

**Federal Regulatory Issues
July 2018 Update**

Environmental Protection Agency		
Issue	Summary	Status
Clean Water Act Rule	The 2015 rule was designed to “provide clarity for determining where the Clean Water Act applies and where it does not.” However, ACWA believes the rule expands the number of water bodies falling under the law’s jurisdiction. ACWA’s comment letter requested water conveyance systems and water infrastructure adjacent to “navigable waters” be excluded from the proposed rule.	President Trump issued an executive order remanding the 2015 rule back to the Agencies for review and revision on 2/28/2017. ACWA provided written recommendations on potential new revisions to the definition of “waters of the United States” on 11/17/2017. Implementation of the 2015 Rule has been delayed until 2/6/2020. New rule anticipated fall 2018.
Subsurface/ groundwater connection and NPDES permits	EPA is seeking public comments on the proper scope of its authority under the CWA to regulate discharges of pollutants from a point source to navigable waters regardless of whether the pollutant enters navigable waters directly or indirectly from another source, such as groundwater. In its request for comment, EPA explained that conflicting court decisions and past EPA statements in rulemakings, permitting actions, and guidance documents have raised questions about whether releases to groundwater or other subsurface flow that reach jurisdictional surface waters should be subject to CWA jurisdiction.	ACWA’s comment letter emphasizes that the potential groundwater connection that water re-use facilities, stormwater management basins, groundwater recharge basins, constructed wetlands and similar water and wastewater infrastructure have to jurisdictional waters is not sufficient to require National Pollution Discharge Elimination System (NPDES) permits. ACWA requested EPA clarify in rulemaking that these water and wastewater infrastructure facilities do not require NPDES permits for their potential subsurface connection to “waters of the United States.” Comments were due May 21, 2018.
WIFIA Implementation Rules on Credit Assistance and Fees	This new source of funding can be used to finance water infrastructure projects that cost at least \$20 million for large communities and \$5 million for small communities (population of 25,000 or less). WIFIA assistance may not exceed 49% of a project’s eligible costs and total federal assistance may not exceed 80% of a project’s eligible costs.	Congress provided \$63 million in funding for FY 2018. Letters of interest, the first step in the project application process, are due 7/6/2018. For FY 2017, EPA selected 12 projects to move forward in the loan application process on, four of them are located in California.
Evaluation of Existing Regulations	EPA is seeking input on regulations that may be appropriate for repeal, replacement, or modification	Comments due 5/15/2017. EPA received over 400,000 letters.

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Technical Report on Protecting Aquatic Life From the Effects of Hydrologic Alteration	Technical report “was developed because hydrologic alteration can be a contributor of impairment for water bodies that are designated to support aquatic life.” It has both legal and policy implications as states are encouraged to set flow targets for every river. The report touches on everything from dam operations to water diversions and groundwater regulations and fails to recognize state sovereignty.	Water community united in opposition to this report and requested the policy and legal sections of the document be removed. ACWA participated in a variety of coalitions that provided comment. Final document released 12/21/2016 and is more technically focused than the draft but concerns remain.
Revised Lead and Copper Rule	EPA is currently evaluating and developing supporting materials for proposal and seeking more stakeholder input on how to set partial line replacement requirements. Also examining how water utility customers will pay for replacements.	EPA held a federalist consultation meeting on proposed updates to the rule on 1/8/2018. ACWA worked with AWWA and AMWA to provide comments on 3/8/2018.
Perchlorate	EPA made a determination to regulate perchlorate on 2/2/11. SAB submitted final report to EPA using novel method for assessing risk to children 5/29/2013.	NRDC sued EPA to force them to establish a national standard last February. Judge ruled in favor of NRDC 9/19/2016. EPA was unable to meet its 10/18/2017 deadline to complete the study that will be the foundation for the drinking water standard. EPA released the final peer reviewed report on the science that will be used to determine the perchlorate drinking water standard on 4/04/2018.

Army Corps of Engineers		
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7001 Project Requests	Section 7001 of WRRDA 2014 requires that the Secretary of the Army to submit an annual report to Congress that identifies, for potential congressional authorization, completed feasibility reports, proposed feasibility studies, and proposed modifications to authorized projects or studies that meet specific criteria. The Annual Report is to be based, in part, upon requests for proposals submitted by non-Federal interests	Proposals by non-Federal interests for feasibility studies and modifications to an authorized USACE water resources development project or feasibility study are due 8/9/2017. Two California projects were included in the Report to Congress released 2/1/2018.
Water Supply Rule	The proposed rule is intended to update policies to enhance the Corps' "ability to cooperate with state and local interests in the development of water supplies." Topic areas addressed by the proposal include explanation of the purpose and scope of Corps authority to include storage for water supply; the definition of "surplus water"; and pricing methodologies for surplus water contracts and water supply storage agreements.	Proposed on 12/16/2016. Comments period extended to 11/16/2017. ACWA, along with NWRA and the Texas Water Conservation Association, asked for the rule to be held in abeyance.
Clean Water Act Rule	See information under EPA.	Implementation of the 2015 Rule has been delayed until 2/6/2020. New rule anticipated fall 2018.
Evaluation of Existing Regulations	The Corps seeking input on regulations that may be appropriate for repeal, replacement, or modification.	Comments due 10/18/2017. ACWA worked with the Texas Water Conservation Association to provide comments.

Endangered Species Act Implementation		
Issue	Summary	Status
Mitigation Policy Executive Order 3349	Directs the Department of Interior to suspend, revise, or rescind existing agency actions on the recently updated mitigation policies including the FWS Mitigation Policy and Compensatory Mitigation Policy described below.	Issued on 3/28/2017. By April 28, the Deputy Secretary shall determine whether to proceed with reconsideration, modification, or rescission. If actions require modification, the heads of each bureau must submit draft revisions or substitutions to the Deputy Secretary for review by June 27.
Mitigation Policy Review	Per E.O. 3349, FWS is soliciting public review of and comment on its Mitigation Policy and its Endangered Species Act - Compensatory Mitigation Policy. Specifically, FWS is looking for input on whether to retain or remove “net conservation gain” as a mitigation planning goal.	ACWA, working with NESARC, provided comments on 1/5/2018.
Evaluation of Existing Regulations: ESA	The Department of Interior seeking input on regulations that may be appropriate for repeal, replacement, or modification.	ACWA, working through NESARC, provided input on how Fish and Wildlife Service could improve implementation of the ESA on 11/1/2017.
National Marine Fisheries Service listing and recovery priority guidelines	NMFS states that it is “revising the guidelines to better prioritize limited agency resources to advance the recovery of threatened and endangered species guided by the immediacy of the species’ overall extinction risk, extent of information regarding major threats, and certainty that management or protective actions can be implemented successfully.”	Issued on 5/31/2017, comment period extended to 8/28/2017. ACWA worked with NESARC to provide comments.
Revisions to FWS Mitigation Policy	Updates FWS 1981 mitigation policy and applies it to the ESA for the first time. The proposed mitigation framework uses a landscape scale approach to achieve mitigation that takes into account climate change. It sets a goal of a “net conservation gain” for proposed mitigation projects and establishes a floor of “no net loss”.	Proposed 3/8/2016. ACWA worked with NESARC to provide comments on ESA implications on 6/13/2016. Final policy released on 11/21/2016. ACWA is advocating to rescind this policy.

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Compensatory Mitigation Policy	Intended to be used in conjunction with the revised mitigation policy (see above). It covers all compensatory mitigation mechanisms and establishes a landscape-level approach to mitigation planning and implementation. Like the mitigation policy above it sets policy it sets an absolute floor of “no net loss”.	Proposed on 9/2/2016. NESARC requested an extension of the comment period until 12/1/2016. Request for extension denied, NESARC submitted comments on 10/17/2016. Final policy released 12/27/2016 and went into effect immediately. ACWA is advocating to rescind this policy.
Habitat Conservation Planning Handbook Revisions (Joint with NOAA)	Significantly revises a handbook that was first issued in 1996 and last updated in 2000. The draft handbook describes requirements, procedure, and guidance for the development of habitat conservation plans supporting the issuance of incidental take permits. Updates reflect advances in data gathering techniques (e.g. GIS, other tools), as well as, new federal initiatives related to climate change and landscape conservation, etc.	Proposed on 6/28/2016. ACWA, working with NESARC provided comments on 8/29/2016. Final handbook released 12/23/2016 and went into effect immediately. ACWA is advocating to rescind these changes to the handbook.
Revisions to Candidate Conservation Agreements with Assurances (Joint with NOAA)	Proposal would add and define the term “net conservation benefit” to FWS policy and eliminate the consideration of “other necessary properties” when determining the benefits of CCAAs. It is designed to clarify the level of conservation effort each agreement needs to include in order for the Service to approve an agreement.	ACWA, working with NESARC, submitted comments on 7/5/2016. Final policy released 12/27/2016. Trump administration is conducting a review of this policy. ACWA, working through NESARC, provided comments on 1/22/2017.