



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION

USGS/Landsat Data

On June 19, the U.S. Geological Survey (USGS) released a report from the Landsat Advisory Group (LAG) to the National Geospatial Advisory Committee (NGAC), which NGAC approved. The Department of the Interior (DOI) tasked the USGS in 2017 to consider possibilities for fee recovery for Landsat data. LAG was asked to consider a range of possible cost sharing models, including “resource leveraging for data processing, management, and distribution; resource leveraging for satellite ground mission development and operations; and various forms of fee recovery models for different market sectors.”

LAG’s report found that charging a fee for Landsat data would: (1) generate little net revenue, potentially less than the government costs incurred to implement the fee; (2) result in negative economic impacts to commercial remote sensing satellite and value-added industries; (3) require substantive changes to both statutes and regulations that currently constrain the government from charging fees; and (4) not be worth the economic, legal, societal, or political costs incurred.

LAG recommended further study and consideration of other alternatives, such as generating revenue by selling enhanced imagery and tailored tasking options from satellite sensors (while keeping standard data free and available). LAG also recommended the possibility of moving from the current business model, government-owned and contractor-operated, to a model of contractor-owned, contractor-operated, to provide data management services at lower costs. Public private partnerships could preserve Landsat continuity while benefitting from the efficiencies of the private sector industry, depending on the development of a successful business model and any necessary legal changes, such as amendments to the Land Remote Sensing Policy Act. “In conclusion, as the overall motivation for examining cost sharing alternatives is to reduce the public expenditures required to sustain Landsat data collections and continuity, the LAG believes that...a more significant study would be to analyze how the costs of building and launching Landsat sensors could be reduced, rather than focusing on cost sharing of operations.”

USFS/Wildfire Suppression

On June 13, the U.S. Forest Service (USFS) published notice of its proposed rule, National Environmental Policy Act (NEPA) Compliance. The USFS first codified its NEPA procedures in 2008, reflecting the policies established by the agency’s 1992 NEPA Manual and Handbook. The agency is updating the procedures to reflect lessons learned and experience gained over the past 10 years. In particular, the rule addresses inefficiencies that are impacting the agency’s ability to manage forest lands subject to large-scale wildfires. The USFS “...has a backlog of more than 5,000 applications for new special use permits and renewals of existing special use permits that are awaiting environmental analysis and decision. On average, the Forest Service annually receives 3,000 applications for new special use permits. Over 80 million acres of National Forest System (NFS) land are in need of restoration to reduce the risk of wildfire, insect epidemics, and forest diseases.”

The proposed rule adds new categorical exclusions (CEs) for restoration activities, road and trail management, recreation and administrative facility management, and special use authorizations. It modifies requirements for scoping and “right sizing” public engagement opportunities relative to the proposed action. “This guidance encourages early and ongoing engagement with the public and other external partners (such as other federal agencies, tribes, states, and local governments) that is not limited to a single NEPA process.” The rule adds a Determination of NEPA Adequacy (DNA) that allows the USFS to consider whether an existing analysis under a prior decision can satisfy NEPA requirements for a sufficiently similar and subsequent proposed action. The DNA would improve efficiency by reducing redundant analyses of substantially similar proposed actions with substantially similar impacts. The rule also codifies existing practices to provide clarity and consistency across the agency. Comments on the proposed rule are due by August 12.

The USFS will also propose revisions to the Forest Service Handbook and Forest Service Manual in early 2020, followed by a public comment period on the proposed directives.

ADMINISTRATION/WATER QUALITY EPA/Fracking/Wastewater Treatment

On July 5, the Environmental Protection Agency (EPA) published its decision (84 FR 32094) on effluent limitation guidelines for unconventional oil and gas (UOG) extraction facilities. In 2016, EPA issued a final UOG rule, prohibiting extraction operations from discharging pollutants in wastewater to publicly owned treatment works (POTWs). EPA's reasoning included: (1) POTWs are not designed to treat the atypical wastewater, leaving untreated pollutants to enter the receiving stream; (2) biological treatment operations would be inhibited, disrupting POTW operations; (3) wastewater pollutants can accumulate in biosolids, limiting their use; and (4) they can cause the formation of harmful disinfection by-products. Information available during the development of the rule indicated that all facilities subject to the rule were already meeting the zero discharge of pollutants requirement.

Subsequent information to the contrary and a lawsuit, *Pennsylvania Grade Crude Oil Coalition v. EPA* (3rd Cir., 2017) resulted in a remand for EPA to consider the new information and take any appropriate action. Several Pennsylvania operations were "conventional" under Pennsylvania law, but appeared to meet the definition of "unconventional" in the federal UOG rule. As a result, EPA extended the compliance date for those facilities to August 29, 2019, but otherwise did not change the substance of the rule. "Based on EPA's analysis of the new information...the EPA concludes that the zero discharge of pollutants standard is technologically available, economically achievable, and has acceptable non-water quality environmental impacts." Wastewater management alternatives for the non-compliant facilities include existing Class II underground injection control wells and centralized waste treatment, which many of the facilities already use, in addition to sending a portion of their wastewater to POTWs.

EPA/Coast Guard/Vessel Discharges

On July 9, EPA and the U.S. Coast Guard held a joint outreach meeting with intergovernmental associations regarding the development of national standards for discharges incidental to the normal operation of vessels under Clean Water Act (CWA) Section 312(b), recently amended by the Vessel Incidental Discharge Act (VIDA). The agencies are considering 28 types of incidental discharges, including ballast water, fish hold effluent, graywater, and many others. Some incidental discharges have invasive species implications as well as raising water quality concerns.

The agencies noted, "Consultation is requested pursuant to the terms of Executive Order 13132, entitled

'Federalism,' which directs Federal agencies to consult with elected State and local government officials, or their representative national organizations, when developing regulations that preempt State or local law." VIDA limits the extent to which states and local governments may enforce more stringent requirements; State laws relating to the discharge, design, construction, installation, or use of any marine pollution control device would be preempted by VIDA. States would have options to assess fees, and VIDA regulations could be enforced by the EPA, Coast Guard, and the states.

EPA and the Coast Guard are requesting preliminary, meaningful input from states and local governments on the rulemaking effort, particularly during the Federalism Consultation Process between July 9 – September 9. VIDA requires both agencies to develop rules by December 2020, and implement those rules by 2022. The requirements under the new rules can be no less stringent than the existing federal rules, and all existing state, local and federal rules will remain in place until the new rules are implemented. See <https://www.epa.gov/vessels-marinas-and-ports/vessel-incidental-discharge-act-vida>.

PEOPLE

Ray Wendell Rigby, 96, a former WSWC Chair from 1982-1983, passed away last month on June 12. He was appointed by Idaho governors to serve on numerous boards and committees for the state - including representing Idaho on the WSWC for 15 years (1973-1988). His son Jerry currently represents Idaho and served as WSWC Chair from July 2016-2018. Ray founded Rigby, Andrus & Rigby, PLLC in 1950. Because of his background in farming and his knowledge of the value of water and electricity, his law practice emphasis was on water law and rural electric cooperatives and was recognized as one of Idaho's foremost experts in water law and rural electrification law. He worked tirelessly for over 62 years, also as an advocate with countless individuals to ensure that their affairs were in order and their rights were recognized and protected. He received the Idaho State Bar's Professionalism Award, and the Idaho State Bar's highest award, the Distinguished Lawyer Award. He was a loving father, grandfather, and great-grandfather. We express our sincere condolences to Jerry and the rest of Ray's family.

MEETINGS

Western States Water Council - WIMS Workshop

The WSWC in cooperation with the U.S. Geological Survey (USGS) are cosponsoring a Water Information Management Systems (WIMS) and the USGS National Water Use (USGS WU) Data Collaboration workshop on September 16-19, 2019, in Fort Collins, Colorado. For further information as it becomes available, please see: <http://www.westernstateswater.org/2019-wims/>.

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.