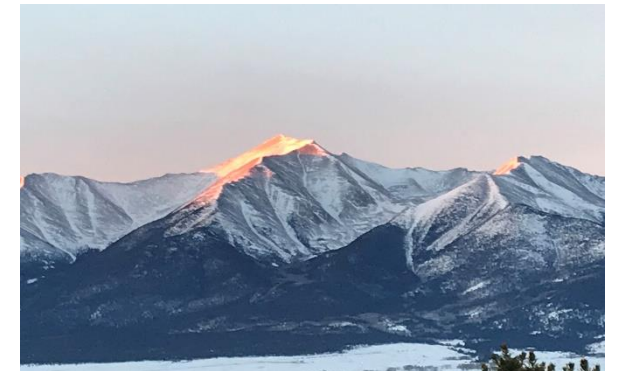


# WESTCAS Regulatory Committee

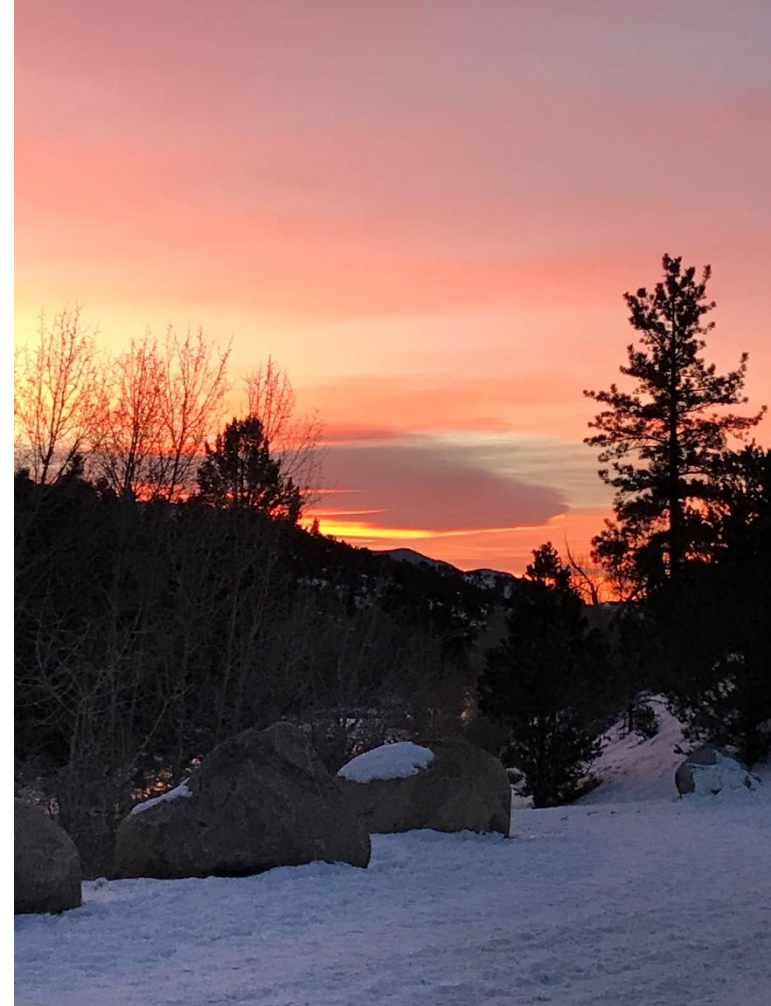
## Kelly Collins - Chair

October 23, 2019



# Agenda

- Introduction
- WESTCAS Regulatory Matrix
  - Aluminum Implementation (Bob Gensemer)
  - Lead and Copper
  - Water Reuse Action Plan
- Endangered Species Act recent changes





	PROJECT	DESCRIPTION	STATUS	TASKS/DEADLINES
	<b>Aluminum Criteria</b>	EPA issued draft implementation guidance	<ul style="list-style-type: none"> <li>Final aluminum criteria issued</li> <li>The draft TSD addresses four issues: (1) flexibility that a State has when adopting the EPA recommended criteria; (2) frequency and time period for collection of input parameter data; (3) methods to reconcile model outputs and derive criteria values; and (4) methods for a State to implement the criteria in its CWA programs.</li> </ul>	<ul style="list-style-type: none"> <li>Monitor EPA activity; assess implementation guidance</li> </ul>
	<b>Chloride Criteria</b>	EPA developing recommended aquatic life criteria for chloride	<ul style="list-style-type: none"> <li>EPA developing new criteria guidance for chloride, which are expected to be similar to Iowa standards, sulfate and hardness-dependent</li> <li>WESTCAS Position Paper on Salinity Water Quality Regulation concurs with this approach</li> </ul>	<ul style="list-style-type: none"> <li>Consider whether to recommend to EPA that it move ahead to issue this guidance for comment</li> <li>WESTCAS Conductivity Champion is Peggy Glass</li> </ul>
	<b>Conductivity Standards</b>	EPA developing stringent recommended conductivity water quality criteria	<ul style="list-style-type: none"> <li>EPA has indicated that taking further action on conductivity guidance is a low priority, and that no action is expected in near future</li> <li>WESTCAS position paper on Salinity Water Quality Regulation</li> </ul>	<ul style="list-style-type: none"> <li>Monitor activity at EPA and in States on conductivity issues, including on water quality standards, TMDLs and permits</li> </ul>
	<b>Definition of Waters of the United States</b>	EPA and USACE proposed definition of WOTUS	<ul style="list-style-type: none"> <li>2/14/2019 Proposed definition of WOTUS issued for comment; WESTCAS submitted comments generally in favor of the proposal, with some suggested changes; 620,000 public comments submitted</li> <li>10/22/2019 Repeal of 2015 Clean Water Rule finalized</li> <li>12/23/2019 Repeal of 2019 Clean Water Rule effective</li> </ul>	<ul style="list-style-type: none"> <li>Watch for final definition of WOTUS</li> <li>Need new WESTCAS WOTUS champion</li> </ul>
	<b>Draft EPA documents</b>	Rescind all draft documents > 2 years old	<ul style="list-style-type: none"> <li>9/4/2019 EPA announced Effective immediately, all draft documents that were issued more than two years ago and that have not been finalized are hereby rescinded.</li> <li>EPA has not developed/released a list of these documents</li> </ul>	<ul style="list-style-type: none"> <li>Watch for list of documents – if there are any that are useful, write letter asking for them to be finalized</li> </ul>
	<b>Lead and Copper</b>	Update requirements for lead service lines, analysis, add trigger level	<ul style="list-style-type: none"> <li>10/10/2019 Pre-publication of proposed changes</li> </ul>	<ul style="list-style-type: none"> <li>Comments due 60 days after FR notice</li> <li>Need WESTCAS Lead and Copper Champion to develop comments</li> </ul>

	<b>Permitting for Discharges to Groundwater</b>	Application of NPDES permit program to discharges to groundwater with hydrologic connection to surface waters	<ul style="list-style-type: none"> <li>• 2/20/18 EPA issued request for comment on Clean Water Act coverage of “discharges of pollutants” to groundwater via a direct hydrologic connection to surface waters - <a href="https://www.gpo.gov/fdsys/pkg/FR-2018-02-20/pdf/2018-03407.pdf">https://www.gpo.gov/fdsys/pkg/FR-2018-02-20/pdf/2018-03407.pdf</a> .</li> <li>• Comments submitted by WESTCAS</li> <li>• 4/23/2019 EPA issued Interpretative Statement excluding all releases of pollutants from a point source to groundwater from NPDES program coverage, regardless of a hydrologic connection between the groundwater and jurisdictional surface water. This statement does not apply to the 4<sup>th</sup> and 9<sup>th</sup> circuit (WESTCAS members in CA, NV, AZ)</li> </ul>	<ul style="list-style-type: none"> <li>• Watch 9<sup>th</sup> circuit for action</li> </ul>
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	<b>Water Reuse Action Plan</b>	Key actions that support consideration and implementation of water reuse across the water sector	<ul style="list-style-type: none"> <li>• 9/10/2019 EPA Draft National Water Reuse Master Plan</li> </ul>	<ul style="list-style-type: none"> <li>• Comments due 12/16/2019 Docket No. EPA-HQ-OW-2019-0174</li> <li>• Need WESTCAS Reuse Champion</li> </ul>
	<b>401 Certification</b>	State certification of water quality permits	<ul style="list-style-type: none"> <li>• 8/22/2019 FR notice Docket ID No. EPA-HQ-OW-2019-0405. Limits certification to water quality impacts from point source discharges; establishes 1-year time frame</li> <li>• 10/21/2019 WESTCAS submits comments supporting EPA’s proposal</li> </ul>	<ul style="list-style-type: none"> <li>• Monitor final to see what changes were made and update WESTCAS membership</li> </ul>



## MEET GEI'S

Robert Gensemer, Ph.D.  
Vice President & Senior Ecotoxicologist

Dr. Robert (Bob) Gensemer has 30 years of academic and industrial experience in aquatic ecology and limnology, ecotoxicology and ecological risk assessment. Bob received his Ph.D. in Biological Sciences from The University of Michigan in 1989, and a Bachelor of Arts, majoring in Botany and Microbiology, from The Ohio Wesleyan University in 1982.



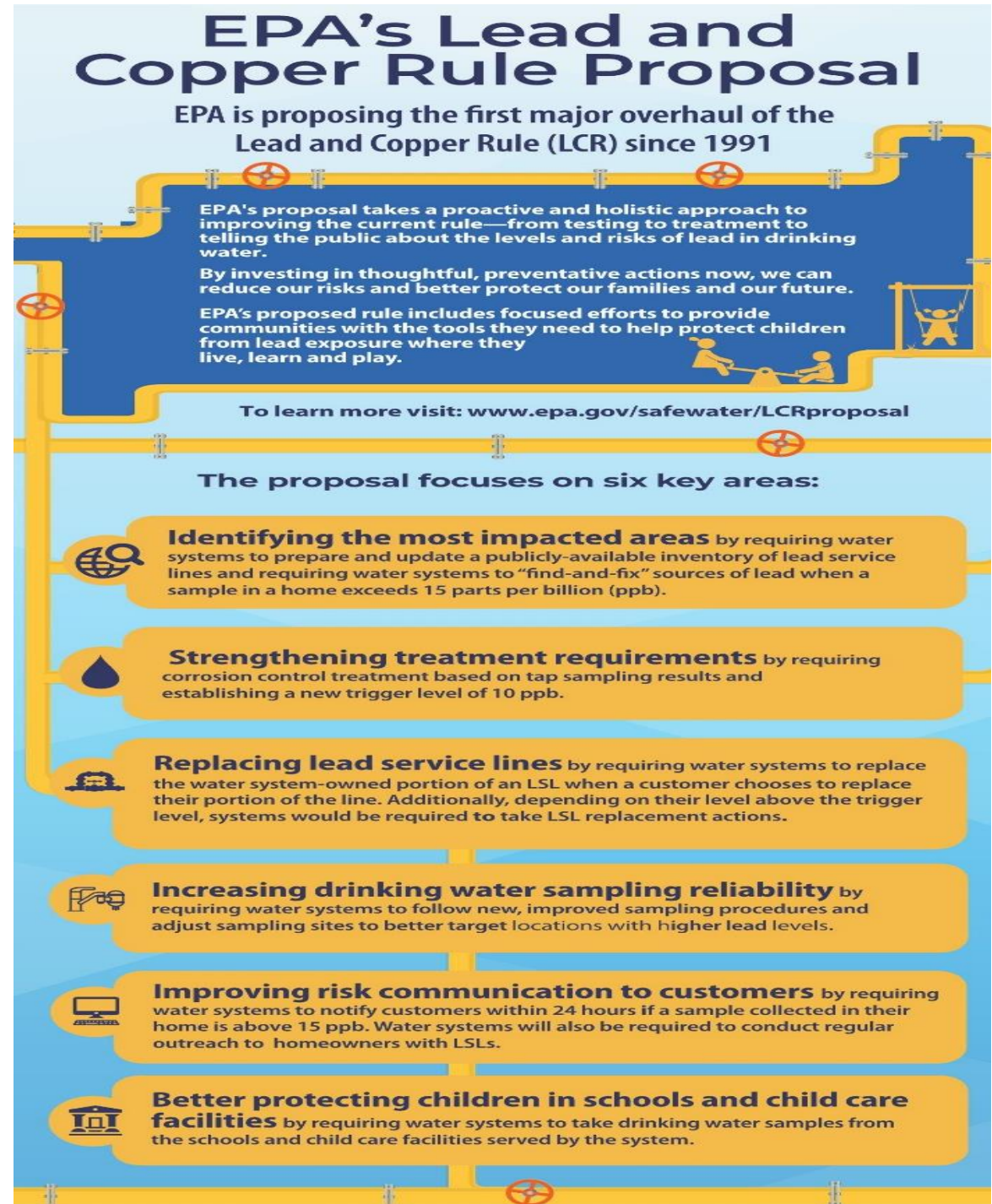
# Lead and Copper

Docket ID No. EPA-HQ-OW-2017-0300

Pre-Publication: 10/10/2019

60 day comment period

Who will be the WESTCAS  
Lead & Copper  
Champion?



Now	Then
<ul style="list-style-type: none"> <li>• Materials inventory required for tap sampling.</li> <li>• Action required if more than 10% of tap samples &gt;15 ppb</li> <li>• No follow-up samples for sites greater than 15 ppb</li> </ul>	<ul style="list-style-type: none"> <li>• Require a public lead service line inventory.</li> <li>• Identifying the cause and mitigating at individual locations with Pb&gt;15 ppb</li> </ul>
<ul style="list-style-type: none"> <li>• Requirements are based on system size.</li> <li>• No requirement to re-optimize their CCT unless directed State or when Pb&gt;15 ppb</li> </ul>	<ul style="list-style-type: none"> <li>• Pb &gt; 10 ppb must reevaluate their existing CCT or conduct a treatment study</li> </ul>
<ul style="list-style-type: none"> <li>• No requirements to replace LSL when Pb&lt; 15 ppb</li> <li>• 7% mandatory annual replacement rate can be met with partial removals and testing out</li> </ul>	<ul style="list-style-type: none"> <li>• Remove LSL when customer does</li> <li>• Pb&gt; 10 ppb negotiate LSL removal rate</li> <li>• Pb &gt; 15 ppb remove 3% LSL annually</li> <li>• Partial LSL replacements not allowed</li> </ul>
<ul style="list-style-type: none"> <li>• Sampling procedures include flushing and aerators</li> <li>• Required to collect 50% of tap samples from sites served by LSLs</li> </ul>	<ul style="list-style-type: none"> <li>• Sampling procedures updated</li> <li>• Select sampling sites bias with higher lead levels</li> <li>• Systems with higher levels will sample more frequently.</li> </ul>
<ul style="list-style-type: none"> <li>• Action level exceedance notification within 30 days</li> </ul>	<ul style="list-style-type: none"> <li>• Action level exceedance notification within 24 hours</li> </ul>
<ul style="list-style-type: none"> <li>• Testing required only at schools that are NTNC systems</li> </ul>	<ul style="list-style-type: none"> <li>• Test at all schools and child care centers</li> </ul>

# Draft National Water Reuse Action Plan

- 10 strategic objectives with 46 proposed actions that support consideration and implementation of water reuse applications:

<b>Section 2. Proposed Actions to Support Consideration and Implementation of Water Reuse</b>	<b>14</b>
2.1 Enable Consideration of Water Reuse with Integrated and Collaborative Action at the Watershed Scale	15
2.2 Coordinate and Integrate Federal, State, Tribal, and Local Water Reuse Programs and Policies	17
2.3 Compile and Refine Fit-for-Purpose Specifications	23
2.4 Promote Technology Development, Deployment, and Validation	25
2.5 Improve Availability of Water Information	28
2.6 Facilitate Financial Support for Water Reuse	30
2.7 Integrate and Coordinate Research on Water Reuse	32
2.8 Improve Outreach and Communication on Water Reuse	34
2.9 Support a Talented and Dynamic Workforce	36
2.10 Develop Water Reuse Metrics That Support Goals and Measure Progress	38



# Comments due 12/16/2019 Docket No. EPA-HQ-OW-2019-0174

- Requesting comments on:
  - The key and priority actions necessary to enhance consideration of water reuse.
  - The key attributes, implementation steps, and milestones to successfully implement the proposed actions.
  - Potential action leaders to champion the proposed actions.
  - Potential contributing organizations to serve as partners/collaborators in implementing the proposed actions.
  - Additional information or recommendations to inform these or other proposed actions.

# Final Rules Revise the Regulations in Sections 4 and 7 of the 1973 Endangered Species Act

- Published: August 27, 2019
- Effective: Definitions and threatened species: September 26, 2019
- Effective: Interagency cooperation: October 28, 2019
- USFWS published three separate notices in Final Rule Vol 84, No. 166
  - Revises definitions relevant to listing or removing species and designating critical habitat
  - Requires the agency to specify protections for threatened species
  - Revises interagency consultation requirements



# Threatened Species

- Must be likely to become an endangered species within the **foreseeable future**
  - Can reasonably determine that both future threats and species responses are likely—does not have to be a specific period of time
  - Determined on a case-by-case basis
- Protections for species added to the list as **threatened**
  - Must be a defined species-specific rule that will contain applicable prohibitions and exceptions
  - Takes away the **blanket** provisions wherein the protections for endangered species are applied to threatened species



# Listing Species and Designating Critical Habitat

## Destruction or adverse modification

- Alteration that diminishes the value of critical habitat **as a whole** for conservation of a listed species

## Effects of the action

- Consequences that **would not occur but for** the proposed action
- Removes categorization of direct, indirect, interrelated, interdependent effects

## Environmental baseline

- Includes agency actions or facilities that the agency cannot modify (e.g., dams)

## Programmatic consultations (new)

- Addresses multiple actions on a program, regional other basis

# Interagency Consultation

## Informal consultation

- Specifies written request for concurrence of **not likely to adversely affect**
- Provides concurrence/nonconcurrence within 60 days of receiving request
- Timeframe may be extended, but may not exceed 120 days

## Formal consultation

- Specifies content of request for consultation—NEPA analyses or other reports may be substituted
- Environmental baseline must be added to current status conditions to make a jeopardy opinion
- Using best available scientific and commercial data is not precluded, but is not required
- Economic considerations can be included in the review
- Binding plans are not required to demonstrate that reasonable or prudent measures are implemented

# Interagency Consultation

## Optional collaborative process

- Service may incorporate information/analyses provided by applicant into the biological opinion
- May adopt the initiation package, conduct any supplemental analyses, add the incidental take statement, and call it a biological opinion

## Expedited consultation

- Federal agency and service develop an mutual agreement
- Specifies expedited timelines

## Consultation reinitiation

- Not required for a land management plan if it was approved before the new listing or habitat designation if a separate action-specific consultation is completed

## Activities reasonably certain to occur

- Must be based on clear and substantial information, using the best scientific and commercial data available





**WESTCAS**  
**REGULATORY ISSUES**  
**10/23/2019**

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