

MINUTES
of the
LEGAL COMMITTEE
Lied Lodge and Conference Center
Nebraska City, Nebraska
April 13, 2017

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MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	Einav Henenson
CALIFORNIA	--
COLORADO	John Stulp
IDAHO	Jerry Rigby John Simpson
KANSAS	Dave Barfield Tracy Streeter Kenneth Titus
MONTANA	Tim Davis Jan Langel Jay Weiner
NEBRASKA	Jeff Fassett Jim Macy
NEVADA	--
NEW MEXICO	--
NORTH DAKOTA	Jennifer Verleger
OKLAHOMA	Julie Cunningham
OREGON	--
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Jon Niermann

UTAH

Walt Baker
Norm Johnson
Todd Stonely

WASHINGTON

--

WYOMING

Chris Brown
Pat Tyrrell

GUESTS

Robert Swanson, U.S. Geological Survey, Lincoln, NE
Ward Scott, Western Governors' Association, Denver, CO
Dave Mitamura, U.S. Army Corps of Engineers, Austin, TX
Lauren Dempsey, U.S. Air Force, Travis Air Force Base, CA
Peter Nichols, Berg Hill Greenleaf Ruscitti, LLP, Boulder, CO
Julie Ward, NE Department of Natural Resources, Lincoln, NE
Susan France, NE Department of Natural Resources, Lincoln, NE
LeRoy Sievers, NE Department of Natural Resources, Lincoln, NE
Skip Feeny, Colorado Water Quality Control Division, Denver, CO

WESTFAST

Roger Pierce, Federal Liaison, Murray, UT
Becky Fulkerson, Bureau of Reclamation, Washington, DC
John D'Antonio, U.S. Army Corps of Engineers, Albuquerque, NM
Roger Gorke, U.S. Environmental Protection Agency, Los Angeles, CA
Danielle Wood, National Aeronautics & Space Administration, Greenbelt, MD

STAFF

Tony Willardson
Michelle Bushman
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

Jennifer Verleger, Chair of the Legal Committee, called the meeting to order, and requested introductions be made around the room.

APPROVAL OF MINUTES

The minutes of the meeting held September 29, 2016 in St. George, Utah were moved for approval, and seconded. The minutes were unanimously approved.

U.S. ARMY CORPS OF ENGINEERS WATER SUPPLY RULE

Jennifer noted that this is an important issue for North Dakota and South Dakota. The WSWC draft comment letter with North Dakota's recent comments and proposed revisions was passed around to the members. The deadline for comments to the Corps is May 15, 2017.

The National Water Supply Alliance, which includes many Eastern states at the local water supply level, is incorporating and working on their organization bylaws. North Dakota has reviewed and provided comments on the bylaws. The NWSA's primary concern right now is commenting on the Corps' Water Supply Rule. This has aligned the Eastern states with our states' rights position, and Jennifer is hoping we will get some good support from NWSA. Ward Scott with WGA has also spoken with their group. For anyone interested in participating with the group, the dues structure does not look like it's going to be as large as she was initially concerned it would be, so it might be worth getting involved, at least while we are working on this water supply issue.

DAKTOA ACCESS PIPELINE

Garland was unavailable to give his presentation due to State budget issues, so Jennifer gave his presentation. The Dakota Access underground pipeline begins near Stanley, ND and ends in Patoka, IL, for a distance of 1,172 miles. It will transport light, sweet crude oil from the Bakken oil fields to market. During North Dakota's oil boom over the past 5-10 years, the oil has been transported by rail, encountering derailments and explosions, and by taking up the train capacity, farmers were having difficulty getting their products to market in competition with the more revenue-generating oil.

The North Dakota State Engineer's Office got involved with the pipeline by granting a permit to cross the river. The primary concern was that the pipeline be located at sufficient depth to not impact the horizontal and vertical movement of water at the point of the pipeline crossing. North Dakota hadn't dealt with scour features before, so the SEO hired a contractor to look at the federal guidelines, which require at least four feet of protective cover above the pipeline, and what the other states are doing. The contractor determined that 20 feet of scour at the Lake Oahe crossing would be best for this pipeline project, so the SEO required a minimum depth of 24 feet. The pipeline is actually at 95 feet below the lake, so they are far below what we required to protect the groundwater and the river. The pipeline also follows a corridor where other existing pipelines are located, to minimize the disturbance to the environment. Their safety equipment met all of the SEO's concerns in the application process, so the permit was approved.

The controversy over the pipeline started at the Standing Rock Sioux Reservation, located south of the pipeline, which crosses private property rather than Tribal land. There was a lot of press coverage about the potential of the pipeline to impact the Tribe's water intake. Five years ago the Tribe began the process of moving their water intake 50 miles south, and that process is expected to be complete in 2017.

In August 2016 protestors began gathering to oppose the Dakota Access pipeline. Law enforcement responded to efforts of hampered construction activity. Protests started to intensify, with protestors securing themselves to equipment with devices called "sleeping dragons." Law enforcement and equipment were the targets of protests. This was also in the middle of harvesting, so farmers' combines out in the field were being vandalized, and farmers that hadn't been vandalized were concerned that they just hadn't found hidden damage. It was a scary time for the locals that live in that area.

The state was unprepared to counteract the protestors' use of social media platforms. The whole movement spiraled out of control very quickly. The protestors raised millions of dollars using social media. The information spread from social media to national news outlets, drawing more protestors. There were a lot of anti-law enforcement images that were shaping the narrative. It became about the indigenous tribes versus the cops. The pictures of water being sprayed were captured in the news with a story that it was a freezing cold night, subzero temperatures, and it looks like the cops are spraying people with water cannons. What you didn't see in the national news was that people had lit fires and then moved in front of the fires when the cops and firefighters were trying to put the fires out.

In order to counteract this, the state and local governments began to set up their own protests on social media sites. Know the Truth Campaign was developed by North Dakota Emergency Response, and they made press releases more readily accessible. They posted the daily activities and statistics of who was being arrested and why, where the protestors were from. There was a lot of myth versus fact publications released to clear up media headlines.

The four protest camps were mostly located on Corps land. North Dakota continually asked the Corps to act to help remove those people. This was met with little to no response. We got a letter back from the Corps indicating that they wanted the protestors gone, too, requesting North Dakota's help. One of the concerns was potential flooding, as the 2011 flood covered the area of the camps. Three early winter storms brought record levels of precipitation, and by the third one the protestors were finally starting to leave, but by that time even the snow ploughs and emergency vehicles were having difficulty getting around. At the end of February, the representatives from the Corps and protestors discussed cleaning up the camps, and law enforcement officers proceeded to remove people from the camps so the state could come in and start cleaning up all of the trash. By the first week, they removed 418,000 pounds of garbage.

The final clean-up costs were \$1.1M, including filling up 835 of those huge roll out dumpsters, 44 abandoned vehicles, and 12 dogs were rescued and brought to shelters. Apparently they also found a body, so there was at least one fatality that we know of from that area. It took

210 days of law enforcement support during the protest, with additional high costs for the National Guard, personnel, equipment, and supplies. It was a very expensive problem for North Dakota. We got a lot of help from other states, which was greatly appreciated. We are looking at legal action to recover some of those costs. Although the main protest was in a remote area, protestors were also blocking streets in Bismarck, not letting emergency vehicles through, disrupting people just trying to live their lives.

Questions and Comments:

Q: You indicated that the state efforts to deal with social media might have been too little too late. Was there a recommendation that followed?

Jen: I think they are still working on all the recommendations. Part of these slides came from a longer North Dakota Response presentation, which is a team that's charged with putting all of this information together. They've been going around the country to talk about what happened, getting a lot of requests to provide information. There will probably be some follow up as far as how to handle that in the future. One of the problems was the timing, and anticipating that the cold of winter would drive the protestors away sooner. But we had a mild, lovely fall, and the protests just got worse until the blizzards in December.

Kent: We're getting ready for Keystone XL. There was something in the news yesterday that there is a protest camp now in South Dakota by Eagle Butte. So we already started posting on social media. We've got emergency planning going on. We are getting ready. We were lucky with the Dakota Access pipeline, they mostly stayed in North Dakota. I saw maybe 15 people protesting at our capitol.

Jen: That's another result of this protest. Our capitol now has security for the first time ever, with metal detectors at all the doors, badges for employees, which is a change in culture that has come out of this.

Q: What's the current status of the pipeline?

Jen: The construction is complete, and I think there may actually be oil flowing through it. Now that the protestors are gone, everything has died down in the news so we don't hear much about it.

WATER TRANSFERS

Peter Nichols, Special Assistant Attorney General to Colorado and New Mexico, provided an overview of the 2nd Circuit decision in *Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA* and the significance of the EPA's Water Transfers Rule on the tens of thousands of daily western water transfers.

Every major western city and agricultural area relies on transfers for some water. More than 100 million residents rely on water transfers daily. Peter provided several examples of water transfers, including: (1) over two dozen transmountain diversions in Colorado; (2) the San Juan Chama Project between Colorado and New Mexico with 26 miles of tunnels; (3) the system of reservoirs and aqueducts enabling transbasin diversions in central Utah; (4) the Central Arizona Project aqueducts and transbasin diversions; (5) the Colorado River Aqueduct, Los Angeles Aqueducts, State Water Project, Bay-Delta, and state reservoirs that supply the Metropolitan Water District of Southern California; (6) the Truckee Meadows Water Authority that diverts water from Lake Tahoe and other water bodies to multiple reservoirs to meet tribal and non-tribal water supply needs; and (7) the Cross-cut Canal in Idaho. Abrogating the States' rights to allocate quantities of water would significantly reduce water transfers and result in a net loss of water supplies in the West.

Meeting Clean Water Act §402 NPDES permitting requirements would be economically infeasible, technically challenging, and environmentally impossible, and the fines would quickly reach astronomical levels. As an example, installing treatment plants for a few major Colorado River Basin transfers would require \$9B in capital costs, with \$4.6B in annual operation and maintenance, and another \$300M per water transfer. Additionally, there are rapid and wide swings in water volume and water quality depending on the time of year, making permit compliance technically challenging. Obtaining permits for transfers in or adjacent to national parks, recreation areas, wilderness areas, and federal lands would be environmentally difficult.

Instead, water transfers occur under the authority of each state to allocate quantities of water within its jurisdiction. Additionally, the states have adequate authority to deal with any water quality issues, designating uses for each water body or segment of waters transferred, and establishing the water quality standards that must be met. Many water transfers exceed the water quality standards, and in some cases contributed to the ability of the receiving waters to exceed those standards. Other transferred waters pick up pollutants from non-point sources, storm events, spring runoff, elevated metals from the local geology, etc. Most water transfers occur during spring runoff to capture snow melt under the prior appropriation doctrine, which can be the times when such waters are most unlikely to meet water quality standards due to high TDS. Fines for transferring waters that are non-compliant are \$51,500 per day.

The Water Transfers Rule conflict has underscored the critical issue concerning traditional federal deference to the states' water rights and water laws. He noted that now may be the best time to codify the Water Transfer Rule, while EPA and the Courts are in agreement. He has been working with WGA to develop some proposed language to introduce into Congress: "A Bill to enact into law a regulation relating to certain discharges excluded from the permit requirements of the National Discharge Elimination System Program. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Section 1. Permit Not Required. *Section 122.3(i) of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act) is enacted into law.*"

EPA's 2008 Water Transfers Rule (40 CFR §122.3(i)) (still in effect today) states the following: "Exclusions. Discharges from a water transfer. Water transfer means an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred."

Peter stated that WGA would be the best public face for the proposed legislation, but we would need to coordinate and ensure that all interested Western parties agree and are on the same page, including WSWC, CWAG, NWRA, WUWC, with some of the individual western water agencies coordinating a strategy and carry the lobbying burden in Washington, D.C. He provided a list of Western states and water providers that have historically opposed NPDES permitting for water transfers, and pointed out that only the West is arguing for deference to state water laws and arguing the practical effects.

WOTUS LITIGATION UPDATE

The Supreme Court has resisted the federal government's request for an abeyance on the jurisdictional question. They will hear the issue of which court should be handling the WOTUS litigation sometime this Fall. The briefing got pushed back a couple of weeks, so the states' brief is due in another couple of weeks.

AGUA CALIENTE CASE: RESERVED RIGHTS TO GROUNDWATER

Michelle provided an update on the 9th Circuit's March 7, 2017 decision in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*. The Court held that the United States implicitly reserved a right to water when it created the Agua Caliente Reservation, and that the Tribe's reserved water right extends to the groundwater underlying the Reservation. In reviewing the federal reserved water rights doctrine in *Winters v. United States*, 207 U.S. 564 (1908), the Court saw no distinction between surface water and groundwater. "Apart from the requirement that the primary purpose of the reservation must intend water use, the other main limitation of the reserved rights doctrine is that the unappropriated water must be 'appurtenant' to the reservation." The court determined that as long as the waters are attached to the reservation, it does not matter whether that water is above or below the ground. Michelle quoted a statement from one of the judges during oral arguments: "Why would one distinguish at that level between surface water and groundwater? I don't get it. It's all water. Some of it's above the ground, some of it's below the ground. It all has two hydrogen molecules and one oxygen molecule. What's the principled reason for determining where the right is to distinguish between what's on top of the ground and what's below the ground?"

The Court also held that federal reserved rights preempt conflicting state law. Michelle pointed out that the groundwater in the Coachella Valley is governed by California's correlative rights doctrine, so there are no priority water rights to groundwater there. If the 9th Circuit can

apply the *Winters*' doctrine in a place where there are no priority rights, what's to stop tribes or federal agencies from doing the same thing elsewhere, even in Eastern riparian systems?

Tony noted that one of the cases the 9th Circuit relied on as persuasive authority, *In re General Adjudication of All Rights to Use Water in Gila River System and Source*, 989 P.2d 739 (Ariz. 1999), is considered dicta because the issue of reserved water rights to groundwater was not an issue squarely before the Arizona Supreme Court. There are Arizona court proceedings currently challenging the ruling as dicta.

Rod Walston, a former WSWC member, represents the Coachella Valley Water District and is preparing to petition the U.S. Supreme Court this summer for certiorari to review and overturn the 9th Circuit's decision. In the handout emailed to Michelle and passed around to members, he provided a written overview of the case and information for states interested in supporting the petition as amicus. Jennifer noted that several states' attorneys general were involved in preparing an amicus brief.

CRITERIA AND PROCEDURES FOR NEGOTIATIONS OF INDIAN WATER RIGHTS CLAIMS

Tony Willardson provided an updated on recent Ad Hoc Group activities. The Department of the Interior began discussions with the Tribes in October 2016, asking for their thoughts on the DOI's 1990 Criteria and Procedures, a set of guidelines and rules for federal participation in the negotiation of Indian water rights claims. They've worked relatively well over the past couple of decades, but Pam Williams has reached out to the Tribes to see whether there is a need to update the C&Ps. Our Legal Committee workgroup discussed the pros and cons of making changes. The general conclusion was that we have a number of settlements still in process, and it may be better for those settlements to stick with the known C&Ps rather than changing the rules in mid-stream, potentially delaying those existing settlement negotiations. We wrote a letter to Pam (Tab R) and spoke with her personally, and she is very interested in getting the States' perspective as well as the Tribes. We will be working with the Secretary's Indian Water Rights Office, and there will be an opportunity for us to discuss the C&Ps and our preferences to leave them as they are.

Norm Johnson noted that there's been a tendency by the federal government in the past to undervalue these Indian reserved water rights claims and the tribes' waivers of those claims. The past several years the federal contribution to completing those settlements has been viewed as an earmark, and it's really not. The tribes have significant claims against the federal government, and these settlements really are a win-win-win for the tribes, states, and federal government. But the federal government looks at the cost as a big number without taking a closer look at the value of the underlying claims.

WSWC/NARF INDIAN WATER RIGHTS SETTLEMENT SYMPOSIUM

The Western States Water Council and the Native American Rights Fund will hold their fifteenth Symposium on the Settlement of Indian Reserved Water Rights Claims on August 8-10, at the Best Western Plus Heritage Inn in Great Falls, Montana. The agenda will follow the same basic format as past symposia, but will include a panel covering tribal water codes, as we've had a request from one of our states to see what tribes have done.

ROUDTABLE: WATER RIGHTS SETTLEMENTS UPDATES

Kansas: David Barfield provided an update on the settlement with the Kickapoo Tribe. The Kickapoo Reservation in northeast Kansas is fairly small, only 30 square miles. The tribe was looking for a more secure water supply. There was a Kansas watershed plan in place with four different multi-purpose areas, and the watershed district started moving forward with the plan in the Plum Creek area. The Tribe sued when the watershed district refused to condemn some land to build a reservoir as part of the plan. The court held that the watershed district could not be forced to condemn property for the project. The negotiation over the reservoir and the quantification of water rights claims went well, with good people on both sides. Practicable irrigable acreage wouldn't work as a measure of water rights in northeast Kansas, so we ended up using a municipal build out concept, focusing more on the question of how much storage they would be allowed to build. Another unique feature of this settlement is the MOA between the tribe and myself as Chief Engineer, to review the agreement every year. As the Tribe builds storage and has more need, we'll keep it up to date with what we're going to do to monitor the basin and update the procedure, so everyone knows what is going on. We don't have to regulate domestic users or deal with futile calls as part of the settlement.

Utah: Norm Johnson provided an update on the settlements with the Navajo Nation and the National Park Service for Bryce Canyon National Park. We've been working for about 14 years with Navajo Nation to quantify the reserved right for the portion of the reservation located in southeastern Utah. It's a very large land mass, including everything below the San Juan River and Aneth extension above the river at the Colorado border. The settlement has been in place in concept for about 8 years. The tribe would take about 80,000 acre-feet of the depletion out of the Colorado River system. Their claim based on practicable irrigable acreage is much larger than that, if they get money to develop projects closer to where the people live. The cost of the settlement as it stands right now is about \$200M. The State has contributed about \$10M (5%). It sounds like a lot of money, and it is, but we weighed that against the reasonable, credible claims of the Nation, which would not have fit within Utah's existing uses of the Colorado River allocation and would have created numerous problems for future development. A key component of these negotiations is to have a federal negotiating team. We asked for a team for several years, but part of the problem is the Secretary's Indian Water Rights Office is spread so thin. We were finally successful in getting that team into place a couple of years ago. The Team worked diligently to get up to speed on the settlement negotiated by the Tribe and the State, and to come up with a federal position on the agreement. Senator Hatch has introduced the settlement

bill as S. 664. After the bill was introduced there's some negotiation of parts of it that may not be quite right, but we are pleased to have the bill introduced. The relationship with the federal negotiating team changes drastically once you have a bill in place. We're hopeful to have the bill move forward as we work out the details. This settlement puts sort of a missing puzzle piece into the puzzle of the Colorado River. The Navajo Nation's reserved water claim for this portion of the reservation fits within Utah's allocation of the river. Having this settlement completed benefits the entire basin.

Utah also completed a settlement on Bryce Canyon, which we've been working on for several years. It involves a very small amount of water, but in that part of the desert it's also a very important amount of water. It's a smaller park, but it grew over the years in pieces. One of those pieces came with a decreed water right from a railroad used to build the lodge there in the 1880s, and we pointed out that the decreed right covered most of the reserved right that was needed, with a better priority date than the 1940s and later. The National Park service did their due diligence looking into that water right, and they were able to build the water structures to use that water right, which made it so much more doable for us. The settlement was signed Jan 18, 2017, while everyone who had worked on the settlement was still in place. A copy of the settlement is under Tab T in the briefing materials. It still needs to be approved by the court, but we're making progress on our Indian and non-Indian water rights claims.

Montana: Jan Langel provided an update on the settlement with the Blackfeet Nation. The Compact for the Blackfeet Nation has been ratified by Congress. The Nation's vote to ratify is on April 20, 2017. The state has been involved in some of the educational meetings to help explain the Compact and what it does. We certainly hope the vote is favorable. The Confederated Salish and Kootenai Tribe Compact was negotiated over many years and was approved by the state in our last legislative session in 2015. There have been some attempts in this legislative session to throw a monkey wrench into the Compact, but it has been beat back so far. It's been a struggle to get people educated on that Compact, and there's been a lot of opposition and close scrutiny.

Oklahoma: Julie Cunningham talked about the details of the settlement with the Choctaw and Chickasaw Nations. In 2011 the tribes filed a lawsuit against the State of Oklahoma and Oklahoma City regarding water in southeast Oklahoma. The City filed an application to remove 115,000 acre feet through a pipeline from Sardis Lake to supply the central part of the state. The Water Resources Board contracted the rest of the storage in Lake Sardis to the City, and the City agreed to pay off the debt for the reservoir. The City did not yet have a water right for the water in the lake. This triggered the lawsuits from the tribe. After a short, five-year mediation, the parties were able to reach some good compromises. The settlement was completed at the end of 2016, and Senator Inhofe and the rest of the Oklahoma delegation really expedited the Congressional process, and it passed as part of the WIIN Act, at zero federal cost.

The state retains the permitting authority and administration of the water rights. The tribes make up the southeast quarter of the state, but there is no reservation, and they have patchwork of privately owned water. Existing private water rights (tribal and non-tribal) were

protected. State's debt obligation was resolved by the City. The tribes agreed not to protest the City's application regarding Sardis Lake, which just went out for public notice. We've gotten over 70 protests from non-tribal entities, so there's still an uphill battle there, just not from the tribes. Certain surface and groundwater uses have been preserved for allottees in the area. The Nations get long-term protection of settlement area water needs, including tourism and recreation protections. It includes certain categories of protected sub-basins, so that if an application comes in, the tribes have a stronger voice at the table, with required modeling exercises with an agreed-upon model. It acknowledges in-stream flow needs, which is unique in Oklahoma except for one other small basin. The parties agreed to a lake level management plan that prohibits diversions under a certain amount of flow. There's an administrative 20,000 af set aside, in addition to any compact, settlement, or other water rights that must be considered before any new diversions. All of the other reservoir users (there are five reservoirs besides Sardis Lake) must be in water conservation mode (including at the residential level) before they can take any water from Sardis Lake. This happened as a result of a release that was requested from Canton Lake up in northwest Oklahoma right before a five year drought. The lake wasn't able to recover from the release, which resulted in lawsuits. So this provision was intended to provide some drought protections. The settlement includes the tribes in the long-term state water planning process. It also mentions out-of-state water use. Right now the legislature must approve any water transfers out of the state, and the settlement assures that the tribes can come to the table of any of those take place as well.

WSWC/WESTFAST FEDERAL NON-TRIBAL WATER CLAIMS WORKSHOP

Roger Pierce, WestFAST Liaison, briefly reviewed the workshop on groundwater held in Bismarck, North Dakota in July 2016. We are preparing for our next workshop in October 2017 in conjunction with the Albuquerque, New Mexico meetings. A Doodle Poll will go out to the Non-Tribal Federal Water Rights Workgroup sometime in the next few weeks to schedule a conference call to begin planning that meeting.

LEGISLATION AND LITIGATION UPDATE

Michelle provided an overview of several bills introduced at the beginning of the 115th Session of Congress.

With relation to the Clean Water Act and Safe Drinking Water Act, there are several bills dealing with (1) the WOTUS rule and defining navigable waters (H.R. 1261, H.R. 1105, S. Res. 12); (2) SRF funding, authorization, and "buy American" provisions (H.R. 1071, H.R. 1647, H.R. 1673, H.R. 1653, H.R. 939, H.R. 904, and S. 181); (3) Clean Water Act technical and compliance assistance (H.R. 465, S. 518, S. 692); (4) streamlining infrastructure project permitting and removing EPA's ability to veto Corps permits (H.R. 1179); and (5) improving reporting related to drinking water systems (H.R. 1179, H.R. 1068, H.R. 1579).

Bills relating to infrastructure funding, aging, asset management, streamlining permits, and storage capacity include H.R. 434, H.R. 660/S. 216, H.R. 875, H.R. 1654/S. 677, and H.R. 648/S. 199.

Indian water rights bills introduced so far include the Navajo-Utah Water Rights Settlement (S. 664) and proposed amendments to the White Mountain Apache Tribe's settlement (S. 140).

Bills addressing drought and extreme weather forecasting include H.R. 353 (which passed both House and Senate and was sent to the President on April 6), H.R. 1663/S. 451, and H.R. 23.

Four bills have been introduced to divide the overloaded 9th Circuit Court to create a new 12th Circuit, with different proposals for which states would be moved to the 12th Circuit's jurisdiction.

Michelle also provided a litigation update on (1) *Cobb County-Marietta Water Authority v. U.S. Army Corps of Engineers*, a federal case in Georgia over the issue of Corps water storage and State allocations of water flow; (2) *Florida v. Georgia*, a U.S. Supreme Court case on interstate equitable apportionment of surface water held in Corps reservoirs; (3) *Sierra Club v. Virginia Electric and Power Company*, a federal case in Virginia that held groundwater is a point source or conduit subject to the Clean Water Act; (4) *Wyoming et al. v. Zinke*, the 10th Circuit appeal on the BLM's Hydraulic Fracturing Rule; (5) the Gold King Mine cases in New Mexico; and (6) *Texas v. New Mexico*, a U.S. Supreme Court case on the Rio Grande Compact,

FY2017-2018 WORK PLAN

The committee will discuss the work plan via email between now and the next Council meeting.

OTHER MATTERS

There being no other matters, the meeting was adjourned.