

**MINUTES
of the
WATER QUALITY COMMITTEE
Red Lion Hotel on Fifth Avenue
Seattle, Washington
June 7, 2012**

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Those in attendance at the Water Quality Committee meeting were as follows:

MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	--
CALIFORNIA	--
COLORADO	Paul Frohardt (via phone) Jennifer Gimbel Dick Wolfe
IDAHO	Barry Burnell (via phone) John Simpson
KANSAS	Tom Stiles
MONTANA	--
NEBRASKA	Pat Rice
NEVADA	--
NEW MEXICO	Scott Verhines DL Sanders
NORTH DAKOTA	James Hogan
OKLAHOMA	J.D. Strong
OREGON	--
SOUTH DAKOTA	Garland Erbele
TEXAS	Weir Labatt Carlos Rubinstein Herman Settemeyer Curtis Seaton

Robert Mace
Dave Mitamura

UTAH

Norm Johnson

WASHINGTON

Stephen Bernath
Barbara Munson
Maia Bellon

WYOMING

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WestFAST MEMBERS

Dwane Young, Federal Liaison
Becky Fulkerson, Bureau of Reclamation

GUESTS

Dan Haller, Aspect Consulting
Rick Gold, CDM Smith, Salt Lake City, UT
Jim Davenport, JHDavenport, LLC, Buena, WA
Tom Hicks, Resource Renewal Institute, San Francisco, CA
Kelly Susewind, Washington Department of Ecology, Olympia, WA
Sarah Johnson, Colorado Water Quality Standards Unit, Denver, CO
Krista Mendelman, U.S. Environmental Protection Agency, Seattle, WA

STAFF

Tony Willardson
Nathan Bracken
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

J.D. Strong, Chair of the Water Quality Committee, called the meeting to order.

APPROVAL OF MINUTES

The minutes of the meeting held in Washington, D.C. in March 2012 were presented. A motion to approve the minutes was made, a second was offered, and the minutes passed unanimously.

SUNSETTING POLICY

The Committee revised Position #316, which expresses support for the Environmental Protection Agency's (EPA) water transfers rule. The rule exempts certain types of water transfers from National Pollutant Discharge Elimination System (NPDES) permitting requirements under the Clean Water Act.

The position was presented to the Committee with one change that would add a whereas clause stating:

WHEREAS, The United States Court of Appeals in the case of *Friends of the Everglades v. South Florida Water Management District*, 570 F.3d 1210, upheld EPA's Water Transfer Rule holding it to be a reasonable construction of the Clean Water Act and therefore entitled to deference by the Federal Courts, and on which decision the United States Supreme Court subsequently denied a Petition for Writ of Certiorari.

Stephen Bernath noted that Washington continues to oppose the resolution but recognizes that it is an associate member state and is therefore unable to vote on the measure.

Carlos Rubinstein moved to recommend that the WSWC re-adopt the position with the suggested change. J.D. seconded, and the motion passed unanimously.

2012-2013 COMMITTEE WORKPLAN

The Committee's workplan for FY 2012-2013 was submitted for discussion and approval. J.D. explained that previous workplans had been tied to the Western Governors' Association's (WGA) 2008 *Next Steps* report. However, since the *Next Steps* report has sunsetted, the workplan is now keyed to current WGA and WSWC policies, which are essentially the same as the *Next Steps* report.

Paul Frohardt stated that he appreciated the work plan's continued inclusion of a work item on Good Samaritan abandoned hardrock mine remediation. He said this continues to be an issue in Colorado and that EPA is working on ways to provide increased protections for Good Samaritans who voluntarily clean up abandoned mines.

Carlos moved to adopt the work plan. J.D. seconded, and the motion passed unanimously.

INFRASTRUCTURE FINANCING ISSUES AND SRF UPDATE

J.D. reviewed the current positions and letters from the Western Governors' Association (WGA) and the WSWC supporting the Clean Water and Drinking Water State Revolving Funds (SRFs). He then explained that Congress has approved or considered an increasing number of appropriations bills that have placed additional restrictions on the states' management and use of SRF funds, including: (1) mandating the use of between 20% and 20% of appropriated funds for

principal forgiveness, negative interest loans, grants or a combination thereof; and (2) setting aside 10% of funds for green infrastructure, water, or energy efficiency improvements, or other environmentally innovative activities.

Most recently, J.D. mentioned that a number of groups sent letters during the spring to Congress expressing concerns over a proposal in the House Subcommittee on Interior, Environment and Related Agencies to add a so-called “Buy-American” provision to the SRFs on an ongoing basis. The American Reinvestment and Recovery Act (ARRA) had included a “Buy American” provision for the use of ARRA funds. Extending this requirement to the SRFs on an ongoing basis would limit the use of SRF funds to purchase certain types of materials and services for SRF projects. Groups that have sent letters expressing concern over the proposal include the Association of Clean Water Administrators, the Council of Infrastructure Financing Agencies, and various state representatives from the State/EPA State Revolving Fund Workgroup. Representatives from 10 WSWC states signed onto the State/EPA State Revolving Fund Workgroup letter.

Dave Mitamura said that Texas is concerned that the SRFs are becoming more prescriptive and may apply to the corpus of the funds. There has also been some discussion of not applying for SRF funds in order to avoid the federal restrictions. The Buy American also raises a number of questions, including but not limited to concerns over how to purchase needed components that are not made in the United States.

Barry Burnell mentioned an audit in Idaho that found that an SRF recipient had tried to use some of the exemptions under ARRA’s Buy American provision but were ultimately found to be out of compliance. As a result, the recipient has had to replace equipment with American-made equipment.

WASHINGTON WATER QUALITY ISSUES

Kelly Susewind, the Director of the Washington Department of Ecology’s Water Quality Program, described a number of “hot” water quality issues in his state. He noted that budget issues continue to present a challenge, but that the Water Quality program has done “pretty well, taking hits but taking proportionately smaller hits.

Municipal stormwater permits are another “hot” water quality topic in Washington, with a number of “tough” permits set to expire this year. Some communities are concerned that they may not be able to comply with permitting requirements if they are updated and become more stringent. This has led to various legislative efforts to provide communities more time to develop new permits and to make certain requirements that are important to the water quality program voluntary, among other things.

Nutrient efforts are another prominent issue and Washington has a strong nutrient management program. Kelly also mentioned a 2011 memorandum between Ecology and the state’s Department of Agriculture regarding coordination between the two agencies with respect to dairy nutrient management.

Kelly also discussed the possible implications of the Ninth Circuit Court of Appeals' decision in *NEDC v. Brown*. That case involved a claim against the Oregon State Forester and found that runoff from forest or logging roads that is channeled through a system of culverts and ditches and discharged into a jurisdictional body of water under the Clean Water Act (CWA) requires a National Pollutant Discharge Elimination System (NPDES) Permit. EPA has indicated that it will revise its regulations to clarify that NPDES permits are not required for this type of runoff and Oregon and other plaintiffs have asked the U.S. Supreme Court to review the case. Kelly noted that Washington already has a road abandonment program and will not be impacted as much as other states if the decision stands.

Kelly also discussed a number of other efforts, including a joint effort between Ecology and the federal government and tribes to restore and expand Washington's shellfish resources, efforts to reduce combined sewer overflows in 11 cities, and marine and freshwater water quality assessments, among other topics.

EPA REGION 10 UPDATE: GREEN INFRASTRUCTURE

Krista Mendleman with EPA Region 10 gave a presentation on efforts within her region to promote green infrastructure. Compared to pre-development conditions, Krista said stormwater runoff leads to increases in peak flows in the stream, increases in total runoff, and increases in the time a stream experiences this high flow. These conditions can lead to stream cutting and degradation of fish and aquatic species, among other impacts.

Stormwater has historically been viewed as a hazard or nuisance that needs to be funneled away, but Krista said a paradigm shift is underway that views stormwater as a resource that can be retained and used for a variety of purposes and help restore stream flows. There are a number of practices that can help accomplish this goal, including green roofs, rain gardens, permeable pavements, alternative street designs, riparian reforestation, and wetland and forest preservation, to name a few.

In April 2011, EPA released a strategic agenda to promote green infrastructure through: (1) community partnerships; (2) clarification of green infrastructure within regulatory and enforcement contexts; (3) outreach and information; (4) financing; and (5) tool development and capacity building. To support the initiative, EPA has created a website (<http://epa.gov/greeninfrastructure>) and is providing technical support.

Within Region 10, Krista said rainfall is a challenge and that utilizing a multi-scale approach and a variety of tools is "key." Within the region, EPA has provided funding, helped develop total maximum daily load (TMDL) plans, assisted with permitting, and provided technical assistance.

In response to questions about the cost of green infrastructure, Krista said the initial costs can be a "big hump for contractors to get over at first," but that EPA Region 10 has not studied the cost/benefit ratios. Kelly added that he has some local data and that green infrastructure can be cheaper than traditional infrastructure if it is done well.

COLORADO NUTRIENTS EFFORTS

Paul Frohardt updated the Committee on the efforts of the Colorado Water Quality Control Commission to develop numeric nutrient criteria for the state. The Commission has taken steps to create use-protective number criteria. In some instances, Colorado's approach has led to numbers that were less than what EPA would have preferred, but that still "work." Although EPA was skeptical at first, Paul said "they have ultimately come around and we believe that they are generally supportive of this approach and this overall package."

The Commission recently held a three-day rulemaking and have final hearing scheduled for the summer in which the Commissioners will likely take final action on the criteria. Nevertheless, there have been some proposed efforts to stop the Commission's rulemaking legislatively and Paul said there will likely be similar issues in the next legislative session.

After the meeting, on June 11, the Commission adopted two regulations that constitute its final action on nutrients. These regulations are: (1) Commission Regulation #31 - Basic Standards and Methodologies for Surface Water, Section 31.17 of which pertains to nutrients; and (2) Commission Regulation #85 - Nutrients Management Control Regulation. These regulations will become effective on September 30 and are available at: <http://www.colorado.gov/cs/Satellite/CDPHE-Main/CBON/1251595703337>.

WATER QUALITY MANAGERS ASSOCIATION UPDATE

Sarah Johnson with the Colorado Water Quality Standards Unit gave an update on the status of the Water Quality Standards Managers Association which met earlier in the spring. EPA created the group, which includes state representatives and a number of EPA Headquarters officials. The group meets twice a year and holds conference calls each month to fostering discussion between water quality decision makers.

Current EPA efforts of note include the development of certain aquatic life criteria, which is currently underway, and recreational water quality criteria. With respect to the latter, EPA published draft criteria in December 2011 and a final is expected in December 2012. Sarah also mentioned two new tools from EPA that are coming online, including an interim economic guidance for quality standards workbook (<http://water.epa.gov/scitech/swguidance/standards/economics/>) and an updated water quality standards handbook (<http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>).

OTHER MATTERS

There being no other matters, the meeting was adjourned.