



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN GOVERNORS EPA/Federal-State Relations

On June 19, the Western Governors' Association (WGA) submitted comments on the Environmental Protection Agency's (EPA) Proposed Rule – EPA Guidance; Administrative Procedures for Issuance and Public Petitions (Docket No. EPA-HQ-OA-2020-0128, 85 FR 31104). The rule was proposed to "ensure that guidance documents upon which federal agency officials rely are: developed with appropriate review; accessible and transparent to the public; and subject to basic public notice and comment processes." The WGA letter recommended that the rule better reflect the sovereign powers that States hold and recognize States have "federal statutory authorities to serve as co-regulators and partners with the EPA in protecting and improving the quality of our nation's air, lands and water." As such, States deserve a more prominent role in regulatory processes that have federalism implications.

WGA recommended that the rule: (1) distinguish States from members of the public and provide States with "opportunities to engage with EPA officials on a government-to-government basis;" (2) require agencies to conduct "early, meaningful, substantive and ongoing consultation with States...in the development of guidance documents that affect States as sovereignties or as co-regulators;" (3) require public notification of issued, modified, and rescinded guidance documents in the *Federal Register* and consult States as necessary; and (4) require a "transparent and accountable" process for categorization of guidance documents.

The letter concludes: "Western Governors submit these remarks through the public notice and comment process for administrative recordkeeping purposes. The Governors, however, maintain that this process is an insufficient channel for state-federal communication on federal actions that may affect state authority or administrative activity. Western Governors strongly urge federal agencies to engage in meaningful, substantive, and ongoing consultation with states in advance of any such decisions or related public processes. Such consultation will result in more effective, efficient, and resilient federal policy, benefitting our shared constituents." See www.westgov.org/letters/.

Policy Resolutions

On June 30, the WGA approved three policy resolutions: (1) Western Agriculture (Policy Resolution 2020-06); (2) Rural Development (Policy Resolution 2020-07); and (3) Broadband Connectivity (Policy Resolution 2020-08). The Western Agriculture resolution supports "an array of funding, trade, education, research and workforce development programs that promote agricultural contributions to the economies and quality of life in western states. The Governors...highlight the production and conservation benefits of precision agriculture technologies and provide recommendations to support this growing sector." The Rural Development resolution "details policies and recommendations to strengthen rural communities and ensure that programs delivering state and federal resources are efficient and accessible." The Broadband Connectivity resolution "highlight[s] the importance of high-speed internet ('broadband') for rural economies and communities....Their recommendations address broadband data and mapping, investments in scalable infrastructure, and strategies to help connect tribal communities." The resolutions also address provisions to help mitigate impacts to rural and farming communities associated with the COVID-19 pandemic.

WATER RESOURCES Colorado/State Legislation

The Colorado legislature passed several bills related to instream flows. HB20-1037 authorizes the Colorado Water Conservation Board (CWCB) to augment stream flows to preserve or improve the natural environment to a reasonable degree by use of an acquired water right that has been previously quantified and changed to include any augmentation use. HB20-1157 amends the existing law that allows the CWCB to use loaned water for instream flows under certain procedural requirements to prevent injury to water rights. The bill expands the number of years a renewable loan may be exercised, addresses the ability of the CWCB to use loaned water, and establishes scientific and water rights criteria for CWCB and the State Engineer (SE) to evaluate proposed water loans. It increases the filing fee, and includes a right to appeal the SE's decision to a water judge. HB20-1159 directs the SE to confirm claims of

existing uses for water rights before CWCB may appropriate those water rights for instream flow purposes, for any water rights not already confirmed by court order or decree.

Appropriations from the CWCB Construction Fund (HB20-1403) included \$380,000 for operation and maintenance of a satellite monitoring system; \$350,000 for continuation of a weather modification permitting program; \$150,000 for the Colorado Mesonet project; \$200,000 for acquisition of LIDAR data; \$500,000 for the state's floodplain map modernization program; \$350,000 for continuation of the water forecasting partnership project; and \$4M for the watershed restoration program. The bill appropriates \$7.5M for implementation of the State Water Plan, including \$3M for additional storage, artificial recharge into aquifers, and dredging existing reservoirs, as well as \$1M for grants to implement long-term strategies for drought planning, conservation, and land use. The CWCB is authorized to make loans from the Severance Tax Perpetual Base Fund or the Construction Fund for various levees, tunnels, federal cost-shared projects, and other infrastructure projects.

SB20-155 modifies the presumptions afforded to domestic wells, which are exempt from the SE's administration, unless the land is subdivided into parcels. The bill maintains the presumption of noninjury to vested water rights or other wells for subdivisions if certain requirements are met. SB20-048 directs the Department of Natural Resources to convene a work group to explore ways to strengthen the existing anti-speculation law, which prohibits water appropriation without specific lands or facilities to be served by the appropriation and plans to divert and put the water to beneficial use. HB20-1095 mandates that local government master plans with a water supply element must include water conservation policies, which may include goals from the State Water Plan. HB20-1094 repealed the \$1,000 cap on the fee for on-site wastewater treatment system permits, allowing local boards of health to set the fee to recover actual direct and indirect costs associated with the permit that may be higher than the cap.

WATER RESOURCES/ADMINISTRATION

WestFAST/NRCS

On June 30, Mike Strobel, Director of the National Water and Climate Center (NWCC), within the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture provided an overview of the programs at NWCC that affect water resource forecasting throughout the West. This was a follow-up to a Western States Federal Agency Support Team (WestFAST) webinar in May where Strobel gave a brief summary of these programs (see WSW #2402 Special Report).

NWCC runs the Snow Survey and Water Supply Forecasting Program that provides snowpack

information critical for forecasting annual water availability. It is considered one of their "mission critical" programs.. The primary purpose of the data is to help irrigators manage their resources for farming, but they are also used for hydropower generation, as well as managing reservoirs and municipal water supply, fire management, recreation, including the ski and rafting industries, managing fish and wildlife habitat and instream flows, and administering international treaties, such as those for the Colorado and Columbia Rivers. NWCC runs on a budget of about \$9.3M and employs about 20 people.

The data are collected using a combination of automated sites (SNOTEL and SNOLITE networks) and manual snow course surveys that are then integrated into models that compare current conditions with past conditions, make estimates for water supply forecasts, and develop anticipated flows for irrigation purposes. See www.nrcs.usda.gov.

NWCC is also further developing their Soil Climate Analysis Network (SCAN), a program piloted in the early 1990s. While not yet a separately authorized program with dedicated funding, the data it produces is becoming increasingly important for understanding the relationship between soil moisture and water supply, as well as runoff. NWCC has developed technical and operational manuals to better facilitate partnerships with agencies and organizations who want to install and maintain their own sensors. Tribal SCAN also offers these sensors to tribes who want to use the data for their own forecasting and as an educational opportunity.

Current NWCC priorities include upgrading their IT capacity to support the vast amounts of data the center downloads from sensors everyday—more than 16 million observations per year. They are working to transition many of their manual snow course surveys to SNOTEL or SNOLITE sites to ensure data continuity and improve program efficiency and safety. NWCC also is working to improve their models and transition them to a cloud-based version to allow better real-time access to water data and forecasting. They are also always looking for ways to improve their data collection and watching for new technologies.

MEETINGS

WestFAST Webinars

WestFAST will host a series of webinars in July (10:00 am Mountain Time): July 8 - overview of the National Water Reuse Action Plan; July 15 - overview of the Natural Resources Conservation Service's Regional Conservation Partnership Program, including a few active water supply projects involving water agencies in the West; and July 29 - overview of EPA's Water Infrastructure Finance and Innovation Act Program. www.westernstateswater.org/westfast/westfast-webinars/.