



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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ADMINISTRATION/WATER QUALITY EPA Science Advisory Board/CWA/WOTUS

A draft 8-page commentary document yet to be reviewed and approved by the Science Advisory Board (SAB) for Environmental Protection Agency (EPA) Administrator Andrew Wheeler, addresses the proposed rule defining the scope of Waters Federally Regulated Under the Clean Water Act (CWA), discusses the “scientific and technical underpinnings of the proposed WOTUS rule, and concludes that aspects of the proposed rule are in conflict with established science, the existing WOTUS rule developed based on the established science, and the objectives of the Clean Water Act.”

Excerpts from the draft, prepared by a SAB Waters of the United States (WOTUS) workgroup, state: “The SAB finds that the proposed revised definition of WOTUS (84 FR 4154)... decreases protection for our Nation’s waters and does not support the objective of restoring and maintaining ‘the chemical, physical and biological integrity’ of these waters.... [T]he Board offered to support EPA in the application of more recent scientific advances to increase clarity and consistency for CWA needs. However, it was made clear that the EPA has chosen to interpret the CWA and subsequent case law as constraining them to limiting the definition of WOTUS to the language of the proposed rule. The SAB acts under no such constraint to give deference to shifting legal opinions in its advisory capacity and is in fact obligated by statute to communicate the best scientific consensus on this topic.”

“The proposed Rule does not fully incorporate EPA’s 2015 Connectivity Report (U.S. EPA 2015)...and is a substantial departure from the earlier WOTUS rule definition. The EPA’s 2015 Connectivity Report emphasizes that functional connectivity is more than a matter of surface geography. The report illustrates that a systems approach is imperative when defining the connectivity of waters, and that functional relationships must be the basis of determining adjacency....”

“The proposed Rule neglects established science pertaining specifically to the connectivity of ground water to wetlands and adjacent major bodies of water by failing

to acknowledge watershed systems and processes discussed in EPA’s 2015 Connectivity Report. In particular, there is no scientific justification for excluding ground water from WOTUS if spring-fed creeks are considered to be jurisdictional. The chemical or biological contamination of ground water may lead to contamination of functionally connected surface water. Ground water may also contribute to intermittent flow of jurisdictional tributaries. Shallow ground water may directly connect wetlands to adjacent major bodies of water. Therefore, the scientific importance of ground water protection and ground water connections should require that these waters be protected from unacceptably high contamination. The same threats apply to those bodies of water that only occasionally flow, such as the arroyos of the Southwest United States....”

“The proposed Rule excludes irrigation canals from the definition of WOTUS. The biological and chemical contamination of large-scale irrigation canals is an established and serious threat to public health and safety. The presence of E. coli in leafy vegetables is often traceable to irrigation water contaminated by animals in feed lots or pastures adjacent to the canals. Water associated with confined animal feeding operations has also been shown to contain chemical contaminants, such as steroids, that are associated with public health concerns....”

“The definition of jurisdictional waters in the proposed Rule also departs from established science cited by EPA in support of the 2015 WOTUS Rule, in the exclusion of adjacent wetlands that do not abut or have a direct hydrologic surface connection to otherwise jurisdictional waters. SAB review of the 2015 WOTUS rule found a sound scientific basis for the inclusion of these wetlands (U.S. EPA Science Advisory Board 2014). No body of peer reviewed evidence has been presented to support an alternative conclusion.”

“The proposed Rule portrays three Supreme Court decisions as establishing a coherent basis for drawing simple ‘bright lines’ to determine jurisdictional waters for the purpose of the CWA; however, by abandoning a scientific basis to adopt a simplistic, if clear surface water-based definition, this approach neither rests upon science, nor provides long term clarity, as is evidenced

by the continuing interpretation and re-interpretation of these decisions over time. However, we understand that the EPA and Department of the Army will abide by their current interpretation of the law."

"In summary, the SAB is disappointed that the EPA and Department of the Army have decided that the CWA and subsequent case law precludes full incorporation of the scientific aspects of EPA's 2015 Connectivity Report into the proposed Rule. The proposed definition of WOTUS is not fully consistent with established EPA recognized science, may not fully meet the key objectives of the CWA - 'to restore and maintain the chemical, physical and biological integrity of the Nation's waters,' and is subject to a lack of clarity for implementation. The departure of the proposed Rule from EPA recognized science threatens to weaken protection of the nation's waters by disregarding the established connectivity of ground waters and by failing to protect ephemeral streams and wetlands which connect to navigable waters below the surface."

"It is readily apparent that a conflict exists between current, recognized hydrological science versus the CWA and its subsequent case law. This suggests that new legislation is needed to update the CWA to reflect scientific discoveries since 1972." For copies of the draft contact the Council's office.

ADMINISTRATION/WATER RESOURCES **USDA Rural Development/California/Sites Reservoir**

Last month, U.S. Department of Agriculture (USDA) Secretary Sonny Perdue told *Western Farm Press*, "The USDA is putting up almost \$500 million in rural development funds," to help improve water management in California and build innovative systems to increase efficiency and reliability. Low interest USDA loans will help fund a facility to connect the Tehama-Colusa and Glenn-Colusa canals in the Sacramento Valley to allow for more flexible water management, particularly during drought conditions. According to Perdue, federal efforts to help California upgrade its aging water infrastructure and address a shortage of agricultural water all over the state is one of the promises President Trump made to California farmers (*Western Farm Press*, Dec. 10, 2019).

USDA funds could also be used for other facilities associated with the proposed Sites Reservoir Project in western Colusa County, near Maxwell, in northern California. As originally proposed, Sites would be an 1.8 million acre-foot off-stream reservoir diverting flood flows when available 14 miles from the Sacramento River. It could increase northern California's storage capacity by 15%. Environmental reviews continue and any possible construction is years away. The \$5.2 billion project has a promise of \$816 million in state bond funding, for "public benefits," plus \$449 million in federal funding (referred to by Secretary Perdue). Moreover, the

Metropolitan Water District of Southern California offered to purchase 50,000 acre-feet of water if the project is built.

Jim Watson, Sites Project Authority General Manager, said the USDA stepped up with the rural development funds after negotiations determined that connecting the canal would have far-reaching benefits for rural communities, even without the construction of Sites.

The Sites Valley has long been viewed by some as an ideal location for additional off-stream storage to benefit instream flows, the Delta ecosystem, and water supply. In 2010, several public agencies created the Sites Project Authority to develop a sustainable approach that balances the needs for environmental, urban and agricultural water supplies, engaging the public, stakeholders, state and federal agencies and landowners. The Authority's Board of Directors includes representatives of Colusa and Glenn Counties, the City of Sacramento, Colusa County Water District, Glenn-Colusa Irrigation District, Sacramento County Water Agency, Reclamation District 108, Tehama-Colusa Canal Authority and the Westside Water District. The California Department of Water Resources and the U.S. Bureau of Reclamation are non-voting members. The Authority initiated required environmental reviews and began feasibility studies.

PEOPLE

On December 27, Nevada Governor Steve Sisolak appointed **Micheline Fairbank**, Deputy Administrator (Water Rights), Nevada Division of Water Resources (NDWR); **Adam Sullivan**, Deputy Administrator (Hydrology), NDWR; and **Jennifer Carr**, Deputy Administrator, Nevada Division of Environmental Protection (NDEP) to the WSWC. Governor Sisolak also appointed **Bradley Crowell**, Director, Nevada Department of Conservation and Natural Resources; **Tim Wilson**, Acting State Engineer, Nevada Division of Water Resources; **Greg Lovato**, Administrator, NDEP; and **James Bolotin**, Deputy Attorney General, Nevada Attorney General's Office to serve as alternate representatives. **Roland Westergard**, former State Engineer, and long-time WSWC member will also continue to serve as an alternate member.

The WSWC is pleased to announce the hiring of **Ryan James** as a Data Analyst/Hydroinformatics Specialist. Ryan, previously an intern with the WSWC, will continue to work on the Water Data Exchange (WaDE) program. Ryan earned his Master's Degree at Utah State University in civil and environmental engineering with an emphasis on water resources. His thesis was on relating residential household behaviors and water conservation choices to inform water managers in prototyping new conservation policies.