596 in completing the process. As for the second option of commencing to mine peat without a permit and awaiting an enforcement action, the Eighth Circuit said that is an even more inadequate remedy because the company cannot initiate that process, and each day they wait for the agency to start its action, they accrue huge additional potential liability.

In addition to bearing on general issues of federal agency accountability and access to justice, the states believe that the Supreme Court's ultimate decision in *Hawkes* has important implications for States' WOTUS case. The WOTUS Rule would greatly expand the federal government's control over state waters and private lands. Being able to immediately bring judicial challenges to jurisdictional determinations under the CWA would provide an important check on the federal government and may help uphold the States' sovereign right to regulate State waters and lands. An interpretation of "final agency action," that would permit intrusions into States' authority to go unchecked is a significant departure from the traditional federal/state balance of powers.

More specifically, upholding the *Hawkes* decision protects the States' ability to regulate land and water resources. If, on the other hand, the Corps is able to make a determination that a water is subject to federal regulation, the State loses its ability to regulate. Moreover, in the pre-*Hawkes* status quo, the Corps makes judicial determinations with the belief that the decision is immune from review, which lends itself to abuses. Moreover, the Corps' jurisdictional determinations require a landowner to restrict the activity they conduct on their own land, under the threat of fines or criminal sanctions. If judicial review is not available, the only available option is to go through the expensive and time-consuming permitting process.

On January 22, the Corps filed its opening brief with the Supreme Court claiming that Clean Water Act (CWA) jurisdictional determinations are just one way it responds to inquiries from regulated parties concerning the CWA's legal framework to particular factual circumstances. Specifically, the Corps claims that: "A landowner that wishes to discharge pollutants may seek a permit from the Corps if it wishes to ensure that its conduct complies with the CWA, or it may discharge without a permit if it is sufficiently confident that the relevant site does not contain waters of the United States."

On March 2, North Dakota, Alaska, Colorado, South Dakota, Nebraska, and Idaho filed an amicus brief in support of Hawkes and the Eighth Circuit's decision. In sum, the amicus highlights the states' sovereign interests under the CWA and emphasizes how other courts, such as the U.S. District Court in North Dakota, have already acknowledged these state interests and the substantial impact and injury that could befall states as a result of the new WOTUS Rule. The brief argues that judicial review is an indispensable safeguard against federal encroachment upon a traditional state power. The WOTUS Rule underscores the critical need for judicial review. In many ways, the WOTUS Rule is simply a jurisdictional determination, applied nationwide, defining WOTUS and providing guidance (albeit not very clear or helpful guidance) regarding how CWA jurisdiction will apply to different properties and terrain. The promulgation of the WOTUS

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|  | <p>Rule will not end the controversy over the meaning of the term “waters of the United States” and will require extensive and highly controversial case-by-case application. As the Corps, state governments, and landowners grapple with the problem of interpreting and applying the new WOTUS Rule, they will benefit from the ability to obtain judicial review of jurisdictional determinations without the complications that come with the enforcement of civil and criminal penalties. The brief also argues that both the Corps and courts have made findings that the Corps’ jurisdictional decisions determine the “rights or obligations” of parties and give rise to “legal consequences.” Despite the Corps’ claims that its judicial determinations are merely guidance, there is general consensus that its determinations are highly consequential and impose significant restrictions on private parties and states. Courts considering challenges to the new WOTUS Rule have found, based on evidence presented, that assertions of jurisdiction will result in immediate and significant economic harms, as well as injury to the authority of states to manage their own lands and waters. In sum, allowing jurisdictional determinations to be challenged as final agency actions under the APA will allow courts to efficiently and authoritatively answer questions that arise about the validity and scope of federal regulatory authority. Such clarity is critical for cooperative federalism, state sovereignty, and the rights and responsibilities of every day citizens.</p> <p>Also on March 2, West Virginia filed an amicus brief with 22 other states, including Arizona, Kansas, Montana, Nevada, Oklahoma, Texas, Utah and Wyoming. The brief argued that the outcome of Hawkes is critical to enforcing limits on federal authority established in the CWA and court decisions. Immediate judicial review is justified under Supreme Court precedent, citing <i>Bennett v. Spear</i> 520 U.S. 154 (1997) and <i>Sackett v. EPA</i>, 132 S. Ct. 1367 (2012). Judicial review is also required under the longstanding rule that the Court will not upset the balance of federal-state regulations without a clear statement from Congress.</p> |
| <b>Case Names</b>                            | <b>Issue – EPA Pre-emptive Veto under CWA 404(c)</b>  |
| <i>Pebble Limited Partnership v. EPA</i>     | <p>On September 3, 2014, Pebble LP filed a Federal Advisory Committee Act (FACA) complaint, alleging violations of FACA and the APA when EPA formed Federal Advisory Committees to assist EPA in preempting Pebble LP from exercising its mineral rights in the Pebble Mine. Under CWA 404(c), EPA may veto a decision by the Corps to permit the discharge of dredged or fill material where the Agency expressly finds that the activity will have unacceptable, adverse effects, or restrict defined areas as disposal sites. This veto authority has always been exercised after an applicant has submitted its application or proposed development plan to the Corps for a 404 permit. The Pebble Mine is the first time EPA has exercised that authority before any application was submitted.</p> <p>On October 14, 2014, Pebble LP filed a Freedom of Information Act (FOIA) complaint, seeking an injunction to produce documents withheld in its response to Pebble LP’s FOIA request, which was made in 2013 following a 2010 EPA decision to veto the Pebble Mine before conducting a scientific analysis of the Mine’s environmental impact.</p> <p>On November 24, 2014, the District Court entered a preliminary injunction against EPA finalizing any limits or advancing its work on the Pebble Mine project.</p> <p>On June 4, 2015, the District Court denied EPA’s motion to dismiss the FACA case. The case is now in the discovery phase and scheduling depositions, including for former EPA scientist Phil North who has been unavailable but was tracked down in Australia.</p> <p>On September 2, Senate and House committee members sent letters to the EPA and NDRC regarding NRDC’s alleged involvement and influence in EPA’s preemptive veto, including a reference to a meeting request an NRDC attorney sent in 2010 to Nancy Stoner, the former Acting Assistant Administrator for EPA’s Office of Water and a previous Co-Director of NRDC’s Water Program. The letter states</p>  |
| <b>Courts</b>                                |   |
| U.S. District Court of Alaska, 3:14-cv-00199 |   |
| <b>Relevant Dates</b>                        |   |

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|  | <p>that Stoner improperly “...facilitated the meeting by forwarding the NRDC’s request and circumvented the ethics restriction barring her participation....” The letters also cite an August 2010 meeting between NRDC staff and senior EPA officials as well as a subsequent email from one of EPA officials involved, which stated that a preemptive veto of the mine under Section 404(c) of the CWA was an “intriguing idea.” In light of these actions, the letters state that NRDC’s “...access to senior leadership at EPA was effective in directing EPA towards its ultimate decision to preemptively curtail the ability of the proposed Pebble Mine to move forward in permitting.”</p> <p>On January 13, 2016, the EPA issued the Inspector General’s report on the Bristol Bay watershed assessment, finding no evidence of bias or a predetermined outcome, although it did find a possible unethical misuse of position by a retired Region 10 employee.</p>   |
| <b>Case Names</b>  | <b>Issue – ANILCA §103(c), NPS Authority to Regulate State Navigable Water as an Inholding within Park Boundaries</b>  |
| <i>Sturgeon v. Masica, Sturgeon v. Frost</i>   | <p>The 1980 Alaska National Interest Lands Conservation Act (ANILCA), 16 USC §1301 et seq., created/expanded the 150 million acres of National Park Service (NPS) land in Alaska, with boundaries of “conservation system units” (CSUs) enclosing State, Tribal, and privately-owned land. ANILCA §103(c) clarified that “<i>Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.</i>” The term “public lands” is defined (in a convoluted way) as Alaska “lands, waters, and interests therein” to which the Federal government has title, except any lands that belong to the State of Alaska or Alaskan Natives under various provisions of Federal law. 16 USC §3102 (1)-(3).</p>  |
| <b>Courts</b>  |  |
| U.S. District Court of Alaska, 3:11-cv-0183  |  |
| 9 <sup>th</sup> Cir., 13-36165, 768 F.3d 1066<br>U.S. Supreme Court, 14-1209   |  |
| <b>Relevant Dates</b>  | <p>In 2007, John Sturgeon entered the Nation River for his annual moose-hunting trip, as he had for 40 years, using his personal hovercraft as he had for the past 17 years, all of which was legal under Alaska law. While stopped on a gravel bar located below mean high water level to make repairs, NPS law enforcement employees told Sturgeon it was a federal crime to operate the hovercraft within the boundaries of the Yukon-Charley, an ANILCA CSU, a position confirmed by the NPS Alaska Regional Director. Sturgeon subsequently filed suit, arguing that the Nation River is a State-owned navigable river, exempt from NPS regulations against hovercraft under ANILCA §103(c).</p> <p>The 9<sup>th</sup> Circuit held that ANILCA §103(c) only exempted the State, Tribal and privately-owned land from regulations “solely” applicable to CSUs in Alaska. Since the NPS hovercraft ban (36 CFR 1.2(a), 2.17(e)) is applicable nationwide and not just in Alaska, the 9<sup>th</sup> Circuit held that the hovercraft ban applied to Alaskan land owned by the State, Native Corporations and individuals within the CSU boundaries.</p> <p>Sturgeon appealed to the U.S. Supreme Court, with amicus briefs filed by the State of Alaska and the Alaskan Congressional Delegation (including Senate Energy and Natural Resources Committee Chair Lisa Murkowski and Senate Environment and Public Works Committee member Dan Sullivan, both with legislative oversight of the Department of Interior, and Representative Don Young, who served in Congress at the time ANILCA was enacted.) All three argued, among other things, that use of the word “solely” in ANILCA §103(c) distinguishes between public land laws/regulations which do not apply on non-federal land (including the Alaskan inholdings within the boundaries of the CSUs), and other laws/regulations that are generally applicable to federal and non-federal lands regardless of CSU boundaries, such as the Clean Air Act, Clean Water Act, Army Corps of Engineers wetland regulations, etc.</p> <p>The Department of Justice, on behalf of NPS, argued that it had authority to regulate the navigable rivers within the CSU boundaries under</p> |
| <p>10/30/13: District Court decision<br/>10/6/14: 9<sup>th</sup> Cir. decision<br/>10/1/15: Petition for writ of certiorari granted<br/>1/20/16: Oral arguments by Sturgeon, Alaska, NPS</p> |  |

several theories: **(1)** 54 U.S.C. §100751(b) provides NPS express authorization to regulate activities on waters in the National Park System, regardless of navigability; **(2)** ANILCA’s creation/expansion of CSUs included a statement of purpose that included protection of water bodies, including rivers and lakes (16 U.S.C. §410hh, §410hh-1); **(3)** NPS nationwide regulations apply on all waters subject to the jurisdiction of the United States, including navigable waters, within the boundaries of a National Park System (36 C.F. R. 1.3(a)(2); **(4)** *the navigable waters were never “conveyed” to the State of Alaska*; **(5)** *the federal government holds title to interests in navigable waters under the doctrine of reserved water rights, and therefore* (under ANILCA’s definition of “public lands”), *the NPS may regulate those waters.*

In response, Sturgeon, the State of Alaska, and the Alaskan Congressional Delegation argued (in part) that: **(1)** Alaska has an absolute right to its navigable waters and the lands beneath them as a sovereign state on equal footing with other states, with power to regulate those navigable waters, and has undisputable title to the land under the Submerged Lands Act; **(2)** reserved water rights are a non-possessory right to use water only to the extent needed to accomplish the purpose of the reservation; **(3)** reserved water rights do not confer title to a body of water; **(4)** reserved water rights cannot be used as a basis to exercise plenary authority over all navigable waters for amorphous conservation purposes (sound and sight of hovercraft within CSU boundaries) that are unrelated to water use. (“This claim stretches the doctrine of reserved water rights beyond its breaking point.” Sturgeon Reply Brief, p.20)

Additionally, they pointed out that with CSUs roughly the size of California, ANILCA balanced the need for conservation with the need for Alaskans to develop and use the land for their economy, culture and way of life. Without infrastructure typical of most states, the rivers (frozen or flowing) are a significant means of transportation, and even the CSUs have relaxed NPS standards to allow Alaskans means of transportation in and through the federal land.

NPS argues that the nationwide regulations applicable to nonfederal land and navigable rivers within park boundaries are limited, and that NPS is entitled to *Chevron* deference in its interpretation of the statutes. In response, the Alaskan parties pointed out that: **(1)** recent federal agencies are straining to find ambiguity in even the plainest words to effectuate executive branch policies with alarming frequency, undermining congressional intent (ignoring the conservation-economic balance of a statute and taking a provision that limits federal authority on nonfederal lands and transforming it into an unchecked source of power under *Chevron*); **(2)** the 9<sup>th</sup> Circuit’s decision creates a regime where Alaskans may not access their own land without obtaining permission from a federal agency, and their nonfederal land receives even less protection from nationwide NPS regulations than the federal land within the CSUs; **(3)** contrary to NPS insistence that the regulations are narrow with a limited impact, **(a)** NPS is relying solely on the 9<sup>th</sup> Circuit’s *Sturgeon* decision as authorization to abrogate an Alaska-specific exemption from certain nationwide oil and gas rules (Oct. 26, 2015 proposed rule, 80 Fed. Reg. 65,572), and **(b)** NPS has required the State of Alaska to seek federal permission to conduct scientific research on caribou and salmon on state-owned lands and navigable rivers, with permits that declare the research samples and results are federal property.

At oral argument before the U.S. Supreme Court, Justice Sotomayor noted that nothing in ANILCA explicitly excluded navigable waters from NPS regulations of boating and water activities. Justice Kagan asked how the word “solely” could be used to distinguish between generally-applicable NPS regulations and other generally-applicable federal regulations. Chief Justice Roberts asked about the distinctions between submerged lands and land lands for inholdings inside the CSU boundaries, and about NPS’ reliance on the reserved water right as a property interest giving title to the federal government. Justice Scalia pointed out that the right to use the water doesn’t give the federal government title to the river, and Chief Justice Roberts noted that he had not considered the reserved water rights doctrine as a basis for general regulatory authority. He also pointed out that if the federal government can still regulate the nonfederal inholdings, §103(c) isn’t a very significant protection for the inholders, particularly if NPS is only limited by what it deems necessary or proper and is offered

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|   | <p><i>Chevron</i> deference. Justice Scalia expressed skepticism that NPS could be trusted not to interpret its authority to regulate only as necessary and proper too broadly, and Justice Sotomayor followed up with a question about NPS’ recently proposed rule on oil and gas for nonfederal lands. Justice Ginsberg asked about navigational servitude and the federal right to control navigable waters. Justice Alito called the 9<sup>th</sup> Circuit’s decision a ridiculous interpretation of ANILCA §103(c), and asked why NPS devoted exactly one paragraph of a 58-page brief to the 9<sup>th</sup> Circuit’s interpretation of that provision. Justice Scalia pointed out that NPS congressional authority does not extend to the inholdings unless the federal government holds title, and asked how the federal government could hold title to the navigable waters belonging to the State of Alaska. Justice Scalia and Justice Sotomayor asked about the judicial rule of interpretation that a specific statute governs in place of a more general statute.</p>  |
| <b>Case Names</b>   | <b>Issue – Clean Water Act TMDLs, lake bed as part of “receiving waters”</b>  |
| <i>Conway v. State Water Resources Control</i>  | <p>Private property owners at McGrath Lake, California, challenged the Board’s Total Maximum Daily Load (TMDL) basin plan, which was stated in terms of concentrations of pollutants (pesticides and polychlorinated byphenyls) in lake bed sediment at the terminal lake.</p> <p>The California Court of Appeals held that the Board could reasonably determine that the wet sediment is part of the lake environment, and therefore part of the “receiving waters” rather than exclusively as a “discharge” under the Clean Water Act. In the absence of outlets, the pollutants won’t regularly flush out, and it is not technically feasible to accurately measure levels of pollutants desorbing from lake bed sediments to the water column. The court noted that 40 CFR 130.2(I) provides that TMDLs can be expressed in terms of pollution remaining in the sediment as an “appropriate measure,” and the Board properly did so.</p> <p>On June 17, 2015, the California Supreme Court denied the request for judicial notice and petition for review. <i>Conway v. State Water Resources Control Bd.</i>, 2015 Cal. LEXIS 4453</p> <p>On October 19, the U.S. Supreme Court denied certiorari to hear an appeal. <i>Conway v. Cal. State Water Res. Control Bd.</i>, 2015 U.S. LEXIS 6671, *1, 136 S. Ct. 374, 193 L. Ed. 2d 292, 84 U.S.L.W. 3212 (U.S. 2015)</p> |
| <b>Courts</b>   |   |
| California Court of Appeals<br>Supreme Court of California<br>U.S. Supreme Court  |   |
| <b>Relevant Dates</b>   |   |
| 3/30/15: California Court of Appeals decision<br><br>6/17/15: California Supreme Court denied petition<br><br>10/19/15: U.S. Supreme Court denied cert. |   |
| <b>Case Names</b>   | <b>Issue – Forest Road Discharges</b>   |
| <i>Environmental Defense Center, Inc. v. EPA</i> , 344 F.3d 832 (9th Cir. 2003)   | <p>Environmental organizations, industrial organizations, and municipal organizations challenged an administrative rule issued by the EPA pursuant to the CWA, 33 U.S.C.S. §§ 1251-1387, to control pollutants introduced into the nation's waters by storm sewers. Petitioners challenged the rule on 22 constitutional, statutory, and procedural grounds.</p> <p>The petitioners argued that forest roads are significant sources of stormwater pollutant discharges to waters of the U.S., and that Phase II regulation is necessary to protect water quality because proper planning and road design can minimize erosion and prevent stream sedimentation. EPA argued that its 1976 silvicultural regulations exclude non-point source activities from the NPDES permit requirements, including “surface drainage, or road construction and maintenance from which there is natural runoff.” 40 CFR §122.27(h)(1). Any challenge to this regulation should be time-barred as long past the 120 limit to oppose regulations. The court disagreed that the petitioner’s complaint was a challenge to the silvicultural regulation, holding that EPA’s argument does not resolve the question of whether EPA should have addressed forest roads in its “comprehensive program...to protect water quality” under §402(p)(6), enacted in</p>                               |
| <b>Courts</b>   |   |
| 9 <sup>th</sup> Circuit   |   |
| <b>Relevant Dates</b>   |   |

|  | <p>1987.</p> <p>The court affirmed the rule against most of the challenges, but remanded three aspects of the rule concerning EPA’s failure to require review of Notices of Intent (NOIs), which were the functional equivalents of permits. EPA also needed to consider the merits of petitioners’ contention that the rule (§402(p)(6)) requires the EPA to regulate forest roads in an appropriate proceeding, where EPA may accept or reject the petitioner’s arguments in whole or in part, with valid reasons that permit judicial review.</p> <p>On November 10, the EPA published a “Notice of opportunity to provide information on existing programs that protect water quality from forest road discharges.” 80 FR 69653, Docket ID No. EPA-HQ-OW-2015-0668. EPA solicited input and information on existing public and private sector programs that address stormwater discharges from forest roads to assist them in responding to the remand.</p> <p>On February 12, WGA <a href="#">responded</a> to EPA’s request, citing its Policy Resolution <a href="#">#2014-04</a>, Water Quality in the West. WGA noted that stormwater runoff from forest roads has been managed as a non-point source of pollution under EPA regulation and state law since the enactment of the CWA. The Western Governors support solutions consistent with the long-established treatment of forest roads as non-point sources, and each state be allowed to determine the scope and application of any EPA best management practices for forest roads in its state. The letter reiterated state authority over water, and of the states’ ability to co-regulate water under the CWA. “Different forests, even those in close proximity to one another, may have different characteristics in terms of topography, tree species, soil types, wildlife habitat, geology and hydrology. In order to be effective, the approach to protecting water quality from activities on forest roads must be adapted to local conditions and circumstances. Not only are the states currently managing programs to protect water quality, the states are best suited to do so. When a state is effectively implementing a program, the role of federal agencies like EPA should be limited to funding, technical assistance and research support. States should be free to develop, implement and enforce program requirements using approaches that make sense in their specific jurisdictions.”</p> <p>EPA will assess a variety of existing programs and determine whether additional stormwater controls are called for.</p> |
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| Case Names   | Issues – Groundwater as a CWA Point Source   |
| <i>Sierra Club v. Virginia Electric and Power Company, CA</i><br>2:15cv112 | <p>On November 6, the Court denied a motion to dismiss, finding that the Sierra Club had standing to bring a lawsuit alleging that the energy company was discharging coal ash, contaminating groundwater that eventually leads to a navigable body of water. The Court also ruled that the lawsuit does not constitute a collateral attack on permits issued by the Virginia DEQ.</p>   |
| Courts   |  |
| U.S. District Court for the Eastern District of Virginia                   |  |
| Relevant Dates   |  |
|  | <p>Rather than try to argue that the groundwater is part of the “waters of the U.S.” under the Clean Water Act (CWA), the Sierra Club asserted that the company’s actions were a violation of the CWA and a state-issued pollutant discharge permit because the groundwater acted as a “conduit” for the pollution, reaching the navigable water and creating a point source, requiring an NPDES permit. The court stated that federal courts “are split on the issue of whether groundwater that is hydrologically connected to surface water is covered under the Clean Water Act,” and whether the CWA covers discharge of pollutants that enter surface waters through groundwater. The court found sufficient facts pleaded to suggest that the CWA could regulate the discharge of pollutants to navigable waters via groundwater, and that the CWA provided authority for the lawsuit.</p> <p>Notably, the First, Fifth and Seventh Circuits have each held that the CWA does not cover discharges that enter surface waters through groundwater: <i>Village of Oconomowoc Lake v. Dayton Hudson Corp.</i>, 24 F.3d 962 (7th Cir. 1994); <i>D.E. Rice. V. Harken Exploration Co.</i>,</p>   |

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|  | <p>250 F.3d 264, 269 (5th Cir. 2001); <i>United States v. Johnson</i>, 437 F.3d 157, 161 (1st Cir. 2006). Other courts have held that hydrologically-connected groundwater is covered under the CWA: <i>N. Cal. River Watch v. Mercer Fraser Co.</i>, 2005 U.S. Dist. LEXIS 42997, 2005 WL 2122052 (N.D. Cal. Sept. 1, 2005); <i>Haw. Wildlife Fund v. Cnty. Of Maui</i>, 2015 U.S. Dist. LEXIS 8189, 2015 WL 328227 (D. Haw. Jan. 23, 2015); <i>Greater Yellowstone Coal. v. Larson</i>, 641 F. Supp. 2d 1120, 1138 (D. Idaho 2009); <i>NW. Envtl. Def. Ctr. v. Grabhorn, Inc.</i>, 2009 U.S. Dist. LEXIS 101359, 2009 WL 3672895 (D. Or. Oct. 30, 2009); <i>Sierra Club v. Colo. Ref Co.</i>, 838 F. Supp. 1428, 1434 (D. Colo. 1993).</p> <p>The Court found a recent decision in a similarly situation North Carolina case persuasive. The court in <i>Yadkin Riverkeeper, Inc. v. Duke Energy Carolinas, LLC</i>, No 1:14-cv-00753, 2015 U.S. Dist. LEXIS 142593 (M.D.N.C. Oct. 20, 2015) denied a similar motion to dismiss and found that the CWA regulates the discharge of pollutants to navigable waters via hydrologically-connected groundwater and that the factual allegations stated in the complaint allowed the court to reasonably infer that "substances removed in the course of wastewater treatment at the [power plant] have been disposed of in a manner that has allowed pollutants to enter protected waters."</p> |
| <b>Case Names</b>  | <b>Issue – Application of CWA §404 to farming operations</b>   |
| <i>Duarte Nursery v. Corps of Engineers, Members of the Board of the Central Valley Regional Water Quality Control Board</i> , 2:13-cv-02095 | <p><i>The following summary is provided in part by Anthony Francois from the Pacific Legal Foundation, attorneys for the Plaintiff:</i></p> <p>On February 25, 2013, the Corps sent a cease and desist letter to Duarte, ordering suspension of farming operations on a parcel of land in Tehama County, California, based on alleged violations of the Clean Water Act during farming operations. The cease and desist order "determines that [plaintiffs] have discharged dredged or fill material into seasonal wetlands, vernal pools, vernal swales, and intermittent and ephemeral drainages, which are waters of the United States, without a . . . permit. . . . Since a DA [Department of Army] permit has not been issued authorizing this discharge, the work is in violation of the Clean Water Act." The CDO directs plaintiffs "to cease and desist all work in waters of the United States." The Corps did not notify Duarte of the allegations in the letter prior to issuing the letter, or provide Duarte any opportunity to comment on the allegations or the requirements of the letter prior to issuing it.</p>   |
| <b>Courts</b>  |  |
| U.S. District Court Eastern District of California   |  |
| <b>Relevant Dates</b>  |  |
| 8/20/14: Complaint filed.  | On April 18, 2013, the Corps sent a follow-up letter to Duarte's counsel, providing an erroneous factual basis for the cease and desist letter, and then asking Duarte for several items of information, which the Corps should have inquired into and given Duarte an opportunity to comment on prior to issuing the February 25, 2013, letter.   |
| 3/23/15: Motion to Dismiss denied in part and granted in part.   |  |
| 10/23/15: Duarte filed Motion for Summary Judgment   | On April 23, 2013, the Central Valley Regional Water Quality Control Board issued a notice of violation, evidently based on the same factual allegations, and also without prior notice or an opportunity to comment afforded to Duarte. The notice of violation appears to be based largely, if not entirely, on receipt of the Corps' February 25 letter. The notice of violation states RWQCB staff inspected the Property on December 6, 2012, and determined "you have discharged dredged or fill material into wetlands and other waters associated with Coyote Creek, a water of the U.S., without a permit." The notice of violation states plaintiffs are in violation of the Clean Water Act for failing to obtain a permit from the Corps and a State Water Quality Certification under Section 401 of the Act, and directs plaintiffs to submit a plan for mitigating the impacts of the unauthorized fill. The notice of violation also threatens plaintiffs with additional enforcement action, including daily fines of up to \$10,000.00.  |
| 11/20/15: Oral arguments on MSJ  | The lawsuit argues that Duarte's right to due process under the 5 <sup>th</sup> and 14 <sup>th</sup> Amendments has been violated by these communications and commands, because they were issued with prior notice of alleged illegal activity, and with no opportunity to comment. The United States counterclaimed, claiming violations of the CWA and seeking civil penalties.  |

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|   | On October 23, 2015, Duarte Nursery filed a motion for summary judgment against the Army Corps of Engineers, presenting undisputed facts that show that the farming company is entitled to judgment as a matter of law because the government deprived it of property without a hearing. Hearing on dispositive motions was held on November 20, 2015. Awaiting decision.  |
| <b>Case Names</b>   | <b>Issue – Critical Habitat, ESA §2(c)(2)</b>  |
| <p><i>Bear Valley Mutual Water Company et al. v. Jewell et al.</i></p> <p>Related cases:<br/> <i>Cape Hatteras Access Preservation Alliance v. U.S. DOI</i>, 344 F.Supp 2d 108 (D.C. Cir. 2004)</p> <p><i>County Board of Commissioners v. U.S. FWS</i>, 75 F.3d 1429 (10<sup>th</sup> Cir. 1996)</p> | <p>A June 25 decision by the 9<sup>th</sup> Circuit cast doubt on the validity and enforceability of mutual agreements entered into under habitat conservation plans (HCPs), involving the Santa Ana River sucker in California. The 9<sup>th</sup> Circuit determined that ESA “displaces” the National Environmental Policy Act (NEPA) and the U.S. Fish &amp; Wildlife Service need not comply when it designates critical habitat.</p> <p>On September 22, plaintiffs-appellants <i>Bear Valley Mutual Water Company et al. v. Jewell et al.</i> filed a petition for certiorari with the Supreme Court, appealing the 9<sup>th</sup> Circuit’s decision. The reasoning of the 9<sup>th</sup> Circuit in making these determinations was explicitly rejected by the 10<sup>th</sup> Circuit in <i>Catron County Board of Commissioners v. U.S. FWS</i>, 75 F.3d 1429 (10<sup>th</sup> Cir. 1996) later reaffirmed in <i>Middle Rio Grande Conservancy District v. Norton</i>, 294 F.3d 1220 (10<sup>th</sup> Cir. 2002) and by the District Court for the District of Columbia in <i>Cape Hatteras Access Preservation Alliance v. U.S. DOI</i>, 344 F.Supp.2d 108 (D.D.C. 2004).</p> <p>Another question presented is whether “Section 2(c)(2) of the [Endangered Species Act] is a meaningless, non-operative statement of policy that fails to create any substantive or enforceable rights regarding cooperation by [the U.S. Fish &amp; Wildlife Service] with state and local governmental agencies to resolve water resource issues arising from administration of the ESA in concert with the conservation of endangered species.” WSWC helped craft the 2(c)(2) language.</p> |
| <b>Courts</b>   | The Supreme Court denied the Petition for Certiorari on January 11, 2016.  |
| 9 <sup>th</sup> Circuit, Supreme Court  |  |
| <b>Relevant Dates</b>   |  |
| <p>6/25/15: 9<sup>th</sup> Circuit Decision</p> <p>9/22/15: Plaintiffs-appellants filed Petition for Certiorari to Supreme Court</p> <p>1/11/16: Petition denied</p>  |  |
| <b>District Court Case Names</b>  | <b>Issue - EPA’s/USACE’s Waters of the United States Rule</b>  |
| <p><i>North Dakota, et al. v. EPA et al.</i>, (D. N. Dak.), Case 3:15-cv-59</p> <p><i>Texas, et al. v. EPA et al.</i>, (S. D. Tex.), Case 3:15-cv-162</p> <p><i>Ohio and Michigan v. U.S. Army</i></p>  | <p>On June 29, 2015, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) published their Final Rule on the Waters of the United States (WOTUS) in the Federal Register.</p> <p>From June 29 to July 31, 69 plaintiffs filed 11 lawsuits, including 15 WSWC member states: Alaska, Arizona, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico (agencies), North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming. Other plaintiffs include 15 additional states, 14 industrial groups, as well as environmental groups.</p>   |

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| <p><i>Corp of Engineers et al.</i>, (S. D. Oh.), Case 2:15-cv-2467</p> <p><i>Georgia et al. v. EPA</i> (S. D. Ga.), Case 2:15-cv-79</p> <p><i>Oklahoma v. EPA</i>,</p>  | <p>Simultaneous petitions were filed in 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> 11<sup>th</sup> and D.C. Circuit Courts from most of the same plaintiffs out of an “abundance of caution,” since certain EPA actions are generally exclusively reviewable by the Circuit Courts of Appeals under 33 USC §1369(b)(1). These petitions were consolidated before the 6<sup>th</sup> Circuit by order of the Multi-District Litigation (MDL) Panel</p>   |
| <p><b>Consolidated 33 USC §1369 Petitions in 6<sup>th</sup> Circuit (Ohio)</b></p> <p>(from 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> 11<sup>th</sup> and D.C. Circuit Courts)</p> <p>Natural Resources Defense Council v. EPA</p> <p>Texas, et al. v. EPA</p> <p>Utility Water Act Group v. EPA</p> <p>Murray Energy Corp. v. EPA</p> <p>North Dakota, et al. v. EPA</p> <p>Waterkeeper Alliance, et al. v. EPA</p> <p>Ruget Soundkeeper Alliance , et al. v. EPA</p> <p>Oklahoma v. EPA</p> <p>Chamber of Commerce of U.S., et al. v. EPA</p> <p>Southeastern Legal Foundation, et al. v. EPA</p> <p>Georgia, et al. v. EPA</p> | <p>Facts generally alleged in the complaints: Despite the EPA’s repeated assurances that the WOTUS rule does not expand its jurisdiction, the suing states interpret the rule as a clear threat to state primacy over water resources, as well as a threat to principles of cooperative federalism under the Clean Water Act; a violation of the 10<sup>th</sup> Amendment and the limits of Congressional Commerce Clause powers; reaches beyond the constraints imposed by cases like <i>Riverside Bayview</i>, <i>SWANNC</i>, and <i>Rapanos</i>; and is an arbitrary and capricious rule under the Administrative Procedures Act. The meaning of “waters of the United States” affects which waters agencies can require such things as Water Quality Standards, Total Maximum Daily Loads, permitting under the National Pollutant Discharge Elimination System, and Section 404 dredge/fill permits. Applications for permits are already costly, time-consuming and uncertain (with punitive fines for failure to follow procedure), and the new WOTUS rule increases all three. The states’ use and management over waters will be burdened by the increased regulation, requiring expenditure and commitment of additional state resources. The expansion displaces state authority over water quality and related land and water resources. The states object to the failure of the agencies to consult with the states prior to publishing the proposed rule, and the Corps’ issuance of an Environmental Assessment when an Environmental Impact Statement was merited. The final WOTUS rule expands per se jurisdiction over intrastate non-navigable waters and wetlands, as well as ephemeral streams, floodplains and channels that are usually dry. The final WOTUS rule fails to account for unique hydrologic circumstances of the states, and fails to account for frequency and duration of flow. The rule claims per se jurisdiction over neighboring waters regardless of a significant nexus or continuous surface connection. The rule references 100-year floodplains, many of which are not mapped. The rule imposes onerous jurisdictional determinations on individual landowners who lack the necessary expertise.</p> <p>In <i>North Dakota, et al. v. EPA et al.</i>, 13 states challenge the WOTUS rule for unlawful expansion of the Agencies’ jurisdiction over state land and water resources beyond the limits established by Congress under the Clean Water Act (CWA). They seek declaratory and injunctive relief for violations of the Administrative Procedures Act (APA), the CWA, the National Environmental Policy Act (NEPA), the Commerce Clause and the 10<sup>th</sup> Amendment. In <i>Texas, et al. v. EPA et al.</i>, three states challenge the WOTUS rule as an unconstitutional and impermissible expansion of federal power over states, their citizens and property owners. The CWA was intended to protect water quality, not to regulate states’ water and land use. The states seek relief for violations of the APA, the Commerce Clause, 10<sup>th</sup> Amendment, and CWA. In <i>Ohio and Michigan v. U.S. Army Corp of Engineers et al.</i>, two states seek relief for violations of the APA, CWA, Commerce Clause, and 10<sup>th</sup> Amendment. In <i>Georgia et al. v. McCarthy et al.</i>, nine states (Alabama, Florida, Georgia, Kansas, Kentucky, South Carolina, Utah, West Virginia, Wisconsin) request an injunction preventing the enforcement of the WOTUS rule and an order for the agencies to draft a new rule that does not infringe on states’ primary responsibility to manage and protect intrastate waters and lands. The lawsuit seeks relief for violations of the APA, CWA, Commerce Clause, and 10th Amendment. On July 2, fourteen industry groups (include farming, ranching, forestry, mining, petroleum, transportation, building, and manufacturing) filed suit in the U.S. District Court in Texas, <i>American Farm Bureau Federation et al. v. Environmental Protection Agency et al</i>, seeking injunctive relief for violations of the APA, CWA, Commerce Clause, and 5<sup>th</sup> Amendment due process protections.</p> <p>On July 21, the EPA and Corps filed a motion in <i>Murray Energy Corporation v. EPA</i>, 1:15-cv-110 (N.D. W. Va.), requesting a temporary stay of all proceedings pending a ruling on a separate forthcoming motion to the Multi-District Litigation Panel to consolidate the ten complaints based on 28 U.S.C. §1407. The EPA and Corps argue that the lawsuits have similar claims challenging the same rule, and proceeding separately would be unnecessarily duplicative, wasteful of judicial resources, and raises the potential of inconsistent results,</p> |

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| National Wildlife Federation v. EPA  | “leading to confusion and legal uncertainty.” Similar motions to stay District Court proceedings were filed in the other nine cases.  |
| <b>MDL Panel</b>   |   |
| Case 05/1:15-ca-60492  | On July 21, the eleven states in the <i>Georgia v. EPA</i> filed a motion for preliminary injunction in an effort to stop the implementation of the WOTUS rule, scheduled to go into effect August 28, 2015. On August 10, the thirteen states in <i>North Dakota v. EPA</i> filed a similar motion. The states argue that the WOTUS rule will drastically alter the states’ administration of water quality programs, such as CWA Water Quality Standards, CWA §404, and National Pollutant Discharge Elimination System programs. States would have to expend money from their budgets that cannot be recovered. The states also argue that the WOTUS rule will irreparably harm their sovereign authority to regulate intrastate waters and lands.   |
| <b>Relevant Dates</b>  |   |
| 6/29/15: EPA and USACE published Final Rule on Waters of the United States; three lawsuits filed by 18 states in U.S. District Courts in North Dakota, Texas and Ohio. | The states submitted individual declarations in support of their motions for injunction, including from Council members Pat Tyrrell (WY), Todd Sando (ND), and Tom Stiles (KS). Pat Tyrrell describes the impact of the newly required CWA permits on over 20,000 critical stock reservoirs located largely in dry washes and upland draws, which efficiently capture and utilize ephemeral flow. The new regulatory burden conflicts with Wyoming’s own established law and policy regarding the allocation of stock water, one of Wyoming’s two highest preferred uses of its water. Todd Sando described North Dakota’s extensive infrastructure projects that will be impacted by the WOTUS rule, such as drinking water pipelines that cross a landscape replete with geographic features bearing indicators of bed, bank, and ordinary high water marks, or prairie potholes, but otherwise isolated from traditional navigable waters. New requirements to obtain CWA § 404 permits will in turn trigger NEPA requirements, adding expense and delay to the state’s water projects, hindering the state’s ability to serve the public. Tom Stile’s declaration states that the WOTUS rule increases federal jurisdiction to five times the stream miles previously covered, the majority of which are ephemeral streams. Based on past experience analyzing designated uses of classified waters, Kansas is well aware of the resource-intensive and time-consuming burden of determining which waters are now jurisdictional and what designated uses apply to those waters. The WOTUS rule raises the status of short-duration marginal waters to require TMDL development, a waste of time and resources for no environmental gain, and places added strain on monitoring programs to inventory and report on state water quality and status. |
| 6/30/15: Georgia v. EPA filed suit, adding nine more states (eleven once Indiana and North Carolina join, 7/21/15)   |   |
| 7/2/15:  |   |
| 7/8/15: Oklahoma v. EPA filed suit   | On July 31, the Northern District of Oklahoma granted EPA and the Corps’ motion requesting the <i>Oklahoma v. EPA</i> proceedings be stayed pending a ruling from the Judicial Panel on Multi-District Litigation on consolidating the ten WOTUS cases before various federal courts.   |
| 7/28/15: Consolidation Order from the US Judicial Panel on Multidistrict Litigation, consolidating the 33 USC §1369 petitions in the 6 <sup>th</sup> Circuit (Ohio)    | On August 27, <i>North Dakota et al. v. EPA</i> enjoined the enforcement of the WOTUS rule, scheduled to go into effect on August 28. As a preliminary matter, the court determined that it had original jurisdiction rather than the court of appeals because the statutory basis for court of appeals jurisdiction (33 USC §1369(b)(1)) is absent: (1) the rule has only an attenuated connection to any actual permitting process; and (2) the discretion of the States over pollution disposal into waters remains unchanged. The court also held that the thirteen States that are parties to the lawsuit are likely to succeed on their claims on two separate grounds: (1) EPA may have violated its Congressional grant of authority; and (2) EPA may have failed to meet Administrative Procedures Act (APA) requirements in promulgating the rule. The court noted that the WOTUS rule suffers from the same fatal defect described by Justice Kennedy in the <i>Rapnos v. United States</i> case, namely, that the rule “allows EPA regulation of waters that do not bear any effect on the ‘chemical, physical, and biological integrity’ of any navigable-in-fact water.” The tributary definition allows for regulation of any remote area that has a trace amount of water as long as bed, banks, and ordinary high water mark exist, which was precisely Justice Kennedy’s concern, the court said. Also the rule’s definitions include “vast numbers of waters that are unlikely to have a nexus to navigable waters within any reasonable understanding of the term.” Under the APA requirements, the court found that the agencies’ Technical Support Document lacks a rational connection between the facts and the rule, which asserts jurisdiction over remote and intermittent waters. “No evidence                              |
| 7/31/15: Oklahoma v. EPA stayed pending the outcome of the motion to consolidate the District Court cases.   |   |
| 8/27/15: North Dakota v. EPA granted injunction against  |   |

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| <p>implementation of new rule in 13 states.</p> <p>8/__/15: Injunction motions in Georgia and West Virginia denied for lack of subject matter jurisdiction.</p> <p>9/4/15: North Dakota v. EPA limited scope of injunction to only the plaintiff states (not nationwide)</p> <p>9/8/15: Texas v. EPA filed a motion for preliminary injunction</p> | <p>actually points to how these intermittent and remote wetlands have any nexus to a navigable-in-fact water.” The court also found the distance-based jurisdiction over waters within 4,000 feet of navigable waters is arbitrary and lacks any connection to the scientific data. Further, the court found that the final rule was not a “logical outgrowth” of the proposed rule, released for public comment, particularly with regard to the expanded definition of “neighboring” waters that substituted geographical distances for the ecological and hydrological concepts in the proposed rule. In balancing the potential harms and public interest, the court found that “the risk of harms to the States is great and the burden on the agencies is slight.” The States’ harm includes both loss of sovereignty over intrastate waters as well as monetary losses from costly jurisdictional studies, lost tax revenue from stalled projects, and costs of expanded CWA §401 certification processes, none of which are recoverable from the United States. The public benefit of increased certainty as to what constitutes jurisdictional waters for some is outweighed by the broader public benefit of ensuring that “federal agencies do not extend their power beyond the express delegation from Congress.”</p> <p>On September 4, the U.S. District Court of North Dakota issued an order limiting the scope of its August 27 injunction, preventing the WOTUS Rule from taking effect, to the plaintiff states in <i>North Dakota et al. v. EPA</i> [Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming, the New Mexico Environment Department and the New Mexico Office of the State Engineer.] The court found that, while there are compelling reasons in favor of both extension and limitation of the injunction, the interests of other sovereign states and the rulings of other courts would be undermined by extending the preliminary injunction beyond the thirteen states that are parties to the case.</p> <p>The U.S. District Courts in West Virginia and Georgia have denied preliminary injunctions due to a lack of subject matter jurisdiction in <i>Murray Energy Corp. v. EPA</i> and <i>Georgia et al. v. EPA</i>. The U.S. District Court in Oklahoma has deferred decisions on two additional cases until the Judicial Panel for Multidistrict Litigation decides whether to consolidate the district court cases.</p> <p>On September 8, the States of Texas, Louisiana and Mississippi filed a motion for preliminary injunction in <i>Texas et al. v. EPA</i>. The states requested that the U.S. District Court for the Southern District of Texas enjoin the effectiveness of the WOTUS rule pending the outcome of litigation. In support of the request, the states noted: (1) that the rule now in effect immediately infringes upon their sovereignty over their lands and intrastate waters; (2) the rule fundamentally redefines the scope of and burden on the states’ delegated permitting programs under the Clean Water Act; (3) that the Environmental Protection Agency and U.S. Army Corps of Engineers (Corps) failed to respond to the states’ August 20 and 27 requests to stay the rule; (4) the Corps memo, revealed on June 30, questions whether the WOTUS rule can withstand judicial scrutiny; and (5) the rule has been enjoined for thirteen other states.</p> <p>On October 9, the 6th Circuit Court of Appeals granted a preliminary injunction, issuing a nationwide stay on the implementation of the WOTUS rule until it determined whether it has jurisdiction.</p> <p>On October 13, the Judicial Panel on Multi-district Litigation denied the agencies’ motion to consolidate the nine actions in seven U.S. District Courts, noting that the cases turn on questions of law, whether EPA and the Corps exceeded their statutory and constitutional authority in promulgating the Clean Water Rule, and without questions of fact the parties would gain little convenience by consolidating. The MDL Panel also pointed to the procedural difficulty of consolidating cases with different holdings on jurisdiction.</p> <p>On October 14, the agencies filed a motion to stay the proceedings in the District Court of North Dakota until the 6th Circuit makes a jurisdictional determination, citing judicial efficiency. Plaintiff states opposed the stay given that the District Court of North Dakota already determined it has proper jurisdiction. On November 10, the U.S. District Court of North Dakota denied the EPA and Corps’</p> |
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motion to stay the case until the 6th Circuit Court of Appeals' ruling on original jurisdiction to review the Waters of the United States (WOTUS) rule under 33 USC §1369(b)(1). The District Court noted that the agencies would be required to compile the administrative record relating to the rule regardless of which court hears the case, that there is little judicial efficiency to be gained by delaying that process, and that a decision by the 6th Circuit may not be binding on the District Court of North Dakota. The District Court set a scheduling order that requires the agencies to file a certified index of the administrative record by November 20.

On December 10, a three-judge panel in the 6th Circuit Court of Appeals heard oral arguments on the question of whether jurisdiction over the challenge to the EPA's Clean Water Rule (WOTUS) belongs in the district courts or the 6th Circuit. States argued that the Section 509(b)(1) criteria for appellate court jurisdiction did not apply to this case. One judge asked questions about the precedent of the challenge to EPA's regulation of pesticide spraying, which bypassed the District Courts in *National Cotton Council v. EPA* (2009). Another judge pressed on the value of having the cases heard together in a single venue given the nationwide application of the rule.

On December 22, the Sierra Club filed a motion to intervene as a defendant, in addition to the EPA and Corps, in *North Dakota et al. v. EPA et al.*, U.S. District of North Dakota. The Sierra Club notes that while its interests overlap with the agencies' interests, in some cases the Clean Water Rule falls short of the "full reach of the Clean Water Act" (CWA). The Sierra Club is simultaneously challenging the agencies' limited construction of the CWA in other lawsuits. Citing the declarations of its members in Michigan, Minnesota and Tennessee, the Sierra Club argues that its members' interests in CWA protections for water bodies where they live, work and recreate would be impaired if the Court implemented a narrow interpretation of jurisdiction over wetlands, streams and marshes. Among its other arguments, the Sierra Club states that adjacent and tributary waters "have always been subject to jurisdiction under the Clean Water Act and relevant case law," and that the standardized definitions under the new Clean Water Rule obviate the need for case-by-case determinations of waters defined as jurisdictional by rule. "[I]n these respects," the Sierra Club asserts, "the new jurisdictional rule does not expand the reach of the Clean Water Act; it merely serves to streamline and clarify for interested parties and the public." The Sierra Club "...asks to intervene in order to defend those aspects of the Rule that it supports, and to defend the Clean Water Act's full jurisdiction from improper limitation."

On February 22, a divided 6<sup>th</sup> Circuit panel ruled 2-1 that it has jurisdiction over the consolidated appellate court cases challenging the EPA and Corps' WOTUS rule (80 Fed. Reg. 37054), rather than the District Courts, and denied the petitioners' motions to dismiss. All three judges agreed that the plain text of applicable judicial review provisions of the Clean Water Act, 33 U.S.C. §1369(b)(1)(E) and (F), precluded jurisdiction. Judge David McKeague, writing the lead opinion, relied on binding and persuasive precedents of case law interpreting those provisions more expansively than a plain text reading. McKeague found that the WOTUS rule "undeniably has the indirect effect of altering permit issuers' authority to restrict point-source operators' discharges into covered waters," creating an alteration that "invariably results in expansion of regulatory authority in some instances and imposition of additional restrictions on the activities of some property owners." Citing *E.I. du Pont de Nemours Co. v. Train*, 430 U.S. 112, 136 (1977), McKeague held that this indirect impact makes the WOTUS rule a "basic regulation governing other individual actions issuing or denying permits" and therefore subject to direct review under appellate court jurisdiction.

Judge Richard Griffin concurred in the decision but not the reasoning, and cited the precedentially-binding decision of *National Cotton Council of America v. U.S. EPA*, 553 F.3d 927 (6<sup>th</sup> Cir. 2009). Griffin disagreed with the holding in *National Cotton* that extended jurisdiction when a rule regulates the permitting procedures, calling it an interpretation that gives "broad authorization to the courts of appeals to review anything relating to permitting notwithstanding the statutory language to the contrary." Noting that the panel did not have authority to overrule *National Cotton*, Griffin stated: "Were it not for *National Cotton*, I would grant the motions to dismiss."

|   | <p>In his dissent, Judge Damon Keith did not find <i>National Cotton</i> either controlling or as broadly applicable. Keith noted a significant distinction between the expanded scope to cover rules that “regulate” or “govern” permitting procedures as in <i>National Cotton</i>, from a rule that merely “relates” to permitting procedures, which he said would give the court jurisdiction “over all things related to the Clean Water Act.” Keith said it could not be “the intent of the legislators who drafted seven carefully defined bases for original jurisdiction in the appellate courts,” nor the intent of the <i>National Cotton</i> court, to expand the jurisdictional reach of the statute “in an all-encompassing, limitless fashion.”</p> <p>The 6<sup>th</sup> Circuit’s nationwide stay on the WOTUS rule implementation remains in effect.</p> <p>The 11<sup>th</sup> Circuit previously ordered its WOTUS case, <i>State of Georgia v. McCarthy</i>, in abeyance pending a decision by the 6<sup>th</sup> Circuit. On February 23, counsel for the appellant states (including Kansas and Utah) requested that the 11<sup>th</sup> Circuit renew its review. Although the “fractured decision” of the 6<sup>th</sup> Circuit found jurisdiction based on the precedent of <i>National Cotton</i>, the appellants noted that 11<sup>th</sup> Circuit is bound by the precedent of “<i>Friends of the Everglades</i>, which specifically rejected the rationale offered by <i>National Cotton</i>.”</p> <p>On February 29, 2016 several industrial and agricultural petitioners filed a request to the 6<sup>th</sup> Circuit for <i>en banc</i> review, noting that “the panel’s splintered 1-1-1 jurisdictional decision raises more questions than it answers.” Given the importance of the decision on numerous Administrative Procedures Act cases and the fact that two of the three panel judges doubt the validity of the court’s own precedent, the petitioners argued that guidance from the full court is necessary to address the uncertainty of the panel’s decision. On March 4, North Dakota and a coalition of states also filed a request to the 6<sup>th</sup> Circuit for <i>en banc</i> review.</p> <p>On March 3, the federal agencies filed a motion to dismiss the WOTUS challenge in the U.S. District Court of North Dakota, and to dissolve the preliminary injunction staying implementation of the rule in 13 states, arguing that the 6<sup>th</sup> Circuit has exclusive jurisdiction over all the states’ challenges to the WOTUS rule.</p> |
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| Case Names  | Issue – BLM’s Hydraulic Fracturing Rule  |
| <p><i>Wyoming and Colorado v. US Department of the Interior and Bureau of Land Management</i>, U.S. District Court Wyoming, Case 2:15-cv-43</p> | <p>On March 20, the Department of the Interior finalized regulations to govern hydraulic fracturing on federal land. (80 FR 16128) The rule only applies to the use of hydraulic fracturing on federal and tribal lands and includes a process by which states and tribes can request a variance from provisions for which they have an equal or more protective regulation in place. The rule also requires oil and gas companies to disclose the chemicals they use on the existing <a href="http://www.FracFocus.org">www.FracFocus.org</a> website, which is funded by oil and gas trade groups, within 30 days of completing fracturing operations. Other parts of the rule require: (1) a validation of well integrity and strong cement barriers between the wellbore and water zones through which the wellbore passes; (2) higher standards for interim storage of recovered waste fluids from hydraulic fracturing; and (3) more detailed information on the geology, depth, and location of preexisting wells to help the Bureau of Land Management better evaluate and manage unique site characteristics.</p>   |
| Courts  |  |
| <p>U.S. District Court of Wyoming</p>   |  |
| Relevant Dates  | <p>On May 29, Wyoming and Colorado filed a motion for a preliminary injunction to halt the implementation of BLM’s new hydraulic fracturing regulations, seeking to maintain the status quo until the case is decided on its merits. The states are pursuing the injunction on the grounds that the rule exceeds the BLM’s jurisdiction as limited by Congress, leading to the irreparable harm of an immediate loss of the states’ “exclusive sovereignty over hydraulic fracturing.” The motion briefly reviews the history of BLM’s limited authority to regulate fracking, explains how the BLM’s new fracking rule duplicates the states’ regulations, and outlines the financial and irreparable</p>   |
| <p>3/26/15: Case filed</p>  |  |

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| 4/29/15: North Dakota intervenes  | <p>harms the rule is expected to cause. The motion rejects the BLM's claims to authority under the Federal Land Policy and Management Act and various mineral leasing acts and Indian mineral statutes, arguing that the Safe Water Drinking Act and 2005 Energy Policy Act expressly grant to states the authority to regulate hydraulic fracturing.</p> <p>On June 23, the U.S. District Court of Wyoming stayed the implementation of the Bureau of Land Management's Hydraulic Fracturing Rule, pending the BLM's submission of its Administrative Record, now due July 22. The Rule was originally scheduled to take effect June 24. Wyoming, Colorado, North Dakota and other petitioners are seeking a preliminary injunction to postpone enforcement of the Rule until the end of the case. Following the lodging of the Administrative Record and an opportunity for petitioners to file additional citations in support of the injunction, the Court will rule on the motions.</p> <p>BLM submitted its Administrative Record to the court on 8/27/15, and plaintiff's citations to the record in support of their motion for preliminary injunction were filed 9/18/15. The deadline to file motions to supplement the Administrative Record is October 16.</p> <p>On September 30, the District Court issued a nationwide preliminary injunction, enjoining the BLM from enforcing its final rule relating to hydraulic fracturing on federal and Indian lands. The Court found that Congress did not grant or delegate to BLM the necessary authority or jurisdiction to regulate fracking on federal, state or tribal lands. Congress specifically removed related authority from the EPA with the 2005 Energy Policy Act, the Court said, and BLM cannot regulate hydraulic fracturing contrary to the unambiguously expressed intent of Congress without additional Congressional action.</p> <p>On December 10, the Administration appealed the September 30 nationwide injunction of BLM's fracking rule. A coalition of environmental groups is also asking the 10th Circuit Court of Appeals to reverse the decision. States assert that they are in the best position to regulate fracking; that BLM's rule is unnecessarily duplicative of state regulations; and that Congress unambiguously removed authority from agencies to regulate fracking with the 2005 Energy Policy Act.</p> <p>On December 17, the District Court denied a motion from defendants to convert a preliminary injunction decision into a final judgment. The defendants want to appeal a final decision on whether the Department of Interior has regulatory jurisdiction over fracking on public lands. The preliminary injunction, issued in September, stayed implementation of the BLM's Hydraulic Fracturing Rule. The Court rejected arguments that the final administrative record would be immaterial to the outcome of the case. The preliminary injunction decision is still on interlocutory appeal before the 10<sup>th</sup> Circuit.</p> <p>On February 24, the Tenth Circuit denied an industry motion to dismiss the appeal of a district court's preliminary injunction staying implementation of BLM's hydraulic fracturing regulations. The industry groups argued that the appeal would become moot before the Tenth Circuit's judgment because the district court that issued the preliminary injunction would first issue a final decision on the merits. The Tenth Circuit requested further briefing on the issue of the industry group's alternative motion for a stay of the appeal pending the District Court's ruling on a permanent injunction. The Tenth Circuit denied a motion by BLM and environmental groups to expedite briefing of their appeal to obtain an accelerated decision.</p> <p>On March 15, the Tenth Circuit granted the DOI's request to hear an immediate appeal of the District Court's fall 2015 preliminary injunction against BLM's rule. The appeal of the preliminary injunction will run concurrently while the district court hears the case against the rule on its merits. The states motion to stay the appeal while the district court case played out was denied.</p> |
| 6/16/15: Utah intervenes  |   |
| 05/29/15: Wyoming and Colorado file Motion for Preliminary Injunction to halt the June 24 implementation of BLM's hydraulic fracturing rule until the case is decided |   |
| 06/23/15: D. Wyo. issues temporary stay   |   |

|   |   |
|---|---|
|   | <i>*WGA's energy resolution (#2013-09) recognizes that states have effectively regulated hydraulic fracturing and that "redundant federal regulation is not required." (WSW #2019)</i>  |
| <b>Case Names</b>   | <b>Issue – EPA's Water Transfers Rule</b>   |
| <p><i>Friends of the Everglades v. EPA</i>, 699 F.3d 1280 (11<sup>th</sup> Cir. 2009)</p> <p><i>Catskills Mountains Chapter of Trout Unlimited, et al v. EPA</i>, (SDNY 2014) (appeal to 2<sup>nd</sup> Cir.)</p> <p><i>Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation</i>, No. 12-35831 (9<sup>th</sup> Cir. 2015)</p> | <p>In 2008, following a decision in <i>South Fla. Water Mgmt. Dist. v. Miccosukee Tribe</i>, 541 US 95 (2004), EPA promulgated its "Water Transfers Rule" (40 C.F.R. §122.3(i)) clarifying that certain water transfers do not require NPDES permits under the CWA. When EPA finalized the rule in 2008, opponents immediately challenged it in the Southern U.S. District Court of New York (SDNY). Protective challenges filed in multiple circuits were consolidated in the 11<sup>th</sup> Circuit, and the SDNY challenge was stayed pending the outcome of the 11<sup>th</sup> Circuit action. The 11<sup>th</sup> Circuit upheld the Rule in <i>Friends of the Everglades v. S. Fla. Water Mgmt. Dist.</i>, 570 F.3d 1210 (11<sup>th</sup> Cir. 2009). Following precedent in the related Lake Okeechobee case, the 11<sup>th</sup> Circuit dismissed the consolidated challenges for lack of original subject matter jurisdiction. The SDNY case was decided on March 28, 2014, vacating EPA's rule to the extent it is inconsistent with the statute – in particular the phrase "navigable waters" – and remanded the Rule to the extent EPA did not provide a reasoned explanation for its interpretation.</p> <p>EPA subsequently appealed the SDNY's decision to the 2<sup>nd</sup> Circuit, together with 11 western intervening states and western water providers. Opening briefs were filed by EPA and the western states in September 2014, and various parties involved in the action filed response and reply briefs in early 2015. The states assert <i>inter alia</i> that the Supreme Court's Clear Statement Rule and Avoidance Canon preclude altering traditional federal deference to state water law by extending NPDES permitting to water transfers authorized by the States.</p> <p>On December 1, the 2<sup>nd</sup> Circuit Court of Appeals held oral argument on EPA's Water Transfers Rule. The panel of three judges was interested in whether they were bound to follow the Circuit's Catskills precedents, which held that NYC's transfers were subject to NPDES permitting. The presiding judge was also concerned with hypothetical effects of transfers on water quality. The other two panelists, however, seemed more interested in whether the Act is ambiguous, such that the Court should defer to EPA's expertise under the <i>Chevron</i> doctrine as EPA argued, and were skeptical of the Court's expertise to decide whether transfers should be subject to NPDES permitting.</p> <p>Peter Nichols, Special Assistant Attorney General to the States of Colorado and New Mexico, and Annette Quill, Assistant Attorney General, Colorado, pointed out to the Court that the West faces different water challenges than the East. Nichols' arguments for the West focused on the necessity of water transfers, contrasting the comparable flows of the Hudson River to the Colorado, and reliance on transfers to the Front Range cities of Colorado, the Rio Grande basin of New Mexico, through the Central Arizona Project to serve Phoenix and Tucson, through the Colorado River Aqueduct to serve the coastal cities of Southern California, and for irrigation of the Imperial Valley for year round fruits and vegetables. He explained the technical and financial impossibility of treating water transfers to meet every one of three dozen water quality parameters of receiving waters because of western precipitation patterns and naturally present constituents. The Court asked about interstate issues, and Nichols was able to talk about compacts that allocate water and compacts that protect water quality. He was also able to explain that the states have authority under the Act to manage water transfers for water quality if they think it's necessary, but should not be required to do so. Counsel for the environmentalists asserted that permitting would not be burdensome. The decision here will likely contribute to a split among the circuits, facilitating an appeal to the Supreme Court to resolve the issue.</p> |
| <b>Courts</b>   |   |
| <p>Southern U.S. District Court of New York (SDNY)</p> <p>2<sup>nd</sup>, 11<sup>th</sup> and 9<sup>th</sup> Circuit Courts of Appeals</p>  |   |
| <b>Relevant Dates</b>   |   |

|  | <p><i>See full summary of Catskills Mountains Chapter of Trout Unlimited, et al v. EPA in the Tulsa, Oklahoma briefing binder, Tab U, April 2015 Special thanks to Peter Nichols, Special Asst. Attorney General for Colorado and New Mexico, who provided much of the information used in the summary of this litigation.</i></p> <p>On August 21, a 9<sup>th</sup> Circuit panel affirmed (on other grounds) a district court decision in <i>Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation</i>, that the Bureau of Reclamation was not required to obtain a Clean Water Act (CWA) §402 permit for waters transferred through a drain as part of the Klamath Irrigation Project. The 9<sup>th</sup> Circuit applied the Supreme Court’s pre-Rule <i>Miccousukee</i> test – whether waters are “meaningfully distinct” – and held that a permit was not required without addressing EPA’s Rule.</p> <p>In August 2012, the district court adopted the magistrate judge’s Report and Recommendation that the Bureau of Reclamation was exempt from the permit requirement under the Environmental Protection Agency’s (EPA) Water Transfers Rule, 40 CFR §122.3(i). The 9<sup>th</sup> Circuit panel relied instead on a subsequent “meaningfully distinct” test from a 2013 U.S. Supreme Court decision in <i>Los Angeles County Flood Control District v. Natural Resources Defense Council</i>, 133 S. Ct. 710. In that case, the Supreme Court held that “no pollutants are ‘added’ to a body of water when water is merely transferred between different portions of that water body.” The panel found this a “simpler path” than deciding whether the Water Transfers Rule is properly within EPA’s authority, as is the issue currently before the 2<sup>nd</sup> Circuit in <i>Catskills Mountains Chapter of Trout Unlimited v. EPA</i>, No. 14-01991.</p> <p>The water at issue flows from the Lower Klamath Lake, through the Klamath Straits Drain, and into the Klamath River. The 9<sup>th</sup> Circuit panel stated that although the discharge into the river includes some runoff and spring-fed streams from another basin, most of the water originates from the Klamath River. The drainage is “essentially an improved version of a previously existing natural waterway,” the panel said, and if the pumping stations and headgates of the drainage were removed, water would still flow from Lower Klamath Lake into the Klamath River.</p> <p>Following the <i>L.A. County Flood Control</i> decision, and based on the district court record, the panel held that the drain did not add any pollutants to the water, the Lower Klamath Lake and Klamath River were not meaningfully distinct water bodies, and the Bureau of Reclamation was not required to obtain a permit under the CWA.</p> <p>On November 12, the 9th Circuit Court of Appeals rejected a petition for rehearing by environmentalists. In their petition, the environmentalists argued that the status of the Klamath water bodies was in dispute, and the question of whether the waters are meaningfully distinct is a factual issue that should have been remanded to the trial court for further proceedings. The November 12 order states: “The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc.”</p> <p><i>*WSWC <a href="#">Policy #342</a>, generally supporting EPA’s water transfers rule.</i></p> <p><i>**WGA <a href="#">Resolution #14-04</a>, Paragraph B(2)(c), generally supporting EPA’s water transfers rule.</i></p> <p><i>***<a href="#">Joint letter</a> from WGA and WSWC urging EPA to appeal the SDNY decision dated 5/12/14.</i></p> |
|--|--|
| Case Names                                     | Issue – Rio Grande Compact   |
| <p><i>Texas v. New Mexico and Colorado</i></p> | <p>The state of Texas filed a lawsuit in the United States Supreme Court against the states of New Mexico and Colorado alleging that New Mexico is violating the 1939 Rio Grande Compact, which governs the distribution of Rio Grande water among the three states. New</p>   |

| Courts  | <p>Mexico denies this allegation. The United States filed a motion to intervene on the grounds that the case affects the Department of Interior’s management of the Reclamation’s Rio Grande Project, its calculation of diversion allocations, and its responsibility to deliver water to intended Project beneficiaries and to Mexico pursuant to Treaty. New Mexico filed a motion to dismiss on the grounds that the language of the compact could not provide the relief requested by Texas, and that the United States is not a party to the Compact. The case was referred to Special Master in November 2014. Two political subdivisions (water districts supplied by and the sole direct beneficiaries of the Rio Grande Project) of New Mexico and Texas also sought to intervene on the grounds that they have compelling interest in the case not properly represented by their respective states.</p>  |
|---|---|
| U.S. Supreme Court  |   |
| Relevant Dates  |   |
| 1/8/13: Texas filed its complaint (motion for leave to file granted 1/27/14)                            |   |
| 2/27/14: United States Motion to Intervene  |   |
| 4/30/14: New Mexico Motion to Dismiss   | <p>Texas: One of the purposes of the Compact is to protect the operation of the Rio Grande Reclamation Project, and requires that New Mexico deliver specified amounts of Rio Grande water into Elephant Butte Reservoir, a storage feature of the Rio Grande Reclamation Project. Once delivered to Elephant Butte Reservoir, that water is allocated and belongs to Rio Grande Project beneficiaries in southern New Mexico and in Texas, based upon allocations derived from the Rio Grande Project authorization and relevant contractual arrangements. In order for water to be delivered to Rio Grande Project beneficiaries in southern New Mexico and in Texas, it must be released from Rio Grande Project facilities, and allowed to flow unimpeded through Rio Grande Project lands in southern New Mexico, and then across the state line into Texas. New Mexico has, contrary to the purpose and intent of the Rio Grande Compact, allowed and authorized Rio Grande Project water intended for use in Texas to be intercepted and used in New Mexico. New Mexico’s actions, in allowing and authorizing the interception of Rio Grande Project water intended for use in Texas, violates the purpose and intent of the Rio Grande Compact, causing injury to Texas.</p> |
| 11/3/14: U.S. Supreme Court appointed A. Gregory Grimsal Special Master and referred the case to him.   |   |
| 12/3/14: Elephant Butte Irrigation District Motion to Intervene   |   |
| 4/22/15: El Paso County Water Improvement District No. 1 Motion to Intervene                            | <p>New Mexico: The plain language of the Compact provides that New Mexico’s obligation to Texas is to deliver water to Elephant Butte Reservoir, not to the Texas-New Mexico stateline. Further, the Compact also expressly states that Texas’ right of enforcement against New Mexico to be at Elephant Butte Reservoir. The parties do not dispute that New Mexico has made all required Compact deliveries for Texas at Elephant Butte Reservoir, the point of delivery specified in the Compact. The Compact does not require New Mexico to maintain depletions within the Rio Grande Basin in New Mexico below Elephant Butte at the levels existing as of 1938. The Compact imposes no affirmative duty on New Mexico to prevent interference with deliveries of Rio Grande Project water by the United States.</p>   |
| 8/19/15: Oral argument before Special Master re: New Mexico Motion to Dismiss                           |   |
| 8/20/15: Oral argument before Special Master re: Elephant Butte Irrigation District Motion to Intervene |   |
| 10/16/15: Status conference with the Special Master.  | <p>On October 15, 2015, the Special Master held a status conference with the parties. Among other administrative matters, the Special Master noted that the decisions on the Motion to Dismiss and the EBID Motion to Intervene were in process, and that the Special Master currently does not feel the need to hold oral arguments on the El Paso County Water Improvement District No. 1 Motion to Intervene, since it is well-briefed and the issues are similar to the EBID Motion to Intervene.</p>   |



Tab O – Water Data Exchange (WaDE) /  
Exchange Network (EN) Grants  
Status Report / Strategic Plan



# Water Data Exchange (WaDE) Update

WSWC 2016 Spring Meeting – Washington DC

*The Water Data Exchange (WaDE) Program enables western states to share important water data with each other, federal agencies, and the public. It also seeks to improve the sharing of federal water datasets that support state water planning efforts.*

## About WaDE

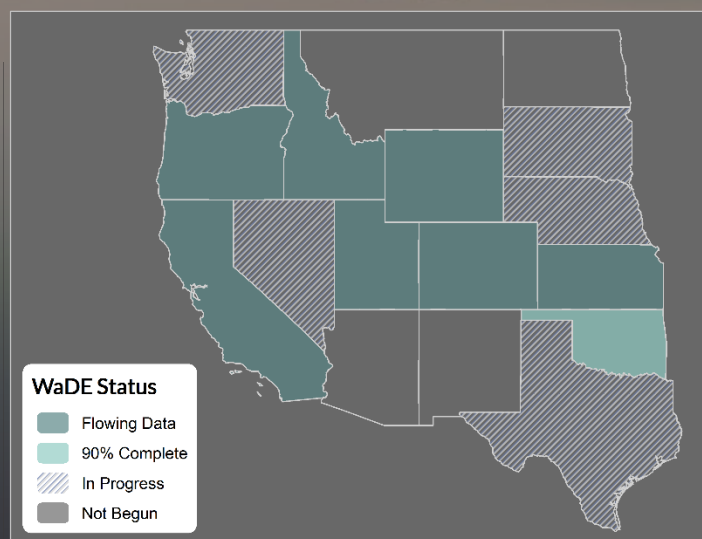
WaDE has been a cooperative effort between the Western States Water Council (WSWC), representing 18 Western states, the Western Governors' Association (WGA), the Department of Energy (DOE), the National Environmental Information Exchange Network (NEIEN) and the Western Federal Agency Support Team (WestFAST). The focus of WaDE is to enable the states to share important water data (water availability estimates, water use by sector, and water allocation data) with each other, federal agencies, and the public. The WaDE program also works to promote "open data" concepts and strategies with other agencies, especially shared federal datasets concerning water management – streamgage data, snowpack and streamflow forecasts, reservoir storage and elevations, etc. This would greatly facilitate the work that states undertake when assessing current and future water conditions.

## 2015 Program Highlights

2015 was a busy year for the WaDE program. The databases and IT components have largely been finalized and made available to participating state IT staff. These include increased support for geographic information systems (GIS) data and methodology information. This capability allows WaDE to provide a suite of methodologies related to water supply and use planning used by its member states. Once a complete listing of methods, terms, and spatial and temporal scales used by states is available, discussions on how to arrive at a more complete and comparable picture of water in the West can be initiated.

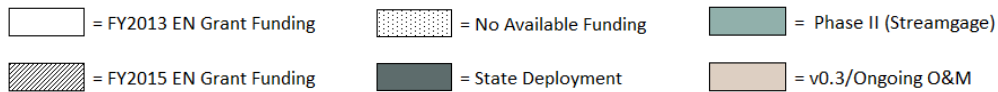
Other notable milestones include:

- Several states' water planning and/or water rights data became available in the WaDE Portal, including Idaho, Wyoming, Utah, and Colorado. The Portal is currently in "beta" and can be found on the WSWC website.
- WSWC has continued engagement with other states, assisting with their initial steps to get "plugged in" to the WaDE framework. Several additional states are finalizing their dataflows, including California, Oregon, Oklahoma, and Kansas.
- Engagement with federal agencies to encourage data sharing, including congressional briefings, AWRA and Exchange Network meetings. This also includes the federally-led Open Water Data Initiative (OWDI)—that seeks to publish water-related data using "open data" concepts, strategies, and standards, and the USGS Water Use Data & Research (WUDR) program.



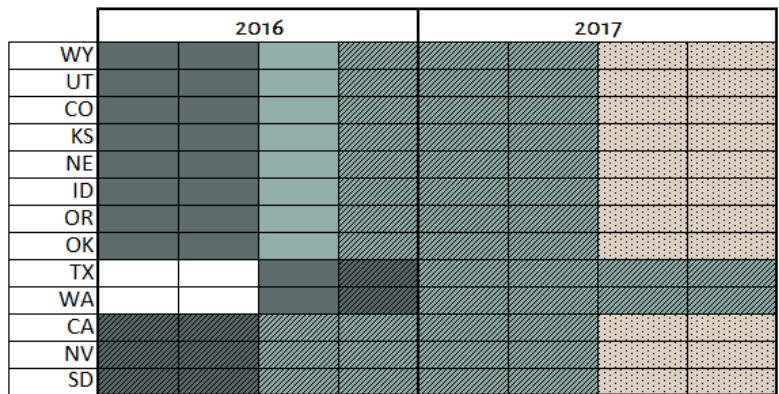
# WaDE 2020: Strategic Directions

WaDE has procured funding from the Exchange Network (EN) that allows for continued coordination of the program for a substantial period of time, but deployment varies depending on some external factors such as grant period extensions, use of contractor-designated funds, and other funding opportunities. The scenarios below contain potential outcomes for the WaDE program based on funding sources, followed by a discussion on anticipated operations and maintenance post-deployment.



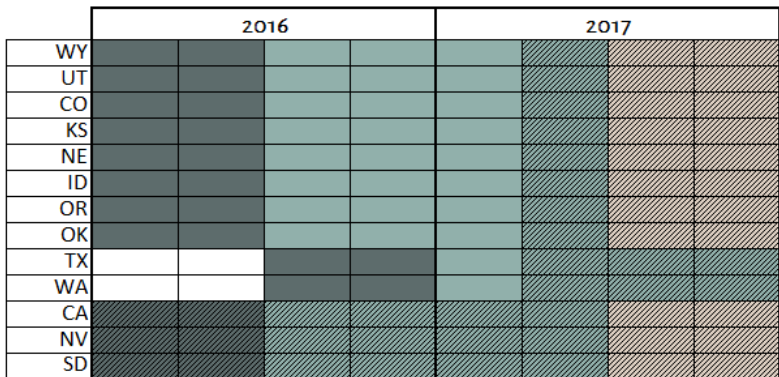
Scenario #1 – No Extension of FY2013  
EN Grant Period

The first grant procured by WSWC has a grant period ending September 30<sup>th</sup> of 2016. One of the grant partners has requested an extension of the grant period so that they will have enough time to finish their grant activities. If there is no extension of the grant period, WSWC will likely not be able to use the full amount allocated to the WaDE program. On the right is a timeline for exhausting funds if there is no extension.



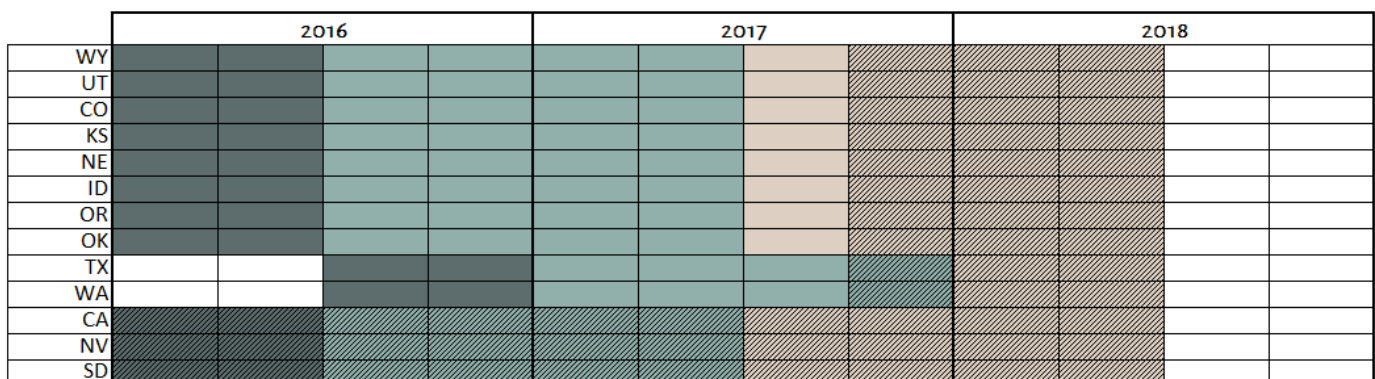
## Scenario #2 – Extension of FY2013 EN Grant Period

If the grant period is extended by six months or more, WSWC will be able to use their full allotment of the funding, which will delay the use of FY2015 funding. To the right is a timeline for exhausting funds if the extension is received.



### Scenario #3—Extension of FY2013 EN Grant Period + Contractor Funds

The FY2013 grant contains an amount allocated to hiring a contractor for component development. If WSWC can re-allocate this into general expenditure funds, it can be used to continue WaDE deployment, which further delays use of FY2015 EN grant funds.

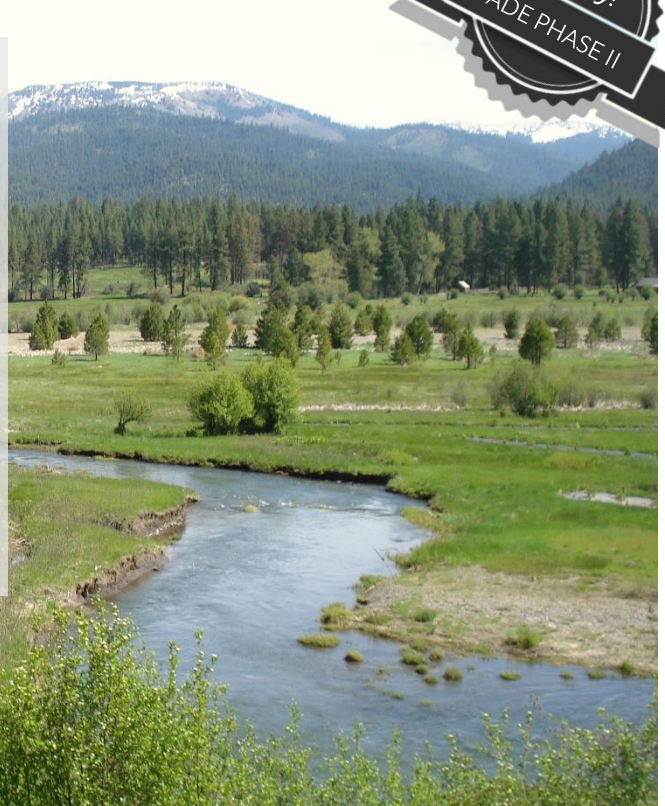


## Phase II – Hydrologic Measurement Data, O&M



WSWC may propose that states who have begun flowing information in the WaDE portal now evaluate whether they can add basic hydrologic measurement type data under Phase II.

The first phase of the WaDE project involved the development of a “schema” or format that would allow for states to share water planning and water rights/administrative data with each other. These types of data are fairly complex and required custom database and component development. WaDE Phase II would assist states with sharing more basic datasets that they may curate, including streamgauge networks that they may own/operate, groundwater monitoring data, and other hydrologic measurement data. These are not only more straightforward, but also already have an international standard developed for them for sharing and interoperability. The standard for time series information is Water Mark-Up Language 2.0 (WaterML2.0) and groundwater can use a similar standard called Groundwater Mark-Up Language (GWML).



### Operations & Maintenance (O&M)

After states have completed their initial deployments and automated their updating procedures, WaDE will continue to require effort to maintain its performance. As with any collaborative online data-sharing effort, dead links, server outages, and network traffic responsiveness can impact the integrity of and trust for the application. WSWC will weigh maintaining and governing the direction of WaDE for the foreseeable future, while also looking for collaborative partnerships to continue to build the framework necessary for improved functionality and user-friendliness of the WaDE system. Once fully implemented, WaDE O&M requirements will fluctuate, but likely average around 25% of a FTE position.

### Proposed changes for future WaDE development include:

- Phase II – basic water supply data implementation
- Inclusion of well log data
- More integrated GIS support
- Greater accessibility to data retrievals (json and .csv downloads)
- A more refined user-friendly interface, including a URL generator page to facilitate automatic data retrieval
- Support for water transfer information
- Greater support for water rights and diversion relationships in the database

Update WaDE database to v0.3!

Patch server...  
Call all states with upgrade...



## Tab P – 2015-2016 Summary of WSWC Activities and Events

**Western States Water Council  
Summary of Activities  
October 2015 – March 2016**

**WASHINGTON, DC VISITS**

November 30 - December 3, 2015 – WSWC Executive Director attended a Water Supply Meeting with presentations by key members of Congress, Rep. Bill Shuster (R-PA) and Senator John Barrasso (R-WY) and staff. He also met with Ann Mills, USDA on NWCC snow survey staffing needs, as well as NOAA's Peter Collohan, on funding for ocean temperature monitoring and drought prediction. Further, he met with DOI's Tom Iseman, attended an EPA stakeholders meeting and met with White House CEQ and OMB staff regarding a permanent tribal settlement fund. On the same topic he met with staff from Senators Hatch (UT) and Daines (MT) offices. Lastly, he attended USFS Stakeholders reception while in Washington, DC.

December 14-15, 2015 – WSWC Executive Director attended a White House Roundtable on Water Innovation (by invitation) and related OSTP follow up discussion session.

February 1, 2016 – WSWC member J.D. Strong was invited to attend the second in a series of White House OSTP Water, Technology and Innovation discussions.

March 22, 2016 – White House Water Summit WSWC member participation: Pat Tyrrell (WY) Chair; James Eklund (CO); John Tubbs (MT); and J.D. Strong (OK).

**WSWC MEETINGS, SYMPOSIA AND WORKSHOPS**

October 7-9, 2015 – The WSWC held its 179<sup>th</sup> Council Meetings and a Water Quantity/Water Quality (WQ2) Nexus Workshop in Manhattan, Kansas.

October 21-22, 2015 - The WSWC, California Department of Water Resources, and National Oceanic and Atmospheric Administration (NOAA) sponsored an Advancing Seasonal Prediction for Water Resources Workshop in Salt Lake City, Utah.

December 15, 2015 – The WSWC and California Department of Water Resources sponsored an Improving Sub-Seasonal and Seasonal Precipitation Forecasting for Drought Preparedness Workshop in Las Vegas, Nevada.

March 21-24, 2016 – The WSWC held its 180<sup>th</sup> WSWC Spring Council Meetings and Washington Roundtable, cosponsored with the Interstate Council on Water Policy (ICWP) in Washington, DC.

**WGA COORDINATION**

December 4-5, 2015 – WSWC Executive Director attended the WGA Winter Meeting in Las Vegas, Nevada.

January 19, 2016 – WSWC Executive Director attended the WGA's second workshop on Chairman Matt Mead's Species Conservation and ESA Initiative held in Boise, Idaho.

March 9-10, 2016 – WSWC Executive Director attended the WGA’s third workshop on Chairman Matt Mead’s Species Conservation and ESA Initiative held in Denver, Colorado.

## **LETTERS**

October 2, 2015 – WSWC/NARF letter requesting a permanent funding mechanism for Indian water rights settlements.

November 5, 2015 – WSWC letter expressing concern regarding the current staffing level at the National Water and Climate Center in Portland, Oregon under the Natural Resources Conservation Service.

March 16, 2016 – WSWC/NARF letter expressing support for tribal water rights settlements and related federal support programs.

## **WaDE DEVELOPMENT**

October 14, 2015 – WaDE Program Manager met with the Oklahoma Water Resources Board to discuss WaDE Deployment in Oklahoma City, Oklahoma.

November 5-6, 2015 – WaDE Program Manager met with Oregon Water Resources Department to discuss WaDE Deployment in Salem, Oregon.

## **COORDINATION WITH OTHER ORGANIZATIONS**

October 28-29, 2015 – WSWC Executive Director addressed the Western Water Conference in Salt Lake City, Utah, sponsored by a number of western universities with USDA support.

October 28-30, 2015 – WSWC Legal Counsel attended and addressed the EPA’s “Waters of the United States” rule at the Wyoming Water Association Meeting in Evanston, Wyoming.

November 16-19, 2015 – WSWC Executive Director and WaDE Program Manager attended and presented at the AWRA Annual Water Resource Conference in Denver, Colorado.

December 16, 2015 – WaDE Program Manager attended a Water Pipeline Roundtable in Las Vegas, Nevada.

December 16-18, 2015 – WSWC Executive Director presented at the CRWUA Conference in Las Vegas, Nevada. He also attended the Upper Colorado River Commission Meeting.

January 20-22, 2016 – WSWC Legal Counsel gave a presentation at the Tribal Water in the Southwest Seminar in Phoenix, Arizona.

January 22, 2016 – WSWC Executive Director presented at the Water Management and Planning Seminar in Salt Lake City, Utah.

January 26, 2016 – WSWC Executive Director and WestFAST Liaison visited with the National Park Service Water Resources Division in Denver and Western Water Assessment (NOAA RISA) Leadership in Boulder, Colorado.

January 28-30, 2016 – WSWC Executive Director presented at the Little Colorado River RC&D Winter Watershed Conference in Eastern Arizona.

February 1, 2016 – WSWC Executive Director participated in a Western Electric Coordinating Council (WECC) State-Provincial Steering Group meeting in Salt Lake City, Utah.

## **COMMITTEES, TASK FORCES AND WORK GROUPS**

Ad Hoc Group on Indian Water Rights Settlements – WSWC Executive Director and Legal Counsel

Advisory Committee on Water Information (ACWI) Climate Adaptation Workgroup – WSWC Member Jeanine Jones of California

ACWI Subcommittee on Spatial Water Data – WaDE Program Manager

American Bar Association Water Law Conference Planning Committee – WSWC Legal Counsel

American Water Resources Association (AWRA) – WSWC Executive Director and WaDE Program Manager

National Geospatial Advisory Committee, Landsat Advisory Group – WSWC Executive Director

National Water Census Ad Hoc Group - WaDE Program Manager

National Drought Resilience Partnership – WSWC Executive Director

Open Water Data Initiative (OWDI) Technical Development Workgroup, Drought/Water Supply Workgroup, and Water Use Data Workgroup Lead – WaDE Program Manager

WaDE - Exchange Network Grant FY2013/FY2015 Steering Committee – WaDE Program Manager

USGS Groundwater and Streamflow Information Program Collaborative Working Group – WaDE Program Manager

USGS Water Use Strategic Planning Team – WaDE Program Manager

USGS Water Use Data and Research (WUDR) Technical Review Committee – WaDE Program Manager

Western Electricity Coordinating Council (WECC) Scenario Planning Steering Group and Environmental Data Work Group – WSWC Executive Director

## Tab Q – Future WSWC Meetings

# WESTERN STATES WATER COUNCIL

## FUTURE MEETINGS

### Upcoming Council Meetings/Host States

#### **2016 Meetings**

Summer – Bismarck, North Dakota  
July 13-15, 2016  
Radisson Hotel

Fall – St. George, Utah  
September 28-30, 2016  
Best Western Abbey Inn

#### **2016 Workshops**

##### *WSWC/CDWR Workshops*

##### Seasonal Precipitation

WSWC/CDWR/NOAA – April 29, 2016, Silver Spring, MD  
WSWC/CDWR – June 6-10, 2016, San Diego, CA

##### CIMIS

WSWC/CDWR – TBD

#### **2017 Meetings**

Spring – Nebraska (last hosted 10/16/09 in Lincoln)  
Summer – California (last hosted 10/29/10 in San Diego)  
Fall – New Mexico (last hosted 4/15/11 in Santa Fe)

#### **2018 Meetings**

Spring – Washington, D.C.  
Summer – Oregon (last hosted 7/29/11 in Bend)  
Fall – Idaho (last hosted 10/7/11 in Idaho Falls)

## MEETING SCHEDULE

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## Tab R – Water Quality / Water Quantity (WQ2) Nexus – Next Steps

**WESTERN STATES WATER COUNCIL**  
**Water Quality-Water Quantity Nexus Workshop**  
**October 6-7, 2015**  
**REPORT**

**EXECUTIVE SUMMARY**

In 1997, the Western Governor's Association (WGA) and the Western States Water Council (WSWC) sponsored a workshop on Water Quantity/Water Quality Interrelationships: Western State Perspectives. The purpose of that workshop was to examine and discuss interrelationships between the management and protection of water, states' mechanisms or institutional arrangements for dealing with these issues, and the appropriate federal role.

Eighteen years later, the WSWC hosted a second workshop to exchange ideas and information about lessons learned in the intervening years, how the states are facing new water challenges, and what the road forward looks like as quality and quantity managers fulfill their objectives.

Pat Tyrrell, WSWC Chair, and Council member Tom Stiles started the meeting with water quality and water quantity primers, followed by six case studies from Colorado, Oklahoma, Utah, Wyoming, Idaho, and Kansas. The day concluded with a panel of WestFAST representatives from five federal agencies: U.S. Geological Survey, Forest Service, National Park Service, Environmental Protection Agency, and Bureau of Land Management.

Attendees participated in breakout discussions to raise concerns and solutions specific to their states and agencies. The results of these discussions were summarized by the breakout group leaders on day two, followed by a roundtable discussion of needs, priorities, and potential next steps to improve the nexus between water quality and water quantity.

We determined that communication between state agencies, between state and federal agencies, and between all water quality/quantity regulators and the public is key to overcoming nexus challenges. While the Western states have many concerns in common, it is difficult to find one-size-fits-all solutions. Identifying a common definition of "public interest" would be helpful, although it may not be possible. Identifying each states' definitions of public interest could inform both internal state and external state-federal collaborative discussions. Educational workshops help us learn from each other, even from efforts that ultimately failed, and we should find ways to memorialize the information we learn to retain institutional knowledge. We can also work with federal agencies and technical or national organizations to co-host workshops or symposia, for educational opportunities as well as developing better relationships in advance of subsequent collaborative efforts.

**WATER QUALITY 101**

Tom Stiles, Chief, Office of Watershed Planning, Kansas Department of Health and Environment, presented a basic primer on water quality. He noted that water quality for the states is framed by statute, regulation, policy, program, and practice. The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The primary job of the CWA is to attack discharges of man-made or man-

induced pollutants by point sources. This does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Battles over the CWA hinge on its interpretation, whether strict or liberal, and revolve around EPA regulations interpreting the 1972 statute in a reasonable or overreaching way for 21<sup>st</sup> Century issues. Lawsuits from regulated entities usually focus on the impact felt from EPA's interpretations, while lawsuits from environmental advocates sue over EPA's failure to go far enough. The states are critical in moving the CWA forward, but the respective roles and responsibilities of state and federal agencies under principles of Cooperative Federalism generate a great deal of tension and friction. In addition to implementing federal water quality laws, states are also heavily involved in land and water management, and the states cannot be withheld from the process of developing rules and regulations on these key issues.

Tom provided a summary of several of the CWA Titles III, IV, and V. Title III sections relate to water quality planning. Tom specifically noted that while Section 303(d) is the only place anti-degradation of waters is mentioned, this issue is becoming increasingly important. Non-point source management in section 319 cannot cross into the realm of circumventing or invalidating compacts, decrees and state water laws. Permits and licenses are the focus of CWA Title IV. Notably, section 404 is ground zero for the debate over the definition of "waters of the United States."

Regulations implementing the CWA are codified under Title 40 of the Code of Federal Regulations. Tom focused on NPDES point source permits and exceptions, prohibitions to new dischargers, and water quality planning and standard.

## **WATER QUANTITY 101**

Pat Tyrrell, State Engineer, Wyoming State Engineer's Office (SEO), provided a primer on water quantity from a Wyoming perspective. Wyoming took the Water Quality-Water Quantity meeting 17 years ago to heart and added discussions relating its quality and quantity concerns to its regular meetings. The discussions were driven by the need to figure out how water right activities meshed with the Wyoming Department of Environmental Quality's (DEQ) list of impaired streams under CWA §303(d) and TMDL's. Some of questions raised included: What if issuance of a state engineer permit caused water quality problems? What if a Point of Diversion or Place of Use changed and resulted in a threat to water quality? Potential methods to relate quality and quantity, or to mitigate water quality problems included instream flows, dry year leasing, and temporary or seasonal change in use.

In Wyoming, water is divertible regardless of its pristine (or not) quality. Most quantity folks don't want to touch the CWA or the quality side of things with a ten-foot pole. Both the CWA and Wyoming statutes have language indicating that quality considerations will not affect water rights appropriations, and the long-term, oldest water rights users want to keep a clear separation between quality and quantity. Wyoming's Environmental Quality Act doesn't allow interference with the state engineer's responsibilities. Our appropriation laws allow and even encourage diversions to dry up a creek. In places, irrigation diversions will dry up channels, and conceivably raise water temperatures, as well as reduce the stream's ability to assimilate pollutants.

Denying permits is not easily done in Wyoming. Generally speaking, the SEO issues permits without a public notice process. Permits are generally issued by the state engineer as long as they are in the public interest and welfare and constitute a beneficial use of the water. Most states' statutes (and interpretive case law) don't have clear definitions of "public interest." But Wyoming law does provide public interest considerations. Water quality reasons are not included as a basis for denying a permit. Wyoming's temporary use statute does allow up to a two-year delay, but the SEO cannot grant temporary changes in use for only water quality considerations.

There is a lot of talk about how the appropriation laws are antiquated, because the laws don't put the water where they need to be. But most of the talk tends to be in articles, and the concept doesn't seem to be changing the entrenched perception. Prior appropriation is only the "worst program" until its compared with everything else. Changing requires a good long look at the property takings problem. Only the most junior water users tend to complain. Senior water rights holders don't want anything to change. It's important to note that breaking down the priority system won't create any additional water in the system. Scarcity will continue to be a problem. Growing towns in need of more water can still obtain water through agreements without removing the prior appropriations framework.

### **CASE STUDY 1: WATER REUSE AT LAKE THUNDERBIRD**

Randy Worden, General Manager, Central Oklahoma Master Conservancy District, addressed the legal and social challenges associated with water reuse at Lake Thunderbird, Oklahoma as an additional resource to increase municipal supply, particularly after experiencing record lows from drought. The City of Norman hopes to build a new wastewater treatment plant that will discharge into Lake Thunderbird, the water supply reservoir managed by the Central Oklahoma Master Conservancy District for Norman and nearby member cities. This is Oklahoma's first indirect potable reuse project, and getting it off the ground is fraught with complications, including NPDES and water quality standards challenges, citizen concerns with emerging contaminants and cultural perceptions of water reuse, and joint financing of the project by three cities with different economies and priorities. Recent federal and state legislation made it possible to allow water reuse and to clarify the water quality standards for reuse. Tests show that treatment at the Norman plant renders the wastewater clean relative to the existing contaminants in the lake. The first Oklahoma DEQ review of an indirect potable water reuse project under the new rules will take place in 2016.

### **CASE STUDY 2: STORMWATER RUNOFF RIGHTS AND SHORT-TERM DETENTION FACILITIES FOR ENVIRONMENTAL PROTECTION**

Kevin Rein, Deputy State Engineer, Colorado Division of Water Resources, presented the regulatory conflict between stormwater detention and diversions, and recent Colorado legislation allowing short-term detention. Storm water permits (MS4s) under the CWA are focused on reducing or preventing discharge of pollutants in storm water rather than any concern about flood control. Water quality rules require that stormwater be treated with best management practices. One of the BMPs often used is detention facilities. During large storm events, and particularly downstream of areas impacted by wildfires, detention facilities are essential for the protection of the environment as well as for public safety and the protection of private property. Historically, the Colorado State Engineer allowed detention of stormwater during significant storms, with the premise that peak discharge flows could be limited to historic hydrograph levels and drawn out

over a longer period of time. All water detained was released within 72 hours, and consumption/beneficial use was considered incidental, though downstream water rights users felt the impact of detention. In 2015, the Colorado legislature decided it needed to reconcile the administrative decision with the constitution and state law. The scale of the stormwater management and the detention time depend on the size of the storms and the need for large-to-small-scale flood control. The legislation grandfathers in existing stormwater detention facilities and post wildland fire facilities, and creates a rebuttable presumption that three types of facilities do not cause material injury to a water right: (i) detention of stormwater in a regional stormwater facility for up to 72 hours; (ii) detention of stormwater during a greater than 5-year storm for up to 120 hours; (iii) post wildland fire facilities. The legislation is particularly valuable to cities and small growing communities anticipating increased development. The statute protects water rights from injury, by exempting sensitive locations and the presumption of no injury is rebuttable, with the water rights procedure to ensure that there is no injury.

### **CASE STUDY 3: WATER REUSE AND IN-STREAM FLOW LIMITATIONS FOR THE SNYDERVILLE BASIN WATER RECLAMATION DISTRICT**

Walt Baker, Director, Utah Division of Water Quality, offered another perspective of water reuse in Snyderville Basin, Utah, where drought has reduced instream flows through the mixing zone. The previously agricultural-dominant community has experienced explosive growth and development in the Park City area, impacting the wastewater treatment needs for the community. The stream, which does not flow continuously, has transitioned from effluent-dependent to effluent-dominant, exponentially increasing costs to remove various constituents to meet stricter water quality needs for the receiving stream. The existing multi-million dollar treatment plant was designed to meet certain effluent limits, and making changes due to variable flow significantly increases the capital costs, which are passed on to the public. The water district desired to augment flows in the receiving stream in order to provide a buffer and better assimilate the waste stream, diluting the concentration of pollutants in the half-mile mixing zone adjacent to the discharge point, thereby resulting in less stringent limits. Agriculture and legislative concerns about water rights have opposed efforts to allow the non-consumptive in-stream flow. An alternate solution for the treatment plant to sell the water to the nearby golf course would result in dewatering the stream, impacting the local fishery. The Utah Department of Environmental Quality continues to work with the POTWs, providing some variances. But the POTWs have to meet the water quality standards either in the creek with sufficient water supply, or in the pipe.

### **CASE STUDY 4: PRODUCED WATER FROM COAL BED NATURAL GAS DEVELOPMENT: PERMITTING, STORING, RECLAIMING AND CHANGING USES**

Bill DiRienzo, Manager, WYPDES Permitting, Compliance and Enforcement Section, Wyoming Department of Water Quality, addressed various permitting and water transfer challenges associated with coal bed methane development in northeastern Wyoming. When the Coal Bed Natural Gas (CBNG) play began in earnest in northeastern Wyoming in the early 2000's, many in the industry were critical of the "lack of coordination" between several state agencies, including the State Engineer's Office (SEO), the Dept. of Environmental Quality (DEQ) and the Oil and Gas Conservation Commission. A Task Force worked on streamlining a number of these issues. Through trial and error, the state agencies found a combination of watershed-wide permits, containment reservoirs, instream monitoring, and operator bonds to protect water quality, in particular for downstream agricultural uses protected by Wyoming law.

Close coordination occurred between the SEO and DEQ as the water quality of the discharge (produced) water in places was high in Sodium Adsorption Ratios (SAR) and was damaging to crops, so DEQ was interested to know what drainages contained valid irrigation water rights. The SEO and the Water Quality Division of the DEQ are working closely as reservoirs that were used during the CBNG for storage of produced water are either being reclaimed or their approved use is changed to a more permanent use. DEQ holds performance bonds on the facilities. The two agencies work closely to determine if the provisions of the bond have been met. The SEO and DEQ coordinate as needed to assure that the well construction standards for the given use of the water from the well are met. Post-development reclamation of the reservoirs and wells has presented new challenges in a wave that echoes the flurry of permits at the beginning stages of development. One of DEQ's concerns is whether the bonds posted will be sufficient, if forfeited by the operators, to complete the necessary reclamation.

#### **CASE STUDY 5: MANAGED RECHARGE: IDAHO AQUIFER SUSTAINABILITY**

John Simpson, Partner, Barker, Rosholt and Simpson, LLP, talked about Idaho's efforts to avoid the water quality-quantity nexus through managed recharge of the Snake Plain aquifer between irrigation seasons. Historical incidental recharge from irrigation reduced with new efficient methods of watering crops, and the water table continued to drop as the previous aquifer recharge was mined. Artificial groundwater recharge efforts to replace the historic incidental recharge and augment the state's water resources are generally limited to surface application, mostly under contracts with canal companies and irrigation districts to use the canals and ditches during the off-season. Monitoring plans for land application projects are developed and approved under the Idaho Ground Water Monitoring Plan. Monitoring shows that the natural filtration of the aquifer maintains the quality of the groundwater. Incidental recharge is not recognized as a recharge or storage right, but is considered beneficial for the public interest. Water appropriated for groundwater recharge is considered a beneficial use, although it must not interfere with other water rights. Idaho anticipates that permitted injection wells will increase in the future, which may change the quality-quantity agencies' dynamic.

#### **CASE STUDY 6: DROUGHT MANAGEMENT: IMPACT OF KANOPLIS RESERVOIR SUMMER RELEASES ON SALINA WASTEWATER TREATMENT DISCHARGES**

Mike Tate, Director, Bureau of Water, Kansas Department of Health and Environment, discussed the impact of drought on the Kanopolis Reservoir management plan. The reservoir's primary uses are for irrigation, flood control, and drinking water. The Kansas Water Office (KWO) raised the question of whether the reservoir water could be put to more efficient use, and went to the Army Corps of Engineers to modify the antiquated release schedule to meet local needs, including adjusting flow rates to mix instream flows with treated wastewater and potentially flushing nutrients that feed blue-green algae. KWO wanted to know just how far the releases could be reduced. The concern was that a reduced upstream flow, which provides dilution for the WWTF discharges, could reduce permit limits and increase the costs of treatment for Salina. The Kansas Department of Health and Environment (KDHE) modeled and evaluated the impact of permit limitations on the City of Salina wastewater treatment facility discharge based on reduced upstream flow. Ultimately, reservoir operations were modified to reduce summer releases, while minimizing the impact on the Salina wastewater treatment facility permit limits. The Kansas Vision for Water includes reductions of minimum releases at other reservoirs to increase supply yield. These reduced releases may impact permit limits for downstream dischargers as well as aquatic life support. In a conflict between water quality and water

quantity, the quantity concerns still take precedent. At some point in the future we may have to address the problems of who pays for more stringent waste water treatment with less water available for mixing.

## **FEDERAL PANEL**

A federal panel of WestFAST Agency representatives shared their experiences with the quality-quantity nexus.

Pat Lambert, USGS hydrologist and WestFAST Federal Liaison, stated that the mission of the USGS is to reliably disseminate impartial information on water resources to assist programs and managers meet their goals and to enable them to have necessary information to deal with the quality-quantity nexus. As the research arm of the government, they develop methodologies and techniques that can be implemented not only at the national level, but at a variety of scales. He summarized several studies and programs in place to assist water managers in making decisions. He said that the USGS likes to hear how they can be more beneficial if they are not doing enough to support a particular aspect of water management.

Jean Thomas, Assistant Director for Water and Aquatic Resources, U.S. Forest Service, addressed the agency's statutory authority to protect and secure favorable conditions of water flow to preserve resources for the nation and to provide a continuous supply of timber. She talked about the challenges of managing highly complex projects, including the easement permits for a reservoir on National Forest Service land along the Cache la Poudre River, which raised new questions about how to maintain instream flows below the reservoir for endangered trout; and a plan to use unclaimed groundwater draining into the Arrowhead Tunnels in the San Bernardino Forest, which required limitations and mitigation requirements to protect the surrounding resources. Compliance with NEPA and other federal legislation complicates what may seem like straightforward solutions to quantity problems.

Bob Boyd, Denver Chief, Branch of Assessment and Monitoring, Bureau of Land Management, talked about the importance of water as part of BLM's management of public lands, from sediment transport and grazing permits, to watershed and wellhead protection, to reclamation from wildfire damage and unwise past management practices. He referenced the 1976 Federal Land Policy and Management Act, which provides standards aimed at watershed functions, hydrology, soil stability, rangeland health, economic activity from oil and gas, and repairing damage from past practices that led to wildfires or unwise uses of the land. He described MOUs with state water quality agencies to share data and provide a framework for cooperation and collaboration, particularly with regard to CWA §303(d) waters.

Roger Gorke, Senior Policy Advisor, Office of Water, Environmental Protection Agency and WestFAST Chair, noted the CWA §101(g) paragraph about federal cooperation with state and local agencies in developing comprehensive solutions to pollution in concert with water resource management. He talked about using positive examples of successful federal-state projects to make cooperation more systemic, enabling state and federal agencies to generate effective solutions to quality-quantity challenges aggravated by drought and land use changes. Some of the tools in our toolbox include water reuse and recycling, water conservation, capturing and managing stormwater, and healthy watershed initiatives.

Alan Ellsworth, Water Advisor, National Park Service, provided statutory excerpts to highlight the mission of the NPS. He noted that the NPS is a land management agency rather than a regulatory agency, with responsibility for wetlands, fisheries, and hydraulic quality. The water quality-quantity nexus is a vital part of its whole system management of park lands. Taking a look at “environmental economics,” the NPS provides an excellent return on investment. Both the inter-agency cooperation and state-federal relationships are important for NPS to accomplish its mission. As states have water resource needs, they should reach out to NPS so that federal personnel know who to work with for each component of state water resources.

Pat Lambert wrapped up the Federal Panel by pointing out that there is recognition among the federal agencies of the critical importance of collaboration with states over water resources and a sincere desire to do so, but often a difference in perspective and understanding gets in the way of effective collaboration. Among the obstacles to communication is that it takes effort and money, and sometimes the agencies are unclear what they are legally authorized to do to collaborate. The agencies will continue to look at the language in the laws, acts and directives that drive their respective programs to determine how they can collaborate with the states. The agencies may look to WSWC to help educate senior federal managers in working with the rules and directives to enable them to do better at proactive collaboration. There is a need to have consistent, unified approaches to programs and rules, but also the ability to consider variations between states, geography and hydrography that may impact those approaches.

Familiarity in state-federal relationships is clearly important to maintaining that communication, and changes in staff require those relationships to start over. We need to look at how we institutionalize the progress that we’ve made as state and federal agencies to better fulfill our responsibilities and meet our respective needs. Embedding members of federal agencies in state offices or members of state agencies in local federal offices and other opportunities may be available to optimize state-federal engagement. Federal agencies may already have tools in the shed needed to assist states without creating new tools, but we need to do a better job of articulating what is available to state managers.

## **FINDINGS AND RECOMMENDED NEXT STEPS**

Attendees participated in breakout discussions to share challenges and solutions relative to quality-quantity issues in individual states and agencies. Summaries and highlights of the individual breakout discussions were followed by a roundtable discussion about what can be done to improve communication, understanding and cooperation for better overall water management, and either prevent or avoid conflicts at the quality-quantity nexus.

### **Findings**

1. We need to have better collaboration, meetings, better communication, etc. These are absolutely critical.
  - a. When we get back to our respective agencies, how do we convey the information we’ve learned here? Sometimes we blame the feds because we seem to be hearing a different story in Washington, D.C., than closer to home, but maybe we’re doing the same things in our states. We could hold monthly meetings, provide bi-monthly updates, and provide cross-training opportunities between state/state and state/federal water agencies.
  - b. The Gold King Mine spill highlighted a problem in communicating to the public.

There was lots of intra-agency communication, but we struggled with how to communicate information where it needed to be heard and understood most. It didn't matter if we churned out the science and concentrations of contaminants, we could not communicate to public what that meant quickly. To them it wasn't just about rights, resources, quality, it's WATER.

- c. Rapid staff transitions and turnover make it difficult to maintain good relationships.
  - d. It is difficult to overcome inertia, perception and cultural divides.
  - e. Colorado's basin roundtables with stakeholders has developed relationships and trust, and they have been able to get a lot of work done. The state has given funding to help implement the basin plans. The state has given funding through legislation to help implement the basin plans. It has been an expensive but successful experiment. It has brought in water users to meet together on a regular schedule. Initially nobody trusted anyone else or talked at the meetings. It took a skilled facilitator to bring people out of their shells to talk – but it's amazing ten years later to see the basin implementation plans. We focus a lot on quality, but there's a quantity impact. The meetings have proven to have valuable outcomes for everyone. Getting back to regional water planning processes, whether they are held as basin roundtables or watershed group activities, we need a process to help break down silos. The water users facing challenges don't care whether the problem falls under the federal or state heading, they just want the water programs fixed.
2. Conflicts between state quantity and quality agencies still exist, but are actually few and far between, because the quality agencies know they are second place in the prior appropriations setting. State-federal conflicts seem more common.
  - a. Conflicts between the state quality agency and EPA are more commonplace. The fear of the quantity agencies over interference by Feds, especially EPA, is an everyday thing for the quality agencies. Having said that, water quality is not the enemy. We need to be able to maximize the use of water resources without denuding the streams.
  - b. Other Federal laws, especially ESA, present greater complications than the CWA. One reason for this is strong State presence on both sides of CWA nexus issues, while ESA is dominated by Federal oversight and directives.
  - c. One source of tension is that quality regulation is largely federally driven and all states have to adopt same rules while quantity is state driven and varies. The states need flexibility, but, in order to protect water quality it is helpful to have a national system so that state pressures do not drive water quality protection levels down. We considered whether it would be helpful for EPA to consider and discuss with western states how water quality regulations impact western states differently than eastern states in light of the water resource differences.
3. We need to find a more effective way to use market processes. Reliance on the free market to eventually solve these conflicts through trades and acquisition transactions are susceptible to political intercession if one sector feels disenfranchised. Most environmental advocates are unfamiliar and untrusting of market processes, let alone political persuasion, hence the propensity to use the legal system for relief.
4. There are very different challenges in each state. We recognized this was another example where one size doesn't fit all. New and emerging issues demand closer and more frequent communication between water quality and quantity regulatory agencies.
  - a. Emerging contaminants are becoming of increasing concern as dilution decreases

upstream for indirect potable reuse. There is a general sense that there is less public opposition to reuse for irrigation purposes, golf courses, and landscape maintenance than for drinking water supply. It may be worthwhile to develop systems that maximize reuse projects for irrigation use, possibly developing a savings account for drinking water-quality supplies that could be reserved for that purpose rather than used for irrigation.

- b. Drought/climate variability may be changing our paradigm.
  - c. Some solutions to nexus problems may be engineering/technical solutions, while others are statutory/regulatory solutions. The success of those solutions varies, depending on perception, culture, existing legal structure, etc.
  - d. Sedimentation fill removal within reservoirs can help achieve both water quality and quantity sustainability. Recent concerns with Harmful Algal Blooms (HABs) and their potential impact on downstream drinking water supplies raise conflicts, where drinking water operators say “don't release the water - keep it in storage,” while other reservoir users (recreationists, homeowners) say “flush it out of here.”
  - e. Alternative approaches to water storage, like aquifer storage and recovery projects, always seem to present permitting problems, and all these projects, outside of irrigation recharge channels, require some sort of groundwater monitoring.
  - f. Impoundments, infiltration basins and other opportunities might present themselves for stormwater capture as an alternative approach to water storage, and may provide recharge through infiltration basins while still honoring existing water rights.
5. With limited budgets, we might not be able to fund programs like those we've heard about at this meeting. But sometimes just having the dialogue is the important issue. We plant seeds that can be built on. We still learn something from the processes that other states go through, even if those processes were ultimately unsuccessful.

### Next Steps

For next steps, we determined it was important identify and focus on short list of primary objectives for WSWC to address specific quality-quantity nexus issues. We need to define a committee work plan and tasks that accomplish specific goals. As much as we want to do more, we have to be careful about how to prioritize and tie this all together. We can't pile on so much training and collaborative work that we aren't able to do our day jobs.

1. It would be helpful common definition of “public interest” culled from the objectives of state water laws, and balanced between the economic and environmental drivers rooted in the missions of both quality and quantity state agencies would be helpful. Such a defined public interest statement presents an anvil to hammer out reasoned, long term policy and program direction. The WSWC may be in the best position to bring those worlds together to define public interest.
  - a. Each state will be different and it may be impossible to come up with a “Western view,” or a template for all the state and federal agencies to follow. The definition of public interest involves legislatures and courts, and there may be legal and non-legal definitions. Collaboration can be improved if you can find a way to educate everyone on the topic.
  - b. We could hold a whole joint-session workshop or webinar on the struggle to define the public interest. This is an area where quantity and quality agencies can

reach back toward each other. It may be possible to identify what the public interest means to each state, or individual agencies within each state. The objective may be to give us tools, or a process, to help us deal with the nexus, with the idea that each of us take that information to our individual states to have those conversations.

- c. The WGA and governors' staff might be interested in this. With a survey we might take a look at where the public interest understanding or concept is memorialized in each state, whether the constitution, statute, or policy.
2. We should identify stakeholders and state/federal cooperators that are interested in the same types of issues (USGS, FS, NPS, BLM, EPA). We should also consider joint symposium with those federal agencies and with other technical or national organizations (GWPC, ACWA, ASDWA, NGWA) to leverage action on major objectives, align common interests, develop relationships, build trust and look for the low-hanging fruit first to make initial progress relatively quickly. We could jointly sponsor a watershed summit. We could use the example of 319 and public interest in protecting watersheds. All the state and federal interests and resources come in for a locally-led project, everyone brings in their laws and rules and regulations, and all agencies are forced to come up with common solutions.
3. For future workshops or webinars, could WSWC do a virtual "brown bag" meeting on a larger scale? Some way to keep communication going – maybe a "brown blog," or something more interactive? Could it be part of the meetings we already hold? Or maybe we could do something periodically in between our regular meetings? Some sort of in-service meeting a couple of times a year, addressing a specific problem, improve those lines of communication. Talk about what's in the toolbox? States with interagency MOUs could circulate some of them so we can identify ways to improve our own state interagency relationships. We could talk about continuing institutional memory. If you're the only one who has the notes from the meeting – memorialize those notes to make them accessible in the future and disseminate with your office. We are putting documents on the WSWC website. That is important, but it is also important to have the basic information, a primer, so employees can quickly be educated on both sides of the issue.
  - a. The value is in the education, and understanding the case studies that different states face. The case study method works really well. The condensation of the major thought and themes is valuable. It may make sense to do a similar workshop on an annual basis, and give it a theme, such as wastewater, aquifer storage and recovery, etc.
  - b. Learning how other states are doing new things is extremely helpful. Is there a way to collect everyone's experiences on a particular issue – like aquifer storage and recovery; wastewater reuse; the Idaho aquifer recharge program - and put together a compendium of resources on specific issues? We could maybe take a survey on a particular issue, and make sure we get the states to respond. It would take WSWC staff time to implement and put it together, but is something like that worthwhile? A compendium to benefit those learning, states just coming up on these issues for the first time? It would still be up to the states to decide whether to implement the things they learn from the other states, but the information would be there.
4. States should share their instream flow legislation
5. Revisit the 1997 WSWC WQ2 issue paper: are the issues still pertinent today? Further, have states identify where progress has been made over the last 18 years to bridge the gaps. What have states done statutorily or administratively to address the WQ2 gaps?

Define what success looks like as WQ2 gaps are filled. What is it we are trying to fix?  
We have to distill down the WQ2 nexus that is identifiable.

Other potential solutions may fit in with each states' overall agency missions.

1. Ensure that institutional memory and knowledge are safe-housed. This is critical to building a long term robust relationship between quantity and quality staff, between State and Federal staff. Eliminate organizational communication "silos" that isolate agency personnel internally and externally. Develop and implement "succession" plans for expected turnover to preserve institutional knowledge, continuity and efficiency of long-term projects. Frame MOUs and sign agreements, and build upon the benchmark of how to do business with each other.
2. Internal efforts to improve attitudes toward the quantity-quality nexus might include improving hiring techniques, overcome challenges of getting well-qualified staff on board; interview questions go beyond skills and experience to incorporate 'behavioral' questions to determine how well they might fit into the cultural organization. Cooperate with each other in achieving respective interests. Example: UDAF and DWQ in Utah performing fieldwork to establish the quality of waters in grazing allotments to combat misinformation.
3. Improve electronic data management capabilities to expedite and improve decision making.
4. At the micro level, hold brown bag get-togethers between water rights and water quality folks to discuss issues and help gain an understanding of each other's perspectives and to seek common ground. Hold regular informal meetings without taking notes. The meetings can be short, but need to be inclusive so that everyone has the vision of building this "vehicle" together, so everyone can see how they fit together and are important to the objective. Without an integrated management or working staff between agencies, this provides an opportunity to see each other face to face and build relationships, trust, know who to call on a first name basis, makes business easier. The meetings aren't mandatory, but we hope to cross-pollinate from the different sectors of our agency.

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## Tab S – Environmental Protection Agency (EPA) Update

# **EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights**

## **Introduction**

EPA recognizes the importance of respecting tribal treaty rights and its obligation to do so. The purpose of this Guidance is to enhance EPA's consultations under the *EPA Policy on Consultation and Coordination with Indian Tribes* in situations where tribal treaty rights may be affected by a proposed EPA action. Specifically, this Guidance provides assistance on consultation with respect to EPA decisions focused on specific geographic areas when tribal treaty rights relating to natural resources may exist in, or treaty-protected resources may rely upon, those areas.<sup>1</sup> In these instances, during consultation with federally recognized tribes (tribes), EPA will seek information and recommendations on tribal treaty rights in accordance with this Guidance. EPA will subsequently consider all relevant information obtained to help ensure that EPA's actions do not conflict with treaty rights, and to help ensure that EPA is fully informed when it seeks to implement its programs and to further protect treaty rights and resources when it has discretion to do so.<sup>2</sup>

The U.S. Constitution defines treaties as part of the supreme law of the land, with the same legal force as federal statutes. Treaties are to be interpreted in accordance with the federal Indian canons of construction, a set of long-standing principles developed by courts to guide the interpretation of treaties between the U.S. government and Indian tribes.<sup>3</sup> As the Supreme Court has explained, treaties should be construed liberally in favor of tribes, giving effect to the treaty terms as tribes would have understood them, with ambiguous provisions interpreted for their benefit. Only Congress may abrogate Indian treaty rights, and courts will not find that abrogation has occurred absent clear evidence of congressional intent. We note that this Guidance does not create any new legal obligations for EPA or expand the authorities granted by EPA's underlying statutes, nor does it alter or diminish any existing EPA treaty responsibilities.

## **Determining When to Ask About Treaty Rights During Tribal Consultation**

EPA consultation with tribes provides the opportunity to ask whether a proposed EPA action that is focused on a specific geographic location may affect treaty-protected rights. Because treaty rights analyses are complex, staff are expected to inquire early about treaty rights.

Certain types of EPA actions, namely those that are focused on a specific geographic area, are more likely than others to have potential implications for treaty-protected natural resources. For example, EPA review of tribal or state water quality standards as a basis for National Pollutant Discharge Elimination System permits typically focuses on a specific water body. If a treaty

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<sup>1</sup> This Guidance focuses on consultation in the context of treaties. EPA recognizes, however, that there are similar tribal rights in other sources of law such as federal statutes (e.g., congressionally enacted Indian land claim settlements).

<sup>2</sup> EPA Administrator, December 1, 2014 Memorandum, Commemorating the 30th Anniversary of the EPA Indian Policy.

<sup>3</sup> *Minnesota v. Mille Lacs Band of Chippewa*, 526 U.S. 172 (1999).

reserves to tribes a right to fish in the water body, then EPA should consult with tribes on treaty rights, since protecting fish may involve protection of water quality in the watershed.

Another example of an action in a specific geographic area is a site-specific decision made under the Comprehensive Environmental Response, Compensation, and Liability Act, such as a Record of Decision for a site, or the potential use of Applicable or Relevant and Appropriate Requirements for a cleanup. Other examples include a site-specific landfill exemption determination under the Resource Conservation and Recovery Act or other similar types of regulatory exemptions for specific geographic areas. In each case, employing the following questions in this Guidance during consultation may inform EPA of when treaty rights are present in the defined area and may be affected by the proposed decision.

For purposes of this Guidance, the treaty rights most likely to be relevant to an EPA action are rights related to the protection or use of natural resources, or related to an environmental condition necessary to support the natural resource, that are found in treaties that are in effect. Other treaty provisions, for example those concerning tribal jurisdiction or reservation boundaries, are outside the scope of this Guidance.

EPA actions that are national in scope, and thus not within a focused geographic area, fall outside the scope of this Guidance, because EPA actions focused on specific geographic areas are the ones we believe are most likely to potentially affect specific treaty rights. Examples of such activities outside the scope of this Guidance include the development of National Ambient Air Quality Standards under the Clean Air Act or the national registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.

Where tribes raise treaty rights as a basis for consultation on issues that are national in scope, or treaty rights otherwise are raised during consultation on national actions, this Guidance can assist in the treaty rights consultation discussion.

In addition, EPA staff should be aware that treaty rights issues in the context of compliance monitoring and enforcement actions should be considered when consulting with tribes pursuant to the *Guidance on the Enforcement Principles of the 1984 Indian Policy* and the *Restrictions on Communications with Outside Parties Regarding Enforcement Actions*. EPA should also act consistent with the *EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*.

### **Questions to Raise During Consultation**

EPA should employ the following three questions during consultations when proposing an action that may affect tribal treaty rights within a specific geographic area. These questions may also be employed when treaty rights arise in other contexts. Collaboration between program and legal staff before and during consultation is an important aspect of ensuring both that these questions are

asked and the answers are understood. For any treaty rights discussion raised during consultation, the tribe may identify particular tribal officials to consult with EPA about treaty rights. It is important that EPA work to ensure that consultation occurs with the appropriate tribally identified officials.

(1) Do treaties exist within a specific geographic area?

This question is designed to help EPA determine when a treaty and its related resources exist within the specific geographic area of the proposed action. This question is important because tribes may possess treaty rights both inside and outside the boundaries of reservations. In some cases, EPA may already be aware of existing, relevant resource-based treaty rights in a specific geographic area; for example, when a tribe has treaty rights within the boundaries of its reservation or near its reservation. In other cases, EPA may not be aware of the full effects of the treaty rights, or EPA may find it difficult to determine when a specific geographic area has an associated treaty right. For example, some tribes in the Great Lakes area retain hunting, fishing, and gathering rights both in areas within their reservations and in areas outside their reservation boundaries, commonly referred to as ceded territories. Similarly, some tribes in the Pacific Northwest retain the right to fish in their “usual and accustomed” fishing grounds and stations both within and outside their reservation boundaries, and retained the right to hunt and gather throughout their traditional territories.

(2) What treaty rights exist in, or what treaty-protected resources rely upon, the specific geographic area?

This question is designed to help EPA understand the type of treaty rights that a tribe may retain. By asking this question, EPA can better understand the complexities that are often involved in treaty rights and better understand whether the proposed EPA action could affect those rights. Some treaties explicitly state the protected rights and resources. For example, a treaty may reserve or protect the right to “hunt,” “fish,” or “gather” a particular animal or plant in specific areas. Treaties also may contain necessarily implied rights. For example, an explicit treaty right to fish in a specific area may include an implied right to sufficient water quantity or water quality to ensure that fishing is possible. Similarly, an explicit treaty right to hunt, fish, or gather may include an implied right to a certain level of environmental quality to maintain the activity or a guarantee of access to the activity site.

(3) How are treaty rights potentially affected by the proposed action?

This question is designed to help EPA understand how a treaty right may be affected by the proposed action. EPA should explain the proposed action, provide any appropriate technical information that is available, and solicit input about any resource-based treaty rights. It is also appropriate to ask the tribe for any recommendations for EPA to consider to ensure a treaty right is protected.

**EPA Actions That May Affect Treaty Rights**

EPA's next steps typically will involve conducting legal and policy analyses in order to determine how to protect the rights. These analyses are often complex and depend upon the context and circumstances of the particular situation. Issues that may arise often involve precedent-setting questions or warrant coordination with other federal agencies. It is expected that the EPA lead office or region that engaged in the tribal consultation about the potentially affected treaty rights will coordinate with the Office of International and Tribal Affairs, the Office of General Counsel, and appropriate Offices of Regional Counsel to conduct these analyses. Although the details of how to conduct such legal and policy analyses are not addressed by this Guidance, the EPA process may warrant continued or additional consultation with tribes.

**Conclusion**

EPA is committed to both protecting treaty rights and improving our consultations with tribes on treaty rights. As part of its commitment, EPA will emphasize staff training and knowledge-sharing on the importance of respecting tribal treaty rights in order to better implement this Guidance. As EPA gains experience on tribal treaty rights and builds upon its prior knowledge, the Agency may modify this Guidance to meet this commitment.





## WESTERN GOVERNORS' ASSOCIATION

Matthew H. Mead  
Governor of Wyoming  
Chairman

Steve Bullock  
Governor of Montana  
Vice Chair

James D. Ogsbury  
Executive Director

### Headquarters

1600 Broadway  
Suite 1700  
Denver, CO 80202

303-623-9378  
Fax 303-534-7309

### Washington, D.C.

400 N. Capitol Street, N.W.  
Suite 376  
Washington, D.C. 20001

202-624-5402  
Fax 202-624-7707

[www.westgov.org](http://www.westgov.org)

February 12, 2016

U.S. Environmental Protection Agency Headquarters  
1200 Pennsylvania Avenue, N.W.  
Office of Water  
Office of Wastewater Management  
Mail Code: 410M  
Washington, D.C. 20460

Attention: Prasad Chumble - [chumble.prasad@epa.gov](mailto:chumble.prasad@epa.gov)

RE: *Notice of Opportunity to Provide Information on Existing Programs That Protect Water Quality From Forest Road Discharges* (Docket ID No. EPA-HQ-OW-2015-0668)

Dear Mr. Chumble:

The Western Governors' Association (WGA) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) request for *Information on Existing Programs That Protect Water Quality From Forest Road Discharges* (Docket ID No. EPA-HQ-OW-2015-0668) (EPA Notice).

### STATEMENT OF INTEREST

WGA represents the Governors of 19 western states and 3 U.S.-flag islands. The association is an instrument of the Governors for bipartisan policy development, information exchange and collective action on issues of critical importance to the western United States.

Clean water is essential to strong economies and quality of life. In most of the West, water is a scarce resource that must be managed with sensitivity to social, environmental and economic values. States are in the best position to manage the water within their borders because of their unique understanding of the values.

As stated in WGA Policy Resolution 2014-04, [Water Quality in the West](#), stormwater runoff from forest roads has been managed as a nonpoint source of pollution under EPA regulation and state law since enactment of the Clean Water Act (CWA). Western Governors have long been concerned about efforts to treat forest roads as point sources under the National Pollutant Discharge Elimination System (NPDES) program. Western Governors support solutions consistent with the long-established treatment of forest roads as nonpoint sources. It is important, however, that individual states determine the scope

and application of any EPA best management practices on forest roads across ownership within each state.

## STATE AUTHORITY OVER WATER

States have federally-recognized authority to manage and allocate water within their boundaries. CWA Section 101(g) expressly says that, “the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act.”

States and EPA work as co-regulators under the CWA and the Safe Drinking Water Act (SDWA). The U.S. Congress has provided a statutory foundation wherein states have the primary responsibility to implement certain federal program responsibilities such as the control of nonpoint source pollution. EPA should be giving deference to state programs designed to meet the goals and requirements of the federal acts.

Different forests, even those in close proximity to one another, may have different characteristics in terms of topography, tree species, soil types, wildlife habitat, geology and hydrology. In order to be effective, the approach to protecting water quality from activities on forest roads must be adapted to local conditions and circumstances. Not only are the states currently managing programs to protect water quality, the states are best suited to do so.

When a state is effectively implementing a program, the role of federal agencies like EPA should be limited to funding, technical assistance and research support. States should be free to develop, implement and enforce program requirements using approaches that make sense in their specific jurisdictions.

## COMMENTS

### **1. The Clean Water Act does not require EPA to regulate forest road stormwater discharge.**

Congress enacted the CWA in 1972. The CWA provided EPA with the authority to implement a consistent program throughout the United States designed to protect the waters of the nation from pollution. *See, e.g., Arkansas v. Oklahoma*, 503 U.S. 91, 110 (1992). The cornerstone of the CWA is a permitting requirement for “point source” discharges. This permitting program is the NPDES permitting program.

In *Decker, Oregon State Forester, et al. v. Northwest Environmental Defense Center*, 113 S. Ct. 1326 (2013), the U.S. Supreme Court held that discharges of stormwater that ran off logging roads into ditches, culverts and channels did not require an NPDES permit.

Any effort to regulate stormwater discharges must come under non-point source programs.

States have the authority to manage non-point source activities. Congress recognized the fact that non-point source pollution is unique to each state when it added Section 319 to the CWA in 1987. Section 319 required states - not EPA - to develop plans for any non-point source activities that are causing a state's water to fall short of the state's water quality goals.

**2. EPA should leave the management of stormwater discharges from forest roads to the states, unless otherwise determined by a specific state.**

Nationwide, the U.S. Forest Service has approximately 378,000 miles of roads, covering 193 million acres, under its jurisdiction. See U.S. Forest Service, Implications of Decision in *NEDC v. Brown* to Silvicultural Activities on National Forest System Land, Doc. 1570-1 (Sept. 7, 2010).

Federal land is often intermingled with state and private land, and the use of state and private land may be dependent upon access across federal land. In some circumstances, forest roads may be used for other activities, including recreational off-road vehicles, access to federal grazing allotments, moving livestock from pasture to pasture, and maintenance of fences and water infrastructure. Since federal regulations discourage construction of duplicate roads, separate road systems have not been created for each specific purpose. See *e.g.* 43 C.F.R. 2812.0-6(a).

When invited by an individual state to play a role in the states' management of stormwater discharges from forest roads, EPA should put its primary focus on ensuring programs are in place and working to control stormwater runoff and mass wasting associated with forest roads on federal lands.

**3. EPA should consider a great variety of existing programs that address water quality impacts attributable to stormwater discharges from forest roads.**

More than 75 percent of our national forest and grassland system is located in Western States. Even so, the EPA Notice only highlights management programs in Maine, North Carolina and the Menominee Indian Tribe Reservation in Wisconsin.

Water quality protection on forest roads in the West presents unique challenges. It is imperative that EPA works with Western Governors and state regulators to obtain information on programs that address water quality impacts from forest road stormwater discharge.

**4. EPA should consult with states during any further settlement negotiations in *Environmental Defense Center, Inc. v. U.S. EPA*.**

The EPA Notice is intended to assist EPA in responding to the remand in *Environmental Defense Center, Inc. v. U.S. EPA*, 344 F.2d 832 (9th Cir. 2003) that directs EPA to consider whether the CWA requires EPA to regulate forest roads. The remand results from a settlement agreement where the EPA agreed to issue a final determination on whether the CWA requires regulation of stormwater discharges from forest roads by May 26, 2016.

Western Governors have identified specific areas where state environmental and natural resource management prerogatives are diminished by federal agencies' settlement of litigation. Where their roles and responsibilities are impacted by settlement negotiations, states need, at a minimum, to be consulted.

## CONSULTATION WITH THE STATES

This issue highlights an ongoing concern of Western Governors on the nature and scope of consultation of federal agencies with states. As stated in the [WGA Resolution 2014-09: Respecting State Authority and Expertise](#), "Western Governors support early, meaningful and substantial state involvement in the development, prioritization and implementation of federal environmental statutes, policies, rules, programs, reviews, budget proposals, budget processes and strategic planning."

Prior to publishing a proposed rule, EPA should consult with Governors and state regulators respectively and this should occur early – pre-rulemaking. This should include substantive consultation with states during development of rules or decisions and a review by states of the proposal before a formal rulemaking is launched – before proposals are sent to the White House Office of Management and Budget for finalization.

As part of the early consultation with Governors and state regulators, EPA should provide the following:

- A detailed state consultation timeline and plan for obtaining individual state comments;
- All technical and scientific materials used to support any proposed rule and denote whether any such materials were peer-reviewed;
- A statement indicating which statute(s) (including specific statutory sections) confer authority to regulate on the EPA;

- A copy of a federalism assessment or the reason why EPA did not complete a federalism assessment; and
- A statement indicating why existing state programs are insufficient to address the problem and if the proposed rule conflicts with state programs and in what way.

Should you have any questions about these comments or require additional information, please contact James D. Ogsbury, Executive Director, Western Governors' Association.

Sincerely,



Matthew H. Mead  
Governor, State of Wyoming  
Chairman, WGA



Steve Bullock  
Governor, State of Montana  
Vice Chair, WGA

## Tab T – Western Federal Agency Support Team (WestFAST) Report

## **Examining Impediments to and Best Practices of Proactive Federal/State Collaboration and their Effects on the Success of Water Resource Preservation and Management Program Development and Policy-Making Processes (Abstract)**

Challenges associated with water-resource management continue to increase, particularly in the west. Such factors as a demographic shift in our population, climate variability (including the potential for severe and sustained droughts), climate change, water-rights issues, depletion of groundwater in storage, introduction of new water storage and water-use technologies, and protection of endangered species, add to a growing complexity for management. States play a pivotal role in water planning and allocation alongside the significant regulatory presence of the Federal Government on public lands in the west. Western state stakeholders have suggested that increasing the role of state and local collaboration in federal decision-making processes is critical to improving the way states and the Federal Government carry out their respective responsibilities in this complex water-management environment. Despite significant efforts toward improving collaboration, gaps remain in many situations between expected and actual collaboration prior to and during policy, program, and project planning and development that could affect water resources. Although there are policy and administrative limitations to the level of collaboration Federal agencies may engage in for some activities, reasons for inconsistencies in proactive Federal/State collaboration may also include an incomplete understanding by program managers and decision makers of appropriate collaboration opportunities and best practices, and a lack of awareness of successful approaches practiced in previous collaborations. Attempts at outreach and engagement by Federal agencies may also be affected by the challenges presented by engaging the diverse opinions and independent attitudes of multiple levels of state and local entities that wish to have a seat at the policy-development table.

Federal agencies continue to work to improve the effectiveness of their collaboration with State organizations and with local, Tribal, and other stakeholders around water resources. In 2008, the Western States Federal Agency Support Team (WestFAST), a collaboration of 12 Federal agencies with water management interests in the West, was formed to facilitate correlation of Federal activities, and to develop and enhance collaborative partnerships among state and federal agencies. In this role, WestFAST has initiated a plan to review, through the study of selected cases, the effect of outreach and proactive collaboration (including pre-policy collaboration) on the success of the water resource program-development and policy-making process. Although the principal objective of this work is to explore correlations between collaboration approaches and success, case studies will provide valuable information to managers not only on the presumed “collaborative advantage,” but also on observed deterrence to collaboration including its cost and the uncertainty of a useful return. Other key process components such as the role of informed expectations of collaboration in the success of the policy making process will be explored. Results of this work can be used to initiate review of this topic among Federal agencies with water-resource responsibilities and provide an initial road map of successful practices in proactive collaboration across Federal agencies. This proposed effort will include a limited number of case studies, but is intended to provide a framework for continued assessment of new cases over time.

Tab U – V (Intentionally Blank)

## Tab W – Newsletter Index

## **WESTERN STATES WATER NEWSLETTER INDEX**

**January 8, 2016 - March 11, 2016**

**Issues No. 2173 - 2182**

| <b><u>HEADING</u></b>        | <b><u>SUBHEADING</u></b>                             | <b><u>DATE</u></b> | <b><u>ISSUE</u></b> |
|------------------------------|--|--------------------|---------------------|
| <b>ADMINISTRATION UPDATE</b> | Bureau of Reclamation                                | 02-12              | 2178                |
|                              | Clean Water Act                                      | 01-15              | 2174                |
|                              | -Aquatic Resources                                   | 03-04              | 2181                |
|                              | Drought  | 01-15              | 2174                |
|                              | Environmental Protection Agency (EPA)                | 01-08              | 2173                |
|                              |  | 01-15              | 2174                |
|                              | -Consultation with Tribes                            | 02-26              | 2180                |
|                              |  | 03-04              | 2181                |
|                              | FY2017 Budget  | 02-12              | 2178                |
|                              |  | 02-19              | 2179                |
|                              |  | 02-26              | 2180                |
|                              | Indian Water Rights                                  | 02-26              | 2180                |
|                              | Landsat  | 02-19              | 2179                |
|                              | National Aeronautics and Space Administration (NASA) | 02-19              | 2179                |
|                              | Treatment as States                                  | 01-15              | 2174                |
|                              | Water Innovation Initiative                          | 02-12              | 2178                |
| <b>CONGRESSIONAL UPDATE</b>  | Waters of the United States (WOTUS)                  | 01-22              | 2175                |
|                              | White House  | 01-15              | 2174                |
|                              | Abandoned Mines                                      | 01-08              | 2173                |
|                              |  | 01-29              | 2176                |
|                              | California   | 02-06              | 2177                |
|                              | Cooperative Federalism                               | 03-11              | 2182                |
|                              | Drought  | 02-06              | 2177                |
|                              | El Niño  | 02-19              | 2179                |
|                              | Endangered Species Act                               | 02-19              | 2179                |
|                              | Environmental Protection Agency (EPA)                | 01-08              | 2173                |
|                              |  | 01-15              | 2174                |
|                              |  | 03-11              | 2182                |
|                              | Good Samaritan                                       | 01-29              | 2176                |

|                      |  |                                  |                              |
|----------------------|--|----------------------------------|------------------------------|
|                      | House  | 01-15                            | 2174                         |
|                      | House Natural Resources Committee            | 01-29                            | 2176                         |
|                      | Indian Water Rights                          | 02-06                            | 2177                         |
|                      | Lake Tahoe Restoration Act                   | 02-06                            | 2177                         |
|                      | Regulatory Reform                            | 01-08                            | 2173                         |
|                      | Safe Drinking Water Act                      | 03-11                            | 2182                         |
|                      | Senate Environment and Public Works          | 01-15                            | 2174                         |
|                      | Senate Joint Resolution (SJR) 22             | 01-29                            | 2176                         |
|                      | State Revolving Funds Infrastructure Funding | 01-08                            | 2173                         |
|                      | Water Resources Development Act (WRDA)       | 02-06<br>02-19                   | 2177<br>2179                 |
|                      | Water Supply                                 | 02-19                            | 2179                         |
|                      | Waters of the United States (WOTUS)          | 01-08<br>01-15<br>01-29<br>02-12 | 2173<br>2174<br>2176<br>2178 |
|                      | Wilderness                                   | 01-29                            | 2176                         |
| <b>ENVIRONMENT</b>   | Clean Water Act - Aquatic Resources          | 03-04                            | 2181                         |
|                      | Endangered Species Act                       | 02-19                            | 2179                         |
|                      | Environmental Protection Agency              | 03-04                            | 2181                         |
| <b>LITIGATION</b>    | Alaska                                       | 03-04                            | 2181                         |
|                      | Clean Water Act                              | 02-06                            | 2177                         |
|                      | <i>Corps of Engineers v. Hawkes</i>          | 01-22<br>02-06                   | 2175<br>2177                 |
|                      | Reserved Water Rights                        | 03-04                            | 2181                         |
|                      | <i>Sturgeon v. Masica</i>                    | 03-04                            | 2181                         |
|                      | Waters of the United States (WOTUS)          | 03-11                            | 2181                         |
| <b>WATER QUALITY</b> | Clean Water Act                              | 01-15<br>01-22<br>02-06          | 2174<br>2175<br>2177         |
|                      | Cooperative Federalism                       | 03-11                            | 2182                         |

|                        |   |   |                                      |
|------------------------|---|---|--------------------------------------|
|                        | Environmental Protection Agency                         | 01-08<br>01-15<br>02-26<br>03-11          | 2173<br>2174<br>2180<br>2182         |
|                        | Forest Roads  | 02-26                                     | 2180                                 |
|                        | Good Samaritan  | 01-29                                     | 2176                                 |
|                        | National Pollutant Discharge Elimination System (NPDES) | 02-26                                     | 2180                                 |
|                        | Safe Drinking Water Act                                 | 03-11                                     | 2182                                 |
|                        | Waters of the United States (WOTUS)                     | 01-08<br>01-15<br>01-29<br>02-12<br>03-11 | 2173<br>2174<br>2176<br>2178<br>2181 |
| <b>WATER RESOURCES</b> | Bureau of Reclamation                                   | 02-12                                     | 2178                                 |
|                        | California  | 02-06                                     | 2177                                 |
|                        | Cloud Seeding   | 02-26                                     | 2180                                 |
|                        | Drought   | 03-11                                     | 2182                                 |
|                        | Indian Water Rights                                     | 02-06                                     | 2177                                 |
|                        | Landsat   | 02-19                                     | 2179                                 |
|                        | Oregon  | 02-06                                     | 2177                                 |
|                        | Snowpack Levels   | 01-15                                     | 2174                                 |
|                        | Utah  | 02-12                                     | 2178                                 |
|                        | Waters of the United States (WOTUS)                     | 02-12                                     | 2178                                 |
|                        | Water Supply  | 02-19<br>03-11                            | 2179<br>2182                         |
| <b>WATER RIGHTS</b>    | Alaska  | 03-04                                     | 2181                                 |
|                        | California  | 02-06                                     | 2177                                 |
|                        | Indian Water Rights                                     | 01-15<br>02-06<br>02-26                   | 2174<br>2177<br>2180                 |
|                        | Oregon  | 02-06                                     | 2177                                 |
|                        | Reserved Water Rights                                   | 03-04                                     | 2181                                 |
|                        | <i>Sturgeon v. Masica</i>                               | 03-04                                     | 2181                                 |

|                          |   |                |              |
|--------------------------|---|----------------|--------------|
| <b>WESTERN GOVERNORS</b> | Endangered Species                                      | 03-11          | 2182         |
|                          | Environmental Protection Agency                         | 02-26          | 2180         |
|                          | Forest Roads  | 02-26          | 2180         |
|                          | National Governors Association                          | 01-08          | 2173         |
|                          | National Pollutant Discharge Elimination System (NPDES) | 02-26          | 2180         |
|                          | State of the State Addresses                            | 01-22<br>02-26 | 2175<br>2180 |
| <b>PEOPLE</b>            | Eric Evanson  | 01-08          | 2173         |
|                          | Michelle Klose  | 01-08          | 2173         |
|                          | Sue Lowry   | 03-04          | 2181         |

Tab XYZ – Sunsetting Positions for Summer  
2016 WSWC Meetings (#352 -  
#355)

**POSITION STATEMENT  
of the  
WESTERN STATES WATER COUNCIL  
in support of  
STRENGTHENING THE RESILIENCY OF OUR NATION  
TO THE IMPACTS OF EXTREME WEATHER EVENTS**

**Casper, Wyoming  
June 26, 2013**

**WHEREAS**, the Nation continues to suffer the effects, including loss of life and economic, social, and environmental damages, from increasingly extreme weather events, including tornadoes, hurricanes, extreme precipitation, and drought; and

**WHEREAS**, Western States have recently experienced extreme seasonal and year-to-year weather volatility that has brought record or near-record events with floods, followed by drought and wildfires, as well as devastating tornadoes, all threatening public safety and property, and often taxing the capacity of our aging water infrastructure system; and

**WHEREAS**, the 2012 prolonged drought afflicting the West and the Nation was nearly unprecedented in its scope, duration and severity – and developed so quickly as to be commonly referred to as a “flash drought;” and

**WHEREAS**, the drought has been magnified in regions of the country due to the failure of Mexico to deliver the water required to the United States under the treaties executed by the two countries, and

**WHEREAS**, present water resources planning and sound decision-making depends on our ability to understand, monitor, predict, and adapt to droughts, floods, extreme storms, and other weather events as well as reliable treaty commitments; and

**WHEREAS**, investments in research, forecasting, and monitoring the development of extreme weather events provide an opportunity to significantly improve planning and project design and operation to avoid or minimize the loss of life and property, as well as mitigate economic and environmental damages; and

**WHEREAS**, advances in weather forecasting and research, such as that of NOAA’s Hydrometeorological Testbed program on West Coast atmospheric rivers, demonstrate the potential for improving extreme event forecasting at the operational time scale; and

**WHEREAS**, in the West, sound decisionmaking demands accurate and timely data on precipitation, temperature, soil moisture, snow depth, snow water content, streamflow, and similar information; and

**WHEREAS**, there is a need for maintaining and improving existing monitoring networks that help provide early warning as well as tracking impacts of extreme events; and

**WHEREAS**, the Council has supported development of an improved observing system for Western extreme precipitation events, to aid in monitoring, prediction, and climate trend analysis associated with extreme storms; and

**WHEREAS**, there is a need for developing new monitoring technologies such as remote sensing that provide more timely data availability and better spatial coverage for assessing drought impacts; and

**WHEREAS**, the Council supports reauthorization of the National Integrated Drought Information System (NIDIS) and the Bureau of Reclamation's Emergency Drought Response authority; and

**WHEREAS**, there is a continuing need for greater collaboration between and among federal agencies, federal and state agencies (including local government), non-governmental and public/private organizations and businesses;

**NOW THEREFORE BE IT RESOLVED** that the Western States Water Council supports as a high priority federal administrative actions to authorize and implement appropriate actions to plan, prepare for and avoid, minimize or mitigate the impacts of extreme weather events, including developing an expanded and enhanced westwide extreme precipitation monitoring system.

**BE IT FURTHER RESOLVED** that the Western States Water Council also supports legislation advancing the goals of: (1) minimizing the loss of life and property and economic, environmental and social cost from extreme weather events; (2) improving collaboration and coordination among agencies and organizations at all levels; (3) increasing consultation with state, local and tribal governments; (4) maintaining and enhancing data gathering and monitoring, as well as communication capabilities, identifying and addressing gaps and overlap; (5) identifying and addressing federal agency responsibilities, as well as regulatory and other preparedness and response barriers, (6) recognizing and addressing regional differences; and (7) avoiding unfunded mandates -- and pledges to work with the Congress to appropriately address current and future needs to improve extreme events response and resiliency.

**RESOLUTION**  
**of the**  
**WESTERN STATES WATER COUNCIL**  
**regarding**  
**HYDRAULIC FRACTURING**  
**Casper, Wyoming**  
**June 26, 2013**

**WHEREAS**, hydraulic fracturing is a process that injects sand, water, and other fluids, including various chemical compounds, underground to aid in the extraction of oil and natural gas; and

**WHEREAS**, hydraulic fracturing has been used for over 60 years in conventional oil and gas production, with over one million wells having been fractured in the United States alone; and

**WHEREAS**, although concerns about hydraulic fracturing have been voiced by some, western states have experienced few, if any, adverse impacts involving water quality and water allocation attributable to hydraulic fracturing; and

**WHEREAS**, states have primary and exclusive authority over the allocation and administration of rights to the use of water used in hydraulic fracturing operations; and

**WHEREAS**, hydraulic fracturing is responsible for significantly increasing the nation's ability to recover oil and gas, lessening its dependence on foreign energy supplies and providing billions of dollars in direct and indirect economic benefits each year, including hundreds of thousands of jobs; and

**WHEREAS**, states have decades of experience, knowledge, and information regulating hydraulic fracturing and other oil and gas activities; and

**WHEREAS**, states are best positioned to regulate hydraulic fracturing because of their understanding of regional and local conditions and their ability to tailor regulations to fit the needs of the local environment; and

**WHEREAS**, states currently employ a range of programmatic elements and regulations to ensure that hydraulic fracturing does not impair water resources and environmental values, including but not limited to requirements pertaining to well permitting, well construction, the handling of exploration and production waste fluids, the closure of wells, and the abandonment of well sites.

**NOW, THEREFORE, BE IT RESOLVED**, that federal efforts involving hydraulic fracturing, including efforts to study potential adverse impacts on water quantity and quality, should leverage state knowledge, experience, policies, and regulations.

**BE IT FURTHER RESOLVED**, that federal efforts to study the potential impacts of hydraulic fracturing on water resources should be limited in scope, based upon sound science, and driven by states given the lack of significant widespread impacts associated with hydraulic fracturing in the experience of our member states and increasingly limited federal funds.

**BE IT FURTHER RESOLVED**, that the Western States Water Council opposes any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.



**WESTERN STATES WATER COUNCIL**

5296 Commerce Drive, Suite 202 I Murray, Utah 84107 I (801) 685-2555 I FAX (801) 685-2559

Web Page: [www.westgov.org/lwswc](http://www.westgov.org/lwswc)

Position #354

July 5, 2013

The Honorable Bob Gibbs  
Chairman  
House Water Resources and Environment  
Subcommittee  
B-370A Rayburn House Office Building  
Washington, DC 20515

The Honorable Timothy Bishop  
Ranking Member  
House Water Resources and Environment  
Subcommittee  
2163 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Gibbs and Ranking Member Bishop:

I am writing on behalf of the Western States Water Council, representing the governors of 18 western states on water policy issues, to express concern about H.R. 1460. As introduced by Representative Sam Graves of Missouri, H.R. 1460 would remove "fish and wildlife" as an authorized purpose for which the Corps can manage the Missouri River Mainstem Reservoir System (the "System").

The System is the largest collectively managed group of reservoirs in the United States, consisting of six dams in four states that control runoff from approximately half of the Missouri River Basin. Pursuant to the 1944 Flood Control Act, the Corps operates the System for eight authorized purposes: flood control, navigation, irrigation, power, water supply, water quality control, recreation, and fish and wildlife.

However, the Act has not been reviewed since its passage in 1944, and there is now a question as to whether the System's current operations best satisfy the Basin's contemporary needs. In particular, flood control, hydropower, and water supply have provided significant benefits as originally expected, while navigation has fallen far short of its anticipated benefits. Congressionally authorized studies to review the System's eight authorized purposes and determine whether adjustments are needed have also stalled due to a lack of funding. Rather than singling out one authorized purpose for elimination before these needs can be studied, river management and states in the System may be better served by a comprehensive, simultaneous, and transparent review of all eight authorized purposes to develop a plan for the sustainable future management of the System.

In addition, maintaining fish and wildlife as an authorized purpose is necessary for management actions that benefit economically and recreationally important species. Prior studies have also shown that these species support substantial economic activity. For example, the Corps estimated in 2004 that recreation provided annual project benefits of \$87 million in the upper Missouri River Basin and \$20-\$38 million in the lower Missouri River Basin, which includes spending pertaining to fish and wildlife resources. In contrast, the Corps estimated that navigation provided \$9 million in annual project benefits. At the same time, while economic activity involving fish and wildlife has increased, the amount of commercial goods shipped on the Missouri River has decreased significantly since peak commercial tonnage in 1977.

Chairman Gibbs and Ranking Member Bishop

July 5, 2013

Page 2

Lastly, removing fish and wildlife as an authorized purpose will not negate the Corps' obligation to protect these resources in the System. The Corps will still need to coordinate with the U.S. Fish and Wildlife Service on recovery efforts for threatened and endangered species listed under the Endangered Species Act, including the pallid sturgeon, interior least tern, and piping plover. The U.S. Fish and Wildlife Coordination Act also requires the Corps to continue mitigating fish and wildlife habitat losses caused by the Bank Stabilization and Navigation Project.

In light of the above concerns, we urge you to oppose H.R. 1460 and other legislation that would alter the System's authorized purposes before a comprehensive study is completed. Thank you for considering the Council's views on this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Phillip C. Ward". The signature is stylized with a large initial "P" and a distinct "W".

Phillip C. Ward  
Chair, Western States Water Council

cc: The Honorable, Bill Shuster, Chairman, House Transportation and Infrastructure Committee  
The Honorable Nick Rahall, Ranking Member, House Transportation and Infrastructure Committee  
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works)

**RESOLUTION**  
**of the**  
**WESTERN STATES WATER COUNCIL**  
**urging the**  
**ADMINISTRATION AND CONGRESS**  
**TO SUPPORT WATER RESEARCH AND DEVELOPMENT PROGRAMS**  
**at the**  
**DEPARTMENT OF ENERGY NATIONAL LABORATORIES**  
**Casper, Wyoming**  
**June 26, 2013**

**WHEREAS**, the Western States Water Council (the Council) has long recognized the importance of protecting and wisely managing our national water resources for the benefit of our present and future generations, including our environment; and

**WHEREAS**, one purpose of the Council is to accomplish effective cooperation among western states in the conservation, development and management of water resources; and

**WHEREAS**, a second purpose of the Council is to maintain vital state prerogatives, while identifying ways to accommodate legitimate federal interests; and

**WHEREAS** many watersheds are already over-appropriated, and new stresses are emerging from climate, population growth, land use changes and water needs for energy development and in-stream uses; and

**WHEREAS**, there is growing concern, particularly in the Arid West, over our ability to continue to supply water of adequate quality in quantities needed to sustain current and future uses, including energy and environmental uses; and

**WHEREAS**, the failure to provide for such needs would have significant regional and national consequences; and

**WHEREAS**, present water resources planning and sound future decision-making depends on our ability to understand, monitor, anticipate and adapt to changing conditions; and

**WHEREAS**, electricity generation and other energy development is a significant driver of present and future water demands and the expertise and research of the national labs can supplement and enhance the ability of state, local and tribal water managers to understand and develop adaptation strategies; and

**WHEREAS**, water-related research at the Department of Energy and National Laboratories should be guided by State needs as expressed in state planning documents and through planning processes; and

**WHEREAS**, in the West, States in compliance with State law have exclusive authority over the appropriation and adjudication of water rights for all uses, and the allocation of water for energy development, including the determination of whether or not there is any unappropriated water available for use.

**NOW, THEREFORE, BE IT RESOLVED** that the Western States Water Council urges the Administration and the Congress to recognize the primary role of the States in allocating water for energy and the value of Department of Energy hosted energy-water programs and research conducted at National Laboratories undertaken in collaboration with state water resources agencies, including but not limited to work at: the Idaho National Laboratory (INL) and its Mountain West Water Institute; Lawrence Berkeley and Lawrence Livermore National Laboratories in California; Los Alamos and Sandia National Laboratories in New Mexico; the National Renewable Energy Laboratory (NREL) in Colorado; and Pacific Northwest National Laboratory (PNNL) in Washington, that collaboratively links federal energy research programs and water issues of concern to the western states.