

**MINUTES
of the
WATER QUALITY COMMITTEE
Hard Rock Hotel & Casino Tulsa
Tulsa, Oklahoma
April 16, 2015**

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

MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	Tom Buschatzke Cindy Chandley
CALIFORNIA	Jeanine Jones
COLORADO	Trisha Oeth James Eklund
IDAHO	John Simpson
KANSAS	Tom Stiles Chris Beightel Tracy Streeter
MONTANA	--
NEBRASKA	--
NEVADA	--
NEW MEXICO	Greg Ridgley Tom Blaine
NORTH DAKOTA	Jennifer Verleger
OKLAHOMA	J.D. Strong
OREGON	--
SOUTH DAKOTA	Kent Woodmansey

TEXAS	Robert Mace
UTAH	Norman Johnson Walt Baker Eric Millis
WASHINGTON	--
WYOMING	Chris Brown

WESTFAST

Patrick Lambert, WestFAST Liaison, Salt Lake City, UT
Jean Thomas, U.S. Forest Service, Washington, DC
Becky Fulkerson, Bureau of Reclamation, Washington, DC
Andrew Hautzinger, Fish and Wildlife Service, Albuquerque, NM

GUESTS

Chris Carlson, USDA Forest Service, Washington, DC
Gary Rowe, NAWQA - USGS, Denver, CO
Brittnee Preston, Oklahoma Water Resources Board,
Mike Mathis, Continental Resources, Oklahoma City, OK
Rudy Herrmann, Oklahoma Water Resources Board, Tulsa, OK
Sarah Furtak, U.S. Environmental Protection Agency, Washington, DC
Mary Schooley, Oklahoma Water Resources Board, Oklahoma City, OK

STAFF

Tony Willardson
Nathan Bracken
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

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

APPROVAL OF MINUTES

The minutes of the meeting held in Scottsdale, Arizona in October 2014 were moved for approval by Walt Baker, the motion was seconded by Chris Brown, and the minutes were approved unanimously.

2015-2016 DRAFT COMMITTEE WORKPLAN

JD Strong and Nathan Bracken reviewed the Committee's draft workplan. Nathan mentioned the workplan is just a proposal at this point in time and asked members to think about what to do in terms of projects.

The water quality/water quantity nexus workshop will be held during the Fall WSWC meetings in Kansas.

CWA transfers legislation clearly defining transfers as exempt from Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) permitting will likely not be ripe for action this year. However, it may be well to begin having internal discussions amongst the western states regarding support for a legislative fix, should the need or the opportunity arise. The 2nd Circuit Appeals Court will likely uphold the district court decision vacating and remanding the rule. Given the Republican majority in the House and Senate, we may be able to get the votes to pass such a bill. The Committee will need to decide how much time to spend on that. Waters of the U.S. seems to be clouding this issue right now.

Walt Baker mentioned a discussion he had with the University of Utah's Law School Dean. If there is a legislative fix, I think he could perhaps have some insight into EPA's processes and the way they function.

Tom Stiles: We want the process like EPA had with their reporting rules. They got it right there.

JD said he remembered that Pat Lambert was asking for those good types of examples of collaboration and outreach.

Pat Lambert: As Nathan said, we need to look at the best practices used, and then help the federal partners know where we can work together. Also, we need to define what consultation means (i.e., collaborating with the WSWC, or with each state, etc.).

Nathan asked: What do we do going forward with the Good Samaritan bill? We will need to consider this before the Summer meeting. Tom Stiles suggested we stick with it and see this issue resolved.

ENVIRONMENTAL PROTECTION AGENCY UPDATE

A. Waters of the US Rulemaking/

Walt Baker: With a million comments on the Waters of the United States (WOTUS) rule, were there lessons learned there?

Roger Gorke: It is a lesson learned. I've been through the rulemaking process on several rules. Your suggestion of if it is written this way, is that what you intend? Or was it miswritten and communicated? There is a desire to work collaboratively. It takes a lot of work.

B. Section 518 and TMDL "Treatment as States" Rulemaking Efforts

Fred Leutner, EPA Office of Science and Technology, stated that the purpose of the Treatment of States (TAS) rule for tribes is to change the cautious interpretation we made in 1991, and to include express congressional authority delegated to tribes. There are 2 things happening. At the staff level, we are still processing the comments from the outreach. At the same time, we got a letter dated March 30, 2014, from Nevada Governor Sandoval, as Chairman of the Western Governors' Association which requested EPA to do direct outreach with the individual states before the rule is proposed. A reply has not gone back to the Governor yet. At the staff level, we believe it is possible that this interpretive rule could go forward, but not before next month. It could slip further, depending on the response to the letter.

C. Water Transfers Litigation

Roger Gorke stated that EPA's oral arguments are set for June 15 to defend the water transfers rule. The brief is online.

Questions/Answers

JD: Because it is an interpretive rule, can't EPA fast-track this a bit?

Fred Leutner: It is similar to a legislative rule. The difference is that we are not changing any regulatory text. In certain circumstances EPA can interpret its own regulations. We have chosen to go through a full notice and comment period on it. So, the process is very similar to a legislative rule. We are deliberately taking all of the input, and we will go through the comments, and we are going through the normal rulemaking process.

JD: Has EPA evaluated if it is following Executive Order 13132?

Fred: We have looked at that, but it may not trigger that requirement. We are focusing primarily on state organizations. We are not required to, but we are going through the same process.

Stephen Bernath: We are less concerned about the interpretation of the rule, than as to the implementation of it. We have 29 recognized tribes in our state, with the potential for having

different standards both upstream and downstream, and how that affects upstream and downstream users. Is EPA going to look at that?

Fred: The only thing changing is the requirements for an application in getting TAS. Once a tribe has TAS, we would go through the same process of resolving different standards.

Stephen: EPA approves whatever the tribes put on the table without giving consideration to what others at the table have brought regarding what makes sense within a particular waterbody.

Fred: We recommend that the tribes and states work collaboratively wherever possible. There is a dispute resolution mechanism, but it has not yet ever been used. Washington State has several different standards. The process is there if need be to try to resolve differences. You are welcome to discuss this offline.

Trisha Oeth: You mentioned you know some cases where there has been good collaboration among the states and the tribes. We are in a checkerboard situation regarding state and tribal land ownership. Can you give us some of your examples?

Fred: I will look into that and get back to Roger with some good examples.

Stephen: The concern is that EPA may only jump in if we push the dispute resolution button. We really do want to work collaboratively. We had a proactive effort to get parties together and share information, and definitely that is the preferred road.

JD: The whole idea behind this rulemaking is to make it easier for the tribes to assert where they have jurisdiction.

Sara Furtak: We are planning to propose a rule that will clarify the process for tribes to set water quality standards and total maximum daily loads (TMDLs). Under CWA Section 518, that section provides that tribes may seek TAS, but current regulations do not expressly define how tribes would do 303(d) listings of impaired waters.

In summary, the TAS effort is progressing. A proposed rule could be offered in 2015. There would be a 60-day comment period.

Nathan asked what expression of desire EPA has seen on behalf of the tribes.

Sara: There is an interest from tribes that have TAS for delegation of the 303(d) listing and the TMDL program.

D. Hydraulic Fracturing Study

Jean Brisken, Coordinator of the EPA Hydraulic Fracturing Study stated the goal is to provide a wholistic understanding on how fracking may affect the nation's drinking water sources. They have continued to meet with the states. The states are the primary audience

because they regulate the oil and gas industry. The project is providing information that includes: What chemicals are used and in what quantity? How will water resources be affected before and after fracking?

They will generate 28 reports, and these will be posted on their website. Four papers have been published thus far. The remaining reports are expected in the near future. They are also releasing the underlying information used in creating the reports.

An Assessment Report is expected in the Spring 2015. The Science Advisory Board (SAB) will review the report, and will make sure EPA got it right. This will be made available to the public in the Spring 2015. The docket will stay open for sometime for comments.

Walt Baker: Last week we had a visit from Region 8. Theresa Marks is at EPA. Her role is liaison to the states. Could you tell us what her charge is? She should make sure that the states are contacted and work collaboratively with them.

WATER QUALITY IN PRINCIPAL AQUIFERS OF THE UNITED STATES, 1991-2010

Gary Rowe, National Water Quality Assessment Program (NAWQA), gave a PowerPoint presentation on the Quality of the Nation's Groundwater. Billions and billions of gallons of groundwater are pumped every day. The NAQWA assessments have been done.

What contaminants are in the groundwater? What chemical processes are occurring on the groundwater? How can water-resource managers use this information?

The results of the groundwater wells study (see map from slides) show that 1 in 5 samples had an exceedance of the human health standard for at least one constituent. About 80 percent of these contaminants are from geologic sources. In most cases, when groundwater contained a manmade contaminant that exceeded the human health benchmark, it was due to organic nutrients. Rarely was a pesticide or a solvent the source of the exceedance for human health.

Nuisance constituents were much more frequent causes of exceedances throughout the aquifers. These constituents appear to be manganese, iron, pH, and total dissolved solids (TDS) across the West. The fact that most exceedances are of geologic origin, led the USGS to determine that irrigation, high volume pumping and artificial recharge can cause unexpected mixing of different quality waters as well as the release of naturally-occurring contaminants from the surrounding aquifer rocks and sediment. Putting in multi-aquifer recharge wells is changing the chemistry of the water. Aquifer storage and recovery comes with contaminants and that can change the system.

Groundwater quality is affected by 5 factors: contaminate sources, climate, geology, hydrogeology and geochemistry. (see slide)

He gave an example in the San Joaquin Valley in central California. They have observed that human actions have affected the amount of uranium concentrations. There are many more examples in the set of circulars that USGS has published.

They are entering their 3rd decade of NAWQA assessments of groundwater quality.

Nathan asked if USGS planned to make these maps available online. Gary said they will be available and there will also be a tool for prediction and forecasting.

INDUCED SEISMICITY ASSOCIATED WITH FLUID INJECTION

Pat Lambert mentioned that there will be a WestFAST sponsored webinar on this issue at the end of April. Pat then reviewed a brief PowerPoint presentation.

Fracking intentionally induces numerous micro-earthquakes. There has been a growing realization that the principal seismic hazard from injection-induced earthquakes comes from those associated with disposal of wastewater into deep strata or basement formations.

He also showed a slide and described induced seismic activity on the Dolores River in Colorado in the Paradox Valley.

Look for an announcement about their April 30th webinar.

STATE IMPLEMENTATION OF AMMONIA CRITERIA AND NUMERIC NUTRIENT CRITERIA

Walt Baker spoke about acute and chronic criteria and indicator species such as mussels. Utah is initiating a study to see if they can relax the criteria based on this mussel, which is not native to Utah.

Kansas is going to embrace the criteria. They have a lot of communities that operate 3-cell lagoons, and we would like to give them a pass, but they cannot begin to meet the ammonia criteria. We will create a quid pro quo. There are two thresholds they must meet. There is an economic threshold, and there is a blanket variance.

JD noted that Oklahoma is in that same boat, and Derek Smith is working with Kansas.

Walt kicked off the nutrient criteria discussion. Utah has done quite a bit, and they have criteria for some that are as old as TMDLs. They are trying to see if they can get some optimization on effluent for phosphorous and nitrogen. Walt is interested in finding out where others are in this process.

Trisha Oeth stated that in Colorado, we adopted nutrient criteria about 3 years ago. We also adopted numeric nutrient criteria, and they are applied above any dischargers. We are undergoing our first triennial review of those criteria. The cost for those facilities has been less than we initially anticipated.

Tom Stiles stated that Kansas had adopted chlorophyll criteria. Kansas is also utilizing the TMDL process to capture the intent of their nutrient criteria, and is trying to get the loadings down, predominantly for phosphorous. They have a good start on nitrates. Blooming algae are showing up more and more.

JD noted that Oklahoma has been doing 303(d) listings for a couple of decades. We have a phosphorous standard and several years later, we adopted chlorophyll criteria.

OTHER MATTERS

There being no other matters, the meeting was adjourned.