



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/WATER RESOURCES**

#### **Corps of Engineers/Nationwide Permits**

On August 3, the U.S. Army Corps of Engineers (Corps) announced its “proposal to renew and revise 52 nationwide permits [NWP]s for work in wetlands and other waters that are regulated by Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.” The 52 NWP]s that were issued in 2017 aren’t scheduled to expire until 2022. The Corps is proposing to modify several NWP]s “to reduce regulatory burdens on entities that develop or use domestically produced energy resources,” pursuant to the President’s Executive Order 13783. A subsequent Corps report identified nine NWP]s that could be modified, including those that cover hydropower, coal mining, and renewable energy activities.

“This notice of proposed rulemaking initiates the rulemaking process to determine whether to modify these nine NWP]s [3, 12, 17, 21, 39, 49, 50, 51, 52] in accordance with the report’s recommendations, and to modify a number of other NWP]s.... In addition to revisions being considered in response to E.O. 13783, the Corps is proposing to reissue the remaining NWP]s, so that all of the NWP]s remain on the same 5-year approval cycle. The Corps is also proposing to issue five new NWP]s....” One of the proposed new NWP]s “would authorize discharges of dredged or fill material into jurisdictional waters for the construction, expansion, and maintenance of water reuse and reclamation facilities.” A 60-day comment period will follow publication of the notice in the *Federal Register*. See <https://www.usace.army.mil/Media/News-Releases/News-Release-Article-View/Article/2298456/army-corps-of-engineers-announces-proposal-to-renew-and-revise-nationwide-permit/>.

#### **Reclamation/DOE/Corps/Hydropower**

On August 24, the Bureau of Reclamation (USBR), Department of Energy (DOE), and the Corps signed a memorandum of understanding (MOU) to “collaborate on common issues and leverage resources and efforts to the benefit of the Agencies and ultimately to the public,” to coordinate on technology development and research projects for a new approach to hydropower development.

They are working on an action plan “designed to adapt hydropower to changing markets, environmental concerns, and water issues, and to facilitate the influx of non-dispatchable generation resources penetrating the bulk electric system.” The projects and activities under the action plan will look at: (1) asset management to maximize investments in hydropower; (2) how to quantify the value of hydropower, including critical ancillary services beyond present energy generation rates; (3) developing opportunities to deploy collaborative training and recruitment for a “diverse and multifaceted...workforce”; (4) identifying areas of collaboration to improve water supply reliability, particularly considering “drought, increased populations, aging infrastructure, and environmental requirements;” and (5) investigating new methods and technologies to meet environmental standards at lower costs and greater operational flexibility. See <https://www.energy.gov/sites/prod/files/2020/08/f77/MOU-hydropower-2020.pdf>.

### **ADMINISTRATION/WATER QUALITY**

#### **EPA/PFAS**

On August 25, Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced a new collaboration between the EPA, Department of Defense, and state partners called the Innovative Ways to Destroy PFAS Challenge. The technical challenge is “seeking detailed plans for non-thermal technologies to destroy [per- and polyfluoroalkyl substances (PFAS)] in concentrated aqueous film forming foam (AFFF), a type of firefighting foam.” The challenge is a new element of the PFAS Action Plan launched in February 2019.

Wheeler said: “EPA researchers and staff are harnessing the power of crowdsourcing to identify ways to destroy PFAS through non-incineration methods. The Trump Administration has offered major assistance to more than 30 states across the U.S. to protect human health regarding PFAS, and the agency is offering up to \$50,000 for the best design concept to safely destroy the chemical.”

Jim Macy, Director, Nebraska Department of Environment and Energy and President of the Environmental Council of the States (ECOS) said: “States are working with the EPA to look for ways to address PFAS contamination and destroy the chemicals

once they are collected. This provides the opportunity to access national and international experts to assist in eliminating the contaminant.”

As stated in the press release, “The goal of this challenge is to discover new non-thermal technologies and approaches that can remove at least 99 percent of PFAS in unused AFFF, without creating any harmful byproducts. Although PFAS compounds can be found in various waste streams, the challenge is focused on unused AFFF. EPA, other federal agencies, states, local communities and tribes, are working together to identify safe and efficient solutions to destroy PFAS-contaminated media and waste, such as AFFF.”

The challenge will run through November 23, 2020. See <https://www.epa.gov/innovation/innovative-ways-destroy-pfas-challenge>.

## **CONGRESS/WATER RESOURCES**

### **Airborne Snow Observatory/Snow Surveys**

On August 14, Representative Josh Harder (D-CA) and Senator Dianne Feinstein (D-CA) introduced the Snow Water Supply Forecasting Program Authorization Act (H.R. 8401 and S. 4530), with additional California co-sponsors. The bill directs the Department of the Interior (DOI) to establish an airborne snow observatory (ASO) and measurement program, authorizing \$15M for FY2022-26.

A press release notes that a previous ASO program run by the National Aeronautics and Space Administration (NASA) ended in December 2019. ASO combines an airborne imaging spectrometer and scanning lidar system for snow and water resources monitoring. Lidar measures distances by illuminating the target with laser light and measuring the reflection with a sensor. It is used to measure snowpack depth, flying mountainous areas without and then with snow, providing important information for seasonal water supply forecasting. “Conventional survey techniques can only achieve 50-90% accuracy when measuring snow runoff. The ASO technology developed by NASA can perform more precise measurements, increasing the accuracy to within 96-99% when paired with conventional techniques.... More precise measurements allow water managers to make better determinations on water allocations – using more water when it’s available and conserving water when it’s not.” The bill would enable the program to continue with federal support under DOI, which benefits from accurate information about water supplies across the West. “Without accurate readings, water managers could be forced to unnecessarily release water from reservoirs or use it from groundwater pumping, resulting in millions of dollars in financial losses.” See <https://harder.house.gov/media/press-releases/harder-feinstein-introduce-bill-improve-water-management-airborne-snow>.

## **WATER RESOURCES/WATER RIGHTS**

### **Texas/Rio Grande/1944 Treaty**

Under the 1944 Water Treaty, Mexico is obligated to deliver a minimum of 1.75 million acre-feet of Rio Grande water to the United States over a five-year cycle. In July, the International Boundary and Water Commission (IBWC) issued a press release noting that Mexico has only delivered 1.33 million acre-feet for the cycle ending this October 24. “To meet its international obligations, Mexico must deliver an additional 416,829 acre-feet to the United States between now and the end of the cycle.” U.S. IBWC Commissioner Jayne Harkins said: “Mexico has failed to implement releases promised earlier and continuing to delay increases the risk of Mexico failing to meet its delivery obligation.” Commissioner Emily Lindley of the Texas Commission on Environmental Quality (TCEQ) said: “Mexico has not honored its commitments. Texas farmers, irrigators, municipalities, and industries along the Rio Grande rely on water that should be delivered as laid out in the 1944 Treaty. I echo Commissioner Harkins that it is vital Mexico deliver water immediately to the U.S.” See [https://www.ibwc.gov/Files/Press\\_Release\\_071720.pdf](https://www.ibwc.gov/Files/Press_Release_071720.pdf).

The TCEQ website notes that Mexico’s failure to consistently deliver water according to the 1944 Water Treaty is an ongoing problem, and that IBWC and the U.S. State Department have not taken serious steps to enforce the Treaty. The minimum annual average delivery of water should be 350,000 acre-feet (af), but deliveries have generally been short: 219,077 af (2016); 567,238 af (2017); 235,097 af (2018), 218,091 (2019); and as of the end of May 2020, only 55,446 af.

TCEQ’s website states: “Mexico’s failure to deliver the amount of water owed results in undue hardship for Texas’ water users who rely on that water for irrigation, as well as municipalities that need the irrigation water to convey public drinking water supplies. In fact, a 2013 study by Texas A&M AgriLife concluded that a loss of irrigation water in the Lower Rio Grande Valley of Texas endangers approximately 4,840 jobs per year and reduces output in the valley by an estimated \$395 million. Despite countless meetings between U.S., Texas, and Mexico water officials, Mexico has yet to provide a concrete proposal and further productive and earnest discussions and commitment to honor the Treaty and deliver the minimum annual amount of water. To resolve this issue, Mexico must recognize their obligation to the United States under the 1944 Treaty, set aside water for Treaty compliance, and deliver water on a schedule that benefits all users within the Rio Grande Basin. The United States has never failed to meet its obligation on the Colorado [River] to deliver 1.5 million acre-feet to Mexico under the same Treaty. Texas is simply requesting that Mexico treat its obligation to the Rio Grande in the same manner.” See <https://www.tceq.texas.gov/border/water-deficit.html>.

**The WESTERN STATES WATER COUNCIL is an organization of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.**