

**MINUTES
of the
WATER QUALITY COMMITTEE
Crystal Gateway Marriott
Washington, DC
April 3, 2014**

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

MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	--
CALIFORNIA	--
COLORADO	Trisha Oeth
IDAHO	Barry Burnell (via phone)
KANSAS	Dave Barfield
MONTANA	John Tubbs
NEBRASKA	--
NEVADA	--
NEW MEXICO	DL Sanders Scott Verhines
NORTH DAKOTA	--
OKLAHOMA	J.D. Strong
OREGON	--
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Todd Chenoweth
UTAH	Walt Baker Eric Millis Norm Johnson

WASHINGTON

Lauren Driscoll (via phone)

WYOMING

Kevin Frederick
Chris Brown (via phone)

WESTFAST

Eric Stevens, Federal Liaison, Murray, UT
Lee Koss, Bureau of Land Management, Washington, DC
Becky Fulkerson, Bureau of Reclamation, Washington, DC
Roger Gorke, Environmental Protection Agency, Washington, DC

GUESTS

Robert Mace, Texas Water Development Board, Austin, TX
Carlee Brown, Western Governors' Association, Denver, CO
Bruno Bowles, Southern Nevada Water Authority, Las Vegas, NV
Laura Sturgeon, Oklahoma Water Resources Board, Oklahoma City, OK
John Dumbrowski, U.S. Environmental Protection Agency, Washington, DC

STAFF

Tony Willardson
Nathan Bracken
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 Deadwood, South Dakota in October 2013, were moved for approval by Walt Baker. The motion was seconded by Kent Woodmansey. The minutes were unanimously approved.

SUNSETTING POSITION

The Committee discussed and renewed sunsetting Position No. 330. It seeks to stable and continue federal appropriations for the Clean Water and Drinking Water State Revolving

Funds (SRF). It urges more flexibility and less restriction on state SRF management. It also includes revised language expressing concern about the increasing number of restrictions that have been placed on the states' management of the SRFs, as well as updated figures showing the gap between estimated wastewater and drinking water infrastructure needs and current spending and operation practices. A motion to re-adopt the resolution as revised was made, a second was offered, and the motion passed unanimously.

2013-2014 DRAFT COMMITTEE WORKPLAN

Nathan reviewed the Committee's proposed work plan for 2014-2015, which the Committee will need to adopt at its summer meetings on July 16-18 in Helena, Montana. The draft workplan proposes that the Committee continue monitoring a number of federal actions involving the Clean Water Act (CWA), including federal rulemaking efforts to clarify CWA jurisdiction, SRF infrastructure financing, litigation involving the Environmental Protection Agency's (EPA) water transfers rule, EPA efforts involving nutrients, CWA permitting for pesticide applications, and abandoned hardrock mine remediation. The workplan also proposes two work items – a summary of western state experiences with hydraulic fracturing, and a workshop to discuss the water quantity-quality nexus.

After some discussion, the Committee agreed that the hydraulic fracturing summary should be conducted in consultation with the Association of Clean Water Administrators (ACWA) to avoid any duplication of efforts that it may be conducting with respect to hydraulic fracturing.

The Committee also discussed the possible timing of the quantity-quality workshop. One possibility that was mentioned was to hold the workshop in conjunction with ACWA's mid-year meeting, which typically takes place in March in the DC metro area and is generally attended by a number of WSWC members. However, Walt Baker noted that DC can be expensive and noted that cost should be considered when determining a date and location for the workshop. Another possibility raised during the meeting would be to hold the workshop in conjunction with one of the WSWC's meetings.

Nathan asked the Committee to provide him with any comments or suggestions that it may have regarding the draft workplan.

EPA UPDATE

A. NPDES Electronic Reporting

John Dombrowski, Director of the Enforcement Targeting and Data Division within EPA's Office of Enforcement and Compliance Assurance gave a PowerPoint presentation on the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, which was proposed in July 2013. John's division manages all of EPA's enforcement compliance data, including the NPDES permitting rule.

John said the proposed rule does not create new reporting requirements and would shift the NPDES program from paper to electronic reporting, which is intended to save time and money, improve transparency, and obtain more accurate and timely information. In particular, he said electronic reporting will generate over \$30 million in annual net savings four years after full implementation when all states and permittees are directly providing NPDES information electronically, greatly exceeding the anticipated annual costs. Although some states have questioned the economic analysis, John said EPA worked with the best data it had has not received additional data to refine the analysis.

Next, John said there will be a two-phase implementation approach. Under Phase 1, which will take place one year after the final rule, EPA and states would electronically receive: (1) basic facility and permit information as well as inspections, violation determinations, and enforcement actions data from states; (2) discharge monitoring report information from facilities; and (3) information from general permit covered facilities for federally issued general permits. Under Phase 2, which would begin two years after the final rule, EPA and states would receive further information, including information from general permit covered facilities for other state-issued general permits and program reports from all facilities.

Although the public comment period on the rule closed in December, John noted that EPA has formed a workgroup with the Environmental Council of the States and ACWA that is meeting regularly to discuss and improve the rule. The discussions are not intended to produce a consensus but are focused on generating dialogue that will hopefully lead to a better rule.

B. Integrated Reporting Guidance: Roger Gorke gave a brief overview of EPA's integrated reporting guidance, which is intended to assist states as they prepare and review the 2014 integrated reports in accordance with Sections 303(d), 305(b), and 314 of the CWA. The guidance is not a regulation and does not impose legally binding requirements on EPA or the States.

WSWC CLEAN WATER ACT WORKGROUP UPDATE

The Committee discussed the WSWC's recent activities regarding the EPA's and the U.S. Army Corps of Engineers efforts to develop a rule to clarify the jurisdictional scope of the CWA in light of the U.S. Supreme Court's rulings in *SWANCC* and *Rapanos*.

The WSWC commissioned a CWA workgroup to identify areas on consensus regarding the rulemaking. The workgroup developed a letter that the WSWC sent to EPA and the Corps on March 10, which expressed concern that the rulemaking was proceeding without sufficient state consultation and urged the agencies to consult with the states prior to publishing a proposed rule for public comment. The letter was based on WSWC Position #330.5 and subsequent letters that the WSWC had sent to the agencies requesting state consultation.

The WSWC's March 10 letter also identified other consensus concerns among the western states, namely that:

- EPA should finalize that scientific report that will serve as the basis of the final rule before publishing a proposed rule for public comment;
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- The rule should give full force and effect to, and in no way detract from, the intent and purpose of Sections 101(b) and 101(g) of the CWA;
- The rule should explicitly exclude groundwater;
- The rule should quantify “significance” as used in Justice Kennedy’s opinion in *Rapanos* to ensure that it does not extend jurisdiction to waters that have de minimis connections to jurisdictional waters;
- The preamble of the rule should recognize that the states have authority pursuant to their “waters of the state” jurisdiction to protect waters excluded from CWA jurisdiction; and
- The rule should exclude:
 - Farm ponds, stock ponds, irrigation ditches, and the maintenance of drainage ditches, as currently excluded under the CWA’s agricultural exemption;
 - Man-made dugouts and ponds used for stock watering or irrigation in upland areas that are not connected to surface waters;
 - Dip ponds that are excavated on a temporary, emergency basis to combat wildfires and address dust abatement;
 - Man-made pits and quarries that have been excavated in uplands and that fill with groundwater but are not connected to surface waters; and
 - Prairie potholes and playa lakes.

On March 25, EPA and the Corps issued a proposed rule, which they later published in the federal register on April 21 with an initial 90-day public comment period. In response and in light of concerns regarding the lack of state consultation, the Western Governors’ Association wrote the agencies on March 25, referencing the WSWC’s March 10 letter and urging the agencies to consult with the states individually and through the WGA before taking further action on the rule.

After some discussion, the Committee agreed to take the following actions:

- To continue working through the CWA workgroup to review the proposed rule and identify additional areas of consensus;
- To offer the WSWC as a forum in which the western states can enter into a dialogue with EPA and the Corps regarding the rule. To goal of the dialogue would not be to develop a consensus but to provide states with an opportunity to comment on the substance of the proposed rule and describe their perspectives regarding possible unintended

consequences. The dialogue would not take the place of substantive consultation with the states on an individual basis; and

- The Committee also agreed to request at least a 60-day extension of the public comment period to ensure that the public comment period would toll after the WSWC's summer meetings.

Note: After the Committee's meeting, the WGA issued a letter on May 10, requesting a 180-day extension of the public comment period. EPA also subsequently extended the public comment period for the rule by 91 days, so that comments are now due on October 20, 2014. EPA Region 8 has also reached out to the WSWC and offered to facilitate dialogue between the western states, EPA, and the Corps, as well as the other EPA Regions.

WSWC 401 SURVEY RESULTS

Tony Willardson reported that the National Hydropower Association has approached the Western Governors' Association and the WSWC about participating in discussions to address possible obstacles to a streamlined regulatory approval process for hydropower projects, and more specifically state 401 conditioning authority. To gather more information, the WSWC surveyed its member states to examine whether there are significant problems with state administration of Section 401 that result in unreasonable delays or obstacles to federal permitting. Tony said the survey results indicated that CWA 401 state water quality certification is not usually an obstacle in and of itself to timely licensing and permitting, provided that all applications are complete and ancillary federal activities are complete or nearly complete (e.g., public notice, study requirements, a complete environmental impact statement, mitigation requirements, etc.). The majority of states reported that it usually took them 40-90 days to act on a certification application. Tony further noted that the responses indicated that the complexity and long duration of the Federal Energy Regulatory Commission's licensing and relicensing process is a major contributing factor in those states with related 401 certification requests that are pending.

Notably, 401 certifications related to Section 404 permitting requests dominate the number of certification requests that states receive. Section 401 certifications are also used to inform state-issued NPDES permits under Section 402.

OTHER MATTERS

There being no other matters, the meeting was adjourned.