



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **ADMINISTRATION**

#### **EPA/CWA §404-Veto Process**

On August 13, the Environmental Protection Agency (EPA) held a conference call with intergovernmental associations as part of its pre-proposal outreach on rulemaking for Clean Water Act (CWA) §404 procedures. Section 404 authorizes the Army Corps of Engineers (Corps), or approved states and tribes, to issue permits for discharges of dredged or fill material into waters of the United States (WOTUS). Section 404(c) authorizes EPA to restrict or veto such a permit whenever it determines that the discharge will have unacceptable adverse effects on municipal water supplies, fish and wildlife, or recreational areas.

EPA's authority can be exercised prior to submission of a permit application, while an application is pending, and after a permit has been issued, after notice and an opportunity for public comment on the proposed determination. EPA has issued a total of 13 §404(c) final determinations since 1972.

The EPA's Office of Water is considering revisions to the §404(c) regulations under the direction of a June 26, 2018 memorandum from former Administrator Scott Pruitt. Proposed revisions include: (1) to identify considerations for when EPA initiates a §404(c) review, such as whether adequate information exists, the degree of certainty as to the nature and magnitude of adverse effects, and the expected impacts on the permittee and the community; (2) to identify how EPA regional offices coordinate with EPA headquarters prior to taking action on a §404(c) review; (3) to update the referral process for the individual permit elevation procedures to reference the 404(q) memorandum of agreement with the Corps; and (4) to create a specific process for how to modify or withdraw a §404(c) final determination.

EPA will hold an informational webinar on September 4, and the pre-proposal comment period closes on September 13.

#### **Reclamation/Colorado River/DCP**

On August 15, the Bureau of Reclamation released its Colorado River Basin 24-month study for August

2019, which sets the annual operations for Lakes Powell and Mead for 2020. Due to above average snowpack in the Upper Basin, Lake Powell's elevation has risen by 50 feet, and the total system storage is at 55% of its full capacity, up from 49% in August 2018. Reclamation estimates that it will release 8.23 million acre-feet of water from Lake Powell in 2020.

Lake Mead's elevation is projected to be 1089.4 feet in January 2020, about 14 feet above the shortage determination trigger of 1,075 feet. However, following the Drought Contingency Plans (DCPs) signed earlier this year, Arizona, Nevada, and Mexico will make water savings contributions to Lake Mead, at an elevation below 1,090 feet.

Commissioner Brenda Burman said: "While we appreciate this year's above average snowpack, one good year doesn't mean the drought is over. We must remain vigilant. I applaud everyone who came together this year to get the drought contingency plans done. The additional actions under the contingency plans will help ensure the reliability of the Colorado River system for the 40 million people dependent upon it." <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=67383>.

#### **Federal Advisory Committee Act/ACWI**

On September 1, the White House Office of Management and Budget (OMB) is expected to announce the termination of a number of federal advisory committees. Last June 14, President Trump issued an Executive Order (EO) requiring that each executive department and agency evaluate the need for its current advisory committees established under Section 9(a)(2) of the Federal Advisory Committee Act (FACA) and those advisory committees established under Section 9(a)(1) that are authorized by law, but not required by statute (eligible committees). By September 30, each agency was directed to terminate at least one-third of its current committees, including where the: (i) stated objectives of the committee have been accomplished; (ii) subject matter or work of the committee has become obsolete; (iii) primary functions have been assumed by another entity; or (iv) agency determines that the cost of operation is excessive in relation to the benefits.

The Department of the Interior's Advisory Committee on Water Information (ACWI) is among those under review. The OMB Director may grant a waiver if OMB concludes it is necessary for the delivery of essential services, for effective program delivery, or because it is otherwise warranted by the public interest. Moreover, each agency that has fewer than three current eligible committees is exempt, and agencies may count eligible committees terminated since January 20, 2017, toward the requirement. The provisions of this order do not apply to any independent regulatory agency.

#### **ADMINISTRATION/WATER QUALITY** **EPA/Clean Water Act – Section 401**

On August 8, the Environmental Protection Agency (EPA) announced the signing of a proposed "Updated Regulations on Water Quality Certifications" rule. The comment period on the proposed action will end 60 days after the rule is published. The pre-publication version (Docket ID No. EPA-HQ-OW-2019-0405) can be found at <https://www.epa.gov/cwa-401>.

EPA is hosting public webinars to help explain the key elements of the proposed rule. EPA will also hold public hearings on September 5 and 6 in Salt Lake City, Utah, at the Salt Lake City Public Library, to provide interested parties the opportunity to present data, views, or information. See <https://www.epa.gov/cwa-401/outreach-and-engagement-cwa-section-401-certification>

#### **State and Tribal Listening Sessions**

EPA will also hold state and tribal listening sessions at the Salt Lake City Public Library around the scheduled public hearings. The tribal listening session will be held on September 4, from 1 to 5 pm. The state listening session will be held on September 5, from 9 am to noon.

A second series of listening sessions will take place at the United States Environmental Protection Agency Region 5 offices at 77 West Jackson Boulevard, Chicago, Illinois. The state listening session will be held on the morning of September 16. The tribal listening session will be held later that afternoon.

#### **ADMINISTRATION/WATER RESOURCES** **NASA/Technology Transfer**

On August 7-9, the National Atmospheric and Space Agency's (NASA) Western Water Applications Office (WWAO) and the Western States Water Council held a workshop in Irvine, California on Technology Transfer and the Transition of Applications from Research to Operations (R2O). The overall goals of the workshop were to: (1) build agency partnerships and a network of experts to facilitate application transition from NASA for water resources management decision support; (2) discover and document best practices for successful

application transition; and (3) identify current barriers to technology transfer and establish pathways to overcome those barriers.

U.S. Rep. Grace Napolitano (D-CA) addressed participants. She is a member of the House Natural Resources Committee and formerly Chaired the Water and Power Subcommittee. She now Chairs the Water Resources and Environment Subcommittee of the House Transportation and Infrastructure Committee. She is a strong advocate for securing a clean, reliable and inexpensive water supply even in times of drought. She has fought for increased water recycling, improved water conservation, and environmental protections for our natural sources of drinking water, as well as supporting desalination, and sound groundwater management and storage.

WSWC Chair Jeanine Jones, California Department of Water Resources, and WSWC Executive Director Tony Willardson welcomed participants. Brad Doorn, NASA, and Indrani Gracyk, WWAO, provided an overview of NASA's Applied Sciences Program and how WWAO supports NASA's role in technology development and transition/transfer. Forrest Melton, WWAO, and Savannah Cooley, NASA, further elaborated on NASA Earth Science applications with a high potential for transfer for use in western water management. A number of speakers covered NASA interagency partnerships addressing an Evaporative Stress Index, Airborne Snow Observatory, Cyanobacteria Assessment Network Project, mapping fallowed Lands in California, and mapping evapotranspiration for the Western U.S.

Various perspectives were presented by federal partners, including representatives from the Environmental Protection Agency, National Oceanic and Atmospheric Administration, U.S. Geological Survey, and U.S. Bureau of Reclamation. State partner perspectives were also presented by agency staff from California, Nebraska, Oregon and Wyoming. Adel Abdallah, WSWC staff, also described our Water Data Exchange (WaDE) and Tony provided an overview of the federal budget process and how to communicate with Congress. The meetings also included a number of breakout groups and discussion of recommendations. NASA/WWAO staff are preparing a summary of the meeting.

#### **MEETINGS**

The National Water Supply Alliance will hold its annual meeting October 3-4 in Pittsburgh, PA at the K&L Gates Center. See <https://www.nationalwatersupply.org/annual-meeting-2019>

The Interstate Council on Water Policy will hold its annual meeting October 8-10 in Mobile, Alabama at the Mobile Renaissance Riverview. See <https://icwp.org/>

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**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.**