



Memorandum

To: Office of Information and Regulatory Affairs, Office of Management and Budget
From: Best Best & Krieger LLP
Date: March 18, 2020
Re: RIN 0710-AA84, Reissuance and Modification of Nationwide Permits: New Nationwide Permit for Water Reuse, Recycling, and Recharge Projects

On behalf of the Coachella Valley Water District, we respectfully submit the following views on the Proposed Reissuance and Modification of Nationwide Permits:

We support a new proposed nationwide permit for projects that reuse or recycle water or recharge groundwater:

The Administration has recognized the benefits of water reuse, recycling, and groundwater recharge projects. In the recently released Navigable Waters Protection Rule, the Army Corps of Engineers and Environmental Protection Agency (EPA) stated: “The agencies recognize the importance of water reuse and recycling, particularly in the arid West where water supplies can be limited and droughts can exacerbate supply issues. This exclusion is intended to avoid discouraging or creating barriers to water reuse and conservation practices and projects. Detention and retention basins can play an important role in capturing and storing water prior to beneficial reuse. Similarly, groundwater recharge basins and infiltration ponds are becoming more prevalent tools for water reuse and recycling.” Department of the Army and EPA, The Navigable Waters Protection Rule: Definition of “Waters of the United States,” at 271 (prepublication document Jan. 23, 2020).

In the EPA’s February release of the National Water Reuse Action Plan, the Administration included as an action: “propose a new nationwide permit to clarify the U.S. Army Corps of Engineers general permitting of certain activities associated with water reuse projects” so that “certain activities associated with construction of facilities and infrastructure related to water reuse projects could be approved at a more rapid rate.” We strongly support this proposal, and believe that it would be a significant step in expediting these water infrastructure projects and increasing water reliability and resilience in the arid West.



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The new proposed nationwide permit should be flexible as to the sources of water served by groundwater recharge projects:

We request that the Army Corps avoid constraints in the permit proposal that could limit its coverage to recharge projects that only use recycled treated wastewater or otherwise constrain their usefulness for projects that recharge groundwater basins. In California, groundwater recharge projects are a critical tool for conserving and storing water and avoiding loss to evaporation. Because of seasonal variations in precipitation, water flow, irrigation, and runoff, along with complex interconnections, water rights, and operational requirements to benefit listed species, the sources of water being recharged in California and the arid West can be mixed and vary over time for a single project. For example, California regulations require recycled water to be mixed with other waters under certain circumstances. Other projects may be designed to capture stormwater certain times of the year, and water transferred from other basins other times of the year. For the proposed nationwide permit to be useful, it is critical that it have coverage that is flexible as to the project's purposes and is not constrained based on the source or mixture of sources of water being recharged. As with most nationwide permits, the focus of its coverage should be on aquatic impacts and whether related conditions are met.

In addition, recharge and recycling projects generally involve spreading grounds and channels that are large and environmentally beneficial. Therefore, the nationwide permit will only be useful if it does not include acreage limits that preclude the largest and most beneficial projects.

We request preamble language that provides notice that a final reissuance or modification of nationwide permits may include a nationwide permit that covers groundwater recharge projects:

Our strong preference is for the proposed new nationwide permit itself to cover all groundwater recharge projects that meet the standard conditions, regardless of the source of water they are intended to serve immediately or over time.

If it is not possible at this stage for the proposed rule itself to cover groundwater recharge projects that would use water from a flexible range of sources, we request that the proposed rule's preamble specifically seek comment on the issue, so that the Army Corps can consider public and stakeholder views and provide sufficient notice to preserve the option under the Administrative Procedure Act for a final rule that has this flexibility.