

**MINUTES
of the
WATER QUALITY COMMITTEE
Sheraton Denver Downtown
Denver, CO
April 4, 2013**

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

MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	--
CALIFORNIA	Tom Howard
COLORADO	Paul Frohardt Steve Gunderson Jennifer Gimbel
IDAHO	--
KANSAS	--
MONTANA	--
NEBRASKA	--
NEVADA	--
NEW MEXICO	Scott Verhines Maria O'Brien
NORTH DAKOTA	--
OKLAHOMA	J.D. Strong
OREGON	Phil Ward
SOUTH DAKOTA	--
TEXAS	Carlos Rubinstein
UTAH	Walt Baker Dennis Strong
WASHINGTON	

WYOMING

Chris Brown

GUESTS

Greg Lanning, Cheyenne, WY
Tim Kilgannon, Army, Denver, CO
Mark Branson, Ch2M Hill, Boise, ID
Cory Hooper, Ch2M Hill, Denver, CO
Julia Miller, Army/Marstel-Day, Denver, CO
Bret Bruce, U.S. Geological Survey, Denver, CO
Robert Boyd, Bureau of Land Management, Denver, CO
Tom Iseman, Western Governors' Association, Denver, CO
Karen Kwon, Colorado Attorney General's Office, Denver, CO
Peter Nichols, Berg Hill Greenleaf & Ruscitti, LLP, Boulder, CO
Sarah Johnson, Colorado Water Quality Control Division, Denver, CO
Greg Ridgley, New Mexico Office of the State Engineer, Santa Fe, NM
David Waterstreet, Wyoming Department of Environmental Quality, Cheyenne, WY
Dave Evans, U.S. Environmental Protection Agency (via phone)
Connie Bosma, U.S. Environmental Protection Agency (via phone)

WestFAST MEMBERS

Eric Stevens, Federal Liaison
Jean Thomas, USDA Forest Service, Washington, DC
Lee Koss, Bureau of Land Management, Washington, DC (via phone)
Roger Gorke, U.S. Environmental Protection Agency, Washington, DC (via phone)

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 San Antonio, Texas in October 2012 were presented. Carlos Rubinstein moved to approve the minutes. Walt Baker seconded, and the motion passed unanimously.

2013-2014 DRAFT COMMITTEE WORKPLAN

The Committee reviewed a draft workplan that would detail its activities from July 1, 2013 to June 30, 2014. Nathan Bracken explained that the Committee will need to adopt the workplan at its summer meetings in Casper, Wyoming, on June 25, 2013, and asked for comments.

After some discussion, the Committee requested that the work items on the Clean Water Act (CWA) guidance, EPA Water Transfers Rule, Nutrients, Pesticides, and Good Samaritan legislation be placed in a separate section that would indicate that these are issues the Committee will monitor and act upon as needed. The section would also list the items in order of priority.

J.D. asked if there was any interest in including an item on hydraulic fracturing. After some discussion, the Committee asked Nathan to look at other efforts being carried out with respect to hydraulic fracturing and to develop a proposal for the Committee to consider at the Casper meetings.

The Committee also discussed the possibility of holding a focused conference on the interaction between water quantity and quality. Phil Ward, Walt Baker, and Carlos Rubinstein offered to work with Nathan to develop a proposal for the Committee to consider in Casper.

COLORADO WATER QUALITY UPDATE

Steve Gunderson, Paul Frohardt, and Sarah Johnson discussed notable water quality developments in Colorado, including selenium, hydraulic fracturing, ammonia, nutrients, arsenic, and efforts to review the water quality impacts of a number of proposed reservoir projects. Among other things, Steve noted that the reservoir project reviews are requiring significant amounts of staff time and resources. He further said that hydraulic fracturing is generating a lot of attention in Colorado and that there are some misconceptions and confusion, particularly about the difference hydraulic fracturing chemicals and produced water. Although Steve said Colorado has experienced some issues with environmental impacts associated with oil and gas development, he said the problems were due to activities on the surface and not the actual process of hydraulic fracturing. Lastly, Colorado recently completed a 10-year effort to develop regulations for nutrients, which required a “lot of political capital.”

Sarah reported that EPA is preparing a new ammonia standard, which will like have “very low” levels. Since ammonia is often the largest water treatment cost, the standard could pose significant problems and costs for western states. She further noted that a lot of organisms

(e.g., mussels, clams, snails, etc.) are very sensitive to ammonia and toxicity, and that you will find sensitive organisms “anywhere in Colorado.” However, much of the toxicity information that is currently available is based on the sensitivity of Midwestern mussels, which are different than their counterparts in the West. Although there is a lack of data showing these differences, the opportunity exists to develop data showing that western systems are more tolerant of ammonia than those in the Midwest.

Walt noted that the standard will pose significant challenges for smaller treatment plants, describing a community in Utah that is facing \$80 million to \$90 million in costs to comply with the old ammonia standard. He further suggested that the western states may want to pool their resources to develop data to distinguish western mussels.

EPA UPDATE

a. Waters of the U.S.: Dave Evans, Director of EPA’s Wetlands Division, discussed rulemaking efforts to clarify the extent of CWA jurisdiction. While the agency is focused on rulemaking, Dave said the Administration has not yet determined whether to release the CWA guidance. He further noted that recent changes in senior EPA leadership positions relating to former EPA Administrator Lisa Jackson’s departure are a factor in the delay.

In addition, Dave said EPA is initiating a study to look at the connection between water quantity and quality, which he said is highly relevant to CWA jurisdiction determinations. The effort is envisioned to be a support document for rulemaking, and the public can nominate members to the science advisory board panel that will be reviewing the study. This connectivity study will be presented to the public in late June.

b. EPA Stormwater Rulemaking: Connie Bosma, Chief of EPA’s Municipal Branch, discussed EPA efforts to develop a proposed rule to revise its stormwater program. Connie said the “potential focus” of the rulemaking is on encouraging watershed approaches for managing municipal stormwater discharges and ensuring a “good fit” with integrated planning and financial capability frameworks. She also said EPA is looking at establishing performance standards for discharges from newly developed and redeveloped sites. Connie further clarified that the performance standards would not apply to existing sites unless they are redeveloped. EPA intends to release the proposed rule for comment in June 2013 and to take final action in December 2014.

c. Good Samaritan Memo: Roger Gorke reported that EPA finalized a memorandum in December that seeks to encourage cleanup activities at abandoned hardrock mine sites. The memorandum clarifies that Good Samaritans who complete cleanup efforts pursuant to EPA policies will not be considered “operators” responsible for obtaining NPDES permits if they lack: (1) access and authority to enter the site; (2) an ongoing contractual agreement or relationship with the site owner to control discharges; (3) power or responsibility to make timely discovery of changes to the discharges; (4) power or responsibility to direct persons who control the mechanisms, if any, causing the discharges; and (5) power or responsibility to prevent and abate the environmental damage caused by the discharges. Nevertheless, the memorandum

states that it "...does not address or resolve all potential liability associated with discharges from abandoned mines."

WATER QUALITY MANAGERS ASSOCIATION UPDATE

Sarah Johnson gave an update on the status of the Water Quality Standards Managers Association. EPA created the group, which includes state representatives and a number of EPA Headquarters officials, to foster discussion between water quality decision makers. The Association is currently holding meetings on nutrient standards and is discussing antidegradation. Sarah noted that nutrient criteria can be hard to defend in court and that narrative protections would be appropriate in some cases.

CLEAN WATER ACT LEGISLATION AND LITIGATION UPDATE

Nathan provided an abbreviated overview of notable legislative and litigation developments involving the CWA, referring Committee members to a more detailed written summary he prepared under Tab L of the briefing books. Among other things, he reported that the U.S. Supreme Court issued its decision in *NEDC v. Decker*, upholding EPA's interpretation of its Silvicultural Rule as a reasonable interpretation of the CWA. EPA has long interpreted the rule as not requiring National Pollutant Discharge Elimination System (NPDES) permits for stormwater runoff from forest roads. Notably, EPA issued a modification to its rule shortly before the Court held oral arguments in the case to further clarify its interpretation.

ROUDBTABLE – STATE BUDGETS AND WATER QUALITY

The Committee held a brief roundtable discussion on state budgets as applied to water quality efforts.

Walt reported that sequestration is causing problems for states.

David Waterstreet said Wyoming's Legislature and Governor believe they need to get ahead of future fiscal problems given declining oil and gas revenues. As a result, the Wyoming Department of Environmental Quality is looking at a possible 8% reduction. David said the state could see some of the largest fiscal challenges it has seen in 10-20 years.

Tom Howard said nitrates in groundwater are garnering a lot of interest. The California Legislature is expecting more effort on this issue.

OTHER MATTERS

There being no other matters, the meeting was adjourned.