



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION/WATER QUALITY** **EPA/WOTUS/North Dakota**

On October 7, Senators Kevin Cramer (R-ND) and John Hoeven (R-ND) and Representative Kelly Armstrong (R-ND) met with EPA Administrator Andrew Wheeler and other state, industry, and agricultural leaders at the University of Mary in Bismarck, North Dakota for a roundtable discussion on efforts to define Waters of the United States (WOTUS) and how that definition impacts land use and numerous small water bodies in North Dakota. Wheeler said: "Today I learned firsthand that waters and wetlands in over 90% of the state's land mass would have fallen under federal purview with the 2015 Rule. Because of this type of federal overreach, the Trump Administration repealed the 2015 Rule, and our new proposed WOTUS definition would respect North Dakota's traditional authority to regulate its land and water resources." North Dakota Agriculture Commissioner Doug Goehring said that the amount of water under federal jurisdiction in the state would have gone from 5,100 up to 85,604 linear miles under the 2015 Rule.

Lt. Governor Brent Sanford said that repealing the 2015 Rule was a win for states' rights, farmers, landowners, and local governments, and that he appreciated hearing firsthand how the new rule would protect waters while promoting economic growth, and recognize that "states are in the best position to manage their own waters in partnership with the federal government." Senator Hoeven said: "North Dakota has some of the cleanest water and air in the nation, showing that we can maintain good environmental stewardship while also supporting a strong economy. We will continue working with EPA to provide certainty to our farmers, ranchers and energy producers and preserve the role of states in protecting our water resources as the agency drafts a new WOTUS rule." Attorney General Wayne Stenehjem, who led a multistate coalition challenging the 2015 Rule in federal court, said that the repeal of the rule isn't a victory yet, because there may be new lawsuits challenging the Administration's repeal.

Wheeler said the new WOTUS rule will be finalized this winter. He said there are six main categories of

waters under federal jurisdiction, including traditional navigable waters, their tributaries, certain ditches used for navigation or affected by tides, certain lakes and ponds, impoundments, and adjacent wetlands. Excluded features are groundwater, agricultural ditches, water treatment facilities, and features that only hold rainfall. ([EPA.gov/newsroom](http://EPA.gov/newsroom); *AgWeek* 10/7/19)

### **EPA/North Dakota/WIFIA**

On October 8, Administrator Wheeler announced that the Fargo-Moorhead Diversion Authority was among the projects selected as eligible to apply for a loan under the Water Infrastructure Finance and Innovation Act (WIFIA) program. The Corps of Engineers began work on an inlet for the project last month. The federal commitment to the \$2.75B project is \$750M, and the WIFIA loan would provide an additional \$510M in low-interest financing for the state and local cost share, providing major cost and time saving for construction. ([EPA.gov/newsroom](http://EPA.gov/newsroom)).

### **ADMINISTRATION/WATER RESOURCES** **Corps of Engineers/Missouri River**

On October 3, the Corps issued a news release indicating that Missouri River levels remain high. September runoff was 200% of normal in eastern Montana, much of North Dakota, portions of South Dakota, and northern Nebraska. The upper basin runoff forecast for 2019 is now 61.0 million acre-feet (MAF), which would equal the highest runoff experienced in 2011, over 161 years of record-keeping. Water storage in the Missouri River mainstem reservoir system was 64.0 MAF on October 1, which occupies 7.9 MAF of the 16.3 MAF flood control zone. Release rates remain high in an effort to evacuate the stored flood water before the 2020 flood season next spring. The continuous high river levels have hampered efforts to repair breached levees. The Corps has spent \$113M on temporary repairs, with an estimated cost of \$1.1B over the next several years. The mainstem hydropower plants are projected to generate 13.3 billion kWh of electricity in 2019, compared to the long-term average of 9.4 billion kWh. ([nwd.usace.army.mil/Media/News-Releases](http://nwd.usace.army.mil/Media/News-Releases); *WSJ* 10/7/19)

## **USGS/Water Use Data and Research (WUDR)**

The U.S. Geological Survey has announced seven recipients of FY2019 WUDR cooperative agreements, including the Idaho Department of Water Resources and the Nevada Division of Water Resources, along with state agencies in Alabama, Mississippi, New Jersey, Pennsylvania and Vermont. Recipients may receive financial assistance between \$25,000-\$250,000 as part of a two-year cooperative WUDR agreement to help States' water resource agencies that collect and report water-use data. Other WSWC member state recipients have included Alaska, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, Utah and Washington. Awards from FY2016-FY2018 totaled \$2.31M. WUDR grant application information and a summary of related projects are at <https://water.usgs.gov/wausp/wudr>. An announcement requesting FY2020 applications is expected in November.

## **CONGRESS/WATER RIGHTS**

### **Indian Water Rights Settlements**

On October 4, the Congressional Budget Office (CBO) issued its cost estimate for the Indian Water Rights Settlement Extension Act (S. 886), assuming that the bill is enacted near the end of 2019. The Senate Indian Affairs Committee approved an amended version of the bill on July 17. Rather than permanently extend the Reclamation Water Settlement Fund (RWSF) in 43 U.S.C. 407 as introduced, the amended version extends transfers from the Reclamation Fund to the RWSF an additional ten years, through FY2039. The bill would transfer \$120M each fiscal year from 2029-2039 from the Reclamation Fund (\$1.2 billion) to the RWSF for future Indian water settlements. CBO's report noted that, "As of 2019, 36 Indian water settlements have been federally approved, with total estimated costs – mostly for construction of new distribution facilities – in excess of \$5.8 billion." The report also indicated that the increases to on-budget deficits in any of the four consecutive 10-year periods beginning in 2030 will be less than \$5 billion.

Section 2 limits the amount that the Secretary of the Interior may spend on any one settlement to \$90M in a single fiscal year (from FY30-44), unless the expenditure of more funds would not adversely affect the implementation of other congressionally-approved settlement agreements. The authorizing language is modified to shift away from the requirements that: (1) the settlement resolve litigation; or (2) involve Bureau of Reclamation water infrastructure projects, allowing more flexibility for settlements initiated without litigation and involving non-Reclamation water infrastructure projects. It specifies that the settlement must involve claims concerning Indian water resources.

Section 2 also makes adjustments to the settlement priorities for Arizona in 43 U.S.C. 407(c)(3)(B)(iv). It provides that if the Navajo Nation's water rights claims in the Lower Colorado River Basin in Arizona are not resolved and a settlement approved by Congress by the end of 2021, the amounts reserved for that settlement will no longer be reserved in the RWSF. Those funds will be deposited instead into the Lower Colorado River Basin Development Fund (LCRBDF), with 65% of the funds deposited into the Future Indian Water Settlement Sub-account of the LCRBDF.

Section 3 of the amended bill modifies the Aamodt Litigation Settlement Act to accommodate unanticipated increases in construction costs and delays in completing the regional water system and the Pueblo water facilities. The modification requires the water distribution facilities to be substantially complete by 2028. The Aamodt Water Settlement is a priority project under 43 U.S.C. 407(c)(3)(B)(ii). CBO noted that the bill would increase the maximum authorized amount available to implement the Aamodt Water Settlement by \$137 million plus expected inflation (for a total of \$157M).

Section 4 directs the Secretaries of Agriculture and the Interior to commence a study of the multipurpose dam described in the Upper Delaware and Tributaries Watershed Plan, developed in 1994 by the Kickapoo Tribe, certain watershed and conservation districts in Kansas, the Kansas Department of Wildlife and Parks, and the Natural Resources Conservation Service. The study is intended to result in recommendations to Congress on what changes to the Plan would effectuate the relevant portion of the 2016 Kickapoo Tribe Water Rights Settlement Agreement between Kansas and the tribe, which is still pending authorization by Congress.

## **WATER QUALITY/WATER RESOURCES**

### **California/Water Reuse**

On September 10, the California State Water Resources Control Board authorized a program enabling a wastewater treatment plant to recycle up to 50,000 acre-feet per year of treated effluent to support agricultural lands and wildlife habitats. The Sacramento Regional County Sanitation District treats wastewater for 1.4 million residents in the region, and has used small recycled water projects for urban landscaping. The bulk of its treated wastewater is discharged to the Sacramento River. The District is constructing \$2B in plant upgrades to meet more stringent water quality requirements, to be completed in 2023. The District's South Sacramento Agriculture and Habitat Lands Recycled Water Program will use the treated water to replace groundwater pumping for irrigation, improve wetlands and riparian forests, create sandhill crane and vernal pool habitats, and increase flow in the Cosumnes River for fall run Chinook salmon.