

**MINUTES
of the
WATER QUALITY COMMITTEE
Hilton Garden Inn
Casper, WY
June 25, 2013**

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

MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	--
CALIFORNIA	Betty Olson
COLORADO	Paul Frohardt (via phone) Trisha Oeth (via phone) Dick Wolfe John Stulp
IDAHO	John Simpson
KANSAS	Tracy Streeter Tom Stiles (via phone)
MONTANA	--
NEBRASKA	--
NEVADA	--
NEW MEXICO	Scott Verhines
NORTH DAKOTA	Michelle Klose (via phone)
OKLAHOMA	J.D. Strong
OREGON	--
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Carlos Rubinstein
UTAH	Dennis Strong

WASHINGTON

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WYOMING

Pat Tyrrell
Sue Lowry
Chris Brown

GUESTS

Jeff Fassett, HDR Engineering, Cheyenne, WY
Steve Wolff, State Engineer's Office, Cheyenne, WY
Greg Lanning, State Engineer's Office, Cheyenne, WY
Ramsey Kropf, Patrick, Miller, Kropf & Noto, Aspen, CO
Dave Mitamura, Texas Water Development Board, Austin, TX
Scott Leedom, Southern Nevada Water Authority, Las Vegas, NV
Greg Ridgley, Office of the New Mexico State Engineer, Santa Fe, NM
Kevin Frederick, Department of Environmental Quality, Cheyenne, WY
Curtis Seaton, Texas Commission on Environmental Quality, Austin, TX
Herman Settemeyer, Texas Commission on Environmental Quality, Austin, TX
Lisa Vjota, Government Accountability Office, Washington, DC (via phone)
Mike Paque, Ground Water Protection Council, Oklahoma City, OK (via phone)
Mike Smith, Interstate Oil & Gas Compact Commission, Oklahoma City, OK (via phone)
Patrick Snyder, Department of Environment & Natural Resources, Pierre, SD (via phone)

WestFAST MEMBERS

Jean Thomas, USDA Forest Service, Washington, DC
Becky Fulkerson, U.S. Bureau of Reclamation, Washington, DC
Eric Stevens, Federal Liaison

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 Denver, Colorado, in April 2013, were presented. A motion to approve the minutes was made, a second was offered, and the motion passed unanimously.

PROPOSED POSITION: HYDRAULIC FRACTURING

The Committee discussed a proposed position from Oklahoma and Texas regarding hydraulic fracturing. The position states that federal efforts involving hydraulic fracturing and water resources should leverage state knowledge, expertise, policies, and regulations. It also states that the WSWC “opposes any and all efforts that would diminish the primary and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.”

Carlos Rubinstein proposed changing the first portion of the third whereas clause to read: “although concerns about hydraulic fracturing have been voiced by some, western states have experienced few, if any, adverse impacts involving water quality and water allocation attributable to hydraulic fracturing.” Nathan Bracken mentioned that he had spoken with Stephan Bernath of Washington, who was unable to participate in the meeting, and that Carlos’ proposed change was acceptable to Stephen. A motion to revise the position to include Carlos’ suggested language was made, a second was offered, and the motion passed unanimously.

Next, J.D. suggested adding the following “whereas” clause:

“WHEREAS, water planning, management, monitoring, and protection programs in many western states are funded in part by taxes and other revenues paid by the oil and gas industry, including revenues and taxes generated from hydraulic fracturing.”

After some discussion, the Committee decided not to include the clause due to concerns that it could make the states appear to have a conflict of interest and undermine the argument that the states are best positioned to regulate hydraulic fracturing.

A motion to recommend that the WSWC adopt the position as amended with Carlos’ suggested change was made, a second was offered, and the motion passed unanimously.

2013-2014 DRAFT COMMITTEE WORK PLAN

J.D. and Nathan reviewed the Committee's proposed work plan for 2013-2014. They explained that the plan includes two new items: (1) a proposed effort to gather information on the states' experiences with hydraulic fracturing; and (2) an invitation-only workshop to discuss the water quality-quantity nexus. The remainder of the work plan focuses on a number of items that the Committee and WSWC staff will monitor and act upon as needed.

After some discussion, the Committee requested that the title of the work item involving the quantity-quality nexus workshop be changed from "Integrated Water Management" to "Water Quality/Quantity Workshop."

A motion to approve the work plan as amended was made, a second was offered, and the motion passed unanimously.

WYOMING WATER QUALITY UPDATE: HYDRAULIC FRACTURING

Wyoming Water Quality Division Administrator Kevin Frederick described how his state regulates hydraulic fracturing, noting that there has been no "conclusive evidence to date that groundwater has been impacted."

Kevin also said the Environmental Protection Agency (EPA) has decided not to carry out a peer review of a draft report it issued in 2011 on possible groundwater contamination near the town of Pavillion. Wyoming has questioned the science and findings of the study, and Kevin said the state will lead further investigations regarding pollution in the area.

STATE AND INTERSTATE HYDRAULIC FRACTURING EFFORTS

Mike Smith, Executive Director of the Interstate Oil and Gas Compact Commission (IOGCC), and Mike Paque, Executive Director of the Groundwater Protection Council (GWPC), discussed their organizations' joint States First Initiative. They explained that the IOGCC consists of 30 governors, all of whom are from oil producing states. The governors understand that the states are doing a "good job" of regulating energy development, including hydraulic fracturing, and "want the world to know it." Consequently, the IOGCC and the GWPC are carrying out the States First Initiative to support greater recognition of excellence in state energy regulation, including regulation of hydraulic fracturing.

EPA's 2008-2009 DRAFT NATIONAL RIVERS AND STREAMS ASSESSMENT

Patrick Snyder, an environmental scientist with the South Dakota Department of Environment and Natural Resources, discussed his state's concerns with EPA's draft 2008-2009 National Rivers and Streams Assessment. In particular, Snyder said the assessment contained a number of threshold value errors for phosphorus and nitrogen concentrations that led to an

overestimation of the streams in poor condition for the two ecoregions that include portions of South Dakota. Snyder reported that EPA has agreed to fix the errors.

WSWC STRATEGIC DISCUSSION: CLEAN WATER ACT JURISDICTION

J.D. and Nathan led a discussion regarding the possibility of developing talking points for the WSWC to use in working with the EPA and the U.S. Army Corps of Engineers as they carry out their rulemaking to clarify Clean Water Act (CWA) jurisdiction. They referenced the WSWC's position on the guidance and a letter the WSWC sent to the EPA and the Corps in April, asking the agencies not to issue the guidance and said that formal rulemaking would be the preferred mechanism for the agencies to use in their efforts to clarify CWA jurisdiction. Both the WSWC's position and the letter urged EPA and the Corps to consult with the states in developing the rulemaking and to do so in the early stages of the rule's development.

Tony noted that it appears likely that any rule will be similar to the proposed guidance and asked the Committee for their thoughts on how to address such a rule.

J.D. then asked if it would be "...worth our getting together to lay out some principles for the rule. Should we be prepared?"

Carlos said: "We need to remain very vigilant on this. We can talk about this at our next meeting." Carlos also said the EPA and Corps should treat the states as co-regulators in this process, but expressed concern that EPA and the Corps are attempting to overturn the U.S. Supreme Court's decisions in *SWANCC* and *Rapanos*. He also noted that the Environmental Council of States is also looking at this issue.

After some discussion, the Committee agreed that it would be worthwhile to develop some talking points. J.D., Curtis Seaton, Stephen Bernath, and Trisha Oeth volunteered to work with WSWC staff to develop some concepts for possible talking points to discuss at the WSWC's next meeting in Deadwood, South Dakota, on October 2-4.

OTHER MATTERS

There being no other matters, the meeting was adjourned.