ADMINISTRATION/WATER RESOURCES
Bureau of Reclamation/Drought

Through the WaterSMART Drought Response Program, the Bureau of Reclamation is providing grants to develop and update drought contingency plans that build long-term resiliency. Eligible applicants for funding include states, tribes, irrigation districts, water districts, or other organizations with water or power delivery authority located in the 17 Western United States and Hawaii. Reclamation may provide up to $200,000 per agreement to develop new drought plans or update existing plans. In general, recipients must match the funding with a 50% cost share from a non-federal source. In exceptional circumstances, a reduction or waiver of the non-federal cost-share may be considered. Applications for fiscal year 2020 funding are due Wednesday, Feb. 5, 2020, at 4:00 p.m. MST. Learn more at www.grants.gov by searching for funding opportunity number BOR-DO-20-F003.

“The drought planning that emerges from this program is a big win for both Reclamation and its partners. When implemented, it will increase water supply reliability, improve water management and provide benefits for fish, wildlife, and the environment. That's impactful,” said Reclamation’s Drought Response Program Manager Darion Mayhorn. See usbr.gov/drought.

EPA/Drinking Water SRFs

On January 7, the Environmental Protection Agency (EPA) announced a new policy allowing Drinking Water State Revolving Funds (DWSRFs) to be used for purchasing water rights under certain circumstances. EPA's regulations (40 CFR 35.3520(e)(2)) prohibit the use of DWSRF funds for the purchase of water rights, under the presumption that newly acquired water rights would be used to support future population growth, which is in turn prohibited by the Safe Drinking Water Act (42 USC 300j-12(g)(3)(C)).

In 2018, three communities in Idaho, Nebraska, and Nevada requested and received approval for deviations from this prohibition due to contamination of existing water supplies. In 2019, a project in Arizona requested a deviation due to drought conditions and the need to ensure adequate drinking water for existing residents in a community. Further requests are anticipated from Colorado, Idaho, Nebraska, Oklahoma, and Oregon.

On the basis of these requests for deviations, EPA has determined that a class deviation is appropriate for DWSRF projects that meet the following criteria, described in the Policy and Technical Evaluation for a DWSRF Class Deviation for Purchase of Water Rights: (1) the project directly addresses a compelling, imminent public health threat; (2) the project is a cost-effective alternative; (3) DWSRF funding is a significant factor in proceeding with the project; (4) any financial assistant agreements must be equal to or less than the design life (or duration of water rights) of the project; and (5) the main project purpose cannot be to prepare for future growth. The purchase of water rights must be to make use of the water, not for investment purposes. Although permanent water rights are optimal, temporary water rights are acceptable as long as the agreement does not outlast the time period for the water rights. States intending to use this class deviation for projects must inform their EPA Regional Project Officer. The first project from each state requesting this class deviation must be reviewed by the EPA Region in collaboration with EPA Headquarters to ensure national consistency and awareness.

The EPA Office of Groundwater and Drinking Water made the following observations about expanding the utility of the DWSRFs to meet public health needs: “Water rights have become important in western communities suffering from drought conditions and in the Midwest due to aquifer contamination. Several states have available capacity to fund additional projects. Allowing state DWSRF programs to support projects with a water rights purchase component, for which the community might otherwise seek other funding for the whole project, provides states with a larger pool of projects to fund. Expanding eligibilities to include water rights will help reduce the amount of unspent Federal funds, or unliquidated obligations (ULOs), in accordance with the EPA’s 2014 ULO Reduction Strategy. The EPA DWSRF Team is educating and encouraging state DWSRF programs to increase their full fund utilization, which includes loan repayments, interest earnings, bond
proceeds, and other fees, in addition to the Federal funds. A class deviation for water rights expands DWSRF eligibilities, promotes the effective use of DWSRF assistance, and ensures available funds are invested in drinking water infrastructure projects and protecting public health."

CONGRESS/WATER QUALITY
CWA/Nonpoint Source Pollution

On January 8, the Senate Environment and Public Works Committee held a hearing entitled “The Nonpoint Source Management Program Under the Clean Water Act: Perspectives from States.” Witnesses included Jennifer Zygmunt, Wyoming Department of Environmental Quality (DEQ), and Ben Grumbles, Maryland Department of the Environment.

Zygmunt provided an overview of Wyoming’s Nonpoint Source Program, which addresses a broad range of unregulated pollutant sources, from natural erosion during spring runoff to agricultural, residential, urban, construction, livestock, and septic systems. As of 2018, nonpoint source pollution contributed to 89% of the water quality impairments in Wyoming. Approximately 45% of Section 319 grant funds are used to support full-time employees implementing various aspects of the nonpoint source program, and the other 55% is awarded as pass-through funds for voluntary, locally-led watershed protection and restoration projects. The majority of projects are sponsored by Wyoming’s 34 local conservation districts, which provide an important link between DEQ and local stakeholders.

She noted that factors affecting whether a land will cause nonpoint source pollution are variable, and strategies to mitigate those effects vary from state to state and even from watershed to watershed. States need the flexibility to adapt Section 319 programs to meet unique nonpoint source needs. Wyoming is a headwater state, with over 50% public land, and agriculture, outdoor recreation and tourism are critical industries; Thus, partnerships and collaborations with other states, federal agencies, the agricultural community, and others are critical to the success of their nonpoint source program. In particular, the partnership between the Wyoming DEQ and Wyoming Natural Resources Conservation Service has improved the effectiveness of conservation and water quality programs; She encouraged the federal agencies to gather state feedback on how the National Water Quality Initiative can be improved.

Zygmunt said aspects of the Section 319 program that are working well include: (1) the voluntary approach that leads to productive dialogue, information sharing, innovative solutions, long-lasting partnerships, and multiple benefits; (2) local leadership that leads to greater support, awareness, partnerships, and access to financial and technical resources; (3) partnerships to build trust, raise awareness, and leverage resources toward common goals; (4) having a Nonpoint Source Task Force with voluntary members appointed with diverse interests; (5) data to show environmental measures of success; and (6) flexibility in determining the best use of grant funds, the amount of resources to put toward surface or groundwater, whether to target specific watersheds, and whether to focus on restoring impaired watersheds or protecting healthy waters. She recommended streamlining the grant awards process to avoid unnecessary delays; leaving review of watershed-based plans to the states; and carefully considering input from all states before making any changes to the Section 319 allocation formula.

Grumbles emphasized the important role of EPA as an enforcer to hold states accountable to address nonpoint source pollution for impaired interstate waters, such as the Chesapeake Bay restoration. He noted the importance of the Section 319 grant funds for small local communities participating in mitigation programs. He also spoke of climate change as a threat multiplier, with anticipated increases in precipitation volume and intensity leading to greater runoff and nonpoint source pollution. He talked about the “value of national progress under the Clean Water Act and the need for bipartisan support for continued environmental progress. Federal and state agencies must work together, in the spirit of cooperative federalism, to meet our national, state, regional and local goals.”

He said Governor Larry Hogan (R-MD), Chair of the National Governors Association (NGA), has focused his year-long initiative on infrastructure, including repair, enhancement, and modernization of aging water systems, “through innovative public-private partnerships, smarter technologies, and a strong focus on resilience.” NGA’s Water Policy Institute is looking at technology and approaches states are using to address emerging contaminants, rural and agricultural water needs, increased droughts, stormwater, funding and financing water infrastructure improvements. “Strategies for clean and safe water...must be comprehensive and integrated, with flexibility that also includes accountability.”

PEOPLE

On February 1, 2020, Maia Bellon, WSWC Member and Director of the Washington State Department of Ecology, will join the firm of Cascadia Law Group. Maia has been the Director of the Washington State Department of Ecology since 2013, where she served as one of Governor Inslee’s closest advisors on climate, water, toxics, and air quality issues. Maia was appointed to the WSWC in August 2011 and has served on the Water Quality and Water Resources Committees. We congratulate Maia on her new position and wish her all the best in her future endeavors.