



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/WATER RESOURCES**

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

On September 15, the Army Corps of Engineers (Corps) published a rulemaking notice titled, "*Proposal to Reissue and Modify Nationwide Permits*" (85 FR 57298). The Corps is planning to reissue the 52 existing nationwide permits (NWP) and associated general conditions and definitions, with some modifications, and is proposing five new NWP (see WSW #2415).

The current NWP 12, which authorizes utility line activities, would be divided into three separate NWP that more specifically address "differences in how different linear projects are constructed, the substances they convey, and the different standards and best management practices" to ensure minimal adverse environmental effects. Specifically, NWP 12 would be limited to oil and gas pipeline activities. The first new NWP would cover electric utility lines and telecommunication lines, and the second would cover all other utility lines, including water conveyances. The third new NWP would "authorize discharges of dredged or fill material into jurisdictional waters for the construction, expansion, and maintenance of water reuse and reclamation facilities." The final two new NWP address mariculture (marine aquaculture) activities.

The Corps specifically calls for comments regarding national best management practices for utility lines that could be included in NWP 12, or either of the proposed new utility line NWP. It also asks for comments on whether to issue a new NWP for dredged and fill material to help streamline and clarify the application process, or if the Corps should continue authorizing those activities under the current NWP 29, 39, 40 and 42. Comments can be submitted at [www.regulations.gov](http://www.regulations.gov) under Docket #COE-2020-0002, and are due November 16.

#### **Bureau of Reclamation/WaterSMART/WestFAST**

On September 17, Amanda Erath and Darion Mayhorn, Bureau of Reclamation, presented a WestFAST webinar on WaterSMART programs. The overarching program goal is to improve water supply reliability by investing in projects that promote water conservation and improved water management, and focus on collaboration with non-federal partners. The WaterSMART funding pipeline provides assistance for

each stage of planning, science and tool development, and project implementation. Most grant programs require a non-federal cost share, typically around 50%. Eligible applicants include states, tribes, cities, local governments, and any entity with water delivery, management or planning authority.

WaterSMART programs fall into four overarching categories – Drought and Watershed Planning and Response Programs, WaterSMART grants, Basin Study Programs and Title XVI programs. Programs under the first include: (1) a Drought Response Program for drought contingency planning and drought resiliency projects (up to \$1.5M); and (2) the Cooperative Watershed Management Program for watershed planning group development and watershed management project design (up to \$100K), and for implementing watershed management plans (up to \$500K).

WaterSMART grants include: (1) Water and Energy Efficiency Grants for common water conservation projects (\$500K to \$2M); (2) Small Scale Water Efficiency Program projects (\$75K to \$200K); and (3) Water Marketing and Strategy Grants to assist in the development and assessment of water markets within a region, including outreach and partnership building, scoping and planning, strategy development and pilot activities (\$200K to \$400K).

The Basin Study Programs include: (1) Basin Studies, which are collaborative working groups (not grants) with non-federal partners to evaluate the current and future water supply and to ensure reliable water supplies in the West; (2) Water Management Options pilots, which are a follow-on to complete a Basin Study to advance strategies or apply tools and information to address water management challenges; and (3) Applied Science Grants to improve or enhance modeling capabilities or improve and adapt forecasting (\$150K to \$300K available).

Title XVI Water Reclamation and Reuse Projects include projects that reclaim and reuse wastewater, and have been authorized by Congress or are eligible under §4007c of the 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act, PL 114-322). These require a 75% cost-share and up to \$20M is available unless otherwise specified by Congress. The WIIN Act also

created a program specifically for ocean or brackish water desalination projects that meet requirements in §4007a of that Act. Finally, WaterSMART program funding and outcomes are tracked on an online portal that has interactive maps, featured project tours, and shows program growth over time. [www.usbr.gov/watersmart](http://www.usbr.gov/watersmart)

### **Interior/Infrastructure/Title Transfers**

On September 18, the Department of the Interior (DOI) finalized two federal project title transfers to local water user organizations, made possible by the 2019 John D. Dingell Jr. Conservation, Management and Recreation Act (PL 116-9). Both projects are located in Utah, conveying ownership of: (1) the Emery County Project, which includes dams, canals, and pipelines that serve the irrigation, recreation, fish and wildlife, and municipal and industrial needs, to the Emery County Water Conservancy District (ECWCD); and (2) the Uintah Basin Replacement Project, which provides water for Roosevelt City and agricultural irrigation, to the Moon Lake Water Users Association (MLWUA).

Governor Gary Herbert (R-UT), Senators Mike Lee (R-UT) and Mitt Romney (R-UT), and Representatives Rob Bishop (R-UT) and John Curtis (R-UT) joined DOI Secretary David Bernhardt as he transferred ownership of the projects. Secretary Bernhardt said: "These title transfers fulfill the Trump Administration's goals to streamline bureaucratic processes, empower local ownership and facilitate infrastructure investment from non-federal sources. Transferring these facilities into local ownership also saves American taxpayer dollars due to decreased federal operating costs and reduced liability." Governor Herbert said: "We know the good people of Emery and Duchesne Counties, and the respective water users associations, will continue making prudent decisions for these projects, as they have for many decades."

Dex Winterton, MLWUA General Manager, called it a win-win solution. "It demonstrates the best of government management by allowing the local entities, who know the area and truly have its best interests in mind, who have fully paid back the U.S. Government for the project construction costs, to efficiently and effectively maximize the project benefits." Jay Humphry, ECWCD General Manager, said the title transfer "will foster better opportunities for efficient and cost-effective operation, management, and care of the project at the local level and guarantee continued project benefits to all stakeholders in the short and long term." <https://www.doi.gov/news>

### **CONGRESS**

#### **WOTUS/Navigable Waters Protection Rule**

On September 16, Rebecca Roose, Water Protection Division Director, New Mexico Environment

Department, testified at a Senate Environment and Public Works Committee hearing titled, "Stakeholder Reactions: The Navigable Waters Protection Rule under the Clean Water Act." Ray Gaessar, Owner, Gaessar Farms, and Douglas Davis, Jr., President and CEO, Fletcher Davis Company, also testified. Roose's comments focused on the "severe" impact that New Mexico is going to experience from the implementation of the Navigable Waters Protection Rule (NWPR). This is largely due to the removal of protection for ephemeral streams under the NWPR, which could affect 90% of New Mexico's waters, as well as the new definition of "adjacent wetlands" that could result in the loss of protections for many wetlands in New Mexico. She also raised concerns regarding the tools needed to fulfill interstate compacts and maintain water quality for those downstream of discharge activities.

Roose stated, "A core argument by those in favor of the rule is that it returns control to States, while maintaining strong water protections nationwide. It may be true that some States will utilize existing authorities to close the regulatory gap and retain the critical water quality accomplishments of the last 50 years. But meanwhile, in New Mexico and many other States, as well as across Tribal lands, it could take years and millions of unavailable, unappropriated dollars to prevent water quality and watershed degradation. Most States today are working through complex steps that involve evaluating how the new definition affects their waters, analyzing existing authorities to protect State waters, and then identifying and prioritizing actions to close any regulatory gaps.... Without an established State program to pick up the slack, we could see thousands of pounds of additional pollutant discharged into our surface waters in New Mexico every year. The value of clean water in New Mexico is both cultural and economic." Finally, Roose mentioned concern with how the NWPR may affect the interplay of the Clean Water Act (CWA) and the Resources Conservation and Recovery Act (RCRA). Exemptions exist under each law for the other to not duplicate federal oversight for a single entity. Those regulated entities that discharge hazardous wastewater and are currently covered under a CWA §402 permit may no longer be regulated under the CWA and thus may be subject to RCRA.

Roose said, "This is an area that we were disappointed, here in New Mexico, that the EPA and the Army Corps of Engineers didn't pay more attention to this in the final rule to provide more regulatory certainty for both the regulated entities that could be impacted by this, what this means for their compliance requirements, and also for the State and federal agencies that are charged with implementing the [RCRA]."

The other two witnesses applauded the efforts and the outcome of the NWPR, and believed that it provided more certainty for their industries in determining whether a water is jurisdictional or not.

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